

STATE OF SOUTH CAROLINA

VOLUME I OF II

In The Court of Appeals

APPEAL FROM MARION COUNTY

Donald B. Hocker, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KEMONIE LASHAWN JONES,

APPELLANT

APPELLATE CASE NO. 2015-000522

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

EDGAR L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit
MSC-Q, Room 1101
180 N. Irby Street
Florence, SC 29501-3431
(843) 665-3091

Attorneys for Respondent

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State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Marion	)	Case No. 2013-GS-33-00406

State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
Kemonie Jones,	)	
	)	
Defendant.	)	
	)	

February 23-27, 2015
Marion, South Carolina

B E F O R E:

The Honorable Donald B. Hocker, Judge; and a jury

A P P E A R A N C E S:

Fitzlee McEachin, Esquire
Attorney for the Plaintiff

Henry Anderson Jr., Esquire
Scott Floyd, Esquire
Attorneys for the Defendant

KRYSTAL J. SMITH
Court Reporter

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3	S-1	Red Elmo Stocking Cap	238	254
4	S-2	Grey & Black Jacket	180	431
5	S-3	Latent Particle Lifts	336	337
6	S-4	Black Pants	202	430
7	S-5	(NONE PRESENTED)		
8	S-6	Defendant's ID Card	426	427
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1 FEBRUARY 23, 2015

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 trial began at 11:16 a.m.)

5 THE COURT: Okay. Ladies and gentlemen of the jury
6 panel, we will be starting a trial more than likely this
7 afternoon after we deal with some pre-trial matters in the
8 case of the State of South Carolina versus Kemonie Lashawn
9 Jones. Mr. Jones, would you stand and just face the jury
10 panel for just a brief moment, please?

11 (WHEREUPON, the defendant complied.)

12 THE COURT: Okay. Very good. You can have a seat.
13 Thank you, sir. Ladies and gentlemen, Mr. Jones has been
14 indicted by the Marion County Grand Jury with two offenses.

15 Now, before I read the indictment to you, let me explain
16 to you that an indictment is not proof of the guilt or
17 innocence of Mr. Jones. The indictment serves as the charging
18 paper to get a case to trial where we are today. It is a
19 statement of allegations that the State has the burden of
20 proving to the jury beyond a reasonable doubt standard. So
21 just because a person has been indicted does not mean that a
22 person is guilty. It's just the mechanism to get it to where
23 we are here today. Now, I'm going to publish the indictment
24 so you'll know a little bit about what this case is about.

25 Count I -- there's two counts, two offenses. Count I is

1 murder. That Kemonie Lashawn Jones did in Marion County on or
2 about February 16, 2013, willfully, feloniously, and
3 intentionally kill Stanley Charles Witek. Is that pronounced
4 correctly?

5 MR. MCEACHIN: That's correct, Your Honor.

6 THE COURT: With malice aforethought, either express or
7 implied, by means of shooting, and the victim did die as a
8 proximate result thereof on or about February 16, 2013, in
9 Marion County in violation of Section 16-03-0010, Code of Laws
10 for South Carolina.

11 Count II is possession of marijuana with the intent to
12 distribute. The allegations are as follows: that Kemonie
13 Lashawn Jones did in Marion County on or about February 16,
14 2013, did knowingly and intentionally possess with intent to
15 distribute a quantity of marijuana, a controlled substance,
16 such possession not having been authorized by law. This being
17 in violation of Section 44-53-370, Code of Laws for South
18 Carolina.

19 Mr. Jones has exercised his constitutional right and has
20 pled not guilty to both of those charges that are in the
21 indictment that I have just published to you.

22 VOIR DIRE

23 THE COURT: Is anyone on the jury panel related by blood
24 or by marriage, either currently or in the past by marriage,
25 to either Kemonie Lashawn Jones or Stanley Charles Witek? If

1 so, please stand.

2 (WHEREUPON, no one stood.)

3 THE COURT: Does anyone on the jury panel have or have
4 had a close personal or social relationship with either
5 Kemonie Lashawn Jones or Stanley Charles Witek? If so, please
6 stand.

7 (WHEREUPON, no one stood.)

8 THE COURT: Is there any member of the jury panel related
9 to anyone in law enforcement? If so, please stand.

10 (WHEREUPON, several people stood.)

11 JUROR NUMBER 18: Do you want division?

12 THE COURT: All right.

13 JUROR NUMBER 18: My son is.

14 THE COURT: All right. First, state your name.

15 JUROR NUMBER 18: I'm sorry.

16 THE COURT: That's okay.

17 JUROR NUMBER 18: Vicki Britt, Juror 18. My son is a DNR
18 officer.

19 THE COURT: Okay. The fact that your son is a DNR
20 officer, would that prevent you from being -- or would that
21 cause you to be biased or prejudiced to either the State or
22 the defense or would you still be able to be fair and
23 impartial to both the State and the defense?

24 JUROR NUMBER 18: I would be.

25 THE COURT: Okay. Thank you, ma'am. Yes, ma'am?

1 JUROR NUMBER 130: Number 130, Laura Cook. My cousin
2 works for the Sheriff's Department.

3 THE COURT: In Marion County?

4 JUROR NUMBER 130: Yes, sir.

5 THE COURT: The fact that your cousin is employed with
6 the Marion County Sheriff's Department, would that prevent you
7 from being fair and impartial to both the State and the
8 defense in this case?

9 JUROR NUMBER 130: No, sir.

10 THE COURT: Okay. Thank you, ma'am. Yes, sir?

11 JUROR NUMBER 74: Former highway patrol.

12 THE COURT: All right. Your name?

13 JUROR NUMBER 74: David Hicks.

14 THE COURT: Okay.

15 JUROR NUMBER 74: Juror Number 74.

16 THE COURT: Okay.

17 JUROR NUMBER 74: Former state trooper in South Carolina
18 and a police officer in Mullins. My father and brother are
19 employed by the South Carolina Highway Patrol.

20 THE COURT: Okay. All right. So you've got two
21 relatives that are employed by the South Carolina Highway
22 Patrol, and did I understand that you previously --

23 JUROR NUMBER 74: Yes, sir.

24 THE COURT: -- were on the highway patrol and also in law
25 enforcement?

1 JUROR NUMBER 74: Yes, sir.

2 THE COURT: As a police officer?

3 JUROR NUMBER 74: Yes, sir.

4 THE COURT: Okay. All right. But you're currently not
5 in law enforcement?

6 JUROR NUMBER 74: Not at this time, no, sir.

7 THE COURT: Okay. All right. The fact that you were
8 previously in law enforcement and the fact that your -- you
9 have two relatives in law enforcement, would that prevent you
10 from being fair and impartial to both the State and the
11 defense?

12 JUROR NUMBER 74: I'd say it wouldn't.

13 THE COURT: You say it wouldn't? Are you certain of
14 that, sir?

15 JUROR NUMBER 74: I can't be a hundred percent certain.

16 THE COURT: Okay. Let's do this. Let's do this.
17 Because I'm going to give the panel another opportunity to
18 come down front and speak with me, you get in that line and
19 come down. We'll talk about it further. Okay?

20 JUROR NUMBER 74: All right.

21 THE COURT: Thank you, sir. Yes, sir?

22 JUROR NUMBER 102: Todd Mobley, 102. My brother is in
23 federal law enforcement.

24 THE COURT: All right. The fact that your brother is in
25 law enforcement, would that prevent you from being fair and

1 impartial to both the State and the defense in this case?

2 JUROR NUMBER 102: No, sir.

3 THE COURT: Thank you, sir. I'm going to publish a list
4 of possible or potential witnesses in this case and then once
5 I do, then I'll ask you a question concerning that.

6 Lieutenant Chris Smith, Sergeant Keith McNeil, Police
7 Officer Chris Hucks, Police Officer Jack McCaskill, Lieutenant
8 Tony Flowers, Officer Orlando Reed, Captain Cindy Barr, and
9 Lieutenant Walker Davis, all of those individuals with the
10 Marion Police Department.

11 Investigator Greg Pike, Officer Marvin Alston, those two
12 with the Marion County Sheriff's Office. Vicki Hallman,
13 Jennifer Clayton, Megan Fletcher, those being employed by the
14 South Carolina Law Enforcement Division. Jeff Gause, G-a-u-s-
15 e, with the Marion County Sheriff's Office.

16 Dan DeFreese, Courtney Thompson, both of those with SLED.
17 Lisa Revell, Ranger Miller, being with EMS. Josh Brown, being
18 with Marion Fire Department. Cynthia Schadl, that's S-c-h-a-
19 d-l [sic], and Eowyn Corcrair, C-o-r-c-r-a-i-n, both with
20 MUSC. Don Oliver, Cyrus Sloan, Scott Lane, Thomas Hills,
21 Betty Elvis, Jacqueline Witek, and Ryan Brigman.

22 Anyone on the jury panel related by blood or marriage or
23 previously by marriage to any of the people that I have just
24 named or does anyone on the jury panel have or previously had
25 a close personal or social relationship with any of those

1 individuals? If so, please stand.

2 (WHEREUPON, no one stood.)

3 THE COURT: Now at this time, I'm going to get the
4 attorneys to actually introduce themselves, even though I've
5 already done that, and any of their staff members that may be
6 with them. And I'll tell you, members of the jury panel, we
7 have excellent attorneys in this case on both sides. I know
8 that they have worked extremely hard in preparing their
9 respective cases in their representation of their respective
10 clients. So at this time, from the State?

11 MR. MCEACHIN: Good morning, ladies and gentlemen. I am
12 Fitzlee McEachin. I'm the assistant solicitor who will be
13 handling this case. As the Court has already indicated, this
14 is Solicitor Ed Clements. He's our elected solicitor here in
15 the circuit. He will be with me throughout the course of this
16 trial.

17 In addition to Solicitor Clements, you may see some other
18 assistant solicitors and deputy solicitors coming in and out
19 of the courtroom. Those would be Todd Tucker, Angel Daniels,
20 John Jepertinger, Rick Hoefer, and David Richardson. Also, we
21 have Vicky Singletary, who is our victim's advocate who is
22 seated here with me today. And also, Gary Street, who is our
23 investigator.

24 Thank you, Judge.

25 THE COURT: All right. Thank you. From the defense?

1 MR. ANDERSON: Good morning. My name is Hank Anderson.
2 I practice law over in Florence. However, every couple of
3 months I get the opportunity to come over here and work with
4 the Public Defender's Office here in Marion. Scott Floyd is
5 the circuit Public Defender. Vick Meetze over here, he's a
6 public defender. He works in Marion and Florence. We also
7 have a young man named Will Grove who works in Florence, but
8 also comes to Marion. And then, in honesty, this is the boss
9 right here, Molly Sloan. She works over here all the time,
10 and she more or less tells us what to do.

11 THE COURT: Anyone on the jury panel related by blood or
12 marriage or previously by marriage or have or have ever had a
13 close personal or social relationship with any of the
14 attorneys involved in this case or any others that they have
15 introduced to you? If so, please stand.

16 (WHEREUPON, no one stood.)

17 THE COURT: Any member of the jury panel ever been
18 represented by any of the attorneys involved in this case? If
19 so, please stand.

20 (WHEREUPON, no one stood.)

21 THE COURT: Now, I realize that you know very little
22 about this case. I published the indictment, but I have to
23 ask you has any member of the jury panel formed or expressed
24 an opinion about any issue or matter involved in this case?
25 If so, please stand.

1 (WHEREUPON, no one stood.)

2 THE COURT: Is any member of the jury panel aware of any
3 bias or prejudice towards either the State or the defendant in
4 this case? If so, please stand.

5 (WHEREUPON, no one stood.)

6 THE COURT: This next question I don't believe anyone
7 will respond to it, but I need to ask it anyways. Is there
8 any member of the jury panel that was a member of the grand
9 jury which issued the indictment in this case? If so, please
10 stand.

11 (WHEREUPON, no one stood.)

12 THE COURT: Is there any member of the jury panel who is
13 a member of or a contributor to any group which has as its
14 primary concern the promotion of law enforcement or victim's
15 rights? And I'll give you some examples of these. I'll give
16 you the acronyms for these groups. And there are other groups
17 too, but groups such as MADD, SADD or CAVE. If that applies
18 to you, please stand.

19 (WHEREUPON, no one stood.)

20 THE COURT: Okay. Now, the next three questions that I
21 ask, if you want to respond, don't do it in front of
22 everybody. I'll have you come down and speak with me
23 privately. Okay? So just keep a good mental note of the
24 question and your response.

25 Has there any member of the jury panel or any of your

1 immediate family members ever been a victim of a violent
2 crime? If that applies to you, I don't want you to stand, but
3 come down front in just a moment.

4 Is anyone on the jury panel or any member of your
5 immediate family currently being prosecuted by the Solicitor's
6 Office or ever been prosecuted by this Solicitor's Office? If
7 that applies to you, please come down front at the appropriate
8 time.

9 Lastly, does any member of the jury panel have any
10 social, religious or moral beliefs that would preclude you
11 from rendering a verdict for or against the defendant in this
12 case? Again, if that applies to you, you'll need to come down
13 front.

14 The last question, which also you'll need to come down
15 front, does any member of the jury panel know of any reason
16 whatsoever why he or she should not serve as a juror in this
17 case, with particular emphasis being placed on your ability to
18 be fair and to be impartial to both the State and the
19 defendant?

20 Now at this time, if anyone needs to come down and speak
21 with me privately, then form a line like you did a moment ago
22 and I'll be glad to talk with you. Mr. Hicks, be sure to get
23 in the line. Okay?

24 (WHEREUPON, a line of jurors formed.)

25 THE COURT: Are you ready?

1 THE BAILIFF: Kamara Platt.

2 THE COURT: Okay.

3 (WHEREUPON, a bench conference was held as follows.)

4 THE COURT: Yes, ma'am.

5 JUROR NUMBER 115: I don't feel comfortable with being a
6 part of --

7 THE COURT: Okay.

8 JUROR NUMBER 115: -- a murder trial.

9 THE COURT: Okay. All right. And why don't you? Don't
10 speak loud. Why don't -- why do you feel uncomfortable?

11 JUROR NUMBER 115: For one, I don't feel like I -- I have
12 the proper credentials to convict a man, wrong or right, for
13 something that he may have done. I mean I just don't know
14 about that.

15 THE COURT: Okay. All right. Well, understand, ma'am,
16 that nobody has any training or experience to serve as a
17 juror, and I'm sure that the vast majority of the panel --
18 it's the first time they've ever been in this position. So if
19 you can be fair and impartial to both the State and the
20 defense, then I want to keep you if you believe you can be
21 fair and impartial.

22 JUROR NUMBER 115: Okay.

23 THE COURT: Okay. All right. We'll keep you. Stay with
24 us, ma'am.

25 JUROR NUMBBER 115: Okay.

1 (WHEREUPON, the bench conference ended.)

2 THE BAILIFF: Schinitra Swinney.

3 (WHEREUPON, a bench conference was held as follows.)

4 THE COURT: Yes, ma'am?

5 JUROR NUMBER 146: Yes. I have a brother that was
6 convicted of a drug offense through this court.

7 THE COURT: Okay. All right. Would that prevent you
8 from being fair and impartial to both the State and the
9 defense?

10 JUROR NUMBER 146: No.

11 THE COURT: Okay. All right. You stay with us, ma'am.
12 Thank you.

13 JUROR NUMBER 146: Okay.

14 (WHEREUPON, the bench conference ended.)

15 THE BAILIFF: Auburn Rogers.

16 (WHEREUPON, a bench conference was held as follows.)

17 THE COURT: Yes, ma'am?

18 JUROR NUMBER 125: Yes. Me and my ex-husband were
19 involved in a drive-by shooting.

20 THE COURT: Okay.

21 JUROR NUMBER 125: It was several years ago.

22 THE COURT: Would that prevent you from being fair and
23 impartial to both the State and the defense?

24 JUROR NUMBER 125: No. I don't think so.

25 THE COURT: You don't think so? Are you certain of that?

1 JUROR NUMBER 125: No, but --

2 THE COURT: Okay. If you're not certain -- if you're not
3 certain -- you have to be certain. I'm not trying to make you
4 answer any particular way, but you have to be certain that you
5 can be fair and impartial and, if you think that -- that
6 experience would affect your ability to be fair and impartial,
7 even to a small degree, then, you know, I'll have to excuse
8 you, but you tell me.

9 JUROR NUMBER 125: It's still kind of hard to deal with.
10 I'm really not sure.

11 THE COURT: You're not certain?

12 JUROR NUMBER 125: No.

13 THE COURT: Okay. I'm going to excuse you. Okay? So
14 stay with us. Okay?

15 JUROR NUMBER 125: Okay.

16 (WHEREUPON, the bench conference ended.)

17 THE BAILIFF: Elaine Collins.

18 (WHEREUPON, a bench conference was held as follows.)

19 THE COURT: Yes, ma'am?

20 JUROR NUMBER 26: I have a brother-in-law that's been in
21 and out of the court system in Marion County and Dillon
22 County. He spent ten months in federal for selling drugs.

23 THE COURT: Okay.

24 JUROR NUMBER 26: He's just an idiot.

25 THE COURT: Okay. All right. The fact that your -- is

1 it brother-in-law you said?

2 JUROR NUMBER 26: It's a brother-in-law. Matter of fact,
3 he's married to my sister-in-law. Okay.

4 THE COURT: Okay. The fact that your brother-in-law has
5 been in the criminal justice system, would that prevent you
6 from being fair and impartial to both the State and the
7 defense?

8 JUROR NUMBER 26: No. He's a --

9 THE COURT: Okay.

10 JUROR NUMBER 26: He's a whole different --

11 THE COURT: Okay.

12 JUROR NUMBER 26: -- category as far as I'm concerned.

13 THE COURT: You can still be fair and impartial?

14 JUROR NUMBER 26: Yes.

15 THE COURT: Okay. Thank you, ma'am. Stay with us.

16 (WHEREUPON, the bench conference ended.)

17 THE BAILIFF: Oliver Davis.

18 (WHEREUPON, a bench conference was held as follows.)

19 THE COURT: Yes, sir?

20 JUROR NUMBER 39: As a minister, anything to do with the
21 death penalty, I cannot participate.

22 THE COURT: This is not a death penalty case.

23 JUROR NUMBER 39: Okay.

24 THE COURT: Okay? Are you good?

25 JUROR NUMBER 39: I'm good.

1 THE COURT: Okay.

2 JUROR NUMBER 39: Okay.

3 THE COURT: Thank you.

4 (WHEREUPON, the bench conference ended.)

5 THE BAILIFF: Kiana Gregg.

6 (WHEREUPON, a bench conference was held as follows.)

7 THE COURT: Yes, Ms. Gregg?

8 JUROR NUMBER 66: Can you clarify that first question for
9 me? It was, like, family members involved in what?

10 THE COURT: Any member of the jury panel or any of your
11 immediate family members been a victim of a violent crime?

12 JUROR NUMBER 66: Yes, but it was back in 2008. My aunt
13 was killed.

14 THE COURT: Your aunt was killed back in 2008?

15 JUROR NUMBER 66: Yeah. Would that interfere with
16 anything?

17 THE COURT: Can you still be fair and impartial to both
18 the State and the defense in light of the fact that you had an
19 aunt who was killed in 2008?

20 JUROR NUMBER 66: No. .

21 THE COURT: You cannot be fair and impartial?

22 JUROR NUMBER 66: Yeah. I mean yes. I'm sorry. I'm
23 nervous.

24 THE COURT: That's okay. Let me ask you again. Your
25 aunt was killed in 2008?

1 JUROR NUMBER 66: Mm-hmm.

2 THE COURT: Would that prevent you from being fair and
3 impartial to both the State and the defense?

4 JUROR NUMBER 66: No, it won't.

5 THE COURT: Okay. Thank you, ma'am. Stay with us.

6 JUROR NUMBER 66: All right.

7 (WHEREUPON, the bench conference ended.)

8 THE BAILIFF: David Hicks.

9 (WHEREUPON, a bench conference was held as follows.)

10 THE COURT: Okay. Mr. Hicks, you stated you were
11 previously a highway patrolman?

12 JUROR NUMBER 74: Yes, sir.

13 THE COURT: And then you were previously a police officer
14 with what department?

15 JUROR NUMBER 74: Mullins Police Department.

16 THE COURT: Mullins Police Department?

17 JUROR NUMBER 74: Yes, sir.

18 THE COURT: Okay. All right. But currently you're not
19 in law enforcement?

20 JUROR NUMBER 74: No, sir.

21 THE COURT: Okay. Now, would that prevent you -- your
22 being previously law enforcement, would that prevent you from
23 being fair and impartial to both the State and the defense?

24 JUROR NUMBER 74: From me doing it before, I can't -- I
25 can't a hundred percent say I would be.

1 THE COURT: Okay. All right, sir. Okay. You're
2 excused, sir.

3 JUROR NUMBER 74: All right.

4 THE COURT: Please stay with us, but you're excused from
5 this trial. Okay.

6 (WHEREUPON, the bench conference with the juror ended. A
7 bench conference was then held with counsel off the
8 record, after which the proceedings continued as
9 follows.)

10 THE COURT: All right. I'll ask the State are there any
11 objections or exceptions to the qualification process and
12 exemption questions and voir dire conducted by the Court?

13 MR. MCEACHIN: None, Your Honor.

14 THE COURT: And does the State have any additional voir
15 dire that the State wishes the Court to ask?

16 MR. MCEACHIN: We do not, Your Honor.

17 THE COURT: Okay. Thank you very much. And from the
18 defense, any objections or exceptions to the qualification and
19 exemption process conducted by the Court and the voir dire
20 conducted by the Court?

21 MR. ANDERSON: No, sir, Your Honor.

22 THE COURT: And is there any additional voir dire that
23 the defense would request the Court to ask?

24 MR. ANDERSON: No, sir.

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

1 Ladies and gentlemen of the jury panel, what now will take
2 place in just a few moments, if your name is called out, you
3 will need to come down front and stand facing both of the
4 counsel tables, and they will make a determination whether or
5 not they want you to serve on this jury. You may hear words
6 to excuse this juror or swear this juror or accept this juror
7 or words to that effect.

8 Now, I want to explain to you that if your name is called
9 and you come down front and you're not selected, don't take
10 that personally. Okay? Don't be offended by that. You may
11 be disappointed that you're not selected and I can understand
12 that, but don't take it personally or be offended. The
13 lawyers have their reasons for accepting or rejecting
14 potential jurors. So again, it's nothing personal.

15 Five and ten? We'll decide -- go with two alternates I
16 think.

17 MR. MCEACHIN: Yes, sir, Your Honor.

18 THE COURT: That's fine?

19 MR. ANDERSON: Yes, sir.

20 THE COURT: All right. So everybody be at ease for just
21 a few moments.

22 (WHEREUPON, there was a pause in the proceedings as the
23 jury list is drawn.)

24 THE COURT: Can I see the lawyers for just a minute?

25 (WHEREUPON, a bench conference was held off the record in

1 the presence of the jury panel but out of the hearing of
2 the jury panel.)

3 THE COURT: All right. Ladies and gentlemen of the jury
4 panel, I've been informed that -- of course, I think I got
5 here about ten and you were already here. I don't know how
6 long you've been here. You probably are needing a break.

7 MEMBERS OF THE JURY PANEL: Yes.

8 THE COURT: Okay. All right. Everybody is in agreement
9 on that. Okay.

10 What I'm going to ask that you do is the entire jury
11 panel vacate the courtroom. I don't know where the bathroom
12 facilities are, but you'll just have to find that. If you're
13 a smoker, go outside and take a smoke break. Do whatever you
14 need to do for your break and be back in here in 15 minutes.

15 My watch says about a quarter till twelve. Let's say
16 twelve o'clock, but I need for the entire panel to vacate and
17 no one linger around in the courtroom. Okay? So have a good
18 break.

19 (WHEREUPON, the jury panel exited the courtroom at 11:40
20 a.m.)

21 (WHEREUPON, a bench conference was held off the record
22 with Juror Number 51, after which the juror was excused
23 for health reasons.)

24 (WHEREUPON, there was a break in the proceedings from
25 11:45 a.m. until 12:04 p.m.)

1 THE COURT: Okay. Is everybody ready to pick a jury?
2 Okay. All right. Madam Clerk?

3 THE CLERK: Thank you, sir. If I call your name, if you
4 will, bring your coats, pocketbooks, whatever you may have
5 with you, and come forward, please. Stand at the end of this
6 counter and face back out toward the jury panel. I'll call by
7 your jury numbers. 115, Kamara Platt.

8 (WHEREUPON, a black female came forward.)

9 THE CLERK: Ms. Platt, if you'll just come and stand
10 right at the end of this counter, please, ma'am, and face back
11 out toward the audience. Thank you.

12 MR. MCEACHIN: Your Honor, may we approach?

13 THE COURT: Certainly.

14 (WHEREUPON, a bench conference was held in the presence
15 of the jury panel but out of the hearing of the jury
16 panel off the record, after which the proceedings resumed
17 as follows.)

18 THE CLERK: What say the State?

19 MR. MCEACHIN: Please excuse Ms. Platt for purposes of
20 this trial only.

21 THE CLERK: You're excused from this trial, Ms. Platt.
22 Thank you.

23 JUROR NUMBER 115: Thank you.

24 THE CLERK: Number 122, Sarah L. Richmond.

25 (WHEREUPON, a black female came forward.)

1 THE CLERK: What say the State?

2 MR. MCEACHIN: Please present Ms. Richmond.

3 THE CLERK: What say the defense?

4 MR. ANDERSON: Please seat her.

5 THE CLERK: Ms. Richmond, if you'll have a seat in the
6 jury box, please, ma'am. Number 32, Kathy G. Cribbs.

7 (WHEREUPON, a white female came forward.)

8 THE CLERK: What say the State?

9 MR. MCEACHIN: Please present Ms. Cribbs.

10 THE CLERK: What say the defense?

11 MR. ANDERSON: Your Honor, please excuse her from this
12 case.

13 THE CLERK: You're excused from this case, Ms. Cribbs.
14 Thank you. Number 60, Wylesha D. Grant.

15 (WHEREUPON, a black female came forward.)

16 THE CLERK: What say the State?

17 MR. MCEACHIN: I beg the Court's indulgence for just a
18 moment.

19 THE COURT: Certainly. Take your time.

20 MR. MCEACHIN: Please excuse Ms. Grant for purposes of
21 this trial only.

22 THE CLERK: You're excused from this trial, Ms. Grant.
23 Thank you. Number 30, Lou H. Covington.

24 (WHEREUPON, a black female came forward.)

25 THE CLERK: What say the State?

1 MR. MCEACHIN: Please present Ms. Covington.

2 THE CLERK: What say the defense?

3 MR. ANDERSON: Please seat her.

4 THE CLERK: Ms. Covington, if you'll have a seat in the
5 jury box, please, ma'am. Ms. Covington? You can have -- Ms.
6 Covington? Number 113, Sinclair W. Pee.

7 (WHEREUPON, a black male came forward.)

8 THE CLERK: What say the State?

9 MR. MCEACHIN: Please present Mr. Pee.

10 THE CLERK: What say the defense?

11 MR. ANDERSON: Please seat Mr. Pee.

12 THE CLERK: Mr. Pee, if you'll have a seat in the jury
13 box. Number 110, Willie D. Page.

14 (WHEREUPON, a black male came forward.)

15 THE CLERK: What say the State?

16 MR. MCEACHIN: Please present Mr. Page.

17 THE CLERK: What say the defense?

18 MR. ANDERSON: Please seat him.

19 THE CLERK: Number 33, Willie E. Cross.

20 (WHEREUPON, a black male came forward.)

21 THE CLERK: What say the State?

22 MR. MCEACHIN: Please present Mr. Cross.

23 THE CLERK: What say the defense?

24 MR. ANDERSON: Your Honor, if I could just have just a
25 moment?

1 THE COURT: Sure. Take your time.

2 MR. ANDERSON: Your Honor, please excuse him from this
3 case.

4 THE CLERK: You're excused, Mr. Cross. Thank you.
5 Number 167, Amanda M. Williamson.

6 (WHEREUPON, a white female came forward.)

7 THE CLERK: What say the State?

8 MR. MCEACHIN: Please present Ms. Williamson.

9 THE CLERK: What say the defense?

10 MR. ANDERSON: Please seat her.

11 THE CLERK: If you'll have a seat in the jury box,
12 please. Number 108, Daphne L. Page.

13 (WHEREUPON, a black female came forward.)

14 THE CLERK: What say the State?

15 MR. MCEACHIN: I beg the Court's indulgence for just a
16 moment.

17 THE COURT: Sure.

18 MR. MCEACHIN: Please present Ms. Page.

19 THE CLERK: What say the defense?

20 MR. ANDERSON: Please seat Ms. Page.

21 THE CLERK: If you'll have a seat in the witness box,
22 please, Ms. Page -- in the jury box. Number 70, Anthony T.
23 Hemingway.

24 (WHEREUPON, a black male came forward.)

25 THE CLERK: What say the State?

1 MR. MCEACHIN: Please present Mr. Hemingway.

2 THE CLERK: What say the defense?

3 MR. ANDERSON: Please seat Mr. Hemingway.

4 THE CLERK: Have a seat in the jury box, please, Mr.

5 Hemingway. Number 9999, Lue T. Clemmons.

6 (WHEREUPON, a black male came forward.)

7 THE CLERK: What say the State?

8 MR. MCEACHIN: I beg the Court's indulgence for just a
9 moment.

10 THE COURT: Sure.

11 MR. MCEACHIN: Please excuse Mr. Clemmons for the
12 purposes of this trial only.

13 THE CLERK: Number 101, Stacia N. Melville.

14 (WHEREUPON, a black female came forward.)

15 THE CLERK: What say the State?

16 MR. MCEACHIN: Please present Mrs. Melville.

17 THE CLERK: What say the defense?

18 MR. ANDERSON: Please seat her.

19 THE CLERK: Number 42, William M. Davis.

20 (WHEREUPON, a black male came forward.)

21 THE CLERK: What say the State?

22 MR. MCEACHIN: Please present Mr. Davis.

23 THE CLERK: What say the defense?

24 MR. ANDERSON: Please seat Mr. Davis.

25 THE CLERK: Mr. Davis, if you'll have a seat in the jury

1 box. Number 89, Estella L. Lee-Harrell.

2 JUROR NUMBER 89: What was that? Estella?

3 THE CLERK: Estella L. Lee-Harrell.

4 (WHEREUPON, a black female came forward.)

5 THE CLERK: What say the State?

6 MR. MCEACHIN: I beg the Court's indulgence.

7 THE COURT: Sure.

8 MR. MCEACHIN: Please present Ms. Lee-Harrell.

9 THE CLERK: What say the defense?

10 MR. ANDERSON: Please excuse Ms. Harrell from this case.

11 THE CLERK: You're excused from this case. Number 126,

12 Donnie D. Rogers.

13 (WHEREUPON, a white male came forward.)

14 THE CLERK: What say the State?

15 MR. MCEACHIN: Please present Mr. Rogers.

16 THE CLERK: What say the defense?

17 MR. ANDERSON: Just a moment, Your Honor, please.

18 THE COURT: Sure.

19 MR. ANDERSON: Your Honor, please seat Mr. Rogers.

20 THE CLERK: If you'll have a seat in the jury box,

21 please.

22 JUROR NUMBER 126: Right here?

23 THE CLERK: No, sir. Right over there. Number 151,

24 Janie T. Thomas.

25 (WHEREUPON, a black female came forward.)

1 THE CLERK: What say the State?

2 MR. MCEACHIN: Please present Ms. Thomas.

3 THE CLERK: What say the defense?

4 MR. ANDERSON: Please seat Ms. Thomas.

5 THE CLERK: Ms. Thomas, if you'll have a seat in the jury
6 box, please. Number 29, Shalanda L. Cooper.

7 (WHEREUPON, a black female came forward.)

8 THE CLERK: What say the State?

9 MR. MCEACHIN: Please excuse -- please excuse Ms. Cooper
10 for the purposes of this trial only.

11 THE CLERK: Thank you, Ms. Cooper. You're excused.
12 Number 8, Dana D. Barnhill.

13 (WHEREUPON, a white female came forward.)

14 THE CLERK: What say the State?

15 MR. MCEACHIN: Please present Ms. Barnhill.

16 THE CLERK: What say the defense?

17 MR. ANDERSON: Please seat Ms. Barnhill, Your Honor.

18 THE COURT: I had previously indicated two alternates.

19 THE CLERK: Winston A. Blackman Jr.

20 (WHEREUPON, a black male came forward.)

21 THE CLERK: What say the State?

22 MR. MCEACHIN: Please excuse Mr. Blackman for purposes of
23 this trial only.

24 THE CLERK: You're excused from this trial, Mr. Blackman.
25 Thank you. Number 46, Beulah Mae Duhnam.

1 (WHEREUPON, a black female came forward.)
2 THE CLERK: What say the State?
3 MR. MCEACHIN: Please present Ms. Duhnam.
4 THE CLERK: What say the defense?
5 MR. ANDERSON: Court's indulgence for a moment, Your
6 Honor. Your Honor, please seat Ms. Duhnam.
7 THE COURT: Alternate one.
8 THE CLERK: Number 27, George Evans Collins.
9 (WHEREUPON, a white male came forward.)
10 THE CLERK: What say the State?
11 MR. MCEACHIN: Please present Mr. Collins.
12 MR. ANDERSON: What say the defense?
13 MR. ANDERSON: Please excuse Mr. Collins from this case.
14 THE CLERK: Thank you, Mr. Collins. You're excused.
15 Number 36, Casey T. Davis.
16 (WHEREUPON, a black male came forward.)
17 THE CLERK: What say the State?
18 MR. CLEMENTS: I beg the Court's indulgence one moment.
19 THE COURT: Sure.
20 MR. MCEACHIN: Please present Mr. Davis.
21 THE CLERK: What say the defense?
22 MR. ANDERSON: Please seat Mr. Davis.
23 THE CLERK: Thank you, Mr. Davis.
24 THE COURT: Alternate two. Okay. Ladies and gentlemen
25 of the -- the trial jury, what I'm going to ask that you do is

1 go back to your jury room. Get to know each other, if you
2 haven't had a chance to introduce yourselves to each other.
3 Get kind of acclimated to where you're going to spend some
4 time this week, and then we'll bring you back shortly.

5 Now, you're going to hear me say something and it's
6 something that I will continuously say throughout the trial.
7 Don't start talking about this case. Don't discuss among
8 yourselves anything that's gone on about this case. Talk
9 about other things. Okay? And we'll bring you back out
10 shortly. Mr. Evans, if you would, take them back there,
11 please.

12 (WHEREUPON, the jury exited the courtroom at 12:24 p.m.)

13 THE COURT: Okay. Other than the one matter we discussed
14 at sidebar, any exceptions or objections to jury selection
15 from the State?

16 MR. MCEACHIN: No, sir, Your Honor.

17 THE COURT: Okay. And from the defense?

18 MR. ANDERSON: No, sir, Your Honor.

19 THE COURT: Okay. Thank you very much. Ladies and
20 gentlemen of the jury panel, maybe some of you are
21 disappointed that you were not selected and maybe some of you
22 are glad that you were not selected. Even though we
23 anticipate this case probably will go most of the week, we
24 don't know that for certain; so I cannot excuse you.

25 Therefore, you've been provided a call-in number. You

1 will need to call that number after six o'clock today. Don't
2 forget to do that, and it will give you instructions on what
3 to do next, either to come back tomorrow or call back after
4 six o'clock or some other time. So -- but at least for this
5 afternoon, you're excused and you're free to go back to -- to
6 work or home or wherever you need to go.

7 So again, don't forget to call that number after six
8 o'clock. If -- if you end up being excused for the remainder
9 of the week, it's certainly nice seeing all of you and I
10 sincerely hope that you'll have an opportunity at some time in
11 the future to -- to be able to be selected and sit on a -- on
12 a trial jury.

13 As I told you at the beginning, serving on a jury is --
14 is a very important task and duty that we all have and
15 hopefully you'll get that opportunity sometime in the future.
16 Have a great afternoon. You're excused.

17 (WHEREUPON, the jury panel exited the courtroom at 12:26
18 p.m.)

19 THE COURT: Okay. Let's -- let's put on the record the
20 -- Solicitor, you had one objection for cause as concerns
21 Juror Number 115.

22 MR. MCEACHIN: Your Honor, based on the fact that we
23 didn't exhaust all of our strikes, I believe at this point
24 that would be a moot argument and we withdraw our objection.

25 THE COURT: All right. Very good. Thank you. It's

1 12:30. Is an hour break -- is that enough time for you folks
2 to do what you need to do?

3 MR. ANDERSON: Yes, sir, Your Honor, but I still think we
4 need to -- I don't know when you plan on bringing them back,
5 but I think we still need to have that --

6 THE COURT: Right.

7 MR. ANDERSON: -- Jackson v. Denno.

8 THE COURT: Right. How many witnesses do you anticipate?

9 MR. MCEACHIN: Four witnesses, Your Honor.

10 THE COURT: Okay.

11 MR. MCEACHIN: I think there were four separate
12 statements that he made.

13 THE COURT: Right. I think that was mentioned, yeah.

14 MR. MCEACHIN: So two witnesses will be able to testify
15 about two of the statements and the other two witnesses have
16 each a separate statement they'll be testifying to.

17 THE COURT: Okay.

18 MR. MCEACHIN: Your Honor, I told everybody to be here
19 between one and 1:30. Out of an abundance of caution, if we
20 can say 1:45, I'm sure we'd be ready by then.

21 THE COURT: Okay. All right. All right. Well, let's
22 plan on regrouping at 1:45. We'll do the Jackson v. Denno,
23 and I'm going to go ahead and have the jury come back, say, at
24 three. And we can go ahead and get opening done and then
25 maybe enough time to put up a witness or so.

1 MR. MCEACHIN: Certainly, Judge, and I should have two or
2 three available for this afternoon if we get that far.

3 THE COURT: Okay. All right.

4 MR. ANDERSON: Your Honor, one of the motions I'll go
5 ahead and make now. Judge, I would ask that the State's
6 witnesses be sequestered.

7 THE COURT: Okay.

8 MR. ANDERSON: Obviously, I don't object to the lead
9 investigator being here.

10 THE COURT: Right.

11 MR. ANDERSON: Your Honor, if the victim's got family
12 here, certainly I do not object to that, but anyone else, Your
13 Honor, that may be called as a witness I would certainly like
14 for them to be sequestered until they are called.

15 THE COURT: Okay. And the position of the State?

16 MR. MCEACHIN: Your Honor, I think Mr. Anderson's motion
17 probably covered this, but Mrs. Witek, who is seated right
18 here in the red, Your Honor, her husband is the decedent --

19 THE COURT: Right.

20 MR. MCEACHIN: -- in the case. She will be the first
21 witness we call just very briefly.

22 THE COURT: Okay.

23 MR. MCEACHIN: I don't anticipate Mr. Anderson will ask
24 that she be held under her subpoena, but to the extent that
25 she is, I would ask that she also be allowed to remain in the

1 -- in the courtroom. But she is under subpoena.

2 MR. ANDERSON: No objection to that, Your Honor.

3 THE COURT: Okay. All right.

4 MR. MCEACHIN: And no other objection.

5 THE COURT: Other than that, then the motion for
6 sequestration will be granted other than whoever your -- your
7 lead officer is. Okay.

8 MR. MCEACHIN: Thank you, Your Honor.

9 THE COURT: All right. Very good. All right We'll be
10 in recess until -- oh, wait a minute. I need to bring the
11 jury back out.

12 THE BAILIFF: Are you ready?

13 THE COURT: Yes, sir.

14 (WHEREUPON, the jury entered the courtroom at 12:31 p.m.)

15 THE COURT: Okay. Let the record reflect the jury is
16 back in. Ladies and gentlemen, what we're going to do --
17 we're going to go ahead and break for lunch. I've got some
18 pre-trial matters after lunch that I need to take up with the
19 -- with the attorneys; so I'm going to give you a little bit
20 longer lunch break than I will ordinarily give you this week.
21 You need to be back here promptly at three o'clock.

22 Now, if we're still in the middle of those pre-trial
23 matters in the courtroom, then you will not be allowed to come
24 through the courtroom to get to the jury room, but hopefully
25 we'll be finished up by then. But if we're not, then you'll

1 just -- you will remain outside until we are finished up.

2 Again, don't start discussing this case. Whoever you may
3 come into contact with during your break, if somebody asks you
4 about being a juror, just say I can't talk about the case or
5 anything related to it per the judge's instructions. Okay?

6 So you're free to go for lunch, and make sure you're back
7 promptly no later than three o'clock. Allow yourself enough
8 time to -- to take into account anything that may be
9 unexpected that comes up while you're on your break. Okay?
10 See you back here. Have a good lunch.

11 (WHEREUPON, the jury exited the courtroom at 12:33 p.m.)

12 THE COURT: All right. We'll be in recess until 1:45.
13 I'm going to be back here during lunch. So if you guys need
14 to come see me for something, I'll be back here. Okay?

15 MR. MCEACHIN: Thank you, Judge.

16 THE COURT: Thank you.

17 (WHEREUPON, there was a break in the proceedings from
18 12:34 p.m. until 1:57 p.m., after which the proceedings
19 continued as follows.)

20 THE COURT: Okay. We're back on the record, and I
21 understand we've got a Jackson v. Denno hearing.

22 MR. MCEACHIN: That's correct, Your Honor. My IT fellow
23 ran downstairs real quick.

24 THE COURT: Okay.

25 MR. MCEACHIN: He'll be right back up.

1 THE COURT: Okay.

2 MR. MCEACHIN: This is a little bit too complicated for
3 me.

4 THE COURT: All right.

5 (WHEREUPON, there was a pause in the proceedings, after
6 which the proceedings resumed as follows.)

7 MR. MCEACHIN: We're ready to proceed, Your Honor.

8 THE COURT: Okay. All right. Call your first witness.

9 MR. MCEACHIN: Thank you, Your Honor. The State would
10 call Trey McCaskill to the stand.

11 THE CLERK: Come around and let me swear you in, please,
12 sir. Do you solemnly swear or affirm to tell the truth, the
13 whole truth, and nothing but the truth, so help you God?

14 THE WITNESS: Yes, ma'am.

15 THE CLERK: Thank you.

16 THE COURT: You may proceed, Solicitor.

17 MR. MCEACHIN: Thank you, Your Honor.

18 JACK "TREY" MCCASKILL, being first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MCEACHIN:

22 Q: Deputy McCaskill, if you would, please state your full
23 name for the record?

24 A: My name is Jack McCaskill.

25 Q: And, Jack, with whom are you employed?

JACK "TREY" MCCASKILL - DIRECT BY MR. MCEACHIN

1 A: Marion County Sheriff's Office.

2 Q: In what capacity?

3 A: I'm a patrol deputy and shift supervisor.

4 Q: And how long have you been working with the Marion County
5 Sheriff's office?

6 A: Close to two years.

7 Q: And prior to working with the Marion County Sheriff's
8 Office, for whom -- with whom were you employed?

9 A: Marion Police Department.

10 Q: How long were you employed with the police department in
11 Marion?

12 A: About a year and a half.

13 Q: How many total years of law enforcement experience do you
14 have?

15 A: Close to three-and-a-half years.

16 Q: And pursuant to your law enforcement experience and
17 becoming a law enforcement officer, did you go through the
18 academy?

19 A: Yes, sir.

20 Q: And as part of your training at the academy, did y'all go
21 through legals?

22 A: Yes, sir.

23 Q: And as part of those legals, do you also go over the
24 subject of Miranda warnings?

25 A: Yes, sir.

1 Q: And are you familiar with Miranda warnings?

2 A: Yes, sir.

3 Q: And have you had occasion to give Miranda warnings in the
4 past?

5 A: Yes, sir.

6 Q: All right. Now, specifically regarding the incident that
7 occurred back on February the 16th of 2013, were you working on
8 that day?

9 A: Yes, sir, I was.

10 Q: And did you have an occasion to make an arrest on that
11 day?

12 A: I did.

13 Q: And where did that arrest take place?

14 A: It was in the City of Marion on Lombardy Street.

15 Q: And not to go over all the facts and circumstances
16 surrounding the arrest, but at some point did you get into a
17 foot pursuit with an individual?

18 A: Yes, sir.

19 Q: And as a result of that foot pursuit, were you able to
20 apprehend the person?

21 A: Yes, sir.

22 Q: And do you see the person you apprehended here in the
23 courtroom today?

24 A: I do.

25 Q: And where is he seated?

JACK "TREY" MCCASKILL - DIRECT BY MR. MCEACHIN

1 A: Over there at the defense table.

2 MR. MCEACHIN: And, Your Honor, we simply ask the record
3 reflect that he's identified the defendant.

4 THE COURT: So noted for the record.

5 MR. MCEACHIN: Thank you.

6 BY MR. MCEACHIN:

7 Q: Jack, once you apprehended the defendant, tell the Court
8 what you did?

9 A: I escorted him to my patrol vehicle that was on Lombardy
10 Street, and I advised him of his rights.

11 Q: All right. And how far away from the place of arrest to
12 your patrol vehicle? How far was that?

13 A: I'd say maybe 30 feet.

14 Q: Okay. Prior to getting him to your patrol vehicle, did
15 you have any sort of conversation with him?

16 A: I did not.

17 Q: And you said once you got him to the vehicle, you advised
18 him of his rights?

19 A: Yes, sir.

20 Q: And when you say you advised him of his rights, you
21 advised him of his Miranda rights?

22 A: Yes, sir.

23 Q: And do you know those rights?

24 A: Yes, sir.

25 Q: And what are those rights?

1 A: You have the right to remain silent. Anything you say
2 can and will be used against you in a court of law. You have
3 the right to talk to an attorney and have him or her present
4 while you are being questioned. If you cannot afford an
5 attorney, one will be appointed to you. You have any time to
6 exercise these rights and not make any statements.

7 Q: And you -- you informed the defendant of the rights that
8 day?

9 A: I did.

10 Q: And then after informing him of the rights, did you ask
11 him a question?

12 A: I did.

13 Q: And what question did you ask him?

14 A: I asked him why he ran.

15 Q: And did he respond?

16 A: He did.

17 Q: What was his response?

18 A: He said because he had marijuana on him.

19 Q: And at the time of the arrest, did you notice any odor of
20 alcohol?

21 A: I did not.

22 Q: Did the defendant seem to comprehend what you were
23 saying?

24 A: He did.

25 Q: Any indication that he didn't understand what you were

JACK "TREY" MCCASKILL - DIRECT BY MR. MCEACHIN

1 saying?

2 A: No, sir.

3 Q: Other than that statement, did the defendant make any

4 other statements to you?

5 A: No, sir.

6 Q: That was the only statement that was made?

7 A: That was the only statement made to me.

8 Q: Did you ask any further questions?

9 A: I did not.

10 Q: Did the defense -- did the defendant ask any questions of

11 you?

12 A: He did not.

13 Q: At the patrol vehicle, it was you and the defendant? Was

14 anyone else there?

15 A: There was another sheriff's deputy with me.

16 Q: And how -- how close was he to you during this period?

17 A: He was right beside me.

18 Q: Okay. So it was the three of y'all there?

19 A: Yes, sir.

20 Q: Anyone else?

21 A: That was it.

22 Q: The defendant was in handcuffs at the time?

23 A: Yes, sir.

24 Q: And after the statement, he was placed in the back of

25 your patrol car?

1 A: Yes, sir.

2 Q: Did you have any other conversations with the defendant
3 that day?

4 A: I did not.

5 MR. MCEACHIN: I beg the Court's indulgence for just a
6 moment.

7 THE COURT: Sure.

8 MR. MCEACHIN: No further questions at this time, Your
9 Honor.

10 THE COURT: Any cross-examination?

11 MR. ANDERSON: Just a few, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. ANDERSON:

14 Q: Officer McCaskill, did you actually write an incident
15 report of that?

16 A: I wrote a supplemental report.

17 Q: And you wrote that that day or a day or two later?

18 A: I believe it was that day.

19 Q: Have you reviewed your supplemental since that time?

20 A: I have.

21 Q: Do you have a copy of it with you?

22 A: Yes, sir.

23 Q: At the top of it, does it have JNC-1?

24 A: Yes, sir.

25 Q: And then McCaskill, Jack?

JACK "TREY" MCCASKILL - CROSS BY MR. ANDERSON

1 A: Yes, sir.

2 Q: Date entered 2/16/13? And then it looks like it's about
3 maybe a little over a page -- or a half-a-page long?

4 A: Yes, sir.

5 Q: That's the statement -- that's the supplemental that you
6 wrote?

7 A: Yes, sir.

8 Q: All right. Earlier, you stated that a deputy was with
9 you also?

10 A: Yes, sir..

11 Q: Who was that deputy?

12 A: Marvin Alston.

13 MR. ANDERSON: No other questions, Your Honor.

14 THE COURT: Any redirect?

15 MR. MCEACHIN: None, Your Honor.

16 THE COURT: Okay. Thank you, Officer, for your
17 testimony. You can step down.

18 THE WITNESS: Thank you, sir.

19 MR. MCEACHIN: And, Your Honor, I'll lead with the
20 Court's style. Do you want us to make an argument on each
21 statement that was made or at the end make an argument to the
22 statements?

23 THE COURT: Well, since we're dealing with four, it may
24 be a little better if we just go ahead and let's take care of
25 each one separately. So is there any argument on this -- on

1 this first one?

2 MR. ANDERSON: No, sir, Your Honor.

3 THE COURT: Okay. All right. So this statement, since
4 there is no argument from the defense, will be admitted into
5 evidence.

6 MR. MCEACHIN: Thank you, Your Honor.

7 THE COURT: Okay.

8 MR. MCEACHIN: The State would now call Lieutenant Tony
9 Flowers to the stand.

10 THE COURT: Come around, please, sir.

11 THE CLERK: Do you solemnly swear or affirm to tell the
12 truth, the whole truth, and nothing but the truth, so help you
13 God?

14 THE WITNESS: I do.

15 THE CLERK: Thank you.

16 THE COURT: You may proceed.

17 MR. MCEACHIN: Thank you, Your Honor. I beg the Court's
18 indulgence for just a moment.

19 (WHEREUPON, two Advisement of Rights forms are marked as
20 Court's Exhibits 3 and 4.)

21 TONY FLOWERS, being first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MCEACHIN:

25 Q: Lieutenant Flowers, if you will, please state your full

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 name for the record.

2 A: Tony Patrick Flowers.

3 Q: And, Tony, with whom are you currently employed?

4 A: I'm currently employed with the Darlington Police

5 Department.

6 Q: And how long have you been employed with the Darlington

7 Police Department?

8 A: Approximately eight months.

9 Q: Prior to going over to Darlington, who did you work for?

10 A: Marion Police Department.

11 Q: And how long did you work for the Marion Police

12 Department?

13 A: Approximately seven years.

14 Q: And prior to leaving Marion, what was your position with

15 Marion Police Department?

16 A: I was an investigator.

17 Q: And -- and just to make sure I understand correctly, back

18 in February 2013, you would have been with the Marion Police

19 Department?

20 A: Yes, sir.

21 Q: And at that time, you would have been or had the capacity

22 or held the position of investigator; is that correct?

23 A: Yes, sir.

24 Q: And as part of your duties as an investigator, you

25 investigate crimes?

1 A: Yes, sir.

2 Q: You speak with witnesses?

3 A: Yes, sir.

4 Q: And on occasion you also speak with defendants?

5 A: Yes, sir.

6 Q: Now with respect to the incident that occurred back on

7 February the 16th of 2013, did you have occasion to speak with

8 Kemonie Jones on that day?

9 A: Yes, sir.

10 Q: And what was that in relation to?

11 A: It was in relation to a murder that myself and Lieutenant

12 Smith had been called out. We were the on-duty investigators.

13 We were called out to speak with Mr. Jones.

14 Q: And did you, in fact, speak with him that day?

15 A: Yes, we did.

16 Q: And where did that conversation take place?

17 A: It took place at my office at the Marion Police

18 Department.

19 Q: And, Tony, before we get too -- too far into this, did

20 y'all actually speak with him on one or more occasions that

21 day?

22 A: We spoke with him twice.

23 Q: And why -- why is it that y'all spoke with him on two

24 different occasions?

25 A: The first time Lieutenant Smith and I spoke with him, we

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 didn't really know a whole lot of facts about what was going
2 on with the case. We briefly spoke with Mr. Jones, and then
3 we decided to terminate the interview at that time until we
4 had more information regarding the case.

5 Q: Okay. So y'all asked some question, he responded to
6 those questions, and then y'all decided to terminate until
7 y'all had more information?

8 A: Yes.

9 Q: And with regard to time, do you recall approximately when
10 y'all had the first conversation with him?

11 A: I think it was around 11:30 or twelve o'clock --

12 Q: That's in --

13 A: -- that morning.

14 Q: Okay. That's what I was going to follow up with. That's
15 in the morning?

16 A: Yes, sir. It was 11:30 a.m.

17 Q: Okay. And off the top of your head, do you recall about
18 when he was arrested?

19 A: I'm not sure exactly when he was arrested.

20 Q: Okay.

21 A: I just know I received the call and they asked us to
22 respond to the police department.

23 Q: And when y'all responded to the police department, was
24 the defendant already there?

25 A: I believe he was.

1 Q: Okay. And who -- who -- who was involved in the
2 conversation between you and the defendant? Anyone else
3 involved?

4 A: Lieutenant Smith was also in the room.

5 Q: And prior to speaking with the defendant, did you go over
6 his rights with him?

7 A: Yes, we did.

8 Q: And how do y'all go over rights with an individual prior
9 to speaking with them?

10 A: I -- we actually have a department Miranda rights form
11 and waiver of rights where we read off for each one where he
12 can read along with me. At the bottom, he can sign it. I
13 sign it, as well as the other person in the room that
14 witnesses it signs it.

15 Q: Okay.

16 MR. MCEACHIN: Your Honor, may I approach the witness?

17 THE COURT: Certainly.

18 BY MR. MCEACHIN:

19 Q: Lieutenant Flowers, I'm going to hand you what's been
20 marked as Court's Exhibit Number 3. Can you identify that?

21 A: Yes. That's the advisement of rights form we used that
22 morning.

23 Q: And with regard to that specific advisement of rights
24 form, what time is noted on that advisement of rights form?

25 A: 11:43 a.m.

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 Q: Okay. So that's when y'all had the first conversation
2 with the defendant?

3 A: Yes, sir.

4 Q: And did you review that advisement of rights form with
5 him?

6 A: I did. Actually, I gave him a copy as I read from
7 another copy so he could follow along with me.

8 Q: And would that have been the copy the defendant had?

9 A: Yes.

10 Q: And can -- if you don't mind, please go over the rights
11 you advised him of?

12 A: The advisement of rights states you have the right to
13 remain silent. Anything you say can and will be used against
14 you in a court of law. You have the right to talk to an
15 attorney and have him or her present with you while you're
16 being questioned. If you cannot afford to hire an attorney,
17 one will be appointed to represent you before any questioning
18 if you want. If you make a statement or answer questions, you
19 have a right to stop at any time.

20 And then it goes on to state: do you understand the -- do
21 you understand your rights? You can check yes or no. He
22 checked yes. He signed it. Also it says: understanding your
23 rights, do you wish to waive them and talk with us now? Mr.
24 Jones checked yes. He was then asked: are you under the
25 influence of alcohol or drugs? He says -- he checked no. And

1 he was asked can you read and write. He checked yes.

2 Then its waiver of rights stated I am willing to make a
3 statement and answer questions. I do not want a lawyer at
4 this time. I understand and know what I am doing. No
5 promises or threats have been made to me and no pressure or
6 coercion of any kind has been used against me. Mr. Jones
7 signed that, and then myself and Lieutenant Smith signed it
8 and dated it February 16th, 2013, at 11:43 a.m.)

9 Q: And that was the follow-up question I was going to ask
10 you. There at the bottom where it states witnesses, is your
11 signature one of those?

12 A: Yes, it is.

13 Q: And you witnessed the defendant check the boxes that he
14 checked?

15 A: Yes.

16 Q: And also witnessed his signature?

17 A: Yes.

18 Q: At any time, did he ask you any questions regarding the
19 advisement of rights form?

20 A: No.

21 Q: Once he completed this form, did y'all ask him some
22 questions?

23 A: Yes, we did.

24 Q: And was this conversation between you and the defendant
25 video recorded?

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 A: Yes, it was.

2 MR. MCEACHIN: And, Your Honor, for purposes of this
3 hearing, we're going to go ahead and move Court's Exhibit 3
4 into evidence for purposes of the hearing only.

5 THE COURT: Mr. Anderson, any -- for purposes of this
6 hearing?

7 MR. ANDERSON: No objection, Your Honor.

8 THE COURT: Okay. All right. Without objection.

9 (WHEREUPON, Court's Exhibit Number 3, the advisement of
10 rights form, was admitted into evidence.)

11 BY MR. MCEACHIN:

12 Q: Lieutenant Flowers, I'm going to hand you a case that's
13 been marked as Court's Exhibit Number 1. Can you identify
14 that case?

15 A: Yes.

16 Q: And is that, in fact, the case that contains the
17 interview conducted with Mr. Jones at 11:43 a.m. on February
18 16th, 2013?

19 A: Yes.

20 Q: And does that -- and have you recently watched that
21 video?

22 A: I have.

23 Q: And does it fairly and accurately depict what occurred on
24 that day at that time?

25 A: Yes.

1 MR. MCEACHIN: Your Honor, at this time, I'd move Court's
2 Exhibit 1, which is the case as well as the exhibit, into
3 evidence.

4 MR. ANDERSON: No objections, Your Honor.

5 THE COURT: For purposes of this hearing?

6 MR. ANDERSON: No objection.

7 (WHEREUPON, Court's Exhibit Number 1, the DVD of the
8 interview, was admitted into evidence.)

9 MR. MCEACHIN: And, Your Honor, I ask that we be allowed
10 to play it.

11 THE COURT: Okay.

12 (WHEREUPON, Court's Exhibit Number 1 was played in open
13 court, after which the proceedings continued as follows.
14 RECORDING NOT TRANSCRIBED HEREIN.)

15 THE COURT: Solicitor, clear up the time. I thought he
16 signed the Miranda form at 11:43, and I think the video says
17 the video was concluded at 11:15.

18 MR. MCEACHIN: Yes, sir, Your Honor.

19 BY MR. MCEACHIN:

20 Q: And, Lieutenant Flowers, is this video time-stamped?

21 A: I'm not sure if it is or not.

22 Q: Okay. Based on what you see on the screen, is it time-
23 stamped?

24 A: I don't -- I said 11:15. I have 11:43 on here. I don't
25 know why there's a discrepancy on it.

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 Q: Do you recall why you said it was 11:15 when you -- when
2 you stated that on the --

3 A: I may have -- it may have been showing on the screen
4 there on the -- on the camera. On the video screen when I was
5 recording, that may have been the time that was showing. I'm
6 not sure.

7 Q: Okay. But in the beginning of the interview, you stated
8 the time was -- and when you were going over his advisement of
9 rights, what time did you indicate it was?

10 A: I think it was 11:08.

11 Q: Okay.

12 MR. MCEACHIN: I beg the Court's indulgence for just a
13 moment.

14 Q: Again, when you went over the advisement of rights form
15 with him, which has been marked as Court's Exhibit Number 3,
16 what time did you indicate at that time it was when the video
17 started?

18 A: I indicated it was 11:43 on the Court Exhibit Number 3.

19 Q: Okay. And that was your testimony with regard to -- or
20 that was the statement that was also made on the video; is
21 that correct?

22 A: Yes, sir.

23 MR. MCEACHIN: I beg the Court's indulgence for a moment.

24 THE COURT: Certainly.

25 BY MR. MCEACHIN:

1 Q: Lieutenant Flowers, at that initial conversation, that
2 initial interview you had with the defendant, does that video
3 show the entire conversation you had with him?

4 A: I think we did a GSR kit before that, but as far as
5 asking him any questions pertaining to this incident, I didn't
6 ask him anything, you know, other -- until after he was
7 Mirandized.

8 Q: Okay. And the total time of that was roughly eight to
9 ten minutes?

10 A: Yes. Somewhere along in there.

11 MR. MCEACHIN: Thank you, Your Honor. That's all I have
12 at this time with regard to this particular statement of this
13 witness.

14 THE COURT: Okay. All right. Does the defense have any
15 cross?

16 MR. ANDERSON: Just a couple questions, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. ANDERSON:

19 Q: Investigator Flowers -- or you were Lieutenant Flowers at
20 that time; right?

21 A: Yes.

22 Q: You just said that you think you had done the GSR kit
23 previously before you began the interview?

24 A: Yes, sir.

25 Q: I mean you would have said -- or let me back up. What

TONY FLOWERS - CROSS BY MR. ANDERSON

1 would you have told him while you were doing the GSR kit?

2 A: It may have been to advise him of -- well, if I'm doing a
3 GSR kit, it's explaining what a GSR kit is. It's to get --
4 it's to detect any gunshot residue particles on your hands.
5 But as far as -- I wouldn't have questioned him about
6 anything. I would explain to him what a GSR kit was because
7 when I've done it before, people ask me what does this do,
8 what is this for.

9 Q: You also took a DNA swab from him. Do you remember when
10 you did that?

11 A: I know it was --

12 Q: Was it before or after?

13 A: That was -- the DNA swab came in the afternoon.

14 Q: After the interview?

15 A: Yeah. After the -- after the second interview.

16 Q: After the second interview? Do you have any idea how he
17 got into the interview room? Did you carry him in there? Did
18 Officer Smith carry him in there?

19 A: Either Officer Smith or Officer McCaskill escorted him to
20 my office.

21 Q: That's actually your office?

22 A: Yes, sir.

23 Q: And Officer McCaskill is the officer who testified
24 earlier?

25 A: Yeah. He was the one that transported him to the police

1 department.

2 MR. ANDERSON: Judge, that's all the questions I have.

3 THE COURT: Anything on redirect?

4 MR. MCEACHIN: Just one quick question.

5 REDIRECT EXAMINATION

6 BY MR. MCEACHIN:

7 Q: And just to clear up from earlier, could it have been a
8 mistake that you said 11:15?

9 A: It could have been.

10 Q: Okay. Thank you.

11 MR. MCEACHIN: Nothing further.

12 THE COURT: Okay. All right.

13 MR. ANDERSON: No recross.

14 THE COURT: Does he need to remain? Does he need to
15 remain? Is he involved in the next statement?

16 MR. MCEACHIN: He is, Your Honor. So if I could do -- go
17 ahead and do the next statement with him, then I could put up
18 Lieutenant Smith, who can testify to both statements as well.

19 THE COURT: Okay. All right. Okay. So you need some
20 testimony concerning this -- this statement that we just
21 reviewed?

22 MR. MCEACHIN: That's correct.

23 THE COURT: Okay. All right. Very good.

24 MR. MCEACHIN: Well, in that case, I'll go ahead and call
25 Lieutenant Smith to testify about that one, Your Honor.

CHRIS SMITH - DIRECT BY MR. MCEACHIN

1 THE COURT: Okay. All right. If you'll step down, and
2 we'll need to recall you.

3 THE CLERK: Do you solemnly swear or affirm to tell the
4 truth, the whole truth, and nothing but the truth, so help you
5 God?

6 THE WITNESS: I do.

7 THE COURT: You may proceed.

8 MR. MCEACHIN: Thank you, Your Honor.

9 CHRIS SMITH, being first duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MCEACHIN:

13 Q: Lieutenant Smith, if you would, please state your full
14 name for the record.

15 A: Robert Christopher Smith.

16 Q: And, Lieutenant Smith, with whom are you currently
17 employed?

18 A: Marion Police Department.

19 Q: In what capacity?

20 A: Investigation.

21 Q: How long have you been an investigator for Marion City
22 Police Department?

23 A: A little over five years.

24 Q: So back in February of 2013, you would have been an
25 investigator with the police department?

1 A: Yes.

2 Q: And prior to becoming an investigator with the police
3 department -- how many total years of law enforcement
4 experience do you have?

5 A: A little over 14.

6 Q: And prior to becoming an investigator, what was your role
7 with the police department?

8 A: Traffic officer.

9 Q: And as part of being a traffic officer, as well as an
10 investigator, you have occasion to speak with people when
11 they've been arrested; is that correct?

12 A: Correct.

13 Q: And also in cases as an investigator, you have occasion
14 to speak with or question defendants; is that also correct?

15 A: Yes, sir.

16 Q: And prior to speaking with defendants, do you normally go
17 over their rights with them?

18 A: Yes, sir.

19 Q: And specifically regarding the incident that occurred on
20 February 16th of 2013, were you present with Lieutenant Flowers
21 when the defendant, Kemonie Jones, was interviewed that day?

22 A: Yes, sir.

23 Q: Now, was -- was that on one or two occasions?

24 A: Twice.

25 Q: And you were there on both occasions?

CHRIS SMITH - DIRECT BY MR. MCEACHIN

1 A: Yes, sir.

2 Q: And did you witness or did you observe Lieutenant Flowers
3 go over the defendant's rights with him?

4 A: Yes, sir.

5 Q: And did you also observe the defendant fill out and sign
6 his advisement of rights form?

7 A: Yes, sir.

8 Q: Now, I'm going to hand you what's been marked as Court's
9 Exhibit Number 3. Can you identify that document?

10 A: Yes, sir.

11 Q: And what is that document?

12 A: Advisement of rights.

13 Q: And who signed that document where it -- excuse me, one
14 second. Who signed that document right below the "do you
15 understand your rights"?

16 A: Kemonie Jones.

17 Q: Okay. And were you there when he was videoed?

18 A: Yes, sir.

19 Q: As a matter of fact, we've just seen the video. Was that
20 you sitting right beside Mr. Jones during the video?

21 A: Yes, sir.

22 Q: Okay. And it appeared that you had some limited
23 conversation with him, maybe asked him a question or two. The
24 defendant was never placed in handcuffs during that interview,
25 was he?

1 A: No, sir.

2 Q: Okay. And it was you and Lieutenant Flowers in there; is
3 that correct?

4 A: Yes.

5 Q: Was there anyone else there at that time?

6 A: Not during the video.

7 Q: Okay. Just the two of you and the defendant; is that
8 correct?

9 A: Yes, sir.

10 Q: And again, we've already played the video. Does that
11 fairly and accurately portray what occurred during that
12 initial interview and conversation with the defendant?

13 A: Yes, sir.

14 Q: Okay. Were there any other statements made by the
15 defendant at that time that weren't caught on video?

16 A: No, sir

17 Q: Okay. Thank you.

18 MR. MCEACHIN: No further questions at this time.

19 THE COURT: Anything on cross-examination?

20 MR. ANDERSON: Not at this time, Your Honor.

21 THE COURT: Okay. All right. Thank you, sir, for your
22 testimony. You may need to be recalled concerning another
23 statement, but you can step down, sir.

24 MR. MCEACHIN: Your Honor, that would be it for that
25 particular statement.

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 THE COURT: That's going to be referred to as the second
2 statement; correct?

3 MR. MCEACHIN: Yes, sir, Your Honor.

4 THE COURT: Okay. All right. Any argument concerning
5 the admissibility of the second statement?

6 MR. ANDERSON: No, sir, Your Honor.

7 THE COURT: Okay. All right. Without objection, it will
8 be admitted into evidence.

9 MR. MCEACHIN: Your Honor, we'd recall Lieutenant Flowers
10 to the stand.

11 THE COURT: Okay. Come back around, Lieutenant Flowers.

12 MR. MCEACHIN: And, Your Honor, just for the record, we
13 were admitting that for purposes of the Denno hearing only --
14 for the Denno hearing only.

15 THE COURT: Okay. You may proceed.

16 TONY FLOWERS, being previously duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MCEACHIN:

20 Q: Lieutenant Flowers, I remind you you're under oath. I'm
21 not going to go through your qualifications with you again.

22 After you had the initial interview with Mr. Jones at 11:43
23 that morning, did y'all then have another interview with him?

24 A: We did.

25 Q: And what was the purpose of the second interview?

1 A: We -- myself and Lieutenant Smith had gotten a few -- a
2 little more information with regards to what was going on that
3 morning in reference to a shooting and everything, and had a
4 little bit better understanding from the officers back to what
5 was happening. So I felt we could ask a little bit more --
6 ask more questions pertaining to the crime.

7 Q: Okay. And on that particular day or at that particular
8 time, he had just previously filled out an advisement of
9 rights form approximately two hours before; is that correct?

10 A: Yes, sir.

11 Q: Did you have him fill out another advisement of rights
12 form?

13 A: We did.

14 Q: And did you also review his rights with him again at that
15 time?

16 A: I did.

17 Q: Lieutenant Flowers, I'm going to hand you what's been
18 marked as Court's Exhibit Number 4. Can you identify that?

19 A: That's the advisement of rights form that was signed.

20 Q: And at what time was that advisement of rights form
21 signed?

22 A: It was signed at -- the time on here is 1:56 p.m.

23 Q: And did you review the same rights with Mr. Jones as you
24 had previously?

25 A: I did.

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 Q: And with regard to asking -- or the question does he
2 understand those rights, what was his response?

3 A: His response was yes.

4 Q: And who signed right below that check mark?

5 A: Kemonie Jones.

6 Q: And you witnessed that?

7 A: I did.

8 Q: And the other questions, understand your rights, do you
9 wish to waive them and speak with us now, how did he respond
10 to that question?

11 A: He checked yes.

12 Q: And with regard to were you under the influence of any
13 drugs or alcohol?

14 A: He checked no.

15 Q: Can you read or write?

16 A: Yes.

17 Q: So that was consistent with his previous responses to --
18 at the 11:43 advisement of rights; is that correct?

19 A: Correct.

20 Q: And you witnessed him sign that document and make those
21 check marks?

22 A: Yes, sir.

23 Q: And was this interview also video recorded?

24 A: It was.

25 Q: And I'll show you what's been marked as Court's Exhibit

1 Number 2. Do you recognize that?

2 A: Yes, sir.

3 Q: And what does this case contain?

4 A: That contains the second interview with Mr. Jones.

5 Q: And at what time did that interview occur?

6 A: 1:56 p.m.

7 THE COURT: What was the time?

8 MR. MCEACHIN: 1:56 p.m., Your Honor.

9 THE COURT: Okay. Thank you.

10 BY MR. MCEACHIN:

11 Q: And you -- you've reviewed that video prior to coming to
12 court today?

13 A: Yes, sir.

14 Q: And does it fairly and accurately depict the interview
15 that you had with Mr. Jones at 1:56?

16 A: Yes, sir.

17 MR. MCEACHIN: Your Honor, at this time, I'd move both
18 Exhibits 4 and 3 -- excuse me -- 4 and 2 into evidence for
19 purposes of the Denno hearing.

20 THE COURT: All right. Two is the video of the third
21 statement and 4 is the Miranda form?

22 MR. MCEACHIN: That's correct, Your Honor.

23 THE COURT: Okay. All right. Well, let's go ahead
24 before -- let's go ahead and play it and then -- then you can
25 renew your request to -- to admit it.

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 MR. MCEACHIN: Thank you, Your Honor.

2 (WHEREUPON, Court's Exhibit Number 2, the video of the
3 interview, is played in open court, after which the
4 proceedings continue as follows. RECORDING NOT
5 TRANSCRIBED HEREIN.)

6 BY MR. MCEACHIN:

7 Q: Lieutenant Flowers, between the first interview and the
8 second interview, where was the defendant taken?

9 A: Marion County Detention Center.

10 Q: And does that -- does that explain the difference in the
11 outfit he had from the first interview to the second
12 interview?

13 A: It does.

14 Q: Okay. At the end of that interview, he requested his
15 right to speak with a lawyer. Did y'all ask any other
16 questions at that period in time?

17 A: When he told me he didn't want to answer any more
18 questions, I -- I terminated the interview.

19 Q: Okay. Nothing -- nothing further after that?

20 A: No.

21 Q: Where did he go from there?

22 A: He was taken back to the Marion County Detention Center.

23 Q: Okay. Any other interviews with him after that period in
24 time?

25 A: No.

26

1 MR. MCEACHIN: Your Honor, at this time, I'd move Court's
2 Exhibit 2 into evidence.

3 THE COURT: Let's -- let's hear from cross first. Do you
4 have any cross-examination, Mr. Anderson?

5 MR. ANDERSON: No, Your Honor.

6 THE COURT: Okay. All right. Now, the State moves the
7 third statement video into evidence for purposes of this
8 hearing.

9 MR. ANDERSON: Second statement.

10 THE COURT: Well --

11 MR. ANDERSON: Second video statement, third statement.

12 THE COURT: Second video statement, third statement.

13 Okay? Any argument or objection from the defense?

14 MR. ANDERSON: No, sir, Your Honor.

15 THE COURT: Okay. All right. So admitted.

16 (WHEREUPON, Court's Exhibit Number 2, the DVD containing
17 the video interview, was admitted into evidence.)

18 MR. MCEACHIN: Your Honor, we'd also move to admit
19 Court's Exhibit 4, which is the advisement of rights form.

20 THE COURT: All right.

21 MR. ANDERSON: Without objection, Your Honor.

22 THE COURT: Okay.

23 (WHEREUPON, Court's Exhibit Number 4, the advisement of
24 rights form, was admitted into evidence.)

25 THE COURT: Okay. You can step down, sir. Thank you.

TYRONE ORLANDO REED -- DIRECT BY MR. MCEACHIN

1 MR. MCEACHIN: Your Honor, the State would call Orlando
2 Reed to the stand.

3 THE COURT: Okay.

4 THE CLERK: Do you solemnly swear or affirm to tell the
5 truth, the whole truth, and nothing but the truth, so help you
6 God?

7 THE WITNESS: Yes, ma'am.

8 THE CLERK: Thank you.

9 THE COURT: You may proceed.

10 MR. MCEACHIN: Thank you, Your Honor.

11 ORLANDO REED, being first duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MCEACHIN:

15 Q: Orlando, if you would, please state your full name for
16 the record.

17 A: Tyrone Orlando Reed.

18 Q: And you go by Orlando?

19 A: I go by Tyrone or Orlando.

20 Q: Okay. Either/or. Where are you currently employed,
21 Orlando?

22 A: Pamplico Police Department.

23 Q: And in what capacity are you employed with Pamplico?

24 A: I'm a patrol officer.

25 Q: And how long have you been with the Pamplico Police

1 Department?

2 A: June will make one year; so approximately about eight
3 months.

4 Q: And prior to going over to the Pamplico Police
5 Department, with whom were you employed?

6 A: Marion City Police Department.

7 Q: And how long did you work with Marion City?

8 A: For approximately about four years.

9 Q: About four years?

10 A: Mm-hmm.

11 Q: Did you work with any other law enforcement agency prior
12 to Marion City?

13 A: No.

14 Q: So your total law enforcement experience is roughly five
15 years; is that fair to say?

16 A: Yeah. March 21st will make five years.

17 Q: And when you were employed with Marion City Police
18 Department, what were your duties and responsibilities?

19 A: Traffic and patrol officer, regular patrol.

20 Q: All right. So you were out there on the streets checking
21 for traffic violations and things of that nature?

22 A: Yes, sir.

23 Q: In addition to that, did you ever have any transport
24 obligations or transport things?

25 A: Yes.

TYRONE ORLANDO REED -- DIRECT BY MR. MCEACHIN

1 Q: And that would be to transport inmates?

2 A: Inmates from -- to and from court or to jail.

3 Q: And specifically in February of 2013 -- and even actually
4 more specifically February 16th, 2013, were you working on that
5 day?

6 A: Yes.

7 Q: And were you doing a regular traffic patrol?

8 A: Yes. Doing just regular patrol.

9 Q: At any point, did you get called in to conduct a
10 transport?

11 A: Yes.

12 Q: And do you recall approximately what time that was?

13 A: I'm not sure of the time.

14 Q: And once you -- where did you respond once you got that
15 call?

16 A: I went to Marion Police Department.

17 Q: And --

18 A: That's where they told me the transport was taking place
19 at, from the police department to the detention center.

20 Q: So it was your understanding -- you didn't know who you
21 were transporting, but you knew you were transporting somebody
22 from the detention -- I mean from the police department to the
23 detention center?

24 A: Yes.

25 Q: And once you got there, was there, in fact, an individual

1 that you were transporting?

2 A: Yes.

3 Q: And who was that individual?

4 A: Mr. Kemonie Jones.

5 Q: And that's the defendant seated here in the courtroom?

6 A: Yes.

7 MR. MCEACHIN: Please have the record reflect the witness
8 has identified the defendant, Your Honor.

9 THE COURT: So noted.

10 BY MR. MCEACHIN:

11 Q: And where was Mr. Jones when you got to the police
12 department?

13 A: He was in Lieutenant Flowers' office.

14 Q: And once you got there, what did you do?

15 A: Once I got there, I placed him in handcuffs and escorted
16 him from Lieutenant Flowers' office to my patrol vehicle.

17 Q: Okay. And where did you place him in your patrol
18 vehicle?

19 A: He was placed in the passenger side in the rear -- in the
20 back of the patrol car.

21 Q: The passenger side of the rear of your car? And once you
22 placed him in there, what did you do?

23 A: I cleared from the police department. I radioed that I
24 was en route to the county detention center, and I was backing
25 up to go to the detention center.

TYRONE ORLANDO REED -- DIRECT BY MR. MCEACHIN

1 Q: All right. So you were backing out to go to the
2 detention center. Did the defendant make any statements to
3 you?

4 A: Yes. He did state something to me.

5 Q: What did he say?

6 A: He stated how are we going to charge him with murder and
7 we didn't find a gun.

8 Q: And when he said "we", who did you -- who did you take
9 that to mean?

10 A: As in Lieutenant Flowers or our police department as in
11 "we".

12 Q: Okay. So he made the statement how are they going to
13 charge him if they don't have a gun?

14 A: Yes.

15 Q: And was that in response to any question you asked him?

16 A: I did not ask him any questions.

17 Q: He just made that statement?

18 A: Yes.

19 Q: And as a matter of fact, once he made that statement, did
20 you say anything to him?

21 A: Yes. Once he made that statement, I advised him I cannot
22 talk to him and I did not have any questions to ask him.

23 Q: As a matter of fact, Corporal Reed, prior to you even
24 picking up Kemonie Jones, did you know anything about this
25 case?

1 A: No, sir.

2 Q: Okay. You were simply there for transport purposes?

3 A: Yes.

4 Q: You didn't have any involvement in what happened earlier
5 in the day?

6 A: No, sir.

7 Q: Did he make any other -- once you informed him that you
8 couldn't ask him any questions, did he make any other
9 statements on the ride to the detention center?

10 A: On the ride to the detention center, yes.

11 Q: Okay. He made another statement on the ride?

12 A: Oh, on the ride, no.

13 Q: Okay. Once you got to the detention center, did he make
14 any other statements?

15 A: Yes.

16 Q: And what statement did he make once you got to the
17 detention center?

18 A: When I -- as I was walking him into the detention center,
19 he stated to me that no gun, no case.

20 Q: Okay. So he indicated to you no gun, no case?

21 A: Mm-hmm.

22 Q: And did you ask him a question that elicited that
23 response?

24 A: No, sir.

25 Q: He just simply made that statement to you?

TYRONE ORLANDO REED -- DIRECT BY MR. MCEACHIN

1 A: He just made that statement to me.

2 Q: With regard to those two statements, the one that was
3 made in the back of the patrol vehicle --

4 A: Mm-hmm.

5 Q: -- and the one that was made in the booking area of the
6 Marion County Detention Center, were either of those
7 statements made in response to a question from a law
8 enforcement officer?

9 A: No, sir. I didn't even speak to him not once.

10 Q: Okay. He made those voluntarily?

11 A: Voluntary, yes, sir.

12 Q: Without any -- without any request?

13 A: Yes, sir.

14 Q: And once you booked him in, was that your only
15 involvement?

16 A: Once I booked him in, I left the detention center and
17 that was it. I didn't ever get involved with it anymore.

18 MR. MCEACHIN: Thank you very much. No further
19 questions. I beg the Court's indulgence for just a moment.

20 THE COURT: Okay. Wait one minute, Mr. Anderson.

21 MR. MCEACHIN: Oh, and one other thing.

22 BY MR. MCEACHIN:

23 Q: Officer Reed, did you document what occurred that day?

24 A: Yes.

25 Q: And did you do it in the form of a -- like, a voluntary

1 statement?

2 A: A voluntary written statement form.

3 Q: And when did you complete that form?

4 A: I'm not sure the time.

5 Q: If -- if I showed it to you, would it help refresh your
6 recollection?

7 A: Yes.

8 (WHEREUPON, the witness was provided a document by
9 counsel.)

10 Q: Do you remember what day you completed that form?

11 A: Yes, sir. February the 16th, 2013.

12 Q: And that was the same day that you transported the
13 individual?

14 A: Yes.

15 Q: Okay.

16 MR. MCEACHIN: No further questions.

17 THE COURT: Okay. Any cross-examination?

18 CROSS-EXAMINATION

19 BY MR. ANDERSON:

20 Q: Officer Reed --

21 A: Yes, sir.

22 Q: He told you how could they charge him with murder if they
23 didn't find a gun?

24 A: Yes, sir.

25 Q: And at the -- I guess jail, he said no gun, no case?

TYRONE ORLANDO REED -- CROSS BY MR. ANDERSON

1 A: Yes.

2 Q: That's it?

3 A: Yes.

4 MR. ANDERSON: Thank you. That's all the questions I
5 have.

6 THE COURT: Okay. Thank you for your testimony, Officer.
7 You can step down. Mr. Anderson, any -- any objections to --
8 to this statement?

9 MR. ANDERSON: No, sir.

10 THE COURT: Okay. All right. That -- that's it for the
11 statements; correct, Solicitor?

12 MR. MCEACHIN: That's correct, Your Honor. That's the
13 last one.

14 THE COURT: All right. Well, I will find that if the
15 State does elect to admit into evidence any or all of the four
16 statements that have been produced at this Jackson v. Denno
17 hearing, the Court finds without objection from the defense
18 that the statements were voluntarily made. As to the three --
19 first three statements, there was appropriate Miranda warnings
20 given, and that the defendant voluntarily and intelligently
21 waived his Miranda rights.

22 With respect to the last statement, it was not subject to
23 any interrogation or questioning on behalf of the police
24 officer. Therefore, I find that that was voluntarily made
25 without the need for Miranda to be given.

1 Okay. Anything else we need to take up on the record
2 before we start the case?

3 MR. MCEACHIN: Just briefly, Your Honor. For purposes of
4 hopefully speeding this process along, State's Exhibit 71,
5 Judge, which is a blown-up map of the area -- of the incident
6 area. There is no objection from the defense, and we'd move
7 to enter that into evidence at this time.

8 THE COURT: Okay. All right. Is that correct, Mr.
9 Anderson?

10 MR. ANDERSON: That's correct, Your Honor, no objection.

11 THE COURT: Okay. And that's Exhibit -- what now?

12 MR. MCEACHIN: 71, Your Honor.

13 THE COURT: 71?

14 MR. MCEACHIN: Yes, sir.

15 (WHEREUPON, State's Exhibit Number 71, a large aerial map
16 view of the location of the scene, was admitted into
17 evidence.)

18 THE COURT: Okay. Anything else we need to take up?

19 MR. MCEACHIN: Your Honor, we also have State's Exhibits
20 15 through 48, which Mr. Anderson has had an opportunity to
21 review. These are crime scene photographs. There is no
22 objection by the defense, and the State would move to admit
23 these into evidence at this time.

24 THE COURT: Okay. Is that correct? No objection?

25 MR. ANDERSON: No objection, Your Honor.

1 THE COURT: All right. Without objection, it will be 15
2 to 48.

3 (WHEREUPON, State's Exhibit 15 through 48, all color
4 photographs, were admitted into evidence.)

5 THE COURT: So right now we've got 15 to 48 and 71 that
6 will be into -- into evidence as part of the record in this
7 case.

8 MR. MCEACHIN: Yes, sir, Your Honor.

9 THE COURT: Okay. All right. Very good.

10 MR. MCEACHIN: Your Honor, I have some physical evidence
11 out at one of my officer's vehicles. Can I have him run go
12 get it before we get started?

13 THE COURT: Okay. All right. What we need to do is
14 before -- because the jury is -- you guys know a lot better
15 than I do, they have to walk through the courtroom to get to
16 the jury room. Let's get all of whatever work you need to get
17 done completed, and then we can bring the -- the jury in.

18 MR. MCEACHIN: Certainly, Your Honor.

19 THE COURT: All right. Anything from the defense?

20 MR. ANDERSON: Your Honor, before we begin the trial
21 though, we'll take just a short break?

22 THE COURT: Oh, yeah. We're going to take a break right
23 now --

24 MR. ANDERSON: Okay.

25 THE COURT: -- to get all housekeeping matters done,

1 bring the jury into their jury room. The clerks might need to
2 deal with them as far as addresses and phone numbers so if we
3 have a wintery day tomorrow that puts a kink into what we're
4 trying to do here, then we'll be able to deal with that with
5 the jury.

6 (WHEREUPON, there was a pause in the proceedings, after
7 which the proceedings resumed as follows.)

8 THE COURT: Do you need me?

9 MR. MCEACHIN: Well, Judge, we're -- there may be an
10 evidentiary issue that comes up with our last witness of the
11 day, but we can probably take that up right before he comes
12 up.

13 THE COURT: All right. All right. We'll be at ease for
14 about 15 or 20 minutes. That should be enough time to get
15 done what we need to do. Okay?

16 (WHEREUPON, there was a break in the proceedings from
17 2:57 p.m. until 3:32 p.m., after which the proceedings
18 resumed as follows.)

19 THE COURT: Okay. We're back on the record. Let me note
20 for the record that I talked with the attorneys in chambers
21 several times about a situation that arose not too long ago
22 wherein -- and if I misstate anything, please correct me.
23 Okay?

24 That when the jury was coming back in, the -- Mrs. Witek
25 had a -- some conversation with one of the members of the

1 jury, a male. The conversation was something about the
2 juror's hat possibly that he was wearing. I'm not aware of
3 anything more to the conversation. And consequently, her
4 sister then reported it to the solicitor and then it was
5 brought to my attention.

6 Of course, the defense has -- I guess you probably need
7 to go ahead and put on the record what your motion is, and
8 then I'll address how we're going to try to remedy the
9 situation. But, Mr. Anderson, I'll go ahead and just let you
10 put on the record now what you need to put on it.

11 MR. ANDERSON: Your Honor, at this point in time on
12 behalf of my client, Kemonie Jones, I would move for a
13 mistrial.

14 THE COURT: Okay.

15 MR. ANDERSON: And, Your Honor, there's several reasons
16 for that. First of all, I do not doubt that it was
17 unintentional. I do not doubt that it was harmless. However,
18 Your Honor, I anticipate that the State will call her as a
19 potential witness --

20 THE COURT: Right.

21 MR. ANDERSON: -- and I'm afraid that when that jury
22 hears that she is the widow or the widower, that her husband
23 was the one that was killed, it could unduly influence the
24 person that she spoke to. Hey, this -- this is the lady that
25 spoke to me earlier. She seemed very nice, very sweet lady,

1 asking about my hat or asking about some emblem. And, Your
2 Honor, subconsciously, I'm afraid that that could influence
3 him in some way, shape or form, and that's why, Your Honor, on
4 behalf of my client at this point in time, we would move for a
5 mistrial.

6 THE COURT: Okay. Thank you. And how I want to do this
7 -- I want to -- I'm going to deny your motion at this time,
8 and what we're going to do is bring the -- the jury out and
9 I'm going to talk to them a few minutes concerning the
10 selection of a foreperson and hopefully with that the -- the
11 sister and/or the wife will be able to identify who this juror
12 was. And we don't have any information that any other jurors
13 were a part of this conversation; correct, Solicitor?

14 MR. MCEACHIN: That's correct, Your Honor.

15 THE COURT: And then if we can identify who this juror
16 is, bring him out and more than likely I will excuse this
17 juror just to avoid any possibility of any improper influence,
18 and also ask this juror if, in fact, he -- and, hopefully, he
19 did not, but ask him if he has communicated the existence of
20 this conversation with Ms. Witek with any other members of the
21 -- the jury and, if he answers that he has not, then we excuse
22 him and then I think we'll be okay and be safe insofar as
23 having a jury that's not been tainted.

24 So with that said, let's bring -- let's bring the jury
25 out and, Solicitor, if you'll make every effort to try to --

1 MR. MCEACHIN: Yes, sir, Your Honor.

2 THE COURT: -- figure out who this juror is.

3 (WHEREUPON, the jury entered the courtroom at 3:36 p.m.)

4 THE COURT: Let the record reflect the jury is back in.

5 Good afternoon, ladies and gentlemen.

6 THE JURY: Good afternoon.

7 THE COURT: I appreciate your patience. A lot of times
8 you're going to find that when you're sitting back there in
9 the jury room, we're working on something involved in the
10 case, and we have been. So I don't want you to think that
11 we're just keeping you back there unnecessarily, but there's
12 -- sometimes there's matters that we just have to deal with
13 and we just can't do it in -- in your presence.

14 We have one housekeeping matter that we're going to need
15 to take care of now. I need to appoint a foreperson of the
16 jury. If it's a man, it's a foreman. If it's a lady, it's a
17 forelady. And I want to explain to you that the vote once you
18 -- at the end of the case when you go back to deliberate on
19 your verdict, the vote of the foreperson carries no greater
20 weight than the other eleven on the jury.

21 But I have to have someone to serve -- well, to actually
22 wear several hats. One, to serve as the spokesperson for the
23 jury. If there's a concern or a matter or something that
24 needs the Court's attention, then I need someone to speak for
25 the -- for the jury.

1 Secondly, I need someone to make sure that the jury is
2 following all instructions that I give you, either at the
3 outset or throughout the course of the trial and, if my
4 instructions have not been followed, then I need to know that.
5 So I need to have someone to -- to sit in that capacity.

6 And thirdly, I need someone to -- once I give you the
7 case and instruct you you can begin your deliberations on
8 deciding a verdict in this case, I need -- I need someone to
9 -- to be -- to organize those deliberations, and I'm confident
10 that all twelve of you and all two of you would make excellent
11 forepersons, but I can't have more than one quarterback. And
12 so I can only -- unfortunately, only just pick one, but again
13 I want to emphasize with you that I'm sure all of you would
14 make excellent forepersons of the jury.

15 But I am selecting Ms. Melville. I think that is you,
16 ma'am. Okay. You'll be fine. You'll be good. Don't -- you
17 looked a little shocked when I called out your name, but I
18 think you'll be just fine.

19 Now, when you come back out, Ms. Melville, you will
20 always maintain this first seat right here. Okay? And the
21 alternates will remain where you are.

22 And let me explain the alternates. Your role is very,
23 very important. You will sit through this entire trial,
24 listen to all the testimony and evidence and view all the
25 evidence that the other twelve has an opportunity to see and

1 hear, and -- and oftentimes, it's not unusual for a -- one of
2 the twelve to have to be excused for many, many different
3 reasons. Consequently, we need someone to fill in that place.
4 So your role is very, very important. Okay? So just because
5 you're an alternate, you are as important as those twelve
6 seated behind you. Okay? So please understand that.

7 So -- but as far as the rest of the jurors, you can sit
8 wherever you like. It already looks like you try to maintain
9 some of the same seats. That's fine too, however you want to
10 do it, but it's just required that the forelady of the jury,
11 Ms. Melville, will maintain that first seat -- first seat
12 there.

13 Now, with that said, before we do anything else, there's
14 a matter I need to discuss with -- with the lawyers, and so
15 I'm going to ask -- and, hopefully, this will take just a
16 minute. I'm going to ask that you go back to the -- to your
17 jury room. Again, don't begin any discussion about anything
18 related to this case among yourselves. Hopefully, we'll get
19 you back out very, very soon.

20 (WHEREUPON, the jury exited the courtroom at 3:41 p.m.)

21 THE COURT: Okay. Solicitor, were you able to identify
22 this juror?

23 MR. MCEACHIN: Your Honor, the individual seated in this
24 -- this seat right here in the front on the very end. I'm not
25 sure of his name. That's the individual.

1 THE COURT: Okay. Madam Clerk, would you be of any
2 assistance for us as far as the identify of that -- do you
3 know which one we're talking about?

4 THE BAILIFF: They said he had on a gray canvas jacket
5 and a gray hat.

6 THE COURT: That's the one?

7 MR. MCEACHIN: That's the one.

8 THE COURT: All right. So here's what we're going to do.
9 We're going to bring him out. Make sure that when he's
10 brought out he's the one, and then I'll -- let me just
11 question him and see what -- what he has to -- has to say.
12 Okay?

13 MR. MCEACHIN: Yes, sir, Your Honor.

14 THE COURT: All right. Mr. Evans, would you go in and
15 just bring him out?

16 THE BAILIFF: All right.

17 THE COURT: And -- and make -- and ask him his name and
18 then bring him out. And tell him he's not in trouble. Okay?

19 THE BAILIFF: Okay. All right.

20 (WHEREUPON, Juror Anthony Hemingway entered the
21 courtroom.)

22 THE COURT: Okay. Hi, Mr. Hemingway. Just -- just come
23 around here just a little bit. Your name is Hemingway?

24 THE JUROR: Anthony Hemingway.

25 THE COURT: Okay. All right. You're not in trouble.

1 Okay? Don't worry. Don't worry about it. Okay?

2 It's my understanding that when you got to the courthouse
3 this afternoon that you may have had a very brief, incidental
4 conversation with a lady, one of the ladies back here, maybe
5 some mention about your hat?

6 THE JUROR: Oh, she asked me -- yeah, she asked me what
7 was on my hat.

8 THE COURT: Okay.

9 THE JUROR: I said I just buy a hat. I just buy a hat.

10 THE COURT: Okay.

11 THE JUROR: I mean I didn't know. I didn't know that
12 lady.

13 THE COURT: I understand, and that was the -- that was
14 the conversation about your hat?

15 THE JUROR: Yes, sir. She asked about the hat -- about
16 what was on the hat. So I looked at the hat and I go in a
17 store and I just buy a hat. That's all I do is buy a hat.

18 THE COURT: Okay. All right. Now, the fact that you had
19 -- did you know who you were talking to?

20 THE JUROR: No, sir.

21 THE COURT: Okay. Did you by any chance have any
22 communication about this conversation that you had with this
23 lady with anybody on the jury?

24 THE JUROR: No, sir.

25 THE COURT: Okay. All right. Here's what I'm going to

1 do and, again, I want to emphasize with you you've done
2 nothing wrong. Okay?

3 THE JUROR: Yes, sir.

4 THE COURT: You've done nothing wrong, but what I'm going
5 to do -- I'm going to go ahead and excuse you from sitting on
6 this -- this jury. And again, you've done nothing wrong. The
7 -- the lady that you had a communication with is -- is on the
8 side of the State and we just want to avoid any -- anything
9 that may create an issue later on. So I'm going to excuse you
10 and you are free to go.

11 MR. MCEACHIN: Just for purposes of this trial?

12 THE COURT: And for purposes of this trial. I'm just
13 thinking as far as him calling back as related to anything
14 else that may come up this week. I think I'm going to just go
15 ahead and excuse him for the rest of the week. You're excused
16 for the rest of the week and, again, you've done nothing wrong
17 and I don't want to make you think that you have.

18 And I don't want to make you think you've done anything
19 wrong by me excusing you. Okay? But we just felt like
20 because of the inadvertent communication that was had with you
21 and this lady, it would probably be best if we did excuse you.
22 Okay? But we appreciate your service very, very much, and
23 have a great rest of the week. Okay?

24 THE JUROR: Yes, sir.

25 THE COURT: All right. Okay. Yes, sir.

1 (WHEREUPON, the juror exited the courtroom.)

2 THE COURT: Okay. You know, I think probably we would
3 have been fine if I -- if I kept him on there, but just to
4 avoid any -- any particular issue later on -- but I think now
5 we -- and you're protected on the record and I'm sure you're
6 still renewing your motion for a mistrial. I understand that,
7 and it's still denied. I think we're fine and I'm going to
8 then just instruct Ms. Duhnam, who is the first alternate,
9 that she will now be on the jury.

10 MR. ANDERSON: Judge, may it please the Court. And you
11 may -- you probably -- I'm not going to say you may. I'm
12 going to say you probably know more about seating alternates
13 than I do. Judge, it's my understanding that the alternates'
14 names kind of went in a hat and one was drawn out. It didn't
15 necessarily just fall to the first alternate and the second
16 alternate, but I'll leave that --

17 THE COURT: Right.

18 MR. ANDERSON: -- to your discretion.

19 THE COURT: Okay. Thank you very much. All right.
20 Anything else before we swear this jury? Now, of course, we
21 -- I need to do the preliminary charge, take opening. We may
22 have time to maybe put up a witness or so. Is that what your
23 plan is?

24 MR. MCEACHIN: Judge, I can put up a very short witness.

25 THE COURT: Okay.

1 MR. MCEACHIN: Time permitting.

2 THE COURT: Yeah. Sure.

3 MR. MCEACHIN: Ten -- maybe ten minutes' worth of
4 testimony.

5 THE COURT: Okay. All right. Okay. All right. Well,
6 let's -- let's bring the -- bring the jury out. I'll just
7 explain that for reasons that the jury does not need to be
8 told, Mr. Hemingway has been released and Ms. Duhnam will take
9 -- take that juror's place.

10 Okay. All right. Mr. Evans, bring the jury out, please.

11 (WHEREUPON, the jury entered the courtroom at 3:47 p.m.)

12 THE COURT: Okay. Let the record reflect the jury is
13 back in.

14 Ladies and gentlemen of the jury, I want to explain to
15 you that Mr. Hemingway I have released as a juror in this
16 case. I don't want to suggest or insinuate that he did
17 anything wrong because he did not, but for other reasons that
18 I don't need to explain to you, I have released him as a juror
19 in this case.

20 And so, Ms. Duhnam, you are now -- if you want to go
21 ahead -- you can just keep your seat, but from now on you'll
22 sit anywhere in the main section here. Okay? So you are now
23 on the twelve. Okay?

24 All right. Madam Clerk, would you swear this trial jury
25 in, please.

1 THE CLERK: Yes, sir. Thank you. I'm going to
2 administer the oath and, after I administer the oath, if you
3 will, reply with the words "I will". If you will, stand and
4 raise your right hand, please.

5 (WHEREUPON, the jury complied.)

6 THE CLERK: You shall well and truly try and a true
7 deliverance make between the State of South Carolina and the
8 prisoner at the bar, whom you shall have in your charge, and a
9 true verdict give according to the law and the evidence, so
10 help you God.

11 THE JURY: I will.

12 THE CLERK: Thank you. You may be seated.

13 (WHEREUPON, the jury complied.)

14 THE COURT: Madam Forelady and ladies and gentlemen of
15 the jury, we are starting the trial now in the State of South
16 Carolina versus Kemonie Lashawn Jones. And before we begin
17 this trial, I want to tell you some things, and I want to tell
18 you that this trial probably will be different from what you
19 might expect. Many people do not have the chance to attend
20 actual court sessions as you are doing now and may think from
21 watching television or movies or reading books that trials are
22 always full of high drama, intense action, and riveting
23 circumstances.

24 While all of these things may be true at times, this
25 trial is not for anyone's entertainment. It is a fundamental

1 part of our democracy, a search for the truth in an effort to
2 make sure that justice is done between the parties before the
3 Court. Searching for the truth and making sure that justice
4 is done is often slow, deliberate, and repetitive, the
5 opposite of what you may have seen in television and movies
6 and read in books. This courtroom is a place of honor
7 dedicated to the protection and preservation of citizens'
8 rights through what many have called to be the greatest
9 justice system ever created.

10 The attorneys appearing before you are advocates for the
11 parties they represent, but first and foremost, they are
12 officers of the court sworn to uphold the integrity and the
13 fairness of our judicial system and to help you in the search
14 for the truth. You should expect them to be professional,
15 competent, and ethical in the representation of their client's
16 interest, which I'm sure that they will be, and you are also
17 expected to be professional, reasonable, and ethical as well.
18 I want to thank you for accepting this important
19 responsibility of jury service and for your contribution today
20 and this week to our judicial system.

21 What I will now say is intended to serve as an
22 introduction to the trial of this case. These remarks are not
23 a charge on the law in this case. I will instruct you on the
24 law applicable to this case at the end of the trial before you
25 retire to consider your verdict. This is merely an

1 explanation of the procedure that we will follow in the trial
2 of this case so that you may better understand what may be
3 happening.

4 And I will tell you that you are not permitted to take
5 any notes during this trial. So what that means is that you
6 will need to be very attentive throughout this entire trial.
7 Be very attentive. Be very alert to everything that goes on.

8 Now, as I told you before you were actually selected when
9 you were a part of the jury panel, the defendant is charged by
10 an indictment filed in this court and charged with two crimes.
11 The two crimes are, one, murder, and, two, possession of
12 marijuana with intent to distribute.

13 Now, I will explain the elements of these two charges
14 later. As I told you also, this indictment is simply the
15 charge by which this case is brought into court, and it is not
16 in any sense evidence of any of the allegations the indictment
17 contains.

18 The defendant has pled not guilty to this indictment to
19 these two charges. Therefore, the State has the burden of
20 proving each and every element of these two charges beyond a
21 reasonable doubt, and it will be your duty, Madam Forelady and
22 ladies and gentlemen of this jury, to decide whether the State
23 has met that burden.

24 Your purpose as jurors is to find and determine the
25 facts. You are the sole judge of the facts. If at any time I

1 make any comment regarding the facts, you must disregard it.
2 You are to determine the facts from the testimony you hear and
3 the other evidence introduced into court. It is up to you to
4 determine the inferences which you feel may properly be drawn
5 from the evidence. It is especially important that you
6 perform your duty of determining the facts diligently and
7 conscientiously because ordinarily there is no way to correct
8 an erroneous determination of the facts by a jury.

9 Now, on the other hand and with equal emphasis, the same
10 law that makes you the judge of the facts makes me the judge
11 of the law. The law as given by the Court is the only law you
12 may consider. You must accept and follow it, even though you
13 may disagree with it. I cannot tell you what the facts are
14 and you cannot disagree with me about what the law is or
15 should be.

16 Your job is to take the law as I give it to you and apply
17 it to the facts as you find them from the testimony of the
18 witnesses and any other evidence that is introduced. After
19 doing all that, you will then render your verdict, a verdict
20 under the solemn oath that you just took as jurors moments
21 ago.

22 And again, until I tell you that you may begin to
23 deliberate on your verdict, you must not discuss this case
24 with anyone, including your fellow jurors, any friends, family
25 members, anyone involved in this case, anyone that you may

1 come into contact with. During your deliberations, you may
2 only discuss the case in the jury room with the fellow -- with
3 your fellow jurors because they have seen and heard the same
4 evidence that you have. You cannot discuss this case with
5 anyone else after -- only until after you have returned a
6 verdict and the case is at an end.

7 You must decide this case based solely on the evidence
8 presented here in this courtroom. This means that you cannot
9 conduct any independent research about this case, the facts of
10 the case, the evidence presented or the people or
11 organizations involved in any way in this case.

12 Please do not try to find out any information from any
13 source outside of this courtroom. You know, we have so easy
14 access to information because of the -- of the Internet, and
15 it may be something that you would consider doing, but you
16 can't. You can't go on the Internet during a break or in the
17 evening when you're at home to try to find out anything
18 related to the case, the law in this case or anything related
19 to the case. You cannot do that.

20 Consequently, if there's any media accounts of this case
21 in the newspaper, on television or on the radio, you are not
22 to consider that as well. Again, it's so vitally important
23 that your decision in this case with respect to your verdict
24 be based one hundred percent on what is presented in this
25 courtroom today and this week.

1 Now, let me instruct you too concerning cell phones. I
2 know some -- some courthouses actually take up the cell phones
3 each day -- each morning when the jurors come into the
4 courthouse. I don't know if that is the custom here in Marion
5 County. The best course of action is to -- is to leave your
6 cell phones in your car and don't even bring them in. If you
7 were to have your cell phone on and it were -- if you forgot
8 to turn it off and it were to ring, then it can certainly
9 interfere with -- with the trial and be disturbing and -- so
10 just don't bring your cell phone in. Leave it -- leave it in
11 the car.

12 Madam Forelady and ladies and gentlemen of the jury, it's
13 your solemn responsibility to determine the guilt or innocence
14 of the defendant, and your verdict must be based solely on the
15 evidence as it is presented to you in this trial and on the
16 law that I instruct you during and at the close of the trial.
17 Again, be very attentive. Be very alert to everything that
18 goes on in this case.

19 I will ask from the State is there any objections or
20 exceptions to the Court's preliminary charge?

21 MR. MCEACHIN: None from the State, Your Honor.

22 THE COURT: And from the defense?

23 MR. ANDERSON: No, sir, Your Honor.

24 THE COURT: Okay. Thank you very much. At this time,
25 Madam Forelady and ladies and gentlemen of the jury, the --

1 the State and the defense will make opening arguments to you.
2 What they tell you is not evidence in this case. It's just a
3 statement as to what their position is and what they believe
4 the evidence will -- will show during the course of this
5 trial.

6 Give both attorneys your strict attention. Be very alert
7 to what they have to tell you in their opening. Solicitor,
8 are you ready?

9 OPENING STATEMENT ON BEHALF OF THE STATE

10 MR. MCEACHIN: I am, Your Honor. Thank you. May it
11 please the Court. Mr. Anderson. Mr. Floyd.

12 Madam Forelady and ladies and gentlemen of the jury, on
13 the morning of Saturday, February the 16th, 2013, Stanley Witek
14 was at his home at here in Marion, South
15 Carolina, about six blocks from the courthouse here. And that
16 morning -- some of you may remember it. It was about two
17 years ago last Monday and it was -- it was one of those days
18 where it started out raining that morning and then eventually
19 led to snow and some ice.

20 But that morning, Stan was -- Stan was out in his front
21 yard and he was working in his flowerbeds. He was prepping
22 his beds, which is something he tended to do from time to
23 time. And as Stan was sitting there working on his
24 flowerbeds, from behind him a masked gunman came up. He
25 pulled out a gun and he shot three times. Stan, after having

1 been shot at three times, attempted to run around his house
2 under his carport and attempted to get inside of his home.

3 He was chased down. Two more shots were fired. Stan
4 Witek did not make it into his home that day. Stan Witek
5 collapsed on the floor of his carport and he died shortly
6 thereafter.

7 I told you at the beginning of this trial my name is
8 Fitzlee McEachin and I'm representing the State of South
9 Carolina and the County of Marion. Seated with me is Mr.
10 Hoefer, Rick Hoefer. He's going to be assisting me during the
11 course of this trial, and you also met the solicitor earlier
12 today.

13 As the prosecuting agency in the case, it is my duty and
14 my burden to prove to y'all that the defendant, Kemonie Jones,
15 is guilty of the crimes of which he has been charged. And the
16 Court already told you about the two charges in this case.
17 You have a charge of murder and you have a charge of
18 possession with the intent to distribute marijuana. Those are
19 the two charges and that's what I have to prove to you folks.

20 I have to prove to you that beyond a reasonable doubt
21 Kemonie Jones killed Stan Witek and Kemonie Jones possessed
22 with intent to distribute a quantity of marijuana. Now, how
23 do I do that? Well, I do it by presenting evidence.

24 There are two forms of evidence you'll see in this case,
25 and there are two forms of evidence in nearly every case. The

1 first comes from this witness stand right here. It comes in
2 the form of testimony. It's what you're going to hear from
3 witnesses who have something to do with this case, whether
4 it's an eyewitness to the case or whether it was somebody who
5 just happened to be involved in the case through their job.

6 And then you'll also have exhibits, and exhibits are
7 those things that are considered hard evidence, things you can
8 touch and can see. You can use your senses. Photographs,
9 clothes, things like that. Those are exhibits.

10 And that's what the State has to do. We have to present
11 evidence to you that proves the defendant guilty beyond a
12 reasonable doubt. And you're going to hear from a number of
13 witnesses. You heard the Court go through them this morning.
14 It sounded like the judge was going for ten minutes talking to
15 you about all the witnesses you're going to hear from.

16 Well, rest assured we're not going to have to hear from
17 all of those folks. You are going to hear from law
18 enforcement officers who responded to the 9-1-1 call that day,
19 and the ones who chased the defendant from right beside the
20 scene of the crime all around downtown Marion and finally were
21 able to apprehend him.

22 You're going to hear how the defendant was apprehended
23 twelve minutes after this happened. This isn't something
24 where they had to look for him for days. Twelve minutes.
25 Twelve to 15 I should say. Twelve to 15 minutes after this

1 shooting, the defendant was apprehended.

2 You're going to hear from eyewitnesses who saw what the
3 defendant was wearing. You're going to hear from a number of
4 witnesses who would say the defendant was wearing the exact
5 same thing when they saw him running through Marion.

6 You're going to hear from the law enforcement officers.
7 You're going to hear from officers with SLED, the South
8 Carolina Law Enforcement Division, that conducted analysis
9 with regard to evidence in this case.

10 You're going to hear from all of these people and you're
11 going to get to see the evidence. And once you get to see
12 that evidence and once you get to hear the testimony from this
13 witness stand, I feel sure that you will find Kemonie Jones
14 guilty of the murder of Stan Witek and you'll also find him
15 guilty of possession with intent to distribute marijuana. He
16 just happened to be caught with it when he was caught.

17 This case is very important, ladies and gentlemen. It's
18 important to the defendant, who is seated right over there.
19 It's important to the Witek family. It's important to the
20 County of Marion and it's important to the State of South
21 Carolina.

22 The defense and I chose you twelve and our alternates
23 because we thought you all could be the most fair and most
24 impartial and the folks that would give the most attention to
25 this case. That's what we expect of you and we thank you for

1 it. Please listen carefully to the evidence that's presented,
2 and it will tell you who killed Stan Witek. Thank you.

3 THE COURT: Thank you, Solicitor. Mr. Anderson? Mr.
4 Floyd?

5 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

6 MR. ANDERSON: A 68-year-old man was killed, and the
7 State wants somebody to pay. A 68-year-old man was killed,
8 and the State needs to have somebody to pay. A 68-year-old
9 man was killed, and the State wants, needs, has to have
10 somebody to pay.

11 But it wasn't Kemonie. It was not Kemonie Jones. This
12 is a case about leaping to conclusions. This is a case about
13 rushing to judgment. This is a case about making
14 speculations, making assumptions.

15 Now, some of y'all when y'all heard the charges read out
16 by His Honor -- I'm sure y'all went, "Murder? We're up here
17 on a murder case?" Now, that is awful. That's terrible. It
18 is awful that someone was killed. Someone that was an elderly
19 man was killed, someone who has family has suffered the loss
20 of a loved one. I'm sure all those thoughts were going
21 through your mind. I'm sure they were.

22 But what could possibly be worse than murder? Convicting
23 an innocent person. That is the only thing that I can think
24 of that could be worse than that charge.

25 Now, the State was correct in what they said just a few

1 minutes ago. Evidence comes from this witness stand. The
2 State is also correct that evidence comes from exhibits. And
3 I promise you the questions that the State asks are going to
4 be pretty easy, but when we ask questions -- when I say we,
5 I'm talking about myself and Mr. Floyd. When we ask
6 questions, the answers might be a little bit tougher.

7 Now, what aren't you going to hear? You aren't going to
8 hear any evidence about a gun because one was never found.
9 One was never found on my client, Kemonie, and one was never
10 found supposedly where he ran. If my client was the shooter,
11 then why didn't they find the gun?

12 You're later going to hear evidence about some mask, but
13 you know what? When they ask my client -- and I think you'll
14 hear this later. When they ask Kemonie, hey, we've got a red
15 mask. The shooter was wearing a red mask. We've got a red
16 mask. You don't mind giving us a DNA sample, do you? Kemonie
17 said I'd be happy to. I'd be happy to give you DNA.

18 Police talked to my client twice. He voluntarily gave a
19 statement to them. I think you'll hear police say you know
20 what? He told us the same thing three times. My client
21 cooperated with the police. I think you'll also hear the
22 police say that when they started saying we know you killed
23 him, we know you did this, we know you shot him, we know you
24 were wearing this mask, we know that you ran, now you just
25 need to cooperate with us. You just need to go ahead and

1 confess up to us. That's when Kemonie said, whoa. You know,
2 I think I need a lawyer.

3 My client was more than happy to give two statements to
4 law enforcement, voluntary statements. He cooperated with
5 them.

6 You know what else you won't hear? You won't hear
7 anything about fingerprints. You won't hear anything about
8 any blood that was on my client. You won't hear anything
9 about anything my client may have taken from the decedent in
10 this case.

11 The State wants you to think this is an open and shut
12 case, but it's not. I promise you this is a case about making
13 assumptions, this is a case about jumping to conclusions, and
14 this is a case about rushing to judgment.

15 And the State is right about one thing. We did choose
16 you all. We chose you because we believed you would give both
17 the State and my client, Kemonie, a fair and impartial trial.
18 And I think that after you hear everything, you will agree
19 with me that Kemonie didn't do it and he's not guilty. Thank
20 you.

21 THE COURT: Thank you, Mr. Anderson. Is the State ready
22 to call its first witness?

23 MR. MCEACHIN: We are, Your Honor.

24 THE COURT: Okay.

25 MR. MCEACHIN: The State would call Scott Lane to the
26

1 stand. Scott Lane.

2 (WHEREUPON, there was a pause in the proceedings until
3 the witness entered the courtroom.)

4 THE CLERK: Mr. Lane, if you would, come around, please,
5 sir. Place your left hand on the Bible and raise your right
6 hand. Do you solemnly swear or affirm that the evidence you
7 give in the trial of this case shall be the truth, the whole
8 truth, and nothing but the truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Please take the witness stand.

11 SCOTT LANE, being first duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MCEACHIN:

15 Q: Mr. Lane, if you would, please state your full name for
16 the record.

17 A: Scott Andrew Lane.

18 Q: And, Scott, would you please let the jury know how old
19 you are?

20 A: I'm 53.

21 Q: And where do you live?

22 A:

23 Q: Eight --

24 A: Marion.

25 Q: I'm sorry.

SCOTT LANE - DIRECT BY MR. MCEACHIN

1 A: in Marion.

2 Q: Okay. And I will ask you to speak up a little bit. The
3 acoustics in here are a little bad. I want to make sure
4 everybody on the jury can hear your answers. Okay?

5 A: Okay.

6 Q: So in Marion, South Carolina?

7 A: Yes, sir.

8 Q: Now, Scott --

9 MR. MCEACHIN: And, Your Honor, may I have him step down
10 for just a moment?

11 THE COURT: Sure.

12 BY MR. MCEACHIN:

13 Q: Scott, I'm going to have you step down.

14 (WHEREUPON, the witness complied.)

15 (WHEREUPON, State's Exhibit Number 71 is displayed on an
16 easel before the jury.)

17 Q: And if you could, show this jury -- let me see if I can
18 get that straightened out. Show this jury about where 820
19 Waycross would be on this map?

20 A: It would be just below right here.

21 THE COURT: Okay. Let me -- let me just stop just a
22 second. I need to make sure that all the jurors can see. I
23 know maybe on this side it may be a little difficult. If you
24 have a problem seeing, just raise your hand. Okay?

25 BY MR. MCEACHIN:

1 Q: All right. How about show the jury about where 820
2 Waycross would be?

3 A: It would be right here on the corner right there.

4 Q: Okay. And what street -- that's Waycross right there?

5 A: Yes, sir.

6 Q: And what street is this?

7 A: This is Upland.

8 Q: Okay. And you're referencing -- excuse me -- referencing
9 State's Exhibit 71; is that correct?

10 A: Yes, sir.

11 Q: Okay. So this is where you were living? This is where
12 you live?

13 A: Yes, sir.

14 (WHEREUPON, the witness retook the witness stand.)

15 Q: All right. How long have you lived there?

16 A: I have lived in that particular house for three years,
17 and I lived just across the street from that house when I
18 moved for a year. So I've been in that area for four years.

19 Q: Okay. And do you know the Witeks, Stan and Jackie?

20 A: I do.

21 Q: Okay. And do you know where they live?

22 A: Yes, sir. They --

23 Q: I'll hand this back to you. How about that?

24 A: Okay.

25 Q: Can you show the jury where they live?

SCOTT LANE - DIRECT BY MR. MCEACHIN

1 A: They're going to live right here, and I can pretty much
2 see from Waycross to their house.

3 Q: And how far away is that roughly from your house?

4 A: About a hundred -- hundred feet.

5 Q: Okay. So it's pretty close?

6 A: Oh, it's close, yes.

7 Q: And you said you knew the Witeks. How did you know them?

8 A: I knew Stan because we were kind of, like, yard buddies,
9 you know, on weekends working in the yard and whatnot. We
10 picked with each other. I'd see him cleaning his yard or he'd
11 see me cleaning mine, and sometimes I'd pick on him going by
12 and saying, hey, you can start on mine, just joking. We just
13 were neighbors.

14 Q: And they lived about four -- roughly about four doors
15 down from you; is that fair to say?

16 A: Yeah. Three -- four doors you could call it, yes.

17 Q: All right. Now, were you living at the Waycross address
18 or across the street back in February of 2013?

19 A: The Waycross.

20 Q: And that's the one you showed the jury to be right off
21 the picture there?

22 A: That's right.

23 Q: And do you recall the morning of February the 13th --
24 excuse me -- February the 16th, 2013?

25 A: Yes, sir.

1 Q: And where were you that morning?

2 A: I was in my bedroom having my coffee.

3 Q: And that was at your home at Waycross?

4 A: Yes, sir.

5 Q: And do you recall anything that struck you as outside of
6 the norm that morning?

7 A: Yes, sir, I do. That morning when I was having my
8 coffee, I did hear what to me sounded like two gunshots, a
9 pause for about one thousand one, one thousand two, one
10 thousand three, and then two more shots -- what sounded like
11 shots to me.

12 Q: Okay. And based on where you were sitting in your house,
13 could you tell which direction they were coming from?

14 A: Yes, sir. It would have been coming from Upland.

15 Q: Upland Avenue?

16 A: Yes, sir.

17 Q: And that would be -- if you were looking out your front
18 door, you're looking straight down Upland?

19 A: That's right.

20 Q: Okay. Now, you said it sounded like gunshots. Are you
21 familiar with what gunshots sound like?

22 A: Yes, sir.

23 Q: Okay. And how is that?

24 A: Well, I've had years of what we call plinking or rifle
25 shooting and shooting pistols. So I've been through several

SCOTT LANE - DIRECT BY MR. MCEACHIN

1 hundreds or even thousands of rounds of shooting. So you can
2 very well tell the distinctive sounds of a pistol or a rifle,
3 depending on the caliber of the rifle even, you know. Like, a
4 .22 is a psh, psh. A higher-powered rifle has a good report,
5 you know, like a bam. And then, of course, pistols have the
6 same report, but it's more of a bamp.

7 Q: Okay. And that morning, you're -- you're fairly certain
8 what you heard were gunshots?

9 A: That's right.

10 Q: And once you heard these gunshots, what, if anything, did
11 you do?

12 A: Well, at the time, I just set there, and then we saw an
13 ambulance through the front door at Stan's house and we
14 started wondering what was going on. And I actually walked
15 out to see what was happening and found out that he had been
16 shot.

17 Q: Okay. And do you recall about what time of day this was?

18 A: It was 9:30 -- quarter to ten.

19 Q: Okay. So sometime in the morning?

20 A: Yes, sir, that morning. Yes, sir.

21 Q: And you said you -- you all saw the ambulance. Did y'all
22 end up walking down towards Stan's house?

23 A: I did myself, yes, sir.

24 Q: You did? And who else lived at the Waycross address with
25 you?

1 A: Just my wife.

2 Q: Now, when you walked down, did you end up speaking to
3 anyone with law enforcement or EMS or anybody along those
4 lines?

5 A: Yes, sir, with law enforcement. I don't remember the
6 officer's name, but I had told him -- well, I was finding out
7 what had happened and they told me what had happened. I said,
8 well, I did hear shots. You know, I gave them a statement at
9 that time from what I heard.

10 Q: And after speaking with law enforcement that day and
11 giving them your statement, did you have any other involvement
12 with this case?

13 A: No, sir.

14 Q: Okay. And let me ask you this real quick. That house
15 that you live on Waycross, that's here in the City of Marion?

16 A: Yes, sir.

17 Q: Okay.

18 MR. MCEACHIN: Your Honor, that's all the questions I
19 have at this time.

20 THE COURT: Okay. All right. Cross-examination?

21 MR. FLOYD: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. FLOYD:

24 Q: Mr. Lane, how are you today?

25 A: Fine.

SCOTT LANE - CROSS BY MR. FLOYD

1 Q: Now, you stated that you were in your house that morning
2 and you heard two shots; is that correct? To begin with?
3 A: To begin with, that's right.
4 Q: And then you had a pause and then you heard two more?
5 A: Yes, sir.
6 Q: Okay. And you subsequently gave a statement to the
7 police; is that correct?
8 A: Yes, sir.
9 Q: Okay. And I believe you told them that you remained in
10 your house after hearing the shots; is that right?
11 A: That's right.
12 Q: Okay. So you didn't go outside after you heard those
13 shots?
14 A: No, not immediately. No, sir.
15 Q: Okay. You didn't go outside until you actually saw law
16 enforcement and an ambulance on the scene?
17 A: That's correct.
18 Q: Okay. So you didn't actually see any shooter; is that
19 correct?
20 A: That's correct.
21 Q: You just heard shots?
22 A: Just heard. That's right.
23 Q: So you couldn't identify anyone to law enforcement?
24 A: That's correct.
25 Q: Is that correct?

1 A: Yes, sir.

2 Q: Okay.

3 MR. FLOYD: Nothing further, Your Honor. Thank you very
4 much.

5 THE COURT: Redirect, Solicitor?

6 MR. MCEACHIN: No redirect, Your Honor.

7 THE COURT: Okay. Thank you for your testimony, sir.

8 THE WITNESS: Yes, sir.

9 THE COURT: You can step down.

10 THE WITNESS: Thank you.

11 MR. MCEACHIN: Your Honor, may we approach?

12 THE COURT: Certainly.

13 (WHEREUPON, a bench conference was held off the record in
14 the presence of the jury but out of the hearing of the
15 jury.)

16 THE COURT: All right. Solicitor, if you'll call your
17 next witness, please, sir.

18 MR. MCEACHIN: Your Honor, one more matter.

19 THE COURT: Sure.

20 (WHEREUPON, a bench conference was held off the record in
21 the presence of the jury but out of the hearing of the
22 jury.)

23 THE COURT: Madam Forelady and ladies and gentlemen of
24 the jury, this is something that is -- you'll have to
25 experience probably several times throughout this trial.

1 There are certain legal issues and legal matters that will
2 come up and I'll need to discuss those with the lawyers. It
3 may require me to comment on the facts which, of course, is
4 solely for you to determine. So I don't want to discuss the
5 facts in your presence.

6 Consequently, I will have to send you out periodically,
7 which I'm going to do now, for me to deal with that legal
8 issue, some evidence, and hopefully it won't take too long.
9 But if you'll go back to your jury room and remember don't
10 begin discussing this case and hopefully we get you back out
11 very soon. Thank you for your understanding and patience.

12 (WHEREUPON, the jury exited the courtroom at 4:21 p.m.)

13 THE COURT: Okay. Solicitor, I understand that the next
14 witness you want to call is the individual who made two
15 separate 9-1-1 calls, and there is a -- a recording of those
16 calls.

17 MR. MCEACHIN: That's correct, Your Honor. And I will
18 state for the record, that individual is the next individual
19 who is going to testify in this matter. So he is available
20 for testimony.

21 THE COURT: Right. Okay. So, Mr. Anderson, your -- your
22 concern or your objection is that the recording would contain
23 some statements from the 9-1-1 --

24 MR. ANDERSON: Operator.

25 THE COURT: -- operator. You would object as to --

1 MR. ANDERSON: Hearsay, Your Honor.

2 THE COURT: -- hearsay and, of course, I'll just have to
3 listen to it and kind of go from there.

4 MR. MCEACHIN: Thank you, Judge.

5 MR. ANDERSON: Yes, sir.

6 (WHEREUPON, there was a pause in the proceedings, after
7 which the proceedings resumed as follows.)

8 MR. MCEACHIN: Your Honor, are you ready?

9 THE COURT: I'm ready.

10 (WHEREUPON, the 9-1-1 recording contained on State's
11 Exhibit Number 14 was played in the courtroom, after
12 which the proceedings continued as follows. RECORDING
13 NOT TRANSCRIBED HEREIN.)

14 THE COURT: All right. It would seem to me that the --
15 the statements of the 9-1-1 operator were either to ask a
16 question to elicit information or, two, repeating what the
17 caller said. I don't think anything -- that I could hear
18 anything was offered to prove the truth of any matters
19 asserted, but I'll be glad to hear from you further on that
20 point.

21 MR. ANDERSON: Your Honor, I just think she repeated some
22 of his answers. She did ask some questions. I think she
23 repeated some answers. I think she did make an assumption at
24 one point in time. Before the caller said anything, she said
25 was he running, and then he said, yes, he was running.

1 THE COURT: Okay.

2 MR. ANDERSON: I mean obviously she would have had no
3 knowledge whether it was male or female. I think Mr. Sloan in
4 his statement actually says I don't know if he or she -- he
5 didn't say he or she, but he said I don't know if they were
6 black or white.

7 And so one of the questions I would certainly ask Mr.
8 Sloan is, well, how do you know it was a male. You couldn't
9 tell whether they were black or white. How do you know it was
10 a male? You only caught him for a brief minute, but that 9-1-
11 1 operator goes ahead and says he before Mr. Sloan said
12 anything.

13 Also, Your Honor, we would object under the -- it had to
14 be authenticated I guess under a business rule or something to
15 that effect as well, but our main objection, Your Honor, is
16 hearsay.

17 THE COURT: Okay. All right. Solicitor?

18 MR. MCEACHIN: Your Honor, two things. One, I'm not sure
19 that it's even hearsay. The definition of hearsay is a
20 statement is an oral or written assertion or non-oral conduct
21 of a person if it is intended by the person as an assertion.

22 Your Honor, the assertion and a question are two totally
23 different things. The statements made by the 9-1-1 operator
24 were, in fact, questions, and if she was repeating something
25 that Mr. Sloan said, it was in a question fashion. Therefore,

1 I'm not sure that it even rises to the level of hearsay.

2 To the extent it is, Your Honor, there is a case called
3 State versus Hagood, which actually goes beyond what the
4 defense is asking you here today, and that's a case where you
5 have somebody who makes a 9-1-1 call very similar to the one
6 Mr. Sloan made, and that individual is not even present and
7 the Court still allows it in, in looking at the case of Davis
8 versus Washington, which was decided by the United States --

9 THE COURT: Right.

10 MR. MCEACHIN: -- Supreme Court. So, Your Honor, I don't
11 even think we get to the hearsay question in this case. As
12 far as authentication is concerned, Mr. Sloan can certainly
13 authenticate that that's his voice on the tape. And based on
14 that, Your Honor, I think it certainly is admissible pursuant
15 to Rules of Evidence.

16 THE COURT: All right. Okay. Yeah. Typically, when
17 these 9-1-1 recordings are offered into evidence, it is calls
18 made by someone who is not available to testify. That's
19 usual, and then you have to get into the analysis of whether
20 it's testimonial in character or not because you don't want to
21 run afoul of the confrontation guarantees under -- under the
22 Constitution.

23 So I think Mr. Anderson is objecting to just the
24 operator's statements based on hearsay. I'm going to allow
25 it. I think maybe with some curative instruction to the -- to

1 the jury that insofar as whatever the dispatcher -- the 9-1-1
2 dispatcher may have said is not to be considered, even though
3 I don't think it rises to the level of hearsay. But I'm going
4 to allow it in.

5 MR. MCEACHIN: Thank you, Your Honor.

6 THE COURT: Anything further on that point? All right.
7 This is what -- Solicitor, when you've got the witness on the
8 stand and you get to the point of the -- wanting to play the
9 two 9-1-1 calls, I'll just give a little brief curative
10 instruction to the -- to the jury.

11 MR. MCEACHIN: Certainly, Your Honor. Just for purposes
12 of clearing up the record for the court reporter, this will be
13 marked as State's Exhibit 14.

14 THE COURT: Okay.

15 MR. MCEACHIN: Both calls are one disk, Your Honor.
16 We'll actually play them separately, but they're on the same
17 disk.

18 THE COURT: Okay.

19 MR. MCEACHIN: State's Exhibit 14.

20 THE COURT: Okay. Very good.

21 MR. MCEACHIN: And I'll go ahead and get the witness in
22 here, Your Honor, before we bring the jury out.

23 THE COURT: All right.

24 (WHEREUPON, there was a pause in the proceedings, after
25 which the proceedings continued as follows.)

1 THE COURT: Okay. Bring the jury out, please, Mr. Evans.

2 THE BAILIFF: Yes, sir.

3 (WHEREUPON; the jury entered the courtroom at 4:31 p.m.)

4 THE COURT: All right. Let the record reflect the jury
5 is back in. Solicitor, call your next witness.

6 MR. MCEACHIN: Thank you, Your Honor. The State would
7 call Russ Sloan to the stand.

8 THE COURT: Okay. Come around, please, sir.

9 THE CLERK: Do you solemnly swear or affirm the evidence
10 you are about to give in the trial of this case shall be the
11 truth, the whole truth, and nothing but the truth, so help you
12 God?

13 THE WITNESS: I do.

14 THE CLERK: Thank you.

15 CYRUS "RUSS" SLOAN, being first duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MCEACHIN:

19 Q: Russ, if you would, please state your full name for the
20 record.

21 A: Cyrus T. Sloan III.

22 Q: And, Russ, where do you currently live?

23 A: At in Marion.

24 Q: And if you don't mind, for the jury -- and I'm showing
25 you what's been marked as State's Exhibit Number 71. Could

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1 You just knew them as neighbors?

2 A: Yeah. I mean we would speak to each other when we saw
3 each other. We weren't -- we didn't do a lot of things
4 socially and that kind of thing, but just in the neighborhood.

5 Q: Okay. You'd occasionally see them out in their yard?

6 A: Right.

7 Q: Just courtesy wave?

8 A: Well, we would sometimes do a lot more than that. We --
9 we'd have some conversations, but it was mostly just in the
10 yard kind of thing.

11 Q: And you said y'all had been living there for quite some
12 time. Presumably, y'all lived there back in February of 2013?

13 A: Yes.

14 Q: And specifically, Russ, I'm going to ask you about the
15 date of September the 16th of 2013. If you could, please tell
16 the jury how your day started that day?

17 A: September or February?

18 Q: I'm sorry. I don't know why I said September. February
19 16th, 2013. Thank you for correcting me.

20 A: That morning, I don't remember what time I got up to do
21 my walking. Sporadically, I have a routine where I try to
22 walk for some exercise, and I had gotten up and done my
23 walking. I'd finished walking and, as my routine is, when I
24 finished the walking, I go and get the paper from the paper
25 stand. I went back in the house and was sitting in my chair

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1 reading the paper. My wife was not up at that time. It was
2 -- I don't know when I finished the walking, but I had been in
3 there some time reading the paper and watching television.

4 Q: Okay. Let me ask you this. When you say you took a
5 morning walk, do you kind of remember the route you went that
6 morning?

7 A: Well, I always start off the same way. I come out here
8 to my driveway and I go here to Cherry Street. I go over here
9 to Upland, and then I go across Main Street and walk either a
10 couple of blocks over there and around Harmon Park, and then
11 sometimes I'll come back down Main Street and go out the
12 walking trail and come back.

13 And when I come back -- let's see where my house is
14 again. I come back down this way, and this is Dogwood. I
15 walk back here. I walk straight toward Jackie and Stan's
16 house and then go ahead and get my paper and then go back in
17 the house.

18 Q: Okay. And you say you go over here to get your paper.
19 Where -- where is your mailbox?

20 A: The paper box is right about here near the driveway going
21 into my back door neighbor's house. The paper box is right in
22 that area right there.

23 Q: So you'd been on a walk that morning?

24 A: Right.

25 Q: And you'd gotten your paper?

1 A: Mm-hmm.

2 Q: Once you got your paper, what did you do?

3 A: I went inside, turned the TV on, and was reading the
4 paper.

5 Q: And with regard to -- I mean is there a specific place in
6 your house where you'll sit and read the newspaper?

7 A: I do. I've got my chair that I sit in. It's in the
8 corner of -- I've got a window right behind my chair, and then
9 there's another window a little bit over here to the right,
10 and it's on the corner of my house. It's probably the closest
11 part of my house to where Jackie and Stan live.

12 Q: Okay. So it would be the side that's closest to Upland
13 Avenue; is that fair to say?

14 A: Yeah, mm-hmm.

15 Q: And you were reading the paper that morning and do you
16 recall -- or did anything stop you from doing that?

17 A: Yes. While I was reading the paper, I heard two or three
18 pops. They just came close together, just pop, pop, pop, like
19 that. I kind of paused. There was a -- a little bit of a
20 pause that I was wondering what it was. I thought it was
21 gunshots, and then I heard two or three more. It was like --

22 (WHEREUPON, the witness knocked on the witness box three
23 times with his hand.)

24 A: And then a -- a little bit of a delay and then --

25 (WHEREUPON, the witness knocked on the witness box two

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1 times with his hand.)

2 A: -- again. And so I had never heard a pistol or hadn't
3 heard one in a long time, but that's what it sounded like to
4 me. I mean with the sequence, the way they were so close
5 together, that kind of thing. So I started to call 9-1-1
6 right then, but I said, well, let's see what's happening.

7 So I got up and went to my door to look out to see if I
8 could see what was going on. And when I got to the door, I
9 just kind of pulled the curtain back a little bit. As I was
10 looking, this person came running by across my neighbor's yard
11 headed -- it would have been headed this way in a westerly
12 direction across her yard.

13 Q: It may -- it may be easier if I show you State's Exhibit
14 71. If you could, show the jury where you saw the individual
15 running from and where they were running to.

16 A: All right. I was right in this part of the house right
17 here, and the person -- when I saw them, they were somewhere
18 in this area and running. They ran across the walkway. In my
19 neighbor's yard, there's a dirt path, and they were running
20 back in this direction. I don't know if they were trying to
21 go over here to Cherry Street or cut back through her yard and
22 come back to Jones Avenue. My garage, the way it sticks out,
23 once they got a little across that sidewalk there, I couldn't
24 see them anymore.

25 Q: And that's the sidewalk in front of your neighbor's house

1 there?

2 A: Yeah. That's -- Ms. Bayhan [phonetic] lives down there.

3 Q: Now, this person that you saw running, were they just
4 kind of walking? Jogging?

5 A: No. They were -- they were running.

6 Q: And how soon after those second set of what you believed
7 to be were gunshots did you see this individual running?

8 A: It couldn't have been long, just seconds.

9 Q: Once you witnessed that, once you witnessed the fellow
10 running, what did you do?

11 A: I got my phone. I don't remember whether I carried my
12 phone with me to the door or not, but I got the phone and
13 called 9-1-1 immediately. I told them that I saw somebody. I
14 heard what I thought were gunshots. I saw somebody running
15 across my neighbor's yard with a red, like, ski mask.

16 Q: And you called 9-1-1?

17 A: I did. I called and told them that.

18 MR. MCEACHIN: Your Honor, at this time, we move State's
19 14 into evidence.

20 THE COURT: Okay. Madam Forelady and ladies and
21 gentlemen of the jury, State's Exhibit 14 that's being offered
22 into evidence is a recording of a 9-1-1 call that was made by
23 this witness here. You'll hear the voice of the 9-1-1
24 dispatcher on the audio recording. I instruct you not to
25 consider anything that the dispatcher -- 9-1-1 dispatcher said

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1 during the -- during the call. Okay.

2 (WHEREUPON, State's Exhibit Number 14, the CD containing
3 the two 9-1-1 calls, was played in open court until the
4 end of the first call, after which the recording was
5 stopped and the proceedings continued as follows.

6 RECORDING NOT TRANSCRIBED HEREIN.)

7 BY MR. MCEACHIN:

8 Q: And, Russ, is that your voice on the 9-1-1 calls?

9 A: Yes, it was.

10 Q: Now, once you made that 9-1-1 call, what did you do?

11 A: Well, I -- I had -- it's a cordless phone. I had that
12 with me. I didn't have a cell phone with me at that time.

13 And I was out in the yard and I just waited for the police to
14 come and was looking around to see if I saw anything. I
15 didn't see anybody else, didn't hear anything.

16 And the police officer came fairly quickly. I don't
17 remember which one it was. He asked me what I had seen or
18 which way the person had gone. I told him basically what I
19 told the operator, and he said okay and he drove off. And
20 that was -- I kind of moved out of the yard close to Upland
21 Avenue closer toward my neighbor's yard.

22 And after he left, I -- it just seemed too quiet to me
23 for somebody shooting a gun and nobody is coming out to check
24 on it. So I walked down Upland Avenue. I don't know -- I can
25 show you on the map about --

1 Q: Sure.

2 A: -- how far I walked down.

3 Q: Sure. Once again, I'm showing you State's 71.

4 A: When I saw the officer, I was probably somewhere along in
5 here in the yard. He came up close to the corner. And I
6 walked down Upland Avenue in this direction to somewhere just
7 beyond -- this is where the Witeks have their driveway and
8 mailbox. I walked far enough so I could kind of see around
9 this corner to see -- really to see if any other neighbors had
10 come out to see anything because I knew the fellow I had seen
11 was going the other way.

12 I didn't see anybody out in the yard. Nobody had come
13 out. It was quiet. I could -- when I was coming back, I
14 could see -- the Witeks have a little green car. I don't know
15 what kind it is, but it was in the garage. And I walked on
16 back to the house and went inside and put the phone down, but
17 I was still uneasy. I just felt like there was more to this
18 than somebody just running through shooting a gun.

19 Q: Okay. And you told the jury that you kind of went right
20 there to the end of the Witeks' driveway.

21 A: Right.

22 Q: I'm going to show you what's been admitted into evidence
23 as State's Exhibit Number 15. Can you take a look at that for
24 me and can you identify that?

25 A: Yes. That looks -- there's the green car that was there,

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1 and I was probably somewhere along in here. There's a hedge
2 that comes out. It's not on this picture. I may have gone as
3 far as that hedge.

4 Q: That's fairly close to where you were standing though?

5 A: Yeah. That's fairly close to where I was standing,
6 somewhere in this area right here, and I could see the back
7 end of the car, but I couldn't see anybody or anything. And
8 so nobody had come out of the house to check on it, but me; so
9 I started back to my house.

10 Q: Could you see in front of the car?

11 A: No. I couldn't see the front of the car.

12 Q: Okay.

13 A: I couldn't see anything but the back end of the car. The
14 rest -- anything that was in front of the car was blocked by
15 the car and the side of the garage.

16 Q: And you said this was pretty much your viewpoint when you
17 --

18 A: Yes.

19 Q: -- had walked down the street?

20 A: It was.

21 Q: You then went back to the house and, once you got back to
22 the house, what was the next thing you did?

23 A: I just wasn't satisfied with -- I don't know how to
24 explain it, but it just didn't seem right. So I decided I'd
25 walk back across the street, and I walked over to the Witeks'

1 house and knocked on the door. I climbed up -- went up the
2 steps on the porch and knocked on the door. I was going to
3 ask Stan had he heard anything or seen anything. And I
4 knocked on the door and no one came and so I started back to
5 my house.

6 Q: Take your time.

7 A: I'm sorry.

8 Q: No. Take your time.

9 A: But as I was going down the stairs, I looked over and for
10 the first really noticed that there was a -- a bucket or a
11 trash can in the yard and some yard tools. And I thought to
12 myself, well, Stan wouldn't have left those in the yard right
13 there by the road and gone away. He must be in the back
14 somewhere. And so I started walking back around in the yard
15 around the garage.

16 Q: Take your time.

17 A: When I got to the driveway, I saw a shell casing on the
18 ground and I knew that couldn't be good. So I went around
19 further and at first I couldn't see. I had to walk all the
20 way around the car, and I could see Stan lying there in the
21 garage and I yelled his name and told him I had to go get a
22 phone and call an ambulance.

23 Q: Russ, I'm going to show you what's been marked and
24 admitted as State's Exhibit Number 16. Could you please
25 describe for the jury what that picture shows?

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1 A: That's his garage with the green car.

2 Q: And whose house is this in the far right corner?

3 A: This is my house.

4 Q: And that's where you were originally?

5 A: That's where I was originally.

6 Q: Okay.

7 A: And I came around here and, when I got to this driveway,
8 somewhere in here I saw some shell casings. I went on further
9 and Stan's head was facing these steps. He was kind of curled
10 up and I yelled to him that -- I yelled his name and said I'm
11 going to go call an ambulance.

12 Q: All right. I'm going to show you now what's been marked
13 and admitted as State's Exhibit 38 that shows a little bit
14 closer picture.

15 A: Right.

16 Q: Can you show the jury where you saw Stan?

17 A: He was -- he was right about here with his head facing
18 toward these steps. When I yelled his name, his lips moved,
19 but he never spoke. I ran back home and got the phone and I
20 called 9-1-1. I told them my neighbor -- I told them my
21 neighbor had been shot, send an ambulance.

22 Q: Okay. So you called 9-1-1 a second time?

23 A: Right.

24 MR. MCEACHIN: Your Honor, at this -- at this point,
25 we're going to ask that we be allowed to play the second

1 portion of --

2 THE COURT: Okay.

3 MR. MCEACHIN: -- State's Exhibit 14.

4 THE COURT: All right. And with the same instruction to
5 the jury concerning anything that the 9-1-1 operator may have
6 said.

7 (WHEREUPON, the second call recording on State's Exhibit
8 Number 14 is played in open court, after which the
9 proceedings continue as follows. RECORDING NOT
10 TRANSCRIBED HEREIN.)

11 BY MR. MCEACHIN:

12 Q: Russ, when you actually got underneath the carport with
13 Stan, what was his condition at that time?

14 A: He never spoke, never moved, but I saw -- I saw his lips
15 move once or twice. He was lying on his side with his -- like
16 I said, he head was facing toward the steps, his feet the
17 other way. And I noticed -- I went -- after I called 9-1-1, I
18 had to -- I started in the garage. I had to run back out to
19 get the house number because I had to read it off the door to
20 the 9-1-1 operator. I didn't know it. I went back in the
21 garage and knelt down beside him and told him that -- I told
22 him help was coming and I would stay with him a little bit. I
23 would walk out in the yard and then go back to him and then
24 walk out in the yard.

25 Q: Do you recall who the first agency was that arrived at

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1 the house?

2 A: It was the city. They had a fire rescue squad. I knew
3 one of the guys that was with them as a high school classmate
4 of mine, Russ Cotton. I don't remember who any of the other
5 people were, but they were the first group that got there.

6 Q: Okay. And once they got there, did you witness what they
7 did?

8 A: One of them went inside the garage and went over toward
9 Stan. I don't really know what he did. I think I heard him
10 say that -- excuse me -- that he had a weak pulse, but I'm not
11 positive of that. And they really didn't do much of anything
12 else until the EMS people came.

13 Q: Okay. And going back, Russ, to when you made that
14 initial phone call, what do you recall was the appearance of
15 the fellow who was running from the direction of Stan's house
16 across the yard in front of you?

17 A: All I can tell you is that he was running very fast. He
18 had on what I call a ski mask. It was red, pulled down over
19 his face. I could just see him from the side. I didn't see
20 him head-on. And I'm not sure what color his clothes were.
21 They were -- the best I can remember, they were dark-colored
22 -- a jacket. I know his jacket -- he had on -- he had on a
23 heavier jacket, but I don't know what color it was, and I
24 don't know what color his pants were.

25 Q: And --

1 A: But my recollection was they were darker-colored.

2 Q: But you do recall specifically a red-colored ski mask?

3 A: It just kind of stood out. It was so much brighter than

4 his other clothing, it just kind of stood out.

5 Q: Once the fire and rescue arrived, going back to when they

6 did, in fact, get there, what, if anything, did you do at that

7 point in time?

8 A: I just stood there. I couldn't believe it.

9 Q: And after the fire and rescue arrived, did the ambulance

10 arrive shortly thereafter?

11 A: It was. It seemed like it took a long time for anybody

12 to get there. I'm sure it wasn't that long, but it seemed to

13 me like forever.

14 Q: And who else arrived other than the ambulance?

15 A: Well, after the city came and then the EMS people came,

16 and then various people from law enforcement I think started

17 showing up.

18 Q: Okay. And did you end up speaking with some folks that

19 day from law enforcement?

20 A: I did, but I couldn't tell you who they were to save my

21 life.

22 Q: That's -- that's -- that's quite all right. Do you

23 remember did you speak with them? Did you give them a

24 statement?

25 A: I did.

CYRUS "RUSS" SLOAN - DIRECT BY MR. MCEACHIN

1 Q: Okay. And once that happened, Russ, were you there when
2 Stan was placed into the ambulance?

3 A: I was there. They put him in the ambulance and didn't
4 leave right away. I was told by somebody that they were
5 working on him there in the ambulance. It was -- I don't know
6 how long -- a minute or two minutes, three minutes, but they
7 worked on him some in the ambulance before they actually left
8 to go to the hospital.

9 Q: Okay. After that occurred -- and I presume it was after
10 that that you spoke to law enforcement?

11 A: Yes. Mm-hmm.

12 Q: After you spoke with law enforcement, did you have any
13 other involvement with this case?

14 A: Well, I don't know if you'd call it involvement. I went
15 over to speak to Jackie after she got home later that night,
16 and somebody in her family found where a bullet had hit the
17 foundation of the house and the slug was still in the ground,
18 and they called some sheriff's deputies back to come pick it
19 up. I was there when that happened.

20 Q: Okay.

21 A: Other than that --

22 Q: So -- and I didn't even ask this earlier, but Ms. Jackie
23 wasn't home at the time?

24 A: No. She was -- she had gone somewhere. She was going to
25 be out of town, and one of the other neighbors, I think Dr.

1 Rob Vijay, had a cell number for her, and I think he either
2 got in contact with her or was responsible for somebody
3 finding her. He was also the one that found out from the
4 hospital that Stan had died. He told us that there at the
5 scene.

6 MR. MCEACHIN: I beg the Court's indulgence for just a
7 moment.

8 THE COURT: Sure.

9 BY MR. MCEACHIN:

10 Q: Russ, I'm going to show you what's been admitted as
11 State's Exhibit Number 18, and I know it's kind of hard to
12 tell with the crime scene tape, but can you describe to the
13 jury what you see in the yard in that picture?

14 A: It's that bucket or trash can thing. That's what brought
15 my attention. That made me think, you know, that Stan
16 couldn't have left home because he wouldn't have left that.
17 And there was a rake or a shovel or something down there on
18 the ground beside it that he wouldn't have left that that
19 close to the road and gone away. So that's what prompted me
20 to walk around to the side.

21 Q: And that was going to be my follow-up. When you saw
22 those items, that's when it prompted you to walk around under
23 the carport?

24 A: Right.

25 Q: And that's when you found Stan?

CYRUS "RUSS" SLOAN - DIRECT BY MR. MCEACHIN

1 A: Right.

2 Q: And once again, Russ, from the time you heard the
3 gunshots until the time you saw that individual sprint by, how
4 long do you think that was?

5 A: It couldn't have been -- it was just a few seconds, just
6 a very few seconds.

7 Q: Thank you. Please answer any questions Mr. Anderson may
8 have for you.

9 A: Okay.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. ANDERSON:

13 Q: Mr. Sloan, I'm going to show you State's 71.

14 A: Yes, sir.

15 Q: Your house is the --

16 A: With the red roof.

17 Q: With the red roof?

18 A: Mm-hmm.

19 Q: All right. And then Mr. Witek's house is --

20 A: Right here.

21 Q: All right. And you saw him running by where?

22 A: Probably somewhere in this area running this way.

23 Q: How far would you estimate that distance is from Mr.
24 Witek's house?

25 A: I don't know. Fifty or 60 feet, maybe a little longer

1 than that. I really haven't thought about it.

2 Q: Twenty or 30 yards maybe?

3 A: It could be.

4 Q: Okay.

5 A: It could be.

6 Q: So you said it was just a few seconds later; is that

7 right?

8 A: Right.

9 Q: That you saw somebody running by?

10 A: Right.

11 Q: So they were going at a pretty good clip I think you

12 said?

13 A: They were.

14 Q: Now, earlier you stated -- well, first of all, let me

15 back up a second. What -- what did you previously do for a

16 living, Mr. Sloan?

17 A: Well, I was -- I'm an attorney. I still am an attorney,

18 but I'm as close to being retired as you can be and not be

19 retired.

20 Q: All right. And as an attorney, did you --

21 A: I was going to say what you're getting to. I worked with

22 the Solicitor's Office for close to 30 years.

23 Q: Did you --

24 A: I did prosecution here in Marion.

25 Q: Okay. You were an assistant solicitor for Marion County?

CYRUS "RUSS" SLOAN - CROSS BY MR. ANDERSON

1 A: Yeah. Part-time, right.

2 Q: For lack of a better analogy, you do what Mr. McEachin
3 used to do? Or you do --

4 A: Probably not as well, but I do -- or I did. Excuse me.

5 Q: You have dealt with law enforcement a lot in the past?

6 A: I have.

7 Q: You've prosecuted a lot of cases in the past?

8 A: I have.

9 Q: Do you remember giving a statement to law enforcement?

10 A: I do.

11 Q: Wrote it out yourself?

12 A: I did.

13 MR. ANDERSON: Your Honor, may I approach the witness?

14 THE COURT: Certainly.

15 BY MR. ANDERSON:

16 Q: Mr. Sloan, does this look like a copy of your statement
17 that you wrote out?

18 A: It is.

19 Q: Now, Mr. Sloan, obviously you went to college, graduated,
20 and got your law degree, practicing attorney, very well-
21 educated?

22 A: Yes, sir.

23 Q: Have dealt with law enforcement in the past?

24 A: Yes, sir.

25 Q: Prosecuted in the past?

1 A: Yes, sir.

2 Q: When they were asking you to write out that statement,
3 nobody rushed you, did they? They didn't say, Mr. Sloan,
4 hurry up. We're in a hurry. Can you speed it up a little
5 bit? Nobody did that, did they?

6 A: No. Nobody rushed me. No, sir.

7 Q: Told you to take your time?

8 A: Well, they didn't tell me. They just said will you give
9 me a statement, and I said sure.

10 Q: If you had wanted another sheet of paper, certainly they
11 would have given you one?

12 A: Yep.

13 Q: You could have written as long a statement as you wanted
14 to?

15 A: Right.

16 Q: You could have put as much detail in there as you wanted
17 to?

18 A: I could have.

19 Q: Now, in this statement, you say that you saw a person
20 running with a red ski mask; is that right?

21 A: Right.

22 Q: And then you said over his face?

23 A: Over his face, yes.

24 Q: But you couldn't tell whether they were black or white?

25 A: Right.

CYRUS "RUSS" SLOAN - CROSS BY MR. ANDERSON

- 1 Q: So how do you know that it was a male that was running?
- 2 A: Just by the way they were running. It appeared to be a
- 3 male to me.
- 4 Q: All right. It appeared to be a male. So could it have
- 5 been a female that was --
- 6 A: I don't think so. No, sir.
- 7 Q: All right. You couldn't see whether they were black or
- 8 white?
- 9 A: I -- I didn't have time to really focus on that. I
- 10 couldn't -- I was not expecting to see anybody. It was so
- 11 quick I just -- I didn't pay the attention that I would like
- 12 to have been able to have paid to it.
- 13 Q: Had on dark clothing?
- 14 A: Right.
- 15 Q: Heavier jacket?
- 16 A: Right.
- 17 Q: Couldn't tell how tall they were?
- 18 A: Nope.
- 19 Q: Couldn't tell how heavy they were?
- 20 A: Nope.
- 21 Q: Just running like a male? White male. Black male.
- 22 Appeared to be running like a male?
- 23 A: Running like the devil. I would say that.
- 24 Q: All right. Running like a male devil?
- 25 A: Okay.

1 Q: All right. But there again, it could have been female?

2 A: I don't think so.

3 Q: Okay. Are you familiar with a CAD report?

4 A: A what?

5 Q: A CAD report?

6 A: I don't think so.

7 MR. ANDERSON: Your Honor, may I approach the witness?

8 THE COURT: Sure.

9 BY MR. ANDERSON:

10 Q: Not in all your years with the Solicitor's Office,
11 prosecuting all those cases? I'm handing you what is called a
12 CAD report. Are you familiar with that?

13 A: No, sir. I don't believe I've ever seen one in all those
14 years.

15 Q: You prosecuted for 30-some years --

16 A: Right.

17 Q: -- in Marion County and you've never seen a CAD report?

18 A: I don't remember ever -- I don't remember that term, CAD
19 report.

20 Q: Okay. Have you ever seen a 9-1-1 log?

21 A: No, sir. I mean not that I recall. I'll put it that
22 way.

23 MR. ANDERSON: Court's indulgence for a moment.

24 THE COURT: Sure.

25 BY MR. ANDERSON:

CYRUS "RUSS" SLOAN - CROSS BY MR. ANDERSON

1 A: Mr. Anderson, if I may, I was a part-time assistant, and
2 I didn't get to prosecute a lot of the big cases. So --

3 Q: That's fine, Mr. Sloan. You said you went over there
4 later that night; is that right?

5 A: Either that night or late afternoon.

6 Q: And somebody actually showed you something?

7 A: I was -- if I remember correctly, I was in the house with
8 Jackie and some of her family members, and some of the other
9 family members had walked outside, and they came back in and
10 told us that they had found a place where it looked like a
11 bullet had hit the foundation and that the bullet was in the
12 dirt there by the house.

13 Q: Did they also tell you that they had found a shell casing
14 there?

15 A: I don't remember. They may have. I don't -- I don't
16 remember for sure, but I remember we called the police back or
17 they called the police back, and I think it was recovered at
18 that time.

19 Q: All right. So you were there. Later, fire and rescue
20 got there. Later, EMS got there. Then law enforcement got
21 there; is that right?

22 A: Mm-hmm.

23 Q: Is that a yes?

24 A: Yes.

25 Q: Did you ever see anybody from SLED there? Were you

1 paying attention?

2 A: There was somebody from SLED there, but who it was, I
3 don't know.

4 Q: Okay. And you saw someone taking numerous photographs?

5 A: I'm sure they were, but I don't remember seeing --
6 actually seeing it. At that time, I was fairly upset. I
7 really wasn't paying attention to what the law enforcement
8 people were doing.

9 Q: Mr. McEachin has already showed you a couple of
10 photographs --

11 A: Right.

12 Q: -- that were taken?

13 A: Right.

14 Q: And so we've got Marion PD there and we've got SLED
15 there. Crime scene?

16 A: Right.

17 Q: Marked off with tape as we saw the tape in one of those
18 pictures?

19 A: Right.

20 Q: Numerous -- I guess law enforcement officers walking
21 around?

22 A: Right.

23 Q: And then that night someone who I guess is a layperson,
24 someone who is not in law enforcement, someone who does not
25 work with SLED, found additional evidence? Is that what

CYRUS "RUSS" SLOAN - CROSS BY MR. ANDERSON

1 you're saying?

2 A: That's my recollection. Yes, sir.

3 Q: A shell casing? I mean not a shell casing, but actually
4 a bullet fragment?

5 A: I don't know. I think they -- they found where the
6 bullet hit the foundation. I'm not sure they got the bullet
7 out of the ground, but they -- they found that, and I think
8 there was a shell casing in a bush. But I -- that's my best
9 recollection. I could be mistaken about finding the shell
10 casing, but they found something out there and they brought it
11 to our attention and I told them we needed to call the police
12 back, and somebody came back from the police department and
13 recovered it.

14 MR. ANDERSON: Court's indulgence?

15 THE COURT: Sure. Take your time.

16 MR. ANDERSON: Your Honor, that's all the questions I
17 have. Thank you.

18 THE COURT: Any redirect?

19 MR. MCEACHIN: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. MCEACHIN:

22 Q: Russ, Mr. Anderson just in a bit of time talking to you
23 about this statement and how you could have made it as long or
24 as short as you wanted. What was your state of mind at the
25 time you wrote this statement?

1 A: I was very upset.

2 Q: Was this statement written the same day that you found
3 Stan?

4 A: It was written within a few minutes after we found out he
5 had died.

6 Q: Okay. And also, tell the jury, if you recall, what was
7 the weather like that day as the day progressed?

8 A: It started out kind of overcast and maybe a little bit
9 cool and, as the day went on, it started misting rain and then
10 a little bit harder, but it -- that morning up until at least
11 until the time that all the police got there really was not
12 raining hard. It may have been a very light mist that started
13 about that time, but I was able to go out and walk and not
14 worry about rain and getting wet and that kind of thing. And
15 it was -- the weather got worse as the day went on.

16 Q: Okay. And that's what I was going to ask. So the
17 further you got along in the day, the worse the weather got?

18 A: Right.

19 Q: Mr. Anderson asked you about your -- your prior work
20 experience and, you know, not recognizing this document and
21 not recognizing that document. When was the last time you
22 worked for the Solicitor's Office?

23 A: I think I quit sometime in 2003 or '04, but I wouldn't --
24 I'm not positive of that. It may have been as late as 2008,
25 but somewhere between 2003 and 2008. I can't remember when it

CYRUS "RUSS" SLOAN - REDIRECT BY MR. MCEACHIN

1 was.

2 Q: So roughly ten -- it could have been as much as ten years
3 ago or at least seven or eight years ago?

4 A: Right.

5 Q: Okay. Thank you.

6 MR. MCEACHIN: No further questions.

7 THE COURT: Any recross?

8 MR. ANDERSON: No, sir, Your Honor.

9 THE COURT: Okay. Thank you, sir, for your testimony.
10 You can step down.

11 THE WITNESS: Thank you.

12 MR. MCEACHIN: And, Your Honor, I'd ask that he be
13 relieved from his subpoena.

14 THE COURT: Okay. Any objections from the defense?

15 MR. ANDERSON: No, sir, Your Honor.

16 THE COURT: Okay. Without objection, you're free to
17 leave, sir.

18 THE WITNESS: All right. Does that mean I can stay if I
19 want to?

20 THE COURT: You're welcome to stay --

21 THE WITNESS: All right.

22 THE COURT: -- or you can leave, either way is your
23 pleasure.

24 THE WITNESS: Thank you.

25 THE COURT: Okay. I think we're going to go ahead and

1 recess for the day. Madam Forelady and ladies and gentlemen
2 of the jury, my watch says about ten after five. I think this
3 would be a good time to go ahead and break for the day. So
4 you'll be free to -- to leave the courthouse and go home or
5 wherever you need to go.

6 I remind you -- you may have some very inquisitive people
7 that you come into contact with who want to find out what
8 you've been doing today and, again, you can't discuss this
9 with anybody that you come into contact with, and blame it on
10 the judge. Okay?

11 And be back here promptly at 9:30 in the morning. Allow
12 yourself enough time. Unexpected things happen, and so we
13 don't want to have to delay starting because we have a juror
14 who is not here. So allow yourself enough time and be sure to
15 wear your -- your juror badge, and we'll see you in the
16 morning at 9:30. I hope you have a great evening.

17 (WHEREUPON, the jury exited the courtroom at 5:10 p.m.)

18 THE COURT: Okay. Do we need to take up anything on the
19 record before we adjourn for the evening from the State?

20 MR. MCEACHIN: No, sir, Your Honor.

21 THE COURT: Defense?

22 MR. ANDERSON: Your Honor, yes, sir, just very briefly.
23 Judge, I understand this is very traumatic and very emotional
24 going through it the second time. Sometimes when I'm giving
25 closing arguments, I've gotten upset and actually cried

1 before, but, Your Honor, I'm going to ask the State to talk to
2 the members of the family and ask them if they're going to do
3 that to please stay outside of the courtroom while the
4 testimony is going on.

5 THE COURT: Okay. All right.

6 MR. MCEACHIN: Your Honor, I didn't notice anybody
7 wailing or crying real loud or anything. I thought it was
8 pretty muffled. I mean I think they're entitled to be in
9 here.

10 THE COURT: Right.

11 MR. MCEACHIN: It's the victim's family. I'll certainly
12 say something, but --

13 THE COURT: Right, right. Well -- and let me just say
14 this. And I know the family here -- it's a -- it's a tragedy
15 that you're dealing with, and the Court certainly sympathizes
16 with you. And I saw where some of you were emotional. I
17 didn't think it rose to the level to where I would feel like
18 it was being disruptive and, if I feel like someone is showing
19 emotion that is being disruptive, certainly understandable,
20 then, of course, I'll see that that person, you know, is
21 excused from the -- the courtroom until they can regain their
22 composure.

23 But I didn't -- I didn't believe that anything rose to
24 that level to where I felt like I needed to deal with it, but
25 I would just ask the jury [sic] to the very best that you can,

1 if you feel like during parts of this case where it's just
2 going to be really hard to restrain your -- your emotions,
3 which again are very understandable, then maybe consider not
4 being in the courtroom during that period of time. Okay? All
5 right.

6 MR. MCEACHIN: Thank you, Your Honor.

7 THE COURT: Okay. Anything else?

8 MR. ANDERSON: No, sir.

9 THE COURT: Okay. All right. We'll be in recess until
10 9:30 in the morning. Everybody have a good evening.

11 (WHEREUPON, the proceedings adjourn for the day at 5:13
12 p.m.)

13 FEBRUARY 24, 2015

14 (NO COURT HELD DUE TO WEATHER CONDITIONS.)

15 FEBRUARY 25, 2015

16 (WHEREUPON, the proceedings resumed at 10:46 a.m.)

17 THE COURT: Okay. Let me note one thing for the record.
18 The -- Juror Number 110, Willie Page -- excuse me --
19 approached me early this morning when I was sitting on the
20 bench having a work issue. Consequently, I stopped him. I
21 told him I'd talk with him once all the lawyers got here. We
22 did meet back in chambers with the juror. He had a work
23 issue, and I told him that we would not excuse him for the
24 day, but anticipating that we'll finish this case sometime
25 tomorrow that the possibilities would be I would go ahead and

1 release him and replace him with our last alternate, depending
2 upon if everybody on the jury was feeling good and did not
3 anticipate having any issues themselves.

4 So that's on the record. Anything we need to take up on
5 the record before we bring the jury out?

6 MR. MCEACHIN: Nothing from the State, Your Honor.

7 THE COURT: How about the defense?

8 MR. ANDERSON: No, sir, Your Honor.

9 THE COURT: Okay. Thank you very much. Mr. Evans, would
10 you please bring the jury out?

11 (WHEREUPON, the jury entered the courtroom at 10:47 a.m.)

12 THE COURT: Okay. Let the record reflect the jury is
13 back in. Good morning.

14 THE JURY: Good morning.

15 THE COURT: I hope -- I hope everyone survived the bad
16 weather that we experienced yesterday, and it looks like
17 everything is pretty much cleaned up and cleared up and we're
18 all ready to get back to work and hopefully you folks are too.
19 Solicitor, are you ready?

20 MR. MCEACHIN: Yes, sir, Your Honor. Your Honor, the
21 State would call Jackie Witek to the stand.

22 THE COURT: Okay.

23 THE CLERK: Ms. Witek, if you would, come forward and let
24 me swear you in, please, ma'am. Please place your left hand
25 on the Bible and raise your right. Place your left hand on

1 the Bible and raise your right hand. Do you solemnly or
2 affirm the evidence you give in this case shall be the truth,
3 the whole truth, and nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. You may take a seat in the
6 witness box.

7 JACQUELINE WITEK, being first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MCEACHIN:

11 Q: Ms. Jackie, if you would, please state your full name for
12 the record.

13 A: Jacqueline Lee Witek.

14 Q: And, Ms. Witek, where do you live?

15 A: Marion, South Carolina.

16 Q: And is that here in Marion County?

17 A: Yes.

18 Q: Okay.

19 MR. MCEACHIN: Your Honor, may I have the witness step
20 down for just a moment?

21 THE COURT: Sure.

22 BY MR. MCEACHIN:

23 Q: Ms. Witek, I'm going to have you step down for me right
24 here.

25 A: Can I ask you to talk a little louder?

JACQUELINE WITEK - DIRECT BY MR. MCEACHIN

1 Q: Certainly.

2 A: I don't hear real well.

3 Q: I'm sorry. No problem. I'll be happy to do that. I'm
4 going to have you step down for me real quick.

5 (WHEREUPON, the witness complied.)

6 Q: Ms. Jackie, I'm showing you what's been marked as State's
7 Exhibit 71. If you could, stand over here so all the jurors
8 can see it. Would you place that green marker where your home
9 is? Take a minute and look at it. Just place it right on top
10 of the house.

11 (WHEREUPON, the witness complied.)

12 Q: Okay. And I'll let you hop back in the witness stand.

13 A: Hop?

14 (WHEREUPON, the witness complied.)

15 Q: Now, Ms. Jackie, how long have you been living at 318
16 Upland Avenue?

17 A: Since 2009.

18 Q: Okay. And prior to living at Upland Avenue, where did
19 you live?

20 A: Two years in Aiken, and prior to that 20 years in
21 California.

22 Q: Okay. Now with regard to the home on Upland Avenue, does
23 anyone live there with you currently?

24 A: No.

25 Q: And prior to February the 16th of 2013, who lived there

1 with you?

2 A: My husband, Stanley.

3 Q: And that's Stanley Witek?

4 A: Yes.

5 Q: The victim in this crime? The victim in this crime?

6 A: Yes, sir.

7 Q: Okay. And that's who -- was it just the two of you that

8 were living there?

9 A: Yes, sir.

10 Q: Now, Ms. Witek, I'm going to hand you some photographs

11 and I'm going to ask if you can identify them, and then we're

12 going to show them to the jury. Okay?

13 A: Yes, sir.

14 Q: If you could -- I'm handing you what's been marked and

15 admitted as State's Exhibit 16. If you could, hold that up

16 and tell the jury what that's a photograph of?

17 A: This is the side of my house, the garage, the driveway,

18 and the carport.

19 Q: Okay. Where's the front of your house in that

20 photograph?

21 A: On this side over here.

22 Q: And we see a house in the background on the right-hand

23 side of that photograph. Whose home is that?

24 A: That is the Sloans', Betty and Cyrus Sloan.

25 Q: Okay. And does Cyrus also go by the name of Russ?

JACQUELINE WITEK - DIRECT BY MR. MCEACHIN

1 A: Russ.

2 MR. MCEACHIN: And, Your Honor, permission to publish
3 these?

4 THE COURT: Sure.

5 BY MR. MCEACHIN:

6 Q: Now, Ms. Witek, I'm going to show you a picture of what's
7 been marked as State's Exhibit Number 17. If you could, hold
8 that up so all the jurors can see it, and tell the jurors what
9 that's a photograph of?

10 A: That's the same carport, but it's from the backside of my
11 back yard looking at it this way, and the main street of
12 Upland would be right there.

13 Q: Now, I'm going to show you what's been marked as and
14 admitted as State's Exhibit Number 18. Can you tell the jury
15 what that's a photograph of?

16 A: This is the front of my house. This is Upland Avenue
17 here, and this is the front of the house and the carport would
18 start right here on that side.

19 Q: Okay. So State's Exhibit 17 that I just showed you, it's
20 from the same angle, but from the back yard; is that correct?

21 A: This is the front yard.

22 Q: Right. This is State's 18. So this is from the front
23 yard. The one we just looked at is from the back yard?

24 A: From the back yard. That's correct.

25 Q: And then State's 19?

1 A: This is the front again.

2 Q: That's the front? That shows the front of your house on
3 that picture. That concrete right in front of the house, what
4 is that?

5 A: That's Upland Avenue.

6 Q: That's the road itself?

7 A: Yes, sir.

8 Q: State's Exhibit 20?

9 A: The front of the house, Upland Avenue being right here,
10 and this is the front door.

11 Q: Okay. The front door is pretty close, a couple -- maybe
12 20 feet or so from the street?

13 A: Yes.

14 Q: And then finally State's Exhibit 21. Can you identify
15 that for the jury?

16 A: Also Upland Avenue, and this is facing the house. This
17 would be the right side of our yard and, again, it's the front
18 of the house.

19 Q: Okay. And right just to the right of where this picture
20 would have been taken, what's to the right of where the
21 picture would have been taken? Who lives -- is that a next-
22 door neighbor's house?

23 A: Yes. That's Ms. Bayhan.

24 Q: Okay. So the front yard doesn't go much past what we see
25 in that photograph?

JACQUELINE WITEK - DIRECT BY MR. MCEACHIN

1 A: No, it does not. There's a fence there.

2 Q: And, Ms. Jackie, State's Exhibit 16 through 21 that I've
3 just shown you, all of those show photographs of your home; is
4 that correct?

5 A: Correct.

6 Q: And that's the home that you and Stan lived in since
7 2009?

8 A: Yes, sir.

9 MR. MCEACHIN: I'll give the jury just a minute to look
10 at those photographs.

11 (WHEREUPON, there was a pause in the proceedings after
12 which the proceedings resumed as follows.)

13 BY MR. MCEACHIN:

14 Q: Now, Ms. Jackie, while they're looking at those
15 photographs, on February the 16th of 2013, do you recall that
16 day?

17 A: Yes, I do.

18 Q: And that was a Saturday; correct?

19 A: Yes.

20 Q: And were you at home on that day? Were you at
21 ?

22 A: I had left. Stan had put my clothing and my suitcase
23 into the car, and I left about seven o'clock that morning and
24 I was on my way to Spartanburg.

25 Q: Okay.

1 A: For a meeting.

2 Q: For a meeting in Spartanburg on that Saturday?

3 A: Yes, sir.

4 Q: And how long were you going to be at that meeting?

5 A: How long would I be there?

6 Q: Yes, ma'am.

7 A: Because the weather was bad, I had taken my suitcase with
8 anticipation of staying over with a friend there if I couldn't
9 drive home. He didn't want me to drive if the weather was
10 bad, and it was supposed to be icy and stormy that day. So in
11 that case, I would have stayed overnight. Otherwise, I would
12 have been there until probably about seven and I would have
13 come home at seven.

14 Q: The next morning?

15 A: No. I would have come home at seven that day if the
16 conditions were okay.

17 Q: Okay. So the conditions were kind of like the conditions
18 were here yesterday?

19 A: Yes.

20 Q: Okay. So you had -- you had a bag packed to stay in
21 Spartanburg just in case?

22 A: Correct.

23 Q: Okay. And did you make it to Spartanburg that day?

24 A: Did I make it to Spartanburg?

25 Q: Yes, ma'am.

JACQUELINE WITEK - DIRECT BY MR. MCEACHIN

1 A: Yes, I did.

2 Q: Okay. And prior to getting to Spartanburg and prior to
3 leaving, did you know what your husband had planned for that
4 day?

5 A: He had planned on digging up two of the shrubs in the
6 front. They had died over the winter and he wanted to pull
7 those out and get the soil ready so, when spring came, he
8 could plant two new shrubs in there.

9 Q: Okay. So he -- he was going to be working. Was that the
10 front yard or the back yard?

11 A: Front yard.

12 Q: Okay. So he was going to be working in the front yard
13 that day?

14 A: Yes.

15 Q: Ms. Jackie, I'm going to show you once again what's been
16 marked and admitted as State's Exhibit Number 18. When you --
17 when you say he was going to be working in the front yard, is
18 that the portion of the house he was going to be working in?

19 A: Yes. He was going to be right in this area right around
20 here.

21 Q: Okay. And those are the shrubs he was going to be
22 working on?

23 A: Yes, sir.

24 Q: Okay. You weren't home around 10 a.m. that morning, were
25 you? Around -- I'm sorry. Around 10 a.m. that morning on

1 February the 16th, you weren't home that day at that time?

2 A: I was not, no.

3 Q: You were already pretty close to Spartanburg?

4 A: Correct.

5 Q: And did you end up coming back from Spartanburg?

6 A: I did.

7 Q: Okay.

8 A: After I got the phone call, a friend had to drive me back
9 home.

10 Q: Okay. And when you got back to Marion, do you recall
11 about what time of day it was?

12 A: Not really. I would think it would be somewhere around
13 maybe two or three. It was raining real hard, and I was not
14 allowed to go back to my house because the investigators were
15 still there and it was all taped off. So my neighbor across
16 the street, Dr. Vijay and his wife, they came out and got me
17 and brought me to their home, and I stayed there until I was
18 allowed to go back to the house.

19 Q: Okay. And when you say all taped off, I'm going to show
20 you State's Exhibit 19. Is that yellow tape what you're
21 referring to?

22 A: Yes.

23 Q: And was law enforcement there when you had gotten back to
24 the house?

25 A: Yes. There were a lot of people there.

JACQUELINE WITEK - DIRECT BY MR. MCEACHIN

1 Q: Okay. And they were still working there at the house?

2 A: Yes, sir.

3 Q: And you say your -- your neighbor is Dr. Vijay. Where

4 did they live exactly?

5 A: They lived right across the street from me.

6 Q: Okay.

7 A: The picture does not -- their house does not show in it.

8 Q: Okay. I'll tell you what I'm going to do. I'm going to

9 put this up here. I'm going to let you point out to the jury

10 where the Vijays' house was.

11 A: This is it right here.

12 Q: Okay. This house right there?

13 A: Yes, sir.

14 Q: And this is your house?

15 A: Right.

16 Q: So you stayed there once you got back to Marion?

17 A: Mm-hmm.

18 Q: Okay. When were you allowed back into your home?

19 A: It's hard for me to tell time. I mean I wasn't watching

20 a clock, but I would say, like, maybe two to three hours after

21 I got back into town.

22 Q: Okay.

23 A: When they finished up everything.

24 Q: And that probably wasn't a fair question. I mean you

25 were allowed back in that day?

1 A: That day -- that evening.

2 Q: So once -- once all the law enforcement had done what
3 they needed to do, you were allowed back into your home?

4 A: Yes, sir.

5 Q: Okay. And did you spend the night in your home that
6 night?

7 A: I did.

8 Q: And did anybody come and stay with you that night?
9 Family or friends? Did anybody stay with you that evening?

10 A: Yes. The girl who drove me back stayed with me. My two
11 other friends drove right back behind us. They stayed with
12 me. And then my brother drove up from Florida. He got there
13 about eleven o'clock because the weather was so bad. It had
14 started snowing. He got there at eleven o'clock, and my
15 brother and sister-in-law stayed with me.

16 Q: So the weather that afternoon was pretty bad?

17 A: Very bad.

18 Q: And when you say eleven o'clock, he got in at eleven
19 o'clock that night?

20 A: Yes.

21 Q: So they stayed with you. How many days did they stay
22 with you?

23 A: They stayed with me -- let's see. The memorial service
24 was on Wednesday, and I believe they went home that Thursday.

25 Q: Okay. So they stayed with you that --

JACQUELINE WITEK - DIRECT BY MR. MCEACHIN

1 A: About a week. Approximately a week.

2 Q: While they were there, do you know if they saw anything
3 in your front yard that was of any interest?

4 A: Well, my -- my daughter and my son came in -- flew in the
5 next day. So they were there also, and everybody was all
6 around my yard looking for things. And I know my son -- the
7 following day, he found a bullet casing. And as soon as they
8 found the casing, they called the police, and then the police
9 came and got it. No one touched it.

10 Q: Ms. Jackie, there's one more thing I want to ask you
11 about.

12 MR. MCEACHIN: And I beg the Court's indulgence for just
13 a moment.

14 THE COURT: Certainly.

15 BY MR. MCEACHIN:

16 Q: Jackie, I'm going to show you State's Exhibit 30. Can
17 you identify what's laying in the front yard right there?

18 A: There's a rake and a shovel.

19 Q: And who did those belong to?

20 A: Stanley and myself.

21 Q: Okay. And they were there when you got home that day?

22 A: I have no idea because they shuffled me right from the
23 car right across the street.

24 Q: Okay.

25 A: I don't know what was laying in the yard.

1 Q: Okay. And then when you went home, you pretty much went
2 straight into your house?

3 A: It was not there when I went home. It had been put away
4 or taken away or whatever.

5 MR. MCEACHIN: Thank you, Ms. Witek. Please answer any
6 questions Mr. Anderson may have for you.

7 THE COURT: Any cross-examination, Mr. Anderson?

8 MR. ANDERSON: Your Honor, Mr. Floyd is going to handle
9 that.

10 THE COURT: Okay. Mr. Floyd, you may proceed.

11 CROSS-EXAMINATION

12 BY MR. FLOYD:

13 Q: Ms. Witek, I just have one question for you. On the 17th
14 of February, your son found a bullet casing in the yard; is
15 that correct?

16 A: He -- the way the light was shining, he -- he saw
17 something shining in the bush, you know, down in the stalk
18 part of the bush. He saw something shining there and when he
19 and my brother -- my brother looked, they saw a bullet casing
20 there. They saw it there. So they immediately called the
21 police, and I was not outside so I don't know.

22 Q: Yes, ma'am. Did you actually go out there and look at
23 it?

24 A: I did not.

25 Q: Okay. You just heard from them --

JACQUELINE WITEK - CROSS BY MR. FLOYD

1 A: Yes.

2 Q: -- that they had found it?

3 A: They just told me after that they had called the police,
4 and the police came and --

5 Q: Yes, ma'am. Did -- did you find anything missing out of
6 your household --

7 A: No, sir.

8 Q: -- when you got back?

9 A: No.

10 Q: Okay. Did you find anything missing from the outside of
11 your yard that had been there previously?

12 A: No, sir.

13 Q: Okay.

14 MR. FLOYD: Thank you very much.

15 THE COURT: Any redirect?

16 MR. MCEACHIN: No redirect, Your Honor.

17 THE COURT: Thank you, ma'am, for your testimony. You
18 can step down.

19 MR. MCEACHIN: Your Honor, the State would call Thomas
20 Hills to the stand.

21 THE COURT: Okay.

22 MR. MCEACHIN: He's right outside the door. Mr. Street
23 will be grabbing him.

24 THE COURT: Sure.

25 (WHEREUPON, there was a pause in the proceedings until

1 the witness entered the courtroom.)

2 THE CLERK: Sir, if you will, come around and let me
3 swear you in, please, sir. Come around right here, sir. If
4 you will, place your left hand on the Bible and raise your
5 right hand. Do you solemnly swear or affirm the evidence you
6 are about to give in the trial of this case shall be the
7 truth, the whole truth, and nothing but the truth, so help you
8 God?

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Thank you. Have a seat in the witness box,
11 sir.

12 THOMAS HILLS, being first duly sworn,
13 testified as follows?

14 DIRECT EXAMINATION

15 BY MR. MCEACHIN:

16 Q: Tom, if you would, please state your full name for the
17 record.

18 A: Thomas Michael Hills.

19 Q: Tom, where do you currently live?

20 A: Waynesboro, Pennsylvania.

21 Q: And how long have you been living in Waynesboro,
22 Pennsylvania?

23 A: Since October of 2013.

24 Q: In February -- or let me take that back. Strike that.
25 Prior to living in Waynesboro or moving to Waynesboro,

THOMAS HILLS - DIRECT BY MR. MCEACHIN

1 Pennsylvania, where did you live?

2 A: , Marion, South
3 Carolina.

4 Q: And you indicated to the jury that you were living --
5 that you moved up to Waynesboro in October of 2013; is that
6 correct?

7 A: I -- I left Marion in September.

8 Q: Now, in February of 2013, you still would have been
9 living in Marion?

10 A: Yes, sir.

11 Q: And when you were living in Marion County, where did you
12 live specifically in February of 2013?

13 A:

14 Q: All right.

15 MR. MCEACHIN: And I'm going to have you step down for
16 just a minute, if that's all right, Your Honor?

17 THE COURT: Sure.

18 BY MR. MCEACHIN:

19 Q: If you could, step down here for me.

20 (WHEREUPON, the witness complied.)

21 (WHEREUPON, State's Exhibit Number 71 was placed on a
22 easel in front of the jury.)

23 Q: Can you show the jury where is where you
24 were living?

25 A: This is Jones right here. I lived right -- right here.

1 Q: Okay. That's the house you were living in --

2 A: Yes, sir.

3 Q: -- in February of 2013?

4 A: Yes, sir.

5 Q: All right. Grab a seat back up there for me for just a
6 moment.

7 (WHEREUPON, the witness complied.)

8 Q: And, Tom, I'm going to show you two exhibits. State's
9 Exhibit Number 21, which the jury has already seen, can you
10 tell the jury what house is in the back right-hand corner of
11 that photograph?

12 A: This is my house here and that's back to the side of my
13 house right there.

14 Q: Okay. So that's the back of your house?

15 A: Yes, sir.

16 Q: And can you tell the jury what State's Exhibit 40 is?

17 A: That's where I lived. I lived on the second floor right
18 there.

19 Q: Okay. So that's the front of your house?

20 A: Yes, sir.

21 Q: And that's where you were living in February of 2013?

22 A: That's correct.

23 Q: Now, Tom, do you remember the morning of February the
24 16th, 2013?

25 A: Yes, sir. I mean it was a kind of rainy day. Yes.

THOMAS HILLS - DIRECT BY MR. MCEACHIN

1 THE COURT: Can you speak up a little bit, sir?

2 THE WITNESS: Yes, sir. I sure will.

3 THE COURT: Thank you.

4 BY MR. MCEACHIN:

5 A: It was -- I guess it was kind of a rainy day. I mean it
6 was raining, but it was driz -- driz --

7 Q: Drizzling?

8 A: Yeah. Thank you very much. That morning, I walked out
9 the door and I looked over next door, and this guy was
10 standing on the corner of the building just like he was
11 looking around for something. He kept peeking around the
12 building and then after a few minutes, he just disappeared. I
13 didn't think nothing of it. Went back in my house.

14 I come out a couple minutes later and I -- I'm not sure
15 about the timeframe. I say a couple minutes. I looked down
16 and somebody was coming through my yard. I yelled hey, and he
17 took off running.

18 Q: Okay. Now, if you could, Tom, in looking at State's
19 Exhibit 40 again, which shows the front of the home you were
20 living in --

21 A: Yes, sir.

22 Q: Can -- can you show the jury where you were when you came
23 out of the house?

24 A: I was up on this -- on the deck on the second floor.

25 Q: Okay. And this has been marked and is admitted as

1 State's Exhibit Number 41. What does that show, Tom?

2 A: It shows the side of the -- the driveway at my house. At
3 the corner there is my steps leading up to my apartment.

4 Q: So those steps right there are the same steps as the ones
5 in State's Exhibit 40 right here?

6 A: Yes, sir.

7 Q: Okay. And you said you -- when you came outside, you saw
8 somebody standing where?

9 A: At the corner of this building right here. The fence
10 stops and you can see this whole open area at the same time.

11 Q: And could you see over that fence?

12 A: Yes, sir.

13 Q: And you said you saw an individual over there. When you
14 saw him, did he make any moves or anything along those lines?

15 A: Now, it's kind of funny because when I opened up my door,
16 he kind of jerked like he saw me coming out, but from where he
17 was standing, there's no way he could have saw me. So it was
18 coincidence the way he did that I guess.

19 Q: And how long do you think you were outside during that
20 particular period of time?

21 A: Just a few -- just a couple minutes. I couldn't tell you
22 exactly.

23 Q: Okay. And I'm also going to show you what's been marked
24 as State's Exhibit 42. This shows a little bit closer picture
25 of State's 41. Can you show the jury based on that picture

THOMAS HILLS - DIRECT BY MR. MCEACHIN

1 where you saw the individual standing?

2 A: Right there on the corner of the building.

3 Q: Okay. And what's the -- so there -- what's that behind
4 the corner of the building?

5 A: That -- that's a wall that goes to the house on the other
6 side. On the corner -- just -- right here is a laundry room
7 and then he was standing here and there's two apartments on
8 the back side.

9 Q: So are these apartments right here?

10 A: Yes, sir.

11 Q: Okay. And he was standing right on that corner?

12 A: He was standing on this corner right outside the laundry
13 room.

14 Q: All right. So after you saw him that first time, did you
15 end up going back in your house?

16 A: Yes, I did.

17 Q: And once you went back in your house, did you ever end up
18 coming back outside?

19 A: Yeah. And again, I can't tell you how long it was, but
20 the dog wanted to go outside; so I opened up the door and let
21 him out. And when I was leading him out, somebody was coming
22 out of the yard. And when I first come out the door, I seen
23 something like somebody was dropping something. I can't say
24 what it was. I ain't sure, but as soon as he come out of my
25 gate, I yelled hey, and he already had his hood on and he just

1 pulled it down in front of his face even further and took off
2 running.

3 He come out of the driveway and hit the street and just
4 about got hit by a car. He jerked around that car. He ran
5 across the street and up the driveway across the street, and
6 it wasn't but a split second a sheriff's car whipped into that
7 driveway after him.

8 Q: Okay. So you --

9 A: And that's it.

10 A: You actually saw the individual running and the sheriff's
11 car pull in behind him?

12 A: Right. Yes, sir.

13 Q: Now, at that time -- and you said you had a dog; is that
14 right?

15 A: Yes.

16 Q: What kind of dog do you have?

17 A: I've got a golden retriever.

18 Q: And did the dog come out?

19 A: He come out and he went down in the yard like he always
20 does. I mean all I've got to do is open the door and tell him
21 to go in the yard, and he goes in the yard. And most of the
22 time, he doesn't leave. He went down in the yard and, after
23 all that had went down, I looked over and he had something red
24 in his mouth. He come out of the yard thinking he was all
25 happy about it, and I yelled at him to drop it and he dropped

THOMAS HILLS - DIRECT BY MR. MCEACHIN

1 -- dropped what looked to be a red hat.

2 Q: And I'm going to show you now what's been marked as
3 State's Exhibits 33, 34 -- excuse me -- 43, 44, 45, and 46.
4 Can you look at those real quick for me and tell me if you can
5 identify them?

6 A: Yeah. This -- that's the hat that he -- that my dog had
7 in his mouth. And -- yeah.

8 Q: So I'm showing the jury what's been marked as State's
9 Exhibit 30 -- excuse me -- 46. That's the hat the dog had in
10 his mouth?

11 A: Yes, it is.

12 Q: And where was it when your dog picked it up?

13 A: I'm thinking it was, like, ten feet inside the yard.

14 Q: And where your dog picked it up, how did that coincide
15 with anything you saw the individual in your back yard do?

16 A: Well, again, I'm not sure exactly what he dropped, but it
17 looked like that's where he dropped whatever he had in his
18 hand.

19 MR. MCEACHIN: Your Honor, may I have him step down one
20 more time?

21 THE COURT: Sure.

22 BY MR. MCEACHIN:

23 Q: Go ahead and step down.

24 (WHEREUPON, the witness complied.)

25 Q: I'm going to give you this marker right here. Can you

1 stick that where you saw the individual when he was in your
2 back yard?

3 A: Let's see. It was probably about in here.

4 THE COURT: Okay. Sir, you're going to need to speak up
5 because the court reporter still needs to --

6 THE WITNESS: I'm sorry.

7 THE COURT: -- take down what you have to say.

8 BY MR. MCEACHIN:

9 A: It was inside the gate. That would be right about ten
10 feet inside the yard.

11 Q: And that's referring to State's Exhibit 71; correct?

12 A: Yes, sir.

13 Q: Okay. Thank you.

14 (WHEREUPON, the witness returned to the witness stand.)

15 Q: Did you ever go down and touch the hat?

16 A: No, sir.

17 Q: Okay. And --

18 A: I just kicked it with my foot out of the way.

19 Q: Okay. So it was a little bit more -- you never touched
20 it?

21 A: No, sir.

22 Q: Now going back, when you yelled hey, what did the
23 individual do?

24 A: Like I said, he was coming out of the yard and as soon as
25 I seen him, like I said, he had his hood up and he was just

THOMAS HILLS - DIRECT BY MR. MCEACHIN

1 walking nonchalantly, and I said hey, and that's when he
2 pulled the hood closer to this face.

3 Q: Now, is your back yard completely enclosed by a fence?

4 A: Yes, it is.

5 Q: Okay. Do you have any idea why this fellow was in your
6 back yard?

7 A: No, sir.

8 Q: And did you notice what he was wearing?

9 A: He had a grey hood and it looked like a dark -- like a
10 vest is what it looked like to me, and the sleeves were grey.

11 Q: Thomas, I'm going to show you what's been marked as
12 State's Exhibit Number 2 for identification purposes only.
13 I'm going to let you set that down underneath you. If you
14 need to pull it out, just kind of keep it low, and tell me if
15 you can identify that.

16 A: Yeah. This looks like -- like the jacket he had on. At
17 least it looks like it to me.

18 Q: Thank you very much.

19 A: Yes, sir.

20 Q: And that was State's Exhibit Number 2 for identification
21 purposes. And you said he almost got hit by a car and then he
22 ran down across the street down a driveway?

23 A: Right. I mean it's pretty much -- okay. My driveway is
24 here and this next driveway is, like, a little bit over a
25 little bit.

1 Q: Okay.

2 A: It's between the apartment building and the -- and the
3 white house.

4 Q: So I'll show you on State's Exhibit 71 again. How about
5 show the jury exactly where he ran?

6 A: This is my driveway. He come out of here. This is about
7 where he got hit right here, and he ran up this driveway right
8 here. And that's when the cruiser come in and whipped it
9 right into that driveway.

10 Q: How -- how long was it when --

11 A: Seconds.

12 Q: Seconds?

13 A: Yes, sir.

14 Q: And you still saw the individual when you saw the cruiser
15 pull up?

16 A: Yes, sir.

17 Q: After you witnessed this, did you witness anything else
18 that day or did you do anything else that particular day?

19 A: No. After all this was on, they were -- my buddies were
20 next door just I guess watching everything go down, and I went
21 over and started talking to them. A few minutes later, you
22 know, the officer showed up and I was explaining to him that
23 my dog picked up the hat and I told him to drop it and he
24 dropped it right there.

25 Q: So you did speak to law enforcement that day?

THOMAS HILLS - DIRECT BY MR. MCEACHIN

1 A: Yes, sir.

2 Q: And did you give them a statement about what you recall
3 occurring?

4 A: Yes, sir.

5 Q: Okay. Other than that and other than being here today,
6 did you have any other involvement with this case?

7 A: No, sir.

8 Q: Okay. Thank you. Please answer any questions Mr.
9 Anderson may have for you.

10 THE COURT: Any cross-examination?

11 MR. ANDERSON: Yes, sir, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. ANDERSON:

14 Q: Mr. Hills, have you spoken with anybody about this case
15 since the day it happened?

16 A: No, sir. Just -- just when I took my statement and I
17 guess, of course, you know, everybody in the neighborhood
18 talking about it. That's about it.

19 Q: All right. You said everybody in the neighborhood was
20 talking about it. Who was talking about it in the
21 neighborhood?

22 A: I don't know any last names. I know the guy's name was
23 Derek, which his dad lived in that apartment building. He's
24 the one that had the -- that had sugar and he had one leg.
25 That's the only reason why I even paid attention to him in the

1 first place.

2 Q: All right.

3 A: Because it looked like whoever was doing it looked like

4 they was trying to do something.

5 Q: Did you hear any unusual noises that day?

6 A: No, sir.

7 Q: You didn't hear any gunfire?

8 A: No, sir.

9 Q: Met with law enforcement later?

10 A: That's correct.

11 Q: Is that right?

12 A: Yes, sir. That's correct.

13 Q: You gave them a statement?

14 A: That is also correct.

15 Q: Now, when you were talking to law enforcement, where did

16 they take this statement?

17 A: They took it at my apartment.

18 Q: Okay. In your house?

19 A: Yes, sir.

20 Q: Where you were living?

21 A: That's correct.

22 Q: How long had you been living there?

23 A: Almost a year. Well, about eight months.

24 Q: Comfortable there?

25 A: Oh, yes, sir.

THOMAS HILLS - CROSS BY MR. ANDERSON

1 Q: Sir?

2 A: Yes, sir.

3 MR. ANDERSON: Your Honor, may I approach the witness?

4 THE COURT: Sure.

5 BY MR. ANDERSON:

6 Q: Is that a copy of the statement you wrote that day?

7 A: That's correct. Yes, sir.

8 Q: Did you write that statement on that day?

9 A: I sure did. Yes, sir.

10 Q: How much education do you have, Mr. Hills?

11 A: I got a associate's degree.

12 Q: High school graduate?

13 A: Yes.

14 Q: Can read and write; is that right?

15 A: Yes, sir.

16 Q: Don't have any trouble reading or writing or anything
17 like that?

18 A: No, I do not.

19 Q: When you met with police, you met with them in your
20 house, comfortable; is that right?

21 A: That is also correct.

22 Q: The police told you to write a statement?

23 A: I did.

24 Q: The day that this happened?

25 A: Yes, sir.

1 Q: The day that it was freshest in your mind? The day that
2 everything had gone on; is that right?

3 A: That's correct.

4 Q: Now, I'm 50. My memory does not get better with time.
5 Does yours get better with time?

6 A: No, sir.

7 Q: All right. And this was, like, two years ago; is that
8 right?

9 A: That's also correct.

10 Q: In the statement you wrote, it looks to be about half a
11 page long; is that correct?

12 A: That's correct.

13 Q: The police weren't rushing you that day, were they?

14 A: No, sir.

15 Q: They didn't tell you to hurry up?

16 A: No, sir.

17 Q: They didn't tell you to speed up? You were inside so the
18 weather wouldn't bother you; is that right?

19 A: That's correct.

20 Q: You had your dog in there with you?

21 A: He's my buddy; so yeah.

22 Q: People will actually sometimes ask does anybody listen to
23 you, and I'll tell them my dog listens to me. You ever had
24 that happen with you?

25 A: Yes, sir.

THOMAS HILLS - CROSS BY MR. ANDERSON

- 1 Q: All right. Golden retriever; is that right?
- 2 A: That's correct.
- 3 Q: How long have you had the dog?
- 4 A: Since he was born.
- 5 Q: How old is he now?
- 6 A: He'll be eight in April.
- 7 Q: All right. Getting back to your statement. In your
- 8 house, taking your time, half a page long. Now, it looks like
- 9 this was done on February the 16th, 2013; is that right?
- 10 A: That's what it says here on the paper. Yes, sir.
- 11 Q: It was also witnessed by someone. Do you have any idea
- 12 who witnessed it?
- 13 A: I would just -- I would assume it was the officer that
- 14 came up, but the name I can't read on here; so I couldn't tell
- 15 you.
- 16 Q: Now, did that officer ever tell you, hey, if something
- 17 else comes to mind, give me a call?
- 18 A: Yes, he did actually.
- 19 Q: Did he give you a card or anything like that?
- 20 A: I believe so. Yes, sir.
- 21 Q: Have you called him since February the 16th, 2013?
- 22 A: No, sir.
- 23 Q: He told you to write a complete statement and put as much
- 24 information in there as you wanted to; is that right?
- 25 A: Yes, sir. That's correct.

1 Q: All right. Now, when Mr. McEachin was talking to you --
2 and I want to make sure I got this right. You walked out of
3 the door. The upstairs door or the downstairs door?
4 A: Upstairs.
5 Q: And you saw a guy standing on the corner?
6 A: That's correct.
7 Q: The corner of the fence?
8 A: No, sir. The corner of the building.
9 Q: The corner of the building? All right. Peeking around
10 the building; is that right?
11 A: Yes, sir.
12 Q: What building was he peeking around?
13 A: The apartment building next door.
14 Q: Would that have been 305? 307? Or something like that?
15 Was it a lower number?
16 A: How our street goes, I'm not completely sure.
17 Q: Okay.
18 A: But if you're looking at the front of my house, it's to
19 the left.
20 Q: You go back inside?
21 A: Yes, sir.
22 Q: A couple of minutes later, you come outside? You're on
23 the deck on your second floor?
24 A: That's correct.
25 Q: Someone is coming through the yard?

THOMAS HILLS - CROSS BY MR. ANDERSON

- 1 A: Yes, sir.
- 2 Q: You yell hey. The guy starts running; is that right?
- 3 A: That's correct.
- 4 Q: Then a few minutes later, did you go back outside?
- 5 A: No, sir.
- 6 Q: To let your dog out?
- 7 A: After I yelled at him hey, I was already outside. This
- 8 was -- this is after the first time I saw him.
- 9 Q: Right.
- 10 A: So I stayed outside because all the commotion was going
- 11 on, you know. Police were going up the next driveway, and
- 12 people were running around, you know. So I kind of stayed
- 13 outside and, you know, there wasn't really much more to do.
- 14 Q: All right. So you only came outside twice; is that
- 15 right?
- 16 A: That's correct.
- 17 Q: All right. So when did you see him peeking around the
- 18 building?
- 19 A: The first time.
- 20 Q: And you were on the deck?
- 21 A: Yes, sir. Well, I wasn't on -- I was still standing in
- 22 my doorway; so I wasn't actually outside yet when I saw him
- 23 standing at the side of the building.
- 24 Q: All right.
- 25 A: From my door, you can see everything on that side of my

1 house.

2 Q: But you -- but you were upstairs?

3 A: Yes, sir.

4 Q: So when you came outside, that's when you actually had
5 your dog with you?

6 A: Right.

7 Q: All right. Now just so I'm -- I'm -- I've got it right
8 in my mind, when you see him outside, you're upstairs?

9 A: That's correct.

10 Q: You didn't notice anything unusual about him?

11 A: No. Just -- I just knew it was the same kid that I saw
12 earlier, and I can't say the timeframe because I really don't
13 know. It's just I come out and TJ was trying to get out the
14 door; so I went ahead and let him out. When I let him out, I
15 usually wait a second before I tell him to go downstairs, and
16 before I tell him to go down, I seen someone coming out of the
17 yard.

18 Q: All right. You're upstairs on your second floor and you
19 see a guy standing at the corner where the fence is. It's
20 like he's peeking around the corner. Kind of like this column
21 right here, he's kind of peeking around the corner?

22 A: Well, at first he was just -- all he was doing was
23 standing right there. But like I said, as soon as I opened up
24 my door, it's like he saw me because he ducked down a little
25 bit. But after I -- after -- after I thought about it, I went

THOMAS HILLS - CROSS BY MR. ANDERSON

1 down and stood where he was standing and looked at my door.

2 There's no way he could have seen me open my door.

3 So it was just a coincidence when that happened, but he
4 just kept -- he would stand there and he would turn around and
5 look around like he was doing something, and then he would
6 stop again. And then the next thing you know, he just walked
7 around the other side of the building. And that's when --
8 that's when -- later on, I found out from Derek that he come
9 and asked his dad to use the phone.

10 Q: You go inside and watch TV for a couple minutes?

11 A: Yes, sir.

12 Q: Then you go outside and let the dog out?

13 A: That's correct.

14 Q: All right. Now, when you went outside and let the dog
15 out, is that when you saw him in your yard?

16 A: That's correct.

17 Q: All right. Well, then what happened after that?

18 A: That's when I yelled hey.

19 Q: And what happened after that?

20 A: He took off running.

21 Q: All right. Now, earlier you said that you saw someone
22 drop something.

23 A: When I first walked out the door, I could see, like,
24 somebody dropped their hand like they're dropping something
25 down. So you take that any way you want with that. I just

1 don't -- I know what I saw when I first walked out the door.

2 Q: All right. The statement I gave you right there, the one

3 that you wrote when it was freshest in your memory --

4 A: That's correct.

5 Q: The one that you wrote the day all this happened, tell me

6 where you wrote in there that --

7 A: I --

8 Q: -- it looked like he dropped something.

9 A: It's not in there.

10 Q: Sir?

11 A: It's not in there, sir.

12 Q: Okay. Tell me in there where he, quote, pulled his hood

13 down further.

14 A: I can't say that it's in there either.

15 Q: Tell me in there where you put he almost got hit by the

16 car when he was running.

17 A: Again, it doesn't say it in there.

18 Q: Okay. And this, of course, was two years ago?

19 A: Yes, sir.

20 Q: All right. Now, nowhere in there do you say it looked

21 like he dropped anything, does it?

22 A: No, sir, it does not. I will say this. For the last

23 week since they contacted me, all I do in the morning is think

24 about that day to make sure I got it in my head.

25 Q: Okay.

THOMAS HILLS - CROSS BY MR. ANDERSON

1 A: And I do have a pretty good memory. I could -- I can
2 remember stuff from back when I was a kid.

3 Q: Okay.

4 A: Just like it's today.

5 Q: I understand. Did you ever bother to call one of the
6 officers?

7 A: No, sir. Honestly, after this, I really didn't think
8 much about it to tell you the truth.

9 Q: All right.

10 A: Until I was -- until they started calling me about it.
11 You know, I've -- I've told the story to my friends, of
12 course, over time, but again, I have not thought about this in
13 probably at least a year.

14 Q: All right. Tell me in your statement where you went down
15 there and stood where you saw him on the corner?

16 A: It says right here after I -- looked out the door and saw
17 a black male peeking around the corner of the apartment
18 building next door.

19 Q: Tell me in your statement where you went and stood where
20 he was standing.

21 A: I didn't -- I didn't put that in there because I didn't
22 do it until a couple days later.

23 Q: Okay.

24 A: I just -- it just bugged me in my head that why would he
25 jump like that if he couldn't see me.

1 Q: Tell me in your statement where he jumped like that.

2 A: It doesn't say that in there.

3 Q: All right. Did you call the officer after you went and
4 stood there?

5 A: I didn't call the officer. From this day forward, I did
6 not talk to any officer.

7 Q: Okay.

8 A: So --

9 MR. ANDERSON: Your Honor, may I approach the witness?

10 THE COURT: You sure can.

11 BY MR. ANDERSON:

12 Q: I'm referring to State's 71. This is your apartment
13 right here where the red or orange dot is?

14 A: This is my apartment right here.

15 Q: Okay.

16 A: The orange dot is where he dropped the hat.

17 Q: Okay.

18 A: He was standing on the corner of this building right
19 here. These trees are bare in February, and from my deck you
20 can see everything over there anyways even with the trees
21 there.

22 Q: Okay. If you were over here on Upland Avenue --

23 A: Yes, sir.

24 Q: -- and you were going to run towards Jones Street, how
25 would you go?

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1 MR. MCEACHIN: Objection, Your Honor.

2 THE COURT: And the nature of your objection?

3 MR. MCEACHIN: Your Honor, the relevancy of what Mr. --
4 what the witness would do under those circumstances.

5 THE COURT: I'll allow it. It's cross-examination.
6 Overruled.

7 BY MR. ANDERSON:

8 A: Okay. Now, when I usually walk my dog, I usually go up
9 this way, but there's sometimes in the mornings I'll come down
10 here. You can see my apartment from right through here. All
11 the way through here, you can see my apartment. Now, if I was
12 going to cut across, it would be right through there.

13 Q: Okay.

14 A: Because the fence over here is over six foot tall. This
15 fence is only a regular-sized fence probably three or four
16 foot tall.

17 Q: Okay. If you were in the street and you were running and
18 you wanted to get to Jones, how would you go?

19 A: Well, like I said, this way there's a gap between these
20 two houses. You can go just straight across there.

21 Q: Okay. You didn't hear any unusual noises that morning?

22 A: No, sir. And that's something else that bugs me that I
23 never -- never heard the shots.

24 Q: Saw the guy, a couple of minutes went by, and walked
25 outside a few minutes later and saw him going through your

1 yard; is that right?

2 A: That's correct.

3 Q: All told, how long do you think that individual was
4 either at the corner or in your yard?

5 A: I have no clue.

6 Q: Well, you said a couple of minutes?

7 A: A couple of minutes. A couple minutes could be two
8 minutes to five minutes really.

9 Q: Okay.

10 MR. ANDERSON: That's all the questions I have, Judge.

11 THE COURT: Okay. Redirect?

12 REDIRECT EXAMINATION

13 BY MR. MCEACHIN:

14 Q: Mr. Anderson just asked you if you were walking down
15 Upland Avenue which direction would you go. If you had just
16 shot somebody while you were on Upland Avenue, which direction
17 would you have gone?

18 A: Well, if he was here, then he would probably cut across
19 through here at a diagonal through there because --

20 Q: The quickest route to get to where you were?

21 A: Exactly right.

22 Q: Mr. Anderson also spent a good deal of time talking to
23 you about the statement you gave. Mr. Hills -- Tom, have you
24 ever taken any classes -- law enforcement classes?

25 A: No, sir.

THOMAS HILLS - REDIRECT BY MR. MCEACHIN

1 Q: Have you ever taken any classes on statement writing?

2 A: No, sir.

3 Q: Have you ever had to write a statement involving a crime
4 before?

5 A: No, sir.

6 Q: Okay. What you put in that statement, what was that?

7 A: It was just -- just my thoughts at the time. I mean
8 everything that I thought of, I put down, but we're seeing
9 there's gaps. I mean things are going on so fast, and not
10 that the officer rushed me or anything, but I hate writing
11 stuff out. So I wrote out what I thought. I write small so,
12 you know, most people a half page would be a full page.

13 Q: Everything you told the jury from this witness stand
14 today, is that what you recall?

15 A: Yes, sir.

16 Q: And you've never had any training as an investigator in
17 criminal matters, have you?

18 A: No, sir.

19 Q: And everything you told them today is what you --

20 MR. ANDERSON: Your Honor, I'm going to object to
21 leading.

22 THE COURT: Okay. Rephrase, please, Solicitor.

23 MR. MCEACHIN: Certainly.

24 BY MR. MCEACHIN:

25 Q: What, if anything, have you told the jury today is

1 inaccurate?

2 A: Nothing that I know of.

3 MR. MCEACHIN: Thank you. No further questions.

4 THE COURT: Recross?

5 MR. ANDERSON: No, sir, Your Honor.

6 THE COURT: All right. Thank you for your testimony,
7 sir. You can step down.

8 MR. MCEACHIN: Your Honor, the State would call
9 Lieutenant Tony Flowers to the stand.

10 THE COURT: Okay.

11 MR. MCEACHIN: And, Your Honor, briefly, as I pointed
12 out, I'd ask that Mr. Hills be relieved from his subpoena so
13 he can get back to Pennsylvania.

14 THE COURT: Okay. Any objections from the defense?

15 MR. ANDERSON: No, sir, Your Honor.

16 THE COURT: Okay. You're welcome to leave or you're
17 welcome to stay with us, either way.

18 THE WITNESS: Thank you, sir.

19 (WHEREUPON, there was a pause in the proceedings until
20 the witness entered the courtroom.)

21 THE CLERK: Do you solemnly swear or affirm the evidence
22 you are about to give in the trial of this case shall be the
23 truth, the whole truth, and nothing but the truth, so help you
24 God?

25 THE WITNESS: I do.

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 THE CLERK: Thank you.

2 MR. MCEACHIN: I beg the Court's indulgence for just a
3 moment.

4 THE COURT: Sure.

5 TONY FLOWERS, being first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MCEACHIN:

9 Q: Lieutenant Flowers, good morning.

10 A: Good morning.

11 Q: If you would, please state your full name for the record.

12 A: My name is Tony Patrick Flowers.

13 Q: Tony, with whom are you currently employed?

14 A: I'm currently employed with the Darlington Police
15 Department.

16 Q: And how long have you been employed with the Darlington
17 Police Department?

18 A: Approximately eight months.

19 Q: And in what capacity are you employed with the Darlington
20 Police Department?

21 A: I'm an investigator.

22 Q: And prior to the eight -- prior to the eight months that
23 you have been with Darlington Police Department -- and is that
24 the city or the county?

25 A: City.

1 Q: Prior to those eight months, with whom were you employed?

2 A: Prior to that, I was employed with the Marion Police
3 Department.

4 Q: And how long were you employed with the Marion Police
5 Department?

6 A: Approximately seven years.

7 Q: And prior to leaving Marion Police Department for the
8 Darlington Police Department, what was your position with
9 Marion Police Department?

10 A: I was an investigator.

11 Q: And as an investigator, if you would, explain to the jury
12 what some of your duties and responsibilities are?

13 A: Some of my duties and responsibilities as an investigator
14 here with Marion is basically, you know, investigating any
15 type of crime that required follow-up on, anything from minor
16 stuff, such as somebody stealing something out of someone's
17 yard, up to major crimes, like burglaries and homicides.

18 Q: And as part of that investigation, maybe you can explain
19 a little bit to the jury what -- what you do when you
20 investigate a case?

21 A: When I investigate -- investigate a case, the first thing
22 I do is review what the initial report was, what the case was
23 about. I then kind of setup I guess an outline of how I'm
24 going to go about this. I speak with victims, any witnesses.
25 Any evidence that's been -- was collected. I go back to the

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 crime scene and look at the crime scene to see if there is any
2 evidence that has been missed that I can collect.

3 Q: And were you employed as an investigator back in February
4 of 2013?

5 A: Yes, I was.

6 Q: And were you on call on February the 16th of 2013?

7 A: Yes, I was.

8 Q: And did you happen to be called out to assist with a case
9 on that day?

10 A: Yes, I was.

11 Q: Were you considered the lead investigator that day?

12 A: No, I wasn't.

13 Q: And who was the lead investigator?

14 A: Lieutenant Smith.

15 Q: And if you could, just explain to the jury how that
16 exactly works, how you have a lead investigator and then other
17 investigators assisting?

18 A: The way Lieutenant Smith and I handled it, being that
19 that way we would divide up the cases. He may be the lead
20 investigator. Usually the way it worked was when you're on
21 call, you're considered the lead investigator. Lieutenant
22 Smith was the primary on call that week; so he would be
23 considered the lead investigator. We both worked the case
24 together, but any warrants and stuff like that is usually he
25 is responsible for typing up. And he's usually the point of

1 contact between the victim and the police department, and I
2 just basically assist him.

3 Q: And with regards to the investigation on that particular
4 day, what type of case was being investigated?

5 A: We got called out for a possible homicide.

6 Q: And again, you said Lieutenant Smith was lead
7 investigator, but you assisted?

8 A: Yes.

9 Q: As part of your assistance, did you collect any evidence
10 in this case?

11 A: Yes, I did.

12 MR. MCEACHIN: I beg the Court's indulgence for just a
13 second.

14 BY MR. MCEACHIN:

15 Q: Lieutenant Flowers, I'm going to hand you some objects.
16 I'm going to ask if you can identify them. They've been
17 marked for purposes of the record. They have not been
18 admitted into evidence. I'm first going to hand you what's
19 been marked as State's Exhibit Number 2 for identification
20 purposes. Would you please take a look in that bag and tell
21 me if you can recognize that?

22 A: I can take it out of the bag?

23 Q: Yes. Just keep it down low until it's admitted.

24 A: Okay. It's -- it appears to be the jacket that the
25 suspect had on at that day.

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 Q: And did you collect that from the suspect that day?

2 A: I believe I collected this from the detention center that
3 day.

4 Q: Okay. I'm now going to hand you what's been marked as
5 State's Exhibit Number 4 for identification purposes. If you
6 could, please take a look at that and tell me if you can
7 identify it.

8 A: Yeah. Those were the pants that he had on that day.

9 Q: Okay. And you also collected those?

10 A: I did.

11 Q: State's Exhibit Number 9. And if you need to open it,
12 that's fine, but if you could, take a look at that envelope
13 and tell me if you know what that is.

14 A: From what it says on there, it's what we call a GSR kit.
15 That's basically a gunshot residue kit.

16 Q: Okay. And who did that gunshot residue kit belong to?

17 A: Can I open it?

18 Q: That's fine.

19 A: You got something I can open it with? Some scissors?

20 THE COURT: Solicitor, is that a sealed envelope?

21 MR. MCEACHIN: It is, Your Honor.

22 THE COURT: Okay. Let the record reflect that this
23 witness is unsealing an otherwise sealed envelope containing,
24 as he says, a GRS kit -- GSR kit.

25 BY MR. MCEACHIN:

1 Q: And, Tony, if you could, explain to the jury -- there's
2 some tape on the outside of that envelope. What is that tape?

3 A: This tape is -- when evidence is sent to SLED, SLED seals
4 the envelope. When it normally comes back to us, it actually
5 has the initials on there, the date it was sealed, and the
6 initials of the person sealing the envelope. This tape has
7 SLED's initials on it; so this is showing the tape of South
8 Carolina -- South Carolina Law Enforcement Division sealed.
9 It was sent there to be processed.

10 Q: And that was going to be my follow-up question. Why
11 would you send particular pieces of evidence to SLED?

12 A: We don't have the capability to test a lot of stuff that
13 we send up there. But inside this envelope, there's a GSR kit
14 that I collected from Kemonie Jones, and there's also one that
15 was collected from Mr. Stanley Witek.

16 Q: Okay. And those are the two items that are in there?

17 A: Yeah. I did the -- the GSR for Mr. Jones, and SLED
18 actually performed the GSR on Mr. Witek.

19 Q: Now, with regard to State's Exhibit Number 9 and a GSR
20 kit, could you please explain to the jury what a GSR kit is?

21 A: Basically, a GSR kit -- it has -- it's in a canister.
22 You have four -- I think it's four separate things in a
23 canister. And basically what you do is you rub on the front
24 of the hand and the back of the hand, and basically what it is
25 is it's kind of like a magnetic thing. It will pull up any

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 gunshot residue, any particles and stuff, and you can send it
2 to SLED and see.. They can analyze it and see if any gunshot
3 residue or particles were pulled from that person's hands.

4 Q: And did you conduct a GSR kit on February the 16th, 2013?

5 A: I did.

6 Q: Who did you conduct it on?

7 A: Mr. Kemonie Jones.

8 Q: And do you see Mr. Jones seated in the courtroom here
9 today?

10 A: I do.

11 Q: And where is he seated?

12 A: He is sitting over at the defense table.

13 MR. MCEACHIN: Your Honor, please have the record reflect
14 the witness has identified the defendant.

15 THE COURT: Okay. So noted.

16 BY MR. MCEACHIN:

17 Q: And do you recall approximately when that was?

18 A: It was -- I can't give you -- I don't know if there's an
19 exact time on there, but can I look at it again?

20 Q: Absolutely.

21 A: I know it was in the morning, a.m. time. There's a sheet
22 you fill out and stick inside the kit. I think it does have
23 the exact time on there, but I did do it that morning
24 sometime. I can't give you an exact time.

25 Q: Okay. But you did conduct it in the morning of the

1 arrest?

2 A: I did conduct it that morning of the arrest.

3 Q: Once you take the -- whatever they may be from both
4 hands, what do you do with the items at that point in time?

5 A: When we collect it, SLED has -- has the tubes and
6 everything in there that comes with it. Also, we do wear
7 latex gloves to conduct it with. On each hand, it's labeled
8 left palm, left back, front palm -- right palm, right back.
9 So there's no confusion when you do it and submit it to SLED,
10 each one -- like, if I do right palm, I'll go across the right
11 palm, check everything, put it back in there, and put it
12 aside. Same thing with each hand. It's labeled and it's --
13 once -- after I do it, it is a process -- I seal the envelope
14 up so it's not left open where somebody could come tamper with
15 it, and it's sealed with red tape also SLED provides in the
16 kit.

17 Q: And you conducted this particular GSR kit on Mr. Jones?

18 A: I did.

19 Q: Now I'm going to show you what's been marked as State's
20 Exhibit Number 7 for identification purposes only. Can you
21 identify that exhibit?

22 A: It appears to be marijuana.

23 Q: You're not sure about that? That's just what it appears
24 to be?

25 A: Yeah. Just -- I mean it appears -- it looks like

TONY FLOWERS - DIRECT BY MR. MCEACHIN

1 marijuana, but I don't know for sure if it is or not.

2 Q: Who did you receive that exhibit from?

3 A: I received this from Officer McCaskill.

4 Q: And once you received that exhibit, what did you do with
5 it?

6 A: I logged it in and put it in our evidence room. Officer
7 McCaskill -- we have lockers set up outside the evidence room
8 where only I have the keys to. There's a lock to it that I
9 only have the key to it. The lockers are unlocked. Whenever
10 he logs in evidence, he places a locker -- the evidence in the
11 locker and locks it so nobody can access it unless I go in
12 there and unlock it. What I do -- I go -- when it's locked,
13 I'll go in there and I'll take the evidence out and transfer
14 it back to our evidence room where it's secured.

15 Q: And that is a secure location?

16 A: Yes, it is.

17 Q: And how many people have access to the evidence room?

18 A: Myself and the Chief of Police.

19 Q: Okay. And at this particular period of time, it was just
20 the two of you?

21 A: Just the two of us.

22 Q: Okay. Now that you're in Darlington, you don't have
23 access.

24 A: Yeah. I don't have access to it anymore.

25 Q: And you logged that into the evidence room?

1 A: I did.

2 Q: And you -- and from the secure locker?

3 A: Yes.

4 Q: And finally, I'm going to show you what's been marked as
5 State's Exhibit Number 13 for ID purposes. Can you identify
6 that exhibit?

7 A: This is a buccal swab taken from Kemonie Jones.

8 Q: And who got that swab?

9 A: I obtained the swab from Mr. Jones' mouth the morning of
10 the incident.

11 Q: So the same morning?

12 A: Yes, sir.

13 Q: And what's the purpose of acquiring one of those swabs?

14 A: Basically, it's like a long Q-tip and we just run it
15 along the gum lines, and it's to collect DNA to match up any
16 DNA from anything we find at the scene of the crime that we
17 can compare DNA to, to tie that person to the crime or tie
18 them to that scene.

19 Q: Now with regard to State's Exhibits 9, 13, 2, and 4, what
20 did you do with those items of evidence? That would be the
21 GSR kit, the buccal swabs, the pants, and the jacket.

22 A: They were transferred to SLED.

23 Q: And who did you give those to?

24 A: I gave those to a crime scene investigator from SLED. I
25 don't recall the name.

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1 Q: And it was that day?

2 A: Yes, it was.

3 Q: Was there only one crime scene investigator from SLED
4 that day that you recall?

5 A: I think there were two.

6 Q: Okay. Was it -- was it a man or a woman?

7 A: I know there was a female and a male. I want to think it
8 was the female. I don't know. I know we have a SLED custody
9 transfer sheet where we sign off on it. I think it was a
10 female, but I'm not a hundred percent sure who it was.

11 MR. MCEACHIN: I beg the Court's indulgence for just a
12 moment.

13 THE COURT: Sure.

14 BY MR. MCEACHIN:

15 Q: If I showed you that transfer form, would it refresh your
16 recollection?

17 A: Yeah.

18 Q: I'm going to let you take a quick look at this. See if
19 that refreshes your recollection.

20 A: Okay. Yeah. It was the female crime scene.

21 Q: And do you remember what her name was?

22 A: Vicki. I can't remember her last name.

23 Q: Okay.

24 A: Hallman or something. I'm not sure exactly what the last
25 name was.

1 Q: But it was the female officer?

2 A: It was female.

3 Q: And when did you transfer those items to Ms. Hallman?

4 A: It was that day. It was in the afternoon prior to them
5 leaving the scene. She took control of it and she was going
6 to log everything in when she got back to SLED to have
7 everything analyzed.

8 Q: So it was the same day of the incident?

9 A: Same day.

10 Q: All right. And you transferred it to her?

11 A: Yes.

12 Q: All right. Once you transferred it to her, that's all
13 you had to do with it?

14 A: Yes.

15 Q: And we've already talked about Exhibit 7. You logged
16 that into the evidence locker at Marion Police Department?

17 A: Yes.

18 MR. MCEACHIN: Thank you. No further questions at this
19 time, Your Honor.

20 THE COURT: Okay. Cross-examination?

21 MR. ANDERSON: Yes, sir, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. ANDERSON:

24 Q: You did other things in this case; is that right,
25 Lieutenant Flowers?

TONY FLOWERS - CROSS BY MR. ANDERSON

- 1 A: Yes, sir.
- 2 Q: For example, you took two statements from Kemonie; is
- 3 that right?
- 4 A: Yes, sir.
- 5 Q: Videotaped both of them?
- 6 A: Yes, sir.
- 7 Q: One was done in the morning?
- 8 A: Yes, sir.
- 9 Q: And one was done later in the afternoon?
- 10 A: Yes, sir.
- 11 Q: Right now, you're Darlington PD. You've been with them
- 12 about seven months?
- 13 A: Since July.
- 14 Q: Prior to that, Marion PD?
- 15 A: Yes, sir.
- 16 Q: Total law enforcement would be maybe almost eight years?
- 17 A: I've got 13.
- 18 Q: Who were you with prior to Marion PD?
- 19 A: Florence Police Department.
- 20 Q: Are you familiar with the South Carolina Law Enforcement
- 21 Academy?
- 22 A: Yes, I am.
- 23 Q: Where is that?
- 24 A: Columbia.
- 25 Q: Did you attend the academy?

1 A: Yeah.

2 Q: When did you go to the academy?

3 A: Fall of 2002.

4 Q: While you're there, they teach you different things?

5 A: They did.

6 Q: How long did a class last?

7 A: At the academy?

8 Q: Yes, sir.

9 A: I think it was nine weeks or something like that.

10 Q: Did they teach you different things there like driving

11 tactics?

12 A: Yes.

13 Q: Shooting, hand-to-hand stuff, writing reports, give you

14 some legals, things like that?

15 A: Yeah. We had an overview of that, yes.

16 Q: You're an investigator now?

17 A: Yes, sir.

18 Q: So obviously you've probably had some additional

19 training?

20 A: As far as going to an investigative school or anything

21 like that, I haven't done anything like that.

22 Q: Have you been to any other --

23 A: Just in the academy what they taught us.

24 Q: All right. Have you been to any other classes?

25 A: I've been to classes, yeah.

TONY FLOWERS - CROSS BY MR. ANDERSON

1 Q: What kind of classes have you been to?

2 A: I've been to everything from gangs to evidence. I mean I
3 don't know. I can't recall everything off the top of my head.

4 Q: Okay. I mean obviously you went to a class about how to
5 collect GSR; is that right?

6 A: No. I didn't have a class for that.

7 Q: Okay. You just kind of picked that up along the way?

8 A: No. Actually, it tells you in the kit. It tells you
9 exactly how to do that.

10 Q: How many times do you think you've done a GSR?

11 A: Ten -- 20 times.

12 Q: Now, two interviews with Kemonie Jones in this case; is
13 that right?

14 A: Yes, sir.

15 Q: Both of them videotaped?

16 A: Yes, sir.

17 MR. MCEACHIN: Your Honor, I have a matter of law to take
18 up.

19 THE COURT: Okay. All right. This might be a good time
20 to take a short morning break. Madam Forelady and ladies and
21 gentlemen of the jury, I would ask you to -- to retire to your
22 jury room for just a little bit and take a break, and I'll get
23 you back out shortly. Again I remind you, don't begin
24 discussing anything about this case among yourselves.

25 (WHEREUPON, the jury exited the courtroom at 11:51 a.m.)

1 THE COURT: Okay. Solicitor?

2 MR. MCEACHIN: Thank you, Your Honor. As a preliminary
3 matter, if Mr. Anderson is about to begin a line of
4 questioning with regards to statements in this case, those
5 statements have not been admitted. And the State would argue
6 at this point, Your Honor, those are hearsay statements and,
7 therefore, any -- any mention or discussion with regard to the
8 substance of the statements would be inadmissible before the
9 jury and be highly prejudicial to the State's case, Your
10 Honor, and we would ask that any sort of question with regards
11 to the substance of the statements be excluded at this point
12 in time.

13 MR. ANDERSON: Your Honor, I can -- if I can -- I don't
14 think I need to respond, but I will. He told me that this was
15 my only chance to cross-examine one of the investigators.
16 That he had to call him to get certain stuff into evidence,
17 but that I needed to cross him fully. So I'm crossing him
18 fully.

19 THE COURT: I mean we had a -- a Jackson v. Denno
20 hearing. Notwithstanding the fact that defense did not make
21 an objection to any of the four statements, the Court did find
22 that the statements were made freely and voluntarily, with a
23 voluntary waiver of any Miranda rights. So a
24 statement/confession -- and I'm not suggesting that there was
25 a confession, but lumping that together. Typically, if it's

1 found to be voluntarily made with a voluntary waiver of
2 Miranda rights, it's admissible evidence.

3 So where -- where does -- where does hearsay on the part
4 of -- where does the hearsay objection come in as it relates
5 to the -- the defendant?

6 MR. MCEACHIN: Well, Your Honor -- and I'll respond to
7 that in a couple of different ways.

8 THE COURT: Please do.

9 MR. MCEACHIN: The purpose of the Denno hearing, of
10 course, was to determine whether or not the statement was
11 voluntarily and freely given.

12 THE COURT: Right.

13 MR. MCEACHIN: Which the Court found that it was
14 voluntarily and freely given.

15 THE COURT: Right.

16 MR. MCEACHIN: The statement itself, however, Your Honor,
17 is a self-serving statement and, if the defendant does not
18 testify, then it's a hearsay statement and there's no
19 exception to the hearsay rule. That would allow the defendant
20 to get the statement in and a defense in without him having to
21 testify.

22 THE COURT: Right.

23 MR. MCEACHIN: The purpose for the State going forward
24 with the Denno hearing is should the defendant end up taking
25 the stand in this case, we would have the ability to bring the

1 statement in should he say anything inconsistent with that
2 statement, which would then make it -- it would allow us to
3 have an exception to the hearsay rule.

4 But at this point, Your Honor, voluntariness and hearsay
5 are two totally distinct issues. We aren't questioning the
6 voluntariness of the statement. We contend that it was a
7 voluntary statement, but it was a statement in the defendant's
8 interest that he can't run an end-around with regard to the
9 hearsay rule in order to get a statement that benefits him
10 into evidence without him testifying, Your Honor.

11 THE COURT: Okay. Anything further from the defense on
12 that point?

13 MR. ANDERSON: Judge, I think I'm able to ask him what he
14 -- what my client told him.

15 THE COURT: Okay. All right. I'm going to have to give
16 this a little thought.

17 MR. ANDERSON: I mean I think I'm allowed to ask him how
18 my client appeared. You know, how did he act? Was he
19 nervous? Was he excited? How did he answer the questions?
20 Did he cooperate? Did he give you a statement?

21 THE COURT: Well, now, I don't think the solicitor is
22 objecting to this witness' observations, which, of course, as
23 we all know, you know, observations of someone, how the person
24 acted, et cetera, would not be hearsay. It's got to be actual
25 statements.

1 So I don't think the State is objecting to that. I think
2 what the State is objecting to is the actual statements made
3 by the -- by the defendant; correct?

4 MR. MCEACHIN: That's correct, Your Honor. We're not
5 objecting to any demeanor testimony.

6 THE COURT: Okay. Was it your intention, Mr. Anderson,
7 to get over and above observations? Was it your intention to
8 get into the actual statements made by the -- by the
9 defendant?

10 MR. ANDERSON: Somewhat, Your Honor. I mean I'm not
11 going to ask him word for word.

12 THE COURT: Right.

13 MR. ANDERSON: For example, they found a shell casing in
14 my client's pocket. My client said he found the shell casing
15 the night before at the Strawberry Projects. I would ask him
16 did my client have a shell casing. Yes. Did he tell you
17 where he got it? Yes. Did he tell you he found it at the
18 Strawberry Projects? Yes.

19 THE COURT: All right. Well, what I think -- what we may
20 do -- I'm going to need a little bit of time to think on this
21 and try to make the correct ruling. It's twelve o'clock.
22 Even though my plan was really to break for lunch around one,
23 I'm inclined now to go ahead and break for lunch and give me
24 an opportunity to take a look at this, take any more argument
25 from -- from you lawyers. So I think that's what we'll do is

1 go ahead and break now, even though it is a little bit too
2 early, but go ahead and do it so that'll give me enough time
3 to take a look at it.

4 MR. MCEACHIN: And, Your Honor, I just wanted to make
5 sure you understood the State's argument. The voluntariness,
6 we don't contest.

7 THE COURT: Right.

8 MR. MCEACHIN: But I think the Court also has to do a
9 hearsay analysis --

10 THE COURT: Right.

11 MR. MCEACHIN: -- to see if the statement is allowed.

12 THE COURT: Right. I understand. I understand.

13 MR. MCEACHIN: Thank you, Your Honor.

14 THE COURT: Okay. All right. What I'm going to do is
15 I'm going to bring the jury out and go ahead and excuse them
16 until about 1:15, and then we'll -- we'll start back up. Just
17 stay on the witness stand, Lieutenant, until we release the
18 jury.

19 MR. MCEACHIN: And, Your Honor, I will go ahead and
20 admonish the witness he can't speak to anyone about the case
21 --

22 THE COURT: That's right.

23 MR. MCEACHIN: -- during the lunch break.

24 THE COURT: That's correct. You can certainly talk to
25 anybody you want to, but don't -- don't talk about the case.

1 Okay? Because we're in the middle of your testimony.

2 All right. Mr. Evans, bring the jury out..

3 (WHEREUPON, the jury entered the courtroom at 11:58 a.m.)

4 THE COURT: Okay. Let the record reflect the jury is
5 back in. Madam Forelady and ladies and gentlemen of the jury,
6 we're going to go ahead and break for lunch. My plan was to
7 break around one, but we've got some legal issues that I need
8 to discuss further with the lawyers. So I didn't want to
9 leave you sitting back there for an extended period of time.

10 So since it's about twelve o'clock, we're going to go
11 ahead and take a break for lunch, and I would ask that you be
12 back promptly at 1:15.. Keep your juror badges on so if you're
13 out, people may not recognize you as jurors and may start
14 talking about whatever. They'll see that; they'll know that
15 they don't need to be talking around you.

16 Again, don't discuss this case among yourselves or anyone
17 that you come in contact with over lunch, and we'll see you
18 back at 1:15. Okay? Thank you very much. Have a good lunch.

19 (WHEREUPON, the jury exited the courtroom at 11:59 a.m.)

20 THE COURT: Okay. We'll be in recess until 1:15. Maybe
21 the lawyers could be back a little bit before then so we can
22 engage in some further discussion on this issue.

23 MR. MCEACHIN: Yes, sir, Your Honor.

24 THE COURT: Okay.

25 (WHEREUPON, there was a break in the proceedings from

1 12:01 p.m. until 1:23 p.m., after which the proceedings
2 resumed as follows.)

3 THE COURT: Okay. We -- we're back on the record.
4 During lunch break, I did some research on the issue
5 concerning the State's objection related to the defense cross-
6 examining the officer who took the two video statements based
7 upon hearsay, and the State is correct. State versus Terry --
8 and this is all premised on the idea that the defendant is not
9 going to testify, invoking his Fifth Amendment rights.

10 Now, if that is not the case, then we might need to
11 reevaluate, but if the defendant elects not to testify, then
12 he cannot in State versus Terry say use his constitutional
13 right as a shield and a sword as well and get into what --
14 what he may have said concerning those two video-recorded
15 statements. So it is hearsay and, therefore, inadmissible.

16 State versus Terry even goes a little further by saying
17 the existence of the defendant giving statements as a sign of
18 cooperation is not admissible as well. So that's -- that's my
19 ruling.

20 Now, I'll be glad to hear any additional arguments. I
21 don't want to cut you off, Mr. Anderson, but I think it's
22 pretty clear. But I will allow you to proffer with this
23 witness, naturally outside the presence of the jury, whatever
24 you want to get in in order to have the record fully
25 protected.

TONY FLOWERS - PROFFERED CROSS BY MR. ANDERSON

1 But even though I've indicated that I've made my ruling,
2 I'll be glad to hear any additional arguments, Mr. Anderson.

3 MR. ANDERSON: Your Honor, if you'd just simply let me
4 proffer the questions I was going to ask, that'll make me --
5 that satisfies me.

6 THE COURT: Okay. All right. So for purposes of the
7 record then, I'm going to allow you to ask this officer
8 whatever you want to ask him for purposes of the record.

9 PROFFERED CROSS-EXAMINATION

10 BY MR. ANDERSON:

11 Q: Lieutenant Flowers, you took a statement from Kemonie?

12 A: Yes, sir.

13 Q: That was the interviewed statement?

14 A: Yes, sir.

15 Q: You and Officer --

16 A: Smith.

17 Q: -- Smith were there -- or Lieutenant Smith were there?

18 A: Yes, sir.

19 Q: My client was calm?

20 A: I don't know him or what's calm for him.

21 Q: He wasn't excited, was he?

22 A: He didn't seem overly excited.

23 Q: He was cooperative with you?

24 A: To an extent.

25 Q: He answered the questions you asked him?

1 A: To an extent.

2 Q: You asked him what he did that morning?

3 A: Yes. I believe I did.

4 Q: He told you?

5 A: Yeah.

6 Q: He gave you a detailed statement as to what he did that
7 morning, where he went, who he saw, what he did?

8 A: That morning?

9 Q: Yes, sir.

10 A: That morning, he did.

11 Q: You asked him about a shell casing that was found in his
12 pocket?

13 A: I think Lieutenant Smith asked him about that.

14 Q: One of y'all asked him about a shell casing that was
15 found in his pocket?

16 A: Yeah.

17 Q: You asked him about the clothes that he had on?

18 A: Yes. We asked him about that.

19 Q: You actually told him while he was -- why he was being
20 interviewed; is that correct? You told him that there was
21 some gunshots?

22 A: Yeah. I believe I told him there was some gunshots in
23 the area.

24 MR. ANDERSON: Your Honor, that was basically all I was
25 going to ask him about --

TONY FLOWERS - PROFFERED CROSS BY MR. ANDERSON

1 THE COURT: Okay.

2 MR. ANDERSON: -- on the first statement.

3 THE COURT: All right. All right. Anything else you
4 want to proffer?

5 MR. ANDERSON: Yes, sir.

6 BY MR. ANDERSON:

7 Q: When the interview was over, you said the time was now
8 11:15, but that was not correct, was it?

9 A: I don't know what the time -- on my paper it says 11:43.
10 I think some --

11 Q: That's what time you started the interview was 11:43?

12 A: I'm not sure exactly. I thought on the -- I'm not sure
13 what time I said on the video.

14 Q: Whether it started at -- whether you started the
15 interview at 11:43 or the interview was over at 11:43, you
16 said it was 11:15 on the tape; is that right?

17 A: I believe I did, yes.

18 Q: Time doesn't go backwards?

19 A: No.

20 Q: Later, you took a second interview from him?

21 A: Yeah.

22 Q: At this point in time, he had already been booked in?

23 A: Yes.

24 Q: Again read him his rights?

25 A: Yes.

1 Q: He signed the waiver form?

2 A: Yes.

3 Q: Cooperated with you?

4 A: Yes.

5 Q: Answered your questions?

6 A: To an extent, yes.

7 Q: You asked him more specific questions about what he had

8 done that night? The night before?

9 A: Yes.

10 Q: You asked him about a girl's house that he stayed at?

11 A: Yes.

12 Q: You asked him about a neighbor's house that he had gone

13 to during that morning? Not a neighbor's house, but

14 somebody's house that he stopped and knocked on the door?

15 A: Yeah. Lieutenant Smith and I did, yeah.

16 Q: Again, he told you the activities that he had that

17 morning, where he went, the path he took?

18 A: Yeah. He told me where -- yeah, he told me that.

19 Q: Later, either you or Lieutenant Smith asked him about a

20 red toboggan; is that right?

21 A: Lieutenant Smith did.

22 Q: Later, either you or Lieutenant Smith asked him to be

23 honest and truthful with y'all?

24 A: Yes.

25 Q: Asked him about a gun?

TONY FLOWERS - PROFFERED CROSS BY MR. ANDERSON

1 A: Yes.

2 Q: Asked him where the gun was?

3 A: Yes.

4 Q: Told him you didn't want someone to get shot by accident?

5 A: Yes.

6 Q: He told you that he didn't know anything about a gun?

7 A: I don't remember what his exact words were, but to an
8 extent, yes.

9 Q: He told you he didn't have a red toboggan?

10 A: Yes.

11 Q: You asked him if he wouldn't mind giving a DNA sample?

12 A: Yes.

13 Q: He said he would?

14 A: Yes.

15 Q: At some point in time, he invoked his right to have an
16 attorney?

17 A: Yes.

18 Q: And that's basically when the interview was concluded?

19 A: Yes.

20 THE COURT: Okay. All right. Anything else before we
21 bring the jury out?

22 MR. MCEACHIN: Nothing, Your Honor.

23 THE COURT: Okay. All right. Mr. Evans, bring the jury
24 out, please, sir.

25 MR. ANDERSON: Your Honor, before we do that --

1 THE COURT: Wait a minute.

2 MR. ANDERSON: None of those questions I can ask him?

3 THE COURT: Right. That's correct. Mr. Evans, bring
4 them out, please, sir.

5 (WHEREUPON, the jury entered the courtroom at 1:27 p.m.)

6 THE COURT: All right. Let the record reflect the jury
7 is back out. Mr. Anderson, you were in the middle of your
8 cross-examination. Anything further?

9 MR. ANDERSON: Yes, sir, Your Honor.

10 THE COURT: Okay.

11 CROSS-EXAMINATION

12 BY MR. ANDERSON:

13 Q: Lieutenant Flowers, are you familiar with any incident
14 reports that were written in this case?

15 A: Yes, sir.

16 Q: Have you seen those incident reports?

17 A: I have read over them.

18 MR. ANDERSON: Your Honor, may I approach the witness?

19 THE COURT: Sure.

20 BY MR. ANDERSON:

21 Q: Lieutenant Flowers, if you would, just look through that
22 for a moment.

23 (WHEREUPON, there was a pause in the proceedings as the
24 witness complied.)

25 Q: About 15 or 16 pages long?

TONY FLOWERS - CROSS BY MR. ANDERSON

- 1 A: Yes. It's a good little bit.
- 2 Q: When Mr. McEachin was talking to you, he asked you what
3 it was like to be an investigator; is that right?
- 4 A: Yes.
- 5 Q: And you said you reviewed the initial report; is that
6 right?
- 7 A: Yeah.
- 8 Q: You said you do an outline, talk to a victim if there is
9 one, talk to witnesses, and then go back to the crime scene;
10 is that right?
- 11 A: Yes.
- 12 Q: Those are just some of the things you do if you're an
13 investigator?
- 14 A: Yes.
- 15 Q: Now, in this case, did you actually write a report?
- 16 A: No. I didn't write a report. I had the notes I wrote.
- 17 Q: You wrote what we call a supplemental; is that right?
- 18 A: Supplemental or investigative notes, one of the two.
- 19 Q: And you did that in this case?
- 20 A: I did.
- 21 Q: And probably about midway through, it's got an incident
22 report supplemental. It's got your name at the top of it; is
23 that right?
- 24 A: Yes.
- 25 Q: And that was on -- the date it was entered was on

1 2/18/2013; is that right?

2 A: Yes.

3 Q: And that just details that you on or about February the
4 16th, 2013, turned some evidence over; is that right?

5 A: Yes.

6 Q: Excuse me. Not turned evidence over, but you actually
7 performed a GSR on --

8 A: No. That wasn't the time I performed the GSR. That was
9 the time that I transferred it to SLED.

10 Q: Right. Turned it over to Vicki Hallman?

11 A: Yes.

12 Q: Is that right?

13 A: Yes.

14 Q: So you transferred a GSR kit and a DNA buccal or buccal
15 swab?

16 A: Yes.

17 Q: It also indicates you transferred one bullet; is that
18 right?

19 A: Yeah.

20 Q: And that bullet was recovered from who?

21 A: It said from the victim's pants at the hospital.

22 Q: And that was done at 1430?

23 A: Yes.

24 Q: Which would be 2:30?

25 A: Yeah.

TONY FLOWERS - CROSS BY MR. ANDERSON

- 1 Q: So at 2:30 on the afternoon -- 2:30 p.m. on the afternoon
2 of the 16th, that's when you transferred that information or --
3 excuse me -- that evidence over to the SLED agent; is that
4 right?
- 5 A: That's what I have, at four -- at 2:30.
- 6 Q: Okay. The very next page, another incidental report
7 supplemental. Again, it's got your name at the top; is that
8 right?
- 9 A: Yep.
- 10 Q: Is that when you received some evidence from Chief Gray?
- 11 A: Yes. No. Can you repeat that?
- 12 Q: Was that when you received some evidence from Chief Gray?
- 13 A: On February 16th, I received evidence from Chief Gray.
- 14 Q: But the incident report was written on 2/18?
- 15 A: Yes.
- 16 Q: All right. 2/16, you got the evidence from Chief Gray?
- 17 A: Yes.
- 18 Q: You didn't transfer any large amounts of money over to
19 Chief Gray, did you?
- 20 A: I didn't transfer any -- I don't think I transferred any
21 money over. Let me look. I didn't transfer any money.
- 22 Q: On that second report, it doesn't talk about \$33 in cash?
- 23 A: Yeah, but it doesn't say I transferred it to Chief Gray.
- 24 Q: Okay. Was that transferred over to SLED?
- 25 A: I believe it was logged in evidence.

1 Q: Okay. But again, no large amounts of money?

2 A: No.

3 Q: No large amounts of cash?

4 A: No.

5 Q: On 2/26, you were present when there was an interview

6 done on Don Oliver?

7 A: I was.

8 Q: You did not write the incident report -- supplemental

9 report on that, did you?

10 A: I just typed my investigative notes, but those were video

11 -- it was recorded. The interview was video recorded.

12 Q: But you didn't write or type it, did you?

13 A: Type what?

14 Q: That -- that -- those notes or that -- that supplemental?

15 A: If I typed -- if it has my name on there, I typed those

16 notes.

17 Q: Right. But that was typed up by Lieutenant Smith?

18 A: If it's got my name on it, I typed it up. No, I typed

19 this up because the first paragraph, the first sentence it

20 says --

21 Q: Okay. Was Lieutenant Smith with you?

22 A: Yes.

23 Q: So other than two supplemental reports that you typed up

24 --

25 A: Yes.

TONY FLOWERS - CROSS BY MR. ANDERSON

1 Q: -- about transferring the evidence or collecting the
2 evidence, and then this one with Tony Flowers -- excuse me --
3 not Tony Flowers -- Don Oliver, that's the only reports that
4 you would have typed up?

5 A: I have these other investigative notes about the GSR kit
6 I typed up.

7 Q: That's the GSR kit that you took and turned over to Vicki
8 Hallman; right?

9 A: Yeah.

10 Q: Okay. Did you ever go to the scene?

11 A: I've -- I went to the crime scene, not -- yeah, I went to
12 the crime scene.

13 Q: Okay. Did you talk to any of the neighbors?

14 A: No, I didn't.

15 Q: Did you go up and down Upland Avenue and see if anybody
16 heard anything or saw anything?

17 A: Yeah. We walked the area. I don't -- I think I did talk
18 to or briefly spoke with a gentleman that lived in an
19 apartment on Jones Avenue.

20 Q: All right. Did you -- what about on Upland Avenue?

21 A: I don't know who I talked with, if I talked to anybody or
22 not. I can't remember.

23 Q: If you'd have talked with someone on Upland Avenue, would
24 you have recorded that in a supplemental report?

25 A: Lieutenant Smith would have or I would have. I don't

1 know.

2 Q: So if it's not in here --

3 A: Anybody we spoke with that I guess had any information,
4 you know, we would include it, but --

5 Q: So if it's not --

6 A: -- if I don't have it, Lieutenant Smith would have it.

7 Q: All right. But if it's not in here, you didn't record
8 it?

9 A: No. If it's not in here, I didn't record it.

10 Q: Is there anywhere in there that indicates you talked to a
11 witness or somebody who may have seen something or heard
12 something on Upland Avenue?

13 A: On Upland Avenue? I'd have to re-read it. I don't
14 believe so. I would have to re-read everything to tell you.

15 Q: What about on Jones Avenue?

16 A: Yeah. I spoke with -- Lieutenant Smith and I spoke with
17 a guy. I can't remember his name. I think he is deceased
18 now.

19 Q: Did you take a statement from him?

20 A: I didn't take a statement from him, no.

21 Q: He's deceased now so we can't get a statement from him,
22 can we?

23 A: No.

24 Q: One of the reasons you write supplement reports, incident
25 reports is because sometimes people's memories get worse with

TONY FLOWERS - CROSS BY MR. ANDERSON

1 time?

2 A: Yeah.

3 Q: Sometimes people are unavailable?

4 A: Yeah.

5 Q: Sometimes people die?

6 A: Yeah.

7 Q: Like yourself, sometimes people go with another county
8 and start working investigations over there?

9 A: Yeah.

10 Q: But you didn't take an incident report or supplemental
11 report or written statement from this person who lived on
12 Jones Avenue?

13 A: No, I didn't.

14 Q: Is he the same individual that claims to have seen
15 Kemonie the day that this happened?

16 A: Do you mind if I take a second and find exactly where it
17 was written in here?

18 Q: Sir?

19 A: Can I look in here and see exactly where it was written
20 in here?

21 Q: Sure.

22 (WHEREUPON, there was a pause in the proceedings.)

23 A: I can't find it exactly. I know I saw it in there.

24 MR. ANDERSON: Your Honor, may I approach the witness?

25 THE COURT: Sure.

1 BY MR. ANDERSON:

2 A: Okay. What was your question? Who I talked with?

3 Q: Yes, sir.

4 A: Mr. Elmore Davis.

5 Q: But you didn't take a statement from him?

6 A: No, I didn't.

7 Q: If he'd have told you something important, do you think
8 you would have included it or Lieutenant Smith would have
9 included it?

10 A: Yeah. Lieutenant Smith is the one that typed that
11 statement you showed me. Yeah, he would have included it.

12 Q: Did you talk to anybody on Waycross Street about what
13 they saw that day or what they may have heard or what they may
14 have seen?

15 A: I -- I have no idea. I'd have to read through all this
16 again.

17 Q: If I told you it wasn't in there, would you disagree with
18 me?

19 A: If it wasn't in there, would I disagree with you? No, I
20 wouldn't disagree with you.

21 Q: Okay.

22 A: Because I could have spoke to somebody, but I don't
23 remember the name of everybody I talked to that day.

24 Q: If it had been important, do you think it would have been
25 included it in your statement?

TONY FLOWERS - CROSS BY MR. ANDERSON

- 1 A: Yeah, I would have included it in my statement --
- 2 Q: Okay.
- 3 A: -- if it had been something pertinent.
- 4 Q: Is there anything in there about talking to a witness on
- 5 Upland, Jones or Waycross other than what you've already said?
- 6 A: Not in my reports. Other reports, there are.
- 7 Q: Did you go to the crime scene,
- 8 A: I went there.
- 9 Q: All right. Did you look for any evidence there?
- 10 A: No, I did not. I -- maybe a day later, I walked through
- 11 there after SLED cleared the crime scene.
- 12 Q: Did you find anything when you went through there a day
- 13 later?
- 14 A: Not that day. I don't recall finding anything the day I
- 15 went.
- 16 Q: Do you know who was on scene the morning of February the
- 17 16th, 2013?
- 18 A: On the crime scene?
- 19 Q: Yes, sir.
- 20 A: I don't know everybody that was on the scene. No, I
- 21 don't.
- 22 Q: That was not your duty and your job?
- 23 A: No. As I -- no. I was interviewing him. I'm at the
- 24 police department. Like my statement says, I met with Mr.
- 25 Jones and Lieutenant Smith at the police department that

1 morning before going to the crime scene.

2 MR ANDERSON: Judge, that's all the questions I have at
3 this time --

4 THE COURT: Okay.

5 MR. ANDERSON: -- for Lieutenant Flowers.

6 THE COURT: Redirect?

7 MR. MCEACHIN: Very briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. MCEACHIN:

10 Q: Lieutenant Flowers, those 15 or 16 sheets of paper that
11 Mr. Anderson handed you, are that -- are those all your
12 report?

13 A: No, they were not.

14 Q: Okay. Out of all those sheets, how many of those reports
15 are yours?

16 A: Maybe two or three.

17 Q: Okay. So those other 12 -- 13 pages, that's not your
18 report?

19 A: No.

20 Q: And were you the lead investigator on this case?

21 A: No, I was not.

22 Q: You weren't the lead investigator?

23 A: No, I was not.

24 Q: And if you're not the lead investigator, what's your
25 role?

TONY FLOWERS - RECROSS BY MR. ANDERSON

1 A: I assist the lead investigator.

2 MR. MCEACHIN: Thank you. No further questions, Judge.

3 THE COURT: Recross?

4 RECROSS-EXAMINATION

5 BY MR. ANDERSON:

6 Q: As someone assisting, can you give ideas to the lead
7 investigator?

8 A: I can.

9 Q: Hey, let's go talk to a few more house. Hey, let's go
10 look for a few more witnesses. Can you do stuff like that?

11 A: I can.

12 Q: Okay.

13 THE COURT: Thank you for your testimony, Officer. You
14 can step down.

15 MR. MCEACHIN: The State would call Cindy Barr to the
16 stand. Your Honor, may we approach?

17 THE COURT: Sure.

18 (WHEREUPON, a bench conference was held off the record in
19 the presence of the jury but out of the hearing of the
20 jury.)

21 (WHEREUPON, there was a pause in the proceedings until
22 the witness entered the courtroom.)

23 THE CLERK: Do you solemnly swear or affirm the testimony
24 you are about to give in this case will be the truth, the
25 whole truth, and nothing but the truth, so help you God?

26

1 THE WITNESS: I do.

2 THE CLERK: Take a seat in the witness box.

3 THE WITNESS: Okay.

4 CINDY BARR, being first duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MCEACHIN:

8 Q: Captain Barr, if you could, please state your full name
9 for the record.

10 A: Cindy Raynor [phonetic] Barr.

11 Q: And, Captain Barr -- I keep calling you Captain. Would
12 you let the -- they jury know why I'm calling you Captain
13 Barr?

14 A: He is calling me Captain Barr because I work at the
15 Marion Police Department, and I've been there about 20 years
16 now.

17 Q: Okay. And you're a captain there at the police
18 department?

19 A: Yes, I am.

20 Q: And, Captain Barr, with regard to the murder
21 investigation that took place on February the 16th of 2013, did
22 you have some involvement in that case?

23 A: The only involvement I had was taking evidence to the --
24 to SLED.

25 Q: Okay. So you did, in fact, take some evidence to SLED?

CINDY BARR - DIRECT BY MR. MCEACHIN

1 A: Yes, I did.

2 Q: Okay. Captain Barr, I'm going to show you what's been
3 marked for identification purposes as State's Exhibit Number
4 1. You can open it up and take a look in there if you need
5 to. Are you familiar with State's Exhibit 1?

6 A: Yes.

7 Q: And what was State's Exhibit 1?

8 A: It was a hat that I had taken to SLED on August 18th,
9 2014.

10 Q: And where did you retrieve that piece of evidence from?

11 A: I retrieved that evidence from the custodian, Lieutenant
12 Smith, at the Marion Police Department. He's our evidence
13 custodian.

14 Q: And you retrieved it from him and you took it straight to
15 SLED?

16 A: Yes, I did.

17 Q: And when you got to SLED, what did you do with it?

18 A: I had turned it over to the people that collects our
19 evidence at SLED.

20 Q: Okay. And it was -- from the time you got it from
21 Lieutenant Smith until the time you got to SLED, was it in
22 your custody and control the whole time?

23 A: Yes, it was.

24 MR. MCEACHIN: Thank you. No further questions.

25 THE COURT: Okay. Cross-examination?

26

1 MR. ANDERSON: No, sir.

2 THE COURT: Okay. Thank you for your testimony, Captain.
3 You can step down.

4 MR. MCEACHIN: And, Your Honor, I ask that she be
5 relieved from her subpoena.

6 THE COURT: Okay. All right. Any objections from the
7 defense?

8 MR. ANDERSON: No, sir.

9 THE COURT: Okay. You're welcome to remain with us or
10 you're free to leave, ma'am.

11 THE WITNESS: I'm going to leave, sir.

12 THE COURT: Okay.

13 MR. MCEACHIN: Thank you, Your Honor. Your Honor, we're
14 going to check on the status of the next witness.

15 THE COURT: Sure.

16 (WHEREUPON, there was a pause in the proceedings until
17 the witness entered the courtroom.)

18 MR. MCEACHIN: Your Honor, the State would call
19 Investigator Greg Pike to the stand.

20 THE COURT: Okay.

21 THE CLERK: Place your left hand on the Bible and raise
22 your right hand. Do you solemnly swear or affirm your
23 testimony in the trial of this case shall be the truth, the
24 whole truth, and nothing but the truth, so help you God?

25 THE WITNESS: Yes, ma'am.

GREG PIKE - DIRECT BY MR. MCEACHIN

1 THE CLERK: Thank you. You may be seated.

2 GREG PIKE, being first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MCEACHIN:

6 Q: Investigator Pike, would you please state your full name
7 for the record?

8 A: Gregory Pike.

9 Q: And you go by Greg?

10 A: Yes, sir.

11 Q: Greg, if you would, please let the jury know what you do
12 for a living.

13 A: Currently, I'm a detective with the Marion County
14 Sheriff's Office. And at the time of that, I was a shift
15 supervisor.

16 Q: All right. Well, that was going to be my next question.
17 At the time of this incident back in February of 2013, you
18 said you were a shift supervisor?

19 A: Yes, sir.

20 Q: And what exactly is a shift supervisor? What do they do?

21 A: Run the shift, manage it, manage the people, make sure
22 they do what they're supposed to do.

23 Q: It may have been better for me to ask you what a shift is
24 first. What's a shift?

25 A: The group of people that work the particular hours and

1 the people on the road.

2 Q: And on February the 16th, 2013, were you working that day?

3 A: Yes, sir.

4 Q: And which shift were you working?

5 A: I believe it was the day shift.

6 Q: All right. And how many shifts to y'all have?

7 A: Two. Seven a.m. to seven p.m., and then p.m. to a.m.

8 Q: So you were on the seven a.m. to seven p.m. shift?

9 A: Yes, sir.

10 Q: And on that particular day, did you end up responding to

11 a call in the city limits of Marion?

12 A: Yes, sir.

13 Q: And what was that call in reference to?

14 A: Dispatch I think stated that the City of Marion needed

15 assistance on Upland Avenue with some shots fired, and that's

16 about all they told us at the time.

17 Q: And just so the jury is clear on this, who did you work

18 for at the time?

19 A: I work for the Sheriff's Office.

20 Q: Okay. And if it's in the city, can the Sheriff's Office

21 assist with cases?

22 A: Of course. Of course.

23 Q: And that's the call you responded to that day?

24 A: Yeah. We were just helping them out basically, assisting

25 them.

GREG PIKE - DIRECT BY MR. MCEACHIN

1 Q: Do you remember about what time of day it was?

2 A: I'm thinking around 9:30 -- ten o'clock.

3 Q: In the morning?

4 A: Yes, sir.

5 Q: And once you received that call, what did you do?

6 A: I was -- I was on Senator Gasque and I proceeded towards
7 Jones Avenue and, you know, was over that way driving on Jones
8 Avenue towards Main Street.

9 Q: And as you were driving, did you respond anywhere?

10 A: When I was coming onto Jones Avenue near the Tobacco Shop
11 or whatever you want to call it, the units had said that they
12 had him. They had him in custody. So I went on to Upland
13 Avenue to the scene where it happened at.

14 Q: Okay. And when you got to Upland Avenue, who was present
15 at the scene at the time you arrived?

16 A: I was the only law enforcement person there. EMS was
17 there, and then a few other people. Mainly, it was just EMS
18 and rescue personnel.

19 Q: And what did you observe when you got to Upland Avenue?

20 A: The victim was being wheeled out on a gurney, and then
21 just looking around I saw a couple of spent shell casings in
22 the carport.

23 Q: So you were the first law enforcement officer who arrived
24 on the scene?

25 A: Yes, sir. Everybody else was trying to find and catch

1 him.

2 Q: You said you saw some spent shell casings. Where were
3 those shell casings located?

4 A: They were, you know, in the carport. It's like a garage
5 but with no door on it, and they were kind of out there.

6 Q: All right. I'm going to show you, Investigator Pike,
7 what's been marked as State's Exhibits 22, 25, and 26, and
8 these have been admitted into evidence. Would you take a
9 second to look through those for me?

10 A: Yes, sir. Those -- those would be my -- the markers with
11 the 1 and 2 on them, those would be -- I got them out of my
12 vehicle.

13 Q: All right. Well, let's go through these one at a time so
14 the jury understands what we're talking about. First with
15 regard to State's Exhibit 22, can you tell the jury what that
16 is and what it shows?

17 A: You know, this is -- this is the house, and the shell
18 casings were -- as you can see them, there's two yellow cones,
19 one is 1 and one is marked 2, and each of them has a brass --
20 a spent shell casing right nearby.

21 Q: And with regard to State's Exhibit 25, what does that
22 show?

23 A: Just a closer view of it. There's the markers. It's
24 just a closer view.

25 Q: And finally with regard to State's Exhibit 26, what does

GREG PIKE - DIRECT BY MR. MCEACHIN

1 that show?

2 A: An even closer view. There's one shell casing and
3 there's the other.

4 MR. MCEACHIN: Your Honor, may I publish these?

5 THE COURT: Sure.

6 MR. MCEACHIN: Thank you.

7 BY MR. MCEACHIN:

8 Q: And while the jury is looking at that, how long did you
9 initially stay at

10 A: Maybe ten -- 15 minutes. I was just there until some
11 Marion city officers got there, until they could set up crime
12 scene tape.

13 Q: Okay. And let's explain that to the jury. When you say
14 set up some crime scene tape, what were they -- what do they
15 do when they're setting up crime scene tape?

16 A: Trying to keep everybody out of the area. They try to
17 rope it off with that yellow tape just so nobody, you know,
18 comes into the crime scene to disturb it.

19 Q: Okay. So that's the purpose behind the yellow tape is to
20 kind of keep everybody out of the crime scene?

21 A: Yes.

22 Q: And the purpose of that is what?

23 A: So they don't disturb anything, destroy anything, pick up
24 something or add something.

25 Q: And -- and when you had -- when you were out there, you

1 had EMS and Fire. Anybody else there prior to that?

2 A: I don't recall. Like I said, it was kind of hectic at
3 the time.

4 Q: And I think you said you were there for about ten or 15
5 minutes and then somebody from Marion City arrived?

6 A: Yes.

7 Q: And did they set up the crime scene at that point?

8 A: Yes.

9 Q: Once they set up the crime scene, what did you do?

10 A: After I, you know, knew they had it, I started looking
11 for other items that, you know, the subject had.

12 Q: And where all did you look?

13 A: I think I went through their backyard heading towards
14 Jones Avenue, just climbing fences and going through people's
15 backyards trying to figure out which way he ran.

16 Q: Ultimately, did you end up finding a piece of evidence?

17 A: Yes. I found a -- a stocking cap or a winter-like beanie
18 hat, and it -- I believe it had Elmo -- like, an Elmo figure
19 on it. Kind of distinguishing.

20 Q: I'm handing you what's been marked as State's Exhibit
21 Number 1. Would you open that up and tell me if you can
22 identify what's contained in State's Exhibit Number 1? Can
23 you identify that?

24 A: Yeah. That was the -- that was the stocking cap I call
25 it that I found.

GREG PIKE - DIRECT BY MR. MCEACHIN

1 Q: And you can put it back inside the bag for me. Now with
2 regard to State's 1, where did you end up finding that?

3 A: I found it next to a fence in a -- in a yard. I do not
4 know the address. Like I said, all I did was -- after I
5 located it, I put a marker by it. I put a marker by it and
6 advised Marion PD about it. I made sure it was still there
7 until somebody collected it.

8 Q: And on what street was the -- I guess that house located?

9 A: If I remember, it's closest to Jones Avenue.

10 Q: All right. I'm going to show you what's been marked as
11 State's Exhibit Number 40. Can you identify that?

12 A: Yeah. That was the house. It was along the fence to
13 that house.

14 Q: Okay. So you found State's 1, the Elmo stocking cap,
15 along the fence to this house?

16 A: Yes, sir.

17 Q: Now I'm going to show you what's been marked and admitted
18 as State's Exhibit 41. Can you describe for the jury what
19 that shows?

20 A: That's my marker and then the red spot is the cap --
21 stocking cap I would call it.

22 Q: So in reference to State's Exhibit 40, that would have
23 been on the left-hand side of that photograph?

24 A: It would be like that.

25 Q: Okay. And with regards to State's Exhibits 42, 43, 44,

1 45, and 46, take a quick look at those for me.

2 A: Okay.

3 Q: And what do those exhibits show?

4 A: The same -- just different views of the stocking cap.

5 You can see it's got the Elmo eyes and nose.

6 MR. MCEACHIN: For the record, Your Honor, he was
7 describing State's Exhibit 46.

8 THE COURT: Okay.

9 BY MR. MCEACHIN:

10 Q: But 42 through 46 just show pictures getting
11 progressively closer to --

12 A: Yes, sir.

13 Q: -- the stocking cap?

14 A: Yes, sir.

15 MR. MCEACHIN: Your Honor, permission to publish these to
16 the jury?

17 THE COURT: Okay. Yeah. Those are already in evidence.

18 MR. MCEACHIN: Yes, sir, Your Honor.

19 THE COURT: Okay.

20 BY MR. MCEACHIN:

21 Q: Greg, once you located the stocking cap, what did you do?

22 A: You know, after Marion City Police Department had it, I
23 -- I kept looking for a weapon.

24 Q: Okay. Did you have any success finding anything else?

25 A: No, sir.

GREG PIKE - DIRECT BY MR. MCEACHIN

1 Q: So the stocking cap was the last piece of evidence that
2 you found?

3 A: Yes, sir.

4 Q: And after you did that and after you continued your
5 search, did you have any other involvement in the case?

6 A: I was back there for a little bit when Captain Barr came
7 and she took the -- you know, she did some stuff, but then I
8 left. We started getting calls, and they had a bunch of
9 people out.

10 Q: All right. So once Marion City had it under control, you
11 kind of --

12 A: Yeah.

13 Q: -- were relieved at that point in time?

14 A: Yes, sir.

15 Q: Now, I do have two other photographs I want to show you.
16 With regard to State's Exhibit 21, can you identify that?

17 A: That's the residence.

18 Q: And what about the back right-hand corner of that
19 photograph?

20 A: That's where the stocking cap was.

21 Q: Okay. So this is the residence you're referring to?

22 A: Yes.

23 Q: And then the stocking cap was located right here?

24 A: Yes.

25 Q: Okay. Do you know approximately how far it was from --

1 and when you say the residence, which residence are you
2 talking about?

3 A: The victim's residence.

4 Q: Okay. And that's where the crime scene was?

5 A: Yes, sir.

6 Q: Roughly how far was it from the victim's residence to
7 where you found the stocking cap?

8 A: A hundred yards maybe.

9 Q: Okay. And then I'm also going to show you what's been
10 marked as State's Exhibit 48. Can you identify that?

11 A: Is that the next-door neighbor's?

12 Q: I'm going to wait for the jury to get through with these
13 and then I'll show you another picture.

14 (WHEREUPON, there was a pause in the proceedings.)

15 Q: While they're doing that, I'm going to show you State's
16 Exhibit 47. Can you identify that?

17 A: Oh, that's the backyard of the house -- the two-story
18 house.

19 Q: All right. And if you standing in the position where
20 that person who took that photograph is, how close were you to
21 the stocking cap?

22 A: Five -- six feet maybe.

23 Q: And can -- can you tell the jury what's in the back
24 right-hand corner of that photograph?

25 A: Yes. That's the house on Upland Avenue.

GREG PIKE - DIRECT BY MR. MCEACHIN

1 Q: That's the victim's residence?

2 A: The victim's residence.

3 Q: Within five or six feet of where that photo taken from,
4 that's where the stocking cap was found?

5 A: Yeah. It would have been, like, down here.

6 Q: And now that you've seen 47, can you identify 48?

7 A: Yeah. That's just a closer version of that picture.
8 It's just closer to the gate there.

9 Q: I understand you said that this is the victim's house
10 right here?

11 A: Yes, sir.

12 MR. MCEACHIN: Your Honor, may I publish?

13 THE COURT: Sure.

14 BY MR. MCEACHIN:

15 Q: Once you cleared the scene that day, Investigator Pike,
16 did you do anything else?

17 A: I wrote a statement.

18 Q: Okay.

19 A: I mean that's about all of my involvement.

20 Q: Other than writing a statement, any other involvement in
21 the case?

22 A: No, sir.

23 Q: So your primary purpose there was to assist Marion City
24 Police Department?

25 A: Yes, sir.

1 MR. MCEACHIN: I beg the Court's indulgence for just a
2 moment.

3 THE COURT: Sure.

4 MR. MCEACHIN: Investigator Pike, please answer any
5 questions Mr. Anderson may have for you.

6 THE COURT: Cross-examination?

7 MR. ANDERSON: Court's indulgence for just a moment, Your
8 Honor.

9 THE COURT: Sure.

10 CROSS-EXAMINATION

11 BY MR. ANDERSON:

12 Q: Investigator Pike, you said you were responding to a
13 call?

14 A: To assist.

15 Q: That call came over your radio?

16 A: Yes, sir.

17 Q: How long did it take you from the time you got that call
18 to get in that area?

19 A: Two -- maybe three minutes.

20 Q: At that point in time, nobody said, hey, he's in custody
21 or I've got a suspect in custody or anything like that?

22 A: Not when we first got the call, no.

23 Q: A few minutes later while you were en route, that's when
24 you found out someone was in custody?

25 A: Yeah. I believe so, yes.

GREG PIKE - CROSS BY MR. ANDERSON

1 Q: So you went ahead and responded to I guess the actual
2 crime scene?

3 A: Yes, sir.

4 Q: And that was the Upland Avenue address?

5 A: Yes, sir.

6 Q: Now, when you put out the markers that you've already
7 testified to, you never intended for that to be an exhaustive
8 search of the premises, did you?

9 A: I don't understand what you mean. I mean I was trying to
10 mark their evidence for them.

11 Q: Right. But you didn't say Marion City Police, I got
12 this. I'm going to mark all of the evidence.

13 A: Oh, no.

14 Q: You never said that, did you?

15 A: No, no, no, no.

16 Q: You didn't ever say, hey, Marion Police Department, I've
17 already found the evidence and marked it. Y'all can go about
18 your business and do other stuff?

19 A: Oh, no, sir. We were just there to assist. I was trying
20 to help out any way I could.

21 Q: You never insinuated or implied or told anyone I've got
22 everything?

23 A: No, sir.

24 Q: As far as you knew, after you responded somewhere else,
25 they were going to continue to -- I guess work the crime

1 scene?

2 A: Yes, sir.

3 Q: So you started -- I think you said going over fences,
4 things like that?

5 A: Yes, sir.

6 Q: Now, had anyone told you, hey, I think they went this
7 specific way?

8 A: I don't believe so.

9 Q: So you were just doing, like, a -- maybe starting off in
10 a small circle and then expanding it more and more and more?

11 A: Something like that, yes.

12 Q: Eventually, you found -- I think you said a red stocking
13 or a red cap?

14 A: Yes, sir.

15 Q: About a hundred yards away, is that what you said?

16 A: Approximately.

17 Q: After you found that, I believe you indicated you kept
18 looking for a weapon?

19 A: Mm-hmm.

20 Q: Was that a yes?

21 A: Yes. Sorry.

22 Q: How long did you look for the weapon?

23 A: I think maybe 30 -- 45 minutes, maybe even an hour.

24 Q: To your knowledge, were other people looking for a
25 weapon?

GREG PIKE - CROSS BY MR. ANDERSON

1 A: Yes.

2 Q: To your knowledge, was a weapon ever found?

3 A: I do not believe it was.

4 MR. ANDERSON: That's all the questions I have, Judge.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. MCEACHIN:

8 Q: Mr. Anderson was just asking you about -- about a weapon.

9 Other than marking those shell casings at as
10 shown on State's Exhibit 15 and finding State's Exhibit 1, the
11 Elmo hat, was there any other evidence that you found in this
12 matter?

13 A: No, sir.

14 MR. MCEACHIN: Your Honor, at this time, I'd move State's
15 1 into evidence.

16 THE COURT: Okay. And what says the defense?

17 MR. ANDERSON: I have no objection, Your Honor.

18 THE COURT: Okay. Without objection, Number 1 will be in
19 evidence on behalf of the State.

20 (WHEREUPON, State's Exhibit Number 1, a red Elmo stocking
21 hat, was admitted into evidence.)

22 MR. MCEACHIN: No further questions, Your Honor.

23 THE COURT: Okay. All right. Thank you, Officer. You
24 can step down.

25 MR. MCEACHIN: And, Your Honor, I ask that Investigator

1 Pike be released from his subpoena.

2 THE COURT: Okay. Any objection?

3 MR. ANDERSON: No objection, Your Honor.

4 THE COURT: Okay. Officer, you're welcome to stay with
5 us or you're free to leave.

6 THE WITNESS: Thank you, sir.

7 (WHEREUPON, there was a pause in the proceedings until
8 the next witness entered the courtroom.)

9 THE CLERK: Come this way, please, to be sworn. Place
10 your left hand on the Bible. Do you solemnly swear or affirm
11 that the testimony you give in this case shall be the truth,
12 the whole truth, and nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Thank you. Please take a seat.

15 VICKI HALLMAN, being first duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MCEACHIN:

19 Q: Good afternoon, Vicki.

20 A: Good afternoon.

21 Q: If you would, please state your full name for the record.

22 A: Vicki Hallman.

23 Q: And, Vicki, what do you currently do?

24 A: I am employed by the South Carolina Law Enforcement
25 Division. I'm currently in their regulatory department.

VICKI HALLMAN - DIRECT BY MR. MCEACHIN

- 1 Q: And how long have you been in the regulatory department?
- 2 A: Approximately five months.
- 3 Q: All right. Prior to working in the regulatory
- 4 department, what did you do?
- 5 A: For ten years before that, I was assigned to the latent
- 6 prints crime scene unit.
- 7 Q: All right. And if you could, please explain to the jury
- 8 what the latent prints crime scene unit is and what they do.
- 9 A: The latent print crime scene unit -- the crime scene
- 10 portion of it is -- of course, SLED is an assisting agency.
- 11 We respond at the request of a local agency to assist in the
- 12 processing of crime scenes.
- 13 We document those scenes. We collect evidence from those
- 14 scenes. Take them -- take that evidence back to our
- 15 laboratory for processing. As part of the latent prints
- 16 portion of it, if there are latent prints that need to be
- 17 identified, that unit or that department also does that. They
- 18 process items of evidence for latent fingerprints, and they
- 19 also do fingerprint comparisons.
- 20 Q: So back in February of 2013, you would have been in the
- 21 crime scene latent prints department?
- 22 A: Yes, sir, I was.
- 23 Q: And specifically on February the 16th of 2013, were you
- 24 working that day?
- 25 A: I was on call that day, yes, sir.

1 Q: Okay. And while you were on call, did you receive a call
2 to assist with a -- with an investigation?

3 A: Yes, we did.

4 Q: And where was that call based from or out of?

5 A: That call came in from the Marion Police Department to
6 assist with a homicide investigation.

7 Q: And at this time, where were you located?

8 A: I was actually at home that day because it was -- I
9 believe it was either a Saturday or a Sunday; so I was
10 actually at home that day.

11 Q: And where is home for you?

12 A: I actually live in Batesburg-Leesville, which is about 30
13 minutes on the other side of Columbia.

14 Q: All right. So once you got that call, what did you do?

15 A: We actually work in pairs at SLED for the crime scene
16 unit; so my partner was also notified. Usually for the two of
17 us, because at the time the partner that I had lived in North
18 Augusta, we actually rode separately. I would have gotten
19 dressed that morning in my uniform, gotten into my vehicle,
20 which is a -- at the time, it was a Ford F-250 pickup. I
21 would have put my blue light on and I would have responded to
22 Marion County.

23 Q: And do you recall -- do you recall approximately what
24 time you received the call?

25 A: I believe the call came in around eleven o'clock in the

VICKI HALLMAN - DIRECT BY MR. MCEACHIN

1 morning.

2 Q: And how long did it take you to get to Marion or what
3 time did you get to Marion?

4 A: I arrived on the scene at approximately 1:20 in the
5 afternoon, and the weather conditions -- it was actually kind
6 of like what yesterday was. It was kind of snowing and
7 raining intermittently on the way down and while we were on
8 the scene.

9 Q: Once you -- once you got to the scene, where did you
10 respond to?

11 A: If I may look at my notes so I can give you the exact
12 address?

13 Q: Certainly.

14 A: Let's see. here in Marion.

15 Q: Once you got to what did you do?

16 A: When we get to the scene, we actually like to receive a
17 general briefing from the -- someone who represents the local
18 agency on the scene because we need a little bit more
19 information than a lot of times what's provided when we
20 initially receive the call. So I would have been briefed by a
21 representative of Marion PD on the scene as to what had
22 occurred.

23 We would -- I would have done a walk through the scene
24 with them. I would have said can you walk -- can you walk
25 through the scene with me and show you -- show me what you've

1 already seen. Tell me -- kind of briefly just give me a
2 scenario of what happened so I kind of know where I need to
3 look for things.

4 And at that point, any evidence -- I would have gone back
5 and photographed the scene without any type of evidence
6 markers or anything along those lines, and then I would have
7 come back and put markers down and then re-photographed the
8 scene, and then we would have done evidence collection.

9 Q: And, Agent Hallman, I'm going to show you what has been
10 marked as State's Exhibits 15 through 48. I'm going to ask
11 that you take a quick glance over those for me and tell me if
12 you can identify them.

13 (WHEREUPON, there was a pause in the proceedings as the
14 witness complied.)

15 A: Yes, sir, I do.

16 Q: And please tell the jury what State's Exhibits 15 through
17 48 are.

18 A: These are a series of photographs that I took the morning
19 that we responded to the crime scene. It shows you a general
20 overall view of the residence where the incident occurred.
21 There was also some evidence that was located in a house that
22 was -- I believe it was directly behind and one yard over from
23 the Upland Avenue address, and there was some evidence, a
24 stocking hat, that was picked up there. So you actually have
25 a few photographs of that item and that area also in these

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1 photographs.

2 Q: Now, with respect to the actual crime scene location at
3 do you recall what evidence was collected
4 at the scene there?

5 A: Specifically, there were a couple of markers that Marion
6 Police Department had already placed on some of the evidence
7 prior to my arrival. I left those in and just added
8 additional markers. Let's see. Let me make sure I get it
9 exactly.

10 There was a cartridge case, which is basically what's
11 left when the bullet is actually shot out of the gun. A
12 cartridge case is what's left. I had a cartridge case at
13 marker 1 and marker 2. Marker 4, I actually had a bullet.
14 Marker 5, 6, and 7 were other cartridge cases in the front
15 yard. There was actually a blood drop or what appeared to be
16 a blood drop on the step at the back door that was marked.
17 And then, of course, we had the Elmo hat, which was in another
18 yard.

19 Q: Okay. Now, I'm going to hand you some exhibits now and
20 ask if you can identify them. So bear with me just a minute.
21 Agent Hallman, I'm going to hand you what's been marked as
22 State's Exhibit Number 10, and I'm going to ask that you look
23 through that and tell -- tell me if you can identify State's
24 Exhibit 10.

25 A: Yes, sir, I can.

1 Q: And what is State's Exhibit Number 10?

2 A: These would be the cartridge cases and the bullet that I
3 just mentioned. They were collected from marker 1, marker 2,
4 then a bullet from marker 4, and three cartridge cases, one
5 from marker 5, one from marker 6, and one from marker 7.

6 Q: And did you collect those items?

7 A: Yes, I did.

8 Q: And after you collected them -- I presume you collected
9 them from where?

10 A: They were actually in the yard at the Upton [sic] Road or
11 the Upton Street address.

12 Q: Once you collected them, did they stay in your care,
13 custody, and control?

14 A: Yes.

15 Q: What did you do with them once you collected them?

16 A: I would have put them -- we carry these little boxes for
17 evidence in our vehicles, and I actually marked on the outside
18 where I -- where they were located, what marker they were at.
19 They would have been stored in this. They would have been
20 taken back to the forensic laboratory and kept in a secure
21 location until that -- until I could log them into the
22 computer system and transfer them for additional processing.

23 Q: And when you say secure location, explain to the jury
24 what you mean by that.

25 A: When -- working at SLED in the forensic laboratory, we

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1 all have, like, a little name badge like a lot of people have
2 for work. There are certain areas in the laboratory that are
3 only accessible to employees of that area. The hall or the
4 area that we worked in, you had to access not only by your
5 scan card but also by a key. So only people who were issued
6 keys could get into that area.

7 And once we returned from that scene, I took them up, put
8 them in there -- in that area; so I actually had to use my
9 scan card and my key to get into the hallway, and then I had
10 to use another key to get into the room that I store the
11 evidence in until I can get it logged in.

12 Q: And the purpose behind all that security is what?

13 A: Basically so we can maintain the integrity of the
14 evidence. So somebody who is not authorized to be around the
15 evidence does not get access to the evidence.

16 Q: And with regard to State's Exhibit Number 10, that was
17 the procedure that you used?

18 A: Yes.

19 Q: Okay. I'm also going to show you what has been marked --
20 bear with me one moment -- as State's Exhibits 9 and 13. Can
21 you identify those items?

22 A: Yes, sir, I can.

23 Q: Okay. And what is State's Exhibit 9?

24 A: State's Exhibit 9 is an envelope that contains two
25 gunshot residue kits, one collected from Kemonie Lashawn Jones

1 and the other one from Stanley -- I think -- is it Witek?

2 Q: That's fine.

3 A: Mr. Witek.

4 Q: Okay. And where did you receive those or who did you
5 receive those from?

6 A: The gunshot residue kit from Mr. Jones, I actually took
7 with a chain of custody from Lieutenant Flowers from the
8 Marion Police Department. And the gunshot residue kit from
9 Mr. Witek was actually collected by the other SLED agent or
10 the other crime scene SLED agent who responded to the scene to
11 assist me.

12 Q: And once you received the items located in Number 9, what
13 did you do with them?

14 A: They're actually -- when I received them, they were both
15 already sealed closed. They would have been treated the exact
16 way that the cartridge cases were. They would have been put
17 in that secure location. They would have been logged into the
18 laboratory, and then they would have been forwarded to the
19 appropriate department for analysis.

20 Q: And what about State's -- is that 13?

21 A: Yes.

22 Q: State's 13?

23 A: State's 13 is a buccal swab that was collected from
24 Kemonie Jones. I received that also from Lieutenant Flowers,
25 also with a chain of custody. I would have taken it back,

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1 treated it the exact same way as the other items of evidence.

2 It was actually put into a pouch similar to this, actually
3 contained inside, and it would have been forwarded to the --
4 the DNA department for analysis.

5 Q: So treated with the same security measures as these other
6 items?

7 A: Absolutely. All items of evidence are treated the same.

8 Q: Thank you. Now, with regard to State's Exhibits -- I
9 believe these are 2 and 5, but let me make sure -- 2 and 4
10 actually. I'm going to ask you to take a look inside State's
11 Exhibit 2 and tell me if you can identify that.

12 A: Yes, sir, I can.

13 Q: And what is State's Exhibit 2 for ID?

14 A: It's a -- it's a black and a dark gray jacket.

15 Q: Okay. And did you take possession of that?

16 A: Yes. From Lieutenant Flowers.

17 Q: All right. On that same -- on the day of the incident?

18 A: Yes, sir.

19 Q: And what about State's 4?

20 A: That is -- it's a pair of black pants, and I would have
21 taken custody of those at the same time I took custody of the
22 jacket.

23 Q: Okay. And once you took custody of State's Exhibits 2
24 and 4, what did you do with them?

25 A: They would have been packaged separately because of the

1 analysis that was going to be performed on them. They would
2 have also been taken back to the laboratory, stored in the
3 secured location until they could have been logged into the
4 computer system, and forwarded to the appropriate department.

5 Q: Okay. So there was a plan for some analysis on the
6 clothing as well?

7 A: Yes.

8 Q: Going back to when you initially arrived at the crime
9 scene, you already told the jury on the ride in the weather
10 began to get worse. What was it like that day at the crime
11 scene?

12 A: It was snowing and raining intermittently. It would get
13 cold enough that it would start snowing, and then it would
14 start raining. It was bad enough that -- our cameras is one
15 of our most expensive piece of equipment, and they don't like
16 for us to expose it to rain. So I was actually walking around
17 with an umbrella taking the photographs that you saw in the --
18 or that you'll see in the State's exhibits.

19 Q: And I think you indicated to the jury the weather on that
20 day was very similar to the weather we had yesterday?

21 A: Yes, sir.

22 Q: Okay. How long were you at Upland Avenue initially?

23 A: We were there approximately two-and-a-half -- I think
24 two-and-a-half to three hours.

25 Q: And did you have occasion to go to another scene or

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1 another location to retrieve any evidence?

2 A: Yes.

3 Q: And where was that?

4 A: Let me get you the exact address. It's actually on Jones
5 Avenue, which is behind Upland. I was at a location that was
6 marked as

7 Q: Okay. And I'm going to show you now some -- some of the
8 photographs that you indicated that you took to help explain
9 that to the jury. All right. I'm going to show you
10 photographs or State's Exhibits 40 through 48. Please look at
11 those quickly.

12 A: Okay.

13 Q: And with regard to those exhibits, specifically Exhibit
14 40, what does that show?

15 A: Exhibit 40 actually shows the front of the residence
16 that's actually marked as 309-A.

17 Q: Okay. And is that the residence where you went to
18 retrieve that other piece of evidence?

19 A: Yes, sir, it is.

20 Q: And once you got there, where was the evidence located?

21 A: If you're facing the front of that residence, it would be
22 to the left-hand side; so it would be back over here. And
23 there's actually a fence behind and in the corner, and I was
24 actually basically in the corner where the fences came
25 together in that yard.

1 Q: And did you take photographs of the evidence marker and
2 the evidence that was located there?

3 A: Yes.

4 Q: If you could, please tell the jury what State's Exhibits
5 45 and 46 are.

6 A: State's 45 is a -- kind of a distant shot so that you can
7 actually see the actual evidence marker and the item of
8 evidence, and then State's 46 is actually just a close-up
9 photograph of the marker with the item of evidence.

10 Q: And in reference to the crime scene location at 318
11 Upland Avenue, how close was State's Exhibit 46 found?

12 A: It's actually -- Jones Avenue and Upland are back to
13 back; so the houses would have been back to back. And it was
14 one house -- one house over and one house down. So kind of
15 diagonal from the crime -- the -- the Upland Avenue address.

16 Q: All right. I'm going to hand you 47 and 48. Take a
17 quick look at those for me.

18 A: Okay.

19 Q: Can you identify those?

20 A: Yes.

21 Q: And what are those?

22 A: Basically, this is the back fence line. The stocking hat
23 is found over here in this back corner, and you can actually
24 see the house on Upland Avenue where the incident occurred.

25 Q: So it's pretty close?

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1 A: Yes.

2 Q: And finally, I'm going to show you what's been marked as
3 State's Exhibit Number 1 and also admitted into evidence. Can
4 you identify that?

5 A: Yes, sir, I can.

6 Q: And what is that?

7 A: That is the stocking hat that I collected in the backyard
8 at Jones Avenue at marker 3.

9 Q: That's the same stocking cap that's pictured in State's
10 46?

11 A: Yes.

12 Q: How long was it before you went from over to
13

14 A: Actually, once we arrived on the scene and I was briefed
15 on it and was told that there was a possible item that had
16 been discarded by the suspect, I actually left the Upland
17 address and actually responded over to first in
18 order to collect the stocking hat to prevent any type of
19 damage to possible DNA evidence that would be with the
20 stocking hat. So I actually left the initial scene shortly
21 after the arrival and went and got the hat from Jones Avenue,
22 and then went back to Upland and processed the actual scene.

23 Q: And -- and if you don't mind, please tell the jury when
24 you collected State's 1, the Elmo stocking cap, what did you
25 do with it?

1 A: One of the other first things that we do once we get on
2 the scene is we put on protective gloves or rubber gloves like
3 you see on a lot of TV shows just so we don't contaminate
4 evidence. I would have been wearing gloves and I would have
5 been changing them out while I was working this scene. And I
6 forgot exactly what you asked me. I'm sorry.

7 Q: That's quite all right. I was just simply asking once
8 you retrieved State's Exhibit 1, how did you package it and
9 what did you do with it?

10 A: It's actually in the bag here in court that I actually
11 collected it in at the scene.

12 Q: And once you collected it, did you secure it?

13 A: Yes.

14 Q: And what did you do with it?

15 A: It would have been put in the back of my truck and it
16 would have been locked in the back of my truck during the
17 processing of the scene in that paper bag, and I would have
18 folded it down and taped it closed.

19 Q: And you've already explained to the jury the procedure
20 you used with all these other items of evidence as far as
21 security and once it got to SLED. Did you use the same
22 procedure for State's 1?

23 A: Yes.

24 Q: Now, your total amount of time in Marion that day was how
25 long?

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1 A: Probably about six or seven hours.

2 Q: And once you cleared the scene at 318, where did you go?

3 A: I responded back to the Marion Police Department.

4 Q: And is that where you collected this evidence from
5 Investigator Flowers?

6 A: Yes.

7 Q: Other than collecting the evidence from Lieutenant
8 Flowers, what else did you do on that day?

9 A: Basically just -- the other thing that we do along with
10 taking photographs is we take notes and we complete, like, a
11 rough sketch. So I would have been taking notes the whole
12 time I was processing the scene and we would have completed a
13 rough sketch, and those would have actually been prepared in a
14 more acceptable format later on, but I would have been doing
15 note-taking and sketching also.

16 Q: And those sketches and note-taking would indicate where
17 particular pieces of evidence were found?

18 A: That's correct.

19 MR. MCEACHIN: I beg the Court's indulgence --

20 THE COURT: Sure.

21 MR. MCEACHIN: -- for just a moment, Your Honor.

22 BY MR. MCEACHIN:

23 Q: All right. Investigator Hallman, with regard to going
24 back to Upland Avenue, can you explain to the jury what is
25 photographed in State's Exhibit Number 24?

1 A: State's Exhibit 24 is a photograph of the driveway or a
2 portion of the driveway and a carport. It actually shows you
3 where items 1, 2, and 4 were located within the crime scene.

4 Q: And can you please explain to the jury what's shown in
5 State's Exhibit 30?

6 A: State's Exhibit 30 is the front of the residence. You
7 can actually see -- I believe it's a rake and a shovel in the
8 front yard near the hedges, and you can actually see where
9 items 5, 6, and 7 were located.

10 Q: And with regard to items 5, 6, and 7, what were those
11 items?

12 A: They're all cartridge cases.

13 Q: And with regard to 1 and 2?

14 A: One and 2 are also cartridge cases.

15 Q: And what about 4?

16 A: Four is actually a bullet.

17 Q: And when you say a bullet, just so the jury understands,
18 we're talking about what? The projectile itself?

19 A: Yes.

20 Q: No cartridge case?

21 A: Correct.

22 Q: Now, how far apart roughly are 5, 6, and 7 from 1 and 2?

23 A: This is the edge of the carport and this -- there would
24 be an area here and then this would kind of come together. So
25 10 to 15 feet probably.

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1 Q: So --

2 A: Rough guess.

3 Q: Ten to 15 feet?

4 A: Yes.

5 Q: So all these cartridge cases weren't found in the same
6 place -- directly in the same place?

7 A: No, they were not.

8 Q: After going back to the Marion Police Department and
9 collecting this evidence, what -- other than what you've
10 already explained to us, what else did you do on the 16th?

11 A: That would have been the -- the majority of the things
12 that we did on the 16th.

13 Q: And once you did that, where did you -- where did you go
14 from there?

15 A: We would have left the location and I would have went
16 back to the forensic laboratory in Columbia and dropped the
17 evidence off.

18 Q: Okay. And you've already explained that procedure to us?

19 A: Yes.

20 Q: Now, did you have occasion to receive a call at any time
21 other than the 16th regarding evidence in the case?

22 A: No, sir, I did not.

23 Q: Okay. So you didn't have any other calls about evidence
24 any days after that?

25 A: No, sir.

1 Q: All right. Other than what you did on the 16th, anything
2 else that you did with regard to this case?

3 A: Just if there was any evidence that needed latent print
4 processing, I would have processed it for latent fingerprints,
5 which in this case I don't believe there was.

6 Q: All right. And I did -- I need to take a step back for
7 just a minute because I think I forgot to ask you about
8 something. I'm going to hand you what's been marked as
9 State's Exhibit 11. Can you take a look at that for me?

10 A: Yes, sir.

11 Q: Can you identify State's 11?

12 A: It is a bullet that was collected at the hospital from
13 the victim's clothing.

14 Q: And would that also have been some evidence that you took
15 control of at SLED?

16 A: Yes. I actually received it from -- and I can't remember
17 the -- another officer from Marion Police Department while I
18 was on the scene at Upton.

19 Q: Okay.

20 A: Or -- excuse me -- Upland.

21 Q: Thank you.

22 MR. MCEACHIN: I beg the Court's indulgence for just a
23 second.

24 THE COURT: Certainly.

25 MR. MCEACHIN: Agent Hallman, that's all I have at this

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1 time. Please answer any questions Mr. Anderson may have.

2 THE COURT: Cross-examination?

3 CROSS-EXAMINATION

4 BY MR. ANDERSON:

5 Q: Agent Hallman, you earlier said you wanted to refer to
6 your notes. Is that -- are your notes -- do they consist of a
7 crime scene response sheet that is several pages long and then
8 also a crime scene investigation summary? Would that be your
9 notes?

10 A: Yes, sir.

11 Q: And you have those with you?

12 A: Yes, sir.

13 Q: Now, earlier you stated that when you arrive on scene,
14 you like to be briefed from, I guess, one of the officers that
15 is there or whoever is there in charge?

16 A: That's correct.

17 Q: And then you like to do a walk-through?

18 A: Yes, sir.

19 Q: Get shown the scene. Hey, this is where we found some
20 evidence. This is where we think something happened. Things
21 like that?

22 A: Yes, sir.

23 Q: And I believe you said that would give you an idea of
24 what you've got and then you can start looking for certain
25 things?

1 A: That's correct.

2 Q: Okay. I believe you stated that you are working for
3 SLED. Right now, you're in the regulatory department?

4 A: Yes, sir.

5 Q: Prior to that, ten years with the -- and I may pronounce
6 this wrong or say it wrong -- the latent print crime scene
7 unit?

8 A: That's correct.

9 Q: Now, at some point in time, did you become, I guess, the
10 senior agent?

11 A: Yes, sir.

12 Q: And the young man that helped you -- I say young man. He
13 might be older than Mr. McEachin right here, but I don't know
14 how old he is. But someone else helped you, and that was
15 Ricardo Prince?

16 A: That's correct.

17 Q: He was an agent. You were the senior agent in charge?

18 A: Well, the rank of senior agent is actually given at some
19 point in time at SLED when you've been there a certain amount
20 of years. So I -- I am classified as a senior agent because
21 of the amount of time that I've spent -- excuse me -- by the
22 amount of time I've been employed at SLED. When we respond to
23 crime scenes, we actually take turns being the primary person
24 on the crime scene because that person is responsible for the
25 paperwork and making sure everything is in order with the

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1 case.

2 Q: So you were the senior agent?

3 A: I was the senior agent, yes, sir.

4 Q: Okay. According to your crime scene response sheet --
5 and if I'm looking at this right, it is either ten or eleven
6 pages long; is that right?

7 A: Well, the response sheet itself is a single page.

8 Q: Okay.

9 A: And it has -- if -- you might be looking at what we
10 classify as data sheets also.

11 Q: All right. On the response sheet, which is the first
12 page, you got the call at 11:04; would that be right?

13 A: If that's what I've got typed up on the sheet, yes, sir.

14 Q: Okay. Well, I'll give you a chance to get to it.

15 A: That's correct.

16 Q: The next page that I have is a crime scene data sheet,
17 and that says date 2/16/13, time arrived 1320?

18 A: Correct.

19 Q: 1320 would be 1:20?

20 A: Yes, sir.

21 Q: At the very bottom, time departed scene 2/16/13, 1540?

22 A: Correct.

23 Q: So that would be 3:40?

24 A: Yes, sir.

25 Q: Now, also at the top of that page, it's got 309-A Jones

1 Avenue?

2 A: Actually, there are several sheets. We respond -- I
3 responded to the location, the
4 Avenue location, and the Marion Police Department. Which --
5 which one specifically are you looking at?

6 Q: The one that says scene address

7 A: Okay.

8 Q: Time arrived 1320, depart time 1520 -- or 1540; is that
9 right?

10 A: Yes, sir. That's what it says.

11 Q: All right. But you weren't actually at 309-A Jones
12 Avenue for two hours and 20 minutes?

13 A: No, sir. That was the time between the two scenes, the
14 309 and the 318 Upton [sic].

15 Q: You actually went to the 318 first, and then I think you
16 said you went over to 309 to get that evidence to protect it
17 from the elements and stuff like that?

18 A: That's correct.

19 Q: All right. But on this sheet, time
20 arrived 1320, time left 1540. So you were over there sometime
21 in-between those two time periods?

22 A: That's correct.

23 Q: Also on that same page where it's got examination and
24 process, you've got -- where it says blood/DNA, you've got an
25 X; is that right?

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1 A: That's correct.

2 Q: And then over on the far right-hand corner where it says
3 other, it says collection of hat worn by suspect; is that
4 right?

5 A: Hang on. Let me make sure I'm looking at the right
6 sheet. Yes.

7 Q: All right. The next page I have, it only has Special
8 Agent Ricardo Prince at the top. Do you have one that just
9 has his name?

10 A: Yes, sir, I do.

11 Q: Okay. And that's Carolinas Hospital Systems?

12 A: That's correct.

13 Q: All right. Now, moving over to another sheet, I've got
14 same 2/16/13, 1320. It's got your name at the top, Senior
15 Agent Hallman, Special Agent Prince, and it's got
16 Avenue, Marion, South Carolina.

17 A: Correct.

18 Q: And at the bottom it's got the same time, 2/16/13, 1540
19 again; is that right?

20 A: Yes.

21 Q: Examination process, you've got a SC diagram. Is that
22 crime scene diagram?

23 A: Yes, sir.

24 Q: All right. And then it says attire, footwear nothing,
25 GSR victim nothing, MCP victim nothing, but then you've got

1 blood/DNA and you've got that X; is that right?

2 A: Yes.

3 Q: Next column over, you've got firearms. You've got a

4 check by that; is that right?

5 A: Yes.

6 Q: Underneath that, you've got metal detector; is that

7 right?

8 A: Yes.

9 Q: A metal detector was not used in this case?

10 A: No, sir.

11 Q: Okay. Now, you took a lot of photos that day?

12 A: Yes, sir.

13 Q: As a matter of fact, in this same crime scene data stuff,

14 on one page you've got table of contents?

15 A: Yes, sir. That's administrative paperwork that goes with

16 the file.

17 Q: Okay. And it says photographs 85; is that right?

18 A: Yes, sir.

19 Q: All right. So between these pictures up here and other

20 pictures, you took approximately 85 pictures?

21 A: That's correct.

22 Q: Going back just for a moment, you want to get an idea of

23 what you're looking for so that you can look for certain

24 stuff; is that right?

25 A: Well, sometimes it helps. I'll get a look at everything,

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1 but it helps sometimes to know what the general story is as to
2 what occurred.

3 Q: You walked around the house?

4 A: Yes.

5 Q: At

6 A: Yes, sir, I did.

7 Q: Took multiple pictures?

8 A: Yes, sir.

9 Q: Eighty-five. We've already discussed it.

10 A: Yes, sir.

11 Q: Is that right?

12 A: Yes.

13 Q: With you being a senior agent, anything that stuck out to
14 you, you would have taken a picture of it?

15 A: Correct.

16 Q: You also had Agent Prince there. If something was
17 obvious to him, he would have said, hey -- did he call you
18 Vicki?

19 A: Yes.

20 Q: Hey, Vicki, let's take a picture of this.

21 A: Correct.

22 Q: That's one of the reasons he's there. You also had
23 Marion PD there at the scene; is that right?

24 A: Yes.

25 Q: They were walking around. If they had seen something

1 important, certainly they would have come to you and said, I
2 hate to bother you, but I think we've got something important
3 over here?

4 A: That's correct.

5 Q: As a matter of fact, we know they did that because you
6 went to

7 A: Correct.

8 Q: Would it be safe to say that some days you wish you could
9 get paid by the picture?

10 A: I've never thought of it that way, no, sir.

11 Q: You took multiple pictures in the yard?

12 A: Yes, sir.

13 Q: Multiple pictures in the driveway?

14 A: Yes.

15 Q: Multiple pictures of the -- I guess the garage is what I
16 would call it?

17 A: Yes.

18 Q: Pictures of his car? Pictures of -- or a car -- a green
19 car. Pictures of tools; is that right?

20 A: That's correct.

21 Q: Pictures of a calendar it looks like? Pictures of the
22 is that right?

23 A: Yes.

24 Q: You also took some pictures of some footwear; is that
25 right? Or some foot imprints?

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1 A: Yes, sir, I did.

2 Q: Approximately four pictures?

3 A: Yes.

4 Q: And it looks like they stepped on maybe an ant hill or
5 some dirt; is that right?

6 A: That's what it appeared to be, yes, sir.

7 Q: And made an imprint?

8 A: Yes.

9 MR. MCEACHIN: Your Honor, at this time, if Mr. Anderson
10 is going to question her about the -- the photographs, I'd ask
11 that he move them into evidence.

12 MR. ANDERSON: Your Honor, I don't have any more
13 questions about the footwear.

14 THE COURT: All right.

15 BY MR. ANDERSON:

16 Q: Going back to your page of items that were collected at
17 in Marion, South Carolina, I asked you
18 earlier about a metal detector, but that was not checked, was
19 it?

20 A: No, sir.

21 Q: Do you have a metal detector?

22 A: Yes, sir, I do.

23 Q: When you were processing the scene, were there bushes
24 around the yard?

25 A: There was shrubbery, well-trimmed shrubbery.

1 Q: Okay. Did you ever think that maybe a shell casing could
2 have landed in that?

3 A: No, sir.

4 Q: Did you ever check?

5 A: I checked the area, what was visible to the naked eye,
6 while I was there.

7 Q: I'm going to show you State's Exhibit 30. Do you see
8 three markings in there that are 5, 6, and 7?

9 A: Yes, sir.

10 Q: All right. And what was collected at 5, 6, and 7? Do
11 you recall?

12 A: Cartridge cases.

13 Q: All right. But you didn't feel the need to look any
14 further in those bushes?

15 A: I looked in that general area and did not see any other
16 evidence.

17 Q: Would it surprise you to know that another shell casing
18 was found in that general area?

19 A: No, sir, it wouldn't.

20 Q: Would it surprise you to know that a bullet fragment was
21 found in that general area?

22 A: No, sir.

23 Q: Your job is to collect and process evidence?

24 A: That's correct.

25 Q: And none of that evidence that was found the next day was

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1 ever turned over to you, was it?

2 A: Not to my -- no, sir. I didn't know anything about it.

3 Q: Going over to another page on your crime scene data
4 sheet, it's got a Marion Police Department, 1024 South Main
5 Street, Marion, South Carolina. Do you have that page?

6 A: Yes, sir.

7 Q: It's got a range meter checked at the bottom. What's a
8 range meter?

9 A: That's actually something that we use to measure
10 distance, and that was accidentally checked on that form.

11 Q: Accidentally checked?

12 A: Yes, sir.

13 Q: Okay. Now, you have your crime scene investigation
14 summary?

15 A: Yes, sir, I do.

16 Q: Let me back up just for a second. When you're processing
17 a scene, is there any minimum number of photographs you take?

18 A: No, sir, there's not.

19 Q: Any maximum number?

20 A: No, sir.

21 Q: As many as you feel needed?

22 A: As many as is appropriate for what the incident is.

23 Q: Okay. And this was a murder scene?

24 A: Yes, sir.

25 Q: Is there any minimum time of how long you process the

1 scene?

2 A: No, sir.

3 Q: In this case, between and
4 Avenue, you spent approximately two hours and ten minutes?

5 A: Yes, sir.

6 Q: You could have spent five hours there if you thought it
7 was necessary?

8 A: Depending on what the evidence was, yes, sir.

9 Q: All right. Your crime scene investigation summary, if
10 I'm reading it correct, it is twelve pages long?

11 A: Yes, sir.

12 Q: The day that it was prepared was May the 15th, 2013; is
13 that right?

14 A: That's the date that it was approved and sent from the
15 laboratory, yes, sir.

16 Q: You would have typed it up?

17 A: Yes, sir.

18 Q: On the crime scene attachments, 3 of 12 -- that's on page
19 3 of 12. Various things were collected?

20 A: Yes, sir.

21 Q: All of the dates say 2/16/13?

22 A: That's correct.

23 Q: And you've already indicated you aren't aware of any
24 other evidence that was found on 2/17; is that correct?

25 A: That is correct.

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- 1 Q: Now, on the second page -- and I'm going to -- I've got
2 crime scene attachments, and then right over to the side of
3 that, it says page 1 of 3. Now, it's page 3 of 12 where it
4 says crime scene attachments and it's page 1 of 3.
- 5 A: Okay.
- 6 Q: The next page would be page 2 of 3. That would be page 4
7 of 12. Under 0-1-8, you've got a box?
- 8 A: What -- I'm sorry. Tell me again what page you're on?
- 9 Q: Page 4 of 12.
- 10 A: Okay.
- 11 Q: On -- under the -- I guess you've got B -- I don't know
12 if that's 1-B and then you've got C. Do you see those on the
13 far left-hand column?
- 14 A: Are you talking about what's handwritten?
- 15 Q: Yes, ma'am.
- 16 A: Okay.
- 17 Q: All right. Number 0-1-8, you took a -- some shoes; is
18 that right?
- 19 A: Yes.
- 20 Q: It says one black/gray/red Air Flight athletic shoes,
21 size 10, collected from Kemonie Jones; is that right?
- 22 A: Yes.
- 23 Q: So you had footwear that was being worn by Kemonie Jones?
- 24 A: That's correct.
- 25 Q: The last page of your twelve-page report -- I'm sorry.

1 Page 11 is crime scene notes; is that right?

2 A: Yes.

3 Q: And then page 12 is the -- I guess the continuation of

4 your crime scene notes; is that right?

5 A: Yes.

6 Q: A lot of people looked for a firearm; is that right?

7 A: Yes.

8 Q: Did you ever look for a firearm?

9 A: Yes, sir, I did.

10 Q: Did Special Agent Prince ever look for a firearm?

11 A: He arrived later on in the scene. I actually assisted

12 when I was in the area where the -- the stocking hat was found

13 to assist and look in some of the areas in-between the two

14 residences, and then I went back to actually process the crime

15 scene and, as far as I know, Marion Police Department

16 continued to look for a weapon.

17 Q: To your knowledge, no weapon was ever found?

18 A: Not to my knowledge, no, sir.

19 Q: You indicated in your report that they looked along

20 possible paths, plural possible paths; is that right?

21 A: Yes, sir.

22 Q: So obviously, law enforcement or either you thought that

23 he could have gone in any number of different directions?

24 A: Yes.

25 Q: No one ever told you, hey, I had my eyes on the suspect

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1 the entire time?

2 A: I was told that he was visible to law enforcement for a
3 majority of the time. I don't know that I was specifically
4 told for the entire time. So we checked the paths around the
5 area where he was seen when he was on foot.

6 Q: All right. So no one told you they had eyes on him the
7 entire time?

8 A: I don't specifically recall being told that, no, sir.

9 Q: All right. If you would have been told that, don't you
10 think you would have included it in your crime scene notes?

11 A: I don't know that I would have because it didn't -- it
12 dealt somewhat with what my function was there, but it didn't
13 deal with it as much as it would have for Marion to include it
14 in their paperwork since they're the investigating agency.

15 Q: Also in your crime scene notes, you indicate that it does
16 not appear that anyone ever went inside the residence?

17 A: That's correct.

18 Q: Does it indicate anywhere in your crime scene notes or
19 the crime scene investigation summary or anywhere that there
20 were more than one suspect?

21 A: No, sir.

22 Q: SLED has other departments; is that right?

23 A: Yes, sir.

24 Q: I think they have a department that checks for GSR --

25 A: That's the --

1 Q: -- analyzes the GSR?

2 A: Yes, sir.

3 Q: I think you indicated earlier that if fingerprints would

4 have been found, you would have actually processed those?

5 A: Yes, sir.

6 Q: You didn't find any fingerprints?

7 A: No, sir.

8 Q: Clothes were given to you; is that right?

9 A: Yes.

10 Q: Did you receive clothes from the victim, Mr. Witek?

11 A: I did not.

12 Q: Did you receive clothes from Mr. Jones?

13 A: That's correct.

14 Q: Those could have been sent to another department?

15 A: They would have been sent to another department.

16 Q: SLED has got something that analyzes weapons; is that

17 right?

18 A: They have a firearms department.

19 Q: Do they also have anything that analyzes DNA?

20 A: Yes.

21 Q: Do they have any other departments other than what we've

22 just talked about?

23 A: Well, are you talking specifically about the laboratory

24 or are you talking about SLED in general?

25 Q: The laboratory.

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1 A: There's also a toxicology department and a drug ID
2 department.

3 Q: Do you have a department that can compare, like, tire
4 prints?

5 A: Yes, sir.

6 Q: Do you have a department that can compare shoe prints?

7 A: Yes, sir.

8 MR. ANDERSON: That's all the questions I have, Judge.

9 THE COURT: Anything in redirect?

10 MR. MCEACHIN: No, sir, Your Honor.

11 THE COURT: Okay. Thank you for your testimony, ma'am.
12 You can step down.

13 THE WITNESS: Thank you, sir.

14 MR. MCEACHIN: I ask that she be relieved from her
15 subpoena, Judge.

16 MR. ANDERSON: No objection.

17 THE COURT: You're relieved from your subpoena.

18 THE WITNESS: Thank you.

19 THE COURT: You're welcome to stay with us or you're free
20 to leave. Let's take a -- about a ten -- 15-minute break.

21 Madam Forelady and ladies and gentlemen of the jury, I ask
22 that you go back to your jury room and take a little break.

23 Be reminded that -- don't start any discussions concerning
24 this case among yourselves and we'll -- we'll start back in
25 just a few minutes. Thank you.

1 (WHEREUPON, the jury exited the courtroom at 2:58 p.m.)

2 (WHEREUPON, there was a break in the proceedings from
3 2:59 p.m. until 3:16 p.m.)

4 THE COURT: All right. Are we ready to start back?

5 MR. MCEACHIN: Yes, sir, Your Honor.

6 THE COURT: Solicitor, for kind of timing purposes, how
7 many more witnesses do you anticipate?

8 MR. MCEACHIN: Your Honor, ideally -- ideally, I would
9 like to get through four more today if possible. We've got
10 Ms. Clayton and two other individuals that traveled from SLED
11 and then one individual from Charlotte.

12 THE COURT: Okay.

13 MR. MCEACHIN: If we can get through those today, Your
14 Honor. I mean I anticipate the State could be through right
15 around -- hopefully, around lunchtime tomorrow.

16 THE COURT: Okay. All right.

17 MR. MCEACHIN: Maybe a little later thereafter.

18 THE COURT: Okay. All right. Very good. Let's bring
19 the jury out, please, Mr. Evans.

20 (WHEREUPON, the jury entered the courtroom at 3:17 p.m.)

21 THE COURT: All right. Let the record reflect the jury
22 is back in. Solicitor, you may proceed.

23 MR. MCEACHIN: Thank you very much, Your Honor. We'd
24 call Jennifer Clayton to the stand.

25 THE CLERK: Ms. Clayton, please come this way and let me

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1 swear you in, please. Place your left hand on the Bible and
2 raise your right hand. Do you solemnly swear or affirm that
3 you shall tell the truth, the whole truth, and nothing but the
4 truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: You can have a seat.

7 JENNIFER CLAYTON, being first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MCEACHIN:

11 Q: Good afternoon. One thing I will tell you about this
12 courthouse is the acoustics are pretty bad; so I do need you
13 to speak up and make sure everyone on the jury can hear you.
14 Okay?

15 A: Okay.

16 Q: Would you please state your full name for the record.

17 A: Jennifer Clayton, C-l-a-y-t-o-n.

18 Q: And, Jennifer, where are you employed?

19 A: I'm currently employed by the South Carolina Law
20 Enforcement Division, also known as SLED.

21 Q: In what capacity?

22 A: I'm currently a DNA analyst in the forensics building.

23 Q: And, if you could, would you tell the jury a little bit
24 about your background?

25 A: I earned a Bachelor's of Science in biology from the

1 University of North Carolina at Chapel Hill. I've also taken
2 classes at N.C. State and USC. My course work includes
3 molecular biology, genetics, biochemistry, and statistics. I
4 completed an internship with the North Carolina State Bureau
5 of Investigations, molecular genetics department, which is the
6 equivalent of SLED's DNA department.

7 I original hired on with SLED as a forensic technician,
8 and I worked as a forensic technician for two years before
9 being hired as a DNA analyst. Once I was hired as a DNA
10 analyst, I completed a one-year training program under the
11 supervision of another qualified analyst, and I did case work
12 under his supervision before I was allowed to do case work on
13 my own.

14 Q: And how long have you been with SLED?

15 A: Approximately twelve years.

16 Q: And during that entire period of time, you've either
17 served as a forensic technician or a forensic scientist?

18 A: That's correct.

19 Q: Now, specifically regarding your duties as a DNA analyst,
20 would you let the jury know kind of what the responsibilities
21 are that are associated with that position?

22 A: Yes. When evidence comes in, it may have DNA on it and
23 it's significant to a crime or may be significant to a crime.
24 That evidence is either sent directly to the DNA department or
25 processed and then the results of that processing are sent to

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1 the DNA department.

2 As a DNA analyst, I attempt to develop DNA profiles from
3 evidence that's submitted, and then I also attempt to develop
4 DNA profiles from standards that are submitted so that a
5 comparison can be made. A standard is a sample that's taken
6 directly from an individual; so the DNA profile that's
7 developed from that item is known to come from that particular
8 individual.

9 Q: And specifically with regard to the past twelve years
10 while you've been at SLED, how many items of evidence or
11 standards have you had the ability or have you had the
12 opportunity to analyze?

13 A: I don't have a count, but I would estimate it's probably
14 in the thousands.

15 Q: And during that period of time since you've been working
16 as a DNA analyst, have you ever had to testify in court
17 before?

18 A: Yes, I have.

19 Q: And have you ever been qualified as an expert in the
20 field of DNA analysis?

21 A: Yes, I have.

22 Q: On how many occasions?

23 A: Approximately 35 times.

24 Q: And of those 35 times, how many were in the state of
25 South Carolina?

1 A: All of them were in the state of South Carolina.

2 Q: And was your testimony in all of those cases related to
3 DNA analysis?

4 A: Yes, they were.

5 MR. MCEACHIN: Your Honor, at this time, I'd move to
6 qualify Ms. Clayton as an expert in the field of DNA analysis.

7 THE COURT: Okay. Any examination of this witness
8 concerning qualifications?

9 MR. ANDERSON: No, sir.

10 THE COURT: Okay. All right. Do you have any objection
11 to the Court finding Ms. Clayton an expert in the field of DNA
12 analysis?

13 MR. ANDERSON: No, sir.

14 THE COURT: Okay. Thank you very much. Madam Forelady
15 and ladies and gentlemen of the jury, let me just give you an
16 instruction or explanation rather.

17 Normally, a person cannot give opinion testimony.
18 Normally when a person testifies, they must testify as to what
19 they either saw, heard or sensed by smell or something of that
20 nature. However, there is an exception when someone is
21 qualified because of education or experience. They are
22 permitted to give their opinion in certain areas if the Court
23 qualifies them that way.

24 This Court finds that Jennifer Clayton is qualified as an
25 expert in the area of DNA analysis to give opinion testimony

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1 in that area. But that does not mean that you must accept her
2 opinion, but it is evidence for you to use in any way you see
3 fit and give it the weight and credibility that you believe is
4 just and appropriate.

5 Solicitor, you may proceed, sir.

6 MR. MCEACHIN: Thank you very much, Your Honor.

7 BY MR. MCEACHIN:

8 Q: Jennifer, if you don't mind, please explain to the jury
9 in somewhat simple terms what DNA is.

10 A: DNA is a long-chain chemical and it's found in every cell
11 of the body except for the red blood cells, and we inherit
12 half of our DNA from our mother and half of our DNA from our
13 father. And we are able in forensics to develop a DNA profile
14 from this DNA, and a DNA profile as it's reported is typically
15 just reported as a set of numbers, kind of like a Social
16 Security number.

17 And with the exception of identical siblings, no two
18 individuals are born with the same DNA profile, and this makes
19 it useful in forensics because we're able to develop DNA
20 profiles from evidence and DNA profiles from standards to do a
21 comparison to see if the DNA profile from the evidence matches
22 the DNA profile from a standard.

23 Q: And you actually just hit on it when you were testifying.
24 No two individuals possess the same DNA?

25 A: Identical siblings have the same DNA profile, but other

1 than identical siblings, no. And they've found even with
2 identical siblings, once you go into an even more detailed DNA
3 test than the one that's typically done in forensics, you can
4 differentiate between identical siblings as well.

5 Q: And with regard to DNA testing, can you explain to the
6 jury your process and your procedure when you either receive a
7 piece of evidence or a standard how you go through that
8 process or procedure?

9 A: When evidence is received, the first step that I do is to
10 separate the DNA from whatever it's in or on. It's separated
11 from, for instance, a cotton swab that it's on. It's
12 separated from the other parts of the cell so that I end up
13 with a tube of liquid with just DNA in it.

14 And from there, we test 15 locations plus another one
15 that indicates the sex of the individual, and so there's
16 several steps to that. And when we've gone through all the
17 steps to target a particular amount of DNA and make copies of
18 those 15 locations that we're interested in, we run it on an
19 instrument and that uses software to interpret the results,
20 and those results are recorded as a sequence of numbers, in
21 other words a DNA profile.

22 Q: And specifically, did you have occasion to test anything
23 related to a murder charge out of the County of Marion from
24 February the 16th of 2013?

25 A: Yes, I did.

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1 Q: And -- bear with me just a moment. Did you receive a set
2 of buccal swabs from Kemonie Jones?

3 A: Yes, I did.

4 Q: And can you identify State's Exhibit Number 13?

5 A: Yes. This would be the buccal swabs that I received.
6 The item is in a SLED heat-sealed pouch. When evidence comes
7 in, it's given a label with the lab number that's assigned to
8 the case when it's submitted to SLED, as well as the item
9 number. In this case, Kemonie Jones' buccal swabs were
10 assigned the item number 12.

11 Additionally, I see the -- my initials and the date from
12 when I resealed this pouch of evidence. I also wrote the lab
13 number and the item number, as well as my initials, on the
14 inside envelope that was originally submitted to SLED.

15 Q: Thank you. And this was one of the items that you ended
16 up testing?

17 A: That's correct.

18 Q: And were you able to establish a DNA profile for Kemonie
19 Jones from that -- from that item?

20 A: Yes. I was able to develop a DNA profile.

21 Q: Thank you.

22 MR. MCEACHIN: Your Honor, at this time, I'd move State's
23 Exhibit 13 into evidence.

24 THE COURT: What says the defense?

25 MR. ANDERSON: No objection, Your Honor.

1 THE COURT: All right. Without objection, it will be
2 Number 13 in evidence for the State.

3 (WHEREUPON, State's Exhibit Number 13, buccal swabs from
4 the defendant, were admitted into evidence.)

5 MR. MCEACHIN: Thank you, Your Honor.

6 BY MR. MCEACHIN:

7 Q: And, Ms. Clayton, you also had occasion to test some
8 swabs from a red Elmo hat; is that correct?

9 A: That's correct.

10 Q: And how many swabs do you recall, if you can recall, were
11 taken from the red Elmo hat?

12 A: May I refer to my notes?

13 Q: Absolutely.

14 A: One swab was taken from the Elmo hat.

15 Q: Was anything else collected from that hat?

16 A: Yes. Three hairs were collected from the hat.

17 Q: And with respect to the swab, as well as the hairs, were
18 you able to conduct analysis on those items?

19 A: Yes. I did take those items through DNA analysis.

20 Q: And with regard specifically to the swab that came from
21 the hat, what was your result of your analysis once you did
22 that swab?

23 A: The DNA profile developed from that item was a mixture of
24 at least three individuals and, due to the complexity of that
25 mixture, it was determined that sample was not suitable for

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1 comparison.

2 Q: And if you could, would you explain to the jury what you
3 mean about not suitable for comparison?

4 A: Okay. First, to explain a mixture, as I said before,
5 when we -- we inherit half of our DNA from our mother and half
6 of our DNA from our father, and we test 15 locations. And so
7 typically, as I said, it's reported in numbers. Each location
8 we expect either one number or two numbers at a location. If
9 there's one number, it means we inherited the same number from
10 our mother and from our father. If it's two numbers, it means
11 we inherited one number from our mother and the other number
12 from our father. So when we see more numbers than that, we
13 see three numbers, four numbers, five numbers at a location,
14 that means there's a mixture. It means more than one
15 individual donated DNA to this item.

16 And in this particular case, at least three individuals
17 and possibly more individuals donated DNA to the item. And
18 based on the information obtained from the instrument, there
19 are indications that there may be some information missing
20 from the mixture, and so that makes it difficult to exclude
21 people. I'm not able to exclude people because there may be
22 information missing from the mixture.

23 Additionally, if I were to include someone in the
24 mixture, I have to put weight to that inclusion, and that's
25 done by calculating a statistic that says if I chose an

1 individual at random from the population, what is the
2 probability that that individual would have a DNA profile that
3 could have contributed to that mixture.

4 So if the probability is one in a million, that means
5 they're -- it's not very likely that you'd choose an
6 individual at random that would just happen to have a DNA
7 profile that could have contributed to the mixture. If the
8 profile is one in two, that means it's very likely that you
9 could just by chance choose someone from the population that
10 could have contributed to the mixture.

11 If I'm unable to develop that -- that probability,
12 calculate that statistic, I can't give any weight to an
13 inclusion. I can't say if it's highly likely that you would
14 choose someone at random from the population or very unlikely
15 that you would choose someone at random from the population
16 that could have contributed to that mixture. And because I
17 can't add any weight to that, I can't offer a conclusion
18 saying someone was included. And since I'm unable to include
19 anybody from -- to the mixture and I'm unable to exclude
20 anyone from the mixture, it's not suitable for comparison to
21 the standards.

22 Q: So just to make sure I understand correctly, with regard
23 to the swab you received from the Elmo cap, there were at
24 least three different DNA mixtures or profiles that came from
25 that?

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1 A: Right. There -- we are unable to separate and say this
2 part of the mixture goes to one individual, this part of the
3 mixture goes to another individual. I'm only able to say that
4 at least -- at least three people contributed to that mixture.

5 Q: So would it be fair to say with regard to the Elmo hat,
6 based on the complexity of the profile that was established,
7 you can't include the defendant as one of the individuals
8 wearing the hat?

9 A: Right. Whether I had one standard, ten standards or 100
10 standards, I would never be able to say based on these results
11 and the statistics that we use that someone was included or
12 that someone was excluded. There just wouldn't be a
13 comparison made.

14 Q: And that was my follow-up question. You wouldn't be able
15 to exclude him either?

16 A: No. That's correct.

17 Q: Okay. And one -- one question I did want to ask you
18 about that is -- there was some testimony regarding a dog
19 picking up the Elmo hat. Would -- would a dog picking it up
20 in its mouth -- would that affect your results in any way?

21 A: No. The kit that we use -- the process that we use to
22 develop our DNA profile is human specific; so we wouldn't
23 develop a profile from a dog.

24 Q: Okay. And specifically with regard to the Elmo hat, you
25 can't say the defendant was or was not in possession of it?

1 A: No. Based on the results that I have, I cannot make a
2 conclusion about that.

3 Q: What about with regards to the hairs that were found?

4 A: There were three hairs from the -- two of the hairs I was
5 unable to develop a DNA profile. That just means that there
6 wasn't enough DNA present for our testing. There's a --
7 there's a -- there has to be a certain amount of DNA present
8 before we can obtain a result. From the other hair, a partial
9 DNA profile was developed from Item 13.2.1, which was one of
10 the hairs, and that profile is from an unidentified individual
11 and does not match Kemonie Jones.

12 Q: Okay. And with regard to that hair -- I mean I think we
13 already know the answer to this, but with regard to that hair,
14 were you able to link the DNA profile you established from
15 that hair with one of the three complex DNAs that were found
16 in the swab of the hat?

17 A: No. Once the mixture was declared not suitable for
18 comparison, nothing else was done with it. So -- and we
19 typically do not compare evidence to evidence either.

20 Q: All right. Now, assuming for a minute based on your
21 field of expertise that that hair did match one of the other
22 standards that was associated, there would still be two other
23 profiles that you were unable to compare based on the
24 complexity; is that fair to say?

25 A: Yes. We're not really able to differentiate profile one,

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1 profile two, and profile three in a mixture. It's just a
2 mixture. But yes, even if you could say that this individual
3 was included a possible contributor -- the individual that
4 left the hair on the hat was included as a possible
5 contributor, which I can't say, there would still be at least
6 two other individuals that had contributed to that mixture,
7 which means at least three individuals have had hat -- have
8 had contact with the hat and left DNA on the item.

9 Q: Now, one thing I want you to explain to the jury,
10 Jennifer, if you don't mind. Can you explain to the jury what
11 touch DNA is?

12 A: Touch DNA and ownership DNA are very similar. Touch DNA
13 is when you touch or handle an item, put your hand on a
14 countertop, pick up a hammer. Ownership is when you're trying
15 to determine who might have worn an item. And in both cases,
16 the DNA profile that's developed is developed from skin cells.
17 We always leave -- we always -- we're constantly shedding skin
18 cells, and sometimes when we handle an item or we wear an
19 item, we leave some of our skin cells on that item, and that's
20 what we refer to when we refer to touch DNA or ownership DNA.

21 Q: And can you also get DNA from blood or other bodily
22 fluids?

23 A: Yes. Blood, semen, and saliva are all excellent sources
24 of DNA.

25 Q: Comparing the two, touch DNA with your fluid DNAs, where

1 -- is there a situation where it's more likely to find
2 something than another situation?

3 A: If someone leaves blood on an item, there's a very high
4 probability that you'll get a very good profile off of the
5 item. Touch DNA, it's very common to get mixtures or no
6 profile at all or a very partial profile that isn't sufficient
7 for comparison.

8 Q: And with regard to the Elmo hat, is what was found touch
9 DNA?

10 A: Right. It would be -- it would be considered ownership
11 because we were trying to determine who was wearing the hat,
12 but again, it would be those shed skin cells that someone
13 leaves behind when they wear an item.

14 MR. MCEACHIN: Thank you very much. Please answer any
15 questions Mr. Anderson has for you.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION

18 BY MR. ANDERSON:

19 Q: Ms. Clayton, on your -- and you've got your notes with
20 you?

21 A: Yes.

22 Q: Items analyzed, twelve. That was the swab that was taken
23 from Mr. Jones?

24 A: Yes. That's correct.

25 Q: And tell me what exactly is a -- is it a buckle? Is it a

JENNIFER CLAYTON - CROSS BY MR. ANDERSON

1 Buccal? What's it called?

2 A: We typically refer to it as a buccal swab. It is common
3 some people pronounce it buccal.

4 Q: Buccal swab? That was given to you by someone who took
5 it from Mr. Jones?

6 A: It was submitted to SLED and then I retrieved it from our
7 evidence control department.

8 Q: And it was labeled as swab from Mr. Jones or Kemonie
9 Jones?

10 A: I believe the labeling -- I can't remember the exact
11 layout of the labeling on the package. It did have the name
12 Kemonie Jones written on the envelope.

13 Q: And then 13.1 is the swab from the Elmo hat collected
14 from marker 3; is that right?

15 A: That's correct.

16 Q: 13.2.1, hair, 13.2.2, hair, 13.2.3, also hair; is that
17 right?

18 A: That's correct.

19 Q: Now, just a few minutes ago, you were talking about
20 different ways you could -- or different things you can get
21 DNA from. You can get DNA from hair; is that right?

22 A: That's correct.

23 Q: And you can get DNA from semen?

24 A: That's correct.

25 Q: You can get DNA from sweat?

1 A: Well, the skin cells that are contained in sweat.

2 Correct.

3 Q: You can get DNA from saliva?

4 A: Correct.

5 Q: And certainly, as you just indicated, one of the best
6 forms is blood?

7 A: That's correct.

8 Q: Other than the hat, was anything sent to you for
9 examination purposes?

10 A: Those were the -- that was the only items I received, the
11 swab from the hat and the three hairs from the hat.

12 Q: No --

13 A: As well as the buccal swab from Kemonie Jones.

14 Q: No shell casings were sent to you?

15 A: I did not receive swabs from shell casings, no.

16 Q: No swabs from, like, a bullet fragment or anything like
17 that?

18 A: No. I did not receive swabs from a bullet.

19 Q: No swabs from a possible crime scene other than the Elmo
20 hat?

21 A: No. Those are the items that I received.

22 Q: You can only test what is actually given to you?

23 A: That's correct.

24 Q: So you don't leave I guess Columbia and go, hey, guys,
25 you've got to send me more stuff than this. This isn't

JENNIFER CLAYTON - CROSS BY MR. ANDERSON

1 enough?

2 A: No. That's -- it's up to the submitting agency and the
3 Solicitor's Office to determine which items they consider
4 significant.

5 Q: Now, as far as touch DNA, there's no way the human body
6 can -- and this may not come out right -- limit the DNA they
7 put on an item, is there? I mean I can't go -- I'm going to
8 put this hat on, but I don't want any of my DNA to get on this
9 hat. I can't do that, can I?

10 A: Well, no. There are different things that will cause a
11 variation in how much DNA is left behind on an item. For
12 instance, they found that if you wash the skin very close in
13 time to when you touch something, it will leave DNA behind --
14 more DNA -- or less -- sorry -- less DNA behind than if it's
15 been quite some time since you've washed your hands and then
16 touched an item. But you're always going to shed skin cells,
17 and different individuals are going to shed different amounts
18 of skin cells. And even the same individual will shed
19 different amounts of cells at different times.

20 Q: Also, you can't control how much perspiration or bodily
21 fluids you leave behind on something. I mean if you're
22 sweating and you put a hat on, your sweat is going to get on
23 that hat. I mean you can't keep your sweat from not getting
24 on the hat, can you?

25 A: That's correct. If you're sweating, it will absorb into

1 the hat. That's correct.

2 Q: If you're breathing through the -- I guess the mouthpiece
3 on the Elmo hat, some of your saliva may be on the material
4 around the -- the mouthpiece?

5 A: That's possible. Yes, sir.

6 Q: The more you put the item on and off, would that have a
7 tendency to leave more potential DNA?

8 A: The more you wear an item, yes, that will increase the
9 possibility of leaving your DNA behind at a level that's
10 detectable.

11 Q: And you had everything you needed to develop a profile or
12 standard from Mr. Jones?

13 A: That's correct.

14 Q: And you weren't able to find anything that connected him
15 to that item?

16 A: The mixture was not suitable for comparison. So --

17 Q: So no?

18 A: No.

19 Q: Thank you.

20 MR. ANDERSON: Judge, that's all the questions I have.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY MR. MCEACHIN:

24 Q: You can't say Kemonie Jones was not wearing that hat, can
25 you?

JENNIFER CLAYTON - REDIRECT BY MR. MCEACHIN

1 A: No. I cannot make a determination one way or the other
2 as to whether or not he was wearing the hat.

3 MR. MCEACHIN: Thank you. Nothing further.

4 THE COURT: Okay. Thank you, ma'am, for your testimony.
5 You can step down. And do you want this witness excused I
6 assume?

7 MR. MCEACHIN: Yes, sir, Your Honor.

8 THE COURT: Okay. Thank you for your testimony, and
9 you're free to leave or you're certainly welcome to stay with
10 us.

11 MR. MCEACHIN: Your Honor, the State would call Dan
12 DeFreese to the stand.

13 THE COURT: Okay.

14 (WHEREUPON, there was a pause in the proceedings until
15 the next witness entered the courtroom.)

16 THE CLERK: Mr. DeFreese, come this way. Place your left
17 hand on the Bible and raise your right hand. Do you solemnly
18 swear or affirm to tell the truth, the whole truth, and
19 nothing but the truth, so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Thank you. Go ahead and have a seat.

22 DAN DEFREESE, being first duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MCEACHIN:

1 Q: Dan, if you would, please state your full name for the
2 record.

3 A: My name is Frank Dan DeFreese. That's D-e-capital F-r-e-
4 e-s-e.

5 Q: Dan, who do you work for?

6 A: I work for the South Carolina Law Enforcement Division in
7 the forensic services laboratory in Columbia.

8 Q: And do you have a specialty that you deal with in the
9 forensic services laboratory?

10 A: Within the laboratory, I'm assigned to the department
11 where we do the analysis of firearm and tool mark evidence.

12 Q: And what are -- and I guess -- I think most jurors would
13 know what a firearm is, but what is tool mark evidence?

14 A: Well, firearms identification is actually a subspecialty
15 of tool mark identification. The principle being that when an
16 object is -- is struck or impressed by the tool, the harder
17 tool will leave a mark on the softer object. That mark, when
18 it's sufficient and when it's unique, can be identified back
19 to a particular tool.

20 That most often occurs, for instance, when physical
21 security devices, like locks or safes or some other mechanism,
22 is attacked by a tool, like a hammer or a chisel or a bolt
23 cutter. In those cases, it's possible some of the time to
24 identify the particular tool that made the attack.

25 Now, firearms identification uses the same principles,

DAN DEFREESE - DIRECT BY MR. MCEACHIN

1 only in firearms identification it's the bullet or the
2 cartridge case, for instance, that's being marked by the tool,
3 which in this case is a firearm, because the firearm will
4 leave unique identifying marks on bullets fired in a
5 particular gun barrel, and they'll leave unique identifying
6 marks on cartridge cases, the marks that were left over from
7 the manufacturer or from the use or abuse to the gun.

8 Q: So -- and I know this is probably not the exact
9 terminology, but it's almost like a firearm can leave a
10 fingerprint on the casing or on a bullet. Would that be fair
11 to say?

12 A: It's more nearly like leaving a signature, you know, much
13 in the same way as all of our signatures are a little bit
14 different. A fingerprint is more like a rubber stamp, and a
15 fingerprint will heal itself, you know, if it's injured, but
16 the firearm, if it's injured or damaged, will remain the same
17 after the damage but not the same as it was before.

18 Q: So in that case, it's often easier to -- even if a piece
19 of evidence is found two -- three weeks later, you'll --
20 typically, as long as the weather or something along those
21 lines hasn't manipulated it, there's been no real way that the
22 piece of evidence has healed itself?

23 A: Correct. In the case of, for instance, firearms, either
24 fired ammunition or components or the firearm itself, if the
25 firearm is subjected to appreciable damage or destruction, we

1 may not be able to identify that firearm as fired -- as having
2 fired a particular bullet or cartridge case. But if it's in
3 its normal condition, it could remain capable of being
4 identified for years.

5 Q: And, Dan, now that we've talked a little bit about that,
6 but would you let the jury know about your educational
7 background?

8 A: Well, I'm a graduate of the University of South Carolina
9 in Columbia. My principle training in firearm and tool mark
10 identification occurred at SLED. After I was employed, I was
11 assigned to the firearm and tool mark department, and I began
12 a course of instruction that lasted about two-and-a-half
13 years.

14 I studied the techniques from Lieutenant Millard Cate --
15 Lieutenant Cate established the SLED laboratory when SLED
16 itself was established in 1947 -- and Lieutenant Carl Stokes,
17 who was an examiner at that time. After studying the
18 techniques involved under their direct supervision, I began
19 accepting cases to work on my own, which I have been doing now
20 since 1969.

21 Q: And you've been with SLED that entire time?

22 A: Actually, I came to work in 1967.

23 Q: I see. But a substantial period of time?

24 A: Yes, sir.

25 Q: And during that period in time, if you would, just let

DAN DEFREESE - DIRECT BY MR. MCEACHIN

1 the jury know a little bit -- and you've explained what
2 firearm and tool marks examination is, but explain to the jury
3 a little about what your duties and responsibilities are.

4 A: Principally, we are asked to identify fired ammunition
5 components back to the firearms in which they were fired.

6 This would include principally bullets and cartridge cases.

7 It could include ammunition to see if it was loaded into and
8 extracted from a particular firearm. We do safety and
9 function testing on firearms, and we do some bullet path
10 reconstructions regarding firearms evidence.

11 Q: With regard to firearm identification examinations, how
12 many of those have you conducted with your time at SLED?

13 A: I really don't know. It would be in the thousands.

14 Q: And have you ever been qualified to testify in the field
15 of firearms and tool marks as an expert in the state courts of
16 South Carolina?

17 A: I have.

18 Q: On how many occasions?

19 A: I actually don't know. I estimate it something between
20 600 and 700 times.

21 Q: That you've been qualified as an expert?

22 A: Yes. As well as in federal court.

23 Q: And most of those have been in South Carolina in federal
24 or state court?

25 A: Yes.

1 Q: Now, with regard to --

2 MR. MCEACHIN: Actually, before we do that, Your Honor,
3 at this time, I'd move to qualify Mr. DeFreese as an expert in
4 firearms and tool mark analysis.

5 THE COURT: Okay... Any cross-examination as to
6 qualifications?

7 MR. ANDERSON: No, sir, Your Honor.

8 THE COURT: All right. Any objections to the Court
9 finding Mr. DeFreese as an expert in the area of firearm and
10 tool mark analysis and identifications?

11 MR. ANDERSON: No, sir, Your Honor.

12 THE COURT: Okay. All right.

13 BY MR. MCEACHIN:

14 Q: Mr. DeFreese, did you have occasion to conduct any sort
15 of examination in reference to some evidence that was
16 collected in a murder investigation in Marion County back in
17 February of 2013?

18 A: I did in this case.

19 Q: And I'm going to show you now what's been marked as
20 State's Exhibit 10 for identification purposes, and I want you
21 to take a look inside there and tell me if you can identify
22 State's Exhibit 10 and its contents.

23 A: All right. State's Exhibit 10 contains five fired .380
24 auto caliber cartridge cases and one fired bullet.

25 Q: Where did you receive -- do you recognize State's --

DAN DEFREESE - DIRECT BY MR. MCEACHIN

1 A: I do. All of them I had previously seen and examined.
2 Their containers are marked with my case number, item number,
3 and initials, and the items themselves are engraved with my
4 case number and item number and initials.

5 Q: And where did you receive those prior to conducting any
6 examination? I mean where did you receive them from?

7 A: The evidence was brought to me by Vicki Hallman.

8 MR. MCEACHIN: Your Honor, at this time, I'd move State's
9 Exhibit 10 into evidence.

10 THE COURT: Okay. What says the defense?

11 MR. ANDERSON: No objection, Your Honor.

12 THE COURT: Okay. Without objection, it will be Number
13 10 is in evidence for the State.

14 (WHEREUPON, State's Exhibit Number 10, five cartridge
15 cases and one bullet, was admitted into evidence.)

16 BY MR. MCEACHIN:

17 Q: And I'll also show you what's been marked as State's
18 Exhibit 11. Can you take a look at 11 for me?

19 A: Yes, sir.

20 Q: And can you identify State's 11?

21 A: Yes. State's 11 is also a fired bullet.

22 MR. MCEACHIN: Your Honor, at this time, I'd also --

23 Q: Did you -- did you conduct an examination on State's 11?

24 A: I did.

25 MR. MCEACHIN: Your Honor, at this time, I'd move State's

1 11 into evidence as well.

2 THE COURT: Okay.

3 MR. ANDERSON: No objection, Your Honor.

4 THE COURT: All right. Without objection, Number 11 is
5 in evidence for the State.

6 (WHEREUPON, State's Exhibit Number 11, a bullet, was
7 admitted into evidence.)

8 BY MR. MCEACHIN:

9 Q: Now, let's -- let's go through these one at a time. You
10 said two of the items you have before you, one from State's
11 Exhibit 10 as well as State's Exhibit 11, were fired rounds;
12 is that correct?

13 A: They're fired bullets.

14 Q: Bullets?

15 A: Right.

16 Q: And -- and explain to the jury the distinction between a
17 round and a bullet.

18 A: A round is -- is a cartridge that contains a cartridge
19 case with primer, propellant powder, and a bullet. It's a
20 fixed round of ammunition. When it fires, the bullet is
21 propelled out of the cartridge case, down the gun barrel, and
22 out of a gun by the firing of the propellant. The burning of
23 the propellant powder is caused by the primer at the back of
24 the cartridge case being struck by the firing pin of the gun.

25 Q: So --

DAN DEFREESE - DIRECT BY MR. MCEACHIN

1 A: So that's -- the components we see here are left as a
2 result of the firing of a loaded cartridge.

3 Q: So the bullet is the projectile itself that comes out of
4 the end of the barrel?

5 A: Correct.

6 Q: And towards whichever direction it's being aimed?

7 A: Which is the direction the barrel is pointing, yes, sir.

8 Q: And with regard to the cartridge casings, what portion of
9 the round is that?

10 A: The cartridge case is that portion of the -- of the
11 unfired cartridge into which all the other components are
12 loaded. It's a small, cylindrical structure. This one is
13 made of brass. The open end of it as you're seeing it now
14 would have been the end the bullet was loaded into, and the
15 rear end of it would be the -- the primer -- where the primer
16 is located that was struck by the firing pin of the gun in
17 which this round was fired.

18 Q: Thank you. Now, with respect to the two bullets, the one
19 from 10 and also State's Exhibit 11, what type of analysis --
20 analysis or examination did you do on those two items?

21 A: Well, first I examined them to determine what caliber
22 they were, what the -- what kind of ammunition they were
23 consistent with. These are copper-alloy-jacketed, full-metal-
24 case bullets, and they have a lead core with a very deep,
25 hollow base. Both of them weigh slightly less than 90 grains,

1 which is the weight of a full-metal-jacketed bullet made by
2 the PMC Company. Both bullets are -- this bullet, my Item 5
3 which came from State's Exhibit 10, is rather severely damaged
4 and deformed. The other bullet in State's Exhibit Number 11,
5 which is my Item Number 9, was much less damaged and much less
6 abraded.

7 I determined these were consistent with .380 auto caliber
8 bullets. They were consistent with .380 auto caliber bullets
9 made by PMC, although I can't state for certain that they were
10 made by PMC. But I compared the two bullets with each other
11 and found the same general rifling characteristics. That is I
12 found rifling characteristics that indicated six groove, right
13 twist rifling.

14 When I attempted to identify the individual marks on
15 these two bullets with each other, I was not able to do so
16 because of the damage that had been sustained principally by
17 the bullet in State's Exhibit 10, but there was some damage
18 also to State's Exhibit Number 11. Both of these bullets
19 could have been fired by the same gun, but I can't state for
20 certain that they were.

21 Q: And that's based on the condition of the bullets?

22 A: On the condition of both -- really of both bullets. And
23 I offered the investigators a list of possible manufacturers
24 of guns that could have fired these two bullets, which was
25 unfortunately a rather large list because I could not

DAN DEFREESE - DIRECT BY MR. MCEACHIN

1 determine the exact length, groove, and width with confidence.

2 Q: What are some possible causes for the land and groove
3 impressions to be not clear or not normally up to what you
4 could work with?

5 A: They can be caused by the gun in which the bullet was
6 fired not being a very well-made gun. Frequently, there are
7 guns that have very shallow rifling or they have bores that
8 are over-sized or irregularly-sized. A gun that was very
9 badly worn. Of course, the use of the wrong caliber
10 ammunition can account for this too. But mostly, it's -- it's
11 either wear, abuse, poor quality construction. Those are the
12 principal reasons why we would end up seeing rifling that
13 would fail to properly engage the bullet.

14 Q: Based on the rifling of those bullets, had a gun been
15 recovered, would you be able to establish a link between the
16 two?

17 A: Perhaps. In the case of State's Exhibit Number 11, it
18 was somewhat less damaged and it might have been identifiable.
19 I think in the case of the bullet, my Item Number 5 which was
20 from State's Exhibit 10, it was probably too damaged to be
21 identified with a specific firearm.

22 Q: All right. Now, with regard to the shell casings located
23 in State's Exhibit 10, what type of analysis did you do on
24 those?

25 A: I did, you know, a physical analysis of them, and I also

1 microscopically compared the fired cartridge cases with each
2 other.

3 Q: And what's the purpose of doing that?

4 A: To see if they were all fired by the same gun or by more
5 than one gun.

6 Q: And were you able to make a determination whether all the
7 shell casings were fired by the same gun?

8 A: I was.

9 Q: And do you have an opinion to a reasonable degree of
10 firearms and tool mark analytical certainty as to whether they
11 were?

12 A: I do.

13 Q: And were all those shell casings fired from the same gun?

14 A: Yes, they were..

15 Q: Mr. DeFreese, I'm going to show you in just a second two
16 photographs. I'm going to show you what's been marked as
17 State's Exhibit Number 22, and can you see the two yellow
18 markers at State's Exhibit 22?

19 A: Yes. The ones in the driveway?

20 Q: That's correct. And do you also notice in State's 22 the
21 yard equipment? If you're looking at the picture, it would be
22 on the right-hand side up near the evidence tape.

23 A: I see something in the lawn on the right-hand side.

24 Q: Okay.

25 A: I can't tell what it is.

DAN DEFREESE - DIRECT BY MR. MCEACHIN

1 Q: And I'll show you State's Exhibit 30. That may help
2 assist you.

3 A: All right, sir.

4 Q: Okay. Now, Mr. DeFreese, based on the markers on State's
5 22 and the markers on State's 30, which has been previously
6 testified to as shell casings in this case, based on your
7 experience and expertise, would an individual be standing in
8 one spot or more than one spot when they fired those five
9 shell casings?

10 A: More than one spot.

11 Q: Okay. And specifically with regard to -- I think you
12 indicated it was a .380 caliber based on your analysis in all
13 likelihood made by PMC. Are you aware of any -- specifically
14 the ones you listed in your report -- any of those that have
15 an ejection portal or an ejection port on the left-hand side
16 of the gun?

17 A: Some of them do. Some of them have the ejection ports on
18 the right -- on the right-hand side of the gun -- excuse me.
19 None of them I'm aware of have one of the left-hand side of
20 the gun. Most of them have ejection ports either on the
21 right-hand side of the gun or may have an open-top slide or
22 the ejection port extends to the top of the gun. And many of
23 the guns in the list of possible makes I provided will tend to
24 eject to the right, but can eject either straight up or in
25 some other direction.

1 Q: And if an individual is holding that gun straight up and
2 down as such, with the guns that have the ejection port on the
3 right, where are the shells going to eject?

4 A: They tend to eject to the right, but not always.
5 Sometimes they will eject -- or if the ejection port is
6 absolutely on the right-hand side of the gun, like would be
7 the case in, for instance, a Hi-Point firearm, they would have
8 to eject to the right if the gun were held vertically. In the
9 case of some of the other makes of guns that are open on both
10 the right-hand side and the top, they could eject in either
11 direction.

12 Q: Okay. And I don't think we mentioned this before. With
13 regard to these shell casings, did you have an opinion with
14 regard to whether they were fired from a revolver or a semi-
15 automatic?

16 A: Well, they were most likely fired by a semi-automatic
17 because the overwhelming majority of all .380 auto caliber
18 firearms are semi-automatics.

19 MR. MCEACHIN: I beg the Court's indulgence for just a
20 moment.

21 THE COURT: Sure.

22 MR. MCEACHIN: Mr. DeFreese, that's all I have for you.
23 Please answer any questions Mr. Anderson may have.

24 CROSS-EXAMINATION

25 BY MR. ANDERSON:

DAN DEFREESE - CROSS BY MR. ANDERSON

1 Q: Agent DeFreese, you -- as you already testified to, you
2 examined I think five shell casings; is that right?

3 A: That's right, sir.

4 Q: And actually two bullets?

5 A: Yes, sir.

6 Q: Okay. Earlier, Mr. McEachin was asking you whether or
7 not they would -- I guess when they came out of the firearm go
8 to the right or straight up in the air. Of course, that
9 depends on how an individual is holding the firearm; is that
10 right?

11 A: Yes, it does.

12 Q: If they're holding it like this, then typically they
13 could go to the right or straight up in the air; is that
14 right?

15 A: Yes. If they're -- if they're held vertically, they
16 would typically go either right or straight up or straight
17 back.

18 Q: What if someone was holding it sideways?

19 A: Then it would go -- if it were held this way, it could go
20 to the right or up. I mean -- excuse me -- to the left as I'm
21 looking at it or up. It all has to do with the attitude at
22 which the gun is held.

23 Q: And after a shell casing is expelled from the gun and
24 lands on the ground, obviously someone could kick it in
25 different directions; is that right?

1 A: It could be mechanically moved, yes.

2 Q: Especially if someone was trying to run and they -- they
3 hit it while they were running?

4 A: If -- for any reason, if you -- you could move it if you
5 kicked it.

6 Q: Now, I'm willing to bet that on February the 16th of 2013,
7 you were not in Marion County.

8 A: That's correct.

9 Q: I'm also willing to bet that on February the 16th, 2013,
10 you were not on Upland Avenue in Marion County.

11 A: That's correct.

12 Q: And you certainly weren't there at 9:52 -- 9:53 a.m. on
13 February the 16th, 2013, on Upland Avenue.

14 A: That's also correct.

15 Q: So you don't know what happened at the scene?

16 A: No, sir, I don't.

17 Q: You never got a gun to compare those to?

18 A: There was no gun submitted for comparison in this case.

19 Q: If a .380 was a revolver, how many bullets would it hold
20 typically?

21 A: I don't know. I can't think offhand of a .380 auto
22 caliber revolver.

23 Q: All right.

24 A: There may be one because there's an awful lot of new
25 firearms in the marketplace, but I would expect a revolver of

DAN DEFREESE - CROSS BY MR. ANDERSON

1 average size to hold five to seven rounds if it were in .380
2 auto caliber.

3 Q: If it was a semi-automatic .380, how many would typically
4 be held in that?

5 A: Most of the .380 semi-autos hold anywhere from five to as
6 many as 14 or 15 rounds in a -- in a traditional pistol, and
7 some of the -- the pistols that are made really to look like
8 submachine guns could hold as many as 30 rounds.

9 Q: So at least five, up to possibly 14 in a typical normal
10 one, but as many as 30 if it was a machine gun?

11 A: Right. Well, the semi-automatic equivalent of a machine
12 gun.

13 Q: Thank you.

14 MR. ANDERSON: Judge, that's all the questions I have.

15 THE COURT: Redirect?

16 MR. MCEACHIN: No redirect, Your Honor.

17 THE COURT: Okay. Thank you, sir, for your testimony.

18 You can step down and you're free to leave the courthouse or
19 you're welcome to remain with us.

20 THE WITNESS: Thank you.

21 MR. MCEACHIN: Thank you, sir.

22 THE COURT: Let's take a real short break. Ladies and
23 gentlemen of the jury, it's my understanding we have a couple
24 more witnesses this afternoon and, before we get to them,
25 let's -- let's take a short break.

1 Again, I remind you not to discuss this case among
2 yourselves, and we'll get you back out shortly. Okay?

3 (WHEREUPON, the jury exited the courtroom at 4:10 p.m.)

4 (WHEREUPON, there was a break in the proceedings from
5 4:10 p.m. until 4:22 p.m., after which the proceedings
6 resumed as follows.)

7 THE COURT: All right. Mr. Evans, bring the jury out,
8 please.

9 (WHEREUPON, the jury entered the courtroom at 4:22 p.m.)

10 THE COURT: Okay. Let the record reflect the jury is
11 back in. Solicitor, are you ready?

12 MR. MCEACHIN: Thank you, Your Honor. We'd call Megan
13 Fletcher to the stand.

14 THE CLERK: Do you solemnly swear or affirm to tell the
15 truth, the whole truth, and nothing but the truth, so help you
16 God?

17 THE WITNESS: I do.

18 THE CLERK: Thank you. You can go ahead and have a seat.

19 MEGAN FLETCHER, being first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MCEACHIN:

23 Q: Megan, if you would, please state your full name for the
24 record.

25 A: It's Megan Fletcher.

MEGAN FLETCHER - DIRECT BY MR. MCEACHIN

1 Q: And, Megan, with whom are you currently employed?

2 A: I work for the South Carolina Law Enforcement Division in
3 the forensic services laboratory under the trace evidence
4 department.

5 Q: And where is that located?

6 A: Columbia, South Carolina.

7 Q: And in the forensic services trace evidence department,
8 what exactly is trace evidence?

9 A: Trace evidence is a discipline of forensic science where
10 we analyze different substances, such as gunshot residue, fire
11 debris, fibers, paint, glass, explosives, and just general
12 chemical analysis.

13 Q: And why do you test those things?

14 A: We test them to make a connection to a crime scene from a
15 suspect or from a victim to the crime scene. Just in general,
16 if an agency requests it, we process it.

17 Q: And how long have you been in the trace evidence
18 department at SLED?

19 A: Seven-and-a-half years.

20 Q: And can you tell the jury a little bit about your
21 educational background?

22 A: I have my Bachelor's Degree in biochemistry and English
23 from Chatham College, and a Master's in forensic science
24 emphasizing in computer forensics and forensic chemistry from
25 Marshall University.

1 Q: And you've already indicated to the jury that as a trace
2 evidence scientist -- a forensic scientist I mean -- you've
3 had occasion to examine gunshot residue; is that correct?

4 A: Yes, sir. I am qualified as a gunshot residue analyst.

5 Q: And when you say qualified, what -- what process do you
6 have to go through to become qualified?

7 A: SLED has a -- has a set training program for all analysts
8 in different disciplines. Gunshot residue -- I went through
9 about a nine-month training program where I had oral,
10 practical, and written examinations, and where I learned the
11 theory of gunshot residue and also the instrumentation used to
12 analyze gunshot residue. I've also had some outside training
13 in the instrumentation used to analyze gunshot residue.

14 Q: And how many different cases have you had to analyze
15 gunshot residue with your -- in your time at SLED?

16 A: In my time at SLED, I've analyzed probably around 100
17 cases of gunshot residue. However, I've also analyzed -- or I
18 technically review cases of gunshot residue from other
19 analysts. So I look at their entire case file and check all
20 the data and I check for accurateness of -- accuracy of their
21 data. And that's about 50 a year since 2009.

22 Q: Okay. So you've looked at a fair number of gunshot
23 residue cases?

24 A: Yes, sir.

25 Q: Now, how many -- have you ever been qualified as an

MEGAN FLETCHER - DIRECT BY MR. MCEACHIN

1 expert in the field of forensic science before?

2 A: I've been qualified as a trace evidence analyst four
3 times.

4 Q: Four times? And were those --

5 A: Five times. I'm sorry.

6 Q: Were those times all related to gunshot residue?

7 A: Four were gunshot residue.

8 Q: Okay. But you have been qualified to analyze gunshot
9 residue and qualified as an expert in that field?

10 A: Yes, sir.

11 Q: Okay.

12 MR. MCEACHIN: Your Honor, at this time, I'd move Ms.
13 Fletcher -- move to qualify Ms. Fletcher as an expert in
14 gunshot residue analysis.

15 THE COURT: Okay. Any cross-examination concerning
16 qualifications?

17 MR. ANDERSON: No, sir.

18 THE COURT: Any objections to the Court qualifying Ms.
19 Fletcher as an expert in the field of gunshot residue
20 analysis?

21 MR. ANDERSON: No, sir.

22 THE COURT: Okay. So qualified.

23 MR. MCEACHIN: Thank you, Your Honor.

24 BY MR. MCEACHIN:

25 Q: Ms. Fletcher, if you would, explain to the jury exactly

1 what gunshot residue is.

2 A: Gunshot residue is everything that comes out of a gun
3 when it's fired. That includes burned and unburned particles,
4 the smoke, different metals come from a bullet and from the
5 gun itself, and also something called primer residue. And
6 when I say gunshot residue when I'm talking about my reports,
7 I'm talking about the primer residue.

8 And the primer residue is made up of three elements:
9 lead, barium, and antimony. And I'm looking for those
10 elements, lead, barium, and antimony, in a specific
11 combination with one another. So I'm looking for them to have
12 molten characteristics or a characteristic where it looked
13 like it went through high pressure and high heat. So round or
14 fairly round.

15 Q: And why is -- why is this a -- why is gunshot residue
16 part of the field of forensic science?

17 A: Gunshot residue can be deposited on somebody by firing a
18 weapon, being in the vicinity to the discharge of a firearm or
19 from touching something that has gunshot residue on it. So we
20 test for gunshot residue when somebody has been suspected to
21 be around a gun when it was fired.

22 Q: And with regard to what you were just explaining to the
23 jury, one of the primary functions is to make a determination
24 of whether someone either fired or was around a weapon when it
25 was fired; is that correct?

MEGAN FLETCHER - DIRECT BY MR. MCEACHIN

1 A: The presence of gunshot residue can indicate three
2 things: firing, being in the vicinity or touching something
3 with gunshot residue on it.

4 Q: And specifically, where do you typically -- what areas do
5 you typically test when you're testing for gunshot residue?

6 A: Gunshot residue can be collected from human beings or it
7 can be collected from inanimate objects. From a human, we're
8 looking for gunshot residue to be collected from the right
9 palm of the hand, the right back of the hand, the left palm of
10 the hand, and the left back of the hand. For inanimate
11 objects, we can test clothing or vehicles.

12 Q: And with regard to that gunshot residue that you test, is
13 there typically a time period in which you need the test to
14 occur in order to have a -- a useful result or a beneficial
15 result?

16 A: On a living person, gunshot residue can last between four
17 and six hours. On a deceased individual, it would last until
18 it's been removed by an outside source. And on an inanimate
19 object, again it will last until it's been removed by an
20 outside source.

21 Q: If you can, explain to the jury why you have a four to
22 six hour range with regard to a human?

23 A: Gunshot residue is very easily removed, meaning an active
24 person that is wiping their hands on their pants or sweating
25 or even washing your hands will remove gunshot residue.

1 Q: So that four to six hours -- is that something that's
2 been tested scientifically?

3 A: That has in general been scientifically accepted in our
4 -- in my field.

5 Q: Okay. So generally speaking, if you find gunshot residue
6 on an individual's hands, you can typically say that they've
7 either touched something, been in the vicinity or fired a
8 weapon in the past four to six hours?

9 A: Yes, sir.

10 Q: Okay. Now, did you have occasion to conduct a GSR
11 analysis with regard to a case that came from Marion County
12 back in February of 2013?

13 A: I did.

14 Q: And did you -- how many items -- do you recall how many
15 items you checked on that particular day?

16 A: There were two gunshot residue kits, one collected from
17 the victim and one collected from a suspect in this case, as
18 well as items of clothing.

19 Q: Okay. At this time, I'm going to show you what's been
20 marked as State's Exhibit Number 9. I'm going to hand that up
21 to you.

22 A: Okay.

23 Q: Can you identify State's Exhibit Number 9?

24 A: I --

25 Q: And just take a look inside if you need to.

MEGAN FLETCHER - DIRECT BY MR. MCEACHIN

1 A: This is an outer container from SLED, Lab Number L-13-
2 02254. It's container number A. I recognize it because my
3 initials are there and the date on which I opened it. Inside
4 are two gunshot residue kits. These are still sealed with the
5 date that I sealed them on March 1st, 2013. It's L-13-02254,
6 Item Number 1, and my initials and the date on which I opened
7 it. And L-13-02254, Item Number 2, with my initials and the
8 date on which I opened it.

9 Q: And can you tell the jurors what each of those is?

10 A: This is a gunshot residue kit from -- it says the
11 subject's name is Stanley Witek. And this is a GSR kit. L-
12 13-02254, Number 2, is a GSR kit from a Kemonie Lashawn Jones.

13 Q: Okay. And who did you receive those items from prior to
14 testing?

15 A: I received these items from Vicki Hallman.

16 Q: Okay. And you also indicated that you received some
17 clothing; is that correct?

18 A: Yes, sir.

19 Q: And I'm going to hand you what's been marked as State's
20 Exhibit Number 2. I'm going to have you take a quick look at
21 that for me, and tell me if you can identify that.

22 A: It appears to be a black article of clothing. Can I put
23 on a pair of gloves?

24 Q: Sure. Absolutely. I've got some.

25 A: I have some.

1 Q: Okay. Perfect.

2 A: On the outside of this bag, I notice my lab number of L-
3 13-2254, Item Number 19, and my initials and the date on which
4 I opened it. And inside is a black and gray coat with my lab
5 number, Item Number 19, my initials and the date on which I
6 would have collected particle lifts on it.

7 Q: Okay. And we haven't talked about this before, but can
8 you explain to the jury what you mean by collecting particle
9 lifts?

10 A: When I say I collect particle lifts, it means I take the
11 same type of stub that's used in the GSR kit. So it looks
12 like a little stamp with a sticky surface on it. And from
13 that jacket, I would have taken six particle lifts: from the
14 right front cuff, from the right back cuff, from the right
15 forearm, from the left front cuff, the left back cuff, and the
16 left forearm. So I would have taken the stub and I would have
17 dabbed it on each of those areas until that sticky was
18 removed.

19 Q: Okay. And you did that with regards to State's Exhibit
20 2?

21 A: Yes, sir.

22 Q: All right. I'm also going to have you take a look at
23 State's Exhibit Number 4 for identification purposes. And I'm
24 sorry. I should have let you keep your gloves on.

25 A: That's okay.

MEGAN FLETCHER - DIRECT BY MR. MCEACHIN

1 Q: And please tell the jury if you can identify that
2 particular item.

3 A: One pair of black pants with the lab number L-13-2254,
4 Item Number 17, my initials and the date on which I would have
5 collected the particle lifts from the right front of the
6 pants, so this whole area, and the left front of the pants,
7 that whole area.

8 Q: And do you know who State's Exhibit 2 and State's Exhibit
9 4 were collected from?

10 A: I would have to refer to my notes.

11 Q: That would be fine.

12 A: Okay. The SLED information sheet says that Item Number
13 17, the black pair of pants, was from a Kemonie Jones, and
14 Item Number 19, the jacket, was also from a Kemonie Jones.

15 Q: And I'm going to finally hand you State's Exhibit Number
16 3. Can you identify that?

17 A: Yes, sir. These are the particle lifts that I collected
18 from Item Number 17; so this is 17.1. These are the particle
19 lifts collected from the pants. And this piece sets out
20 particle lifts are from the jacket, Item Number 19 so these
21 are Item Number 19.1. I've identified it based on my initials
22 and the date and my initials of when I closed the bag.

23 Q: And are you the one who actually took those particle
24 lifts?

25 A: Yes, sir, I am.

1 MR. MCEACHIN: Your Honor, at this time, I would move
2 State's 3 into evidence.

3 THE COURT: Okay. What says the defense?

4 MR. ANDERSON: No objection.

5 THE COURT: Without objection, Number 3 for the State
6 into evidence.

7 (WHEREUPON, State's Exhibit Number 3, the particle lifts,
8 was admitted into evidence.)

9 BY MR. MCEACHIN:

10 Q: Now, Megan, when you conduct your analysis with regard
11 not only to the GSR kit that's collected from any individual,
12 but also with regard to the particle swabs that are taken,
13 explain to the jury what you do, what the process is when
14 you're examining these things.

15 A: What I'm doing is I'm putting them on an instrument
16 called a scanning electron microscope with an energy
17 dispersive x-ray detector, which is just a really big
18 microscope that allows me to see up to ten to even 30,000
19 times what the human eye can see. So I'm looking at really
20 small particles, and I'm looking for what they contain. So
21 I'm looking for that lead, barium, and antimony, and I'm also
22 looking at the shape of those particles, whether they're round
23 or molten.

24 Q: And you did conduct that type of examination with regard
25 to State's Exhibit 9 and State's Exhibit 3, which are swabs

MEGAN FLETCHER - DIRECT BY MR. MCEACHIN

1 from 2 and 4; is that correct?

2 A: Yes, sir.

3 Q: And with regard to State's Exhibit 3, which are the swabs
4 that were taken from Kemonie Jones' pants and his jacket, do
5 you have an opinion as to a reasonable degree of GSR
6 analytical certainty whether or not GSR was found on those
7 items?

8 A: On Item Number 17 and 19, gunshot residue was found on
9 both of those items of clothing.

10 Q: And with regard to State's Exhibit Number 9, specifically
11 the GSR kit for Kemonie Jones, which again you stated tests
12 the front palm, back palm of each hand; is that correct?

13 A: I'm sorry?

14 Q: I'm sorry. I may not have been clear. The GSR kit for
15 the defendant, Kemonie Jones --

16 A: Mm-hmm.

17 Q: That would test both the front palm and the back palm --
18 back of each hand; is that right.

19 A: Yes, sir.

20 Q: Okay. And you analyzed that as well?

21 A: Yes, sir. I analyzed all four of the lifts from that
22 kit.

23 Q: And what were your results?

24 A: My results are that one lead -- round lead particle was
25 found on the right palm. In addition to that round lead

1 particle, I also found a non-round gunshot residue particle,
2 which means that it was molten in shape, but not round.

3 On the right back of the hand, I found gunshot residue
4 particles. I found one gunshot residue particle and two round
5 lead particles.

6 On the left palm of that kit, I found gunshot residue,
7 which was one gunshot residue particle and one round lead
8 particle.

9 And on the left back of that kit, I found round lead
10 particles, which consisted of a non-round or a molten gunshot
11 residue particle and three round lead particles.

12 Q: Ms. Fletcher, as a result of all your analysis of the
13 items, the swabs of the clothing as well as the swabs of Mr.
14 Jones' hands, do you have an opinion as to a reasonable degree
15 of GSR analytical certainty whether or not Mr. Jones was in
16 the vicinity, fired or touched something that contained
17 gunshot residue?

18 A: Based on the data, it's my opinion that the subject was
19 in the vicinity of a gun when it -- when it was fired.

20 MR. MCEACHIN: I beg the Court's indulgence. Your Honor,
21 at this time, I would also move State's Exhibit Number 9 into
22 evidence.

23 THE COURT: What says the defense?

24 MR. ANDERSON: No objection, Your Honor.

25 THE COURT: Okay. Number 9 is into evidence on behalf of

MEGAN FLETCHER - CROSS BY MR. ANDERSON

1 the State.

2 (WHEREUPON, State's Exhibit Number 9, the two GSR kits,
3 was admitted into evidence.)

4 MR. MCEACHIN: Ms. Fletcher, please answer any questions
5 Mr. Anderson may have for you.

6 THE WITNESS: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. ANDERSON:

9 Q: Ms. Fletcher, you indicated earlier that GSR is made up
10 of lead, barium, and antimony; is that right?

11 A: Yes, sir, it is.

12 Q: Now, different things can leave lead, antimony, and
13 barium; is that right?

14 A: Individually, yes.

15 Q: Like batteries for example?

16 A: They have lead components to it, yes.

17 Q: Brake pads?

18 A: There are some brake pads that have some lead, barium
19 particles present.

20 Q: Now, the FBI -- FBI, they don't use GSR tests anymore; is
21 that right?

22 A: No. The FBI has stopped doing gunshot residue testing to
23 --

24 Q: Okay.

25 A: Their letter said that they were refunding with anti-

1 terrorism activities. They didn't get enough GSR kits in to
2 allow them -- or to make it worth their while to continue
3 analyzing gunshot residue kits.

4 Q: Now, as you indicated earlier, GSR can last a long time?

5 A: Four to six hours on a living person.

6 Q: Indefinitely on an inanimate?

7 A: Yes, sir.

8 Q: For example, if I fire a gun multiple times and then put
9 the gun in my car --

10 A: Mm-hmm.

11 Q: -- and it's on the seat of my car, GSR could be on the
12 seat of my car?

13 A: Yes, sir.

14 Q: And it could stay there for an extremely long period of
15 time?

16 A: It will stay until it's removed.

17 Q: If I fire a weapon multiple times and then later I put my
18 hands in my pockets, could some GSR be in my pockets?

19 A: There could be some GSR in your pockets, yes.

20 Q: If a spent shell casing -- if I pick it up, could a spent
21 shell casing have GSR on it?

22 A: Yes, sir, they do.

23 Q: If I put that spent shell casing in my pocket, therefore,
24 could it be transferred to my pocket?

25 A: Yes, sir, it can.

MEGAN FLETCHER - CROSS BY MR. ANDERSON

1 Q: I don't know if you noticed or not. I have a bad habit
2 of doing it. Mr. McEachin, when he was asking you questions,
3 a lot of the times he had his left hand in his pocket. Did
4 you by any chance notice that?

5 A: I did not, sir.

6 Q: Is it unusual to see a gentleman or even a lady walking
7 around on a cold day with their hands in their pockets?

8 A: I don't suppose it is.

9 Q: Would you argue with me that today, like yesterday, was
10 very cold?

11 A: Yes, sir, it was.

12 Q: Would it have been uncommon to see some people with some
13 hands in their pockets?

14 A: No, sir.

15 Q: You don't have any idea how Mr. Kemonie Jones was
16 transported anywhere, do you?

17 A: No, sir. I have no knowledge of that.

18 Q: You don't have any idea the condition of the car seat or
19 anywhere else that he may have sat while he was on his way to
20 somewhere, do you?

21 A: No, sir.

22 Q: You don't have any knowledge whatsoever whether or not an
23 officer washed his hands before he touched Kemonie's hands, do
24 you?

25 A: No, sir, I don't.

1 Q: You could only test what is given to you; is that right?

2 A: Yes, sir, that's right.

3 Q: You don't have any idea what was in the back of the
4 Marion City Police car, do you?

5 A: No, sir, I don't.

6 Q: What if you wore clothes that -- for example, let's say
7 yesterday I had worn this suit and this shirt and this tie,
8 and I had gone out and shot a firearm 40 to 50 times. Is it
9 possible that my clothes would have GSR on them?

10 A: As long as you didn't wash them, yes, it is.

11 Q: Okay. If I didn't wash these clothes and then wore them
12 again tomorrow, is it possible that these clothes would still
13 have GSR on them as long as I didn't wash them?

14 A: Yes, sir, it is.

15 Q: If while I was walking, I just rubbed my clothes, could I
16 get GSR on my hands?

17 A: There is a potential for a transfer, if it was present in
18 the first place.

19 Q: When someone is positive for GSR, do you ever do a
20 particle count?

21 A: What I do is I analyze it and try to get a good idea of
22 what the entire lift contains.

23 Q: Did you do a particle count on any of these?

24 A: I do know how many particles that I did analyze.

25 Q: Do you know how many particles were found on these? Did

MEGAN FLETCHER - CROSS BY MR. ANDERSON

1 you do a report to that effect?

2 A: It is not in my official report. It's in my case notes.

3 Q: You don't have any idea how Lieutenant Tony Flowers
4 collected the GSR that he turned over to Agent Hallman, do
5 you?

6 A: No, sir, I do not.

7 MR. ANDERSON: Judge, that's all the questions I have.

8 THE COURT: Any redirect?

9 MR. MCEACHIN: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. MCEACHIN:

12 Q: Ms. Fletcher, Mr. Anderson asked you about, you know,
13 sticking your hands in your pockets with a shell casing in
14 your pocket if you could get gunshot residue on your hands
15 that way?

16 A: Yes, sir.

17 Q: As a matter of fact, I think he said, you know, if you
18 pick one up off the ground and put it in your pocket, you
19 could get gunshot residue on your hand that way?

20 A: Yes, sir.

21 Q: Let me ask you this. Can the elements, such as wind,
22 rain, snow, things like that -- can they remove gunshot
23 residue from an object?

24 A: Yes, they can.

25 Q: And presumably the longer an object was outside, the less

1 likely it is to find gunshot residue on it; would that be
2 correct?

3 A: Presumably the longer an item is out in the elements of
4 wind, rain or any other environmental source, it will help to
5 remove any gunshot residue that may have been present.

6 Q: With regard to Mr. Anderson's question about the shell
7 casing and the pocket and you getting gunshot residue from
8 that, based on your expertise, does that or would that cause
9 the results that you've already testified about today to be
10 the case?

11 A: It may account for some of the particles on the hands.
12 The number of the particles that I found on the clothing
13 seemed too high for that to be a -- the most probable
14 scenario.

15 Q: And that's why in your opinion that the defendant was in
16 the vicinity when a gun was fired?

17 A: Yes. I believe that's the most likely scenario.

18 Q: And when you say vicinity, can that also include firing
19 the weapon?

20 A: Yes, sir, it does.

21 MR. MCEACHIN: Thank you. No further questions.

22 THE COURT: Any recross?

23 MR. ANDERSON: No, sir, Your Honor.

24 THE COURT: Okay. Thank you for your testimony, ma'am.

25 You can step down. You are free to leave or you're welcome to

KEITH MCNEIL - DIRECT BY MR. MCEACHIN

1 remain with us.

2 (WHEREUPON, there was a pause in the proceedings until
3 the next witness entered the courtroom.)

4 THE CLERK: Place your left hand on the Bible and raise
5 your right hand. Do you solemnly swear or affirm to tell the
6 truth, the whole truth, and nothing but the truth, so help you
7 God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Go ahead and take a seat.

10 MR. MCEACHIN: Your Honor, the State would call Keith
11 McNeil to the stand.

12 THE COURT: Okay.

13 KEITH MCNEIL, being first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MCEACHIN:

17 Q: Keith, if you don't mind, please state your full name for
18 the record.

19 A: Keith McNeil.

20 Q: And, Keith, where do you currently live?

21 A: Charlotte, North Carolina.

22 Q: And how long have you been living in Charlotte, North
23 Carolina?

24 A: About two years.

25 Q: And prior to moving to Charlotte, North Carolina, Keith,

1 what did you do?

2 A: Police officer with Marion Police Department.

3 Q: And what was -- what were some of your duties and
4 responsibilities as a police officer with the City of Marion?

5 A: Protect and serve, make sure all documents and evidence
6 is logged and tagged.

7 Q: All right. Keith, if you don't mind, speak up a little
8 bit --

9 A: Okay.

10 Q: -- so everybody can hear you. Okay? Were you a patrol
11 officer or were you an investigator?

12 A: A patrol officer.

13 Q: All right. So what does a patrol officer do? That would
14 be a better question. What does a patrol officer do?

15 A: Patrol and -- and check property and protect and serve.

16 Q: Do you respond to calls?

17 A: Yes, sir.

18 Q: Okay. Now, back in February of 2013 -- you've got to
19 keep your voice up, Keith. Back in February of 2013, what
20 were you doing at that time?

21 A: I was patrolling -- on patrol.

22 Q: You were on patrol? And do you recall the date of
23 February the 16th, 2013?

24 A: Yes. Yes, sir.

25 Q: And were you on duty that day?

KEITH MCNEIL - DIRECT BY MR. MCEACHIN

1 A: Yes, I was.

2 Q: And what shift were you working?

3 A: Day shift.

4 Q: Do you remember receiving a call on that morning?

5 A: Yes, I do.

6 Q: And what was it in reference to?

7 A: Shots being fired.

8 Q: And where were you -- where did you respond when you got
9 that message?

10 A: Upland Avenue and Dogwood.

11 Q: When you got the call, how far away were you from Upland
12 Avenue and Dogwood?

13 A: Maybe a minute away.

14 Q: All right. And once you responded -- once you got the
15 call and once you responded, where did you go?

16 A: I went down Upland Avenue.

17 Q: You went down Upland Avenue?

18 A: Yes.

19 Q: And I'm going to get you to step down here for a minute
20 for me. I'm going to get you -- I want you to stand right
21 here so you can show the jurors where exactly you're talking
22 about. Okay?

23 (WHEREUPON, State's Exhibit Number 71 was placed on an
24 easel next to the witness in front of the jury.)

25 Q: So you responded -- you've got to stand right here so

1 everybody on the jury can see. Okay? And if you need to take
2 a look at the map first, that's fine. All right. You got
3 your bearings?

4 A: Yes.

5 Q: All right. You said you responded to Upland Avenue and
6 you were going down Upland Avenue. Show the jury which
7 direction you were heading when you initially responded.

8 A: Here, going that way.

9 Q: All right. So you were going towards Main Street down
10 Upland Avenue?

11 A: Yes, sir. I came down Upland Avenue and went towards
12 Cherry Street.

13 Q: Okay. And at any point did you stop while you were
14 driving down Upland Avenue?

15 A: No. I just went straight down.

16 Q: All right. And what was the next thing you remember
17 happening?

18 A: Officer McCaskill came on the radio saying that he saw a
19 subject matching the description of a -- of how the -- that
20 the complainant had stated he saw.

21 Q: Okay. And where was -- do you know where McCaskill was
22 at that time?

23 A: He was on Jones Avenue.

24 Q: He was on Jones Avenue? So when you heard that, what did
25 you do?

KEITH MCNEIL - DIRECT BY MR. MCEACHIN

1 A: I came down and made a left on Cherry Street and I made a
2 left on Jones Avenue where McCaskill said he saw the subject
3 in-between some apartments on the 300 block of Jones Avenue.

4 Q: All right. And where did you go?

5 A: I came further down because he had crossed over the road
6 -- crossed over Jones Avenue headed back towards here. So I
7 came down toward this way, maybe further, and then Officer
8 Hucks came up there and stated he was jumping the fence --

9 MR. ANDERSON: Objection. Hearsay, Your Honor.

10 THE COURT: Don't repeat what anybody told you, sir.

11 MR. MCEACHIN: All right.

12 THE WITNESS: Yes, sir.

13 BY MR. MCEACHIN:

14 Q: So once you got the call from Officer Hucks, where did
15 you go?

16 A: I got -- I went further down here, got out of my patrol
17 unit and, you know, walked -- walking up and down Jones
18 Avenue.

19 Q: All right. So you got out of your vehicle and began
20 walking up and down Jones Avenue?

21 A: Yes.

22 Q: All right. What happened next?

23 A: Officer Hucks came over the radio. I --

24 Q: Now, you can't say what Hucks told you. In response to
25 what you heard from Hucks, what did you do?

1 A: I headed towards Patterson Court, where I saw the subject
2 coming down Patterson Court, and I gave a loud, firm command
3 for him to stop.

4 Q: All right.. So you -- you saw the subject?

5 A: Yes, sir.

6 Q: Okay. And did you get -- how close did you get to him?

7 A: Maybe 40 feet.

8 Q: All right. And you indicated you thought that was on
9 Patterson Court?

10 A: Yes.

11 Q: Right here?

12 A: Yes.

13 Q: All right. I want you to mark --

14 THE COURT: Solicitor, hold on just a second. The court
15 reporter is having a very difficult time hearing this officer.

16 MR. MCEACHIN: Okay.

17 THE COURT: So if you could -- you're going to have to
18 stand in a position where you've got some facing of the -- to
19 the court reporter so she can hear you.

20 THE WITNESS: Okay.

21 THE COURT: And speak up loudly.

22 MR. MCEACHIN: Stand right here.

23 THE WITNESS: Okay.

24 BY MR. MCEACHIN:

25 Q: All right, Keith. You said you were on Patterson Court?

KEITH MCNEIL - DIRECT BY MR. MCEACHIN

1 A: Yes.

2 Q: And you saw the subject? Put that sticker where you saw
3 the subject.

4 (WHEREUPON, the witness complied.)

5 A: Right in here.

6 Q: All right. Once you made contact with him, where did he
7 go? Here. You can use this laser pointer. I'll tell you
8 what. Why don't you do that and just press that little red
9 button on there.

10 A: He ran southwest behind some residences. I gave chase
11 behind him, but I ran back toward the front of the residences
12 so I wouldn't lose him. I didn't want him to get past the
13 perimeter we kind of had set up.

14 Q: All right. Let's talk about that. Y'all set up a
15 perimeter. So was Jones Avenue the outer boundary of that
16 perimeter?

17 A: Yes, sir.

18 Q: And that's why you ran back to Jones?

19 A: Yes.

20 Q: All right. So where was the last place you actually saw
21 him?

22 A: It was along here.

23 Q: Okay. Do me a favor and mark where you last saw him with
24 that right there?

25 (WHEREUPON, the witness complied.)

1 Q: And that's behind some houses there on Patterson Court?

2 A: That's actually going to be Jones Avenue. This is

3 Patterson here.

4 Q: Okay. I apologize. So once you came back out at Jones

5 Avenue, what happened then?

6 A: I advised the subject running towards Henry Street and I

7 continued to run down Jones Avenue. That's when he was

8 apprehended right around Henry Street.

9 Q: All right. So did you see the subject again after you

10 had seen him right here?

11 A: I saw him apprehended on Jones Avenue.

12 Q: Okay. Hop back on the stand.

13 (WHEREUPON, the witness complied.)

14 Q: Do you remember what you saw the subject wearing that

15 day?

16 A: Dark clothing. Dark jeans and a dark jacket.

17 Q: All right. I'm going to show you what's been marked as

18 State's Exhibits 4 and 2. Take a look inside that bag for me

19 and tell me if you can identify that. You don't have to pull

20 it all the way out.

21 A: Yeah. That's it.

22 Q: All right. What is it? What is State's Exhibit 2?

23 A: Say that again?

24 Q: What is State's Exhibit 2?

25 A: A black jacket.

KEITH MCNEIL - DIRECT BY MR. MCEACHIN

1 Q: All right. Do you recognize that jacket?

2 A: Yes, sir.

3 Q: And what jacket is that?

4 A: The jacket the subject was wearing at the time.

5 Q: All right. Now, I'm going to hand you State's Exhibit 4.
6 Can you identify that? .

7 A: Some black cargo jeans.

8 Q: And do those appear to be the same type the subject was
9 wearing that day?

10 A: Yes, sir.

11 Q: Okay. Now, Keith, after you heard the subject was
12 apprehended, where did you go?

13 A: Prior to -- as soon as he was apprehended, while we was
14 trying to apprehend him, dispatch had came on the radio and
15 stated that --

16 MR. ANDERSON: Objection, Your Honor, to hearsay.

17 THE COURT: All right. Don't repeat what the dispatcher
18 said, but as a result of whatever the dispatcher said, then
19 you did what?

20 BY MR. MCEACHIN:

21 A: I went back to -- I went to

22 Q: All right. And once you got to what
23 did you do?

24 A: I spoke with Mr. Cyrus Sloan.

25 Q: All right. And you can't say what Mr. Sloan told you,

1 but as a result of your conversation with him, what did you
2 do?

3 A: I went back -- went behind 318 near the carport and saw
4 the victim laying in the carport.

5 Q: Okay. What else did you do while you were at
6 Avenue?

7 A: At this time, I roped off the crime scene and began
8 collecting evidence.

9 Q: Okay. And by the time you got there, Fire and EMS were
10 already working on this sub -- this victim?

11 A: Yes, sir.

12 Q: And you roped off the area?

13 A: Yes, sir.

14 Q: So were you the first Marion City police officer there?

15 A: Yes, I was.

16 Q: And once you roped off the area, what was your function?
17 What were you doing there at

18 A: Trying to collect evidence and log anybody who came into
19 the crime scene.

20 Q: Okay. So you were in essence insuring -- explain to the
21 jury a little bit why you'd mark off the crime scene.

22 A: To make sure no evidence gets destroyed or collected?

23 Q: To make sure no evidence gets destroyed or what?

24 A: Collected.

25 Q: By anybody other than law enforcement?

KEITH MCNEIL - DIRECT BY MR. MCEACHIN

- 1 A: Yes, sir.
- 2 Q: Okay. How long did you stay there at
- 3 A: Until the detectives arrived on scene.
- 4 Q: All right. Once they arrived, did you have occasion to
- 5 go somewhere else involved in this case?
- 6 A: Yeah. I received a call.
- 7 Q: All right. You can't say what you did. You can tell me
- 8 where you were.
- 9 A: Yes, sir.
- 10 Q: Okay?
- 11 A: I just went to the hospital.
- 12 Q: Okay. At the hospital, did you collect some evidence
- 13 from the hospital?
- 14 A: I collected a bullet fragment from the victim.
- 15 Q: Let me see where I put it. Actually, I think it's
- 16 sitting right up here with you. Can you identify State's
- 17 Exhibit 11?
- 18 A: It's a bullet fragment.
- 19 Q: Okay. And does that look similar to the one you
- 20 collected from the victim at the hospital?
- 21 A: Yes, it does.
- 22 Q: Okay. Once you collected that, where did you take it?
- 23 A: It was logged into evidence.
- 24 Q: Okay. Did you give it to anybody specifically?
- 25 A: Lieutenant Flowers.

1 Q: You gave it to Tony Flowers?

2 A: Yes.

3 Q: After you collected that that day, did you have any other
4 involvement with this case on that day?

5 A: No, sir.

6 Q: All right. What about the following day? Did you have
7 occasion to go back to the incident location?

8 A: I went back to 318 and collected a spent case and a
9 bullet fragment.

10 Q: And where were those located?

11 A: Underneath a bush -- in a bush in front of the residence.

12 Q: All right. Were they easy to see?

13 A: No. You really had to be looking to find it.

14 Q: Okay. So they were pretty hard to find?

15 A: Yes.

16 Q: And what did you do with those once you received them?

17 A: They was collected and logged into evidence.

18 Q: Okay. Did you also give those to Lieutenant Flowers?

19 A: Yes.

20 Q: All right. Other than that, Keith, what other
21 involvement did you have in this case?

22 A: That's it right there.

23 MR. MCEACHIN: I beg the Court's indulgence for just a
24 moment, Your Honor.

25 BY MR. MCEACHIN:

KEITH MCNEIL - DIRECT BY MR. MCEACHIN

1 Q: So the day after the incident, that was the last day you
2 had anything to do with the case?

3 A: Yes, sir.

4 MR. MCEACHIN: Thank you. Please answer any questions
5 Mr. Anderson may have for you.

6 THE COURT: Cross-examination?

7 CROSS-EXAMINATION

8 BY MR. ANDERSON:

9 Q: Mr. McNeil, when you worked with the Marion County Police
10 Department, you were a sergeant?

11 A: Marion City, I was a sergeant.

12 Q: Yeah, Marion City. I'm sorry. Is that right? A
13 sergeant?

14 A: Yes, sir.

15 Q: And how long did you work at Marion at that time?

16 A: About six years.

17 Q: You went to the academy?

18 A: Yes, sir.

19 Q: Nine weeks? Ten weeks? Twelve weeks? How long was it?

20 A: It was nine weeks at that time.

21 Q: And they taught you various things up there? How to
22 drive a car, how to defend yourself, how to shoot a weapon,
23 taking reports, things like that?

24 A: Yes, sir.

25 Q: Obviously in your many years of patrol with Marion City,

1 you probably took a lot reports. Would that be accurate?

2 A: Yes, sir.

3 Q: Wrote a report in this case?

4 A: Yes, sir.

5 Q: Have you seen your report?

6 A: Yes, I have.

7 Q: Have you reviewed it recently?

8 A: Yes, I have.

9 Q: Have you reviewed it today?

10 A: Yes.

11 Q: Your report, if I'm looking at it properly, is about two

12 pages long; is that right?

13 A: Yes, sir.

14 Q: A lot of detailed information in there?

15 A: I hope so.

16 Q: Usually when you write a report, you try and do it as

17 soon as possible?

18 A: Yes.

19 Q: You want to do it while it's freshest in your mind?

20 A: Yes, sir.

21 Q: You want to do it while you can remember as much detail

22 as possible?

23 A: Yes, sir.

24 Q: When you're writing this report, of course, you want it

25 to be thorough, accurate, and as detailed as possible?

KEITH MCNEIL - CROSS BY MR. ANDERSON

1 A: Yes, sir.

2 Q: That's a fair statement?

3 A: Yes, sir.

4 Q: One of the reasons you do that is because you might get
5 transferred to Charlotte. One of the reasons you do that is
6 you might be in the military and you get called overseas.

7 Another officer might pick up the case and it's good to be
8 able to look back at your notes; is that right?

9 A: Yes, sir.

10 Q: Another reason it's good to do it is because time passes.
11 For example, this case is two years old. It was good to be
12 able to look back at your notes and refresh your memory; is
13 that right?

14 A: Yes, sir.

15 Q: Other than this report, have you written any other
16 reports in this case?

17 A: I have a supplemental.

18 Q: And that supplemental report was done on 2/17; is that
19 right?

20 A: Yes.

21 Q: And that was because family members found another shell
22 casing?

23 A: Yes.

24 Q: You went to the scene at

25 A: Yes.

1 Q: Collected that evidence?

2 A: Yes.

3 Q: Did you take pictures of it?

4 A: Yes, I did.

5 Q: Who did you give those pictures to?

6 A: I believe Lieutenant Flowers.

7 Q: The evidence that you collected, who did you give that

8 to?

9 A: Lieutenant Flowers.

10 Q: It was a shell casing?

11 A: A spent casing and a bullet fragment.

12 Q: Two different things?

13 A: Yes, sir.

14 Q: A shell casing and a fragment?

15 A: Yes.

16 Q: Do you know if those items were ever sent to SLED?

17 A: I do not.

18 Q: After you got the call, you said it took you about a

19 minute to get to where you were going up Upland Avenue?

20 A: Yes, sir.

21 Q: Were you the first officer on the scene?

22 A: Maybe. When I patrolled through the area, I didn't stop

23 at that the first time.

24 Q: Right.

25 A: The first time I didn't stop. I was looking for the

KEITH MCNEIL - CROSS BY MR. ANDERSON

1 subject.

2 Q: You didn't hear anything over your radio saying subject
3 in sight prior to you getting to Upland Avenue, did you?

4 A: No.

5 Q: As a matter of fact, after you got to Upland Avenue, you
6 heard I guess Officer McCaskill say, hey, I think I see
7 someone who matches the description?

8 A: That was while I was on Upland Avenue.

9 Q: Right. Nothing before that?

10 A: No.

11 Q: Now, while you were riding up and down Upland Avenue,
12 Dogwood Avenue, Jones Avenue, a lot of reports were coming in
13 over the radio, weren't they?

14 A: Yes.

15 Q: Prior to you getting there, nothing over the radio?

16 A: No.

17 Q: How many people did you log in and out of the crime
18 scene? Do you know?

19 A: I can't recall that.

20 Q: A lot of people there?

21 A: Yes.

22 Q: For example, do you know Russ Sloan?

23 A: Yes, I do.

24 Q: Do you know --

25 A: I know of him.

1 Q: Do you know Russ Sloan used to be an assistant solicitor?
2 A: No, I did not know that.
3 Q: Best guess, how many officers do you think were there?
4 A: About seven or eight.
5 Q: Were all of them looking around the scene?
6 A: No. Once the -- once the tape got up, only a few people
7 got in.
8 Q: All right. You taped it up. Who do you think actually
9 got in at that time?
10 A: I'd say the detectives.
11 Q: Sir?
12 A: The detectives.
13 Q: Detectives are trained to look for evidence?
14 A: Yes, sir.
15 Q: Did you find anything when you first went to Upland
16 Avenue as far as shell casings, fragments, anything like that?
17 A: Yes, I did.
18 Q: Did you show them to other investigators?
19 A: Yes.
20 Q: Did you mark them or just tell them where they were?
21 A: I took pictures and collected them.
22 Q: You actually collected them?
23 A: Yes.
24 Q: You picked them up?
25 A: Yes.

KEITH MCNEIL - CROSS BY MR. ANDERSON

1 Q: Who did you turn them over to?

2 A: Lieutenant Flowers.

3 Q: Did you ever take any pictures of the victim in this
4 case?

5 A: No, I did not.

6 Q: Did you take any pictures on the date of the incident,
7 February 16th, 2013?

8 A: Yes, some pictures.

9 Q: What did you do with those pictures?

10 A: It was turned in to evidence.

11 Q: Best guess, how many pictures do you think you took?

12 A: Probably five or six. It wasn't many.

13 Q: The next day when you went back, you took a few more
14 pictures?

15 A: I took a few more pictures, yes, sir.

16 MR. ANDERSON: May I have the Court's indulgence for a
17 moment, Your Honor?

18 THE COURT: Sure. Take your time.

19 BY MR. ANDERSON:

20 Q: You say you turned those pictures over to --

21 A: Lieutenant Flowers.

22 Q: Lieutenant Flowers. You don't have any idea what he did
23 with them, do you?

24 A: No, sir.

25 MR. ANDERSON: Judge, that's all the questions I have at

1 this time.

2 THE COURT: Anything in redirect?

3 MR. MCEACHIN: Very briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. MCEACHIN:

6 Q: Mr. McNeil, Mr. Anderson asked you about collecting
7 evidence. The only evidence you actually physically picked up
8 and collected was on the second day; is that correct?

9 A: I believe I collected two casings on the first day I went
10 to

11 Q: Okay. And who did you give those to?

12 A: I think I gave those to Lieutenant Flowers.

13 Q: Are you certain about that?

14 A: Not really. I'm not sure.

15 Q: Okay. But you remember you -- you remember certainly
16 that you got the evidence the following day?

17 A: Yes, sir.

18 Q: Okay.

19 MR. MCEACHIN: Thank you. No further questions.

20 THE COURT: Let me see the lawyers for just one second,
21 please.

22 (WHEREUPON, a bench conference is held off the record in
23 the presence of the jury but out of the hearing of the
24 jury.)

25 THE COURT: Ladies and gentlemen of the jury, because the

KEITH MCNEIL - REDIRECT BY MR. MCEACHIN

1 court reporter and as well as I had a little hard time hearing
2 this gentleman when he was standing up at the map, I'm
3 allowing the solicitor just to go over a few questions, just a
4 little bit of that direct examination.

5 And we're not trying to place any emphasis on that. We
6 just need to make sure that our record is one hundred percent
7 complete for the court reporter's purposes, and then, of
8 course, I need to hear everything that goes on as well. So
9 that's what we're going to do. It shouldn't take just a few
10 minutes. Thank you.

11 MR. MCEACHIN: Thank you, Your Honor. Very briefly.

12 FURTHER DIRECT EXAMINATION

13 BY MR. MCEACHIN:

14 Q: Keith, when you indicated to the jury earlier -- and make
15 sure you speak up now.

16 A: Okay.

17 Q: That you first saw the individual on Patterson Court,
18 which direction was he coming? Was he coming towards you?

19 A: He was coming towards me.

20 Q: And once he made eye contact with you, what happened?

21 A: He turned around and headed back behind -- he headed back
22 towards Patterson and then turned towards southwest.

23 Q: Was he walking away or was he running?

24 A: He was running.

25 MR. MCEACHIN: Thank you. No further questions.

1 THE COURT: Okay. Okay. All right. Thank you, sir, for
2 your testimony. You can step down. You're free to leave or
3 you're welcome remain with us.

4 MR. MCEACHIN: Thank you, Your Honor. I would ask that
5 he be relieved from his subpoena, Judge. Your Honor, may we
6 approach?

7 THE COURT: Sure.

8 (WHEREUPON, a bench conference was held off the record in
9 the presence of the jury but out of the hearing of the
10 jury.)

11 THE COURT: Ladies and gentlemen, we -- the State has one
12 more witness for purposes of today, and we're going to try to
13 get that witness up and out, and then we'll go ahead and
14 recess for the evening. So please be patient. We're going to
15 work at this just a little bit longer.

16 (WHEREUPON, there was a pause in the proceedings until
17 the witness entered the courtroom.)

18 THE CLERK: Do you solemnly swear or affirm to tell the
19 truth, the whole truth, and nothing but the truth, so help you
20 God?

21 THE WITNESS: I do.

22 THE CLERK: Thank you. Go ahead and take a seat.

23 JEFF GAUSE, being first duly sworn,
24 testified as follows:

25 DIRECT EXAMINATION

JEFF GAUSE - DIRECT BY MR. MCEACHIN

1 BY MR. MCEACHIN:

2 Q: Mr. Gause, if you would, state your full name for the
3 record.

4 A: Jeffrey Windham Gause.

5 Q: All right. You're going to have to speak up. I don't
6 think the microphones work; so you're going to have to speak
7 up so everybody can hear you. Jeff, what's -- or who do you
8 currently work for?

9 A: Currently employed with the Marion County Sheriff's
10 Office.

11 Q: In what capacity?

12 A: I wear quite a few hats. Currently, I'm a victims'
13 advocate. I work also helping the evidence person, and I have
14 worked some with the investigation unit doing some crime
15 scene, which is part of my background.

16 Q: And we're going to get into that right now. How long
17 have you been with the Marion County Sheriff's Office?

18 A: Not quite two years.

19 Q: And prior to working for Marion County, who did you work
20 with?

21 A: I retired from the Horry County Police Department here in
22 South Carolina with 25 years of service. I stayed retired for
23 about six months and was offered a job here in Marion County.

24 Q: All right. So you've got going on 28 years of experience
25 in law enforcement?

1 A: Somewhere close to that.

2 Q: And as part of your experience, do you have any special
3 certifications or licenses?

4 A: I'm currently qualified for the State Law Enforcement
5 Division, SLED, to conduct marijuana analysis.

6 Q: And can you explain to the jury what you have to do in
7 order to become certified to conduct marijuana analysis?

8 A: Well, it's a process that you're basically set down in a
9 classroom setting. This will be my second time being
10 qualified through SLED to do marijuana analysis. I had also
11 once in the past in Horry County did the same job.

12 And part of the qualifying to become certified in that is
13 that you are -- you're set down and you're given several
14 samples of approximately 50 cases that you have to identify
15 through a microscopic test and a chemical test. Through --
16 through the written part of it, you have to be at least 80
17 percent or better through the written process and also through
18 the chemical part of the training you have to be 100 percent
19 accurate.

20 Q: And you went through that certification process?

21 A: Twice.

22 Q: Two times. And did you get certified both times?

23 A: Yes, sir.

24 Q: And is your current certification still in effect?

25 A: Yes, it is.

JEFF GAUSE - DIRECT BY MR. MCEACHIN

1 Q: And how long is that certification good for?

2 A: It's good for three years.

3 Q: And, Jeff, during the course of this time while you've
4 been certified, how many times have you analyzed marijuana?

5 A: During my career, I probably would estimate it at in
6 excess of a thousand cases.

7 Q: And that was during the time with Horry County as well as
8 Marion County?

9 A: Yes, sir. That's correct.

10 Q: Now, when you analyze marijuana -- and you told the jury
11 a little bit about the two different types, microscopic and
12 chemically. Explain to them how you actually conduct a test.

13 A: Once an agent or another department sometimes calls on me
14 to come in and conduct one of these tests, they provide a
15 sample or samples of a green, leafy-looking substance, and
16 part of that process would be it signed over to be in my
17 custody and, once that's completed, I take it to the
18 microscope and I take a sample and put it up under the
19 microscope and observe three different characteristics. And
20 once those three characteristics have been identified, I move
21 over to the chemical test and once that's -- the chemical test
22 has proven to be positive, then the written report is made
23 out.

24 Q: And do you also have occasion to weigh the substance?

25 A: That's correct.

1 Q: Now, with regard to these tests that you've done, have
2 you ever been qualified as an expert in the field of marijuana
3 analysis?

4 A: I have.

5 Q: On how many occasions?

6 A: Probably maybe ten times or more.

7 Q: And that -- those have been with state courts of South
8 Carolina?

9 A: Those were all in the Fifteenth Judicial Circuit, which
10 was in my Horry County days.

11 MR. MCEACHIN: Your Honor, at this time I'd move to
12 qualify Mr. Gause as an expert in the field of marijuana
13 analysis.

14 THE COURT: Any cross-examination concerning
15 qualifications?

16 MR. ANDERSON: No, sir, Your Honor.

17 THE COURT: Any objections to the Court qualifying Mr.
18 Gause in the -- as an expert in the field of marijuana
19 analysis?

20 MR. ANDERSON: No, sir.

21 THE COURT: Thank you very much. So qualified.

22 MR. MCEACHIN: Thank you very much, Your Honor.

23 BY MR MCEACHIN:

24 Q: Mr. Gause, I'm going to have you take a look at what's
25 been marked for identification purposes as State's Exhibit

JEFF GAUSE - DIRECT BY MR. MCEACHIN

1. Number 7. Can you identify that?

2 A: Yes, sir.

3 Q: And what is State's Exhibit Number 7?

4 A: It was a -- a plastic evidence bag that I received from
5 the Marion County -- sorry -- Marion City Police Department,
6 and it contained eight small, green, plastic baggies with what
7 was consistent with marijuana.

8 Q: All right. And when you say you received the bag -- can
9 I hold it just a minute? It appears that there was -- it
10 looks like an evidence bag inside of this larger bag. Is that
11 what you're referring to?

12 A: Yes, it is. And the reason it's packaged as such is
13 because once it was given to me, it was in a smaller bag.
14 That is the bag that was inside of this bag, and inside of the
15 smaller bag was the eight small packages of marijuana.

16 Q: All right. And you indicated that it was consistent with
17 marijuana. What kind of analysis did you do on the substances
18 in that bag?

19 A: On each plastic bag containing the green, leafy
20 substance, each bag was taken out and weighed using an
21 electronic scale. A sample was taken and put up in a petri
22 dish and set up on a microscope. I identified the
23 characteristics of the marijuana, and also a chemical test was
24 completed also.

25 Q: And as a result, after you completed your examination,

1 did you prepare a report?

2 A: I did.

3 Q: I'll hand you what's been marked as State's Exhibit
4 Number 72. Would you please take a look at that for me?

5 A: Yes, sir.

6 Q: And do you recognize that document?

7 A: Yes, sir.

8 Q: What is that document?

9 A: This is a -- a written report that I completed and
10 provided to Marion City Police Department with a copy of the
11 findings.

12 Q: And, Jeff, do you have an opinion to a reasonable degree
13 of marijuana analytical certainty what the substance was that
14 was located in State's Exhibit 7?

15 A: All eight different baggies were tested and came back as
16 positive for marijuana.

17 Q: And could you please review with the jury the weights of
18 each of those eight baggies?

19 A: Item 1 was a plastic bag with green, leafy substance.
20 The weight was 0.39 grams and 0.014 ounces. Item 2 is 0.39
21 grams and 0.014 ounces. Item 3, plastic bag with green, leafy
22 substance, is 0.39 -- I'm sorry -- 0.39 grams and 0.014
23 ounces. Item 4 is a plastic bag with green, leafy substance,
24 and the weight is 0.37 grams, 0.013 ounces. Item 5, weight
25 was 0.41 grams, also 0.014 ounces. Item 6 is 0.5 grams, also

JEFF GAUSE - DIRECT BY MR. MCEACHIN

1 0.016 ounces. Item 7 is 0.31 grams, also 0.011 ounces. Item
2 8 is 0.45 grams and 0.016 ounces.

3 Q: And all eight items tested positive for marijuana?

4 A: That's correct.

5 Q: Who prepared this report?

6 A: I did.

7 Q: And that was in reference to State's Exhibit Number 7; is
8 that correct?

9 A: That's correct.

10 Q: Jeff, when you received the packaging, how was the
11 marijuana packaged?

12 A: The eight small, green, plastic bags were placed in the
13 smaller bag here, which is in the larger bag, and sealed.

14 Q: And I may not have asked that question appropriately.
15 Inside of the evidence bag, how -- how was the marijuana
16 packaged? Was it packaged individually?

17 A: They were packaged individually in eight small, green,
18 plastic baggies.

19 Q: And that's how you received it?

20 A: Yes, sir. The baggies look similar to a sandwich bag,
21 but on a lot smaller scale.

22 Q: Jeff, who did you receive that item of evidence from?

23 A: Chris Smith with the Marion PD.

24 Q: Okay. And do you know what Chris Smith's position was
25 with Marion PD when you received that from him?

1 A: I'm not sure.

2 Q: Okay. Thank you. Please answer any questions Mr.
3 Anderson may have for you.

4 CROSS-EXAMINATION

5 BY MR. ANDERSON:

6 Q: The day you prepared the report, would that have been
7 five -- six days ago?

8 A: It was done so on February the 20th of this year.

9 Q: Five or six days ago?

10 A: Five days.

11 Q: Okay. What did you do for Horry County?

12 A: In my career there, I -- I was a road supervisor at my
13 time of retirement as the rank of sergeant. Before going back
14 on the road, I worked in crime scene investigation. Part of
15 my job was also to analyze marijuana for the department or any
16 outside agency that would need it. I basically was assigned
17 to the investigative division of Horry County for
18 approximately about seven-and-a-half years. Before that, I
19 was a road patrolman basically answering calls of service.

20 Q: Are you familiar with the term buy bust?

21 A: Buy bust?

22 Q: Yes, sir.

23 A: Yes.

24 Q: What is a buy bust?

25 A: It's basically sometimes you have a -- an undercover

JEFF GAUSE - CROSS BY MR. ANDERSON

1 agent or possibly a confidential informant that may sell to an
2 individual. Once the sale has been made, the police come in
3 and stop the person and arrest them for the sale of the
4 marijuana.

5 Q: After someone makes a sale of drugs, they're arrested
6 immediately?

7 A: Yes, sir.

8 Q: That would be a buy bust?

9 A: Basically.

10 Q: All right. Now in this case, eight bags of marijuana --
11 eight small bags of marijuana. What was the total weight of
12 it? About three grams?

13 A: I'm not sure. I would estimate it would probably be
14 maybe a quarter of an ounce.

15 Q: A quarter of an ounce would be four grams? Excuse me.
16 Seven grams?

17 A: Somewhere in that neighborhood.

18 Q: All right. Well, if a quarter of an ounce is seven grams
19 and you've got eight items and the heaviest one is .45, the
20 most that could weigh, if I'm doing my math right, would be
21 four grams; is that right? Not seven grams, but four grams?

22 A: Not the whole gram. It would be not quite a half a gram.

23 Q: Right. So the total weight was about three to four
24 grams?

25 A: Somewhere in that -- yeah. I'm not sure.

1 Q: Twenty-eight grams in an ounce; is that right?

2 A: Should be. Yes, sir.

3 Q: 28.35?

4 A: Right.

5 Q: If I remember my math correctly.

6 A: That's correct.

7 Q: This is nowhere near an ounce?

8 A: No, sir.

9 Q: Nowhere near a half an ounce?

10 A: No, sir.

11 Q: Nowhere near a quarter of an ounce? Would it be safe to

12 say that in a cigarette, just a typical ordinary cigarette, if

13 you took the tobacco out of a filtered cigarette, how much do

14 you think that would weigh?

15 A: To give you a fair and accurate account, I -- I've never

16 weighed a cigarette that's been unwrapped.

17 Q: I'm looking at State's Number 7. If you can see how much

18 one bag contains in there, does that look like the tobacco

19 that would fit in one cigarette or is it less than the tobacco

20 that would fit in one cigarette?

21 A: Well, now, it depends on how you look at things. My

22 granddaddy used to roll his own cigarettes with, you know,

23 rolling paper. So it depends on how big you like your

24 cigarettes.

25 Q: Would that roll one of your granddaddy's?

JEFF GAUSE - CROSS BY MR. ANDERSON

1 A: I've seen Granddaddy roll that or less.

2 Q: So --

3 A: But he liked a big cigarette.

4 Q: Maybe eight cigarettes if you rolled them each up?

5 A: I would be under the opinion that, individually packaged
6 like this, it would make eight marijuana joints.

7 Q: Okay. This was given to you back in 2013? The evidence;
8 is that right?

9 A: I received this evidence February the 20th of this year,
10 which would be last Friday.

11 Q: So you didn't receive that in 2013?

12 A: No, I did not.

13 Q: You certainly didn't receive it in 2014?

14 A: No, I did not.

15 Q: You just received it sometime last week?

16 A: Yes, sir.

17 MR. ANDERSON: Judge, that's all the questions I have.

18 THE COURT: Okay. Anything on redirect?

19 MR. MCEACHIN: No, sir, Your Honor.

20 THE COURT: Okay. Thank you for your testimony, sir.
21 You can step down. That's it for today?

22 MR. MCEACHIN: Yes, sir, Your Honor.

23 THE COURT: Okay. Okay. Ladies and gentlemen, that is
24 going to conclude what we're going to do today. I appreciate
25 your hard work, and we've worked you pretty hard today I

1 think. I've noticed -- I've looked at you a lot throughout
2 the entire day's trial, and you have all been paying very
3 close attention. And so you have all followed my instructions
4 and I appreciate that very much. You can't perform effective
5 jury service if you're not paying attention, and all of you
6 have been paying attention and I appreciate that very much.

7 Is everyone feeling okay? Okay. Any expected problems
8 for coming back tomorrow? Okay. Everybody is going to be
9 back. Of course, we're going to start back at 9:15 in the
10 morning.

11 So again I remind you, as I've been telling you
12 throughout this -- this trial, that you can't begin discussing
13 this case amongst yourselves or any family members, friends,
14 neighbors, anybody that you come into contact with. Don't try
15 to do any independent research on the Internet or look at any
16 media accounts that may be in existence out there concerning
17 this case. You just simply cannot do that.

18 And get a good night's rest, and we'll start back at 9:15
19 in the morning. Okay? Have a good evening. Mr. Willie Page,
20 I need for you to hang around for just a minute. Okay?
21 You're free to leave. Thank you.

22 (WHEREUPON, the jury exited the courtroom at 5:32 p.m.,
23 with the exception of juror Willie Page.)

24 THE COURT: (To Willie Page) Here's what I'm going to do.
25 I'm going to cut you loose, but what I need for you to do is

1 be back here at 9:15 just so I can make sure that we've got
2 all twelve. If we have all twelve, I'm going to cut you
3 loose. Okay? Because I hate to say don't come back and then
4 somebody --

5 THE JUROR: Yes, sir.

6 THE COURT: Okay. So you be back here just like the
7 others and if we've got the twelve, then I'm going to cut you
8 loose. Okay?

9 THE JUROR: Okay.

10 THE COURT: All right. Very good. Thank you.

11 THE JUROR: Thank you.

12 (WHEREUPON, the juror exited the courtroom.)

13 THE COURT: Okay. We'll be in recess until 9:15 in the
14 morning.

15 MR. ANDERSON: Your Honor, may I inquire a few things
16 before we break for the day?

17 THE COURT: Sure.

18 MR. ANDERSON: Judge, just so I'm clear on the ruling
19 earlier in regards to Tony Flowers, if I wanted to introduce
20 the two statements, the two recorded statements, could I do
21 that?

22 THE COURT: Not without the defendant testifying.

23 MR. ANDERSON: Your Honor, I, at this time, of course,
24 would renew my objection --

25 THE COURT: Sure.

1 MR. ANDERSON: -- that I made previously.

2 THE COURT: Sure.

3 MR. ANDERSON: I just wanted to preserve that for the
4 record.

5 THE COURT: Sure. Anything else?

6 MR. ANDERSON: No, sir.

7 THE COURT: Okay. Because -- let me just kind of
8 elaborate on it. By examining Officer Flowers concerning what
9 was said in the statements would be really no different than
10 you putting the statements into evidence. It would be
11 basically doing the same thing.

12 MR. ANDERSON: I object, Your Honor.

13 THE COURT: Okay. I understand. You're protected on the
14 record.

15 MR. MCEACHIN: Thank you, Judge.

16 THE COURT: All right. Anything else?

17 MR. ANDERSON: No, sir.

18 THE COURT: Okay. All right. We'll be in recess until
19 9:15 in the morning.

20 MR. MCEACHIN: Thank you, Your Honor.

21 (WHEREUPON, the proceedings adjourned for the day at 5:33
22 p.m.)

23 FEBRUARY 26, 2015

24 (WHEREUPON, prior to beginning the proceedings for the
25 day, Juror Willie Page was excused and the alternate

1 juror put in his place.)

2 (WHEREUPON, the proceedings resumed at 9:21 a.m.)

3 THE COURT: Okay. We're back in the record. Anything we
4 need to take up before the jury comes out?

5 MR. MCEACHIN: Nothing from the State, Your Honor.

6 THE COURT: Okay.

7 MR. ANDERSON: Your Honor, just -- if the State calls
8 Lieutenant Smith, who is the lead investigator in this case,
9 Your Honor, I just wanted some direction as to what questions
10 I could ask him as far as the two interviews and, Your Honor,
11 if I tailored my questions to specifically just what he asked,
12 no answer whatsoever -- just, you know, did you interview him
13 twice? Did you ask him questions? You know, did you tell him
14 there was a shooting? Did you tell him that his clothes
15 matched the description? If I asked him those five questions,
16 would that be allowed?

17 THE COURT: I'm going to go to -- hold that thought just
18 a minute, Solicitor. I had mentioned yesterday that State
19 versus Terry, one of the lead cases on this particular issue
20 -- I'm going to pull it up and I'm going to read what it says
21 about the existence of -- not what was said, but just the fact
22 of -- of giving the statement. So just bear with me for just
23 a second.

24 (WHEREUPON, there was a pause in the proceedings.)

25 THE COURT: All right. What the State versus Terry case

1 says -- that's at 339 S.C. 352. It says:

2 "In any event the fact that Terry gave police a statement
3 was simply irrelevant to any issue at trial. Admission
4 of the fact that Terry cooperated with police without
5 giving the substance of the statement would, in our
6 opinion, have been confusing and misleading to the jury."

7 It says:

8 "Moreover, given the fact that some police officer
9 testified Terry was cooperative in all his dealings with
10 the police and defense counsel reiterated this fact to
11 the jury in closing, we discern neither error nor
12 prejudice in exclusion of this evidence."

13 So I don't think we can get into the fact that a
14 statement was given. Now, based upon this, I guess you could
15 say generally speaking was the defendant cooperative with the
16 police, and then I would have to assume that the police
17 officer would say that he -- that he did, but I don't think we
18 can get in -- based upon State versus Terry, get into the --
19 the existence of him giving these two statements.

20 Solicitor, do you want to respond?

21 MR. ANDERSON: Your Honor, before the State responds,
22 Judge, I think it is relevant. I mean my client gave detailed
23 information that if it would have been checked, if police
24 would have checked it -- did you -- you know, he told them,
25 this is what I did, this is where I went, and this what I did,

1 this is what I did, this is what I did. They could have
2 verified that. They could have looked to see. Hey, did you
3 see a young man around 9:45 in the morning walk by this place?
4 Did -- you know, he walked by two stores. Was there a
5 videotape at those two stores? I mean that -- in my opinion,
6 that would be relevant.

7 THE COURT: Solicitor?

8 MR. MCEACHIN: Your Honor, you've cited the portion of
9 Terry I was actually going to indicate to the Court. So that
10 -- that pretty much addresses that argument.

11 With regard to the argument Mr. Anderson just made,
12 certainly that evidence can come in, but it needs to come in
13 from the defendant testifying, and he's certainly entitled to
14 take the stand and testify to that and be subject to cross-
15 examination. I think that's kind of the premise behind Terry,
16 Your Honor. You can't get that information in without being
17 subject to cross-examination and, therefore, we would argue
18 that it's not admissible.

19 THE COURT: All right.

20 MR. ANDERSON: And, Your Honor, if I put my client on the
21 stand, he's giving up very valuable Fifth Amendment rights.
22 Like, for example, he was on probation on this case; so his
23 prior record would come out.

24 THE COURT: Right. Well, again -- and I think I alluded
25 to this -- the statement Terry makes that, you know, the Fifth

1 Amendment cannot be used both as a shield and a sword. And
2 what you're wanting -- you're wanting favorable evidence in,
3 favorable evidence coming from what the defendant stated to
4 the police, inculpatory evidence. You're wanting that to come
5 in without the benefit of him testifying and being subject to
6 cross-examination. And that's exactly what State versus Terry
7 says should not be allowed.

8 MR. ANDERSON: Your Honor, I don't know if it would be
9 favorable or not. If they would have verified it, it might be
10 very unfavorable.

11 THE COURT: Well, let me ask you this, Mr. Anderson. You
12 don't know whether -- your hope is that which you elicit from
13 the police officers would be favorable to your client.
14 Otherwise, I think you're too good a lawyer to -- to take a
15 risk of it actually hurting your client. Right?

16 MR. ANDERSON: Opinions vary, Your Honor.

17 THE COURT: Again, I'm not going to allow any evidence of
18 the statements made by the -- the defendant to come in. I
19 think you could ask the police officers just in general terms
20 was the defendant cooperative without alluding to statements,
21 but I think under State versus Terry I'm going to deny any
22 examination of the police officers with respect to him giving
23 the statements and what he said.

24 But again, as I allowed you yesterday with Officer
25 Flowers to proffer so the record is protected, when Officer

1 Smith testifies, I'll be glad to allow you to do the same
2 thing so you have a protected record.

3 MR. ANDERSON: Other than that, nothing, Your Honor.

4 THE COURT: Okay. All right. Thank you very much. All
5 right. Let's bring the jury out.

6 (WHEREUPON, the jury entered the courtroom at 9:31 a.m.)

7 THE COURT: All right. Let the record reflect the jury
8 is back in. As you can tell, Mr. Page is no longer with you.
9 I had to excuse him. Therefore, Mr. Davis, you're now a part
10 of the twelve and you will participate in the deliberations.

11 Solicitor, are you ready to call your next witness?

12 MR. MCEACHIN: The State is ready to proceed, Your Honor.

13 THE COURT: Okay. Thank you.

14 MR. MCEACHIN: The State would call Joshua Brown to the
15 stand.

16 THE CLERK: Mr. Brown, if you will, come forward, please,
17 and let me swear you in. Place your left hand on the Bible
18 and raise your right hand. Do you solemnly swear or affirm
19 the evidence you're about to give in the trial of this case
20 shall be the truth, the whole truth, and nothing but the
21 truth, so help you God?

22 THE WITNESS: Yes, ma'am.

23 THE CLERK: Take a seat in the witness box.

24 JOSHUA BROWN, being first duly sworn,
25 testified as follows:

DIRECT EXAMINATION

1
2 BY MR. MCEACHIN:

3 Q: Joshua, I premise with this because I think some
4 witnesses didn't speak loud enough yesterday. Make sure you
5 keep your voice up so the court reporter as well as the jury
6 can hear everything you have to say. Okay?

7 A: Yes, sir.

8 Q: And that microphone doesn't work; so don't -- don't rely
9 on that. Now, Josh, if you don't mind, please state your full
10 name for the record.

11 A: Joshua Curtis Brown.

12 Q: And, Josh, who are you employed by?

13 A: The City of Marion Fire Department.

14 Q: In what capacity?

15 A: I'm an engineer and an EMT.

16 Q: And that's with the fire department?

17 A: Yes, sir.

18 Q: How long have you been with the Marion Fire Department?

19 A: Eight years.

20 Q: And in that period of time -- can you explain to the jury
21 kind of what kind of training you go for as a fireman?

22 A: I went through recruit school with the South Carolina
23 Fire Academy. Also, went through EMT training with Florence-
24 Darlington Technical College.

25 Q: And I was going to follow up with a question. Do you

JOSHUA BROWN - DIRECT BY MR. MCEACHIN

1 have any certifications or licenses?

2 A: Yes, sir. I'm licensed through the state as an EMT.

3 Q: And what is an EMT?

4 A: That's an emergency medical technician.

5 Q: And what are some of the duties or responsibilities of
6 EMTs?

7 A: To provide basic life support to medical patients, to
8 control bleeding, provide oxygen, transport to the hospital
9 for further exams.

10 Q: And are you familiar with the term "first responder"?

11 A: Yes, sir.

12 Q: What is a first responder?

13 A: A first responder responds to scenes prior to an
14 ambulance's arrival to stabilize a patient, to provide quicker
15 care.

16 Q: And are you -- are you considered a first responder?

17 A: Yes, sir.

18 Q: Now, I want to ask you -- you said you've been with
19 Marion Fire for about eight years now. Back in February of
20 2013, were you with Marion Fire?

21 A: Yes, sir. I was on duty.

22 Q: And specifically with regard to February the 16th, 2013,
23 which was a Saturday, were you on duty that day?

24 A: Yes, sir.

25 Q: And when you tell the jury you're on duty, are you at a

1 fire station?

2 A: Yes, sir.

3 Q: And where's the firehouse located?

4 A: 107 East Bond Street, Marion, South Carolina.

5 Q: How far is that from here?

6 A: Less than a block.

7 Q: Okay. So it's about a block away that way?

8 A: Yes, sir.

9 Q: And you were on duty the morning of the 16th?

10 A: Yes, sir.

11 Q: And did you have occasion to receive a call out that
12 morning?

13 A: Yes, sir.

14 Q: And what was that in reference to?

15 A: A gunshot victim.

16 Q: And once you got the call, where did you -- what did you
17 do?

18 A: I got in the engine, which is our primary response unit
19 to make medical calls, and I proceeded to the Anderson
20 Brothers Bank to wait for further instructions from dispatch.

21 Q: Okay. Why would you go to Anderson Brothers Bank?

22 A: It was a central location about two or three blocks away
23 from the address on Upland Avenue, and our protocol with any
24 violent crimes or any dispatches of gunshots, anything that
25 could potentially cause us harm, we like to wait for law

JOSHUA BROWN - DIRECT BY MR. MCEACHIN

1 enforcement to get there and secure the scene prior to our
2 arrival.

3 Q: Okay. So it's standard for y'all to allow law
4 enforcement to clear the scene to make sure any danger is away
5 before y'all actually arrive on scene?

6 A: Yes, sir.

7 Q: And that's why you went to Anderson Brothers Bank?

8 A: Yes, sir.

9 MR. MCEACHIN: And, Your Honor, may I have the witness
10 step down?

11 THE COURT: Sure.

12 BY MR. MCEACHIN:

13 Q: Step down, please.

14 (WHEREUPON, the witness complied.)

15 Q: And I'll let you stand right here because you have to
16 give yourself a minute to familiarize yourself with this map,
17 and you let me know when you're familiarized with it.

18 A: Okay.

19 Q: All right. Once you are, kind of stand to the side right
20 here so all of the jurors can see.

21 (WHEREUPON, the witness complied.)

22 Q: So when you responded, can you show the jury where you
23 responded to?

24 A: I responded right here on Jones Avenue just across at
25 Anderson Brothers Bank.

1 Q: Okay. So that building with the green roof right there
2 on State's Exhibit 71, that's the Anderson Brothers Bank?

3 A: Yes, sir.

4 Q: And how long were you at Anderson Brothers Bank?

5 A: Maybe a minute or two, no more than two minutes.

6 Q: Okay. You can grab a seat back in the --

7 A: Yes, sir.

8 Q: -- box for me there.

9 (WHEREUPON, the witness complied.)

10 Q: While you were waiting at Anderson Brothers Bank, did you
11 observe or witness anything?

12 A: Yes, sir. I observed an individual crossing over --
13 coming from Lombardy crossing over Jones Avenue, followed by
14 several law enforcement officers that were chasing him.

15 Q: Okay. So you saw an individual being chased while you
16 were sitting here at Anderson Brothers Bank?

17 A: Yes, sir.

18 Q: And if you could, show the jury -- and make sure you
19 speak up so the court reporter can hear you.

20 A: Okay.

21 Q: Show the jury where you saw this individual running.

22 A: I saw the suspect or the individual running across from
23 this direction on Lombardy Street this way, and then law
24 enforcement apprehended him on this corner right here.

25 Q: So right there on the corner of -- what's that? Lombardy

JOSHUA BROWN - DIRECT BY MR. MCEACHIN

1 and Jones?

2 A: Yes, sir..

3 Q: And you witnessed law enforcement apprehend him?

4 A: Yes, sir.

5 Q: Okay. Once you witnessed that, how long was it after
6 that when you ended up going to the address of the shooting?

7 A: Two minutes.

8 Q: Okay. So that happened almost right when you got there?

9 A: Yes, sir.

10 Q: And once you left Anderson Brothers, you went to where?

11 A: I went and turned onto Cherry Street and made a right
12 onto Upland Avenue and then proceeded to the residence.

13 Q: When you --

14 A: To the address.

15 Q: Okay. And when you got to the residence, who was -- who
16 was present when you got there?

17 A: Law enforcement was there and several other members of
18 the fire department.

19 Q: Okay. And once you got there, what did you do?

20 A: I gathered my basic life support equipment, which we
21 carry standard to every call, and proceeded to walk under the
22 carport to the patient.

23 Q: And I'll show you what's been marked as State's Exhibit
24 15. Can you identify that?

25 A: Yes, sir.

1 Q: And is that the carport you're referring to?

2 A: Yes, it is.

3 Q: Okay. Now, once you walked under the carport, what did
4 you observe?

5 A: I saw a male patient lying -- when I initially walked up,
6 I noticed shell casings that were behind the green car that
7 was under the carport, and then as I walked further around the
8 car, I observed the patient lying face-down clenching an axe.

9 Q: Okay. And I'm going to show you what has been marked as
10 State's Exhibits 38 and 39, and ask if you can identify those.

11 A: Yes, sir. That's the axe he was clenching and the
12 carport where we found him.

13 Q: Okay. And with respect to 38 and 39 -- and I'll hand you
14 38 -- if you could, hold that up for the jury. Where was the
15 victim located when you arrived?

16 A: The victim was laying flat on the ground this way face-
17 down with his head pointing this way.

18 Q: And maybe you can turn it that way too so everyone can
19 see it. So his head was right there kind of close to the
20 corner of the steps?

21 A: Yes, sir.

22 Q: All right. And you said he was clenching the axe. Kind
23 of show the jury what you mean by that.

24 A: He had -- he had the head of his axe -- the axe under his
25 chin laying face-down clenching it like that.

JOSHUA BROWN - DIRECT BY MR. MCEACHIN

1 Q: And when you approached him, what did you do?

2 A: I checked for a pulse. I felt a weak pulse. So I
3 initially rolled the patient over and opened his airway and
4 started attempting to remove his clothing to -- to get ready
5 to further assess him.

6 Q: Okay. And when -- when you say you were getting ready to
7 remove his clothing, what kind of clothing did he have on?

8 A: He had on several layers of clothing with a big coat on
9 the outside followed by several more shirts underneath it.

10 Q: Okay. And when you say you were attempting to remove it,
11 how would you go about doing that?

12 A: Well, we took the top layer -- we just unbuttoned the top
13 of the coat. I can't recall if it was a zipper or buttons,
14 but we took the top coat off, and then we took scissors and
15 cut the outside of his clothing off to remove -- to expose his
16 chest.

17 Q: And once you were able to expose his chest, what did you
18 observe?

19 A: Four gunshot wounds to the upper torso.

20 Q: And that was four of them that you saw?

21 A: Yes, sir.

22 Q: Now, once you observed this, what was the next step as
23 far as your protocol was concerned?

24 A: Reassess the patient and start CPR.

25 Q: Okay. Is that what you did?

1 A: Yes, sir.

2 Q: And how long did you -- and explain to the jury. When
3 you say start CPR, what are you talking about doing?

4 A: Cardiac pulmonary resuscitation. We basically pump the
5 heart for the patient with a heart no longer beating.

6 Q: Okay. And based on a weak response or the weak heartbeat
7 that you felt, was that why you began that?

8 A: Well, no, sir. After re -- after reassessment, there was
9 no pulse felt after a secondary assessment. So that's when we
10 started CPR. Yes, sir..

11 Q: Okay. And this was all within a couple of seconds?

12 A: Yes, sir.

13 Q: All right. So you began CPR. How long were you doing
14 CPR before someone else arrived?

15 A: Approximately two minutes.

16 Q: And who arrived with -- after that two minutes had
17 expired?

18 A: Marion County EMS.

19 Q: Okay. And once EMS arrived, what did y'all do?

20 A: We continued CPR and assisted them with patient care and
21 providing a driver for the ambulance to the hospital.

22 Q: Okay. Why would y'all have to provide a driver for the
23 ambulance?

24 A: Because all ambulances are mostly run by two people, and
25 both of those people were caring for the patient; so they

JOSHUA BROWN - DIRECT BY MR. MCEACHIN

1 needed someone to drive the ambulance to the hospital.

2 Q: And is that typical or is that because of the type of
3 injuries he had sustained?

4 A: Because of the injuries he sustained, it required more
5 than one person in the back with him to provide care.

6 Q: And somebody from your department ended up driving the
7 ambulance to the hospital?

8 A: Yes, sir.

9 Q: Now, Josh, let me go back just a minute. With regard to
10 State's Exhibit 38, you said that's where the victim was
11 lying; is that correct?

12 A: Yes, sir.

13 Q: Did you notice any pools of blood or anything like that?

14 A: No, sir. I didn't observe any -- any blood at all.

15 Q: Okay.

16 A: On the ground or anything.

17 Q: What about once you cut open the clothing?

18 A: It was very minimal bleeding that had self-controlled
19 itself.

20 Q: So you didn't have to do a whole lot on the front side of
21 him?

22 A: Yes, sir.

23 Q: All right. Thank you. Please answer any questions the
24 defense may have for you.

25 THE COURT: Cross-examination?

26

1 MR. FLOYD: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. FLOYD:

4 Q: Mr. Brown, did you make any reports, written reports, of
5 this?

6 A: Yes, sir.

7 Q: Okay. Did you provide those to the State?

8 A: Yes, sir.

9 Q: Okay. What type of report would you have made?

10 A: It was our incident reporting system that we use through
11 the fire -- fire department, standard reporting that we do.

12 Q: Did you write out any type of voluntary statement for the
13 police or anything of that nature?

14 A: No, sir.

15 Q: In regards to anything else that you witnessed?

16 A: No, sir.

17 Q: Okay. And you said that you saw four gunshot wounds; is
18 that correct?

19 A: Yes, sir.

20 Q: Okay.

21 MR. FLOYD: Thank you, Your Honor. I don't have any
22 further questions.

23 THE COURT: Any redirect?

24 MR. MCEACHIN: Nothing at this time, Your Honor, and I'd
25 ask that he be relieved from his subpoena.

CHRIS HUCKS - DIRECT BY MR. MCEACHIN

1 THE COURT: Okay. All right. Thank you for your
2 testimony, sir. You're free to leave the courthouse or, if
3 you'd like to remain with us, you're welcome to.

4 THE WITNESS: All right. Thank you.

5 MR. MCEACHIN: Your Honor, the State would call Chris --
6 Christopher Hucks to the stand.

7 THE COURT: Okay.

8 (WHEREUPON, there was a pause in the proceedings until
9 the witness entered the courtroom.)

10 THE CLERK: Come around and let me swear you in, please,
11 sir. Place your left hand on the Bible and raise your right
12 hand. Place your left hand on the Bible and raise your right
13 hand. Do you solemnly swear or affirm that the evidence
14 you're about to provide in this case shall be the truth, the
15 whole truth, and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Have a seat.

18 CHRIS HUCKS, being first duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MCEACHIN:

22 Q: Good morning, Chris.

23 A: Good morning.

24 Q: If you would, please state your full name for the record
25 and, before you do, make sure you speak loudly and audibly so

1 everyone in the jury can hear you, as well as the court
2 reporter.

3 A: All right. My name is Christopher Hucks.

4 Q: And, Chris, who do you work for?

5 A: Mullins Police Department.

6 Q: How long have you been working for Mullins Police
7 Department?

8 A: About a year and a half now.

9 Q: Prior to working for Mullins, who did you work for?

10 A: Marion City Police Department.

11 Q: And how long had you worked for Marion City?

12 A: Close to six-and-a-half years.

13 Q: How many total years of law enforcement experience do you
14 have?

15 A: Seven.

16 Q: So Marion Police Department and Mullins, those were the
17 two places that you've worked?

18 (WHEREUPON, no verbal response.)

19 Q: And you've got to respond audibly. Those are the two
20 places you've worked?

21 A: Yes, sir.

22 Q: Okay. Now, back in February of 2013, you were with
23 Marion City?

24 A: Yes, sir.

25 Q: And in what capacity were you working for the City at

CHRIS HUCKS - DIRECT BY MR. MCEACHIN

1 that time?

2 A: I was working as a patrol officer, checking property and
3 answering calls.

4 Q: Okay. And that was going to be my follow-up question.
5 As a patrol officer, what do you do? You said check property
6 and answer calls and respond to calls?

7 A: Yes, sir.

8 Q: Do you recall receiving a call or did you respond to
9 anything on the morning of February 16th, 2013?

10 A: Yes, sir.

11 Q: And you recall that day?

12 A: Yes, sir.

13 Q: And what did you end up responding to?

14 A: That morning, we responded to a shots-fired call on
15 Upland Avenue.

16 Q: And when you received that call, where were you?

17 A: Whenever I received that call, I was on Jones Avenue
18 heading towards Main Street.

19 Q: You were already on Jones Avenue at the time the call
20 came in?

21 A: Yes, sir.

22 Q: All right. Chris, I'm going to hand you or I'm going to
23 show you State's Exhibit 71 and, if you could, point out to
24 the jury -- and it may be off the map. Would you show them
25 roughly where you are -- were on Jones Avenue when you got the

1 call.

2 A: I was back further this way. There goes Waycross Street
3 there. I was catty-corner --

4 Q: So you were down below that?

5 A: Yes, sir.

6 Q: Okay. Towards Main Street?

7 A: Yes, sir. I was driving towards Main Street.

8 Q: Once you received the call, what did you do?

9 A: Once I received the call, I turned onto Cherry Avenue or
10 Cherry Street, then made a right onto Upland.

11 Q: All right. So I probably should have just stayed up
12 there with it. So you made a right on Cherry?

13 A: I made a right onto Cherry and a right onto Upland.

14 Q: All right. Once you got onto Upland, what did you do?

15 A: A man flagged me down. Mr. Cyrus Sloan -- I think that
16 was his name -- flagged me down around right there, and told
17 me he heard shots fired and saw a black male with a black or
18 gray coat or hoodie on running from the scene with a red
19 toboggan.

20 Q: All right. And once you got that from him, what did you
21 do?

22 A: I kept driving on Upland Avenue to Waycross, and I made a
23 right back onto Jones Avenue to go back in the area behind the
24 residence to where he said he saw him running.

25 Q: Okay. And at this time, were you driving fast or slow?

CHRIS HUCKS - DIRECT BY MR. MCEACHIN

1 A: I was driving slow.

2 Q: Okay. And so you were driving back up -- up Jones
3 looking around?

4 A: Looking around to try to see if I could see the subject.

5 Q: All right. And what was the next thing that occurred, if
6 you recall?

7 A: At that time, Officer McCaskill stated he saw the subject
8 behind a set of apartments on Jones Avenue.

9 Q: And at this point, where were -- I should have just
10 stayed up there. Where were you at this point?

11 A: We were coming across -- we were coming right through
12 here because there goes this set of apartments. We were
13 coming through here, and whenever me and McCaskill was driving
14 towards Main Street, I come up here after he saw -- after he
15 come over the radio and stated he saw a subject or somebody
16 matching that description, I come up here and made a U-turn
17 and headed back --

18 Q: And --

19 A: -- towards Waycross Street.

20 Q: And when you say we, you said you and McCaskill. Where
21 was he?

22 A: He was either in front of me or behind me. I don't
23 remember exactly because it has been two years ago.

24 Q: Okay. So you turned around and he also turned around?

25 A: He also turned around.

1 Q: Okay. And so you started heading back down this way?

2 A: We started heading back down to see if we could -- to see
3 if I could make contact with the subject matching that
4 description.

5 Q: All right. And as you were coming back down Jones toward
6 Waycross, what happened?

7 A: A male matching that description ran in front of my
8 patrol car. Whenever he ran in front of my patrol car --
9 there is a set of apartments right there. He ran across Jones
10 in-between the apartments and that residence to the
11 maintenance shop. All of this right here is the maintenance
12 shop inside of the fence. He ran across there with me yelling
13 out my window for him to stop. He jumped -- he jumped over
14 the fence and went inside the maintenance shop.

15 Q: Okay. How close were you to him while you were yelling
16 at him?

17 A: He could have heard me because I'm -- because I got --
18 because I can yell pretty loud.

19 Q: You get loud when you need to?

20 A: Yes, sir.

21 Q: And I --

22 MR. MCEACHIN: Your Honor, may I have him step down just
23 a minute?

24 THE COURT: Sure.

25 BY MR. MCEACHIN:

CHRIS HUCKS - DIRECT BY MR. MCEACHIN

1 Q: All right. If you would, step down for me.

2 (WHEREUPON, the witness complied.)

3 Q: And I know you just pointed out to the jury where you saw
4 him go over the fence, but, if you could, would you mark it
5 with that marker right there?

6 (WHEREUPON, the witness complied.)

7 A: There goes the apartments. There goes the --

8 THE COURT: You need to speak up, sir.

9 Q: Speak up for me so the court reporter can --

10 A: All right.

11 Q: -- get everything you're saying.

12 A: There goes the apartments and there goes the residence.

13 He jumped over the fence somewhere -- somewhere behind it.

14 There's a little clearing where the trees aren't grown and you
15 can actually see the entire fence right there from the top to
16 the bottom, and he jumped over there.

17 Q: All right. So -- and I'll have you stand right back
18 here. I'll keep you down here for just a minute. Make sure
19 you speak up so the court reporter can hear you. Now, once he
20 jumped over the fence, what did you do?

21 A: Once he jumped over the fence there, I jumped in my car,
22 backed out, and come down here to Waycross to set up a
23 perimeter because I called across the radio and told my
24 colleagues that -- where he -- that he had jumped over the
25 fence to go inside the maintenance shop. And my sergeant --

1 he was on Jones Avenue. So I come down here to Waycross
2 Street and McCaskill -- Sergeant McCaskill now -- he come down
3 here at Bobby Gerald to try to keep him installed in the
4 perimeter. That way he wouldn't get out until we could catch
5 him.

6 Q: Okay. And when you say your sergeant, who was your
7 sergeant at the time?

8 A: Sergeant Keith McNeil.

9 Q: And he was in this area right here you said?

10 A: He was in -- he was in this area.

11 Q: Now, once you got to Way -- down here to Waycross, what
12 did you do?

13 A: Sergeant McCaskill had told me that he come -- that he
14 saw him trying to come out of the fence and come over the
15 radio and says he saw him trying to come out of the fence, and
16 whenever he said he was trying to come out of the fence, he
17 saw him jump back into the fence or come down off the fence,
18 and stated he was still in there. So I come -- I walked
19 through the field right here and jumped into the fence with
20 the subject to try to see if I could -- because there's a lot
21 of trucks and stuff because it's a maintenance shop -- to try
22 to see if I couldn't flush him out and catch him.

23 Q: All right. So you actually jumped over the fence of the
24 maintenance shop and you were in the maintenance yard?

25 A: Yes, sir.

CHRIS HUCKS - DIRECT BY MR. MCEACHIN

1 Q: All right. Once you were in the maintenance yard, what
2 did you witness?

3 A: Whenever I was -- whenever I got to the maintenance shop,
4 I heard the fence rattle. And whenever I heard the fence
5 rattle, I looked over towards this open field right through
6 here, and I saw the subject matching that description in the
7 -- running towards Patterson Court, that next -- that next --
8 he jumped across somewhere along there. I saw him running
9 north. On here, it's north. It was towards Main Street.

10 Q: All right. And you said it was towards Patterson Court,
11 which is in this area?

12 A: Yes. Towards Patterson Court. Patterson Court is right
13 there.

14 Q: All right. Once you observed that, what did you do?

15 A: I come across my radio and I advised the other two
16 officers that were outside the fence where I saw him and which
17 direction he was going. That way, they may be able to make
18 contact because I was inside the fence. I wouldn't be able to
19 jump across the fence and catch him before he would be out of
20 -- out of reach for me.

21 Q: Do you know where McNeil was at that time?

22 A: McNeil stated he was on Jones Avenue and Patterson Court,
23 and he saw him running behind some of the houses.

24 Q: Okay. If you would, grab a seat right back up there.

25 (WHEREUPON, the witness complied.)

1 Q: So with regards to State's Exhibit 71 here, you saw him
2 jump over the fence here?

3 MR. ANDERSON: Your Honor, I'm going to object. Asked
4 and answered.

5 THE COURT: Okay.

6 MR. MCEACHIN: I was simply establishing the case so I
7 can follow up.

8 THE COURT: I'll overrule that. I'll allow you to just
9 make sure that you understood the -- the testimony correctly.

10 MR. MCEACHIN: Certainly.

11 BY MR. MCEACHIN:

12 Q: So the first place you noted was when he jumped over the
13 fence here into the maintenance yard?

14 A: Yes, sir.

15 Q: And you saw him there and then the only other time you
16 saw him was here when you heard the fence rattle and saw him
17 heading towards Patterson Court?

18 A: Yes, sir.

19 Q: Okay. Now, you got to see him two times. Could you
20 recognize the clothes he was wearing?

21 A: I recognized the clothes he was wearing. I did -- I
22 didn't pay attention to his -- I didn't necessarily pay
23 attention to his physical facial features or anything.

24 Q: Okay. I'm going to hand you what's been marked as
25 State's Exhibit Number 4. I'm going to ask you if you can

CHRIS HUCKS - DIRECT BY MR. MCEACHIN

1 identify those.

2 A: Yes. He was wearing dark pants.

3 Q: All right. And I'm also going to hand you State's
4 Exhibit Number 2. Take a look inside that bag and tell me if
5 you can identify that.

6 A: That matched the description I received from Mr. Cyrus
7 Sloan and Mr. Hills, and the same guy that I was chasing --

8 Q: Okay.

9 A: -- the entire time.

10 Q: And the fellow you saw jump over the fence the first time
11 and the same fellow you saw running towards Patterson Court
12 were wearing the same clothes?

13 A: Wearing the same clothes.

14 Q: Okay. Thank you. Now, once you got -- once you saw him
15 running, where did you go?

16 A: Once I saw him running, I notified my other two officers
17 that were outside the fence, and I come and I jumped because
18 it was a clean spot for me to jump off of. I jumped back
19 across right here on -- I jumped back across the fence where
20 Sergeant McCaskill stated he was trying to jump over to begin
21 with. That was the lowest portion of the fence.

22 Q: Okay. Once you jumped over that, where did you go?

23 A: I went back to my unit, which was parked over here on
24 Waycross.

25 Q: All right. And once you got back to your unit, what did

1 you do?

2 A: I went up to -- I drove up because McCaskill had stated
3 that he had the subject in custody at that time. It took me a
4 little while to get back over the fence.

5 Q: All right. Okay. So once you got back in your patrol
6 vehicle, where did you go?

7 A: Once I got back to my patrol vehicle, I went up to Cherry
8 Street and saw they were good whenever they had him in custody
9 to make sure they were all right. They were good; so I headed
10 down and made -- turned back onto Cherry Street and went back
11 to Upland Avenue because dispatch had come across during the
12 chase and stated there was a shooting victim on Upland Avenue.

13 Q: Once you got to Upland, what did you do?

14 A: Once I got to Upland, there was a deputy there, Sergeant
15 Pike. He was there. He had already started placing number
16 markers for the shell casings. And at that point, I went
17 around -- because I had crime scene tape in my patrol unit, I
18 went around and I taped the whole crime scene off. That way
19 nobody could enter or exit without our knowing.

20 Q: Okay. And once you did the crime scene tape, what did
21 you do?

22 A: Once I done the crime scene tape, Sergeant Pike had come
23 back around and told me that the red toboggan that -- that was
24 -- that everybody had said in the description that we had seen
25 was behind a residence on Jones Avenue. I think it was 309

CHRIS HUCKS - DIRECT BY MR. MCEACHIN

1 Jones Avenue in-between -- it was in-between the apartments --
2 the set of apartments is right beside that house.

3 Q: And, Office Hucks, I'm going to show you now what's been
4 marked as State's Exhibit 40. Can you identify that?

5 A: Yes, sir. That is -- I'm almost positive that's 309
6 Jones Avenue.

7 Q: And is that the house where the toboggan was located?

8 A: It was right behind it. Where the steps come down,
9 there's a fence right behind this residence, and it was at the
10 corner of the step -- the fence and the steps and there --
11 behind the apartments, there is also a fence -- another fence
12 that separates the apartments from the residences on that, and
13 the toboggan was laid down at the corner of pretty much all
14 three of the properties.

15 Q: And I'll show you what's been marked as State's Exhibit
16 43. Can you identify that?

17 A: That is the toboggan that I witnessed.

18 Q: And that's where you saw it when you got there?

19 A: That's where I saw it whenever I got there.

20 Q: All right. Once you got there, what did you do?

21 A: Once I got there, I stayed with the toboggan until
22 somebody came to relieve me.

23 Q: Okay.

24 A: I also spoke to the male standing on top of the steps to
25 that residence right there.

1 Q: State's Exhibit 40?

2 A: He was standing up there and I spoke with him, and he
3 stated he had seen the person that we were chasing because he
4 had run in-between the house and the apartments.

5 Q: Do you remember what that fellow's name was?

6 A: Can I check back with my --

7 Q: If it helps refresh your recollection, certainly.

8 A: I think it was Mr. Hills.

9 Q: Okay. Thomas Hills?

10 A: Yes, sir.

11 Q: Once you spoke to Mr. Hills and got through with him,
12 what did you do?

13 A: I -- I kept the toboggan in my -- kept the toboggan in my
14 sight until somebody came to relieve me and take it into
15 evidence.

16 Q: And once that happened, what did you do?

17 A: I went back around to the scene and held the perimeter
18 until SLED arrived.

19 Q: And once SLED arrived, did you have any other involvement
20 that day?

21 A: I did not have any other involvement.

22 Q: Okay.

23 A: Other than walking through attempting to locate the gun.
24 I walked through everywhere that I had seen him run,
25 everywhere that everybody had seen him run come over the

CHRIS HUCKS - DIRECT BY MR. MCEACHIN

1 radio, and attempted to locate the firearm and was unable to.

2 Q: Okay. That was going to be my follow-up. Did y'all have

3 any success in finding the firearm?

4 A: No, sir.

5 Q: Okay. And that was all you did that day?

6 A: That was all I did.

7 Q: Did you have anything to do with this case other than

8 what you've told the jury?

9 A: No.

10 Q: Okay. Thank you. Please answer any questions Mr.

11 Anderson may have for you.

12 A: Yes, sir.

13 THE COURT: Cross-examination from the defense?

14 CROSS-EXAMINATION

15 BY MR. ANDERSON:

16 Q: Officer Hucks, when you were on patrol that day, you were

17 already on Jones Avenue?

18 A: Yes, sir.

19 Q: A call came out about shots being fired?

20 A: Yes, sir.

21 Q: How fast do you think you were going down Jones Avenue?

22 A: I wasn't going too fast, sir.

23 Q: Fifteen -- 20 miles an hour?

24 A: Probably somewhere around there, just looking around. It

25 was a slow day. It was cold. There weren't very many people

1 outside.

2 Q: You turned onto Cherry Street; is that right?

3 A: Yes, sir.

4 Q: Then made a right on Upland?

5 A: Yes, sir.

6 Q: That probably took a couple seconds; is that right?

7 A: Well, once we got the call of shots fired, I sped up.

8 Q: But had to make a couple of turns?

9 A: Yes, sir. I had to make a couple of turns. It took a
10 few seconds.

11 Q: Got flagged down by Mr. Sloan?

12 A: Yes, sir.

13 Q: Mr. Sloan -- Mr. Sloan talked to you a little bit about
14 what he heard and what he saw?

15 A: Yes, sir.

16 Q: That probably took a minute or two?

17 A: It didn't take but a second because he said he saw -- he
18 said he heard the shots and said he --

19 Q: Described what he was wearing?

20 A: He described what he was wearing. He said --

21 Q: Described which way --

22 A: -- he was running towards Cherry Street and run through
23 Ms. Bayhan's yard. That was all he said. Whenever he said
24 that, I -- I circled back through and attempted to locate the
25 subject.

CHRIS HUCKS - CROSS BY MR. ANDERSON

1 Q: All right. So he told you he heard shots fired?

2 A: Yes, sir.

3 Q: Then he told you what he was wearing? Then he told you
4 which direction he was going?

5 A: All in all, it probably took a minute or so.

6 Q: Okay. Then you got a call over -- or you heard a call
7 over the radio from McCaskill said sees subject running?

8 A: Yes, sir. As I was coming down Jones Avenue. Well, he
9 didn't say he saw him running. He said he saw him behind a --
10 he saw someone matching that description behind Jones Avenue
11 Apartments.

12 Q: All right. Now, you never saw Kemonie holding a red
13 toboggan, did you?

14 A: I never did, no, sir.

15 Q: And you said you talked with Mr. Hills?

16 A: Yes, sir.

17 Q: Mr. Hills never said he saw him holding a red toboggan,
18 did he?

19 A: Not that I can recall.

20 Q: I mean if he'd have said that, you certainly would have
21 put it in your report?

22 A: He wrote a statement also. So it would be in the
23 statement also.

24 Q: Okay. But if he had told you that, don't you think you
25 would have put it in the report that you wrote?

1 A: Everything that was put in my supplemental I thought at
2 that time was pertinent to the case.

3 Q: Okay. Well, you've got a copy of your supplemental?

4 A: Yes, sir.

5 Q: Have you -- do you see it anywhere in there?

6 A: I didn't put it in there.

7 Q: Okay. But if it had been pertinent, certainly you would
8 have put it in there?

9 A: I think so, yes, sir.

10 Q: All right. You also said that you went back and tried to
11 look for a firearm?

12 A: Yes, sir.

13 Q: You retraced all the steps that you saw Kemonie running?

14 A: Yes, sir.

15 Q: Looked in the -- I guess the maintenance shop and looked
16 on Patterson Court and things like that?

17 A: Yes, sir.

18 Q: Never saw a gun?

19 A: Never found one, no, sir. There's plenty of houses and
20 plenty of hiding spots.

21 Q: Exactly. 'Plenty of houses, plenty of hiding spots.

22 That's a congested area as far as woods and things like that
23 are concerned, aren't they?

24 (WHEREUPON, no verbal response.)

25 MR. ANDERSON: Okay. That's all of the questions I have,

JACK "TREY" MCCASKILL - DIRECT BY MR. MCEACHIN

1 Judge.

2 THE COURT: Any redirect?

3 MR. MCEACHIN: No, sir, Your Honor.

4 THE COURT: Okay. Thank you for your testimony.

5 MR. MCEACHIN: And I ask that he be relieved from his
6 subpoena.

7 THE COURT: Sure. Thank you for your testimony, Officer.
8 You can step down and you're free to leave the courthouse or
9 you're welcome to remain with us.

10 THE WITNESS: Thank you.

11 MR. MCEACHIN: The State would call Trey McCaskill to the
12 stand, Your Honor.

13 (WHEREUPON, there was a pause in the proceedings until
14 the witness entered the courtroom.)

15 THE CLERK: Do you solemnly swear or affirm the evidence
16 you're about to give in the trial of this case shall be the
17 truth, the whole truth, and nothing but the truth, so help you
18 God?

19 THE WITNESS: Yes, ma'am.

20 THE CLERK: Thank you. You can take the witness stand.

21 JACK "TREY" MCCASKILL, being first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MCEACHIN:

25 Q: Mr. McCaskill, if you would, please state your full name

1 for the record.

2 A: My name is Jack McCaskill.

3 Q: And, Jack, you also go by Trey?

4 A: Yes, sir.

5 Q: Okay. Trey, do you mind if I call you Trey?

6 A: That's fine.

7 Q: Trey, who do you work for?

8 A: I work for the Marion County Sheriff's Office.

9 Q: And how long have you worked for the Sheriff's Office?

10 A: Going on about two-and-a-half years.

11 Q: And prior to working for the Sheriff's Office, who did

12 you work for?

13 A: Marion Police Department.

14 Q: And in what capacity were you working for the police

15 department?

16 A: I was a patrol officer.

17 Q: How long were you a patrol officer with the police

18 department?

19 A: About a year and a half.

20 Q: Back in February of 2013, who were you employed by?

21 A: Marion Police Department.

22 Q: As a patrol officer?

23 A: Yes, sir.

24 Q: And we've had some other testimony, but tell the jury

25 what you perceive a patrol officer's duties and

JACK "TREY" MCCASKILL - DIRECT BY MR. MCEACHIN

1 responsibilities to be.

2 A: Patrol the City of Marion. We answer 9-1-1 calls and
3 stuff like that.

4 Q: Okay. Basic policing?

5 A: Right..

6 Q: So when people see patrol vehicles riding around in the
7 neighborhood, that's typically a patrolman, not an
8 investigator or something like that?

9 A: Yes, sir.

10 Q: Okay. And that's what you were doing back in February of
11 2013?

12 A: Yes, sir.

13 Q: On February 16th, 2013, were you working that day?

14 A: I was.

15 Q: Okay. And do you -- do you recall receiving a call that
16 day to respond to?

17 A: Yes, sir.

18 Q: And where were you at the time you received that call?

19 A: That morning, I was around Supply Drive.

20 Q: And once you received the call, where did you go?

21 A: I went towards Jones Avenue.

22 Q: And about how long did it take you to get from where you
23 were on Supply Drive to Jones Avenue?

24 A: Within a couple minutes, not even.

25 Q: Okay. And once you got to Jones Avenue, what did you do?

1 A: I began looking for the description of the person they
2 advised us that was involved in the call.

3 Q: And what were you looking for?

4 A: I was looking for a male subject wearing a black jacket
5 and a red ski mask.

6 Q: All right. And as you were patrolling Jones Avenue,
7 what, if anything, did you see?

8 A: When I was going towards Cherry Street on Jones Avenue, I
9 observed a male subject wearing a black and gray jacket and he
10 had in his hand what appeared to be a red 'boggan -- a red
11 toboggan.

12 MR. MCEACHIN: Your Honor, may I have the witness step
13 down?

14 THE COURT: Sure.

15 (WHEREUPON, the witness complied.)

16 BY MR. MCEACHIN:

17 Q: Trey, I want you to familiarize yourself real quick with
18 the map here. When you say you saw an individual wearing a
19 dark jacket and a red toboggan, I want you to mark with this
20 where you saw that individual.

21 A: Okay.

22 (WHEREUPON, the witness complied.)

23 Q: Okay. So right in that same area?

24 A: Yes, sir.

25 Q: And once you saw him, just show the jury which direction

JACK "TREY" MCCASKILL - DIRECT BY MR. MCEACHIN

1 -- make sure you speak up so the court reporter can get it
2 down. Show the jury which direction you were headed.

3 A: I was traveling this way down Jones Avenue towards Cherry
4 Street right there.

5 MR. MCEACHIN: And for the record, we are referring to
6 State's Exhibit 71.

7 Q: And once you saw the individual, what did you do?

8 A: I -- when I seen him, I was actually passing the
9 apartments and I turned around to make contact with him.

10 Q: And once you turned around, what occurred?

11 A: The subject began to run.

12 Q: Okay. And did you see him in front of your vehicle or
13 behind your vehicle when you noticed he started to run?

14 A: Well, he was beside my vehicle -- in front of my vehicle
15 on the side and went behind the -- this yellow two-story house
16 is right here. It's He went behind the
17 house and I went in front of the house to make contact with
18 him.

19 Q: Okay. And where did he go when he ran?

20 A: Well, at that point, on the other side of the house
21 there's a fence and it blocks him from running straight
22 towards, you know, that direction. So I didn't see him
23 anymore. I looked in my rear-view mirror and I seen him go
24 across Jones Avenue towards -- in this direction towards Bobby
25 Gerald Parkway.

1 Q: At that time, were there any other police officers on
2 Jones Avenue?

3 A: Yes.

4 Q: Who was on Jones Avenue?

5 A: Chris Hucks.

6 Q: All right. And was Chris behind you? And by behind you,
7 I mean closer to Main Street.

8 A: Yes.

9 Q: Okay. Once you saw him run behind you, where did you go?

10 A: I seen Hucks -- I seen Officer Hucks turn in behind the
11 subject; so I turned around and started heading back towards
12 Henry Street and towards Main Street.

13 Q: All right. And where did you go once you started heading
14 back in that direction?

15 A: I turned and took a left onto Henry Street. I went to
16 the -- to the stop sign and took a right -- or took a left.
17 I'm sorry. I took a left onto Bobby Gerald Parkway and I went
18 in front of the maintenance shop right here at that fence.

19 Q: And why did you go there?

20 A: I was advised that he jumped the fence and stayed inside
21 the fence of the maintenance facility, and I went to the front
22 to make contact with him. And by the time I got to the gate,
23 he was up at the top of the fence trying to jump over.

24 Q: Okay. And can you show the jury where you're talking
25 about where you made contact with him?

JACK "TREY" MCCASKILL - DIRECT BY MR. MCEACHIN

1 A: Yes. Right there.

2 Q: Now, I presume you kind of wheeled right in there?

3 A: Yes.

4 Q: Now, this was on a Saturday; is that correct?

5 A: Yes.

6 Q: Was the maintenance shop open that day?

7 A: No. It was closed.

8 Q: So the fence that you're referring to, it was --

9 A: It was locked.

10 Q: It was closed and locked as well?

11 A: Yes, sir.

12 Q: Once you pulled up, what did the individual do?

13 A: He jumped down from the fence and he began, like, a fast

14 jog towards this building, which that building is a -- it's

15 like a carport for all the maintenance trucks we have.

16 Q: And what was the next thing that occurred?

17 A: I took my patrol vehicle -- I started coming down this

18 way and I watched him go behind this building, and he started

19 to go back towards -- there's a corner fence right here and a

20 couple of trees, and I seen him get in behind them trees right

21 there.

22 Q: Okay. I'll have you mark that for the jury.

23 A: Okay.

24 (WHEREUPON, the witness complied.)

25 Q: All right. And once you saw that, what happened next?

1 A: I advised Officer Hucks his location and I told him to go
2 into the fence. I was already advised that Hucks was inside
3 of the fence at that point in time. At that point, I was
4 advised that he's already jumped the fence -- that the subject
5 already jumped the fence and was heading towards Patterson
6 back out to Jones. So I turned back around and started
7 heading this way, and then I was advised that he was going in-
8 between houses here headed towards Henry Street. So I took a
9 right on Henry and I went down and what I did was I stopped
10 and then started reversing back to look in-between houses to
11 try and locate him.

12 Q: And show the jury about where you started reversing on
13 the map?

14 A: It was right up in here where I started reversing.

15 Q: All right. And you started going backwards?

16 A: Yes.

17 Q: And what were you doing while you were going backwards?

18 A: I was looking to my right.

19 Q: So show the jury which houses you were looking at?

20 A: In-between these houses right here.

21 Q: Okay. And what, if anything, occurred while you were
22 doing that?

23 A: Say that one more time?

24 Q: What, if anything, occurred while you were doing that?

25 A: What, if anything, occurred?

JACK "TREY" MCCASKILL - DIRECT BY MR. MCEACHIN

1 Q: Yes. What occurred when you were doing that?

2 A: What occurred? Oh. Whenever I was reversing back, he
3 ran across the front of my car, and he started running this
4 way between this building and there's a house right here,
5 traveling towards Lombardy Street.

6 Q: Show the jury where -- when he ran in front of your car,
7 where did that happen?

8 A: Right here.

9 Q: All right. Once you saw that occur, where did you go?

10 A: I proceeded to Jones and took a left and then I went to
11 Lombardy Street and made contact with him or tried to make
12 contact with him on Lombardy Street.

13 Q: Okay. And once you got to Lombardy Street, what did you
14 observe?

15 A: I observed that whenever he was running down -- I
16 observed -- whenever he was running down, I observed --
17 whenever I come this way, I observed him trying to hide in-
18 between this -- there's a white building right here and I
19 observed him trying to hide in-between there. So I stopped my
20 patrol vehicle and I was trying to make sure that he was in
21 that position when I dropped back behind that building.

22 Q: Okay. And what did you -- when you say you observed him
23 at that building, what was he doing at that building?

24 A: He was trying to hide. He crouched down.

25 Q: Okay. What did you do when you saw that?

1 A: I stopped and I parked my patrol car, and then a deputy
2 came up. And as soon as -- I mean as soon as the deputy came
3 up, he jumped up from the building and started running towards
4 Jones Avenue.

5 Q: Okay. So show this jury which direction he was headed
6 from that marker.

7 A: From there, he was heading this way toward Jones Avenue.

8 Q: And while he was doing that, what did you do?

9 A: I got out and I ran behind him.

10 Q: Okay.

11 A: Myself and the deputy.

12 Q: And what ultimately happened?

13 A: Whenever -- whenever we was running across Jones Avenue,
14 we were advising him to stop, loudly telling him to stop, and
15 eventually behind that house he threw his hands up and
16 stopped, and we put him in custody.

17 Q: So show -- with that yellow marker, show the jury where
18 you placed him in custody.

19 A: In that back yard.

20 Q: Okay. You can go ahead and have a seat back in the
21 stand.

22 A: Okay.

23 (WHEREUPON, the witness complied.)

24 Q: Once you were able to place the individual in custody,
25 were you able to identify him?

JACK "TREY" MCCASKILL - DIRECT BY MR. MCEACHIN

1 A: Yes, I was.

2 Q: And who was the individual you placed into custody?

3 A: Kemonie Lashawn Jones.

4 Q: Do you recognize -- can you identify whether or not that
5 individual is in this courtroom today?

6 A: Yes, I can.

7 Q: And can you please point him out to the jury?

8 A: He's sitting right at the defense table.

9 MR. MCEACHIN: Your Honor, please have the record reflect
10 the officer has identified the defendant.

11 THE COURT: Okay. So noted.

12 BY MR. MCEACHIN:

13 Q: Now, I'm going to hand you a couple of items here, Trey,
14 and maybe it would be easiest if I do it from right over here.
15 Once you placed the defendant into custody, what did you do?

16 A: I escorted him back to my patrol vehicle, and I conducted
17 a search of him and advised him of his Miranda rights and
18 asked him why he ran.

19 Q: Okay. Now, with regard to State's Exhibit Number 6, can
20 you identify that?

21 A: Yes, I can.

22 Q: And what is State's Exhibit 6?

23 A: That is Kemonie Jones' South Carolina identification
24 card.

25 Q: And did you collect that from the defendant?

1 A: Yes, I did.

2 Q: And that was there either between where you arrested him
3 and your patrol vehicle?

4 A: Yes, sir.

5 MR. MCEACHIN: Your Honor, I'd move State's 6 into
6 evidence.

7 THE COURT: Okay.

8 MR. ANDERSON: No objection.

9 THE COURT: All right. Without objection, it will be
10 Number 6 for the State into evidence.

11 (WHEREUPON, State's Exhibit Number 6, the ID card, was
12 admitted into evidence.)

13 BY MR. MCEACHIN:

14 Q: In addition to that, you found some other items on the
15 defendant; is that correct?

16 A: Yes, I did.

17 Q: I'm going to show you what's been marked as State's
18 Exhibit Number 7. Can you identify that?

19 A: I can.

20 Q: And what -- what is that?

21 A: It's -- it's clear plastic bags containing a green, leafy
22 substance that is marijuana.

23 Q: Okay. And you took that into your possession?

24 A: I did.

25 Q: All right. And --

JACK "TREY" MCCASKILL - DIRECT BY MR. MCEACHIN

1 MR. MCEACHIN: Your Honor, at this time, I'd move State's
2 7 into evidence.

3 THE COURT: Okay. And what says the defense?

4 MR. ANDERSON: No objection, Your Honor.

5 THE COURT: All right. Without objection, Number 7 into
6 evidence for the State.

7 (WHEREUPON, State's Exhibit Number 7, the bag of plastic
8 bags containing marijuana, was admitted into evidence.)

9 BY MR. MCEACHIN:

10 Q: And how about State's Exhibit 8? Can you identify that?

11 A: I can. This is a -- it was a clear bag that had --
12 contained 19 individual clear plastic bags.

13 Q: And did you also collect that from the defendant?

14 A: I did.

15 MR. MCEACHIN: Your Honor, I'd move State's 8 into
16 evidence.

17 MR. ANDERSON: No objection, Your Honor.

18 THE COURT: All right. Without objection, Number 8 into
19 evidence for the State.

20 (WHEREUPON, State's Exhibit Number 8, clear plastic bags,
21 was admitted into evidence.)

22 MR. MCEACHIN: And, Your Honor, by way of testimony
23 yesterday, I'd also move State's 72 into evidence.

24 MR. ANDERSON: No objection, Your Honor.

25 THE COURT: All right. 72?

1 MR. MCEACHIN: That's correct, Your Honor.

2 THE COURT: Okay. The analysis?

3 MR. MCEACHIN: That's correct, Your Honor.

4 THE COURT: Okay.

5 MR. MCEACHIN: The drug analysis.

6 (WHEREUPON, State's Exhibit Number 72, the drug analysis
7 report, was admitted into evidence.)

8 BY MR. MCEACHIN:

9 Q: Now, Trey, if we look at this map here, State's Exhibit
10 71, you made contact with the defendant one, two, three, four,
11 five, six times; is that correct?

12 A: Yes, I did.

13 Q: And with regard to the individual you saw holding the red
14 ski mask here, right there at was that the
15 same individual that you arrested?

16 A: Yes, it is.

17 Q: And the individual you saw trying to jump over the fence,
18 was that the same individual you arrested?

19 A: Yes, it was.

20 Q: And the individual behind the bus shed?

21 A: Yes, sir.

22 Q: On Henry Street?

23 A: Yes, sir.

24 Q: And behind Lombardy Street?

25 A: Yes, sir.

JACK "TREY" MCCASKILL - DIRECT BY MR. MCEACHIN

1 Q: At all of those locations, the individual you saw was
2 Kemonie Jones?

3 A: Yes, it was.

4 Q: Trey, do you know what time you took him into custody?

5 A: It was about 10:09 that morning.

6 Q: 10:09 that morning? And did you end up transporting him
7 from the location?

8 A: I did. I transported him from Lombardy Street. After I
9 put him in my patrol vehicle, I transported him to the police
10 department in Marion.

11 Q: Okay. And from the police department, did you transport
12 him?

13 A: I did. After the investigators got done with everything,
14 I transported from the police department to the detention
15 center.

16 Q: Jack, can you identify State's Exhibit Number 4 for me?

17 A: These are the pants that the subject was wearing that
18 day..

19 MR. MCEACHIN: Your Honor, at this time, I move State's 4
20 into evidence.

21 THE COURT: What says the defense?

22 MR. ANDERSON: No objection, Your Honor.

23 THE COURT: All right. Without objection, Number 4 into
24 evidence.

25 (WHEREUPON, State's Exhibit Number 4, the black pants,

1 was admitted into evidence for the State.

2 BY MR. MCEACHIN:

3 Q: And I also want you to look inside of State's Exhibit
4 Number 2 and tell me if you can identify that.

5 A: Can I take it out?

6 Q: That's fine.

7 A: Yeah. That was the -- this is the jacket that he was
8 wearing the day involved.

9 MR. MCEACHIN: Your Honor, at this time, I'd move State's
10 2 into evidence as well.

11 THE COURT: All right.

12 MR. ANDERSON: No objection, Your Honor.

13 THE COURT: Without objection, Number 2 is into evidence
14 for the State.

15 (WHEREUPON, State's Exhibit Number 2, the black/gray
16 jacket, was admitted into evidence.)

17 BY MR. MCEACHIN:

18 Q: How about show that jacket to the jury for me, please,
19 sir?

20 A: All right.

21 (WHEREUPON, the witness complied.)

22 MR. MCEACHIN: I beg the Court's indulgence for just a
23 moment.

24 THE COURT: Sure.

25 MR. MCEACHIN: Please answer any questions Mr. Anderson

JACK "TREY" MCCASKILL - CROSS BY MR. ANDERSON

1 may have for you.

2 THE COURT: Okay. Cross-examination?

3 CROSS-EXAMINATION

4 BY MR. ANDERSON:

5 Q: Officer McCaskill, you have been in law enforcement
6 between six and -- I'm sorry -- between three and four years;
7 is that right?

8 A: Yes, sir.

9 Q: Now, Officer McCaskill, you went to the South Carolina
10 Law Enforcement Academy?

11 A: Yes, sir.

12 Q: How long did you go up there? How long was the training?

13 A: Twelve weeks.

14 Q: So basically three months?

15 A: Yes, sir.

16 Q: Did you have to go every day?

17 A: Every day.

18 Q: Even on weekends?

19 A: Not on weekends.

20 Q: Okay. Monday through Friday?

21 A: Yes, sir.

22 Q: For three months?

23 A: Yes, sir.

24 Q: Taught you various things up there?

25 A: Yes, sir.

1 Q: I'm not going to go over everything, but one of the
2 things they taught you how to do was write a report up; is
3 that right?

4 A: Yes, sir.

5 Q: Being on patrol, is it safe to say you've written a large
6 number of reports?

7 A: Yes, sir.

8 Q: You've been on patrol both with I guess Marion PD and
9 also with the Marion County Sheriff's Office?

10 A: Yes, sir.

11 Q: Patrolled both places?

12 A: Yes, sir.

13 Q: Now, obviously, Officer McCaskill, one of the reasons we
14 write reports is because our memories get worse with time; is
15 that right?

16 A: That's correct.

17 Q: You try to write the report as soon as you can. Is that
18 a fair statement?

19 A: Yes, sir.

20 Q: You try to put as much detail in there as you can?

21 A: Yes, sir.

22 Q: Later on, you may need to look back at it and refresh
23 your memory?

24 A: Yes, sir.

25 Q: Is that a fair statement?

JACK "TREY" MCCASKILL - CROSS BY MR. ANDERSON

1 A: Yes, sir.

2 Q: As a matter of fact, have you looked at it this morning?

3 A: I have.

4 Q: Have you looked at it this week?

5 A: I have.

6 Q: May have even looked at it last week?

7 A: Yes, sir.

8 Q: You wrote a supplemental in this case?

9 A: Yes, sir, I did.

10 Q: And that's an incident report supplemental?

11 A: Yes, sir.

12 Q: Would it be safe to say that it's a little over a half a

13 page long?

14 A: Yes, sir.

15 Q: You responded to a 9-1-1 call; is that right?

16 A: Yes, sir.

17 Q: The call that came out said the subject was wearing a

18 black jacket, also wearing a red ski mask?

19 A: Yes, sir.

20 Q: Now, you never saw Kemonie wearing a red ski mask, did

21 you?

22 A: No, sir.

23 Q: I think you said you were on Supply Drive --

24 A: Yes, sir.

25 Q: -- when the call first came out, and then you went to

1 Jones Avenue?

2 A: Yes, sir.

3 Q: It took you a couple of minutes?

4 A: About a minute.

5 Q: Okay. I mean earlier you said a couple minutes. I'm

6 just -- I mean you tell me whatever.

7 A: Yes, sir.

8 Q: Okay. Do you respond to a call saying shots fired on a

9 -- shots fired on a regular basis?

10 A: Yes, sir.

11 Q: Is it safe to say that maybe your heart starts beating a

12 little faster?

13 A: Sometimes.

14 Q: Sometimes might get a little nervous on the way to a

15 shots fired call?

16 A: Possibly.

17 Q: In the report that you wrote the day that this happened,

18 you never wrote in your report that he was holding a red

19 toboggan, did you?

20 A: I put right here in the report holding what appeared to

21 be a red 'boggan in his hands in-between the brick apartments

22 and the yellow two-story residence.

23 Q: Appeared to be? You didn't say he was holding a red

24 toboggan. You said holding what appeared to be a red

25 toboggan; is that right?

JACK "TREY" MCCASKILL - CROSS BY MR. ANDERSON

1 A: That's what I wrote.

2 Q: Yes, sir. I mean that's what you meant at the time you
3 wrote it, didn't you?

4 A: Yes.

5 Q: Okay. You were driving down Jones Avenue I guess looking
6 for someone, a subject; is that right?

7 A: Yes, sir.

8 Q: How fast do you think you were driving?

9 A: I was driving slow. Probably -- maybe five -- ten miles
10 an hour.

11 Q: Okay. Probably going like -- almost like you were
12 watching a tennis match, looking to your left, looking to your
13 right, looking to your left, looking to your right?

14 A: Right.

15 Q: Something like that?

16 A: Yes, sir.

17 Q: And as you drove by 309, you saw a subject?

18 A: Yes, sir.

19 Q: How far did you keep driving before you turned around?

20 A: Not even maybe 20 feet to turn around.

21 Q: Did you turn around in a driveway? Did you do a three-
22 point turn? What did you do?

23 A: A U-turn.

24 Q: U-turn?

25 A: Yes, sir.

1 Q: After you caught Kemonie, you said you read him your --
2 his Miranda rights?

3 A: Yes, sir.

4 Q: Did he make any statements to you?

5 MR. MCEACHIN: Objection, Your Honor. Hearsay.

6 THE COURT: All right. Let's -- let's take a short
7 break. Ladies and gentlemen of the jury, let's take a short
8 morning break, and we'll get you back out in just a few
9 minutes. I'll remind you again don't begin discussing this
10 case among yourselves. Okay.

11 (WHEREUPON, the jury exited the courtroom at 10:28 a.m.)

12 THE COURT: Okay.

13 MR. ANDERSON: Your Honor, I think the door was opened.
14 He asked Officer McCaskill -- you escorted him to the vehicle?
15 Yes. You read him his Miranda rights? Yes. You asked him
16 why he ran.

17 THE COURT: Well, I think based upon the Jackson v. Denno
18 hearing, I think what he would answer is because he had
19 marijuana on him.

20 MR. MCEACHIN: That's right, Judge, but that's the same
21 argument we had with the Terry situation.

22 THE COURT: Okay.

23 MR. MCEACHIN: It was completely voluntary, but he can't
24 get a defense in that way. That's improper.

25 THE COURT: Okay.

JACK "TREY" MCCASKILL - CROSS BY MR. ANDERSON

1 MR. MCEACHIN: It's the same argument.

2 THE COURT: Wouldn't that -- having marijuana on him and
3 admitting to having the marijuana on him, wouldn't that be
4 more exculpatory than inculpatory? Would it not be?

5 MR. MCEACHIN: Well, Judge, I mean I think the State's
6 position is, you know, you've got two crimes that don't
7 necessarily normally go together. You've got a PWID marijuana
8 charge and then you've got a murder charge.

9 THE COURT: Right.

10 MR. MCEACHIN: Ultimately, it can be a self-serving
11 statement as to the more significant or more severe charge.

12 THE COURT: Okay.

13 MR. MCEACHIN: Because that gives the defendant a defense
14 somewhat.

15 THE COURT: Right.

16 MR. MCEACHIN: Yeah, I was running because I had
17 marijuana on me. So it's the same argument, and Terry applies
18 in this same situation, Your Honor.

19 THE COURT: All right. All right. Apart from that, Mr.
20 Anderson is arguing that the door was opened. Apart from the
21 -- whether it was exculpatory or inculpatory, the door is open
22 just by virtue of Officer McCaskill saying he read him his
23 Miranda and asked him why he ran.

24 MR. MCEACHIN: Well, Your Honor --

25 THE COURT: Does that open the door?

1 MR. MCEACHIN: I don't believe so, Your Honor. I mean
2 when you talk about opening the door, that's not -- that's not
3 something you talk about when you're referring to hearsay.
4 That's more of a 403 analysis. I don't think it applies in
5 this case.

6 We didn't get into why he said he was running. He said
7 he read his rights, asked him why he was running, and we left
8 it -- left it there. So the statement was never made.

9 THE COURT: Okay.

10 MR. MCEACHIN: And I would argue that certainly no door
11 has been opened as a result of that.

12 THE COURT: All right. Mr. Anderson?

13 MR. ANDERSON: Judge, just like you say I can't have it
14 both ways or the State says I can't have it both ways, they
15 can't have it both ways. They can't ask my client why are you
16 running, but don't tell us the answers. The jury is going to
17 infer, well, he was running because he just shot somebody.

18 THE COURT: Okay. All right.

19 MR. MCEACHIN: The defendant can take the stand and say
20 the reason I was running was because I had marijuana on me.

21 THE COURT: Okay.

22 MR. MCEACHIN: Which is the whole analysis that Terry
23 goes through.

24 THE COURT: Right. All right. I'll give it some
25 thought. Let's take about a ten-minute break. I'll give it

JACK "TREY" MCCASKILL - CROSS BY MR. ANDERSON

1 some thought.

2 MR. MCEACHIN: And, Judge, I'm going to run downstairs
3 and see if my other witnesses are here.

4 THE COURT: Yeah, sure. Yeah.

5 (WHEREUPON, there was a break in the proceedings from
6 10:31 a.m. until 10:47 a.m.)

7 THE COURT: Okay. We're back on the record. That's a
8 close issue. I think State versus Terry would still control.
9 I think opening the door -- if the State had allowed Officer
10 McCaskill to repeat what the defendant said, I think that
11 would be more opening the door than just him saying, well, I
12 asked him, you know, why he ran, and didn't repeat what the
13 defendant said.

14 So I don't believe the door was opened, and I think Terry
15 -- State versus Terry would still control because that
16 statement would benefit the defendant because of the more
17 serious charge of murder versus the -- the PWID charge.

18 So, Mr. Anderson, I deny your request to -- to ask the
19 officer what the defendant said. Anything further before we
20 bring the jury out?

21 MR. MCEACHIN: No, sir, Judge.

22 THE COURT: Okay. All right. Mr. Evans, will you bring
23 the jury out, please, sir?

24 (WHEREUPON, the jury entered the courtroom at 10:48 a.m.)

25 THE COURT: All right. Let the record reflect the jury

1 is back in. Mr. Anderson?

2 MR. ANDERSON: Yes, sir.

3 THE COURT: Continue cross.

4 CROSS-EXAMINATION

5 BY MR. ANDERSON:

6 Q: Officer McCaskill, you indicated that you escorted him
7 back to your car and you searched him while he was near your
8 car or at your car?

9 A: At my car.

10 Q: I believe you testified that you found an ID card on him?

11 A: I did.

12 Q: You found some clear plastic bags that contained what you
13 believed is marijuana?

14 A: Yes, sir.

15 Q: And that I think was found in his left cargo pants
16 pocket?

17 A: Yes, sir.

18 Q: What else did you find in that left cargo pants pocket?

19 A: The .40 caliber round -- spent round.

20 Q: A .40 caliber Smith & Wesson round?

21 A: Yes, sir.

22 Q: Now, you also found other clear bags; is that right?

23 A: Yes, sir.

24 Q: I think you said 19 of them?

25 A: Yes, sir.

JACK "TREY" MCCASKILL - CROSS BY MR. ANDERSON

1 Q: One cigarillo? What is that?

2 A: That's a cigar. That's a small cigar.

3 Q: Two lighters?

4 A: Yes, sir.

5 Q: And other items as well?

6 A: Yes, sir. Just personal items.

7 MR. ANDERSON: Judge, that's all the questions I have.

8 THE COURT: Thank you. Any redirect?

9 MR. MCEACHIN: Just one question, Your Honor. May I
10 approach?

11 REDIRECT EXAMINATION

12 BY MR. MCEACHIN:

13 Q: I'm showing you what's been introduced as State's Exhibit
14 Number 4 into evidence. Show this jury where you found the --
15 the marijuana and the shell casing?

16 A: In his left pocket, this side.

17 Q: Okay.

18 A: Left cargo pocket. It's down here on the leg --

19 Q: Okay.

20 A: -- at the bottom.

21 Q: So it wasn't in this -- what I call a normal pocket on a
22 pair of pants. It was down in the cargo pocket?

23 A: It was in the cargo pants or down here I mean.

24 MR. MCEACHIN: No further questions.

25 THE COURT: All right. Thank you, Officer, for your

1 testimony. You can step down.

2 THE WITNESS: Thank you.

3 MR. MCEACHIN: Your Honor, may we approach?

4 THE COURT: Sure.

5 (WHEREUPON, a bench conference was held off the record in
6 the presence of the jury but out of the hearing of the
7 jury.)

8 MR. MCEACHIN: Your Honor, my next witness is coming up
9 from downstairs.

10 THE COURT: Okay.

11 MR. MCEACHIN: Oh, Your Honor, I apologize. While we're
12 waiting, I would ask that Officer McCaskill be relieved from
13 his subpoena.

14 THE COURT: Certainly. Any objection?

15 MR. ANDERSON: No, sir, Your Honor.

16 THE COURT: Okay. All right. You're free to stay with
17 us or you're free to leave, sir, either way.

18 THE WITNESS: Thank you, Your Honor.

19 (WHEREUPON, there was a pause in the proceedings until
20 the witness entered the courtroom.)

21 MR. MCEACHIN: Your Honor, the State would call Don
22 Oliver to the stand.

23 THE COURT: Okay.

24 MR. MCEACHIN: Mr. Oliver, come right around this way,
25 please.

DON OLIVER - DIRECT BY MR. MCEACHIN

1 THE CLERK: Mr. Oliver, place your left hand on the Bible
2 and raise your right hand as much as possible. Do you
3 solemnly swear or affirm to tell the truth, the whole truth,
4 and nothing but the truth, so help you God?

5 THE WITNESS: Yes, ma'am.

6 THE CLERK: Thank you. Go ahead and take a seat.

7 DON OLIVER, being first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MCEACHIN:

11 Q: Mr. Oliver, I need you to speak loudly and clearly in
12 order for everyone on the jury to hear what you have to say
13 today. Okay? And also, anytime a question is asked, it has
14 to be a verbal response. Either yes or no would be
15 sufficient. Okay?

16 A: Yes, sir.

17 Q: All right. You've got to speak just a little bit louder
18 than that so the court reporter can get you as well. If you
19 don't mind, would you please state your name for the record?

20 A: Don Oliver.

21 Q: And, Don, where do you currently reside?

22 A: SCDC.

23 Q: Okay. Whereabouts in SCDC?

24 A: Allendale Correctional.

25 THE COURT: Mr. Oliver, you're going to need to speak up,

1 sir.

2 BY MR. MCEACHIN:

3 A: Allendale Correctional Institution.

4 Q: Okay. And SCDC stands for the South Carolina Department
5 of Corrections?

6 A: Yes, sir.

7 Q: And you're currently housed in Allendale, South Carolina?

8 A: Yes, sir.

9 Q: And are you currently serving a sentence there?

10 A: Yes, sir.

11 Q: For what charge?

12 A: Strong-armed robbery --

13 Q: Strong-armed --

14 A: -- and CDV.

15 Q: Okay. Now, prior to going to SCDC, where were you
16 living?

17 A: In Marion County.

18 Q: And did you have occasion to be booked in to the Marion
19 County Detention Center back in February of 2013?

20 A: Yes, sir.

21 Q: All right. Specifically, I'm going to ask you about some
22 events that took place on February 26th of 2013. Do you recall
23 that day?

24 A: Yes, sir.

25 Q: And where were you that day?

DON OLIVER - DIRECT BY MR. MCEACHIN

- 1 A: In the County.
- 2 Q: When you say in the County, you're talking about --
- 3 A: Marion County Detention Center.
- 4 Q: The jailhouse?
- 5 A: Yes, sir.
- 6 Q: Okay. And again, if you could, just speak up just a hair
- 7 to make sure everybody on this jury can hear you.
- 8 A: Yes, sir.
- 9 Q: Were you getting booked in that day or were you already
- 10 in jail?
- 11 A: I was already in.
- 12 Q: All right. And during the course of that day, did anyone
- 13 come up and speak to you?
- 14 A: Yes, sir.
- 15 Q: All right. Who came up and spoke with you?
- 16 A: Kemonie.
- 17 Q: And when you say Kemonie, are you referring to Kemonie
- 18 Jones?
- 19 A: Yes, sir.
- 20 Q: And did you know Mr. Jones before that day?
- 21 A: Yes, sir.
- 22 Q: Okay. So you knew who he was?
- 23 A: Yes, sir.
- 24 Q: All right. And do you see him seated in the courtroom
- 25 here today?

1 A: Yes, sir.

2 Q: Where is he seated?

3 (WHEREUPON, the witness gestured.)

4 Q: Okay.

5 MR. MCEACHIN: Please have the record reflect the
6 defendant [sic] pointed out the defendant, Your Honor.

7 THE COURT: So noted.

8 MR. MCEACHIN: Thank you.

9 BY MR. MCEACHIN:

10 Q: And where were y'all within the correctional facility
11 when he came up and spoke with you?

12 A: In population.

13 Q: In population?

14 A: Yes, sir.

15 Q: And when he came up to you, what did he say?

16 A: He had mentioned -- he mentioned about the little
17 incident that took place.

18 THE COURT: Sir, you're going to have to speak up.

19 Apparently, you're soft-spoken, but --

20 THE WITNESS: I'm sorry.

21 THE COURT: -- we need to all hear you. Okay? So speak
22 up.

23 THE WITNESS: Yes, sir.

24 BY MR. MCEACHIN:

25 A: He had spoke to me about the incident that had took

DON OLIVER - DIRECT BY MR. MCEACHIN

1 place.

2 Q: All right. And which incident are we referring to?

3 A: The murder case.

4 Q: The murder case?

5 A: Yes, sir.

6 Q: All right. And when he walked up to you, what did he say

7 to you?

8 A: He was like, is my name messed up out there, and I was

9 like, yeah, everybody seen the news. Everybody who watch the

10 news know what you're locked up for.

11 Q: All right. And then what did he say after that?

12 A: I can't remember what he said after that.

13 Q: Okay. But was that the only part of the conversation

14 y'all had?

15 A: No, sir.

16 Q: All right. So he did -- he did -- did he elaborate on

17 what happened that day?

18 (WHEREUPON, no verbal response.)

19 Q: And what I -- I'm sorry. I may not have phrased that

20 correctly. I'll strike that question. Did y'all continue to

21 talk about that -- the murder?

22 A: Oh, yes, sir.

23 Q: Okay. And what did he say to you after he initially told

24 you -- asked you if people were talking about him out there?

25 A: He asked me -- he -- he asked me was -- was anybody

1 saying anything messed up about his name, and I was like,
2 yeah, everybody's saying you killed the white dude -- the
3 white guy. And I told him -- I was like, they said you tried
4 to rob him or whatever like that. And then he told me -- he
5 was like -- he was like, yeah, I killed him, but --

6 Q: So he told you he killed him?

7 A: Yeah.

8 Q: And when he told you that, did you ask him any other
9 questions?

10 A: Not that I remember.

11 Q: Okay. So once he told you he killed him, did y'all keep
12 talking about it?

13 (WHEREUPON, no verbal response.)

14 Q: I'll tell you what. I'll strike that question. Did he
15 tell you about any of the particulars that occurred that day?

16 (WHEREUPON, no verbal response.)

17 Q: And that's fine. Take your time.

18 A: I mean all I remember is him coming up to me and telling
19 me that he did it and that he used a .380 gun and all that.

20 Q: So he told you what type of gun he used?

21 A: Yeah.

22 Q: What type of caliber gun did he say he used?

23 A: A .380 handgun.

24 Q: All right. And did he tell you what happened with the
25 gun?

DON OLIVER - DIRECT BY MR. MCEACHIN

1 A: Yeah. He tried -- he tell me -- he tell me that his
2 uncle had the gun.

3 Q: Okay. So did he tell you who he gave it to or who got
4 rid of the gun for him?

5 A: Two -- two dudes that he used to run with.

6 Q: And you -- and I'm sorry. I couldn't hear you there.
7 Who did he say?

8 A: This dude named Tony Foxworth and Najee Cunningham.

9 Q: Okay. And did he say who got the gun to them?

10 A: I don't remember him telling who gave them -- gave them
11 the gun, but he told me to get the gun from them and give it
12 to his uncle.

13 Q: Okay. So he said he had gotten it to them?

14 A: Yeah.

15 Q: Did he say how he had gotten it to them before he got to
16 the police or before the police got him?

17 A: Oh, through his buddy, Ryan Brigman.

18 Q: Okay. He said his buddy, Ryan Brigman, got it?

19 A: Yeah.

20 Q: And is that who was supposed to have given it to Mr.
21 Foxworth and Mr. Cunningham?

22 A: Yes, sir.

23 Q: Okay. Now, going back, with regard to the incident
24 itself, did he indicate to you how many times he had fired the
25 gun or anything along those lines?

1 A: He told me he shot the whole clip.

2 Q: He shot the whole clip? And did he tell you the reason
3 for doing that? Did he say why he shot the man?

4 A: Yeah. He told me he was trying to rob him. He tried to
5 rob the old guy, and the guy looked at him and he actually
6 told him the dude to give it to him, and the dude looked at
7 him and started smiling, and then the dude swung an axe at him
8 and almost hit him in his neck. And then he said after that
9 he shot him. He dumped the whole clip.

10 Q: Okay. When you say the dude, you're talking about the
11 victim?

12 A: Yeah.

13 Q: You said he swung an axe at him?

14 A: Yeah.

15 Q: And that's when he shot him?

16 A: That's when he shot him.

17 Q: Did he tell you how he felt after he shot him?

18 (WHEREUPON, the witness shook his head.)

19 Q: Did he tell you about any sort of -- you know, what his
20 feelings were about the shooting?

21 A: Not that I remember. No, sir.

22 Q: Okay.

23 MR. MCEACHIN: I beg the Court's indulgence for just a
24 moment. Thank you, Mr. Oliver. Please answer any questions
25 Mr. Anderson may have for you.

DON OLIVER - CROSS BY MR. ANDERSON

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. ANDERSON:

4 Q: Mr. Oliver, you're a convicted felon?

5 A: Yes, sir.

6 Q: And you've been convicted of pointing and presenting a
7 firearm?

8 A: Not on this case right here, but yeah, I have.

9 Q: That was in 2008?

10 A: Yes.

11 Q: You point guns at people?

12 MR. MCEACHIN: Objection, Your Honor. May we approach?

13 THE COURT: Certainly.

14 (WHEREUPON, a bench conference was held off the record in
15 the presence of the jury but out of the hearing of the
16 jury.)

17 THE COURT: You want to repeat the question, Mr.
18 Anderson?

19 BY MR. ANDERSON:

20 Q: You point guns at people?

21 A: I have.

22 Q: Now, the reason you're in jail right now, that's a CDV?

23 A: Strong-armed robbery.

24 Q: But also a CDV?

25 A: Yes.

1 Q: All right. Strong-armed robbery is when you rob somebody
2 by force?

3 A: Yeah.

4 Q: And CDV is when you beat on a woman or a household
5 member?

6 A: Yeah.

7 Q: Okay. Now, you're here to testify for the State today;
8 is that right?

9 A: Yeah.

10 Q: You're here to basically be a snitch against Kemonie.

11 A: Yeah.

12 Q: Is that a fair statement?

13 A: Yeah.

14 Q: Let me ask you this. When did you go into the Marion
15 County Detention Center in 2013? Weren't you arrested on
16 February the 26th, 2013?

17 A: Yes, sir.

18 Q: So the first day you get in the population, that's when
19 Kemonie supposedly talked to you?

20 A: Yeah.

21 Q: Well, let me ask you this. What is it about you that
22 makes you so trustworthy?

23 A: Why would I lie about what he said?

24 Q: What is it about you that makes people want to confess
25 things to you? Are you the go-to guy if you committed a

DON OLIVER - CROSS BY MR. ANDERSON

1 crime?

2 A: No.

3 Q: So the first day you're in there, Kemonie walks up to you
4 and he goes, whew, I am so glad you're here. I need to tell
5 you a story. Is that what happened?

6 A: No. It ain't happen like that.

7 Q: Okay. The first day you're there, Kemonie walks up to
8 you and he just starts talking; is that right? I didn't hear
9 you if you made a response. Is that right?

10 A: When I came in there -- do you want me to explain to you
11 what happened again?

12 Q: No. I'm just asking you. As soon as you get in there,
13 he runs up to you and tells you a story; is that right?

14 A: I mean pretty much.

15 Q: All right. Now, at the detention center, aren't there
16 cameras?

17 A: Yeah.

18 Q: That would certainly show if you and Kemonie had a
19 conversation?

20 A: Yeah.

21 Q: Those cameras -- obviously, they record things; is that
22 right?

23 A: I guess, but cameras are in there.

24 Q: So you're the go-to guy if you have a confession to make.
25 The first day you're in there, Kemonie comes up to you and

1 starts talking to you, basically confesses to you?

2 A: Yes, sir.

3 Q: Okay. The first thing he asked you is, hey, can you do
4 me a favor? Do you remember that? I need a yes or no.

5 A: Yeah.

6 Q: Hey, can you do me a favor? That's what he asked you.
7 Then he says, when you get out, how about go to my uncle's
8 house and get a gun; is that right?

9 A: Yes, sir.

10 Q: And then he says, JJ killed him; is that right?

11 A: He didn't tell me JJ killed him.

12 Q: He didn't tell you that?

13 THE COURT: Mr. Oliver, you're going to have to speak up
14 louder, sir.

15 BY MR. ANDERSON:

16 Q: Then he later changed his story; is that right?

17 A: He told me what happened, what he did. He ain't tell me
18 what nobody else did.

19 Q: Didn't he tell you that JJ was inside?

20 A: He told me JJ was with him.

21 Q: Okay. Didn't he tell you that JJ was inside?

22 A: Yeah.

23 Q: All right. Where was JJ inside? Inside where?

24 A: I mean I don't -- you got the wrong one. I don't know
25 all that.

DON OLIVER - CROSS BY MR. ANDERSON

1 Q: So he just said JJ was inside? He tells you this fellow
2 supposedly swings at him; is that right?

3 A: Yeah.

4 Q: And then JJ comes outside; is that right? JJ came
5 outside. Isn't that what you told them?

6 A: What you mean ain't that what I told them?

7 Q: Isn't that what you told law enforcement? That JJ came
8 outside?

9 A: I didn't tell them no JJ came outside.

10 Q: Didn't you tell them that JJ came outside and threw him a
11 clip? Isn't that what you told law enforcement? When you
12 gave the statement to law enforcement, didn't you tell them JJ
13 came outside and threw a clip to Kemonie? Is that not what
14 you told law enforcement?

15 A: Yeah.

16 Q: All right. And then Kemonie catches the clip, puts it in
17 the gun, and then shoots the victim? Isn't that what you
18 said?

19 A: Yeah.

20 Q: All the while an axe is being swung at him; right?

21 A: Right.

22 Q: Kemonie somehow manages to dodge the axe, grab the clip,
23 put the clip in, chamber a round, and then empty the whole
24 gun, according to what you told law enforcement?

25 A: I'm just going on what he told me. I ain't never said I

1 was there.

2 Q: But that's what you told law enforcement that he said.

3 And then Kemonie, the kind-hearted, nice, young man that he is

4 --

5 MR. MCEACHIN: Objection, Your Honor. I have a matter of
6 law to take up.

7 THE COURT: Okay. All right. Ladies and gentlemen, I
8 need for you to go back to your jury room for just a moment so
9 I can deal with this legal issue with the lawyers. Again,
10 don't begin discussing this case among yourselves.

11 (WHEREUPON, the jury exited the courtroom at 11:11 a.m.)

12 THE COURT: Okay. Solicitor?

13 MR. MCEACHIN: Your Honor -- and I probably should have
14 let Mr. Anderson finish the question, but if he's going to sit
15 there and say the kind-hearted, compassionate person that his
16 client is, he is -- he is certainly opening the door for me to
17 ask the defendant if I know about -- the witness about the
18 defendant's prior criminal record.

19 THE COURT: Okay.

20 MR. MCEACHIN: That would open the door, Judge.

21 THE COURT: All I heard Mr. Anderson say was something
22 about a nice young man or something like that. I didn't
23 really catch the whole -- the whole question. What was your
24 question before the objection, Mr. Anderson?

25 MR. ANDERSON: Your Honor, I didn't finish my question.

DON OLIVER - CROSS BY MR. ANDERSON

1 THE COURT: Okay. All right. Well, tell me the whole
2 question.

3 MR. ANDERSON: The question would have been: Kemonie,
4 kind-hearted young man says, "Here, JJ, you take the gun.
5 I'll run this way so that they won't catch you. They'll catch
6 me without a gun."

7 THE COURT: Yeah. Yeah. I think that's fine. I don't
8 think that would be opening the door.

9 MR. MCEACHIN: Judge, if he -- and if I may --

10 MR. ANDERSON: I'll rephrase the kind-hearted.

11 MR. MCEACHIN: If he uses the terms kind-hearted or
12 compassionate, that certainly opens the door to character
13 evidence, Judge. I mean he can ask a question, but there's no
14 -- there's absolutely no benefit to saying compassionate and
15 kind-hearted other than to bring the defendant's character in.

16 THE COURT: Well, I think possibly Mr. Anderson was being
17 maybe a little facetious in using those words. I understand
18 where he's coming from. I don't have a problem with it. I'll
19 overrule your objection. Anything else?

20 MR. MCEACHIN: I don't believe so, Your Honor.

21 THE COURT: All right. Okay. Mr. Evans, bring the jury
22 back out.

23 (WHEREUPON, the jury entered the courtroom at 11:13 a.m.)

24 THE COURT: All right. Let the record reflect the jury
25 is back in. You may continue, Mr. Anderson.

1 BY MR. ANDERSON:

2 Q: Mr. Oliver, after my client tells you that he emptied the
3 clip into him, he then proceeds to tell you, "Hey, JJ, you
4 take the gun and run this way, and I'll run that way so that
5 you won't be caught." Is that what he told you?

6 A: Like I said, I wasn't there. I don't know. I wasn't at
7 the scene.

8 Q: And you were there when he was talking to you, wasn't
9 you?

10 A: Yeah. I was in the county jail when he was talking to
11 me.

12 Q: Is that what he told you?

13 A: He told me he dumped the clip and ran.

14 Q: He didn't tell you he gave it to JJ?

15 A: He threw -- passed the gun off to JJ and ran.

16 Q: He gave the gun to JJ, and then JJ ran one way and he ran
17 another way; is that right?

18 A: Yes, sir.

19 Q: And he did that -- he told you I did that so that JJ
20 would not get caught?

21 A: When he said it, he didn't said it how you just said it,
22 but pretty much that's what he was saying.

23 Q: Now, the reason that all this happened to begin with is
24 because supposedly my client was going to sell a gun to JJ; is
25 that right?

DON OLIVER - CROSS BY MR. ANDERSON

1 A: Yeah.

2 Q: And the reason that he was going to sell a gun to JJ is
3 because JJ and Cedrick Brown had had an altercation; is that
4 right?

5 A: Yeah.

6 Q: And supposedly, Cedrick was going to get back at JJ; is
7 that right?

8 A: Yes, sir.

9 Q: So Kemonie goes over there to sell a gun to JJ. Where
10 does JJ live?

11 A: On Jones Avenue.

12 Q: Does he live at

13 A: I don't know the house number. I don't know.

14 Q: Does he live closer to the CVS or further away from the
15 CVS?

16 A: Closer.

17 Q: At some point in time, Kemonie allegedly tells you I went
18 by the dude's house and he had a pile of money; is that right?

19 A: He didn't say he walked by.

20 Q: He walked by and he had a pile of money. Either he had
21 just cashed his income tax check or he had just won the
22 lottery; is that right?

23 A: Yes, sir.

24 Q: So that is when he told you that he and JJ concocted a
25 story to rob the white man?

1 A: Yes, sir.

2 Q: And he tells you that he put -- he goes back to JJ's
3 house and puts on the red toboggan; is that right?

4 A: He didn't mention nothing about no toboggan.

5 Q: He never said he put on a red toboggan?

6 A: He ain't never said nothing about a toboggan.

7 Q: All right. Did he say that's when he went back to JJ's
8 house and got the gun?

9 A: Yeah.

10 Q: And then he walks back to the old man's house; is that
11 right?

12 A: Yes, sir.

13 Q: So if he's walking from Jones Avenue to where this
14 happened, he certainly would have had to walk down the street,
15 walk down a path, walk somewhere; is that right?

16 A: Yes, sir.

17 Q: He would have had to have gone from Jones Avenue over to
18 wherever this incident happened?

19 A: Yes, sir.

20 Q: JJ obviously walking with him the whole time; is that
21 right? According to what he told you?

22 A: Yeah.

23 Q: He never told you that he put the mask on at JJ's house?

24 A: No, sir.

25 Q: You never told that to law enforcement?

DON OLIVER - CROSS BY MR. ANDERSON

1 A: Not to my understanding.

2 Q: He gets to the white guy's house. He asked him, give me
3 the money. The guy smiles at him. He asks him again. Give
4 me the money. That's when the older gentleman swung an axe at
5 him; right? That's when JJ comes from wherever and throws him
6 the clip; right?

7 A: Right.

8 Q: That's when Kemonie snatches that clip out of thin air
9 and puts it in the gun; right?

10 A: Yes, sir.

11 Q: Obviously, he would have had to shell a chamber or rack a
12 gun, and then emptied the whole clip into him?

13 A: Yes, sir.

14 Q: Now, Kemonie never said I missed the guy a few times and
15 he ran around the corner to the carport. He never said that,
16 did he?

17 A: No, sir.

18 Q: He never said while the guy was running away from him I
19 shot him in the back. He never said that, did he?

20 A: No, sir.

21 Q: Then he tells you to get with Najee Cunningham or Tony
22 Foxworth?

23 A: Yes, sir.

24 Q: Get the gun from one of them; is that right?

25 A: Yes, sir.

1 Q: And then to take the gun over to his uncle's house?

2 A: Yes, sir.

3 Q: Now, you told law enforcement this story before you got

4 sentenced, didn't you? On the strong-armed robbery and the

5 CDV 3rd; is that right?

6 A: No, sir.

7 Q: It's not?

8 A: I was -- I was already booked in on the -- on the strong-

9 armed robbery.

10 Q: But you had not been sentenced by a Court, had you?

11 A: No, sir.

12 Q: And you told this story in hopes of getting a reduced

13 sentence; isn't that right?

14 A: No.

15 Q: You didn't tell law enforcement that --

16 A: No.

17 Q: -- in hopes of getting your sentence reduced?

18 A: No, sir.

19 Q: In all your life, only one person in the world has told

20 you about a crime and you just decided to tell about that one;

21 is that right?

22 A: Yes, sir.

23 Q: A guy who has been convicted of pointing and presenting,

24 a guy who has been convicted of strong-armed robbery, a guy

25 who has been convicted of CDV, has only seen or heard of one

DON OLIVER - CROSS BY MR. ANDERSON

1 bad thing in their life, and you decided to share that with
2 law enforcement; is that right?

3 A: I mean what that got to do with anything? Because I had
4 pointing and presenting, that don't mean I pointed a firearm
5 because I was charged with it.

6 Q: My question is you've only heard one bad thing in your
7 life and that was from Kemonie, and you decided to share that
8 with law enforcement out of the goodness of your heart; is
9 that right?

10 A: Yeah.

11 MR. ANDERSON: Judge, that's all the questions I have.

12 THE COURT: Okay. Redirect?

13 MR. MCEACHIN: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. MCEACHIN:

16 Q: Don, is there anything that you've told this jury today
17 that Kemonie Jones didn't tell you?

18 A: No, not that I -- no, sir, not to my knowledge.

19 Q: Who did Kemonie Jones tell you killed that man?

20 A: He told me he did.

21 MR. MCEACHIN: No further questions.

22 THE COURT: Okay. Thank you for your testimony, sir.
23 You can step down.

24 MR. MCEACHIN: Your Honor, may we have a five-minute
25 recess?

26

1 THE COURT: Sure. Sure. All right. Ladies and
2 gentlemen, we're going to take a very short recess. So if
3 you'll go back to your jury room. I again remind you don't
4 being discussing this case among yourselves.

5 (WHEREUPON, the jury exited the courtroom at 11:22 a.m.)

6 THE COURT: How many more witnesses you got?

7 MR. MCEACHIN: I think three, Judge.

8 THE COURT: Okay.

9 MR. MCEACHIN: And I can let the Court know. I'm going
10 to run downstairs right now. I think our pathologist is here.

11 THE COURT: Okay.

12 MR. MCEACHIN: I anticipate that taking 20 to 30 minutes
13 maybe.

14 THE COURT: Okay.

15 MR. MCEACHIN: And then the other two will depend on
16 cross-examination, but no more than 30 a piece on those.

17 THE COURT: Okay. Well, maybe we'll kind of shoot for
18 maybe breaking for lunch at one. Maybe you can get everything
19 in by then. If you can. If you can't, you can't.

20 MR. MCEACHIN: Depending on Mr. Anderson's cross-
21 examination, I hope to, Your Honor.

22 THE COURT: Okay. All right.

23 (WHEREUPON, there was a break in the proceedings from
24 11:22 a.m. until 11:34 a.m.)

25 MR. MCEACHIN: Your Honor, to speed things up, these are

1 State's Exhibits 49 through 69, autopsy photos, to which I
2 believe there is no objection.; Mr. Floyd has reviewed them.

3 THE COURT: Is that correct, Mr. Floyd?

4 MR. FLOYD: Yes, sir.

5 THE COURT: Mr. Anderson?

6 MR. ANDERSON: No objection, Your Honor.

7 THE COURT: All right. Without objection, Exhibits 49
8 through 69 are admitted into evidence on behalf of the State.

9 (WHEREUPON, State's Exhibits Number 49 through 69, all
10 photographs, were admitted into evidence.)

11 MR. MCEACHIN: Thank you, Your Honor.

12 THE COURT: Bring in the jury, please.

13 (WHEREUPON, the jury entered the courtroom at 11:35 a.m.)

14 THE COURT: All right. Let the record reflect the jury
15 is back in. You may proceed, Solicitor.

16 MR. MCEACHIN: The State calls Dr. Cynthia Schandl to the
17 stand.

18 THE COURT: Okay.

19 THE CLERK: Do you solemnly swear or affirm to tell the
20 truth, the whole truth, and nothing but the truth, so help you
21 God?

22 THE WITNESS: Yes, ma'am.

23 THE CLERK: Thank you. Please take a seat.

24 DR. CYNTHIA SCHANDL, being first duly
25 sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MCEACHIN:

Q: Dr. Schandl, if you could, would you please state your full name for the record? Spell your last name for the court reporter.

A: Cynthia Anna Schandl, S-c-h-a-n-d-l.

Q: And I've called you Dr. Schandl. Would you explain to the jury why I'm calling you Doctor?

A: Yes, of course. So my educational background is a Bachelor's degree from California State University System, followed by a medical degree from the Medical University of South Carolina in Charleston, South Carolina, during which time I also completed a graduate program. And from both of those, the M.D. and the Ph.D., those are both considered Doctor.

And then following that education, I continued with a residency program, which is additional occupational training, in the field of pathology and laboratory medicine. And during that, I also did an additional year to sub-specialize in forensic pathology called a fellowship year.

And following all that training, so for the medical licensure, there's three different board examinations, and then you also must maintain a license within the state where you practice, which I do maintain my medical license in South Carolina and two other states. And also after your training

DR. CYNTHIA SCHANDL - DIRECT BY MR. MCEACHIN

1 in pathology, there are board examinations to be certified in
2 those areas, and so I'm board-certified in anatomic pathology,
3 clinical pathology, and forensic pathology with the American
4 Board of Pathologists.

5 Q: And if you don't mind, would you please explain to the
6 jury what the field of pathology is?

7 A: Yes. So pathology is -- when you break it down into its
8 ancient words, is pathos which is disease and ology is the
9 study of. So it's the study of disease processes. And so the
10 way that we look at disease processes -- there's many ways:
11 with our eyes, under the microscope, looking at different
12 tests, like if you get a blood test for example. All those
13 things fall under the field of pathology.

14 And then when you become interested in working in the
15 field of forensic pathology, now you're looking at disease
16 processes and injuries, and you can look at a person's body
17 that's not normal, how your normal state would be, and then
18 how those things might coincide with the law.

19 So there are a number of instances when a forensic
20 pathologist will be called on to perform an autopsy or some
21 sort of an examination when somebody dies in a circumstance
22 that is not -- has not been well-documented to be a natural
23 disease process. So we frequently are not called if somebody
24 has a long history of, for example, cancer and they die
25 because of cancer. They're not likely to call the forensic

1 pathologist. But that same person, if they're house looks
2 like it been broken into, for example, or if they have
3 injuries, that same person with the long history of cancer,
4 they would call the forensic pathologist to investigate that
5 death and perform an autopsy and see what did happen.

6 So the forensic pathology is where all those things come
7 together, injuries and disease processes, and how does that --
8 how does that work with our legal system.

9 Q: And you used the word autopsy a couple times. If you
10 could, just explain to the jury what an autopsy is.

11 A: Yes. An autopsy is a medical procedure and a surgical
12 procedure. It begins at the time where we bring the body from
13 the morgue up to the autopsy suite and examine them in the
14 state where they -- how they arrived to us, whether they have
15 clothes on or they don't have clothes on. I'll take pictures
16 at that time just how they come to us.

17 And then the examination proceeds to look at the
18 clothing, if there is clothing on, take the clothing off, and
19 sometimes examine it and photograph it separately if it's
20 important to the case. And then once the clothing is take
21 care of, looking at the body itself as it came to us now that
22 the clothing is off.

23 One of the things that we'll do in a case such as what
24 we're describing today where there has been gunshots is do x-
25 rays of the body, and the reason that we'll do x-rays of the

DR. CYNTHIA SCHANDL - DIRECT BY MR. MCEACHIN

1 body wherever we see gunshot wounds is in order to look for
2 bullets that are in the body. So x-rays will tell us if there
3 are bullets in the body and where they are so that when we're
4 in there, we can retrieve those as evidence. So in this case,
5 there was a full set of x-rays done as well in all the areas
6 where he had gunshot wounds -- Mr. Witek.

7 And then after we do that part of the examination, if
8 there are injuries on the body, we will look at those, draw
9 them, photograph them, diagram them, whatever we need to do to
10 make sure that they are written down properly.

11 Then once we've completed the external examination, then
12 we'll turn to what people often think of as the autopsy
13 examination, which is the internal examination where we do the
14 light incision and take off the chest plate. We look at the
15 internal organs. Again, we're looking for any injuries. So
16 in the case with a gunshot wound case, what did the bullet go
17 through? What structures are damaged? Those sorts of things,
18 as well as any natural disease processes that we find that the
19 person came with.

20 The other thing that we do routinely in forensic cases is
21 to take samples to send for toxicological examination; so
22 blood samples for that. And then another way that I look at
23 the organs is to take samples to look at under the microscope.

24 When we get all that information back, we'll put together
25 a report, which then goes back to the coroner where -- from

1 what county the case was referred to our office in Charleston.

2 Q: And thank you for that detailed description of an

3 autopsy. How many autopsies have you had occasion to -- to

4 either take part in or to do yourself?

5 A: More than 2,000.

6 Q: And when -- and I don't even know that I asked you this

7 yet. With whom are you employed?

8 A: I'm employed at the Medical University of South Carolina

9 in Charleston, South Carolina, in the department of pathology

10 and molecular lab.

11 Q: Okay. And what's your position in that department?

12 A: I'm an associate professor and a forensic pathologist and

13 also the director of the molecular laboratory.

14 Q: And you said you've conducted over 2,000 autopsies. Have

15 you ever had occasion to go to court to testify about these

16 things?

17 A: Yes, sir.

18 Q: And how many times, would you please tell the jury, have

19 you been qualified as an expert in the field of pathology and

20 more specifically forensic pathology?

21 A: Somewhere around 100 times.

22 Q: And those have been in the state courts of the state of

23 South Carolina?

24 A: State court, federal court, military court, and also in

25 other states.

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1 Q: Thank you.

2 MR. MCEACHIN: Your Honor, at this time, I'd move to
3 qualify the witness as an expert in the field of forensic
4 pathology.

5 THE COURT: Okay. Any examination concerning
6 qualifications?

7 MR. FLOYD: No, Your Honor.

8 THE COURT: Any objection to the Court deeming the doctor
9 an expert in the field of forensic pathology?

10 MR. FLOYD: No, Your Honor.

11 THE COURT: Okay. Thank you very much.

12 BY MR. MCEACHIN:

13 Q: Now, Dr. Schandl, you've explained to the jury kind of
14 what you do on a daily basis. I want to take you back to
15 February of 2013 and specifically February the 17th of 2013.
16 Did you have occasion to perform an autopsy on that day?

17 A: Yes, sir.

18 Q: And what county was that case out of?

19 A: This county. It was referred to us from the coroner of
20 Marion County, Jerry Richardson.

21 Q: And do you know who it was you were performing an autopsy
22 on?

23 A: Yes. The name that we received is Stanley C. Witek.

24 Q: And, Doctor, you've already indicated what the -- when
25 the body first comes to you, you'll take a picture of it in

1 the state that it arrives; is that correct?

2 A: Yes, sir.

3 Q: And I'm going to ask you if you can identify State's
4 Exhibit 49 that's been admitted into evidence.

5 A: Yes, sir. This is a representation of a picture that I
6 would take and did take at the beginning of the autopsy before
7 I removed the clothes and the intervention from first
8 responders and such.

9 Q: And that particular picture -- that still shows clothing
10 on the individual, but it looks as if it's been removed from
11 his chest area; is that correct?

12 A: Yes. He had five layers on -- five shirts and jackets
13 and things on, and so it's very common when first responders
14 get to the scene where they suspect an injury that they'll cut
15 the clothing off so that they can get down to see what's going
16 on. So in this case, his clothing was cut and moved off of
17 his chest.

18 Q: And, Dr. Schandl, while I'm showing that to the jury,
19 I'll have you look at State's Exhibits 50 through 57 for
20 identification, and let me know if you can identify those
21 particular items.

22 MR. MCEACHIN: Your Honor, may I publish State's Exhibit
23 49 to the jury?

24 THE COURT: Sure.

25 BY MR. MCEACHIN:

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1 A: Yes. So State's Exhibit 50 through 57 are photographs
2 that are taken during the autopsy of the clothing that he was
3 wearing or partially wearing as it was in this case.

4 Q: And in those photographs, it actually shows where it
5 appears that the clothing had been cut. Would that be
6 something y'all did or the first responders did?

7 A: We do not cut clothing if at all possible; so that would
8 not have been us. That would have been first responders.

9 Q: And again, tell the jury why you take photographs of
10 clothing in these cases?

11 A: Well, in a case of a gunshot wound or a stab wound where
12 an injury is going to go through something before it gets to
13 the body, I'll take pictures of that clothing. Sometimes
14 there will be evidence that I don't notice with my eye that
15 you can see on closer look with -- with a camera.

16 In addition, it can help us to put together a picture of
17 what happened. So are there holes that lead right up to where
18 the injury is through all the layers of clothing? So we take
19 a picture of the defects in the clothes where we presume that
20 the bullet has gone through to get to the skin. So for all
21 those reasons, for evidence.

22 Q: Okay. And that would be the reason, as you indicated,
23 that you would take pictures of the clothing that the
24 individual arrives in?

25 A: Yes.

1 Q: Now, with regard to the autopsy of Mr. Witek, can you
2 again tell the jury what date that was done or completed?

3 A: I performed the autopsy on February 17th, 2013.

4 Q: And when you're going through the autopsy process, you
5 said first you'll take a picture with the clothes on, and then
6 you'll remove all the clothing and take photographs with the
7 clothes off; is that correct?

8 A: Yes, sir. That is my protocol.

9 Q: Okay. And I'll have you look at State's Exhibits 58
10 through 68 quickly for me, and just let me know if you can
11 identify those.

12 A: Yes, sir. These are our photographs of Mr. Witek with
13 his clothing removed and with letter designations for the
14 different gunshot wounds, the different defects or holes to
15 his body.

16 Q: And upon your external examination of Mr. Witek -- and I
17 will refer to State's Exhibit 58 for this. If you could,
18 explain to the jury how many gunshot wounds were located on
19 the victim's body.

20 A: So you want to think about it in two different ways. So
21 a gunshot wound has an entrance wound for sure; right? Or
22 else it didn't make it unless it grazed. And sometimes it's
23 also going to have an exit wound if it went all the way
24 through you. So if you have two holes, that could mean that
25 you were shot one time or it could mean that you were shot two

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1 times; right? So if you have two bullets in you, you could
2 have two holes and have been shot two times. Whereas, if you
3 don't have any bullet in you and you have two holes, the
4 bullet went through. Okay?

5 So Mr. Witek has six gunshot wounds, and those correspond
6 to being shot three times through and through. So each time
7 he was shot, there are two holes, one for the entrance and one
8 for the exit. So six gunshot wounds because he was shot three
9 times through and through each time. So the first time, one,
10 two, the second time, one, two, the third time, one, two.

11 So three of those are entrance wounds and the other three
12 are going to be exit wounds. He had six gunshot wounds.

13 Q: Okay. And just to make sure that we all understand that
14 correctly, when you say through and through, that means the
15 bullet enters the body and leaves the body?

16 A: Yes. That's right. So we don't recover a bullet from
17 the body because it's already gone all the way through.

18 Q: And in this case, I think you indicated that you do x-
19 rays. Was there any indication there were any bullets in Mr.
20 Witek's body?

21 A: No. There were no bullets in his body at the time of x-
22 ray. We did recover a bullet from his layers of clothing and
23 -- and then just to be sure that there weren't any more, I did
24 also x-ray all of his clothing to make sure that there wasn't
25 another bullet hiding in there. So we retrieved one bullet

1 from his clothing, but no bullets from inside of him.

2 Q: Okay. And at this time, I'm actually going to give you
3 State's Exhibit 59. There are markings designated A through D
4 on the victim's body. Can you hold it up for the jury and
5 explain what those markings show?

6 A: Yes. So the way that -- since it would be misleading --
7 so I just told you how you can have been shot one time and
8 have two holes. The way that I number the gunshot wounds is
9 with letters so that you're not saying that, okay, this is
10 gunshot wound number 3, therefore, he's shot three times. You
11 just know A, B, C, D. Those are your holes.

12 So in this case, on the front of his body, you can see
13 four of the gunshot wounds, and they're labeled A, B, C, D,
14 just sort of from top to bottom. And then there are two more
15 that you don't see on the front of his body that are -- what
16 letter did I leave off at? -- E and F. So this picture shows
17 four of the gunshot wounds.

18 Q: And I'm going to hand you State's Exhibit 66, and can you
19 explain to the jury what that's a photograph of?

20 A: Yes. So if we continue -- so if we're going to go back
21 to State's Exhibit 59, we have A, B, C, D, and then if you
22 look at his side -- so that's his right side. That's E.

23 (WHEREUPON, the witness stands and points out locations
24 on her own body.)

25 A: So on me, A, B, C -- wait, B, C, D, E.

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1 Q: And State's Exhibit 68, what does that show?

2 A: And this is F, so the sixth one, and that's on his back
3 -- on the right back. I can't quite reach there, but back
4 here is what we called F. So that's number six.

5 Q: Okay. And with regard to these wounds, do y'all make a
6 determination whether or not they are entry or exit wounds or
7 can you make that determination?

8 A: We -- we can in many instances and in some that we
9 cannot. So it depends on the characteristics of the wound.
10 So an entrance wound classically will have sort of a cut-out
11 rounder appearance, and it will have abrasions on the edges of
12 it where the bullet, which is generally spinning, will rub the
13 edges of the skin as it goes into the skin.

14 Whereas an exit wound, you're already in the skin so
15 basically you're coming through and just the skin will tear
16 open and the bullet will come out. So that exit wound is more
17 like it will come back together, what we call re-
18 approximation. The edges usually come right on back together.
19 So you have a hole cut out for the entrance and then the exit
20 is just a slit in the skin where it pops out. So that's one
21 way to tell.

22 Other ways to tell is if something got deposited on the
23 skin. So you might have soot or stippling or something that
24 tells you, okay, that's the way it was going. That's going to
25 have come out of the muzzle of the gun, and so if something

1 gets on the skin or on the clothing from the muzzle of the
2 gun, you can tell that way what direction the bullet was
3 going.

4 So there are other ways that we can tell, but in general,
5 in this case, I relied on the -- the shape of the wounds in
6 order to tell which was entrance and which was exit.

7 Q: When you just explained this to the jury, you used the
8 term stippling. What exactly is that?

9 A: So again, soot and stippling, those are things that come
10 out of the muzzle or the end of the gun -- the business end of
11 the gun. So soot is just what you're thinking it is. It's
12 the -- the black powder that might get deposited on the skin.
13 And stippling is actually particulates, little pieces of metal
14 and whatever is coming out of the muzzle with the bullet that
15 actually scrape the skin and put -- make little scrapes on the
16 skin.

17 So soot, which essentially means that you're right up
18 against the skin, so markings consistent with a contact
19 gunshot wound. Soot can be wiped away. Whereas if you backed
20 up a little and you end up with stippling where those things
21 are scraping the skin, then you're sort of in a close range.
22 So that's another thing that we can sometimes do when we're
23 looking at the skin is determine how far away the muzzle of
24 the gun was from the target, which in my case is going to be
25 an individual.

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1 So the soot, again, is just the black debris that can get
2 on the skin if you're very, very, very close or right at
3 contact with the skin. And then stippling is a scraping of
4 the skin from little pieces coming out of the muzzle of the
5 gun.

6 Q: And in a case where you have somebody like Mr. Witek, who
7 has got five or six layers of clothing on, does that effect
8 whether or not you find stippling or soot on the individual?

9 A: It certainly can. So when there are that many layers of
10 clothing, all that stuff that's coming out of the muzzle of
11 the gun is going to first hit the clothing. So if there's
12 enough of it, it's not going to get through the clothing. So
13 it certainly can affect what I see on the skin.

14 Q: All right. I'm going to go through some of the injuries
15 with you, and I'll have you describe these to the jury. I'm
16 going to show you what's been marked as State's Exhibit Number
17 60. What is State's 60?

18 A: This is called gunshot wound A. This is an exit wound,
19 and it goes with the entrance wound, which is F to his back.
20 So that's the exit wound. That's where the bullet is coming
21 out.

22 Q: Okay. And you said that's the exit wound to the entry
23 wound of F. I'm showing you State's 68.

24 A: That's correct. So that's F, and so that on the back
25 came out here on the chest.

1 Q: And State's Exhibit 61, what does that show?

2 A: That is our gunshot wound B, which is over here on the
3 lower left chest area.

4 THE COURT: Did she say B or D?

5 MR. MCEACHIN: I'm sorry, Your Honor. B --

6 THE COURT: B? Okay.

7 MR. MCEACHIN: -- as in bravo.

8 THE COURT: Okay.

9 BY MR. MCEACHIN:

10 Q: That -- that was in the lower chest area?

11 A: Yes, the left chest.

12 Q: And do you recall what exit wound or if an exit wound
13 coincided with that?

14 A: Yes. That one, the B one, went across his body and out
15 the E one over here on the right side. E for elf.

16 Q: And, Dr. Schandl, could you stand up and show the jury
17 what you're talking about?

18 (WHEREUPON, the witness stood.)

19 A: So B over here went out E over here.

20 Q: It crossed through his body?

21 A: It did.

22 Q: And I'll show you these two together, which are State's
23 Exhibit 63 and 64. What do these show you?

24 A: This is gunshot wound C and then D as dog -- as in dog.
25 This would -- this is his belly button here. So it's right

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1 below his belly button is C. And then that one over there is
2 over here a little bit to the left side of his abdomen.

3 In this case, there's no clear-cut evidence for which one
4 is the entry or the exit. So I'm not sure if it's going from
5 belly button area to the left or the other way around.

6 Q: But these two were created by the same bullet?

7 A: That's correct. They connect. It's a single pathway.

8 Q: Now, with regard -- once you did this external interview
9 -- or I shouldn't say interview. Once you did your external
10 examination of the victim's body, what was the next step in
11 the autopsy process?

12 A: At that point, we'll go to the internal examination. So
13 at this point, I had an idea of -- that the two -- C and D,
14 the ones on the belly, were connecting and they were
15 connecting superficially. So that one was C to D. Went into
16 the skin and the belly fat and then out of the skin. So that
17 wound is one that I was able to put together before I opened
18 the body.

19 Q: Was that injury the one from -- and again, I'm
20 referencing State's Exhibit 62 here -- C to D, would that have
21 likely caused death? That injury?

22 A: Not likely.

23 Q: Okay. All right. Once you saw or made a determination
24 about C and D, what was the next thing you did?

25 A: So then we're going to open the body cavities up and see

1 where the other bullets went and see what those tracks were.
2 So at this point, we are looking at the one that went from the
3 back to the chest, and then the one that went through the
4 belly into -- through the belly, the other one, the B through
5 E one.

6 Q: Okay. Let's talk about B through E first, and explain to
7 the jury exactly how you determine the path of a bullet once
8 you open up an individual?

9 A: You can follow -- basically, you follow the bleeding. So
10 where the bullet goes, it leaves a path of destruction, and
11 you follow that pathway. And frequently, I will pass a probe
12 from where I find the entrance wound to where the exit will
13 be, and there will be little -- depending upon where you are,
14 there shouldn't be a whole lot of resistance to passing that
15 probe and there will be bleeding all along that pathway. And
16 the structures between the beginning of the pathway, the
17 entrance wound, and the end will have holes in them from where
18 the -- from where the bullet passed through. So you just
19 follow the injury.

20 Q: And with regard to -- and I'm showing you State's 58 and
21 65. With regard to the entry at B and the exit at E, can you
22 please tell the jury the path that that bullet traveled inside
23 of Mr. Witek's body?

24 A: Yes. So it went through ribs and then it went through
25 stomach and small intestine and large intestine and then out

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1 his other side.

2 Q: And once you completed the investigation of that
3 particular bullet path, what was the next thing you did?

4 A: Well, we would open the chest cavity after we've looked
5 firstly at the abdominal cavity. So the next thing we're
6 going to look at is what happened with the gunshot wound that
7 went through his back and chest.

8 Q: And the one you're referring to there is denoted on
9 State's Exhibit 67; is that correct?

10 A: Yes. That's the entrance wound F.

11 Q: And I believe you indicated that the -- bear with me just
12 a moment. The exit wound was State's Exhibit 60; correct?

13 A: Yes. So here's the exit wound A of the chest.

14 Q: So prior to determining the path of this bullet, you
15 actually had to open up the chest cavity?

16 A: Yes, sir.

17 Q: Okay. Once you opened up the chest cavity, what was the
18 next step in the autopsy?

19 A: Well, at that point, we'll measure fluids. So in this
20 case, he bled a great deal into his right chest cavity. So we
21 measured one liter, which is a little bit more than a quart,
22 of blood in -- just loose in his right chest cavity. And then
23 having done that, I'll look to see -- all right, so where did
24 the bullet go through?

25 And so at that point, I could see that the bullet went

1 through all of the lobes of the right lung and also through
2 the sac that goes around your heart. It went through that.
3 And it also went through his heart, the right side of his
4 heart, the side of the right ventricle of his heart, which is
5 on the right side. So from there, it went through all the
6 different lobes of his lung and through the heart and then out
7 the front.

8 Q: Okay. And you indicated sometimes you'll use a probe to
9 try to denote the angle of the shot, the path the bullet took
10 in the body; is that correct?

11 A: Yes, I do.

12 Q: And with regard to entry wound F, which was in the back,
13 and exit wound A, did you use a probe to denote that
14 particular pathway?

15 A: I believe I did.

16 Q: I'm going to show you what's been marked as State's
17 Exhibit 69. Could you take a look at that for me and tell me
18 if you can identify that?

19 A: Yes. This is a depiction of a probe, which is just --
20 it's a metal pole, a thin metal pole, kind of like a dowel
21 only made out of metal. And it's showing the pathway from F
22 to A.

23 Q: Okay. And what type of direction did that bullet go when
24 it was inside of the body?

25 A: So it was going in an upward direction and slightly

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1 towards the left.

2 Q: Okay.

3 MR. MCEACHIN: Your Honor, may I have permission to
4 publish?

5 THE COURT: Certainly.

6 BY MR. MCEACHIN:

7 Q: And again, State's Exhibit 69 shows the path of entry
8 wound F and exit wound A?

9 A: It doesn't show the path very well, but it does show the
10 approximately direction of the path.

11 Q: And I probably should have used the word angle instead of
12 path.

13 A: Angle or trajectory.

14 Q: Okay. Now, Doctor, once you've done this portion of the
15 analysis, what's the next step in the process?

16 A: You continue in a step-wise process and look at each
17 organ for any kind of pre-existing disease processes. I'll
18 take some samples to look at under the microscope. Again, I
19 mentioned earlier I'll take samples that will go for
20 toxicological analysis to look for drugs and alcohol, those
21 sorts of things. And -- and then again, we pull the whole --
22 all the pieces together and generate a report.

23 Q: Now, I want to go back for just a second to the clothing.
24 The photographs you took of the clothing and the analysis you
25 did after -- after conducting the autopsy, were the bullet

1 wounds on the victim's body also indicated on his clothing?

2 A: Yes. Almost entirely, and it's a difficult thing. You
3 can't always -- you can't -- it's not always exactly right
4 because people move, layers of clothing slip, the jacket can
5 be open or a vest can be opened, but they did approximate
6 those wounds, yes.

7 Q: Doctor, what's the final step in your analysis when you
8 conduct an autopsy?

9 A: Well, the -- the coroner and the legal system is
10 interested in me creating a cause of death statement and a
11 manner of death as well.

12 Q: And based on your training and your expertise and your
13 experience, are you capable of doing that?

14 A: Yes, sir.

15 Q: And, Doctor, do you have an opinion to a reasonable
16 degree of medical certainty what the cause of death was in
17 this case?

18 A: Yes, sir. Lung perforations and heart laceration due to
19 perforating gunshot wound to the right back, and contributory
20 are the perforated gunshot wounds to the left chest and to the
21 abdomen. And if I can explain? So lung perforations means
22 there's holes in the lung. Heart laceration means that
23 there's a tear in the heart.

24 Q: So the shot that went from the back came out of his
25 shoulder, that's I guess what you'd consider the primary cause

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1 of death in this case?

2 A: Yes, sir.

3 Q: And is that due to the injury to the lungs and the heart?

4 A: Yes, sir.

5 Q: And you said that the one that went across his body kind
6 of went through his intestines and his stomach area. That one
7 also contributed?

8 A: Yes. And I -- I considered that the other wound that
9 went through his skin is also contributory. One does not know
10 how that might have affected his behavior. One does not know
11 if down the road if that was his only injury if it would have
12 gotten infected and led to further problems and even possibly
13 death. So there are a lot of unknowns even with superficial
14 gunshot wounds. So I considered that one to be contributory
15 as well.

16 Q: And, Doctor, you indicated the other thing that you're
17 asked to determine is the manner of death. Do you have an
18 opinion to a reasonable degree of medical certainty the manner
19 of death in this case?

20 A: Yes, sir. The manner of death is homicide in this case,
21 and in the state of South Carolina, we're given limited
22 options, just so you can know the scope of that. We can
23 choose accident, natural, undetermined, suicide or homicide.
24 And homicide simply means that one person died as a result of
25 the other person's acts or sometimes failing -- failure to

1 act.

2 Q: And how did you determine homicide in this case?

3 A: In this case, there was no evidence that there was any
4 accidental trauma inflicted that -- that hurt this man or
5 suicidal trauma that was inflicted that hurt this man. All
6 the evidence points to another individual firing a gun at this
7 man.

8 Q: All right. And, Doctor, if you would, I would have you
9 step down for just a minute if it's all right with the Court.

10 THE COURT: Sure.

11 (WHEREUPON, the witness complied.)

12 BY MR. MCEACHIN:

13 Q: Just so the jury maybe has a little bit better
14 understanding about the fatal wound, which is the -- what I'm
15 calling entry wound F, exit wound A. If you can, show on my
16 body the trajectory of how that bullet passed through Mr.
17 Witek's body.

18 A: Sure. So F is somewhere around here on the back and then
19 A is right around here on the chest. And so from here to
20 there, it's got to go through something, and what happens to
21 be between there and there is the right lung and the right
22 side of the heart.

23 Q: Okay. And so it went from a downward to upward angle.
24 So presumably, an individual would have to be low or the
25 victim perhaps bending over?

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1 A: That -- that is possible. There are many scenarios.
2 Just because I know where it started and where it ended does
3 not mean I know where the two people were because, again, they
4 can move a lot.

5 Q: Thank you. You can go ahead and have a seat.

6 (WHEREUPON, the witness complied.)

7 Q: And finally, Doctor, just to make sure that I understand
8 correctly, you did say that you think the primary cause of
9 death was the gunshot wound to the back?

10 A: Yes, sir. That was the most immediate.

11 Q: Thank you. Please answer any questions Mr. Floyd may
12 have for you.

13 A: Yes, sir.

14 THE COURT: Mr. Floyd, cross-examination?

15 MR. FLOYD: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. FLOYD:

18 Q: Dr. Schandl, in your autopsy report on page 3, you have
19 an item on there with the heading "evidence transfer"?

20 A: Yes, sir.

21 Q: Do you see that? Tell me what that is.

22 A: Those are all of the items that I cataloged at autopsy
23 and then gave over to law enforcement.

24 Q: Okay. And when you say law enforcement, do you mean
25 Marion Police Department?

1 A: In this case, yes, the Marion Police Department.

2 Q: Okay. And one of those items were fingernail clippings;
3 is that correct?

4 A: Yes, sir.

5 Q: Right and left fingernail clippings?

6 A: Yes, sir.

7 Q: Why would you do that?

8 A: In -- in a case of homicide, there's always the
9 possibility that the two people were in close enough proximity
10 that -- that there may be evidence underneath the fingernails
11 to point to a specific person. So if they were in a fight or
12 a brawl, there may be DNA evidence essentially, specifically,
13 underneath the fingernails.

14 So one of the things that we do at the beginning of one
15 of these cases is to cut those real short and send them in
16 case that becomes an issue. They can test those to see if
17 there's any DNA, not the dead person's, but somebody else' DNA
18 that could lead to identify somebody that they were very -- in
19 very close proximity right near to.

20 Q: But in any event, you handed that over to the Marion
21 Police Department and, after that, you don't know what
22 happened to it; is that correct?

23 A: That is accurate.

24 Q: Okay. As far as the order of the entrance wounds, I mean
25 you can't tell from examination whether or not the entrance

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1 wound to the front was the first shot or the second shot, can
2 you?

3 A: No. In this case, there's no indication of that. So I
4 can't tell you which one happened first or second or third.
5 That is correct.

6 Q: Okay. All right. Other than the information which you
7 have seen from local law enforcement and your direct
8 examination, do you know anything else about this case?

9 A: No, sir.

10 Q: I mean you didn't talk to police beyond performing this
11 autopsy; is that correct?

12 A: That's correct. I generate the report for the coroner.

13 Q: Okay. Thank you.

14 MR. FLOYD: That's all I have, Your Honor.

15 THE COURT: Anything in redirect?

16 MR. MCEACHIN: Just one follow-up based on Mr. Floyd's
17 question.

18 REDIRECT EXAMINATION

19 BY MR. MCEACHIN:

20 Q: He asked if you could tell which wound occurred first.
21 Based on the wounds, do you have any idea or can you testify
22 as to how long an individual would survive with those wounds?

23 A: Well, this -- this -- this is a very difficult question
24 to answer because there are always medical miracles that
25 happen. But he bled out a great deal, and he had an

1 underlying heart condition; so it was probably quite quick
2 that he died, but I can't give you anything closer than that.

3 MR. MCEACHIN: Thank you. No further questions, Your
4 Honor.

5 THE COURT: Anything in recross?

6 MR. FLOYD: None from me.

7 THE COURT: Okay. Thank you, Doctor, for your testimony.
8 You can step down.

9 THE WITNESS: Thank you, sir.

10 MR. MCEACHIN: And we'd ask that she be relieved from her
11 subpoena.

12 THE COURT: Okay. You're excused from your subpoena.
13 You're free to leave the courthouse.

14 THE WITNESS: Thank you, sir.

15 (WHEREUPON, there was a pause in the proceedings until
16 the witness entered the courtroom.)

17 MR. MCEACHIN: Your Honor, the State would call Tyrone
18 Orlando Reed to the stand.

19 THE COURT: Okay. Come around, please, sir.

20 THE CLERK: Do you swear to tell the truth, the whole
21 truth, and nothing but the truth, so help you God?

22 THE WITNESS: Yes, ma'am.

23 THE CLERK: Thank you. Go ahead and have a seat.

24 TYRONE ORLANDO REED, being first duly
25 sworn, testified as follows:

TYRONE ORLANDO REED - DIRECT BY MR. MCEACHIN

1	DIRECT EXAMINATION

2 BY MR. MCEACHIN:

3 Q: Tyrone, if you would, please state your full name for the
4 record.

5 | A: Tyrone Orlando Reed.

6 Q: And, Tyrone, who are you currently employed with?

7 | A: Pamplico Police Department.

8 Q: And that's over in Florence County?

9 A: Yes, sir.

10 Q: How long have you been with the Pamplico Police
11 Department?

12 A: Approximately eight months.

13 Q: All right. And before going over to Florence to be with
14 the Pamplico Police Department, who did you work for?

15 A: Marion City Police Department.

16 Q: And how long did you work with Marion City?

17 A: Approximately four years.

18 Q: Okay. So before -- did you work with any sort of law
19 enforcement agency prior to Marion City?

20 | A: No, sir.

21 Q: All right. So you've gotten almost five years of law
22 enforcement experience?

23 | A: Yes, sir.

24 Q: And when you were with Marion City, what was your
25 position with Marion City.

1 A: I was a corporal over a shift. Also, I did regular
2 street patrol and also traffic.

3 Q: Okay. So you wore a number of hats?

4 A: Mm-hmm.

5 Q: Were you working for Marion City back in February of
6 2013?

7 A: Yes.

8 Q: Okay. And specifically on February the 16th, 2013, were
9 you working on that day?

10 A: Yes, sir.

11 Q: In what capacity were you working on the 16th?

12 A: I was actually just running regular street patrol.

13 Q: Okay. What was the weather like that day?

14 A: The weather was actually kind of foggy, but it wasn't
15 bad.

16 Q: Okay. Did it get worse as the day progressed?

17 A: Yes.

18 Q: And at some point, did you have occasion to be called up
19 to the police department?

20 A: Yes.

21 Q: And what was that in reference to?

22 A: To do a transport from the police department to the
23 jailhouse.

24 Q: Okay. And when you say transport, were you transporting
25 evidence or an individual?

TYRONE ORLANDO REED - DIRECT BY MR. MCEACHIN

1 A: An individual.

2 Q: And which individual were you transporting that day?

3 A: They had me come to the police department to transfer
4 Kemonie Jones.

5 Q: And I noticed you pointed over there. Did you recognize
6 Mr. Jones?

7 A: Yes, sir.

8 Q: And is that the individual you transported?

9 A: Yes, sir.

10 Q: Okay.

11 MR. MCEACHIN: Please have the record reflect the witness
12 has identified the defendant.

13 THE COURT: So noted.

14 BY MR. MCEACHIN:

15 Q: Once you got the police department, did you go back and
16 meet with Mr. Jones?

17 A: Yes.

18 Q: And ultimately I presume y'all went out to your car?

19 A: Yes. We left Mr. Flowers' office and I escorted him to
20 my vehicle.

21 Q: Okay. And where did you place him once you got to the
22 vehicle?

23 A: Passenger-side rear of my vehicle.

24 Q: And where did you go once you placed him there?

25 A: Once I placed him in the vehicle, I went to the driver's

1 side and I began backing out of the police department.

2 Q: Okay. Where were you headed?

3 A: I was leaving the police department heading to the
4 detention center.

5 Q: Okay. And while you were backing out, what, if anything,
6 occurred?

7 A: While I was backing out, Kemonie asked me how we going to
8 charge him with murder and we didn't find a gun.

9 Q: Okay. And was that in response to any question?

10 A: No, sir.

11 Q: He just said that to you?

12 A: Yes. He just asked me the question.

13 Q: Okay. And did he have any other conversation with you at
14 that time?

15 A: At that time, no, he didn't.

16 Q: Okay. And did you finally get to the detention center?

17 A: Yes. I did arrive at the Marion County Detention Center.

18 Q: And once you arrived there, I presume you pulled in the
19 sally port?

20 A: Yes, sir.

21 Q: And did you get Mr. Jones out of the vehicle?

22 A: Yes, sir. I went to the rear of my vehicle passenger
23 side and got Mr. Jones out of the vehicle.

24 Q: And once you get him out of the vehicle, where did you
25 take him?

TYRONE ORLANDO REED - DIRECT BY MR. MCEACHIN

1 A: Actually, once you get into the sally port, you walk in
2 through the first metal door and it's right there where the
3 fingerprinting machine is at, and that's where he stated to me
4 that no gun, no case. And he kept repeating himself.

5 Q: Okay. And that happened there in the detention center
6 booking area?

7 A: Yes, sir. That happened at the Marion County Detention
8 Center.

9 Q: He said what?

10 A: No gun, no case.

11 Q: After you assisted with the booking-in process, did you
12 have any other involvement with this case?

13 A: No, sir. Once I took my handcuffs off of Mr. Jones, I
14 left the detention center.

15 Q: Thank you. Please answer any questions Mr. Anderson may
16 have for you.

17 THE COURT: Any cross?

18 MR. ANDERSON: Yes, sir, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. ANDERSON:

21 Q: Tyrone --

22 A: Yes, sir.

23 Q: You picked him up from the Marion Police Department?

24 A: Yes, sir.

25 Q: Do you have any idea what he was doing at the Marion

1 Police Department?

2 A: Not at that time.

3 Q: Any idea who he talked to?

4 A: No, sir.

5 Q: Any idea what they may have told him?

6 A: No, sir.

7 Q: For all you know, someone could have said, hey, Kemonie,

8 did you have a gun on you that day. You don't know what was

9 said to him, do you?

10 A: No, sir.

11 Q: You don't know if somebody said, hey, Kemonie, somebody

12 was shot, but we're looking for the gun. You don't know if

13 that was said, do you?

14 A: Oh, no, sir.

15 Q: You don't know if they said, hey, Kemonie, we need to

16 find that gun. Will you please tell us where it is? You have

17 no idea, do you?

18 A: No, sir.

19 Q: All your job was was to transport him from the Marion

20 Police Department to the Marion County Detention Center?

21 A: Yes, sir.

22 Q: You knew he was there for a reason at the Marion County

23 Police -- or the Marion City Police Department? You knew he

24 was there for a reason; right?

25 A: I knew that I was transporting him.

TYRONE ORLANDO REED - CROSS BY MR. ANDERSON

1 Q: All right. But you had no idea who talked to him or what
2 they may have asked him and what they may have told him?

3 A: No, sir.

4 MR. ANDERSON: That's all the questions I have, Judge.

5 THE COURT: Okay. Redirect?

6 MR. MCEACHIN: Just briefly.

7 REDIRECT EXAMINATION

8 BY MR. MCEACHIN:

9 Q: Corporal Reed, at that time, you hadn't had any other
10 involvement in this case, had you?

11 A: No, sir.

12 Q: You had no idea why the defendant was there?

13 A: No, sir. I was just there to transport him.

14 Q: And the statements that he made to you were just during
15 the transport?

16 A: Yes, sir.

17 MR. MCEACHIN: No further questions.

18 THE COURT: Okay. Thank you, sir, for your testimony.
19 You can step down.

20 MR. MCEACHIN: Your Honor, the State rests.

21 THE COURT: Okay. All right. Ladies and gentlemen, I
22 need for you to go back to -- to your jury room for just a few
23 moments. I need to take up some matters with the -- with the
24 lawyers, and then I'll make a decision on -- on if we're going
25 to break for lunch now or not. So if you'd just go back to