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Volume I of II

No Respondent's Brief Filed

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM FLORENCE COUNTY

APR 18 2016

William H. Seals, Jr., Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHRISTOPHER MAYHUE PETERSON,

APPELLANT

APPELLATE CASE NO. 2015-001359

RECORD ON APPEAL

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State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2013-GS-21-01128
	)	Case No. 2015-GS-21-00494

State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
Christopher Mayhue Peterson,	)	
	)	
Defendant.	)	
	)	

June 15-18, 2015
Florence, South Carolina

B E F O R E:

The Honorable William H. Seals, Judge; and a jury

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

Todd Tucker, Esquire
Attorney for the Plaintiff

Steven Deberry, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

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1 JUNE 15, 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 10:49 a.m.)

5 THE COURT: All right. Solicitor, if you would, call
6 your first case.

7 MR. TUCKER: Yes, Your Honor. At this time, the State
8 calls Indictments 2013-GS-21-1128, 2015-GS-21-0494, State of
9 South Carolina versus Christopher Peterson for trial.

10 THE COURT: All right. Thank you very much. All right.
11 Members of the jury panel, in this particular case I need to
12 ask you another series of questions to make sure that you're
13 qualified to serve on this jury.

14 In this matter, the State of South Carolina alleges that
15 a Christopher Peterson did in Florence County on or about
16 January 6th, 2013, intentionally kill Luther Lisbon by means of
17 shooting the victim in the chest. Therefore, the defendant is
18 charged with murder. The defendant is also charged with
19 attempted murder on that same date in Florence County of a
20 David Lunn, as well as other related charges.

21 Has any member of the jury panel heard anything about
22 this case, talked to anybody about this case, read anything
23 about this case? If you know anything about this case, no
24 matter how insignificant you think it is, please stand.

25 (WHEREUPON, no one stood.)

1 THE COURT: All right. No one stood. Is the defendant
2 in the courtroom?

3 MR. DEBERRY: He is, Your Honor.

4 THE COURT: All right. If you would, please stand. If
5 you would, turn and face the jury panel.

6 (WHEREUPON, the defendant complied.)

7 THE COURT: All right. Thank you. You may be seated.

8 (WHEREUPON, the defendant complied.)

9 THE COURT: Is any member of the jury panel related by
10 blood or marriage or has a close personal or social
11 relationship with the defendant, Mr. Christopher Peterson? If
12 so, please stand.

13 (WHEREUPON, no one stood.)

14 THE COURT: All right. No one stood. Solicitor, if you
15 would, stand and introduce yourself and any members of your
16 staff.

17 MR. TUCKER: Thank you, Your Honor. May it please the
18 Court.

19 THE COURT: Thank you.

20 MR. TUCKER: My name is Todd Tucker and I'm a deputy
21 solicitor here in Florence County. Seated to my right is the
22 solicitor, Ed Clements, who is my boss. Also, you'll see
23 popping in and out of the court other assistant solicitors.
24 Who was sitting next to me just a little while ago is another
25 deputy solicitor, John Jepertinger. We also have John Holt,

1 Angel Daniels, Catherine Wyse, David Richardson, and Stephen
2 Hill who work within our office.

3 THE COURT: All right. Thank you.

4 MR. TUCKER: And also Rick Hoefer.

5 THE COURT: All right. Is any member of the jury panel
6 related by blood or marriage or has a close personal or social
7 relationship with this solicitor or any member of the
8 solicitor's staff? If so, please stand.

9 (WHEREUPON, two people stood.)

10 THE COURT: All right. Give me your name and your
11 number.

12 JUROR NUMBER 137: Marvin Slaughter, 161. No, 137.

13 THE COURT: All right. How does that apply to you?

14 JUROR NUMBER 137: I know Ed.

15 THE COURT: All right. Well, taking that into account,
16 if you were selected to serve on a jury in this case, could
17 you be fair and impartial not only to the solicitor, but the
18 defense as well?

19 JUROR NUMBER 137: Yes.

20 THE COURT: Would you be fair and impartial to both
21 sides?

22 JUROR NUMBER 137: Yes.

23 THE COURT: Good. Thank you very much. All right. Your
24 name and your number?

25 JUROR NUMBER 66: William Hoylen, Number 66. The

1 solicitor is one of my customers.

2 THE COURT: All right.

3 JUROR NUMBER 66: I'm an insurance agent.

4 THE COURT: All right. Well, taking that into account,
5 if you were selected to serve on a jury in this case, could
6 you be fair and impartial not only to the solicitor, but the
7 defense as well?

8 JUROR NUMBER 66: I could.

9 THE COURT: Thank you very much. Anybody else? All
10 right. Mr. Deberry, if you would, stand and introduce
11 yourself.

12 MR. DEBERRY: Thank you, Your Honor. Good morning,
13 ladies and gentlemen. I'm Steven Deberry. I practice law
14 here in Florence. I'm a solo practitioner and practice by
15 myself. I have an office in Florence and one in Pamplico.
16 And I represent Christopher Peterson this week.

17 THE COURT: All right. Thank you. Is any member of the
18 jury panel related by blood or marriage or has a close
19 personal or social relationship with Mr. Deberry? If so,
20 please stand.

21 (WHEREUPON, one person stood.)

22 THE COURT: Yes, sir. One more time for the record your
23 name and your number.

24 JUROR NUMBER 66: William Hoylen, Juror 66. My insurance
25 agency has dealt with Mr. Deberry's office.

1 THE COURT: All right. Well, taking that into account,
2 if you were selected to serve on the jury in this case, could
3 you be fair and impartial not only to Mr. Deberry, but the
4 State as well?

5 JUROR NUMBER 66: I sure can.

6 THE COURT: Thank you very much. Anybody else? All
7 right. The witnesses on behalf of the State of South Carolina
8 in this case will be: a Jason Pate, Courtney Turner, Mike
9 Gifford, Thomas McFadden, Eric Barnes, Andrew Clendenin, Larry
10 Quick, Chad Collins, all with the Florence County Sheriff's
11 Office. A Dr. Ellen Riemer, MUSC pathology, Kathleen Street
12 with the Florence County Sheriff's Office, Jennifer Stoner,
13 Jamie Green, Michael Lynch with SLED, Dale Drewicz. Is that
14 pronounced right?

15 MR. TUCKER: Drewicz, Your Honor.

16 THE COURT: Drewicz. And William Druitts, David Lunn,
17 Marcus Lisbon, Reginald Johnson, Lashonda Williams, Don
18 Reynolds, Helen Cain, and Kim Cockfield.

19 In that regard, is any member of the jury panel related
20 by blood or marriage or has a close personal relationship with
21 any of the State's witnesses? If so, please stand.

22 (WHEREUPON, no one stood.)

23 THE COURT: All right. No one stood. The defense
24 witnesses, other than the defendant, may -- will be a Tony
25 Moore with the Florence County Sheriff's Department and Amanda

1 Webb with SLED and DHEC.

2 In that regard, is any member of the jury panel related
3 by blood or marriage or has a close personal or social
4 relationship with any of the defense witnesses? If so, please
5 stand.

6 (WHEREUPON, no one stood.)

7 THE COURT: All right. Good. No one stood. Is any
8 member of the jury panel related by blood or marriage to any
9 law enforcement officer? If so, please stand.

10 (WHEREUPON, several people stood.)

11 JUROR NUMBER 179: I have a question, Your Honor. Is
12 that in the state of South Carolina?

13 THE CLERK: Stand up, please.

14 THE COURT: Anywhere. If you would, just give me your
15 name and your number.

16 JUROR NUMBER 179: Candace Williams. And my number I
17 think was 179.

18 THE COURT: All right. How does that question apply to
19 you?

20 JUROR NUMBER 179: My brother is a New York police
21 officer.

22 THE COURT: All right. Well, taking that into account,
23 if you were selected to serve on the jury in this case, could
24 you be fair and impartial to the State and the defense?

25 JUROR NUMBER 179: Yes, sir.

1 THE COURT: Thank you very much. All right. Your name
2 and number?

3 JUROR NUMBER 59: William Herron, Number 59. My father
4 is a retired parole agent. My mother retired from the
5 California Attorney General's Office as an attorney. My best
6 friend is a retired Washington, D.C., policeman. I've had a
7 lot of contact with law enforcement during my life.

8 THE COURT: Well, taking that into account, if you were
9 selected to serve on the jury in this case, could you be fair
10 and impartial to the State and the defense?

11 JUROR NUMBER 59: Based on my experience, when these law
12 enforcement people saw fit to go to the trouble to bring
13 somebody in here, I --

14 THE COURT: All right. I'll excuse you for the purposes
15 of this trial only. If you'll just have a seat until the
16 process is over.

17 MR. DEBERRY: Your Honor, may I approach?

18 THE COURT: Yes. The State can come up as well. And I
19 did not excuse him. Just for this trial.

20 (WHEREUPON, a bench conference was held in the presence
21 of the jury panel but out of the hearing of the jury
22 panel as follows.)

23 THE COURT: Yeah?

24 MR. DEBERRY: I just ask for an instruction that there's
25 no evidence that's been introduced and that just because he's

1 charged he's not guilty.

2 THE COURT: Oh, I know. We're going to get into all
3 that.

4 MR. TUCKER: Yeah. I think if you draw attention to it
5 now, it just --

6 THE COURT: I wouldn't do it right now.

7 (WHEREUPON, the bench conference ended.)

8 THE COURT: All right. Yes, ma'am?

9 JUROR NUMBER 26: My name is Lauren Buntten. I'm Juror
10 Number 26. My boyfriend is a corporal in the Sheriff's
11 Department and that won't affect my decision.

12 THE COURT: All right. Well, taking that into account,
13 if you were selected to serve on the jury in this case, could
14 you be fair and impartial to the State and the defense?

15 JUROR NUMBER 26: Yes, sir.

16 THE COURT: Thank you very much. I appreciate you
17 standing. Anybody else?

18 JUROR NUMBER 103: Yeah. 103, Vince Payne. My brother
19 is a corporal with the South Carolina Highway Patrol.

20 THE COURT: All right. Taking that into account, if you
21 were selected to serve on the jury in this case, could you be
22 fair and impartial to the State and the defense?

23 JUROR NUMBER 103: Yes, sir.

24 THE COURT: Thank you. Yes, sir?

25 JUROR NUMBER 22: I got robbed about a year or so ago.

1 THE COURT: Give me your name and your number, if you
2 would.

3 JUROR NUMBER 22: Number 22, Johnnie Broach.

4 THE COURT: All right. Thank you.

5 JUROR NUMBER 22: I got robbed about a year ago, and one
6 of the investigators here handled my case. So --

7 THE COURT: All right. Well, taking that into account,
8 if you were selected to serve on the jury in this case, could
9 you be fair and impartial to the State and the defense?

10 JUROR NUMBER 22: Yes, sir.

11 THE COURT: Thank you very much. I appreciate you
12 standing. Yes, sir? Your name and number?

13 JUROR NUMBER 33: William E. Collins, Number 33.

14 THE COURT: All right.

15 JUROR NUMBER 33: I was not a commissioned law
16 enforcement officer, but I worked with law enforcement for the
17 past 16 years.

18 THE COURT: All right. Well, taking that into account,
19 if you were selected to serve on the jury in this case, could
20 you be fair and impartial to the State and the defense?

21 JUROR NUMBER 33: Yes, sir.

22 THE COURT: Thank you. I appreciate you standing.
23 Anybody else? All right.

24 Is any member of the jury panel aware of any bias or
25 prejudice for or against the State of South Carolina? If so,

1 please stand.

2 (WHEREUPON, no one stood.)

3 THE COURT: All right. No one stood. Has any member of
4 the jury panel formed an opinion as to the guilt or innocence
5 of the defendant, Christopher Peterson? If so, please stand.

6 (WHEREUPON, no one stood.)

7 THE COURT: All right. No one stood. Is there any
8 member of the jury panel who is a member of or contributor to
9 any group which has as its primary concern the promotion of
10 law enforcement or victims' rights? These groups would
11 include but certainly not be limited to MADD, SADD or CAVE,
12 Citizens Against Violent Crimes. If so, please stand.

13 (WHEREUPON, no one stood.)

14 THE COURT: All right. No one stood. Has any member of
15 the jury panel or any member of your immediate family ever
16 been involved in a crime of personal violence? This could be
17 including but not limited to criminal sexual conduct, assault
18 and battery of a high and aggravated nature, murder,
19 manslaughter, kidnapping, armed robbery, et cetera, et cetera.

20 Now, if you or any member of your immediate family have
21 ever been a victim or a defendant in a crime such as these
22 just mentioned or anything similar to them, please stand.

23 (WHEREUPON, several people stood.)

24 THE COURT: All right. You may come on up. If you
25 would, line them up at the rail and just give me their name

1 and number before they come up.

2 MR. CLEMENTS: May we approach, Your Honor?

3 THE COURT: Sure.

4 THE BAILIFF: 119.

5 (WHEREUPON, a bench conference was held in the presence
6 of the jury panel but out of the hearing of the jury
7 panel as follows.)

8 THE COURT: Come on around. We just had you to come up
9 front instead of --

10 JUROR NUMBER 119: It's okay. My dad was arrested for
11 molestation.

12 THE COURT: Okay.

13 JUROR NUMBER 119: And he's serving life at --

14 THE COURT: Okay.

15 JUROR NUMBER 119: -- in Florida.

16 THE COURT: Did y'all hear that by chance? Just make
17 sure that -- all right.

18 JUROR NUMBER 119: He's got life.

19 THE COURT: All right. Taking that into account, if you
20 were selected to serve on the jury in this case, could you be
21 fair and impartial to the State and the defense?

22 JUROR NUMBER 119: Yes, sir.

23 THE COURT: Would you be fair and impartial to both
24 sides?

25 JUROR NUMBER 119: Yes, sir.

1 THE COURT: Thank you for coming forward. Appreciate
2 that.

3 (WHEREUPON, the bench conference ended.)

4 THE COURT: All right. Yes, ma'am?

5 THE BAILIFF: 95.

6 THE COURT: Okay.

7 (WHEREUPON, a bench conference was held in the presence
8 of the jury panel but out of the hearing of the jury
9 panel as follows.)

10 MR. DEBERRY: What number was this?

11 THE COURT: 95. Okay.

12 JUROR NUMBER 95: Yes. My brother -- he was convicted of
13 murder.

14 THE COURT: All right. Well, taking that into account,
15 if you were selected to serve on the jury in this case, could
16 you be fair and impartial to the State and the defense?

17 JUROR NUMBER 95: Yes, sir.

18 THE COURT: All right. Would you be fair and impartial
19 to both sides?

20 JUROR NUMBER 95: Yes, sir.

21 THE COURT: Thank you. Appreciate you coming forward.

22 (WHEREUPON, the bench conference ended.)

23 THE BAILIFF: Juror Number 61, Roger Hickson.

24 (WHEREUPON, a bench conference was held in the presence
25 of the jury panel but out of the hearing of the jury

1 panel as follows.)

2 THE COURT: Good morning. How does that question --

3 JUROR NUMBER 61: I just want to know. I was charged

4 with, like, an '06 lynching.

5 THE COURT: You were charged with lynching?

6 JUROR NUMBER 61: But it got dropped, but I didn't know

7 if you still needed that.

8 THE COURT: All right. You're fine. You're qualified.

9 JUROR NUMBER 61: Okay.

10 THE COURT: Appreciate you coming forward.

11 JUROR NUMBER 61: Yes, sir.

12 THE COURT: He's fine. All right. I think that's it.

13 (WHEREUPON, the bench conference ended.)

14 (WHEREUPON, a bench conference was held with counsel in
15 the presence of the jury panel but out of the hearing of
16 the jury panel off the record.)

17 THE COURT: All right. Is there any member of the jury
18 panel who knows of any reason whatsoever why they could not
19 give the parties in this case a fair and impartial trial? If
20 so, please stand.

21 (WHEREUPON, no one stood.)

22 THE COURT: All right. No one stood. Has any member of
23 the jury panel or any member of your family ever been
24 prosecuted by this solicitor or any member of the solicitor's
25 staff, regardless of whether the case was dismissed or not?

1 If so, please stand.

2 (WHEREUPON, no one stood.)

3 THE COURT: All right. No one stood. Anything further
4 from the State?

5 MR. TUCKER: Nothing from the State, Your Honor.

6 THE COURT: Anything further from the defense?

7 MR. DEBERRY: No, Your Honor. Thank you.

8 THE COURT: All right. I find the jury panel qualified
9 for this case except for those I have excused. If you would,
10 give us a jury of twelve and two alternates, please.

11 THE CLERK: Yes, sir.

12 (WHEREUPON, there was a pause in the proceedings as the
13 jury list was drawn.)

14 THE CLERK: Are you ready, Judge?

15 THE COURT: I'm ready.

16 THE CLERK: Members of the jury, as I call your name,
17 please come to the side railing, come to the microphone, and
18 face the back of the courtroom. 143, Allison Sprott.

19 (WHEREUPON, a white female came forward.)

20 THE CLERK: What say the State?

21 MR. TUCKER: Please present Ms. Sprott.

22 THE CLERK: What say the defendant?

23 MR. DEBERRY: Please excuse Ms. Sprott from the trial of
24 this case.

25 THE CLERK: You've been excused from this trial only,

1 ma'am. You can return to your seat. 45, Kenneth Epps.

2 (WHEREUPON, a black male came forward.)

3 THE CLERK: What say the State?

4 MR. TUCKER: Please present Mr. Epps.

5 THE CLERK: What say the defendant?

6 MR. DEBERRY: Please seat the juror, please.

7 THE CLERK: Please have a seat in the jury box, sir.

8 156, Tina Tickle.

9 (WHEREUPON, a white female came forward.)

10 THE CLERK: What say the State?

11 MR. TUCKER: Please present Ms. Tickle.

12 THE CLERK: What say the defendant?

13 MR. DEBERRY: Please seat Ms. Tickle.

14 THE CLERK: Please have a seat in the jury box, ma'am.

15 101, Anna O'Shea.

16 (WHEREUPON, a white female came forward.)

17 THE CLERK: What say the State?

18 MR. TUCKER: Please present Ms. O'Shea.

19 THE CLERK: What say the defendant?

20 MR. DEBERRY: Please excuse Ms. O'Shea from this trial.

21 THE CLERK: You've been excused from this trial only.

22 14, Cynthia Bethea.

23 (WHEREUPON, a black female came forward.)

24 THE CLERK: What say the State?

25 MR. TUCKER: Please present Ms. Bethea.

1 THE CLERK: What say the defendant?
2 MR. DEBERRY: Please seat Ms. Bethea.
3 THE CLERK: Please have a seat in the jury box. 49, Lee
4 Floyd.
5 (WHEREUPON, a white female came forward.)
6 THE CLERK: What say the State?
7 MR. TUCKER: Please present Ms. Floyd.
8 THE CLERK: What say the defendant?
9 MR. DEBERRY: Please seat Ms. Floyd.
10 THE CLERK: Please have a seat in the jury box. 22,
11 Johnnie Broach.
12 (WHEREUPON, a white male came forward.)
13 THE CLERK: What say the State?
14 MR. TUCKER: Please present Mr. Broach.
15 THE CLERK: What say the defendant?
16 MR. DEBERRY: Please excuse Mr. Broach from the trial of
17 this case.
18 THE CLERK: You've been excused from this trial only,
19 sir. 154, Scott Thompson.
20 (WHEREUPON, a white male came forward.)
21 THE CLERK: What say the State?
22 MR. TUCKER: Please present Mr. Thompson.
23 THE CLERK: What say the defendant?
24 MR. DEBERRY: Please seat Mr. Thompson.
25 THE CLERK: Please have a seat in the jury box. 50, Gary

1 Freeman.

2 (WHEREUPON, a white male came forward.)

3 THE CLERK: What say the State?

4 MR. TUCKER: Please present Mr. Freeman.

5 THE CLERK: What say the defendant?

6 MR. DEBERRY: Please seat Mr. Freeman.

7 THE CLERK: Please have a seat in the jury box. 8,

8 Hayley Ballou.

9 (WHEREUPON, a white female came forward.)

10 THE CLERK: What say the State?

11 MR. TUCKER: Please present Ms. Ballou.

12 THE CLERK: What say the defendant?

13 MR. DEBERRY: Please seat Ms. Ballou for this trial.

14 THE CLERK: Please have a seat in the jury box. 127,

15 Mickey Rotan.

16 (WHEREUPON, a white male came forward.)

17 THE CLERK: What say the State?

18 MR. TUCKER: Please present Mr. Rotan.

19 THE CLERK: What say the defendant?

20 MR. DEBERRY: Please seat Mr. Rotan.

21 THE CLERK: Please have a seat in the jury box. 115,

22 Phillip Prosser.

23 (WHEREUPON, a white male came forward.)

24 THE CLERK: What say the State?

25 MR. TUCKER: Please present Mr. Prosser.

1 THE CLERK: What say the defendant?

2 MR. DEBERRY: Please excuse Mr. Prosser from this trial.

3 THE CLERK: You've been excused from this trial only,

4 sir. 11, Lorraine Benton.

5 (WHEREUPON, a white female came forward.)

6 THE CLERK: What say the State?

7 MR. TUCKER: Please present Ms. Benton.

8 THE CLERK: What say the defendant?

9 MR. DEBERRY: Please excuse Ms. Benton from this trial.

10 THE CLERK: You've been excused from this trial only.

11 142, Shane Springs.

12 (WHEREUPON, a white male came forward.)

13 THE CLERK: What say the State?

14 MR. TUCKER: Please present Mr. Springs.

15 THE CLERK: What say the defendant?

16 MR. DEBERRY: Please seat Mr. Springs.

17 THE CLERK: Please have a seat in the jury box. 32,

18 William B. Collins.

19 (WHEREUPON, a white male came forward.)

20 THE CLERK: What say the State?

21 MR. TUCKER: Please present Mr. Collins.

22 THE CLERK: What say the defendant?

23 MR. DEBERRY: Please seat Mr. Collins.

24 THE CLERK: Please have a seat in the jury box. 136,

25 Emily Singletary.

1 (WHEREUPON, a black female came forward.)
2 THE CLERK: What say the State?
3 MR. TUCKER: Please present Ms. Singletary.
4 THE CLERK: What say the defendant?
5 MR. DEBERRY: Please seat Ms. Singletary.
6 THE CLERK: Please have a seat in the jury box. 33,
7 William E. Collins.
8 (WHEREUPON, a white male came forward.)
9 THE CLERK: What say the State?
10 MR. TUCKER: Please present Mr. Collins.
11 THE CLERK: What say the defendant?
12 MR. DEBERRY: Please excuse Mr. Collins for the trial of
13 this case.
14 THE CLERK: You've been excused from this trial only.
15 62, Leah Hinsch.
16 (WHEREUPON, an Hispanic female came forward.)
17 THE CLERK: What say the State?
18 MR. TUCKER: Please present Ms. Hinsch.
19 THE CLERK: What say the defendant?
20 MR. DEBERRY: Please seat Ms. Hinsch.
21 THE CLERK: Please have a seat in the jury box. That's
22 twelve, Judge.
23 THE COURT: Okay. Two alternates.
24 THE CLERK: 170, Candace Williams.
25 (WHEREUPON, a black female came forward.)

1 THE CLERK: What say the State?

2 MR. TUCKER: Please excuse Ms. Williams from the trial of
3 this particular case.

4 THE CLERK: You've been excused from this trial only.
5 151, Glenna Taylor.

6 (WHEREUPON, a white female came forward.)

7 THE CLERK: Does the State wish to challenge this juror
8 for cause?

9 MR. TUCKER: No.

10 THE CLERK: What say the defendant?

11 MR. DEBERRY: Please seat Ms. Taylor.

12 THE CLERK: Please have a seat in the jury box. 114,
13 Euzelia Powlesland.

14 (WHEREUPON, a white female came forward.)

15 THE CLERK: What say the State?

16 MR. TUCKER: Please present Ms. Powlesland.

17 THE CLERK: What say the defendant?

18 MR. DEBERRY: Please seat Ms. Powlesland.

19 THE CLERK: Please have a seat in the jury box.

20 THE COURT: All right. The State and the defendant come
21 up here.

22 (WHEREUPON, a bench conference was held with Juror Number
23 114 and counsel as follows.)

24 THE COURT: All right. Juror 114?

25 JUROR NUMBER 114: Yes, sir. My son-in-law has already

1 been called. I don't know if that matters.

2 MR. TUCKER: What's that?

3 THE COURT: Your son-in-law has been what?

4 MR. TUCKER: I think her son-in-law has already been
5 picked on the jury.

6 JUROR NUMBER 114: Yes. So I don't know if that matters.

7 THE COURT: It doesn't matter to me.

8 MR. TUCKER: Not to me.

9 MR. DEBERRY: You're an alternate; right?

10 THE COURT: Right.

11 MR. DEBERRY: That's fine.

12 THE COURT: All right. You can have a seat.

13 JUROR NUMBER 114: Okay.

14 THE COURT: Thank you.

15 (WHEREUPON, the bench conference ended.)

16 THE COURT: All right. Any objections to the jury or the
17 process by which they were drawn? What says the State?

18 MR. TUCKER: None from the State, Your Honor.

19 THE COURT: How about the defense?

20 MR. DEBERRY: No, Your Honor. Thank you.

21 THE COURT: All right.

22 (WHEREUPON, the Court and the clerk confer off the
23 record, after which the Court and the County Solicitor
24 confer off the record.)

25 THE COURT: All right. The remainder of the jury panel,

1 if you would, go down to the courtroom on the 10th floor.
2 They're going to pick a jury for another case on the 10th
3 floor. If you'll just stay seated, I'll talk to you in just a
4 minute.

5 (WHEREUPON, the jury panel was released at 11:20 a.m.)

6 THE COURT: All right. Members of the jury, I'm going to
7 excuse you until two o'clock. If you would, come back to this
8 courtroom and go in that jury room right there at two o'clock.
9 However, before I dismiss you, I want to let you know a few
10 things that I want you to abide by.

11 One, when you leave this courtroom, don't get on your
12 phones or the computer and google the defendant's name or the
13 lawyers' names or anything about this case at all. You are
14 instructed not to talk about this case at all among yourselves
15 or with anybody in the public.

16 If you would, I want you to go, I want you to have lunch,
17 I want you to relax, forget about it, and come back at two
18 o'clock and we'll start at that time. And I'm going to
19 appoint Mr. Freeman to be the foreman of the jury. You'll sit
20 in that seat for the remainder of the trial.

21 All right. You are excused and I'll see you back at two
22 o'clock. And please abide by those instructions.

23 (WHEREUPON, the jury exited the courtroom at 11:22 a.m.)

24 One juror remained behind to speak with the Court.)

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

1 JUROR number 62: Can I talk to you for a second?

2 THE COURT: What's that?

3 JUROR NUMBER 62: Can I talk to you for a second?

4 THE COURT: Sure.

5 JUROR NUMBER 62: How long is this going to take?

6 Because I have the only vehicle in my house and my husband

7 needs to be picked up at five.

8 THE COURT: You have somebody that needs to do what at
9 five?

10 JUROR NUMBER 62: I have to pick my husband up at five.

11 I also have really high anxiety or I would have came up here

12 sooner and let you know, but he also has a felony background

13 too. So I don't know if that -- I mean I just want to make

14 sure you guys know everything.

15 THE COURT: All right. Y'all come on up here and let me
16 talk to you real quick with them.

17 JUROR NUMBER 62: I'm sorry.

18 THE COURT: What's your jury number?

19 JUROR NUMBER 62: 62.

20 THE COURT: 62.

21 MR. TUCKER: Yes, sir.

22 THE COURT: All right. She has to pick up somebody at
23 five.

24 JUROR NUMBER 62: Uh-huh.

25 THE COURT: Your husband?

1 JUROR NUMBER 62: Yes.

2 THE COURT: Where?

3 JUROR NUMBER 62: He works at Rock Tenn.

4 THE COURT: Okay. Can you get somebody to pick him up
5 just for this one day?

6 JUROR NUMBER 62: We have the only vehicle and we don't
7 really have friends here. We've only been here for two years.

8 THE COURT: All right. And what else did you tell me?

9 JUROR NUMBER 62: Yeah. He has a -- what is it? Assault
10 and battery. He went to prison for a year.

11 THE COURT: That's her husband..

12 JUROR NUMBER 62: Yeah. That was for -- yeah, assault
13 and battery. And my sister-in-law still works for the
14 Florence County --

15 THE COURT: Why didn't you tell me all this stuff when I
16 asked you?

17 JUROR NUMBER 62: I don't like being in public. I'm
18 sorry.

19 THE COURT: All right.

20 JUROR NUMBER 62: I really have high anxiety. I'm sorry.
21 I would've come up here sooner.

22 THE COURT: All right. Let me hear from the State.

23 MR. TUCKER: Judge, certainly I can anticipate we can
24 probably break at 4:40 -- 4:30, somewhere in that ballpark,
25 and that would address the picking up the husband. I

1 certainly have no problem with her husband having an issue and
2 her -- you say your sister-in-law?

3 JUROR NUMBER 62: My sister-in-law works at -- used to
4 work at the Sheriff's Department.

5 THE COURT: That kind of balances things out, doesn't it?
6 Well, taking all of those things into account, I do want to
7 ask you can you be fair and impartial to the State and the
8 defense?

9 JUROR NUMBER 62: I can, yes.

10 THE COURT: Okay. How do you feel about this, Mr.
11 Deberry?

12 MR. DEBERRY: I'd love to help her any way we can. I'd
13 love to keep her on the jury if we can -- as a juror if we
14 can.

15 THE COURT: You want her -- you don't want her on the
16 jury?

17 MR. DEBERRY: No. I'd love to have her serve.

18 THE COURT: Well, we're going to keep you and why don't
19 you just remind me about 4:45. If we're still going, you just
20 wag your finger to me and we'll try to find a breaking point.

21 MR. TUCKER: And that shouldn't be a problem, Your Honor.

22 THE COURT: Okay. How about that? And then we'll let
23 you go and then make arrangements for the next day and the
24 next and the next.

25 JUROR NUMBER 62: I'll probably have to have somebody --

1 I don't know if there's -- they said somebody would come pick
2 me up from here. I don't know about --.

3 THE COURT: We'll make arrangements to get you.

4 JUROR NUMBER 62: That way, he can take the truck and I
5 don't have to go pick him up.

6 THE COURT: Okay.

7 JUROR NUMBER 62: Okay. Thank you.

8 THE COURT: Okay. You remind me now before you leave
9 today.

10 JUROR NUMBER 62: Okay.

11 THE COURT: All right. Sounds good. No objections from
12 anybody? We're keeping her.

13 (WHEREUPON, the bench conference ended.)

14 THE COURT: All right. We'll see y'all at 1:30.

15 MR. TUCKER: Yes, sir. Thank you, Judge.

16 THE COURT: Sounds good.

17 (WHEREUPON, there was a break in the proceedings from
18 11:25 a.m. until 1:31 p.m.)

19 MR. TUCKER: And, Your Honor, Mr. Deberry and I met over
20 the lunch break.

21 THE COURT: Good.

22 MR. TUCKER: And I think we've decided that those items,
23 while I'll still have to lay a foundation, certainly I don't
24 think he's going to object if a proper foundation is laid --

25 THE COURT: Okay.

1 MR. TUCKER: -- for those items coming into evidence, if
2 I understood our talks correctly.

3 MR. DEBERRY: Or if you want to just stipulate them into
4 evidence.

5 THE COURT: That would be the easiest way to do it.

6 MR. TUCKER: That's fine with me.

7 THE COURT: If that's okay with you? All right. Give me
8 the ones where y'all have no objection that you know are into
9 evidence.

10 MR. TUCKER: The composite sketch, Your Honor.

11 THE COURT: Give me the numbers.

12 MR. TUCKER: State's Exhibit 1.

13 THE COURT: Okay.

14 MR. TUCKER: The scale drawing of the apartment.

15 THE COURT: Okay.

16 MR. TUCKER: State's Exhibit 2. And then there are I
17 think --

18 MR. DEBERRY: Sixty --

19 MR. TUCKER: Nine?

20 MR. DEBERRY: Two.

21 MR. TUCKER: Well, we added five.

22 MR. DEBERRY: Plus one. Yeah, 67 plus one.

23 MR. TUCKER: Okay. And these have -- when they appear on
24 the screen, of course, it will be just one picture at a time.

25 THE COURT: Okay.

1 MR. TUCKER: But for printing purposes, you know, there
2 are two pictures per page.

3 THE COURT: Okay. Are you going to mark them as a
4 packet?

5 MR. TUCKER: That would be -- if it's suitable to the
6 Court, Your Honor. As long as -- and the way that they'll be
7 shown to the jury obviously is the ones that --

8 MR. DEBERRY: And you're sure you've got just the ones on
9 --

10 MR. TUCKER: And what we'll do is before we actually show
11 -- I won't get into these until we put the forensics guy up,
12 and we can take a break and then I can have --

13 MR. DEBERRY: Are you going to do that today?

14 MR. TUCKER: -- him pull it up. What?

15 MR. DEBERRY: Are you going to do that today?

16 MR. TUCKER: Yeah. He'll be up here. And just pull
17 those up and just -- Keith can pull those up so that only
18 those appear when we pull them up. Correct?

19 KEITH: Have you got the interview?

20 MR. TUCKER: Yes. We'll put that in tonight because
21 we're going to have to redact a portion of the first
22 statement. And that was another thing, Your Honor.

23 In talking with Mr. Deberry, my understanding is while he
24 doesn't plan to ask for a *Jackson v. Denno* hearing, what I
25 plan to do is since the burden is on the State to prove that

1 the statement was voluntarily made, I'll just do that when I
2 do my direct in terms of setting that scene for how the
3 interviews were done and conducted.

4 THE COURT: Okay.

5 MR. TUCKER: And I'll actually put the -- the waiver
6 sheet that they use in as evidence too.

7 (WHEREUPON, a discussion was held off the record
8 regarding the marking of the photographs.)

9 (WHEREUPON, there was a pause in the proceedings as the
10 photographs were marked as State's Exhibits Number 3
11 through 135.)

12 THE COURT: All right. Mr. Tucker, you got any more
13 items that are into evidence without objection?

14 MR. TUCKER: I believe that is it for the moment, Your
15 Honor.

16 THE COURT: All right. So it looks like Number 1 would
17 be the composite sketch, Number 2 would be the sketch of the
18 apartment, and 3 through 135 would be the pictures.

19 MR. TUCKER: Correct, Your Honor.

20 THE COURT: All into evidence without objection. Is that
21 right, Mr. Deberry?

22 MR. DEBERRY: Yes, sir.

23 MR. TUCKER: And we do have one additional item for
24 today, Your Honor.

25 THE COURT: Okay.

1 MR. TUCKER: I'll be referring to this blow-up overhead
2 sketch of the incident location. So we can make that State's
3 Exhibit --

4 THE COURT REPORTER: 136.

5 THE COURT: 136. Any objection to that, Mr. Deberry?

6 MR. DEBERRY: No, Your Honor.

7 THE COURT: All right. 136 in evidence without
8 objection. All right. Is everybody here?

9 THE CLERK: No, sir. We're missing four.

10 THE COURT: Okay. Let me know when they're here.

11 (WHEREUPON, State's Exhibits Number 1 through 136 were
12 admitted into evidence.)

13 (WHEREUPON, there was a break in the proceedings from
14 1:49 p.m. until 1:53 p.m.)

15 (WHEREUPON, a bench conference is held as follows.)

16 MR. TUCKER: I believe Mr. Deberry has a motion to
17 sequester the witnesses.

18 THE COURT: Is that okay with you?

19 MR. TUCKER: That's fine with me. Now, Judge, the only
20 difference is both Investigator Collins and Investigator
21 McFadden were --

22 MR. DEBERRY: They're fine if they want --

23 MR. TUCKER: -- co-primary investigators.

24 THE COURT: Okay.

25 MR. TUCKER: I'd ask that they be allowed to stay.

1 THE COURT: That's fine. You don't object, do you? Is
2 that a no?

3 MR. DEBERRY: Yeah. That's fine.

4 THE COURT: Okay.

5 MR. TUCKER: Thank you, Judge.

6 THE COURT: Thank you.

7 (WHEREUPON, there was a break in the proceedings from
8 1:53 p.m. until 2:18 p.m.)

9 (WHEREUPON, a juror, William B. Collins, has failed to
10 appear and a bench conference is held as follows.)

11 THE COURT: Y'all want to go with an alternate instead?

12 MR. DEBERRY: Who is it we're missing?

13 THE COURT: William Collins is the one missing, 32. He
14 was kind of a --

15 MR. DEBERRY: A white male? A black male?

16 THE COURT: White male. Sort of looked a little bit
17 young. Short.

18 MR. TUCKER: That's certainly fine with me, Your Honor.

19 THE COURT: Doesn't matter to me.

20 MR. TUCKER: Then if he shows, we'll just seat him as an
21 alternate.

22 THE COURT: And we got two alternates. We got Powlesland
23 or whatever you call it and Taylor. We just put names in a
24 hat and pull out a name.

25 MR. DEBERRY: I mean I'd really -- I don't want to be

1 hard to get along with, but I'd love to have him.

2 THE COURT: Let's get a deputy to go find him.

3 THE CLERK: Okay. You want to just set him aside for
4 right now? I mean you want to wait a few minutes?

5 THE COURT: They want him. Let's wait on him. Send a
6 deputy to go get him.

7 THE CLERK: Okay.

8 MR. DEBERRY: Well, we've got a few minutes I mean.

9 MR. TUCKER: And if push come to shove, Your Honor, if
10 that becomes an issue, what we can do is send the sheriff's
11 deputies to get him.

12 THE COURT: That's what I'm doing right now. I've done
13 it.

14 MR. TUCKER: And then we can, you know, start maybe in
15 the morning once they round him up tonight, if it gets that
16 far along.

17 THE COURT: Yeah. I've sent a deputy now.

18 MR. DEBERRY: If they can just -- they should be able to
19 let us know if they can find him right quick.

20 THE COURT: Yep. Back off the record.

21 (WHEREUPON, the bench conference ended.)

22 (WHEREUPON, there was a break in the proceedings from
23 2:20 p.m. until 2:42 p.m.)

24 THE COURT: Any objection to using an alternate?
25 Anything from the State?

1 MR. TUCKER: Nothing from the State, Your Honor.

2 THE COURT: How about you?

3 MR. DEBERRY: No, Your Honor.

4 THE COURT: All right. Put two names in the hat and pull
5 one out, Ms. Clerk.

6 (WHEREUPON, there was a pause in the proceedings.)

7 THE CLERK: 114, Euzelia Powlesland.

8 THE COURT: All right. Go ahead and pull the jury out.

9 THE BAILIFF: Yes, sir.

10 (WHEREUPON, the jury entered the courtroom at 2:43 p.m.)

11 THE COURT: All right. Members of the jury, I apologize
12 for the delay. We're missing a juror. We tried to find him.
13 We haven't found him yet. So we're going to make Ms.
14 Powlesland -- is that pronounced right?

15 JUROR NUMBER 114: Yes, sir.

16 THE COURT: We're going to make you a part of the jury.
17 All right. So you can come down here and have a seat in that
18 front seat right there if you'd like. All right. Ms. Clerk,
19 if you would, go ahead and swear the jury.

20 THE CLERK: Members of the jury, if you will, stand and
21 raise your right hand to be sworn.

22 (WHEREUPON, the jurors complied.)

23 THE CLERK: You shall well and truly try and a true
24 deliverance make between the State of South Carolina and the
25 defendant at the bar, whom you shall have in your charge, and

1 a true verdict render according to the law and evidence, so
2 help you God. You may be seated.

3 (WHEREUPON, the jurors complied.)

4 THE COURT: All right. Members of the jury, we're
5 getting ready to start this case, but before we actually begin
6 I want to give you a few preliminary instructions.

7 The first thing I want to tell you is that the burden of
8 proof is on the State of South Carolina to find the defendant
9 guilty beyond a reasonable doubt. The State of South Carolina
10 has the burden of proof.

11 The second thing I want to tell you is what your role is
12 and what my role is. You are the judge of the facts; I am the
13 judge of the law. You ask yourselves, well, what does that
14 mean? That simply means that you determine what the facts of
15 this case are and nobody else.

16 Well, you may ask yourselves how do I do that? It's very
17 simple. You look at the evidence. Evidence is made up of two
18 things. It can be made up of any exhibits admitted into the
19 record as evidence. That can be guns, bullets, pictures,
20 reports, anything of that nature. And it is made up of
21 witnesses that come over here and they're sworn in and they
22 testify.

23 In regard to the witnesses, I want you to understand that
24 you can believe everything a witness tells you, nothing a
25 witness tells you, part of what a witness tells you. You can

1 believe one witness against many or many against one. That is
2 your job to judge their credibility and believability. That
3 is the evidence of this case and that is where you determine
4 what the facts are.

5 In turn, I am the judge of the law. I'm here to give the
6 parties a fair trial and I'm here to instruct you on the law
7 applicable to this case at the very end, and I will read that
8 to you in great detail.

9 And I want you to understand that you have to accept the
10 law as I give it to you. And then when I tell you to begin
11 your deliberations and only when I tell you to begin your
12 deliberations will you take the facts as you find them, the
13 law as I give it to you, put the two together, and make a
14 decision therefrom.

15 Furthermore, I want to instruct you that at no point in
16 time in this trial until I tell you to, which will be at the
17 very, very end, do you need to talk about this case at all.
18 If we take a break and you go in the back, introduce
19 yourselves, talk about weather, sports, whatever you want to,
20 but not this case.

21 When we go home at night or at lunch or anytime that
22 you're not in court until this case is over with, do not talk
23 about the case with anybody. Do not research the case in any
24 form or fashion. Don't get on a computer and try to look
25 somebody's name up. I need to make sure that you get

1 everything you need right here in this courtroom so that you
2 can receive it properly to make a decision therefrom.

3 All right. At any point in time if you need a break or
4 if you need something, if you'll just kind of get my
5 attention. If I'm going too long, let me know and I'll make
6 sure that you're taken care of and that we have the
7 appropriate break.

8 At this point in time, I want you to sit back, I want you
9 to relax, and I'll recognize the State for the opening
10 statement.

11 MR. TUCKER: Thank you, Your Honor.

12 OPENING STATEMENT ON BEHALF OF THE STATE

13 MR. TUCKER: Death. It comes for us all sooner or later.
14 Most of us hope that we reach a ripe old age before it comes,
15 but for some, sadly, death can come without warning, death can
16 come violently, and death can come far too soon.

17 On the evening of January the 6th, 2013, Luther Lisbon
18 found that out the hard way. On that evening, death came for
19 Luther. It walked right up his front steps, it knocked on his
20 front door, and for Luther, when that door opened, death had a
21 name, death had a face, and that was the face and name of
22 Christopher Peterson.

23 This is a case about tragedy. This is a case about
24 violence. But ultimately, this is a case about a man who
25 quite literally thought he could get away with murder.

1 The evidence will show that on June [sic] the 6th, 2013,
2 Luther Lisbon was at home doing what most guys around his age
3 and a little older do on a Sunday. He was watching pro
4 football. Now, Luther was not alone. Later in the day, he
5 was joined by his brother, Marcus Lisbon, and a good friend of
6 his, David Lunn.

7 Now, as they set there and they watched TV and they
8 didn't have a care in the world, none of them expected that
9 Sunday to end any other way than uneventful. Unfortunately,
10 they were wrong. And for Luther Lisbon, he was dead wrong.

11 Unbeknownst to the three of those gentlemen as they
12 watched pro football, Sunday began altogether differently for
13 two individuals, one of whom was Reginald Johnson and the
14 other was Christopher Peterson. That morning on January the
15 6th, they found themselves like a lot of guys do. They didn't
16 have any money whatsoever. They came up with a plan to get
17 money and to get some money fast. Now, unfortunately, that
18 involved armed robbery.

19 Reginald Johnson, as you'll hear him testify, will tell
20 you he had an acquaintance, if you will, in common with Luther
21 Lisbon. Now, it was through this acquaintance that he became
22 aware that Luther kept a lot of cash money in or around his
23 apartment. Reginald, however, while he may have been short --
24 long on ideas, he was kind of short on nerve. He enlisted the
25 aid of Christopher Peterson, and Peterson was a willing

1 participant, an eager participant in what was to happen.

2 Reginald lost his nerve. And as closer they got to that
3 apartment, as you will hear, he lost it even more.

4 Unfortunately, for Luther Lisbon and for the other two
5 gentlemen in that apartment, not only was Christopher Peterson
6 armed with a nine millimeter handgun, he was armed with enough
7 nerve for ten men.

8 At around 7 p.m., both Johnson and Peterson arrived at
9 the Brittany Place Apartments on the west end of Florence
10 County. Now, what happened next is they parked a couple
11 buildings down and walked up. They walked right up the front
12 steps and Peterson, as you will hear, put himself right in the
13 front door. He knocked on the front door and, as that front
14 door opened, Marcus Lisbon was on the other side.

15 Immediately -- immediately, a struggle took place and
16 Marcus quite literally started fighting for his life because
17 the fellow on the other side of that door was a short, stocky,
18 black male dressed in black who had a nine millimeter handgun.
19 Marcus grabbed the gun and essentially it went off right when
20 he grabbed it.

21 There was a short struggle. They got inside the door.
22 The door opened up. Marcus, had it not been for his cat-like
23 quick reflexes, probably would have died that day himself, but
24 he was able to force the gun up over the top of his head and a
25 round went through the front door. You'll see the evidence

1 and you'll hear the testimony that would corroborate that.

2 At this point, Marcus was able to push his assailant
3 backwards and run out of the apartment. He quite literally
4 ran for his life and in so doing jumped off of the second-
5 story balcony and he wound up almost fracturing his leg.

6 Unfortunately, Luther Lisbon and David Lunn wouldn't be
7 quite so fortunate because as surely as Marcus Lisbon was able
8 to get away, David Lunn, who was sitting on a couch facing the
9 door, saw everything. He and Luther Lisbon saw everything.

10 David Lunn will tell you that he got up immediately when
11 that door opened up and it was the fellow who was first in the
12 door with whom Marcus struggled that he saw come in with a
13 gun. Two rounds had already been fired. David Lunn will tell
14 you how he got up and he moved to the far left-hand part of
15 that living room, but unfortunately death had a bead on him.
16 Death would not be so easily defeated that day because he took
17 one look at David Lunn -- David Lunn will tell you how he put
18 his hands up, hey, you got me, and death pulled the trigger
19 through Christopher Peterson's arm.

20 One round hit him in the chest. Lunn, knowing that if he
21 didn't act he was probably going to die right there, he will
22 tell you how he ran forward and he struggled with that
23 individual who had that gun, and he was shot a second time,
24 this time in the stomach. Lunn miraculously was able to get
25 loose, run out of the apartment, and another round was fired

1 right behind him. That round skipped the side of the door and
2 wound up in the bannister of the apartment just out front of
3 Luther Lisbon's place.

4 You will hear how once the crowd or the situation kind of
5 relented, for want of a better description, Marcus Lisbon was
6 able to go back upstairs after he thought the coast was clear,
7 and what he found there was something that probably no
8 brother, no friend, no mother, no father ever wants to endure
9 or encounter. He found his brother almost literally gasping
10 his last breath.

11 Now, as Christopher Peterson and Reginald Johnson fled,
12 there was another subject who was on the bottom half of the
13 apartment out looking over the parking lot. He heard the
14 quick gunshots. He called law enforcement. He also got a
15 good look at two individuals running away. Both were dressed
16 in black. The one who was traveling the slowest who was in
17 the back moving slower than the first was a short, stocky
18 individual that had a gun in his hand.

19 Now, the evidence will show that after this happened,
20 both David Lunn and Marcus Lisbon were taken to a hospital and
21 treated for their injuries. Now, in the interim, law
22 enforcement did respond. As you can imagine, this kind of an
23 incident brought law enforcement and first responders from
24 almost every corner, EMS and sheriff's deputies.

25 You will hear from the first responders in the Sheriff's

1 Office who will tell you what they saw when they first got
2 there. You will also hear from forensics individuals who will
3 tell you what they saw and what they did, specifically that
4 they found five shell casings in the crime scene, which was
5 consistent with what they would later learn to know to be the
6 facts. They will also tell you about the gunshot residue kit
7 that they collected and that they sent to SLED for analysis.
8 You'll also hear about some blood testimony, about blood that
9 was collected and sent to SLED for analysis.

10 But, ladies and gentlemen, this case didn't really start
11 to turn, as cases sometimes do, until a few days later when
12 David Lunn and Marcus Lisbon were able to give law enforcement
13 an account of what happened. You will hear Marcus Lisbon and
14 David Lunn tell you what happened. They were there. Both
15 will tell you that when that door opened up, it was the short,
16 stocky, black male dressed in black who had a gun with whom
17 Marcus Lisbon struggled first. David Lunn will tell you that.
18 Marcus Lisbon will tell you that. He got a first up-close,
19 personal look at him.

20 They will tell you that there was a second guy both saw,
21 particularly Marcus, but he will tell you that the second
22 individual did not come into the apartment. That the second
23 individual was there for a moment and then it was almost like
24 he disappeared. They will both tell you how when they gave
25 law enforcement this information what was done with it.

1 They will also tell you about a composite sketch that
2 they were able to give a description of to law enforcement,
3 who generated a sketch. Now, when that sketch was made
4 public, leads came in. So anonymous tips came in and it was
5 at this point and a couple of months after the incident that
6 Christopher Peterson's name came up. And as any good
7 investigator -- you'll hear from Investigator Thomas McFadden
8 and Investigator Chad Collins, who ran point with this case --
9 they were able to put a name with the face.

10 And now death had a face. Death now had a name because
11 Christopher Peterson matched the description given by Marcus
12 Lisbon and David Lunn almost to a T.

13 Now, when they bring Christopher Peterson in for
14 questioning, they noticed a funny thing. It appears as if
15 Christopher Peterson was shot. Now, he made a statement on
16 April the 11th, 2013, and you will hear about the statement.
17 And the first statement that he gave, he -- I wasn't there. I
18 was somewhere else. I got injured on the job working at
19 Nucor. You will hear how none of that was absolutely true.
20 None of it.

21 He calls law enforcement the next day after he sits back
22 and he thinks about it, and you'll hear the testimony. The
23 second statement he tells law enforcement is, yeah, I was
24 there. I went with Reginald Johnson. Reginald Johnson asked
25 me to go. I thought I was going to be part of a drug deal.

1 And you'll hear this in Christopher Peterson's own words
2 because you'll get a chance to listen to both statements.

3 But Christopher Peterson puts himself first in the door,
4 knocking on the door, the first one in the door with whom
5 Marcus Lisbon struggled. Christopher Peterson will tell you
6 he struggled with Marcus Lisbon.

7 And, folks, when you hear everything, when you see
8 everything, the evidence only lays out the one way. That it
9 was Christopher Peterson who knocked on the door, who burst
10 into that apartment, who struggled with Marcus Lisbon, and who
11 wound up shooting at Marcus Lisbon and who wound up hitting
12 Luther Lisbon and also David Lunn.

13 You will hear the pathologist tell you that Luther Lisbon
14 unfortunately died of a gunshot wound, and she'll tell you
15 exactly how that happened and she'll give you the particulars
16 of it. But make no mistake about it, Luther died too early.

17 Death had a name and death has a face, and it is sitting
18 right there at the defense table. This is a case about
19 violence. This is a case about tragedy. But ultimately,
20 ladies and gentlemen, this is a case about a man who thinks he
21 can get away with murder.

22 THE COURT: All right. The defense is recognized.

23 MR. DEBERRY: Thank you, Your Honor. Mr. Tucker.

24 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

25 MR. DEBERRY: Good afternoon. Ladies and gentlemen, that

1 was one rendition of the facts of this case, but let me tell
2 you something. You, as the jurors in this case, just like the
3 judge told you, it's your job to decide what happened, not Mr.
4 Tucker's. And what I say and what Mr. Tucker says are not
5 evidence.

6 It's not evidence. Not one bit of it is evidence. What
7 comes from this witness stand and what comes in the forms of
8 evidence such as gunshot residue, pictures, trajectory rods,
9 blood, all those sorts of things, that's the evidence in this
10 case that you should decide what happened and that you should
11 make your mind up on the facts in this case.

12 Now, I'm not going to stand here and go back over our
13 entire theory or my entire theory of this case because you, as
14 the twelve jurors sitting in this case sitting in this box,
15 that's your job. That's what you do. That's your main
16 purpose is to sit here this week and to decide what happened.
17 Okay?

18 Now, I'll tell you that you might think it's been quite a
19 while since January the 6th of 2013 and it's been over about
20 two-and-a-half years, a little more than two-and-a-half years.
21 If the State was absolutely sure about what they just told
22 you, this case would have been to trial a long time ago. If
23 the State hadn't have changed from using my client,
24 Christopher Peterson, as their witness to prosecute the
25 shooter, Gregory Johnson, in this case, then they would have

1 tried it a long time ago.

2 There was one indictment for Peterson and for Johnson
3 August of 2013. There's a new indictment in April of this
4 year. They don't know what happened. I've looked at this
5 case for two -- for over two-and-a-half years. I don't know
6 what happened. Law enforcement doesn't know what happened.

7 There's way too much evidence that doesn't make any
8 sense. Zero. It doesn't fit into the puzzle. It just makes
9 you scratch your head. And again, I've been looking at this
10 for two-and-a-half years. I'm not about to stand up here like
11 Mr. Tucker and try to convince you of something that I'm not
12 sure of.

13 Now, this is a serious, serious matter, and I'm not
14 taking anything away from the fact that this is a tragedy and
15 that Luther Lunn [sic] died too soon. I agree with all of
16 that. It's awful. It's unimaginable. It's your worst
17 nightmare coming true.

18 But it's also Christopher Peterson's day in court, and
19 thank God we're Americans because only in America do you have
20 the right to have your day in court, to have twelve
21 individuals from this community, this great community, come
22 into this courtroom and decide what happened. Not the State,
23 not law enforcement, not the victims, not the accused, but
24 you, the jury.

25 That's an awesome power and it means so much to me and I

1 know it means a lot to you because if you ever find yourself
2 charged with a crime, you can know this. You are innocent
3 until you're proven guilty right here in a court of law. You
4 are not guilty by any means until the twelve of you decide
5 beyond a reasonable doubt that you know exactly what happened.

6 And what is a reasonable doubt? I know you've probably
7 watched TV and you've heard that phrase a million times, but
8 it is the very fabric of this system of justice. We're
9 talking about people's liberty, the freedom to live free, to
10 not be incarcerated. That's a major, major task that's
11 imposed on you this week, and I just hope that you get it
12 right and I know that you will. Win, lose or draw, thank God
13 we're Americans and this process works.

14 I've tried many cases in this courtroom and other
15 courtrooms and, if anybody's ever watched me the whole entire
16 throughout my nine -- ten years doing this, they'll tell you
17 that I ask every jury just to be fair. Be fair to the State.
18 Be fair to law enforcement. Be fair to the victim. But be
19 fair to the accused. This system works and I put all of my
20 faith into it. Win, lose or draw, thank God we're Americans
21 and thank God we have this system of justice because it works.

22 And when this trial is over, whether you find Christopher
23 Peterson guilty, not guilty or if you can't agree, I'm going
24 to go home and I'm going to sleep and I'm going to go home and
25 I'm going to know I did the best I could do to zealously

1 defend my client, but I think at the end of this trial you
2 will see that the evidence will show there's too many
3 questions.

4 There's too many questions. There's a third person.
5 Nobody knows who it is, but I can show you there was a third
6 person. In many different instances, I can show you there was
7 a third person. There was the five people that we know were
8 there. We're not at all going to tell you that Christopher
9 Peterson wasn't there. He's been on board with the State for
10 two -- for over two years to testify for them. And then they
11 changed their mind and then they added an armed robbery charge
12 on him.

13 All of this happened, by everybody's account, in less
14 than 15 -- 20 seconds and they want to say they got away with
15 \$4,000. Well, wait until you hear how much money was left in
16 the apartment.

17 It's always been Christopher Peterson's statement and
18 story that he didn't know. He was just going along for the
19 ride. He didn't know what was going to happen. And he got
20 shot. That's the biggest hurdle I can't get around. He got
21 shot on the inside of his right knee. You're going to hear
22 he's right-handed. How does that happen?

23 The State wants you to believe there's one shooter and
24 there's only evidence that maybe there was one shooter, but
25 maybe there's evidence that there's more than one shooter.

1 There's bullets going in and there's bullets coming out.

2 A dog team tracked somebody miles away. They never even
3 really followed up on that. Their witness that they see
4 running across the parking lot with a gun has got the gun in
5 his left hand. I don't know how many of you handled firearms
6 before, but I promise you you're going to pick it up and run
7 with it in your dominant hand.

8 There's a lot to be answered in this situation. It's
9 just not as clear as they want to make it out to be. I think
10 the indictments themselves prove that there's reasonable doubt
11 even on the State's part.

12 Now, what is reasonable doubt? There's two definitions
13 of reasonable doubt. Okay? The first definition is it's the
14 type of doubt that makes a reasonable person hesitate to act
15 to do something. The type of doubt that makes a reasonable
16 person hesitate to act to do something. And in the law and
17 this system of justice, it's the highest burden we have
18 because it's so important that we're going to consider taking
19 somebody's freedom away. Okay?

20 When you're in a car accident case and you come up here
21 in your day in court, it's just as -- it's just as important,
22 but it's a lower standard of proof that's required. It's just
23 more likely than not. It's called presumption of the
24 evidence. It just means that it's more likely than not that
25 something happened.

1 But when we get here in General Sessions court when
2 somebody's life is on the line, it raises to the highest level
3 of doubt in our system and it's called a reasonable doubt.
4 And it means that it's the type of doubt that makes a
5 reasonable person hesitate to act to find somebody guilty.

6 So when you get the case back there in the jury room and
7 you think about it and you just say, well, something just
8 isn't right, that is all it takes. That is a reasonable
9 doubt. If you don't -- if you're not firmly convinced --
10 that's the other definition of reasonable doubt is being
11 firmly convinced that my -- that my client is guilty, then you
12 cannot find him guilty.

13 And this is another anomaly in this system of justice
14 that we have today. I think it's real important for you to
15 understand. When you're back in your jury room at the
16 conclusion of this case, you're going to be sent back there
17 with a verdict form. And by the way, the word verdict, it
18 means to speak the truth. It's a Latin phrase or a Latin word
19 that means to speak the truth.

20 But when you go back in that jury room with your verdict
21 form that you'll have to sign, you're charged with the duty to
22 either find him guilty beyond a reasonable doubt or not
23 guilty. Now, let me explain that. This is really important.
24 Please understand this.

25 If you check not guilty, it does not mean at all that

1 you're saying that beyond a reasonable doubt my client is not
2 guilty. What it means is is that you're not convinced or
3 you're not sure beyond a reasonable doubt that he is guilty
4 because as he sits here and as I stand here and zealously
5 advocate for him and his position, we don't have to prove
6 anything.

7 That's not the way this system of justice works. It's
8 the State's burden of proof. They have to prove him guilty
9 beyond a reasonable doubt. Right now, he's sitting there and
10 he is innocent. You're innocent until you're proven guilty.
11 So those are some things I would like you to just really
12 consider.

13 Now, I'm telling you I apologize for you having to be
14 here. I think Winston Churchill once said that, other than
15 fighting for your country, jury duty is one of the highest
16 civic duties that there is, and I believe that. I also
17 understand it's a major inconvenience. You have jobs, you
18 have lives, you have families, and there's other places that
19 you would rather be, but I just ask you to know that this is a
20 very important matter and that you have a job here and the job
21 is for you to pay attention and win, lose or draw, to give us
22 a fair trial to both the State and Mr. Peterson.

23 And so I trust that you will do that and I promise you
24 that I won't waste any of your time. We'll will move forward
25 as expeditiously as we can, but also keep in mind that every

1 bit of this will have a huge impact on many, many lives.
2 We're not taking them away from the death and the tragedy that
3 happened. We just need to make sure that the actions that you
4 bring forward in the form of your verdict are the right thing
5 to do or is the right thing to do.

6 So thank you very much for your attention. I know, you
7 know, it's an inconvenience and I apologize for that, but I
8 know you'll be fair and that's all we can ask for. Thank God
9 we're Americans.

10 THE COURT: Call your first witness.

11 MR. TUCKER: Thank you, Your Honor. At this time, the
12 State calls Deputy Jason Pate to the stand.

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

15 THE CLERK: If you will, sir, come to the witness stand.
16 Place your left hand on the Bible and raise your right hand.
17 Do you swear to tell the truth, the whole truth, and nothing
18 but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Please be seated and state your full name for
21 the record.

22 THE WITNESS: Jason L. Pate.

23 MR. TUCKER: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Sure.

JASON PATE - DIRECT BY MR. TUCKER

1 JASON PATE, being first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. TUCKER:

5 Q: Mr. Pate, with whom are you employed?

6 A: The Florence County Sheriff's Office.

7 Q: What's your rank there at present?

8 A: Corporal.

9 Q: Now, were you employed with the Florence County Sheriff's
10 Office on or about January the 6th, 2013?

11 A: I was.

12 Q: Do you recall what your duties and responsibilities were
13 on that particular date?

14 A: I was on the patrol division. We answer the calls of
15 assistance from the citizens.

16 Q: Let me back up and ask you -- what are some of the
17 training that goes along with being a patrol deputy?

18 A: Through the academy or --

19 Q: Yeah. Did you -- I'm assuming you graduated from the
20 South Carolina Criminal Justice Academy?

21 A: I did.

22 Q: And what are some of the classes and things that you did
23 there?

24 A: Basically, report writing, crime scene stuff, a little
25 bit of everything.

JASON PATE - DIRECT BY MR. TUCKER

1 Q: And did you have to complete a field training officer
2 program when you got put on regular patrol I should say?

3 A: Yes, sir.

4 Q: Now, drawing your attention specifically to January the
5 6th, 2013, do you recall where you were at or around 7 p.m.?

6 A: Around 76 and I-95 area.

7 Q: And do you recall, as you mentioned, getting a
8 notification or a request for assistance?

9 A: Yes, sir. I received a call that someone had been shot
10 on Brittany Drive.

11 Q: Now, are you pretty familiar with this area?

12 A: Yes, sir.

13 Q: Do you patrol it routinely?

14 A: Yes, sir.

15 MR. TUCKER: Your Honor, at this point, I would ask
16 what's been marked State's Exhibit 136 --

17 BY MR. TUCKER:

18 Q: Corporal Pate, could you take a look at this area
19 overhead and could you tell us if you recognize this
20 particular area?

21 A: Sure. That's Brittany Drive. Let me see which way --
22 West Palmetto is at that end; correct?

23 Q: Correct.

24 A: Yes, sir. I recognize it.

25 MR. TUCKER: Your Honor, at this point, the State would

JASON PATE - DIRECT BY MR. TUCKER

1 move that this aerial map be admitted into evidence.

2 THE COURT: It's my understanding it's in evidence. Is
3 that correct, Mr. Deberry?

4 MR. DEBERRY: Sure. No objection.

5 THE COURT: All right.

6 BY MR. TUCKER:

7 Q: Now, Deputy Pate, if you could, step down just a second
8 since I don't have the benefit of an easel and could you point
9 to the area or location where you actually responded to in
10 that -- for that shooting complaint?

11 (WHEREUPON, the witness complied.)

12 A: I'm looking for the gate. I met the first victim right
13 here in this area, if that goes into the gated part.

14 Q: Okay. You can take your seat back on the witness stand.

15 (WHEREUPON, the witness complied.)

16 Q: Do you recall the name of the first victim that you
17 encountered?

18 A: He identified himself as David Lunn.

19 Q: Did he indicate to you the nature of his injuries?

20 A: He said he had had several gunshot wounds.

21 Q: Now, in addition to Mr. Lunn, were there anything else
22 going on that got your attention? I'm assuming others were
23 responding?

24 A: Yeah. Others were arriving on the scene and also I was
25 trying to talk with him. Some bystanders came running over

JASON PATE - DIRECT BY MR. TUCKER

1 pointing towards the apartment complex.

2 Q: Okay. And let me ask you what may seem like a silly
3 question. But Brittany Place Apartments, is that in Florence
4 County?

5 A: Yes, sir.

6 Q: Now -- and just for a frame of reference, that is on the
7 western end of the county?

8 A: Yes, sir, off of West Palmetto.

9 Q: Okay. Now, after talking to Mr. Lunn, I believe you
10 indicated that others responded and you were directing them
11 around?

12 A: Yeah. I pointed towards the apartment complex where the
13 bystanders had ran up to me and said something was going on
14 over there.

15 Q: Now, specifically, were there other deputies that you
16 recognized and directed over towards where what had been
17 brought to your attention as the location?

18 A: Yeah. It was Lieutenant Hicks and also Deputy Mike
19 Gifford.

20 Q: Okay. Now, did you stay there with Mr. Lunn or were you
21 responsible or did you move from there and go elsewhere?

22 A: I stayed until they loaded him in the EMS.

23 Q: Now, at -- or once that occurred, did you leave that
24 location and did you do anything else there that night?

25 A: I left that location and went towards the apartment where

JASON PATE - DIRECT BY MR. TUCKER

1 the other deputies and I think EMS and Fire Department were on
2 the scene.

3 Q: What did you see when you arrived over in that area?

4 A: They were working on a male subject that was lying in the
5 foyer.

6 Q: Now, do you recall the specific apartment number? Was it
7 an upstairs apartment or a downstairs?

8 A: It was an upstairs apartment. I want to say
9 Drive, Apartment ..

10 Q: Now, you said they were working on him. Was there any
11 other individuals that were brought to your attention as
12 possibly being involved? Was there an another victim?

13 A: It was another guy sitting -- I'd say sitting on the
14 breezeway and he said that it was his brother that was in the
15 apartment.

16 Q: Now, were you able to identify this particular
17 individual?

18 A: He said his name was Marcus Lisbon.

19 Q: And he had indicated to you that he was the brother of
20 the individual who was inside?

21 A: Yes, sir.

22 Q: After speaking to Marcus Lisbon, what, if anything else,
23 did you do?

24 A: At that time, investigations were arriving on the scene.
25 We just kind of held the crime scene together, and I think the

JASON PATE - DIRECT BY MR. TUCKER

1 bloodhound tracking team was called out as well.

2 Q: Now, did you participate with the bloodhound tracking
3 team?

4 A: I did not.

5 Q: In terms of talking to anybody else, did you speak to
6 anybody else other than Marcus Lisbon and David Lunn?

7 A: No, sir.

8 MR. TUCKER: I believe those are all the questions I
9 have, Your Honor.

10 THE COURT: All right. Mr. Deberry?

11 MR. DEBERRY: Thank you. I just have a few questions.

12 CROSS-EXAMINATION

13 BY MR. DEBERRY:

14 Q: Thank you for being here, Deputy Pate.

15 A: All right. You're welcome.

16 (WHEREUPON, State's Exhibit Number 136 is displayed for
17 the witness and jury.)

18 Q: Now, I didn't quite get to see. Can you -- could you
19 show us one more time where -- where you found Mr. Lunn?

20 A: This is the entrance into the gated part and he was lying
21 right here next to the fence.

22 Q: Okay. And where was the -- where did you find the
23 victim, Mr. Lisbon?

24 A: He was -- he was by this apartment right here in the
25 breezeway. I can't remember exactly. The breezeway to the

JASON PATE - CROSS BY MR. DEBERRY

1 apartments.

2 Q: So that's a little ways off from where you found Lunn?

3 A: Yeah.

4 Q: How far would you say?

5 A: Fifty to a hundred yards maybe.

6 Q: A hundred yards? Okay.

7 A: That's a guess.

8 Q: Did you observe any -- any type of evidence around where
9 Mr. Lunn was?

10 A: No. He was laying in the grass.

11 Q: All right. And how did you find him there?

12 A: When I pulled up, I think dispatch advised me that
13 someone would be laying in the grass near the gate, and I saw
14 him out there.

15 Q: Okay. Did -- did you notice the way that he ran between
16 where you found him and the apartment? Or did you know he had
17 come from that apartment?

18 A: He said that it happened at one of the apartments, but he
19 couldn't tell me anything else.

20 Q: Okay. And so you testified that you gathered information
21 from other people and they pointed towards the other building
22 over there?

23 A: Some people, I guess residents or bystanders, come
24 running up to me pointing towards the apartment complex.

25 Q: And you're -- and you're a patrol deputy?

JASON PATE - CROSS BY MR. DEBERRY

- 1 A: Yes, sir.
- 2 Q: So what's your role when you come onto a crime scene as,
3 like, a first responder and like that?
- 4 A: Get medical attention and go ahead and secure the crime
5 scene.
- 6 Q: Okay. Did you -- did you notice any evidence between the
7 apartment building some hundred yards away and where Mr. Lunn
8 was?
- 9 A: I did not.
- 10 Q: All right. And EMS picked Mr. Lunn up from right where
11 you found him?
- 12 A: Yes, sir.
- 13 Q: And you stayed there during that time?
- 14 A: When they loaded him up, that's when I left.
- 15 Q: All right. Do you know if any gunshot residue analysis
16 was done on Mr. Lunn while he was there?
- 17 A: I don't know that.
- 18 Q: Did you see any?
- 19 A: While they were loading him or --
- 20 Q: Yeah.
- 21 A: No, sir.
- 22 Q: Did -- was an investigator there at that time?
- 23 A: There were several pulling up at that time. I want to
24 say several.
- 25 Q: Some investigators arrived on the scene before Lunn was

JASON PATE - CROSS BY MR. DEBERRY

1 transported away?

2 A: I don't know if it was before, but it was soon after.

3 Q: Well, just a minute ago -- or you said you're just not
4 sure. They could have been. Is that accurate?

5 A: It could have been. There were a lot of people with the
6 Sheriff's Office that were out there.

7 Q: Before he was transported?

8 A: There were other deputies there before he was
9 transported.

10 Q: All right. Could there have been an investigator there
11 before he was transported?

12 A: Could have been, yes, sir.

13 Q: Okay. And would it -- would you say it would be the
14 investigator's job to do some gunshot residue analysis?

15 A: I'd say forensics.

16 Q: Yeah.

17 A: Yes, sir.

18 Q: And do you understand what gunshot residue is? You just
19 have a general knowledge?

20 A: Just general. I've seen them do the test, but other than
21 that --

22 Q: All right. What did -- when you've seen them do a test,
23 what -- what did -- what do they do?

24 A: Swab the hands of the -- the people.

25 Q: And is it your understanding that they do that just to

JASON PATE - CROSS BY MR. DEBERRY

1 determine if that person may have fired a gun?

2 A: Yes, sir.

3 Q: Okay. And do you understand that that's fragile
4 evidence? That it can be wiped off and --

5 MR. TUCKER: Your Honor, I would object. I don't know
6 that this is in this particular deputy's area of expertise.
7 It might be questions better suited for those in forensics.

8 THE COURT: All right.

9 MR. DEBERRY: It's just a general question.

10 THE COURT: I'm going to overrule it. Go ahead.

11 MR. DEBERRY: Thank you.

12 BY MR. DEBERRY:

13 Q: I mean do you understand that it -- that it needs to be
14 done right away?

15 A: Yes, sir.

16 Q: Okay. When you say you went out there after and started
17 holding -- what did you call it? The crime -- what did you do
18 at the crime scene?

19 A: Yeah. Put up crime scene tape and started a crime scene
20 log.

21 Q: Okay. And what is a crime scene log?

22 A: That's where we take the names of individuals who pass
23 the crime scene tape.

24 Q: Okay. And can you tell us where you put the crime scene
25 tape?

JASON PATE - CROSS BY MR. DEBERRY

1 A: Sir, I can't remember. Right there around the apartment
2 I'm sure.

3 Q: So it wouldn't have been a hundred yards where you found
4 Mr. Lunn?

5 A: I can't recall exactly where the tape was.

6 Q: Okay. You testified earlier that you went right up to
7 the -- to the apartment after Lunn had gotten into the
8 ambulance and you found Marcus Lisbon sitting outside and EMS
9 working apparently Mr. Luther Lisbon?

10 A: Yeah. The guy that was in the apartment, EMS and I want
11 to say the fire department.

12 Q: And where was he in that apartment? The victim.

13 A: Right there near the door.

14 Q: And were his feet laying towards the door?

15 A: I can't remember. He had people all over him working on
16 him.

17 Q: Okay. But he was real near the doorway?

18 A: Yeah, within a few feet I would say.

19 Q: Okay. Are you aware that they found some bullet casings
20 and some shell fragments and stuff outside of that apartment?

21 A: Yes, sir.

22 Q: So there was people that responded to that apartment
23 before any of that stuff was preserved; is that correct?

24 A: There were other deputies over there when -- before I got
25 there. So --

JASON PATE - CROSS BY MR. DEBERRY

1 Q: Okay. And you don't know exactly the area that you put
2 your crime scene tape; is that right? That's accurate?

3 A: That's accurate.

4 Q: Okay. But you definitely didn't put it out near where
5 you found Mr. Lunn?

6 A: I can't remember. I would assume that we would have
7 roped that off, but I can't remember to be exact.

8 Q: All right. And when you say a crime scene log and
9 somebody -- and you write their name or they sign their name
10 when they enter the crime scene?

11 A: Yes, sir.

12 Q: Is that like when they pick the tape up and step under
13 it?

14 A: Yes, sir.

15 Q: Okay. Was the entire apartment roped -- roped off?

16 A: I don't think so. No, sir.

17 Q: Okay.

18 MR. DEBERRY: Give me just a second.

19 THE COURT: All right.

20 BY MR. DEBERRY:

21 Q: Did you -- did you come into information that there may
22 have been somebody that saw somebody running off with a gun?

23 A: One of the bystanders who pointed towards the apartment
24 said he saw someone running with a gun near the apartments.

25 Q: Okay. Can you show us on the map where -- where he was

JASON PATE - CROSS BY MR. DEBERRY

1 talking about?

2 A: Going to the woods right here. That's where he pointed.

3 Q: Okay. Did you tape off any of that area?

4 A: No, sir.

5 Q: Did you get the individual's name that told you that?

6 A: No, sir. It was all happening so fast.

7 Q: Okay. Well, I appreciate it. Thank you so much.

8 A: Thank you.

9 THE COURT: All right. Redirect?

10 MR. TUCKER: Nothing on redirect, Your Honor.

11 THE COURT: All right. You may step down. Thank you.

12 MR. TUCKER: And, Your Honor, I would ask that this
13 witness be allowed to leave the courtroom. I understand that
14 the subpoena needs to stay in effect, but if he can be excused
15 from court today.

16 THE COURT: Any objection?

17 MR. DEBERRY: No objection, Your Honor.

18 THE COURT: All right. Thank you. All right. Call --

19 MR. TUCKER: Your Honor, at this time, the State would
20 call Deputy Courtney Turner.

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

23 THE CLERK: If you will, ma'am, come to the witness
24 stand. Place your left hand on the Bible and raise your right
25 hand. Do you swear to tell the truth, the whole truth, and

26

COURTNEY TURNER - DIRECT BY MR. TUCKER

1 nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated and state your full name for
4 the record.

5 THE WITNESS: My name is Courtney Kristen Turner.

6 COURTNEY TURNER, being first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. TUCKER:

10 Q: Deputy Turner, where are you presently employed?

11 A: Florence County Sheriff's Office.

12 Q: How long have you been with the Sheriff's Office?

13 A: Since 2010.

14 Q: Now -- so it's safe to assume that you were working for
15 the Sheriff's Office on or about January the 6th, 2010 [sic]?

16 A: I was.

17 Q: What were some of your duties and responsibilities on
18 that particular date?

19 A: I was -- on that particular day, I was responding to 9-1-
20 1 calls.

21 Q: Were you assigned to patrol at this point?

22 A: I was.

23 Q: Now, you mentioned you responded to a 9-1-1 complaint.
24 Do you recall what general area or address was given?

25 A: It was in the Brittany Drive apartment complex area.

COURTNEY TURNER - DIRECT BY MR. TUCKER

1 Q: And again, this may sound like a silly question, but that
2 is in Florence County?

3 A: It is.

4 Q: Do you recall when you first got there what you first
5 saw?

6 A: When I first arrived on scene, I came upon Deputy Pate,
7 who was out with EMS on a grassy area around the apartment
8 complex, and he was out with a victim.

9 Q: What did you do once you saw Deputy Pate out with a
10 possible victim?

11 A: I got out with him, and EMS at that point was loading the
12 victim into the ambulance.

13 Q: Now, at this point, was your primary responsibility just
14 trying to see what was going on and to get medical attention
15 to those who might be in need and to take charge of the scene?

16 A: Absolutely.

17 Q: Once you spoke to Deputy Pate, did he direct you further
18 into the apartment complex?

19 A: As I was standing out there with him, it came across our
20 radio that another victim had been located by another deputy.
21 When he said we're --

22 Q: And you responded to that location?

23 A: Once he told me where it was at, I went to find him where
24 that victim was at.

25 Q: In reference to where you encountered Deputy Pate, where

COURTNEY TURNER - DIRECT BY MR. TUCKER

1 was this second location that you now responded to?

2 A: It was inside the apartment complex. The first victim
3 was out around the gate on the grassy area. The second victim
4 was in an apartment.

5 Q: Now, do you recall the specific apartment number?

6 A: I don't recall.

7 Q: Do you recall if it was an upstairs apartment or a
8 downstairs apartment?

9 A: It was an upstairs apartment to the far right side.

10 Q: Now, could you just explain to the jury what are some of
11 your responsibilities when you arrive at a situation kind of
12 like that?

13 A: Whenever I'm on a scene, it's basically to see what I
14 have at hand, how many victims I have, to get medical
15 treatment to them automatically, to see if we have any
16 suspects in the area, and to secure that scene so nobody else
17 can get into it.

18 Q: Now, is it part of your duties to start processing the
19 scene for possible evidence?

20 A: No. It's just to secure it so when they do come in to
21 process it, I haven't let anything go or come.

22 Q: And is that what you did in this particular incident?

23 A: Yes.

24 Q: Now, do you recall once you arrived there and you
25 established I believe that there was one fellow on the outside

COURTNEY TURNER - DIRECT BY MR. TUCKER

1 and one on the inside, what, if anything, did you do after
2 that?

3 A: Once the -- somebody was outside got him away with that
4 investigator from the scene, she talked with him.

5 Q: Did he appear injured to you in any way?

6 A: Yeah. He had a -- he was limping with his leg.

7 Q: And the first individual that you encountered as you
8 turned into the apartment complex, did you ever ascertain what
9 the nature of his injuries were?

10 A: That was laying on the grassy area?

11 Q: Yes..

12 A: No. I think he said he had been shot, but I didn't know
13 where or anything.

14 Q: And again, it probably wasn't your responsibility to try
15 to inquire further along those lines, was it?

16 A: No, it wasn't. It wasn't. It was just getting medical
17 treatment.

18 Q: Now, once the second individual had been brought to the
19 investigator's attention, what, if anything, did you do after
20 that?

21 A: When I got on scene and medical treatment got him and
22 took him away, I stayed on scene to secure it until
23 investigators could get there.

24 Q: Okay. And eventually did investigators arrive?

25 A: They did. They arrived on scene and they took over.

COURTNEY TURNER - DIRECT BY MR. TUCKER

1 Q: And at that point, what did you do, if anything?

2 A: They took over. I mean I stood by for any information
3 they may need, but we stood by to make sure the area was
4 secure for them.

5 Q: Now, is it your responsibility or part of your
6 responsibilities to start canvassing the area for possible
7 witnesses and things along those lines as a patrol officer?

8 A: It could be. At that point, my -- they told me to stay
9 there to secure the scene. We had others go out.

10 Q: Now, suffice it to say I think -- I would imagine it was
11 pretty chaotic at this particular point?

12 A: It was very chaotic. There were people everywhere.

13 Q: Okay. Now, above and beyond what you've already
14 described to the jury, did you do anything once you helped --
15 once investigators took over and just kind of fell back as a
16 security-type perimeter person?

17 A: That was it except for one of the victims that had the
18 hurt leg. He was put in the back of my patrol car to sit
19 there until he could be spoken with.

20 Q: And eventually, did someone speak to him?

21 A: Yes. Investigators talked with him.

22 MR. TUCKER: I don't believe I have any additional
23 questions.

24 THE COURT: All right. Mr. Deberry?

25 CROSS-EXAMINATION

COURTNEY TURNER - CROSS BY MR. DEBERRY

1 BY MR. DEBERRY:

2 Q: Thank you, Ms. Turner. Can you -- can you tell us -- it
3 was your role to assist Deputy Pate or to help Deputy Pate in
4 securing the crime scene?

5 A: When I first got there, I got out with him to see what he
6 needed with the first victim. As we went to the second place,
7 yes, we -- we secured that together.

8 Q: Okay. How far would you say that the first victim was
9 found from where the apartment was?

10 A: I do not recall how far it would be.

11 Q: Okay.

12 A: It was out by the roadway coming in and the other one was
13 in the apartment.

14 Q: Okay. And in your statement I think you wrote -- you
15 write that you helped place the crime scene tape?

16 A: Deputy Pate had the crime scene tape and we went around
17 and put it around the outside.

18 Q: Can you recall where you put it?

19 A: I think it was on the entry into the -- there are
20 stairwells on each side of the apartment. We put it around
21 the back and the front.

22 Q: Okay.

23 A: So nobody could get to where we were at.

24 Q: Okay. Do you recall seeing any evidence, such as, like,
25 blood, gun shells, bullet fragments, bullet holes or anything

COURTNEY TURNER - CROSS BY MR. DEBERRY

1 on that scene?

2 A: I recall some of the things. I don't exactly remember
3 where they were at.

4 Q: Okay. And how many people would you estimate entered
5 that scene before it was secured?

6 A: Secured? There might have been people there before I got
7 there. I'm not sure how many it would have been.

8 Q: How many would -- how many would -- would you say that
9 you saw enter that scene before you got there or while you
10 were there?

11 A: The only people that I saw before investigators got there
12 would have been the EMS, you know, helping the victims.

13 Q: And there was some other deputies; right?

14 A: And the deputies that did the report.

15 Q: Okay. All right. And are you -- I mean would you say
16 you did not put -- place any crime scene tape around where the
17 first victim was found?

18 A: I do not recall that because I left from there. When I
19 left, I went to the other one. I wasn't there really long.

20 Q: Okay. So you didn't put any out there?

21 A: Out there, no, I did not.

22 Q: Okay. Was there any -- did you notice any evidence such
23 as blood or anything that led from the apartment to where the
24 victim was?

25 A: Not at that time. I was trying to get to the victim. I

COURTNEY TURNER - CROSS BY MR. DEBERRY

1 don't recall if I saw any.

2 Q: Okay. Do you recall where the victim that was inside the
3 apartment -- where he -- where he was when you got there?

4 A: I do.

5 Q: Where was he?

6 A: He was inside the doorway with his feet facing towards
7 the door.

8 Q: And just barely inside the doorway?

9 A: I don't know how far. You know, he was laying in the
10 doorway with some feet outside of the door somewhat.

11 Q: So he was in the doorway?

12 A: Uh-huh.

13 Q: Okay. Well, thank you so much. I don't have any further
14 questions.

15 A: Okay.

16 THE COURT: Redirect?

17 MR. TUCKER: Nothing on redirect, Your Honor. Likewise,
18 I would ask that Deputy Turner be allowed to leave the
19 courtroom although I understand the subpoena would still be in
20 effect.

21 THE COURT: All right. Any objections?

22 MR. DEBERRY: No objections.

23 THE COURT: All right. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: All right. Call your next witness.

MIKE GIFFORD - DIRECT BY MR. TUCKER

1 MR. TUCKER: Your Honor, at this time, the State would
2 call Mike Gifford.

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

5 THE CLERK: If you will, sir, come to the witness stand.
6 Place your left hand on the Bible and raise your right hand.
7 Do you swear to tell the truth, the whole truth, and nothing
8 but the truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Please be seated and state your full name for
11 the record.

12 THE WITNESS: Michael Gifford.

13 MIKE GIFFORD, being first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. TUCKER:

17 Q: Corporal Gifford, where are you presently employed?

18 A: Florence County Sheriff's Office in the patrol division.

19 Q: How long have you been employed with the Florence County
20 Sheriff's Office?

21 A: About five-and-a-half years.

22 Q: Were you working with the patrol division on or about
23 January the 6th, 2013?

24 A: Yes, sir.

25 Q: Do you recall -- was that in a patrol capacity?

MIKE GIFFORD - DIRECT BY MR. TUCKER

1 A: Yes, sir.

2 Q: Now drawing your attention specifically to about 7 p.m.
3 that evening, do you recall being notified by dispatch of a
4 possible shooting incident?

5 A: I do.

6 Q: What, if anything, did you do upon receiving that call?

7 A: I proceeded to the incident location, which was in the
8 Brittany Place, Drive apartment area.

9 Q: Is that in the western part of Florence County?

10 A: It is.

11 Q: Just by frame of reference, are there any sort of stores
12 or heavily traveled streets kind of adjacent to that area?

13 A: I mean it's right off of Palmetto Street, US 76, which is
14 a four-lane highway.

15 Q: Okay. Now, do you recall what you saw or what you did
16 when you arrived at the incident location?

17 A: When I arrived, Officer Pate was telling me that there
18 was supposed to be another victim and that was at the incident
19 location which was the actual apartment which was up a
20 staircase.

21 Q: Now, as part of your duties and responsibilities, do you
22 process any crime scene for possible evidence?

23 A: What do you mean process?

24 Q: Well, I mean do you log it, catalog it, take photos of
25 it, collect it?

MIKE GIFFORD - DIRECT BY MR. TUCKER

1 A: In -- on that type of call, not typically.

2 Q: I understand. Now, you mentioned you ran into Deputy
3 Pate at the entrance of Brittany Place Apartments. Do you
4 recall if he was with someone or was he by himself?

5 A: He was out with a victim that was supposedly shot with a
6 gun.

7 Q: Now, did you spend any time there or did you go to the
8 incident location as directed by Deputy Pate?

9 A: No. As soon as I got out of the car, we -- he yelled to
10 me to go up to the actual apartment where there was supposed
11 to be another victim where all this actually took place. So I
12 proceeded straight up there.

13 Q: Now, do you recall what you did when you arrived there?

14 A: When I got up the steps, I saw two more subjects
15 upstairs, one was standing and one was laying down on the
16 concrete of the breezeway with apparent injuries. I peeked my
17 head into the -- not the hotel -- the apartment, smelled
18 marijuana coming from it, saw money laying everywhere, and I
19 was told that the subjects ran across the parking lot. So I
20 took off down the steps and across the parking lot.

21 Q: Now, were there other individuals from the Sheriff's
22 Office there at the apartment?

23 A: I believe Jennifer Floyd was on scene right as I was
24 leaving and then Deputy Turner was also arriving on the scene
25 as I was leaving.

MIKE GIFFORD - DIRECT BY MR. TUCKER

1 Q: Okay. Now, after being informed about a possible suspect
2 running from the location, what, if anything, did you do at
3 that point?

4 A: Myself and another deputy I believe -- I don't know who
5 it would have been, but we took off across the parking lot in
6 the direction that we were told the subjects ran and we
7 actually were trying to find them. We found some money strewn
8 about through the parking lot, but we never --

9 Q: Were you able to make contact with any of the possible
10 suspects?

11 A: No, sir.

12 Q: After that, did you go back to the incident location?

13 A: If I -- well, I did to get in my car, but not back
14 upstairs.

15 Q: What would you -- or how you describe your
16 responsibilities at this particular juncture?

17 A: After having come back?

18 Q: Yes.

19 A: This would have been several hours later because I stayed
20 with the dog team the whole way through until the dogs were
21 called off. So at that point, I would have come back to my
22 car and left --

23 Q: Do you --

24 A: -- and continued regular patrol.

25 Q: You were out with the bloodhound team. Do you recall if

MIKE GIFFORD - DIRECT BY MR. TUCKER

1 the dog unit -- if the dog alerted on any scents and, if so,
2 what happened as a result?

3 A: I don't recall if they did a scent article or if they did
4 a last known.

5 Q: But they weren't able to ferret out a suspect I guess,
6 for lack of a better description?

7 A: Correct. We did not find a subject.

8 Q: Now, at this point, did you clear the scene --

9 A: Yes..

10 Q: -- after you arrived back?

11 A: Yes, sir.

12 Q: Had everybody else pretty much left in terms of a patrol
13 capacity?

14 A: Yes, sir.

15 Q: To your knowledge, were all the victims removed from the
16 incident location at this point?

17 A: Yes, sir.

18 Q: To your knowledge, were forensic units on scene at this
19 point?

20 A: Yes, sir.

21 MR. TUCKER: Thank you, Your Honor. I don't believe I
22 have any more questions.

23 THE COURT: All right. Cross?

24 MR. DEBERRY: Thank you, Your Honor.

25 CROSS-EXAMINATION

MIKE GIFFORD - CROSS BY MR. DEBERRY

1 BY MR. DEBERRY:

2 Q: Good afternoon, Deputy Gifford.

3 A: Hey, how you doing?

4 Q: Are you doing okay?

5 A: Yes, sir.

6 Q: All right. Thank you. Thanks for being here too. So

7 when you arrived on scene, were you the first law enforcement

8 officer up the steps?

9 A: I don't think so. I think Jennifer Floyd might have been

10 already up there.

11 Q: Okay.

12 A: Either that or me and Deputy Hall.

13 Q: All right. And you -- where -- where was the -- you said

14 you -- you encountered two victims up -- upstairs?

15 A: No, sir. I said there was two people upstairs. One of

16 them appeared to be on the ground in the breezeway with

17 injuries. The other one was standing.

18 Q: So one appeared actually to you to be outside?

19 A: I'm sorry?

20 Q: The one with the injuries appeared to actually be outside

21 of the apartment?

22 A: Both of them were outside.

23 Q: Okay. You're sure about that?

24 A: Best as I can recall.

25 Q: Okay. And when -- you said you looked inside and what --

MIKE GIFFORD - CROSS BY MR. DEBERRY

1 and what did you see?

2 A: I saw cash strewn about the apartment, heavy smoke which
3 was marijuana smoke.

4 Q: Okay. Did you go in any -- how far did you go into the
5 apartment?

6 A: I didn't. Just poked my head in.

7 (WHEREUPON, State's Exhibit Number 136 is displayed for
8 the witness and jury.)

9 Q: Okay. And are you familiar with this -- what's into
10 evidence?

11 A: Yes, sir.

12 Q: If you could, could you just step down and point to where
13 the apartment was that you responded to? I think the gate is
14 down here if that helps you any.

15 (WHEREUPON, the witness complied.)

16 A: This is the gate of Brittany Place? This would be West
17 Palmetto Street out here?

18 Q: That's my understanding.

19 A: Okay. I mean I don't -- I don't know which one was the
20 exact incident location because they're all laid out exactly
21 the same and it was dark when I arrived on scene, but this
22 would be -- if this is Brittany Place, there's a black gate
23 down here. So we probably would have been at one of these two
24 places.

25 Q: Okay. Can you point to the jury where you think Deputy

MIKE GIFFORD - CROSS BY MR. DEBERRY

1 Pate was with the other victim?

2 A: Well, there's a fence here and there's a fence inside
3 here. So he was probably at this location. I mean I -- I
4 wouldn't swear to it.

5 Q: You didn't see Deputy Pate?

6 A: I saw him, but as I said, it was dark that night. So it
7 was hard for me to remember from two years ago whether it was
8 this one or that one. I mean they're exactly the same.

9 Q: So which side would you have entered? From the parking
10 lot side?

11 A: Yes. So if it was this building, I would have came in
12 this way.

13 Q: Okay. And you say that you ran after two suspects
14 somebody told you that ran in a certain direction?

15 A: Yes, sir.

16 Q: Which way was that?

17 A: That would have been across the parking lot.

18 Q: All right. Into the woods?

19 A: I wouldn't call that a wood -- woods per se, but there
20 are trees here, yes. We came adjacent to the corner of the
21 parking lot to where you can see there's trees here.

22 Q: Okay.

23 A: And we went on into all these streets.

24 Q: All right.

25 A: But I wouldn't call that a woods.

MIKE GIFFORD - CROSS BY MR. DEBERRY

- 1 Q: Now, when you say y'all went into all those streets, you
2 just went on -- you and -- was there another deputy with you?
- 3 A: Initially, yes, and then we -- the dog team got on the
4 scene afterwards and we assisted with them.
- 5 Q: Who was the other deputy?
- 6 A: I -- it might have been Lieutenant Hicks.
- 7 Q: Okay. And you said that y'all found some money strewn
8 across the parking lot?
- 9 A: Yes.
- 10 Q: You sure?
- 11 A: Yes.
- 12 Q: Okay. Where did you find it?
- 13 A: It was somewhere under these trees. I believe there's a
14 green -- what you call it -- big trash can. Not a trash can,
15 but it's a waste management trash can.
- 16 Q: Uh-huh.
- 17 A: Where they were jumping this fence and there was money on
18 the ground.
- 19 Q: So there was a place where you determined somebody jumped
20 the fence?
- 21 A: Well, there was a place where we determined somebody
22 dropped money, which was next to a fence.
- 23 Q: Okay. All right. Now, you said that the dog team showed
24 up?
- 25 A: Yes, sir.

MIKE GIFFORD - CROSS BY MR. DEBERRY

- 1 Q: And you went on the -- on the dog track?
- 2 A: Parts of it, yes, sir.
- 3 Q: Okay. Was there any doubt that y'all were following
- 4 somebody?
- 5 A: Say that again?
- 6 Q: I mean how long did this dog track last?
- 7 A: I can't give you a timeframe, but it was a long time.
- 8 Q: Quite a distance?
- 9 A: Probably over an hour I'm sure.
- 10 Q: It was quite a distance, wasn't it?
- 11 A: Yes.
- 12 Q: And where were -- where was your position? Were you kind
- 13 of acting as security or were you running right near the dog
- 14 or what -- what were you -- what was your role?
- 15 A: I would have been either behind the dog or off to the
- 16 sides providing security.
- 17 Q: All right.
- 18 A: At that time, I wasn't on the dog team.
- 19 Q: Okay. Are you on the dog team now?
- 20 A: I am.
- 21 Q: Okay. So what kind of dog was tracking that night?
- 22 A: I wouldn't know.
- 23 Q: Okay. How --
- 24 A: It would have been a bloodhound, but --
- 25 Q: Right.

MIKE GIFFORD - CROSS BY MR. DEBERRY

- 1 A: -- I don't know which one it was.
- 2 Q: And then how -- distance-wise, how long would you say
- 3 that track lasted?
- 4 A: At least an hour.
- 5 Q: Well, that's time-wise, but if you said, like, distance-
- 6 wise, how far would you guess you traveled?
- 7 A: I'd be guessing. If you want me to guess --
- 8 Q: Sure.
- 9 A: -- I'll guess.
- 10 Q: Sure.
- 11 A: A mile and a half -- two miles.
- 12 Q: Quite a ways? All right. Did you find anything along
- 13 that track?
- 14 A: Other than the money?
- 15 Q: Uh-huh.
- 16 A: Not that I recall.
- 17 Q: Okay. You don't recall anybody finding a cell phone on
- 18 that track?
- 19 A: I don't.
- 20 Q: Okay. Do you recall where that track ended up?
- 21 A: Somewhere in Forest Lake area I believe.
- 22 Q: Just in a parking lot?
- 23 A: I don't remember.
- 24 Q: Okay. Did you just --
- 25 A: I think it ended up -- actually, I think it ended at a

MIKE GIFFORD - CROSS BY MR. DEBERRY

1 lake or a pond of some sort.

2 Q: Okay. All right. So what -- did you have any role in
3 this case after the dog track ended?

4 A: No, sir.

5 Q: All right. And if -- if there was money in that parking
6 lot where you found it, you would think that it would have
7 been photographed and that sort of thing?

8 A: That would be a forensics question.

9 Q: All right. That's --

10 A: I didn't take any pictures.

11 Q: Okay. Did you tell anybody about it?

12 A: I mean did I personally? I don't know if I did or not.

13 Q: Did you pick it up?

14 A: No.

15 Q: You just left it there?

16 A: We probably would have told somebody to come over and
17 secure it so that we could keep going, but I can't recall if
18 it was me or the other deputy that was with me.

19 Q: So -- but you can't recall whether you did that or not?

20 A: It would have been me or the other deputy or we would
21 have told somebody else to come stand next to it so we could
22 keep going.

23 Q: But you don't remember?

24 A: I don't remember what?

25 Q: Doing that.

MIKE GIFFORD - CROSS BY MR. DEBERRY

1 A: I'm sure one of us would have.

2 Q: Okay.

3 A: I mean I just can't remember which one did that.

4 Q: I understand.

5 A: Yeah.

6 Q: I understand. Now, did -- did y'all have to jump the
7 fence or did you get around it or how did that work?

8 A: I don't recall.

9 Q: Okay.

10 A: More than likely we jumped it.

11 Q: And so where did the dog start on the track?

12 A: I don't recall. I don't even think I was with them when
13 they first started. Me and the other deputy -- when we went
14 by the fence, we ended up on some of those side streets.

15 Q: So did the dog go that way or the dog went a different
16 way?

17 A: I wasn't with -- I don't believe I was with the actual
18 dog team when they started, but they ended up in some of the
19 same neighborhoods we were standing in waiting.

20 Q: Okay. So where -- your best recollection, where did you
21 get up -- meet up with the dogs?

22 A: In one of those side streets, either Arrowood or -- I
23 don't have all those side streets memorized, but it would have
24 been in one of those side streets. They ended up coming
25 through where we were standing.

MIKE GIFFORD - CROSS BY MR. DEBERRY

- 1 Q: And on the dog track did you cross some roads?
- 2 A: Yes.
- 3 Q: Did you cross fields?
- 4 A: Grass.
- 5 Q: Did you go through some woods?
- 6 A: Trees.
- 7 Q: Did you go by a pond?
- 8 A: Yes.
- 9 Q: Did you come out in a parking lot?
- 10 A: I mean I can't remember any specific parking lot.
- 11 Q: Certainly, it's not all on that -- on this poster board?
- 12 A: No, no. Everywhere that we went probably is not pictured
- 13 there. I agree.
- 14 Q: Because you went -- you were off for quite -- for, like,
- 15 over an hour; right?
- 16 A: Yes, sir.
- 17 Q: Okay. About how fast does that dog track?
- 18 A: It depends on the situation.
- 19 Q: But that night, just the best recollection, I mean were
- 20 you at a steady pace? At a run? At a walk?
- 21 A: We wouldn't run. It would be a face-paced walk.
- 22 Q: And that's normal?
- 23 A: Yes.
- 24 Q: Okay. Thank you so much.
- 25 THE COURT: All right. Redirect?

HELEN CAIN - DIRECT BY MR. TUCKER

1 MR. TUCKER: Nothing further, Your Honor. I would also
2 ask that Deputy Gifford be released from the courtroom today.

3 THE COURT: All right. Any objections?

4 MR. DEBERRY: No, Your Honor.

5 THE COURT: All right. Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: Call your next witness.

8 MR. TUCKER: At this point, Your Honor, the State would
9 call Investigator Helen Cain.

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

12 THE CLERK: Please step up and place your left hand on
13 the Bible and raise your right hand. Do you swear that the
14 testimony you give in this case will be the truth, the whole
15 truth, and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Please be seated and then state your name for
18 the record.

19 THE WITNESS: Helen Cain.

20 HELEN CAIN, being first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. TUCKER:

24 Q: Ms. Cain, with whom are you employed?

25 A: Florence County Sheriff's Office.

HELEN CAIN - DIRECT BY MR. TUCKER

1 Q: How long have you worked for the Florence County
2 Sheriff's Office?

3 A: August will be 20 years.

4 Q: In what capacity are you employed with the Sheriff's
5 Office presently?

6 A: I'm an investigator.

7 Q: Now, were you an investigator on or about January the 6th,
8 2013?

9 A: Yes, I was.

10 Q: Now, specifically within your office, could you describe
11 to the ladies and gentlemen of the jury what the on-call
12 investigator means?

13 A: Okay. The on-call investigator has to be on call for
14 seven days and we're on call for 24 hours. Anything that
15 comes out that they need someone to respond, we're responsible
16 to go handle that case.

17 Q: Now, this being a Sunday night, were you the on-call
18 investigator for the Sheriff's Office?

19 A: Yes, I was.

20 Q: Do you recall, directing your attention to about 7 p.m.,
21 being notified of a possible gunshot or shooting incident?

22 A: Yes.

23 Q: Do you recall the address of the location?

24 A: It was Drive.

25 Q: Is that in the western area of Florence County?

HELEN CAIN - DIRECT BY MR. TUCKER

1 A: Yes.

2 Q: And what did you do upon notice or receiving
3 notification?

4 A: I responded to the scene.

5 Q: Now, when you responded out to the scene, did you
6 encounter other sheriff's deputies?

7 A: Yes, I did.

8 Q: And could you tell the ladies and gentlemen of the jury
9 what your primary function in responding out to the scene was
10 that night?

11 A: Upon my arrival, I spoke with the deputies that had
12 arrived before me, which was Deputy Pate and Deputy Courtney
13 Turner.

14 Q: Now, after speaking to them, did you learn about possible
15 victims and their names?

16 A: Yes, I did. I was told that one had been shot a couple
17 of times and he had been transported to the hospital, and the
18 other one was in the home, but he had also been transported.

19 Q: So both gunshot victims at this point had been
20 transported away from the scene by the time you got there?

21 A: Yes.

22 Q: Now, after receiving this information, what, if anything
23 else, did you do?

24 A: At that time, I did walk up to the room and spoke with
25 the forensic officer really quick. I did observe the door had

HELEN CAIN - DIRECT BY MR. TUCKER

1 a hole in it and there was some blood on the breezeway and
2 some things laying on the floor. And then I went -- I was
3 told there was some -- a few witnesses and I went to talk to
4 them.

5 Q: Now, were you made aware of where the second suspect --
6 or second victim was located inside the apartment before they
7 transported him away?

8 A: It was right there close to the doorway.

9 Q: Now, was it your understanding that the victim was inside
10 the apartment at this point?

11 A: Yes.

12 Q: Were you able to identify who this particular individual
13 was?

14 A: It was Luther Lisbon.

15 Q: And as part of your duties as an investigator, did you
16 subsequently find out what Mr. Lisbon's -- Luther Lisbon's
17 status was later on that evening?

18 A: Yes.

19 Q: What was that?

20 A: He was deceased.

21 Q: Now, going back to when you went to the apartment and I
22 believe you indicated you had spoke to some forensic
23 individuals who were there, do you recall specifically to whom
24 you spoke?

25 A: I spoke with Andy Clendenin.

HELEN CAIN - DIRECT BY MR. TUCKER

- 1 Q: And do you know what his official title is?
- 2 A: At that time, I think he was a corporal.
- 3 Q: Did he work within the forensics department?
- 4 A: Yes, he did.
- 5 Q: Now, after speaking with him, what, if anything, did you
- 6 do? I believe you mentioned that you were made aware of a
- 7 possible witness or a couple of witnesses?
- 8 A: Yes. I had went down to talk with a couple witnesses and
- 9 I had also notified my supervisors.
- 10 Q: Now, were you able based on -- and let me ask you first
- 11 do you recall the names of those witnesses to whom you spoke?
- 12 A: Not off the top of my head.
- 13 Q: And you have your report in front of you?
- 14 A: Yes, I do.
- 15 Q: Would it help your recollection to review your report on
- 16 this issue?
- 17 A: Yes. I talked to a Mr. Brown. He lived at
- 18 Drive. Also living with him was two other individuals.
- 19 Q: And without going into what they told you, what -- after
- 20 speaking to those individuals, what, if anything, did you do?
- 21 A: When Investigator Chad Collins arrived, I advised him of
- 22 everything and that was it.
- 23 Q: Now, with regards to Investigator Collins, would he be
- 24 designated as the primary investigator at this point?
- 25 A: Yes.

HELEN CAIN - DIRECT BY MR. TUCKER

1 Q: And again, you were the on-call investigator so you were
2 just there until the primary investigator could arrive once
3 you ascertained the nature of the call and the incident?

4 A: Yes.

5 Q: Do you normally work homicides I guess is what I'm
6 getting at?

7 A: No. We have a unit that does that. It's the violent
8 crime unit. And anytime someone is deceased, then we'd call
9 them in.

10 Q: And is Investigator Collins part of that unit?

11 A: Yes, he is.

12 Q: How about Investigator Thomas McFadden?

13 A: Yes, he is.

14 Q: Let me ask you lastly, Investigator Cain, with regards to
15 a third possible victim, were you made aware of a person who
16 had -- well, not had been shot, but was still a possible
17 victim?

18 A: Yes.

19 Q: Do you recall his name?

20 A: That is Marcus.

21 Q: Did you yourself speak to him?

22 A: Yes, I did.

23 Q: Was he able to tell you anything of use to you at that
24 particular point in your investigation?

25 A: No.

HELEN CAIN - DIRECT BY MR. TUCKER

1 Q: Now, once Investigator Collins got there, did you do
2 anything above and beyond what you've already testified to?

3 A: No.

4 Q: You didn't process the scene for any sort of evidentiary
5 items?

6 A: No, I did not.

7 Q: Didn't take any photographs?

8 A: No, I did not.

9 Q: Didn't talk to anybody other than the individuals you've
10 indicated here pursuant to your testimony?

11 A: There was another lady across the street, but other than
12 that, that was it.

13 Q: And you turned all this information over to Investigators
14 Collins and McFadden?

15 A: Yes, I did.

16 MR. TUCKER: I believe those are all the questions I
17 have, Your Honor.

18 THE COURT: All right. Mr. Deberry?

19 CROSS-EXAMINATION

20 BY MR. DEBERRY:

21 Q: Good afternoon, Investigator Cain. Thank you for being
22 here. So when you arrived on the scene, you went up the
23 stairs to the apartment where -- where Mr. Luther Lisbon was.
24 Who else was up there as far as -- not -- not EMS or not law
25 enforcement, but who else was there?

HELEN CAIN - CROSS BY MR. DEBERRY .

1 A: Deputy Pate was standing there and then Clendenin was
2 inside and that's the only ones I basically saw.

3 Q: Was Investigator Floyd there?

4 A: I don't recall Investigator Floyd.

5 Q: Okay. And you said that you talked to several people
6 around. You talked to -- there was one lady that you just
7 indicated across the street that you spoke to?

8 A: Yes. She was across the apartment complex.

9 Q: And did she have any information for you?

10 A: Not really.

11 Q: Okay.

12 A: She just said that she heard someone knock on the door.

13 Q: Okay.

14 A: And when she went to the door, there was nobody there.

15 Q: Okay. And she lived in that area?

16 A: Yes.

17 Q: Okay. And did you speak with Marcus Lisbon?

18 A: Yes, I did.

19 Q: Did you testify earlier that you thought he had been
20 shot?

21 A: No, sir.

22 Q: Okay.

23 A: I did not.

24 Q: Did he have injuries?

25 A: He was complaining of his foot hurting.

HELEN CAIN - CROSS BY MR. DEBERRY

1 Q: Okay. And after you handed this case over basically --
2 would you say you kind of handed it over to Mr. Collins and
3 Mr. McFadden at some point?

4 A: Yes, sir.

5 Q: All right. Did you have any information at all to
6 believe that Marcus Lisbon was not in the apartment at the
7 time of the shooting?

8 A: He stated he was walking up the stairs. That was it.

9 Q: Okay. Did you have any information to believe that --
10 that somebody had seen somebody fleeing from the apartment
11 with a gun in their left hand?

12 A: One of the witnesses stated they saw someone running
13 across the parking lot.

14 Q: With a gun in his left hand?

15 A: I do not recall which hand they said. They said in his
16 hand. One had a gun in the hand and one had what may have
17 been a cell phone maybe.

18 Q: Okay. In your Florence County Sheriff's Office report
19 summary about three-quarters or more down on the right-hand
20 side, I see a sentence that said had a black gun in his left
21 hand.

22 A: Which witness is that may I ask?

23 MR. DEBERRY: May I approach, Your Honor?

24 THE COURT: Sure.

25 BY MR. DEBERRY:

HELEN CAIN - CROSS BY MR. DEBERRY

1 A: Yes, he did state -- he stated it was his left hand.

2 Q: All right. And basically you didn't collect any evidence
3 there?

4 A: No, I did not.

5 Q: Were you there when the ambulance was still there in
6 connection with David Lunn?

7 A: No, I was not.

8 Q: Okay. And do you know if any gunshot residue kits were
9 collected from him?

10 A: I do not know.

11 Q: All right. You didn't do any gunshot residue collection
12 at all?

13 A: No.

14 Q: All right. Did you -- did you notice any evidence that
15 was laying about when you arrived?

16 A: When I went to the door, the only thing I saw was a
17 little bit of money laying on the floor and there was a gun up
18 on the counter and that was it because I stood at the door.

19 Q: All right. You noticed a door -- a gunshot through the
20 door?

21 A: Yes, I did.

22 Q: Do you know which way it came from?

23 A: No, I do not.

24 Q: Okay. Did you notice any shell casings laying around?

25 A: I did not. I do not recall seeing any. I'm not sure.

HELEN CAIN - CROSS BY MR. DEBERRY

1 There could have been some there.

2 Q: Did you notice any bullet fragments laying around?

3 A: I didn't look that close.

4 Q: Okay. Did you notice any blood?

5 A: I did see some blood in the breezeway and there was some
6 I think on the floor.

7 Q: Okay. Did you do anything to try to preserve that
8 evidence?

9 A: Forensics was already on the scene.

10 Q: Oh, they were already there?

11 A: Yes.

12 Q: Okay. And that would be their job?

13 A: Yes.

14 Q: All right. Did you sign a crime sheet log?

15 A: I did.

16 Q: Okay. Well, thank you so much.

17 MR. DEBERRY: I don't have anything further.

18 THE COURT: Redirect?

19 MR. TUCKER: Nothing on redirect, Your Honor, but
20 likewise I would ask if Investigator Cain would be excused
21 from the courtroom.

22 THE COURT: That would be fine. Thank you.

23 MR. TUCKER: And, Your Honor, if we have a brief moment
24 if --

25 THE COURT: Sure.

1 MR. TUCKER: If Mr. Deberry and I could approach?

2 (WHEREUPON, a bench conference was held in the presence
3 of the jury but out of the hearing of the jury off the
4 record.)

5 THE COURT: All right. Members of the jury, we're going
6 to break for the day. They have some work they have to do to
7 get prepared for you in the morning. If you would, be back at
8 9:30 and we'll try to run strong tomorrow and see what we can
9 get done.

10 As I've told you before, now when you go home, the first
11 thing your spouse or your children or your friends are going
12 to do is say tell me about it and what happened. Tell them
13 you're under a court order. You can't talk about it. You
14 can't research it. Just put it out of your mind until it's
15 over with and then you can say whatever you want to whoever
16 you want. All right?

17 But you are excused and I'll see you back at 9:30 in the
18 morning ready to go. Everybody else remain seated.

19 (WHEREUPON, the jury exited the courtroom at 4:04 p.m.)

20 THE COURT: All right. Deputy, if you would, bring me
21 the jury -- the juror that did not show up today. He's back
22 there. Bring him on up.

23 (WHEREUPON, the deputy complied.)

24 THE COURT: All right. Mr. Collins, we waited on you
25 about 45 minutes today. Where were you?

1 THE JUROR: I was --

2 THE COURT: You can stop right there.

3 THE JUROR: Okay. I went to my buddy's after -- after
4 you told us to leave to get something to eat, and my mom
5 called me and said she needed her car for work. I called up
6 here and I hit number 4 for jury and I called and I said I'm
7 not going to have a ride up there and she said I don't know
8 what to say. She said the judge --

9 THE COURT: Did your mother --

10 THE JUROR: She said the judge is not going to be happy
11 about that.

12 THE COURT: Did your mom take the car?

13 THE JUROR: Yes, sir.

14 THE COURT: All right. Ms. Clerk? Is Doris over there?
15 Is Doris over there by chance?

16 THE CLERK: No. She had to go.

17 THE COURT: She had to leave? All right. How about
18 Deputy Munn? Was it -- did you talk to him or who did you
19 talk to?

20 THE DEPUTY: I didn't talk to him, but I just had
21 individual -- I was texting and we were going back and forth.
22 He didn't pick up the phone.

23 THE JUROR: At first, I thought -- I didn't -- I thought
24 it was somebody else calling me. I didn't know it was him
25 until he said this is a deputy.

1 THE COURT: All right. I'm going to tell you what I need
2 you to do. I'm going to need you to be here at 9:30 in the
3 morning.

4 THE JUROR: Yes, sir.

5 THE COURT: I want you to sit out there for this trial.
6 If we start this trial and you're not here, if we take a break
7 and we start the trial again and you're not here --

8 THE JUROR: I'll be here.

9 THE COURT: -- I'll hold you in contempt of court and put
10 you in jail for ten days.

11 THE JUROR: Yes, sir.

12 THE COURT: You understand?

13 THE JUROR: Yes, sir.

14 THE COURT: So when that jury is here, you need to be
15 here.. All right? I'll be looking for you.

16 THE JUROR: Thanks for giving me a chance.

17 THE COURT: I'm looking for you. All right. Thank you.
18 All right. We'll be at break until 9:30 in the morning and
19 ready to roll.

20 MR. TUCKER: Thank you, Your Honor.

21 (WHEREUPON, the proceedings adjourned for the day at 4:06
22 p.m.)

23 JUNE 16, 2015

24 (WHEREUPON, the proceedings resumed at 9:52 a.m.)

25 THE COURT: All right. It's my understanding that we

1 have one more item that's in evidence without objection from
2 either side?

3 MR. TUCKER: That's correct, Your Honor. The State and
4 the defense stipulated to the introduction of a bloodhound
5 tracking report, which I believe has been marked as State's
6 Evidence 138.

7 THE COURT REPORTER: Seven.

8 MR. TUCKER: 137.

9 THE COURT: All right. Any objection, Mr. Deberry?

10 MR. DEBERRY: No, Your Honor.

11 THE COURT: All right. One through 137 are in evidence
12 without objection. Go ahead and bring in the jury.

13 (WHEREUPON, State's Exhibit Number 137, the bloodhound
14 tracking report, was admitted into evidence.)

15 (WHEREUPON, the jury entered the courtroom at 9:54 a.m.)

16 THE COURT: All right. If you'll call your next witness.

17 MR. TUCKER: Thank you, Your Honor. At this time, the
18 State would call Andrew Clendenin to the stand.

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

21 THE CLERK: If you will, sir, come to the witness stand.
22 Place your left hand on the Bible and raise your right hand.
23 Do you swear to tell the truth, the whole truth, and nothing
24 but the truth, so help you God?

25 THE WITNESS: I do.

ANDREW CLENDENIN - DIRECT BY MR. TUCKER

1 THE CLERK: Please be seated and state your full name for
2 the record.

3 THE WITNESS: Andrew Robert Clendenin.

4 ANDREW CLENDENIN, being first
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. TUCKER:

8 Q: Officer Clendenin, what are your -- where do you work
9 presently I should say?

10 A: Florence County Sheriff's Office.

11 Q: And how long have you been employed by the Sheriff's
12 Office?

13 A: For the last 15 years.

14 Q: What is your current job title?

15 A: I'm a crime scene investigator with the Florence County
16 Sheriff's Office.

17 Q: How long have you been a crime scene investigator?

18 A: For the past ten years.

19 Q: I take it you did something prior to becoming a crime
20 scene investigator?

21 A: Correct. I was a road deputy.

22 Q: Okay. Now, with regards to crime scene investigator, do
23 you have any sort of specialized training that prepared you
24 for that particular job?

25 A: I do.

ANDREW CLENDENIN - DIRECT BY MR. TUCKER

1 Q: Could you explain some of that to the jury, please?

2 A: I am a latent examiner, marijuana analysis examiner, tire
3 and footwear examiner, scene reconstructionist, and a few
4 other job titles.

5 Q: Okay. Speaking of your job titles, could you explain
6 some of your present duties with regards to your current job
7 title?

8 A: Some of my present duties are to process the scene,
9 document the scene, photograph the scene, and collection of
10 evidence.

11 Q: Now, were you working as a crime scene investigator for
12 the Sheriff's Office on or about January the 6th, 2013?

13 A: I was.

14 Q: Directing your attention specifically to that evening, do
15 you recall being notified to respond to a shooting incident?

16 A: I did.

17 Q: Do you recall approximately what time and what you did
18 after receiving the call?

19 A: I was dispatched at approximately 8:50 p.m.

20 Q: And after being dispatched, what did you do, if anything?

21 A: I responded to . . . Drive, Apartment . . . That's
22 in Florence, South Carolina.

23 Q: Now, what was the first thing you did when you arrived at
24 that location?

25 A: I spoke with the first responding deputy, which was

ANDREW CLENDENIN - DIRECT BY MR. TUCKER

1 Deputy Jason Pate.

2 Q: What, if anything, did you learn from Deputy Pate?

3 A: I was notified of a shooting that occurred in Apartment
4 E.

5 Q: Were you given the names of any -- of the parties
6 involved in this?

7 A: I was given a couple names, one of the victim and Marcus
8 Lisbon.

9 Q: Okay. After talking to Deputy Pate, what, if anything,
10 did you do?

11 A: I did a walk-through of the scene.

12 Q: Now, when you say scene, specifically what are you
13 referring to?

14 A: The apartment complex.

15 Q: Now, based on what you do at that point, did that appear
16 to be what's called the primary location or the primary scene?

17 A: Correct.

18 Q: Now, when you say you did a walk-through, could you be a
19 little bit more specific about what that entails?

20 A: After speaking with the deputy, I entered the crime scene
21 tape and then I proceeded on to the second floor of the
22 apartment building, where I entered and observed everything
23 that was occurred and then went back.

24 Q: Okay. Now, when you say you walked through and observed
25 everything that occurred, what are you doing on this walk-

ANDREW CLENDENIN - DIRECT BY MR. TUCKER

1 through? Are you trying to identify pieces of possible
2 evidence?

3 A: I am.

4 Q: All right. And once you've done that, what do you do
5 next?

6 A: I come back and then I collect the items needed to
7 process the scene.

8 Q: All right. After you did your initial walk-through, what
9 did it tell you or what did it indicate to you in terms of
10 what you needed to do next?

11 A: It indicated a shooting and possible items I may need to
12 process the shooting.

13 Q: Now, were you able at this point to establish where
14 Luther Lisbon, who was a victim in this incident, was prior to
15 being transported to the hospital?

16 A: Just based upon the first responding deputy's testimony.

17 Q: Yeah. Was it your understanding that he was in the
18 apartment?

19 A: Correct.

20 Q: Now, once you retrieved the items that you needed to
21 process the scene, what, if anything, did you do next?

22 A: I started marking the evidence as I came up to it all the
23 way up to the second floor of the apartment building.

24 Q: Now, do you recall what first item of evidence you
25 encountered?

ANDREW CLENDENIN - DIRECT BY MR. TUCKER.

1 A: The first item of evidence was a projectile that was
2 laying on the bottom floor.

3 Q: Okay. Now, once you did this, as a result of your
4 investigation did you generate a scale or a drawing of the
5 apartment?

6 A: I did a field sketch of the apartment.

7 MR. TUCKER: If I may approach, Your Honor?

8 THE COURT: Sure.

9 BY MR. TUCKER:

10 Q: Corporal Clendenin, I'm showing you what's been marked
11 State's Evidence 2 and ask if you could identify that?

12 A: Yes. This is a field sketch I done of the apartment
13 building.

14 Q: Now, did it --

15 A: The second floor.

16 Q: Did it fairly and accurately represent the apartment
17 interior --

18 A: Yes.

19 Q: -- as depicted there? And did it fairly and accurately
20 depict the stairs and the balcony outside?

21 A: It's the second floor staircase.

22 Q: Okay. Corporal Clendenin, what I'm going to have you do
23 is if you'll step down and just kind of indicate as I ask you
24 about the items that were identified by you?

25 (WHEREUPON, the witness complied.)

ANDREW CLENDENIN - DIRECT BY MR. TUCKER

1 (WHEREUPON, State's Exhibit Number 2 was displayed on the
2 screen for the jury.)

3 Q: Okay. Now, you mentioned you encountered one piece of
4 evidence as you were going up the stairs?

5 A: Yes.

6 Q: Could you indicate on that particular scale drawing where
7 that's at?

8 A: There were a spent shell casing at the bottom -- there
9 was a projectile on the bottom floor. As I entered up the
10 staircase, I found a shell casing laying here what I marked A.
11 It was on the sixth step up.

12 Q: Okay. Now, just so I'm clear and so the folks on the
13 jury are clear, could you indicate where the front door of
14 Apartment is in that drawing?

15 A: Right here entering into the apartment.

16 Q: Okay. Now, what did you do, if anything, once you
17 determined that A was a piece of evidence of interest?

18 A: I marked it with a yellow tower marker.

19 Q: Did you retrieve it?

20 A: Later on, I did retrieve it.

21 Q: What's the process once you put the yellow tower next to
22 a piece of evidence?

23 A: It's then documented by photographs and then later
24 collected.

25 Q: Now, to your knowledge, was that done with this

ANDREW CLENDENIN - DIRECT BY MR. TUCKER

1 particular piece of evidence?

2 A: It was.

3 Q: All right. After you noticed A, which was a -- I believe
4 you indicated a bullet fragment, what, if anything, did you
5 do?

6 A: After documenting that one, I continued on to where I
7 reached the apartment door entrance.

8 Q: Did you notice anything of interest there?

9 A: I did. If you'll look at B, C, and D, B being some low-
10 velocity blood spatter.

11 Q: What, if anything -- when you say low-velocity blood
12 spatter, what is that exactly?

13 A: It indicates that there were no real pressure behind it.
14 It's just free-falling and then making impact.

15 Q: So blood droplets I guess?

16 A: Yes.

17 Q: You mentioned that and was there anything outside the
18 door at that point that also caught your attention?

19 A: There was. There was a nine millimeter shell casing
20 here.

21 Q: Now, is that the first shell casing you encountered?

22 A: Yes.

23 Q: Also just inside the door, right there at what appears to
24 be the threshold, you've got something indicated there as
25 well?

ANDREW CLENDENIN - DIRECT BY MR. TUCKER

- 1 A: Yes. There's an iPhone laying here.
- 2 Q: Was there any sort of blood there on that metal portion
3 of the threshold?
- 4 A: There was a smear on the threshold of the door.
- 5 Q: Okay. What, if anything, did you do after that?
- 6 A: I continued further into the apartment.
- 7 Q: Okay. And did you notice anything of evidentiary value
8 at that point?
- 9 A: I did. I found a nine millimeter shell casing, which I
10 marked F, and another nine millimeter shell casing I marked G.
- 11 Q: Okay. Anything else that you found of interest?
- 12 A: I found a .45 caliber handgun laying on the end of the
13 counter here.
- 14 Q: All right. And anything beyond that that you found that
15 drew your attention?
- 16 A: I found another handgun located here that was in a gun --
17 kind of a small floor safe, and that was a .40 caliber Hi-
18 Point.
- 19 Q: Did you find any spent either .45 caliber shell casings
20 or spent .40 caliber shell casings?
- 21 A: No, I didn't.
- 22 Q: Did it appear as if the .45 had been fired?
- 23 A: It appeared not to be fired.
- 24 Q: And did it also appear if the .40 caliber had been fired?
- 25 A: No, it did not.

ANDREW CLENDENIN - DIRECT BY MR. TUCKER

1 Q: All right. Was there anything else that you noted of
2 interest in the interior of the apartment?

3 A: The loveseat here was kind of moved off to the side. And
4 a large amount of currency here and also some other items.

5 Q: Now, when you say currency, you mean cash I assume?

6 A: Yes.

7 Q: Okay. Was it packaged in any particular way or was it
8 just kind of laying out on the floor?

9 A: Just kind of laying out across the floor here.

10 Q: Okay. Did you do anything after that in terms of
11 processing the scene?

12 A: Not as further here after it was documented and then I
13 went on to a further search trying to find the projectiles
14 that possibly --

15 Q: Okay.

16 A: -- went into the apartment.

17 Q: What were some of the things that you employed to try to
18 find those projectiles?

19 A: Just a search that's back and forth, back and forth
20 trying to find any kind of indication where a projectile might
21 have hit.

22 Q: At some point, after -- was that all you did on the
23 interior of the apartment?

24 A: Yes, sir.

25 Q: What did you do outside of the apartment, if anything,

ANDREW CLENDENIN - DIRECT BY MR. TUCKER

1 after that?

2 A: After we documented it, the other investigator and I
3 assisted in collection. Also, I did a gunshot residue kit
4 later on that evening.

5 Q: Do you recall from whom or --

6 A: Marcus Lisbon.

7 THE COURT: All right.

8 Q: What did you do with the gunshot residue --

9 THE COURT: Mr. Tucker, I'm going to need for him to
10 speak up a little bit. The court reporter cannot hear you.

11 A: I did a gunshot residue kit a little after ten o'clock on
12 Marcus Lisbon's hands.

13 Q: Now, could you explain to the jury what gunshot residue
14 is?

15 A: It's a three-particle. It's barium, round-ball particle,
16 and barium [sic]. And we use a metal disc that's got a sticky
17 side. We pat the subject's hands and then we place it back in
18 the kit where it's sent to the South Carolina Law Enforcement
19 facility for further testing.

20 Q: Okay. In terms of the kit itself, what -- it's just a
21 swab of some sort?

22 A: It's just a metal disc that we pat their hands with.

23 Q: And you collected that?

24 A: Yes.

25 Q: And what did you do with it?

ANDREW CLENDENIN - DIRECT BY MR. TUCKER

1 A: After that, I gave it to another investigator to take to
2 the office to secure it in the evidence room.

3 Q: Okay. As far as your knowledge, was that done?

4 A: Yes, it was.

5 Q: And that was ultimately sent to SLED for analysis?

6 A: It was.

7 Q: Did you do any sort of gunshot residue kits on anybody
8 else there that night?

9 A: No, I did not. That was it.

10 Q: Did you collect any of the shell casings?

11 A: Yes, I did.

12 Q: The shell casings -- and again, at this point, how many
13 were there after you had done your walk-through?

14 A: Five total.

15 Q: And you identified those with the yellow evidence
16 placards?

17 A: I did.

18 Q: And they were subsequently photographed?

19 A: Yes, it was.

20 Q: And then you collected them; is that correct?

21 A: I collected them.

22 Q: What did you do with the shell casings once you collected
23 them?

24 A: Once I collected them, I gave them back to another
25 investigator and he returned them to the Florence County

ANDREW CLENDENIN.- DIRECT BY MR. TUCKER

1 Sheriff's Office where they're secured in the evidence room.

2 Q: Did you do any sort of analysis there on the shell
3 casings?

4 A: Once back in the office, I did process them for latent
5 prints, but I was unable to develop any kind of prints on
6 them.

7 Q: To your knowledge, was anything in addition to that done
8 with those shell casings?

9 A: They were further sent to the South Carolina Law
10 Enforcement Division to -- for further analysis.

11 Q: Okay. After you did the -- or collected the shell
12 casings and turned those in, was there anything else that you
13 did with regards to your duties as a forensic investigator?

14 A: No. That was the completion of it.

15 THE COURT: Speak up. We didn't catch that.

16 A: That was the completion of it. I did no further.

17 MR. TUCKER: I believe those are all the questions I have
18 with this witness, Your Honor.

19 THE COURT: Thank you. All right. Mr. Deberry?

20 THE WITNESS: Do you want me to stand here?

21 MR. DEBERRY: I don't know. Let me just ask you a few
22 questions while we got this up.

23 CROSS-EXAMINATION

24 BY MR. DEBERRY:

25 Q: And you may have -- and it may look different from the

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

1 jury from where I was standing, but can you just explain what
2 is this opening right here?

3 A: That? I'm not quite sure of that. I think that was a
4 mistake on my behalf as far as the railing.

5 Q: Okay. You drew this?

6 A: Oh, I'm sorry. I know it. This is the second apartment
7 that's directly across. It took me a second.

8 Q: Okay. So you said earlier that C or B -- is that B?

9 A: Yes.

10 Q: Was -- was the first shell casing you found?

11 A: C and B was actually low-velocity blood spatter.

12 Q: Okay. Was there a shell casing here somewhere?

13 A: Right here. It's marked D.

14 Q: Okay. Now, that's outside the apartment?

15 A: Outside the apartment.

16 Q: Okay. So this kind of faded line right here, is that the
17 wall?

18 A: That's the wall.

19 Q: So this is outside; this is inside?

20 A: Yes. This would be Apartment and this would be
21 Apartment F.

22 Q: Okay.

23 A: Straight across the hall.

24 Q: Okay. Did you do any -- in your -- in your statement, it
25 seems like there was something found on the ground level?

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

- 1 A: It was.
- 2 Q: Is that not shown on here?
- 3 A: No, it's not.
- 4 Q: All right. What was that?
- 5 A: That was a projectile -- a fired projectile.
- 6 Q: And just what is that?
- 7 A: It's a copper-jacketed lead. It's from the bullet being
- 8 fired and it's the actual bullet --
- 9 Q: Okay.
- 10 A: -- that was fired from a gun.
- 11 Q: And where was it found?
- 12 A: It was found at the bottom of the -- it comes around.
- 13 It's on the bottom breezeway if you're coming up at the very
- 14 bottom of the stairs.
- 15 Q: Underneath the top breezeway?
- 16 A: Underneath the top at the very bottom.
- 17 Q: Okay. Any -- would that tell you that had to be fired
- 18 from the first floor?
- 19 A: It could tell -- all I know is it was located at the very
- 20 bottom. It could have been shifted or --
- 21 Q: Okay. What was your understanding about -- is there a
- 22 bullet hole in the door?
- 23 A: There was on the frame of the door here.
- 24 Q: Okay. And isn't it true that your statement says that
- 25 that bullet hole came from inside the apartment to outside?

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

- 1 From here --
- 2 A: Trajectory puts it from inside to outside.
- 3 Q: Inside to outside?
- 4 A: Yes.
- 5 Q: Okay. Now, wasn't there also a bullet hole through the
- 6 door?
- 7 A: There was. Trajectory is putting it from outside to
- 8 inside.
- 9 Q: From outside to inside?
- 10 A: Yes.
- 11 Q: And when you say trajectory, what -- just explain that,
- 12 if you would.
- 13 A: The bullet traveling from this point to that point.
- 14 Q: Direction?
- 15 A: Direction of travel.
- 16 Q: Does it also mean angle?
- 17 A: Angle? With trajectory rods, I can tell that angle.
- 18 Q: Okay. Did you use a trajectory rod?
- 19 A: I did.
- 20 Q: And what -- just so the jury understands, say if a -- if
- 21 a bullet got shot through this pad, you would just place a rod
- 22 through the hole?
- 23 A: Right. Through the hole.
- 24 Q: And whichever way it's angling --
- 25 A: Yes.

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

1 Q: -- is the trajectory?

2 A: Yes.

3 Q: And how was that angling through that door?

4 A: It was kind of at a slight angle.

5 Q: Down?

6 A: Kind of a downward path.

7 Q: From downward?

8 A: Slight degree of downwards.

9 Q: Okay. And all that would have been photographed with a
10 rod through the door?

11 A: Yes.

12 Q: Okay. All right. Now, did you understand that -- and I
13 guess you had the information to know that allegedly two
14 people were shot inside the apartment?

15 A: What I was advised that two people had went to the
16 hospital and one had apparently left the scene from inside the
17 apartment.

18 Q: Did you find any bullet fragments at all, meaning the
19 bullets that actually come out of a gun, inside this
20 apartment?

21 A: I was unable to locate any in the apartment.

22 Q: Okay. And when you say the guns that you found inside
23 the apartment didn't appear to be fired, did you test them?

24 A: They were just laid out. They was not test fired, no.

25 Q: Did you test them any kind of way to determine that they

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

1 hadn't been fired earlier?

2 A: Other than finding no shell casings that matched that
3 particular caliber and there don't appear to be any kind of
4 shell casings, there was no residue of gunpowder on the end of
5 the barrel, and --

6 Q: You tested that?

7 A: No. That was visual inspection and photograph
8 documentation.

9 Q: Okay. Are there forensic tests that you can do to
10 determine if a firearm has been fired in the last few hours or
11 so?

12 A: You could probably do a gunshot residue kit, but it
13 wouldn't tell you when it was fired other than gunshot residue
14 being on the end of the barrel.

15 Q: And you didn't do that?

16 A: No, I did not.

17 Q: Okay. What else did you observe back in this -- in this
18 bedroom here?

19 A: I noticed some currency laying on the floor in the
20 bedroom.

21 Q: Did you notice large rolls of money in there?

22 A: On another area here, there was a large roll of money in
23 another bedroom.

24 Q: So this is a bedroom?

25 A: That's a bedroom. This would be the bed, TV kind of

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

1 area.

2 Q: Okay. So what did you find in there?

3 A: There was a large roll of currency that was wrapped up in

4 here laying on the dresser.

5 Q: Do you have any idea how much money it was?

6 A: No. I did not -- I wasn't -- I didn't count that.

7 Q: Okay. How was it -- was it packaged?

8 A: That one was packaged.

9 Q: Was it in plain view?

10 A: It was in plain view.

11 Q: Now, when you say plain view, what do you mean?

12 A: Almost laying up on top of this counter where everybody

13 can see it.

14 Q: Okay. And just size-wise, how big of a roll of money is

15 that?

16 A: Substantial amount.

17 Q: Was there more than one roll?

18 A: From what I could see, I just appeared and viewed it. It

19 was --

20 Q: All right.

21 A: -- laying up on the counter.

22 Q: Blood spatter. You talked about some on the doorframe --

23 A: Uh-huh.

24 Q: -- or the door jamb? And you talked about maybe one of

25 these being a drop?

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

1 A: Yes. Both the B and C was just low-velocity blood
2 spatter.

3 Q: All right. Did you find any blood spatter down the
4 stairs?

5 A: No, I did not.

6 Q: Did you find any on the breezeway downstairs?

7 A: No, I did not.

8 Q: Did you find any out where -- near where David Lunn was?

9 A: My total concentration was right here at the apartment
10 complex. I never exited out of the complex.

11 Q: So you're not -- so -- but you investigated the crime
12 scene?

13 A: Yes. I was one of the two.

14 Q: Did you ever look for any blood between the apartment and
15 where David Lunn was?

16 A: I never left the apartment building, no.

17 Q: Were you --

18 A: That was my area of concentration here.

19 Q: Were you notified that somebody allegedly ran out of that
20 apartment after being shot and went a hundred yards or so away
21 and laid down and waited for --

22 A: Yes, I was.

23 Q: But you never looked?

24 A: Another investigator was assigned to that area.

25 Q: Okay. As far as blood where two people were shot in this

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

- 1 apartment allegedly, where did you find the blood?
- 2 A: The only areas I found blood was here, which was marked
- 3 B, C, and on the door facing itself.
- 4 Q: No blood at all where somebody would run back to these
- 5 bedrooms?
- 6 A: No, I did not find no blood out through there.
- 7 Q: Okay. And you got one bullet leaving the apartment and
- 8 one bullet entering the apartment; correct?
- 9 A: I've got one bullet that traveled from inside the
- 10 apartment to the outside, nicking the door facing, and I've
- 11 got one that travels through the door.
- 12 Q: Okay. How about the railing outside?
- 13 A: It was struck by a projectile.
- 14 Q: Okay. Is that another bullet?
- 15 A: It was another bullet.
- 16 Q: And where is that railing?
- 17 A: The railing comes along the stairwell here.
- 18 Q: Okay.
- 19 A: It cuts across and then down.
- 20 Q: Where was it struck?
- 21 A: It was struck on the edge of the railing over here.
- 22 Q: Now, I don't know if it's the angle, but are you pointing
- 23 at this wall here or are you pointing --
- 24 A: No. This is -- this is -- the slotted line here --
- 25 Q: Okay.

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

- 1 A: -- by the staircasing --
- 2 Q: Okay.
- 3 A: -- is the railing that kind of keeps you from falling
- 4 down the stairs.
- 5 Q: And there's a bullet hole way over here on this side of
- 6 it?
- 7 A: It nicks the corner edge right here of the railing.
- 8 Q: And which way is it going?
- 9 A: It travels from the breezeway and impacts into the
- 10 railing.
- 11 Q: So it doesn't go through, it just kind of goes into it?
- 12 A: It goes through it. It goes through the edge of it kind
- 13 of.
- 14 Q: And by your trajectory investigation, which way did it go
- 15 after that?
- 16 A: I was unable to locate any kind of signs that it struck
- 17 the wall here. So I'm unknown. It could be the projectile
- 18 found at the bottom here. I'm not sure.
- 19 Q: Okay. No blood out there?
- 20 A: No blood out there whatsoever. The only blood was found
- 21 B, C, and then on the door facing of the apartment.
- 22 Q: Okay. Did you do any -- you said you did fingerprint
- 23 analysis only on the shell casings you found?
- 24 A: That's correct.
- 25 Q: There seems to have been a penny laying out here

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

1 somewhere. Do you know where that was?

2 A: That was found on the stairs itself.

3 Q: On the stairs?

4 A: Yes.

5 Q: Did you do -- I know that a lot of photographs and I

6 think that it comes up in your statement. Did you do any

7 analysis on it?

8 A: No, I did not.

9 Q: But you investigated it?

10 A: Yes, I did.

11 Q: Okay. All right. Did you do any fingerprint analysis on

12 the inside of this apartment?

13 A: I myself did not.

14 Q: Did anybody?

15 A: I'm unsure if the other crime scene investigator did.

16 Q: All right. Would that have been your job to do that?

17 A: It's a shared event.

18 Q: It's a shared event?

19 A: Yes.

20 Q: Okay. If he testifies and says he didn't do it, then

21 should you have done it?

22 A: If the scene calls for it, yes.

23 Q: Okay. Well, did this scene call for it?

24 A: I seen no other -- other than this area here, no

25 disturbance. So no, it was not done by myself.

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

1 Q: So by that statement, are you indicating that you didn't
2 believe anything else happened inside of that apartment?

3 A: That's correct. Other than this area here, this is all I
4 could find.

5 Q: Okay. How about the doorknob?

6 A: The doorknob was never checked by myself.

7 Q: Okay. How about the railings?

8 A: Other than the trajectory, no.

9 Q: Okay. How about the face of the door?

10 A: No.

11 Q: Is there a door -- is there a doorbell there?

12 A: I observed no doorbell.

13 Q: Okay. All right. Now, I think -- you can put that down.
14 If you'll -- I've just got a few more questions I want to ask
15 you.

16 (WHEREUPON, the screen was lowered and the witness
17 returned to the witness stand.)

18 BY MR. DEBERRY:

19 Q: How many spots of blood did you collect from the scene?

20 A: I did not collect no blood.

21 Q: How many do you -- did you identify?

22 A: Three areas.

23 Q: Three areas of blood?

24 A: Yes.

25 Q: Now, is that three drops or is it three areas where there

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

1 are drops?

2 A: It's two drops and one smear stain.

3 Q: Okay. Was any of it inside the apartment?

4 A: Just on the door facing itself.

5 Q: Okay. Did you collect David Lunn's personal belongings
6 from McLeod Hospital?

7 A: I collected some. Let me make sure that it was David
8 Lunn's. Yes, I did.

9 Q: Okay. What did -- how much money did he have?

10 A: He had the following amounts: two \$5 bills, two \$10
11 bills, thirty-nine \$20 bills, one \$5 bill, four \$100 bills,
12 for a total of \$1,050.

13 Q: Isn't it -- I think it's 1,250. Or is it 1,050? I may
14 have counted wrong. Well, that's the individual that was
15 laying out by the -- a hundred yards or more away from the --
16 from the incident location?

17 A: I'm unsure of that.

18 Q: Okay. Did you collect GSR from his hands?

19 A: No, I did not.

20 Q: Why not?

21 A: I concentrated on David Lunn at the scene. Another
22 investigator may have done those.

23 Q: Okay. And you're not sure if they did or not?

24 A: I'm unsure. I don't have his report with me.

25 Q: Okay. Did you collect two bags of marijuana from the

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

1 apartment?

2 A: I observed one bag of marijuana, yes.

3 Q: Okay. I think in your report it says two bags. Would
4 that be accurate?

5 A: There were two plastic bags that was --

6 Q: Okay.

7 A: -- given to me. One I actually observed in the living
8 room.

9 Q: Okay. Later on at some point, did you collect buccal
10 swabs from Marcus Lisbon, Christopher Peterson, and Gregory
11 Johnson?

12 A: Yes, I did.

13 Q: And can you explain to the jury what the purpose of that
14 is?

15 A: To compare any DNA found at the scene to those
16 individuals.

17 Q: Okay. So when you say a buccal -- or when I said a
18 buccal swab, what is that? What -- can you explain?

19 A: It's just a cotton-tipped swab that's used to extract
20 skin cells from the inside of the cheek.

21 Q: So you could just rub that on the inside of anybody's
22 mouth and you've got their DNA; is that correct?

23 A: Correct.

24 Q: All right. And then you compared -- the purpose in this
25 case for doing that was to compare against the blood that you

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

1 found on the scene?

2 A: That's correct.

3 Q: Okay. Now -- and you collected from Marcus Lisbon, from
4 Christopher Peterson, and from Reginald Johnson. Do you know
5 that also there was collections made from David Lunn and
6 Luther Lisbon?

7 A: I'm unsure of that.

8 Q: Okay. All right. Your report -- did you write this
9 report?

10 A: I wrote mine, yes.

11 Q: Okay. And on the first page, it reads that --

12 MR. DEBERRY: May I approach?

13 THE COURT: Sure.

14 BY MR. DEBERRY:

15 Q: A little ways down, it's on the right-hand side. It
16 starts with "I observed."

17 A: Yes, sir.

18 Q: Now, the first part of that paragraph just says that you
19 arrived on scene and you met with who was there and you kind
20 of got an understanding of what's going on, and then you start
21 with "I observed"; correct?

22 A: Correct.

23 Q: Now, did you write the following part of that all the way
24 down to where it says on January 7th, 2012 [sic]?

25 A: Yes, I did.

ANDREW CLENDENIN - CROSS BY MR. DEBERRY

1 Q: Okay. And those are your words?

2 A: Yes.

3 Q: All right. Was Corporal Barnes -- I believe he was a
4 corporal at that time.

5 A: Yes, at that time he was a corporal.

6 Q: Was he there?

7 A: He was there.

8 Q: The whole entire time you were there?

9 A: He arrived on scene. I'm not sure before or after, but
10 he was there.

11 Q: Okay. Would it be strange that y'all's reports are
12 identical as to what you observed?

13 A: Not if he observed the same thing I did. Probably not.

14 Q: Okay. Would you let him see your report so that he could
15 write his report?

16 A: They are entered into a system where it's -- all law
17 enforcement can observe what's been written as a report.

18 Q: Okay. So -- so it wouldn't be uncommon for y'all to have
19 the same report verbatim?

20 A: I'm unsure of that. He observed the same things I did.

21 Q: Okay. And he would have to write the same words and the
22 same phrases and the same commas and periods and everything?

23 A: I'm unsure of what Corporal Barnes did.

24 Q: Okay. Thank you.

25 MR. DEBERRY: I don't have anything further.

ANDREW CLENDENIN - REDIRECT BY MR. TUCKER

1 THE COURT: All right. Redirect?

2 MR. TUCKER: Just a few questions on redirect, Your
3 Honor. If I may approach?

4 THE COURT: Sure.

5 REDIRECT EXAMINATION

6 BY MR. TUCKER:

7 Q: Corporal, on the door step -- when Mr. Deberry asked you
8 about the -- the trajectory dowel, which is right here --

9 A: Yes.

10 Q: -- and you indicated that it looked as if it were outside
11 going in, would it be possible for the door to be open and
12 someone to be in the apartment and the door -- or the round
13 strike the outside of the door?

14 A: Yes.

15 Q: So in other words, the door didn't have to be closed for
16 that? It could have been on the inside?

17 A: The only thing I can attest to it was from the outside of
18 the door to the inside of the door frame -- door.

19 Q: And Mr. Deberry asked you about the trajectory, the one
20 that specifically went by the door frame?

21 A: Yes.

22 Q: Could that have been the same round that was fired from
23 the inside that skipped the side of the door frame and then
24 wound up into the bannister?

25 A: Yes.

ANDREW CLENDENIN - RECROSS BY MR. DEBERRY

1 MR. TUCKER: Thank you. That's all I have.

2 THE COURT: All right. Mr. Deberry?

3 RECROSS-EXAMINATION

4 BY MR. DEBERRY:

5 Q: Are you saying that the same bullet that went through the
6 door could hit the door frame too?

7 A: The door itself, no.

8 Q: I didn't think -- that couldn't be possible, could it?

9 A: The frame of the door is possible to the -- to the
10 railing.

11 Q: Okay. I thought he asked you could it be possible that
12 the bullet that went through the door be the same bullet that
13 exited and hit the door frame. That's not possible, is it?

14 A: No, sir.

15 Q: And if the door was open, which apparently nobody knows,
16 but if the door was open, the bullet wasn't stuck in the door,
17 was it?

18 A: No, it's not.

19 Q: Okay.

20 A: It was a through and through.

21 Q: Was it found anywhere on the inside?

22 A: No. A search was conducted and nothing was found.

23 Q: Okay.

24 MR. TUCKER: No further questions, Your Honor.

25 THE COURT: All right. You may step down. Thank you.

ERIC BARNES - DIRECT BY MR. TUCKER

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Call your next witness.

3 MR. TUCKER: Your Honor, at this time, the State would
4 call Eric Barnes.

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

7 THE CLERK: If you will, sir, come to the witness stand.
8 Place your left hand on the Bible and raise your right hand.
9 Do you swear to tell the truth, the whole truth, and nothing
10 but the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Please be seated and state your full name for
13 the record.

14 THE WITNESS: My name is Corporal Eric Wayne Barnes with
15 the Florence County Sheriff's Office crime scene unit.

16 ERIC BARNES, being first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. TUCKER:

20 Q: Corporal Barnes, how long have you worked for the
21 Sheriff's Office?

22 A: I think around eight years.

23 Q: Were you always in crime scene or did you start out
24 elsewhere?

25 A: I started out on patrol.

ERIC BARNES - DIRECT BY MR. TUCKER

1 Q: How long were you with patrol?

2 A: About five years.

3 Q: So how long have you been with crime scene altogether
4 now?

5 A: Approximately about three years.

6 Q: Were you employed as a crime scene investigator on or
7 about January the 6th, 2013?

8 A: I was.

9 Q: Do you recall the evening of the 6th receiving a call to
10 respond to a gunshot incident?

11 A: I do.

12 Q: Can you tell the ladies and gentlemen of the jury what
13 you did when you received that call?

14 A: On January 6th at approximately 8:50 p.m., I responded to
15 the incident location at Place Apartments,
16 Apartment

17 Q: Now, when you got there, what was the first thing that
18 you did?

19 A: I started taking photographs of that scene.

20 Q: And Corporal Clendenin testified just before you, but if
21 you could expound on some of the duties and responsibilities
22 of a crime scene investigator?

23 A: Our job is to protect the integrity of the crime scene.
24 We start by taking photographs where everything was initially.
25 Then we usually mark our items of evidence. I was taking

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1 photographs while Corporal Clendenin was marking the -- the
2 items of evidence with tower markers so we can collect the
3 evidence.

4 Q: Was your primary responsibility just documenting
5 everything by way of photograph?

6 A: That's correct.

7 Q: Corporal Clendenin talked about doing a walk-through to
8 identify possible evidentiary items. Is that something you
9 did as well?

10 A: I did afterwards. Like I said, initially I was taking
11 photographs.

12 Q: Now, did y'all split duties I guess when y'all were both
13 there at the scene? Did y'all talk amongst about who would do
14 what and who would take care of other things?

15 A: We did, but, you know, we pretty much -- you know, we
16 know what we got to do and we go in and get it done.

17 Q: Yeah. Corporal Clendenin testified that he stayed
18 primarily in the apartment. Did you do any sort of walk-
19 through on the grounds or the outside of the apartment
20 building itself?

21 A: I did.

22 Q: And what did that entail?

23 A: I located a \$20 bill in close proximity along the fence
24 line.

25 Q: Okay. Now, everything that you located on the outside

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1 and everything that had been marked by -- ultimately later on
2 by Corporal Clendenin, you took photographs of those?

3 A: That's correct.

4 Q: With regards to the photographs, what kind of camera or
5 what kind of equipment did you use?

6 A: I use a digital Nikon D90 camera. We use the SP-700
7 flash. It helps illuminate the -- since it's nighttime, it's
8 kind of rather dark outside of the apartment complex. It
9 helps illuminate the surrounding area a little bit.

10 Q: Okay.

11 MR. TUCKER: May I approach, Your Honor?

12 THE COURT: Sure.

13 BY MR. TUCKER:

14 Q: Corporal, I'm handing you a stack of pictures which have
15 been marked State's Evidence 3 through 134 and just ask you to
16 briefly kind of look at those and see if you recognize them.

17 A: Yes. These are my photographs.

18 Q: Okay.

19 MR. TUCKER: And, Your Honor, we're trying to locate Mr.
20 Godbolt who works the equipment there.

21 THE COURT: Why don't you go ahead and pull him down and
22 be using the pictures --

23 MR. TUCKER: Yeah.

24 THE COURT: -- and see if it will work? You can stand
25 down before the jury.

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1 MR. TUCKER: Yeah. Corporal, if you could?

2 (WHEREUPON, the witness exited the witness stand to stand
3 in front of the jury box.)

4 BY MR. TUCKER:

5 Q: And I'm going to hand you these. If you would -- if you
6 would, just identify what you see in those.

7 A: That's a couple of patrol cars right there in front of
8 the complex that's located where the incident location is
9 right there.

10 Q: Okay. If you could, kind of hold those up just until Mr.
11 Godbolt gets here. And the one on the bottom, what does that
12 depict?

13 A: What's that?

14 Q: The bottom picture. Is that an outside picture as well
15 or was does it depict?

16 A: It is. It was so cold that it takes a -- sometimes it
17 takes a few seconds more for the flash to catch up.

18 THE COURT: Speak up a little bit more. She has to hear
19 everything you say.

20 THE COURT REPORTER: What number are you on?

21 BY MR. TUCKER:

22 Q: And what you're looking at is State's --

23 A: Exhibit Number 4.

24 Q: 3 and 4?

25 A: Correct. The camera is -- it was rather cold that night

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1 and it takes a little bit -- few more seconds sometimes for
2 the flash to be able to catch up to illuminate.

3 Q: Okay. I'm also handing you State's 5 and 6, and I'm
4 going to ask if you could explain what those pictures depict
5 as you hold it up to the jury, please.

6 A: This is the front of Apartment E upstairs. That was a --
7 that was out of the window, the same as here. It just didn't
8 illuminate quite as much as the flash.

9 Q: And now I'm handing you what's been marked State's
10 Exhibit 7 and State's Exhibit 8 and, if you could, hold that
11 to the jury and explain what you see in those.

12 A: This one in 7 was a -- like, a plastic sandwich bag and a
13 digital scale that was on the counter. Also, this in Number 8
14 was the hallway adjacent to the front doorway.

15 Q: Okay. And I'm handing you State's 9 and State's 10 and,
16 if you could, hold that up to the jury and explain what you
17 see in both of those pictures.

18 A: In Exhibit 9, the top picture, there's the scales right
19 here and there was a firearm right beside it.

20 Q: Now, was it your understanding from talking to the others
21 there on scene that that was a firearm that belonged to the
22 occupant of the apartment?

23 A: That was my understanding, yes, sir.

24 Q: Now, do you recall what particular caliber that firearm
25 was?

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- 1 A: I believe that one was a .45.
- 2 Q: Okay. Did -- to your knowledge, did you recover any sort
3 of spent shell casings of a .45 caliber?
- 4 A: No .45 shell casings.
- 5 Q: I'm handing you what's been marked State's Exhibit 11 and
6 State's 12 and, if you would, hold that up to the jury and
7 explain what you see there.
- 8 A: In 11, this is the -- the couch in the side of the living
9 room as soon as you come through the doorway. Can everybody
10 see? And the -- and Exhibit 12 was a shell casing.
- 11 Q: And I'm handing you State's Exhibit -- or State's 14 and
12 State's 15. If you could, hold that up and explain to the
13 ladies and gentlemen of the jury what is depicted in those.
- 14 A: This one is in front of the complex, Number 14 and 15,
15 and that's the stairwell.
- 16 Q: And State's 16 and State's 17. If you could, explain
17 what you see in those.
- 18 A: In 16 and 17, this is another picture of the parking lot
19 right in front of the complex.
- 20 Q: Okay. And State's 18 and State's 19?
- 21 A: This is the front left wall of the -- of that -- that --
22 both of those buildings.
- 23 Q: And --
- 24 A: Close to the wood line.
- 25 Q: And what was your purpose for photographing that?

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1 A: We always get the full perimeter of the entire incident
2 location.

3 Q: State's 20 and State's 21. If you could, explain what is
4 depicted in that photo.

5 A: This is the backside of the complex here. That is the
6 backside of the stairwell, the backside of the complex.

7 Q: Okay. And State's 22 and State's 23?

8 A: This is also the same. The one on the bottom is the
9 backside of the stairwell and also this is the backside of the
10 complex.

11 Q: State's 24 and State's 25?

12 A: This is the back right side and the right side of the --
13 of the complex there.

14 Q: State's 26 and State's 27?

15 A: 26 on the top is the back right side of the complex and
16 the bottom is the stairwell.

17 Q: State's 28 and State's 29?

18 A: In 28, this is the stairwell leading upstairs to
19 Apartment E and the stairwell -- top of the stairwell.

20 Q: All right. State's 30 and State's 31?

21 A: As you come up the stairwell to the platform to the left,
22 that was the -- that was a trajectory rod stuck into the door
23 of Apartment E.

24 Q: Okay. Could you explain what a trajectory rod is to the
25 jury?

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1 A: A trajectory rod is a tool we use to kind of help show
2 the way a projectile travels. And it was showing that it made
3 penetration all the way through the door of Apartment E.

4 Q: Now, that photo or those two photos depict the front door
5 shut. Was it -- would it be possible for that door to be open
6 and a struggle on the inside with a gunshot occurring there
7 hitting the front side of the door?

8 A: That's correct.

9 Q: Okay. And if you could, State's 32 and State's 33?

10 A: 32 is a bottom picture of the .45 that was on the
11 counter. I'm sorry -- the 32. And 33 is a picture of the
12 front of the door with the trajectory rod in Apartment E.

13 Q: Okay.

14 (WHEREUPON, there was a pause in the proceedings as Mr.
15 Godbolt entered the courtroom, raised the screen in front
16 of the jury, and began to display the photographs in
17 evidence on the large screen television.)

18 MR. TUCKER: We're up to 34.

19 MR. GODBOLT: Okay.

20 BY MR. TUCKER:

21 Q: And, Corporal, if you could, come down. Okay. You're
22 now looking at State's 34. Could you explain what that is?

23 A: That's a trajectory rod stuck from the inside of the
24 front door. Can everybody see it?

25 Q: Okay. And that trajectory rod -- what, if anything, does

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1 its position tell you?

2 A: That the projectile was traveling at a downward angle.

3 MR. TUCKER: (To Mr. Godbolt) State's 35, please.

4 Q: And what does that photo depict?

5 A: The same thing. It's just a different view of the
6 trajectory rod coming through that front door.

7 MR. TUCKER: State's 37.

8 MR. GODBOLT: 36?

9 MR. TUCKER: Yeah, 36.

10 Q: And if you could explain that?

11 A: That's a trajectory rod traveling inwards through the
12 front door.

13 MR. TUCKER: And 37.

14 Q: And you're now looking at State's 37.

15 A: Same thing, just a different view of that trajectory rod
16 going through the front door of Apartment E.

17 MR. TUCKER: And State's 38.

18 Q: And what are we seeing in that photo?

19 A: That's a trajectory rod from the outside going into the
20 door.

21 Q: And State's 39?

22 A: That is the top of the stairwell and that is apartment
23 door E right there.

24 Q: Okay. And in the bottom right-hand corner, there appears
25 to be a yellow placard with the letter 3.

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- 1 A: Tower Marker Number 3.
- 2 Q: Do you recall what piece of evidence that denoted?
- 3 A: Not without looking at my report off the top of my head.
- 4 Q: Okay. If you want to step back and get your report --
- 5 A: That's fine.
- 6 Q: -- just to refresh your recollection? If you want to,
- 7 you can bring that with you over here. It might save you a
- 8 step or two if that's okay.
- 9 (WHEREUPON, there was a pause in the questioning as the
- 10 witness complied.)
- 11 Q: If we could progress and come back to that, there may be
- 12 a closer-up picture of that.
- 13 A: It was -- because Corporal Clendenin -- he's the one that
- 14 placed the tower markers down there. I'd have to go through
- 15 that report to find out which one is what.
- 16 Q: All right.
- 17 MR. TUCKER: And if we could look at State's 40?
- 18 Q: And what are we looking at there in that picture?
- 19 A: That is the outside -- I mean that's the inside looking
- 20 outward into the patio right here.
- 21 Q: Okay. So that -- is that the front door of Apartment E,
- 22 just without the trajectory rod in it?
- 23 A: That's correct.
- 24 Q: And State's 41?
- 25 A: That's the hallway adjacent to the front door going into

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1 the bedrooms.

2 Q: Okay. Now, that -- if you were coming the other way down
3 that hallway, where does it open up into in terms of the
4 apartment? Does it open up into the living room?

5 A: It opens up to the living room on the side --

6 Q: Okay.

7 A: -- and straight forward.

8 Q: Can you see the see front door -- what would be the back
9 of the front door from that hallway as you're looking towards
10 it?

11 A: Yeah. You'd be able to see the front door.

12 Q: Okay.

13 MR. TUCKER: State's 41 -- or --

14 MR. GODBOLT: 42?

15 MR. TUCKER: 42.

16 A: That is the living room. That is the couch close to the
17 balcony window and doors.

18 Q: And State's 43?

19 A: That is the front door of Apartment E.

20 MR. TUCKER: State's 44.

21 Q: What are we looking at in that photo?

22 A: I believe that is the first bedroom to the right as you
23 walk in through the front door.

24 Q: And State's 45?

25 A: That is the front right bedroom. I see a TV stand with

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1 the currency.

2 Q: Okay.

3 MR. TUCKER: State's 46.

4 Q: And what are we looking at there?

5 A: That's also another view of the bedroom, the first one to
6 the right with the currency.

7 Q: And State's 47?

8 A: Same thing as well with the currency right there in the
9 first bedroom to the right.

10 Q: All right. State's 48?

11 A: That is the kitchen area and to the right of that, you
12 should see where the hallway is leading to the bedrooms, and
13 to the right of that, that's where the living room is.

14 Q: Okay. And State's 49?

15 A: That is the kitchen area.

16 Q: State's 50?

17 A: That is the living room with the cell phone and the
18 currency scattered along the floor.

19 Q: State's 51?

20 A: That is the edge of the living room area and there's the
21 kitchen.

22 Q: State's 52, please?

23 THE COURT: Speak up.

24 THE WITNESS: I'm sorry.

25 A: This is the kitchen area. This is the living room.

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- 1 Q: Okay. And State's 52? And what are we looking at there?
- 2 A: This is some blood drops that was on the breezeway in
- 3 front of the doorway.
- 4 Q: Okay. And so that's just outside the front door of
- 5 Apartment E?
- 6 A: That is correct.
- 7 Q: And State's 53, please?
- 8 A: That is the -- the railing, the back side of the
- 9 breezeway going to the stairwell.
- 10 Q: Okay.
- 11 MR. TUCKER: And if we could look at State's 54?
- 12 Q: And what does that photo depict?
- 13 A: That is a picture of the -- over the top of the railing
- 14 down to the first floor.
- 15 Q: And State's 55?
- 16 A: That is the threshold of the doorway.
- 17 Q: And there appears to be a smudge or a red substance there
- 18 on the threshold itself?
- 19 A: That's correct.
- 20 Q: Do you recall if a swab of that was taken?
- 21 A: I did. I took a swab of the blood.
- 22 Q: Okay.
- 23 A: I took several swabs.
- 24 Q: And do you recall what, if anything, you did with that?
- 25 A: I sent it to -- I did a report and sent it to SLED for

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1 further analysis.

2 Q: Okay.

3 MR. TUCKER: State's 56, please.

4 Q: And what are we looking at in that frame?

5 A: That is a shell casing.

6 MR. TUCKER: And State's 57.

7 Q: And what is that in that picture?

8 A: That's a shell casing as well.

9 Q: Okay.

10 MR. TUCKER: And if we could look at State's 58?

11 A: That is the different -- the currency scattered around
12 the residence and the green -- bag of green, leafy substance
13 that appeared to be marijuana right there near the cell phone.

14 Q: And State's 59?

15 A: That is a shell casing located beside a tower.

16 MR. TUCKER: State's 60, please.

17 Q: And what are we looking at there?

18 A: This is a -- standing from the living room looking into
19 the kitchen.

20 Q: State's 61?

21 A: That is a .45 caliber handgun located on the counter --
22 kitchen counter beside the stove along with a digital scale
23 and that clear plastic bag.

24 Q: State's 62, please?

25 A: That is the hallway again leading to the --

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1 Q: And --

2 A: -- bedroom.

3 Q: -- State's 63?

4 A: That is the living room. That is the -- that's along the
5 back side of that wall where the other side a bedroom is to
6 the right.

7 Q: And State's 64?

8 A: That's a plastic bag located inside of the living room.
9 A paper bag. I'm sorry.

10 Q: And State's 65?

11 A: That is the corner where the end of the couch is inside
12 of the living room.

13 Q: And the purpose of taking all of these different pictures
14 is what in terms of a forensic investigator?

15 A: To show where everything was, different angles of where
16 everything was. The purpose of showing different angles of
17 where, you know, the evidence lies, you know, it helps put the
18 story together.

19 Q: Okay. State's 66, please?

20 A: That is a picture of the living room as looking back
21 toward the -- that is the hallway that leads to the bedrooms.
22 And to the left would be the front door.

23 Q: Now, if you could, it appears as if that loveseat had
24 been moved where it looks like you could see the outline of
25 where it was?

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1 A: Yes. It was like it -- it appeared like it had been
2 pushed back.

3 Q: Based on your training and experience, did it look like a
4 struggle had taken place on the inside of that apartment?

5 A: It's entirely possible.

6 MR. TUCKER: And State's 67.

7 Q: I think there's a better view of the loveseat itself; is
8 that correct?

9 A: That's correct. It's been pushed back. You can see the
10 edge of the doorway where Tower Marker 8 and 9 is located.

11 Q: Okay. And State's 68?

12 A: That is the -- one of the cabinets in the kitchen.

13 Q: And State's 69?

14 A: That's the drawers right there in the kitchen counter
15 right below the cabinets.

16 Q: And State's 70, please?

17 A: That's a picture of the -- of the bedroom, the first one
18 to the right.

19 Q: And State's 71?

20 A: That is also the same -- the same first bedroom to the
21 right.

22 MR. TUCKER: State's 72. That is 72.

23 Q: What are we looking at there?

24 A: It looks like a closet.

25 MR. TUCKER: And the next one up? Okay.

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1 Q: And 73?

2 A: That is the entry in one of the doors.

3 THE COURT: Speak up.

4 THE WITNESS: I'm sorry.

5 THE COURT: Speak louder.

6 BY MR. TUCKER:

7 A: That's the entryway to one of the doors. There is a \$20
8 bill on the floor.

9 Q: Okay. And State's 74?

10 A: That's one of the nightstands in one of the bedrooms and
11 that's a cup.

12 Q: All right. And 75?

13 A: That is an ashtray that was -- I believe it was located
14 on the floor of the back bedroom.

15 Q: And 76?

16 A: That was a -- it looked like a roach right there on the
17 -- one of the nightstands in the back bedroom.

18 Q: Okay. When you say roach, what do you mean?

19 A: Like, what's left over from a marijuana cigarette.

20 Q: Okay. And 77?

21 A: That is a picture of the back bedroom and that's a
22 bathroom and that is the closet in the straight-back bedroom.
23 When you go down the hallway, that's the one that's all the
24 way at the end.

25 Q: Okay. Is that the one where the other handgun was found?

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1 A: That's correct. It was a -- I believe there was a safe
2 and a Hi-Point .45 caliber handgun was in the safe.

3 Q: Okay. And 78?

4 A: That is Tower Marker Number 1. It looks like the -- part
5 of a jacket of a projectile.

6 Q: Okay. And do you recall where that was?

7 A: I believe that was on the bottom of the breezeway.

8 Q: Okay.

9 MR. TUCKER: And if we could look at 79?

10 Q: And what are we looking at in that photo?

11 A: That is Tower Marker 12, and that is looking from the
12 hallway to the -- toward the front door.

13 MR. TUCKER: Let's go to 80.

14 A: That is a -- that's the bottom floor leading up to the
15 stairwell to go upstairs.

16 Q: Okay. And there we get a better picture of Placard
17 Number 1?

18 A: That's correct.

19 Q: Okay.

20 MR. TUCKER: And 81, please?

21 Q: And what are we looking at there?

22 A: That is the stairwell with Tower Marker Number 2. That's
23 leading up the stairwell to the upstairs apartment.

24 Q: Okay. And State's 82?

25 A: That is a picture of a shell casing at Tower Marker

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1 Number 2 that's on the stairwell.

2 Q: To your knowledge, was that the only shell casing found
3 outside of the apartment?

4 A: I can't recall right this moment without looking at my
5 report.

6 Q: Okay.

7 MR. TUCKER: And if we could go to 83?

8 Q: And that's just a different view of it?

9 A: That's correct.

10 MR. TUCKER: And if we could go to State's 84?

11 A: That is a different view of Tower Marker Number 2 and a
12 shell casing.

13 MR. TUCKER: And 85.

14 Q: And what are we looking at there?

15 A: That is the Tower Marker Number 3. That's at the top of
16 the stairwell in the breezeway.

17 Q: Okay. Would that be a blood droplet perhaps that that's
18 there for?

19 A: I'd have to look at my report.

20 Q: Again, I think the next photo we might be able to see a
21 little bit more clearly.

22 MR. TUCKER: If we could look at 86?

23 A: That was a penny.

24 Q: And 87?

25 A: That is Tower Marker Number 3 with a penny that was

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1 located at the top of the stairwell and it's a -- that's the
2 way that's leading right to the front door of the apartment,
3 Apartment E.

4 Q: Okay.

5 MR. TUCKER: And if we could look at State's 88?

6 A: That's Tower Marker Number 4. That's still on the
7 upstairs balcony leading toward the front door.

8 Q: And State's 89?

9 A: Tower Marker 4. It was part of a copper-jacketed
10 projectile.

11 MR. TUCKER: And if we could look at State's 90?

12 A: This is just the same view of the Number 4. It's a
13 copper-jacketed fragment.

14 Q: And 91?

15 A: Same thing. Copper-jacketed fragment, Number 4.

16 Q: And 92?

17 A: That is Tower Marker Number 5 located next to the front
18 door of Apartment E.

19 Q: Okay. And what is --

20 MR. TUCKER: If we could take a look at 93?

21 A: That's a shell casing.

22 Q: Okay. And again, this is just outside the door?

23 A: Yes, sir.

24 Q: And 94, please?

25 A: These are right outside the front door on the -- the

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1 doorway. It's Tower Marker 6 and 7. That's where we notated
2 where there was blood spots on the concrete.

3 Q: And 95?

4 A: Also Tower Marker 6 just showing a closer-up view of the
5 blood drops on the concrete. That's just a closer-up view.

6 Q: And that's State's 96 you're looking at?

7 A: Correct.

8 Q: All right. And State's 97?

9 A: That's just another close-up view of Tower Marker Number
10 7, the blood spot.

11 Q: And these appear to all be outside on the --

12 A: That's correct.

13 Q: -- concrete? State's 98?

14 A: Tower Marker 8 is a -- is where that blood smear is at
15 the threshold of the doorway.

16 Q: All right. And it looks like there's a Number 9. Can
17 you get a look at it?

18 A: That's Tower Marker 9. It's a shell casing.

19 Q: All right.

20 MR. TUCKER: And if we could look at 99?

21 A: That's just Tower Marker 8 showing the different view of
22 the blood spot -- the blood smear.

23 Q: Okay.

24 MR. TUCKER: And if we could look at State's 100?

25 A: That is Number 9 -- Tower Marker Number 9 showing the

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1 shell casing right there in the apartment.

2 Q: And 101?

3 A: Same thing.

4 Q: And were all these shell casings the same caliber?

5 A: Yes, sir.

6 Q: Do you recall what that caliber was?

7 A: Nine millimeter.

8 Q: Were they all the same type of shell casing?

9 A: No, they weren't.

10 Q: Do you recall which two types of shell casings they were?

11 A: I'd have to look at my report, but I believe one was a --

12 I hate to pronounce this incorrectly, but it's Rheinische

13 Winston Blish. That's getting close.

14 Q: I'll take your word for it. How many of those did you

15 find out of the five?

16 A: I'm not sure. I'd have to go through all this report

17 there.

18 Q: Okay. And what was the other type of shell casing that

19 you found?

20 A: I believe it was --

21 Q: Was Winchester the other type?

22 A: I believe it was. I just wanted to make sure.

23 Q: Okay.

24 MR. TUCKER: And if we could go to 102?

25 Q: And what are we looking at there?

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1 A: That was an orange and black cell phone that was located
2 close to the entry to the door.

3 Q: Okay. 103?

4 A: Same thing. It's Tower Marker 10 showing that cell
5 phone.

6 Q: And State's 104?

7 A: That's Tower Marker 11. That's the shell casing close to
8 the towel.

9 Q: And 105?

10 A: That's just another close-up view of Tower Marker 11 with
11 the shell casing.

12 MR. TUCKER: And if we could look at State's 106?

13 A: That's an outside view of the complex.

14 Q: And 107?

15 A: That is the backside of it closer to the fence line and
16 the wood line.

17 Q: Okay. And 108? And that appears to be Apartment -- or a
18 different apartment than E?

19 A: That is correct.

20 Q: Okay. What was the purpose in taking this photo? Do you
21 recall?

22 A: I believe it was just to show the location.

23 Q: Okay. And 109? And do you recall what -- that was just
24 another --

25 A: This is another picture of that breezeway.

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1 Q: And 110?

2 A: That is the entryway to Apartment E there.

3 Q: And 111?

4 A: Same thing.

5 Q: State's 112?

6 A: That is the left side of the apartment -- I mean the
7 living room of the apartment complex.

8 Q: And 113?

9 A: That is the hallway and the living room and the edge of
10 the kitchen area.

11 Q: 114?

12 A: That's Tower Marker 12 with a shell casing in front of
13 it.

14 Q: And 115?

15 A: Same thing, just a closer-up view.

16 Q: 116?

17 A: That's a picture of a box with different -- with the
18 different items. I believe that was the --

19 THE COURT: Speak up.

20 THE WITNESS: I'm sorry.

21 A: It was just a -- it was a box with miscellaneous items
22 inside, different trash.

23 Q: Okay. And 117?

24 A: That's showing Tower Marker 13, and that's the kitchen
25 counter beside the stove next to the gun and the digital

ERIC BARNES - DIRECT BY MR. TUCKER

1 scales and the sandwich bag.

2 Q: 118?

3 A: That's just a closer-up view of that Tower Marker 13 and
4 the handgun.

5 Q: 119?

6 A: Closer-up view of Tower Marker 13.

7 Q: 120?

8 A: That is a close-up of the gun that was on the counter for
9 the serial number.

10 Q: Okay. And 121? Okay. And what does that appear to be?

11 A: That looks like the door casing.

12 Q: And when you say door casing, to the front door?

13 A: Front door. Yes, sir.

14 Q: Okay. And what does that picture depict?

15 A: That the projectile struck that piece of wood.

16 Q: Okay. 122?

17 A: That's a trajectory rod going through the front door.

18 Q: 123?

19 A: That's a -- that's a picture of the -- close-up of the
20 serial number of the handgun.

21 Q: Okay. 124?

22 A: That is the -- one of the pickets from the stairwell
23 where the projectile struck one of the wooden pickets.

24 Q: And that was most likely from the one coming from the
25 inside of the apartment out?

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1 A: Possibly, yes.

2 Q: All right. 125?

3 A: That's a close-up view of where the projectile struck

4 that wooden picket.

5 Q: 126?

6 A: Same thing, and a closer-up view of it.

7 Q: 127?

8 A: That's showing the back side of the picket where the

9 projectile exited.

10 Q: 128?

11 A: Same thing showing where the projectile exited the back

12 of that picket.

13 Q: 129?

14 A: That is the apartment complex adjacent from the Apartment

15 E, the one along the wood line.

16 Q: Okay. And if I could, I want to bring over the aerial

17 and show that to you. It's been -- it's already entered in

18 evidence as State's 136. I'm going to bring it right in front

19 of it and, if you could, just kind of point where that picture

20 would be on here.

21 A: All right. That would be right along here.

22 Q: Okay. And just for reference, this is --

23 A: Apartment E. I'm sorry. It's where Apartment E was and

24 that's the -- what's shown in that picture there is the -- the

25 edge of the wood line along the edge of this complex across

ERIC BARNES - DIRECT BY MR. TUCKER

1 from it.

2 Q: Okay. All right.

3 MR. TUCKER: 129?

4 MR. GODBOLT: 130.

5 Q: 130. And what are we looking at in 130?

6 A: That's a closer-up view of the edge of the wood line and
7 that apartment complex along that fence line.

8 Q: Okay. 131?

9 A: That's showing what looks like a \$20 bill located right
10 there close to the corner of the complex and the edge of the
11 wood line.

12 Q: 132?

13 A: That is -- that is the edge -- edge of the complex and
14 the wood line there.

15 Q: Okay. 133?

16 A: That's just a closer-up view of the \$20 bill that was
17 laying on the ground.

18 Q: And 135?

19 A: 134? That's a closer-up view of that \$20 bill.

20 Q: And 135?

21 A: The same.

22 Q: Okay. And I believe we are finally at the end of those
23 photos. Corporal, you can have a seat back up there if you
24 will.

25 (WHEREUPON, the witness complied.)

ERIC BARNES - DIRECT BY MR. TUCKER

1 Q: Now, if my calculations are correct, there were five nine
2 millimeter shell casings found at the scene?

3 A: That's correct.

4 Q: And I believe there were two on the outside just outside
5 the apartment, one on the step -- or there was one on the
6 landing, one on the step, and then there were three additional
7 shell casings found on the inside of the apartment?

8 A: That is correct.

9 Q: And I believe we mentioned that there were two different
10 types of nine millimeter shell casings?

11 A: That's correct.

12 Q: Now, would it be possible for one handgun to have fired
13 all five of those?

14 A: It's possible, yes.

15 Q: Okay. And also the lead fragment, you found that on the
16 outside of the apartment as well; is that correct?

17 A: That is correct.

18 Q: Now, with regards to the shell casings, did you collect
19 those once you photographed them?

20 A: I did.

21 Q: And what, if anything --

22 A: I always do.

23 Q: Yeah. And what, if anything, did you do with them at
24 that point?

25 A: They was -- I took custody of all the evidence and it was

ERIC BARNES - DIRECT BY MR. TUCKER

1 taken to the evidence room at the Sheriff's Office.

2 Q: Now, could you explain what the evidence room is to the
3 ladies and gentlemen of the jury?

4 A: It is a -- we have a secured location at our -- at the
5 Sheriff's Office. It has video surveillance and it's got
6 several doors that's -- that's really good security. Nobody
7 comes in and only a limited amount of people have access to
8 the evidence locker. Evidence techs has access to the
9 evidence room.

10 Q: Okay. And we heard testimony from Corporal Clendenin,
11 who indicated that he processed the shell casings for
12 fingerprints and then they were sent to SLED for analysis; is
13 that correct?

14 A: (No verbal response.)

15 Q: Now, do you have --

16 MR. TUCKER: And, Your Honor, if I may approach?

17 THE COURT: Yes, sir.

18 (WHEREUPON, an envelope containing five shell casings in
19 boxes was provided to the witness.)

20 BY MR. TUCKER:

21 Q: And if you would, look at -- and what is that that you're
22 looking at?

23 A: This is the shell casings.

24 Q: Okay.

25 A: The five shell casings.

ERIC BARNES - DIRECT BY MR. TUCKER

1 Q: And if you would, could you open that, please?

2 (WHEREUPON, the witness complied.)

3 THE COURT: Mr. Tucker, would you set that on the floor?

4 MR. TUCKER: Yes, sir.

5 (WHEREUPON, the monitor screen was moved from the bench

6 to the floor.)

7 THE COURT: Thank you.

8 BY MR. TUCKER:

9 A: It's to show it's been sealed.

10 Q: Okay. And that was a SLED --

11 A: That was a SLED seal.

12 Q: Okay. And that's how they sent it back to you once they

13 processed it?

14 A: That's correct.

15 Q: Okay. Okay. And they are each in individual plastic

16 envelopes; is that correct?

17 A: That is correct.

18 Q: Okay.

19 MR. TUCKER: At this time, Your Honor, I would move these

20 into evidence.

21 THE COURT: Any objections?

22 MR. DEBERRY: No objection, Your Honor.

23 THE COURT: All right.

24 MR. TUCKER: Okay. And, Your Honor, if we could, we

25 could just put them back in the envelope and maybe make it one

ERIC BARNES - DIRECT BY MR. TUCKER

1 or do you want to label --

2 THE COURT: Have you marked them?

3 MR. TUCKER: No. We have not yet.

4 THE COURT: Just go ahead and mark them.

5 MR. TUCKER: Okay.

6 (WHEREUPON, State's Exhibits Number 138 through 142, each
7 a shell casing, were marked.)

8 MR. TUCKER: And for the record, Your Honor, it's State's
9 Evidence 141, 142, 138, 139, and 140.

10 THE COURT: All right. 138, 139, 140, 141, and 142 in
11 evidence without objection.

12 (WHEREUPON, State's Exhibits Number 138 through 142, each
13 a shell casing, were admitted into evidence.)

14 BY MR. TUCKER:

15 Q: And, Corporal Barnes, there was another item that was
16 processed. You can have a seat if you want. Gunshot residue.
17 I believe that Corporal Clendenin testified that he obtained a
18 gunshot residue kit from Marcus Lisbon; is that correct?

19 A: That's correct.

20 Q: Was that logged into evidence? Did you take it back to
21 the evidence room?

22 A: I did.

23 Q: And did you secure it in the same fashion as you did the
24 shell casings?

25 A: I did.

ERIC BARNES - DIRECT BY MR. TUCKER

1 Q: And what happened -- or is your lab capable of conducting
2 the actual gunshot residue analysis?

3 A: We don't, no.

4 Q: Okay. And what happens to the kit that you take?

5 A: It is sent to SLED. That's the South Carolina Law
6 Enforcement Division in Columbia.

7 Q: Okay. And was that done here in this case?

8 A: In this case, yes, sir.

9 Q: Okay. And if --

10 MR. TUCKER: Let me approach again?

11 Q: This other envelope that you have there, if you could,
12 open it, please. And is it fastened the same way the shell
13 casings were?

14 A: Yes. It's been sealed by SLED seal.

15 Q: Okay. And that's when they send it back to your lab; is
16 that correct?

17 A: That's correct. They sealed this one good.

18 Q: And these look to be two gunshot residue kits, one from
19 Luther Lisbon and one from Marcus Lisbon; is that correct?

20 A: That's correct.

21 Q: Okay.

22 MR. TUCKER: And, Your Honor, at this time, I would move
23 that these items be admitted as evidence.

24 THE COURT: Any objections?

25 MR. DEBERRY: No objection, Your Honor.

ERIC BARNES - DIRECT BY MR. TUCKER

1 THE COURT: All right. 143 and 144 are into evidence
2 without objection.

3 (WHEREUPON, State's Exhibit Number 143, the gunshot
4 residue kit from Luther Lisbon, and State's Exhibit
5 Number 144, the gunshot residue kit from Marcus Lisbon,
6 were marked and admitted into evidence.

7 BY MR. TUCKER:

8 Q: And there was some blood items or blood droplets that
9 were depicted in some of the photos that you took. Clendenin
10 also testified to some buccal swabs that were taken. Were
11 those sent to SLED as well for processing?

12 A: Yes, sir.

13 Q: And what would have been the purpose for sending the
14 blood sample or blood items to SLED?

15 A: With the buccal swab, it's what they call a known. It's
16 a known standard; so you have something to compare the blood
17 to.

18 Q: Okay. To your knowledge, did any of the samples that you
19 sent come back as a positive hit from a DNA profile
20 standpoint?

21 A: I'm not sure. I didn't look at that.

22 Q: Okay.

23 A: Corporal Clendenin would be those.

24 Q: Okay.

25 MR. TUCKER: I believe those are all the questions I

ERIC BARNES - CROSS BY MR. DEBERRY

1 have, Your Honor.

2 THE COURT: All right. Cross?

3 MR. DEBERRY: Just a second, Your Honor.

4 THE COURT: Uh-huh.

5 CROSS-EXAMINATION

6 BY MR. DEBERRY:

7 Q: Good afternoon -- or good morning, Corporal Barnes. How
8 are you?

9 A: Fine. How about yourself?

10 Q: Okay. Thank you. I want to start -- I want to start by
11 just showing you a few pictures here and asking you a few
12 questions. I promise we're not going to go back through all
13 of them.

14 A: Okay.

15 (WHEREUPON, there was a pause in the proceedings as the
16 screen was prepared to display the photographs in the
17 courtroom as they were discussed. The witness left the
18 witness stand to stand by the screen.)

19 BY MR. DEBERRY:

20 Q: Well, I think they're out of order, but here we go. This
21 -- what does this picture show?

22 A: It's the stairwell leading upstairs --

23 THE COURT: What number are you talking about?

24 THE WITNESS: I'm sorry.

25 MR. DEBERRY: I asked for Picture Number 28, but I'm not

ERIC BARNES - CROSS BY MR. DEBERRY

1 sure that that's it.

2 THE WITNESS: It is 28.

3 MR. DEBERRY: It is 28?

4 THE WITNESS: It is.

5 THE COURT: All right. Thank you.

6 MR. DEBERRY: Okay.

7 BY MR. DEBERRY:

8 Q: Is that marked on it?

9 A: Yeah. Number 28 is right there.

10 Q: Okay. What does this show?

11 A: That is the stairwell leading up to the Apartment E.

12 Q: Okay. And isn't there a tower -- does it show -- what's
13 that yellow tape there?

14 A: That's to keep anyone from walking through there.

15 Q: So that's the crime scene tape?

16 A: Yes, sir.

17 Q: Okay. Now, was there crime scene tape put around the
18 entire perimeter of the building?

19 A: I believe there was. That was the initial.

20 Q: Initial?

21 A: Yes. That was the first.

22 Q: All right.

23 A: It was like that when I got there.

24 Q: Okay. So -- and you didn't put any crime scene tape up?

25 A: I did not.

ERIC BARNES - CROSS BY MR. DEBERRY

1 Q: Okay. Isn't there a tower marker outside of that crime
2 scene tape there?

3 A: Not in that picture, but we take -- we take photographs
4 without the tower markers and then we -- after we add the
5 tower markers, we take pictures after that.

6 Q: Okay.

7 A: We take one with and we take one without.

8 Q: All right.

9 MR. DEBERRY: Can we see 29? We can go back to 28. All
10 right.

11 Q: But you do remember that there's a tower marker. I
12 believe it's a bullet fragment that's laying on the bottom
13 breezeway down there.

14 A: That's correct.

15 Q: All right. And it's outside of that crime scene tape?

16 A: Yes, sir.

17 Q: Okay. All right.

18 MR. DEBERRY: Can you go to the next one? Go to the next
19 one, please. All right. Can you try 35? All right. Back up
20 one. All right.

21 Q: This is Picture Number 35. That is a trajectory rod?

22 A: That's correct.

23 Q: And is that -- and it's been determined I believe and I'm
24 not sure if you testified to it, but is it your belief that
25 the bullet came from outside inside?

ERIC BARNES - CROSS BY MR. DEBERRY

1 A: That's correct.

2 Q: Okay. And that shows a clear angle?

3 A: That's correct.

4 Q: And you -- how -- and can you determine that the bullet
5 came to the inside of the door based on the way the bullet
6 hole looks on each side of the door?

7 A: That's correct.

8 Q: Okay. So there's no doubt in your mind it came through
9 the door that way?

10 A: That's correct. You have an indentation coming from the
11 outside.

12 Q: Right.

13 A: And you have where it opens up on the inside.

14 Q: And that's where it's opening up on the inside?

15 A: That's correct.

16 Q: All right.

17 MR. DEBERRY: If you could, flip --

18 MR. GODBOLT: 39?

19 MR. DEBERRY: Yes. Keep going. Okay.

20 BY MR. DEBERRY:

21 Q: This is Picture 40. State's Exhibit Number 40. Does
22 that show that door open?

23 A: That's correct.

24 Q: Okay. So does that show any -- how much room would you
25 say would be behind that door there?

ERIC BARNES - CROSS BY MR. DEBERRY

- 1 A: Several feet.
- 2 Q: Between the door and the wall?
- 3 A: No. I mean the door frame runs adjacent to the wall.
- 4 Q: Sure.
- 5 A: I'm already -- I'm trying to get what you're asking.
- 6 Q: When that door is swung open like that, do you think
- 7 there's room for somebody to stand behind there?
- 8 A: It's possible.
- 9 Q: It's just hard to tell how much room is there?
- 10 A: That's correct.
- 11 Q: All right. Is there any way that this bullet that
- 12 traveled through this door is the same bullet that struck the
- 13 door jamb?
- 14 A: I can't say.
- 15 Q: It's not likely?
- 16 A: I just can't say.
- 17 Q: Well, I mean if it went through this door, it would be
- 18 hard for it to hit this door jamb over here, wouldn't you
- 19 think?
- 20 A: It would be hard to hit it.
- 21 Q: Okay. And did you find any bullet holes in that wall
- 22 behind there?
- 23 A: I didn't find holes in the wall.
- 24 Q: Did you find any bullet projectiles inside the apartment
- 25 at all?

ERIC BARNES - CROSS BY MR. DEBERRY

1 A: I did not.

2 Q: All right. So in either instance, whether or not the
3 door was shut or open, the bullet would have traveled into
4 that apartment somewhere; is that correct?

5 A: That's correct.

6 Q: Okay.

7 MR. DEBERRY: Let me get the next picture. All right.

8 Q: Tell us again what this is?

9 A: That's a large amount of currency that was in the bedroom
10 on the -- on the entertainment center.

11 Q: All right. And this is State's 45. Would you say that's
12 in plain view?

13 A: That's correct.

14 Q: And just explain to the jury that means that it's just
15 out in the open and anybody could see it?

16 A: That's correct.

17 Q: And that's the way you found it?

18 A: That's the way I found it.

19 Q: How much money was it?

20 A: The exact total? \$4,980.

21 Q: Okay. And what happened to that money?

22 A: It was logged into evidence.

23 Q: Okay. Is it still there?

24 A: That's correct.

25 Q: Okay. Was it tested for anything at all?

ERIC BARNES - CROSS BY MR. DEBERRY

- 1 A: I don't believe so.
- 2 Q: Okay.
- 3 MR. DEBERRY: What's the next one? Go ahead. All right.
- 4 Q: This is State's Exhibit 50. Does that appear to be in
- 5 two of these places a stain there at all?
- 6 A: There's a -- there's just a dark color in the carpet.
- 7 Q: And would you say that's a dark -- little darker red
- 8 color there?
- 9 A: That's correct.
- 10 Q: Did you collect that as blood?
- 11 A: No. I don't believe -- no, we didn't.
- 12 Q: Any reason why not?
- 13 A: I don't believe it looked like blood at the time.
- 14 Q: Okay. You're -- and how many blood spots did you
- 15 collect?
- 16 A: Maybe three, if I'm not mistaken.
- 17 Q: All right. And out of those three, are you aware only
- 18 one of them tested positive as blood?
- 19 A: That's correct.
- 20 Q: Okay. Do you know whose it was?
- 21 A: I'm not sure of that. Corporal Clendenin would have to
- 22 testify to that. He got the results on that.
- 23 Q: How about this cell phone? Did you pick it up?
- 24 A: It was collected. I didn't personally pick it up.
- 25 Q: Did you check it for any messages?

ERIC BARNES - CROSS BY MR. DEBERRY

1 A: I didn't.

2 Q: All right. Well, who would have picked it up?

3 A: It would be either me or Corporal Clendenin.

4 Q: All right.

5 MR. DEBERRY: Give me just a second.

6 Q: On the -- so you may have picked that cell phone up, but
7 you don't know? You're not sure?

8 A: Not off the top of my head, no. I would have to look at
9 the evidence log sheet.

10 Q: All right. And so you wouldn't know what's on it?

11 A: I wouldn't.

12 Q: All right. Or whose it was?

13 A: I wouldn't.

14 Q: Okay. If there's any pictures on it, you wouldn't know?

15 All right. How much currency was laying on the floor in
16 there?

17 A: I'd have to look at the report because it was scattered
18 among -- all throughout the living room.

19 Q: Okay.

20 MR. DEBERRY: Can I see the next one, please?

21 Q: All right. These are -- this is State's 52. What are
22 those?

23 A: Those are the blood spots on the concrete.

24 Q: And those are some of the ones I assume you tried to
25 collect?

ERIC BARNES - CROSS BY MR. DEBERRY

1 A: That's correct. You'd have to show a picture where the
2 tower marker is.

3 Q: All right. Any idea why they didn't test positive for
4 blood?

5 A: I don't know. They could have been contaminated by
6 somebody stepping on it perhaps. Anything. There's a lot of
7 variables, but I'm not -- I'm not a scientist. I can't attest
8 to that.

9 Q: So I mean -- but you believe if blood gets stepped on
10 it's -- it may change it?

11 A: It may contaminate it, yeah.

12 Q: And cause it not to be blood anymore?

13 A: I'm not saying it would cause it not to test to be blood
14 anymore.

15 THE COURT: Speak up.

16 MR. DEBERRY: All right. Can we see the next one,
17 please?

18 BY MR. DEBERRY:

19 Q: This shows the tower marker outside of the crime scene
20 tape?

21 A: That's correct.

22 Q: Certainly, evidence found on the scene would be inside of
23 the crime scene, wouldn't it?

24 A: That's correct.

25 Q: Okay.

ERIC BARNES - CROSS BY MR. DEBERRY

1 MR. DEBERRY: Can I see the --

2 Q: Well, let me ask you this. Were you aware that an
3 individual named David Lunn received some gunshot wounds in
4 this case?

5 A: Not at that time, no.

6 Q: So you were -- but you responded to preserve the crime
7 scene?

8 A: That's correct.

9 Q: To take pictures? To put this story together; is that
10 right?

11 A: That's correct.

12 Q: And you weren't notified that there was a body a hundred
13 yard away from there that had been shot?

14 A: I found out while I was on scene, yes.

15 Q: And did -- was that area roped off with crime scene tape?

16 A: I don't recall.

17 Q: Was there ever an effort by you or that you know of to
18 trace the -- to make sure that Mr. Lunn came from that
19 apartment?

20 A: I don't recall.

21 Q: And he was shot in that apartment three times?

22 A: I don't know if he was or not.

23 Q: You're not sure? And he made it a hundred yards away
24 from there supposedly, but there's no blood anywhere between
25 there and there?

ERIC BARNES - CROSS BY MR. DEBERRY

- 1 A: Not that we saw, no.
- 2 Q: Are you -- but you didn't -- but you didn't go out to
3 where he was?
- 4 A: We searched the whole area.
- 5 Q: Did you search where EMS found him and transported him to
6 the hospital?
- 7 A: I don't recall off the top of my head, no.
- 8 Q: Okay. Do you recall where he was?
- 9 A: I think he was closer to the gated -- close to the gate
10 coming in.
- 11 Q: Okay. But you didn't do any kind of examination out
12 there for any evidence or anything else?
- 13 A: Just a visual.
- 14 Q: Any blood out there?
- 15 A: Not that I recall.
- 16 Q: Okay. And none of the blood that you tested came back as
17 David Lunn's?
- 18 A: I -- I can't say without looking at the lab report.
- 19 Q: You couldn't disagree with me if I told you that our lab
20 report came back testing positive for Marcus Lisbon's blood,
21 not for Luther Lisbon, not for Christopher Peterson, not for
22 Reginald Johnson, and not for David Lunn? You couldn't
23 disagree with that, could you?
- 24 A: No, sir.
- 25 Q: So three individuals were shot and there's only one

ERIC BARNES - CROSS BY MR. DEBERRY

1 positive speck of blood, and it comes from somebody who we
2 know didn't get shot; is that right?

3 A: That's correct.

4 Q: Okay.

5 MR. DEBERRY: Can I see the next picture, please?

6 Q: Now, there seems to be -- and this is State's Exhibit --

7 MR. GODBOLT: 94.

8 Q: -- 94. There's two tower markers there?

9 A: That's correct.

10 Q: 6 and 7? And I assume by the looks of it they're both
11 marking blood?

12 A: That's correct.

13 Q: Okay. If three people have been shot there, those blood
14 droplets could be any one of the three; is that correct?

15 A: That's correct.

16 Q: And I assume that, by marking Number 6 and 7, was there
17 some theory that this blood was different than this blood or
18 these droplets weren't from the same source or -- why weren't
19 they marked individually?

20 A: Because of the spacing -- spacing there was. That one's
21 -- that's a close group.

22 THE COURT: You've got to talk louder.

23 THE WITNESS: I'm sorry.

24 THE COURT: You've got to talk loud enough for her to be
25 able to hear.

ERIC BARNES - CROSS BY MR. DEBERRY

1 THE WITNESS: All right.

2 BY MR. DEBERRY:

3 A: In 7, there was one outside beside itself, and 6, there
4 was a group.

5 Q: All right. Well, you collected -- by your report -- by
6 me reading your report, I understand that you collected blood
7 from Tower Number 6 and Tower Number 7 and Tower Number 8,
8 which isn't in this picture. I think that 8 was on the door
9 jamb.

10 A: On the threshold of the doorway.

11 Q: Okay. So neither 6 or 7 came back testing as blood.
12 Because the one on the door jamb is in the report that's into
13 evidence, that is Marcus Lisbon's blood, who didn't get shot,
14 smeared across the door frame at the bottom. So neither one
15 of these, 6 or 7, tested positive for blood. Can you --
16 you're saying they were contaminated?

17 A: I said they could possibly have got contaminated. I mean
18 I -- like I said, I don't do the testing on blood.

19 Q: But you collect it?

20 A: That's correct.

21 Q: Are you trained to collect it?

22 A: I am.

23 Q: How -- can you just explain to the jury how you collected
24 that?

25 A: We take sterile swabs that are encapsulated and we take

ERIC BARNES - CROSS BY MR. DEBERRY

1 sterile water, distilled water that's -- and we swab the --
2 use the tip of the swab to collect the blood samples. And
3 they are then sealed inside an envelope.

4 Q: And that process isn't photographed or videoed or
5 anything, is it?

6 A: No, sir.

7 Q: All right. So by memory, could you tell us which blood
8 drops you tried to swab?

9 A: Not without looking at the report, no.

10 Q: Would that be in your report?

11 A: What's that?

12 Q: I mean I've seen your report. I don't see where it says
13 that you -- I mean would you swab each and every one of those
14 blood drops or just one of them?

15 A: No. Just one of them.

16 Q: And you'd agree that in this case that could be several
17 different people's blood, if it's blood at all?

18 A: It's possible.

19 Q: So you had the information about multiple people being
20 shot, didn't you?

21 A: That's correct.

22 Q: Is that why there's two tower markers there?

23 A: That's correct.

24 Q: So you're just assuming that all the blood drops on 6
25 were from the same person?

ERIC BARNES - CROSS BY MR. DEBERRY

- 1 A: We don't assume. We individually marked each one. That.
2 was -- that was an isolated one, and that was a small group.
- 3 Q: Okay. How about the smear? Does that appear to be
4 smeared blood to you around that picture?
- 5 A: I don't think so.
- 6 Q: What do you think that is?
- 7 A: I don't know.
- 8 Q: It would be logical that it may be smeared blood; is that
9 right?
- 10 A: It's possible.
- 11 Q: You didn't try to collect that?
- 12 A: No.
- 13 Q: All right.
- 14 MR. DEBERRY: Can I have the next picture, please?
- 15 Q: Now, it's been testified to -- this is State's Exhibit
16 121. This is a bullet that struck the vertical frame of the
17 door; correct?
- 18 A: That's correct.
- 19 Q: All right. Is this the door? Do you see the hinge here?
- 20 A: You can see the hinge.
- 21 Q: And so this is the door?
- 22 A: That's correct.
- 23 Q: That has a bullet hole in it?
- 24 A: That's correct.
- 25 Q: And the bullet hole is basically in the middle of that

ERIC BARNES - CROSS BY MR. DEBERRY

1 door? Wouldn't you agree with the trajectory rod and all?

2 A: That's correct.

3 Q: Maybe about the middle of that door? There's no way that
4 that bullet that's in the middle of that door comes out here,
5 is it?

6 A: I don't believe so.

7 Q: Okay. And it's been testified to that law enforcement,
8 you and Mr. Clendenin, believe that this bullet grazed this
9 door on the way out of the apartment?

10 A: That's correct.

11 Q: And the bullet that went through this door had to go into
12 the apartment?

13 A: That's correct.

14 Q: Okay. Any idea where this bullet is?

15 A: I do not know.

16 Q: By that trajectory, it would have hit a brick wall across
17 the breezeway; right?

18 A: Not necessarily. We did find a fragment of a copper
19 jacket.

20 Q: Okay. Could you tell if that fragment was from a .40
21 caliber pistol?

22 A: I'm not a firearms expert. I can't testify to that.

23 Q: All right. Do you have any knowledge whether or not it
24 was tested and was able -- any of the fragments were able to
25 be determined whether they were nine, .40 or .45 caliber?

ERIC BARNES - CROSS BY MR. DEBERRY

- 1 A: Not on the fragment.
- 2 Q: Right.
- 3 A: It pretty much disintegrated on impact.
- 4 Q: You can't tell; right?
- 5 A: That's correct.
- 6 Q: Okay.
- 7 MR. DEBERRY: Can I have the next picture, please?
- 8 Q: All right. This is the picture -- and this is State's --
- 9 MR. GODBOLT: 129.
- 10 Q: -- 129. This is interesting to me because -- this is
- 11 across the parking lot from where this incident took place?
- 12 A: That's correct.
- 13 Q: Or where the apartment was? And it's towards the wood
- 14 line?
- 15 A: That's correct.
- 16 Q: All right. There's been testimony about a fence line.
- 17 That's not in this picture, is it?
- 18 A: No. It's just a wood line on there.
- 19 Q: Okay. I think you testified earlier that there was some
- 20 money -- that you found some money along a fence line?
- 21 A: That's the terminology of the wood line. It's a space
- 22 in-between the apartment and the --
- 23 Q: So -- so are you saying now that the fence line and the
- 24 wood line are the same?
- 25 A: That's correct.

ERIC BARNES - CROSS BY MR. DEBERRY

1 Q: Well, there's certainly some fences out there, aren't
2 there?

3 A: Oh, yeah.

4 Q: The apartment complex is fenced in; right?

5 A: That's correct. But you got the wooded area covering a
6 lot of it up.

7 Q: All right. Well, there's already been testimony that
8 said that there was money found at a fence line where the
9 subjects must have jumped the fence. Can you show me those
10 photographs?

11 A: I cannot.

12 Q: Did you -- were you alerted that there was money on a
13 fence line somewhere?

14 A: I was alerted that there was a \$20 bill right there
15 beside the complex.

16 Q: Okay. That's not a fence line though; right?

17 A: There's a fence line along there. I mean I can't attest
18 yes or no what's up under that foliage, but there was a gap
19 between the complex and the --

20 Q: All right. I think there's a closer-up, maybe the next
21 picture. Let's be clear just a second. This is a light pole.
22 You agree with that, don't you?

23 A: Correct.

24 Q: It's not a fence post?

25 A: No.

ERIC BARNES - CROSS BY MR. DEBERRY

- 1 Q: Okay.
- 2 MR. DEBERRY: We'll go to the next picture.
- 3 Q: All right. Is that -- this is State's Exhibit 130. And
- 4 right around this corner is where the \$20 bill is laying;
- 5 correct?
- 6 A: That is correct.
- 7 Q: Okay. And this is the light pole and that's the wood
- 8 line. I'll agree with that, but I can't see a fence in there.
- 9 Can you?
- 10 A: Not in that picture, no.
- 11 Q: Okay. And don't you think it's logical to believe that
- 12 the fence line and the wood line are two different places in
- 13 this case?
- 14 A: No, sir.
- 15 Q: You don't?
- 16 A: There's fences all around that complex.
- 17 Q: Do you see anything right there that you would have to
- 18 jump that you would call a fence?
- 19 A: I don't see nothing right there in that picture, no.
- 20 Q: Okay.
- 21 MR. DEBERRY: Can I have the next picture, please?
- 22 Q: Now --
- 23 MR. DEBERRY: I think one more forward or back it up.
- 24 Q: This is --
- 25 MR. DEBERRY: One more forward.

ERIC BARNES - CROSS BY MR. DEBERRY

1 Q: This is State's Exhibit 131. There's currency on that
2 path there; is --

3 A: That's correct.

4 Q: -- that correct? All right. Now, was that collected by
5 you?

6 A: That's correct.

7 Q: Okay. Was it tested at all? Can you get fingerprints
8 off of money?

9 A: We can.

10 Q: Did you test it?

11 A: I don't recall.

12 Q: If I told you that there's no report of it being tested,
13 would you disagree with me?

14 A: I couldn't.

15 Q: Do you know if bloodhounds were called out to this scene?

16 A: I believe there was.

17 Q: Okay. Do you know where they were -- where they started?

18 A: I can't testify to what they tracked.

19 Q: Okay. All right.

20 MR. DEBERRY: Is that -- is that all of the pictures?

21 Give me just a second, Judge. Okay. If you'll just take the
22 stand, I've got a few more questions for you. Thank you.

23 (WHEREUPON, the witness complied.)

24 BY MR. DEBERRY:

25 Q: Can you explain to the jury -- well, I think they've

ERIC BARNES - CROSS BY MR. DEBERRY

1 heard some about GSR, but that's gunshot residue?

2 A: That's correct.

3 Q: And that's likely found on people's hands who have
4 recently fired a weapon; is that right?

5 A: Either fired or in proximity.

6 Q: Okay. And there's a gun. There was actually two guns
7 found inside the apartment?

8 A: That's correct.

9 Q: All right.. Was there -- did -- and you were doing the
10 forensics work inside the apartment?

11 A: That's correct.

12 Q: All right. Did you test either one of those guns for
13 being fired?

14 A: I did not.

15 Q: Did you have any reason to believe those guns were not
16 fired?

17 A: Because there was no .40 or .45 shell casings found, I
18 had no reason to believe that was fired.

19 Q: Okay. There was also a lot of -- or several bullets
20 fired in -- inside the apartment that are unaccounted for; is
21 that correct also?

22 A: That's correct.

23 Q: Okay. But you could have -- could you have done any kind
24 of gunshot testing to see if those firearms had been fired.

25 A: We could have.

ERIC BARNES - CROSS BY MR. DEBERRY

1 Q: Did you smell them?

2 A: I didn't.

3 Q: Okay. I noticed you took pictures of the serial number
4 of one gun, but not the other.

5 A: That's correct.

6 Q: Why is that?

7 A: I don't recall. Not without looking at the photos.

8 Q: Okay. Well, there's no photos of the second gun that I'm
9 aware of. Any reason why you didn't take pictures of it?

10 A: I don't recall. I remember it being inside of a safe in
11 the closet.

12 Q: It was inside of a safe? Was there money in that safe as
13 well?

14 A: I'm -- I can't recall off the top of my head.

15 Q: If it's in your report, you would say there was?

16 A: Yes, sir.

17 Q: And was that safe locked or open?

18 A: I believe it was open.

19 Q: It was open? In your report, it says it was open. Now,
20 you collected gunshot residue from the victim that
21 unfortunately passed away, Mr. Luther Lisbon; is that correct?

22 A: That's correct.

23 Q: Now, isn't it true that his gunshot residue report comes
24 back positive?

25 A: That's correct.

ERIC BARNES - CROSS BY MR. DEBERRY

1 Q: Okay. Did you collect the gunshot residue kit on Mr.
2 Marcus Lisbon, Luther Lisbon's brother?

3 A: I'm not sure. I'd have to look at the report.

4 Q: All right. Well, would you disagree with me that the
5 report that's into evidence says that a gunshot residue kit
6 was performed on Marcus Lisbon and it came back as positive?
7 Do you agree with that? Or you couldn't disagree with it?

8 A: I couldn't disagree with it.

9 MR. TUCKER: Judge, I would object to this. I think that
10 those questions are best reserved for the SLED analyst who
11 works in trace who will testify tomorrow as to what is and
12 what is not positive gunshot residue.

13 MR. DEBERRY: Your Honor, I would just say that the State
14 has already put it into evidence.

15 THE COURT: Go ahead. I'll let you ask him general
16 questions.

17 MR. DEBERRY: Thank you.

18 BY MR. DEBERRY:

19 Q: All right. You couldn't disagree that the two gunshot
20 residue kits were positive for Marcus Lisbon and for Luther
21 Lisbon?

22 A: That's correct.

23 Q: Now, you already testified that you didn't have any
24 involvement with David Lunn. Do you know who David Lunn is?

25 A: I do.

ERIC BARNES - CROSS BY MR. DEBERRY

1 Q: You do? He was another individual that received gunshot
2 wounds apparently in the apartment, but there's no evidence --
3 I mean there was no blood. There's no evidence other than
4 he's a hundred yards away. Is that what your understanding
5 is?

6 A: That's my understanding.

7 Q: Okay. Was a gunshot residue kit performed on David Lunn
8 that you know of?

9 A: Not that I recall, no.

10 Q: Okay. And he was transported away by the time you got
11 there?

12 A: I believe so.

13 Q: You think he was?

14 A: I think the CAD report doesn't say yes or no.

15 Q: You can't?

16 A: I'm saying I don't have a copy of the CAD report.

17 Q: Okay.

18 A: I'd have to look to see yes or no if it was.

19 Q: Okay. Well, I'm not sure if he was or not, but don't you
20 agree that he would be an important individual to perform a
21 gunshot residue kit on?

22 A: It depends if he had blood on his hands or not or if he
23 just washed his hands before that.

24 Q: But you didn't investigate that?

25 A: I didn't.

ERIC BARNES - CROSS BY MR. DEBERRY

1 Q: Okay. All right. And you also collected a blood sample
2 -- a known blood sample from Luther Lisbon, the victim in this
3 case, to provide SLED for the DNA analysis?

4 A: That's correct.

5 Q: Okay. And -- and it's your testimony already that out of
6 the six or seven standards that you sent there, the only thing
7 that came back as a match was for Marcus Lisbon?

8 A: That's correct.

9 THE COURT: Speak up a little bit louder.

10 THE WITNESS: I'm sorry.

11 BY MR. DEBERRY:

12 Q: Okay. Was there any gunshot residue collected from the
13 front door?

14 A: No, sir.

15 Q: Was that -- did that ever enter into your mind to want to
16 know whether -- how far away a shooter may have been from that
17 front door?

18 A: No.

19 Q: So you can't say if that bullet that struck the front
20 door was from a point-blank range or from 20 feet away?

21 A: That's correct.

22 Q: You can't say?

23 A: No.

24 Q: Had it been a point-blank range, there would have been
25 some gunshot residue there; correct?

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1 A: It's possible, yes.

2 Q: Okay. Are you aware of any evidence that said that two
3 individuals left there in a car?

4 A: I don't recall that.

5 Q: Okay. All right. I got just a couple more questions for
6 you. I appreciate your patience. Your report. Did you write
7 your report?

8 A: I did.

9 Q: Okay. Is it just a coincidence that about halfway down
10 the text on the first page of your report where it starts with
11 "I observed" all the way to the break of the next paragraph
12 that it's identical to Mr. Clendenin's report? The same
13 words, same spacing, same periods, commas? That's a -- is
14 that a coincidence?

15 A: That's a coincidence.

16 Q: Okay. You typed it yourself?

17 A: That's correct.

18 Q: Okay. Did you and Investigator Clendenin arrive at the
19 exact same time?

20 A: I'm not sure what time he arrived. I can testify to what
21 time I arrived though.

22 Q: Okay. Did y'all stay hand-in-hand the whole time you
23 were there?

24 A: Not the whole time.

25 Q: One of you would be doing one thing and another doing

ERIC BARNES - CROSS BY MR. DEBERRY

1 another?

2 A: That's correct.

3 Q: Okay. Earlier, you testified that you take these
4 pictures and you preserve the crime scene and you do all the
5 things that you're required to do on your job in an effort to
6 put the story together; is that right?

7 A: That's correct.

8 Q: Through your investigation and what you know about the
9 evidence that you testified to today and by taking these
10 pictures and looking at them and by going over your report and
11 by remembering everything that you did, do you have any idea
12 what happened?

13 MR. TUCKER: Your Honor, I would object. That's a
14 compound question that asked for a narrative explanation.

15 MR. DEBERRY: That's fine, Your Honor. I don't have any
16 other questions.

17 THE COURT: Thank you. All right. Redirect?

18 MR. TUCKER: Nothing on redirect, Your Honor.

19 THE COURT: All right. You may step down. Thank you.
20 Let's take a 15-minute break and then we'll resume at five
21 after twelve. Do not discuss the case.

22 (WHEREUPON, the jury exited the courtroom at 11:49 a.m.)

23 THE COURT: All right. Let's take a short break.

24 (WHEREUPON, there was a break in the proceedings from
25 11:49 a.m. until 11:53 a.m.)

1 (WHEREUPON, the jury entered the courtroom at 11:53 a.m.)
2 THE COURT: All right. We're going to go ahead and take
3 a lunch break until 1:30. The lawyers have some work that
4 they have to do to be prepared for you at 1:30. Like I told
5 you before, over your lunch break just relax. Don't talk to
6 anybody about the case. Don't talk about it among yourselves.
7 Do not research the case. Just go enjoy yourselves. Relax.
8 We'll see you back at 1:30. All right.

9 (WHEREUPON, the jury exited the courtroom at 11:54 a.m.)

10 (WHEREUPON, there was a break in the proceedings from
11 11:54 a.m. until 1:38 p.m.)

12 THE COURT: Have we got everybody here?

13 THE BAILIFF: Yes, sir.

14 THE COURT: All right. Go ahead and bring them in.

15 (WHEREUPON, the jury entered the courtroom at 1:38 p.m.)

16 THE COURT: All right. If you will, call your next
17 witness.

18 MR. TUCKER: Thank you, Your Honor. At this time, the
19 State would call Investigator Thomas McFadden to the stand.

20 THE CLERK: If you will, sir, place your left hand on the
21 Bible and raise your right hand. Do you swear to tell the
22 truth, the whole truth, and nothing but the truth, so help you
23 God?

24 THE WITNESS: I do.

25 THE CLERK: Please be seated and state your full name for
26

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1 the record.

2 THE WITNESS: Thomas Jermaine McFadden.

3 MR. TUCKER: Thank you.

4 THOMAS MCFADDEN, being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. TUCKER:

8 Q: Investigator McFadden, where do you presently work?

9 A: Florence County Sheriff's Office.

10 Q: And how long have you been there?

11 A: Fourteen years.

12 Q: And what is your present title?

13 A: Criminal investigator.

14 Q: Were you always an investigator or did you start out at
15 another place in the Sheriff's Office?

16 A: I started out -- back in '97, I started in the detention
17 center, but when I came back in 2001, I started on patrol.

18 Q: How long have you been with investigations?

19 A: Eleven years.

20 Q: Okay. What kind of special classes and training have you
21 had to prepare you for your role as an investigator?

22 A: Well, we had to do nine weeks at the academy. Then we
23 had the basic investigator course, two-week course.

24 Q: Now, have you had any specialized classes since then?

25 A: I'm a homicide investigator with a homicide team. We go

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1 to training and conferences in different states.

2 Q: Okay. That brings up an interesting question. You
3 mentioned you were a homicide investigator. So there is a
4 specialized -- well, for lack of a better description --
5 entity within the investigations division that handles violent
6 crime?

7 A: Yes. Myself and Investigator Collins and Lieutenant
8 Kathleen Streett.

9 Q: Okay. When you say Investigator Collins, are you
10 referring to Chad Collins?

11 A: Yes.

12 Q: Okay. Now, were you working as an investigator with the
13 Sheriff's Office on the evening of January the 6th, 2013?

14 A: Yes, I was.

15 Q: Now, do you specifically recall being notified about a
16 shooting incident at Brittany Place Apartments?

17 A: Yes, I do.

18 Q: What did you do after you received that call?

19 A: Investigator Collins briefed me over the phone about what
20 was going on. It took me a while to get there. I got there a
21 little later than they did. They just briefed me about there
22 was a shooting that had several victims, and two of them was
23 being transported to the hospital.

24 Q: Now, once you arrived on scene, what was your first area
25 of responsibility?

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1 A: Well, I came to the scene and a couple of the deputies
2 that was on the scene told me all the victims had gone to the
3 hospital.

4 Q: Now, when you say all the victims, do you recall
5 specifically to whom they were referring?

6 A: I later found they were referring to David Lunn, Luther
7 Lisbon, and Marcus Lisbon.

8 Q: Now, did you ascertain where the initial location or the
9 incident was within the Brittany Place Apartments?

10 A: Yeah. It was an upstairs apartment, Apartment E.

11 Q: Now, was it your understanding after following up and
12 speaking to people on scene as to who was shot and who was
13 more seriously wounded?

14 A: Yes. Luther they said was in the worst shape when they
15 got there. They thought he might not make it. And then David
16 Lunn was even -- was in critical condition as well. They said
17 he was able to talk and call 9-1-1.

18 Q: Now, were these two individuals -- had they already been
19 transported away from the scene by the time you arrived?

20 A: Yeah. They were already at the hospital.

21 Q: Okay. And you mentioned a third victim in this matter, a
22 Marcus Lisbon?

23 A: Yeah. Marcus Lisbon.

24 Q: Were you able to ascertain what his status was when you
25 arrived?

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1 A: He was hurt. He had some kind of leg injury.

2 Q: Now, were you able to speak with him right then?

3 A: Not right when I got there. When I got to the hospital I
4 did, but not right then at the -- at the scene.

5 Q: Now, let's go back to the scene.

6 A: Okay.

7 Q: And I want to show you what's already been marked as
8 State's 136. And I would ask you if you would step down and
9 show where exactly you responded to?

10 (WHEREUPON, the witness complied.)

11 Q: And I guess let's start with do you recognize where
12 is on this aerial?

13 A: Yeah. It's right here. Apartment E.

14 Q: Okay. Now, when you responded, you mentioned David Lunn
15 had already been transported away. Did you find out where he
16 was when law enforcement made contact with him?

17 A: Yeah. He was here. The bushes area right here where the
18 entrance to the gated community is.

19 Q: Now again, you didn't have any contact with him then?

20 A: No.

21 Q: But that's where you found out he was. Now, also did you
22 find out if Luther Lisbon was inside the apartment or outside
23 the apartment when he was transported?

24 A: He was still inside of the apartment.

25 Q: All right.

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- 1 (WHEREUPON, the witness returned to the witness stand.)
- 2 Q: Now, after ascertaining who your victims were, what, if
- 3 anything, did you do at that point?
- 4 A: I went to McLeod, spoke with the family. Marcus was
- 5 already there. He was in the waiting room. I briefly spoke
- 6 to him too. Investigator Collins also had briefed me. Both
- 7 of us went to the hospital. He briefed me on information he
- 8 gathered as well. I was trying to check on David Lunn because
- 9 after I spoke with Marcus, he was just saying it was a stocky,
- 10 black male was at the door that he had an altercation with
- 11 when the incident first happened.
- 12 Q: Now, who told you this at that point?
- 13 A: Marcus.
- 14 Q: Now, was David Lunn able to speak with you that night?
- 15 A: No. I went up to the trauma unit. They had to rush him
- 16 into surgery. The doctor really said he wasn't sure if he was
- 17 going to make it because I know they said he was talking at
- 18 the scene, but he thought he wasn't going to make it through
- 19 the night. He said it was touch and go.
- 20 Q: Now, did your investigation reveal how many times he had
- 21 been shot?
- 22 A: I think it was at least twice.
- 23 Q: And again, if you have to refer to your notes --
- 24 A: Yeah.
- 25 Q: Do you recall exactly where on his body he was shot?

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1 A: One in the -- like, the chest area, and then one in the
2 abdomen, in the stomach area.

3 Q: Now, was it possible at that point -- there was some
4 discussion you were present for the forensics testimony -- to
5 do any sort of gunshot residue kits on David Lunn?

6 A: They couldn't because when I got there, there was a bunch
7 of family members in that trauma unit upset and crying. The
8 doctor said we couldn't get to him because they had to rush
9 him in into surgery and if -- because they thought we might
10 lose him that night.

11 Q: I understand. Now, while you were at the hospital, did
12 you subsequently find out what Luther Lisbon's status was?

13 A: Yeah. He was deceased.

14 Q: All right. Now, do you recall any discussion about
15 Luther Lisbon and being transported for an autopsy at MUSC?

16 A: Yes.

17 Q: Do you recall you speaking with Chad Collins about that?

18 A: Yes.

19 Q: Now, was subsequently Luther Lisbon taken to MUSC for an
20 autopsy?

21 A: Yes, he was. We took one of the family -- I took a few
22 of the family members in to see him, a sister and maybe his
23 mom, to see him that night at the ER before and then we
24 discussed -- told them we had to send him off for autopsy to
25 be checked out.

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1 Q: Now, did you subsequently find out after the autopsy what
2 the cause of death was with regards to Luther Lisbon?

3 A: Yeah. He died from a gunshot wound.

4 Q: Do you recall how many times he was shot?

5 A: Once.

6 Q: Now, after talking to the family members and talking to
7 Marcus Lisbon that night at the scene, were you able to do
8 anything else that night --

9 A: Not that night.

10 Q: -- in terms of your investigation?

11 A: Not that night.

12 Q: Do you recall what happened next with regards to your and
13 Chad Collins' investigation?

14 A: We started following up leads, going back talking to
15 forensics, trying to go back to the crime scene again to walk
16 back through to see -- you know, get an exact picture of what
17 was taken place -- what took place at the scene.

18 Q: Were you able to talk to David Lunn during this period?

19 A: A couple days later after they got him stable and brought
20 him out of -- out of the ICU, they put him in a regular room
21 and he was still hooked up, but he was able to speak at that
22 time.

23 Q: Okay. Do you recall what, if anything, he told you when
24 you spoke to him about what had happened?

25 A: Yeah.

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1 MR. DEBERRY: Objection, your Honor. Hearsay.

2 MR. TUCKER: He's going to testify here shortly, Your
3 Honor, with regards to it so we'd be able to tie it up at that
4 point.

5 THE COURT: Still, I'll sustain it.

6 MR. TUCKER: Okay.

7 BY MR. TUCKER:

8 Q: Do you recall after speaking with David Lunn what, if
9 anything, you did?

10 A: After speaking with Lunn, listening to the information he
11 gave, him and Marcus' information matched up to basically the
12 same thing about an individual at the door, a big-built
13 individual at the door.

14 Q: Now, were you able to -- to use the information that they
15 give you with regards to a description to generate a forensics
16 sketch or a composite?

17 A: Yeah. We spoke to them. He described the guy as a big,
18 stocky male. So me and Mr. Collins -- me and Investigator
19 Collins advised Marcus we wanted him to come in for a
20 statement at some point in time.

21 Q: Now, did Marcus Lunn and David Lisbon [sic] -- did they
22 describe the same individual to you in terms of
23 characteristics?

24 A: Yeah. Same individual, heavy-built, black, stocky black
25 male --

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1 MR. TUCKER: If I may approach, Your Honor?

2 A: -- wearing a hoodie.

3 THE COURT: Sure.

4 BY MR. TUCKER:

5 Q: Let's see. Investigator McFadden, I'm showing you what's
6 been marked State's 1 and ask if you recognize it?

7 A: Yes. This is a forensic sketch that SLED did. Marcus
8 gave them a sketch when he came in for a recorded statement.

9 MR. TUCKER: And, Your Honor, at this point, rather than
10 raise that big board and put it down just for that, I'd ask if
11 I could just publish that to the jury.

12 THE COURT: Sure.

13 BY MR. TUCKER:

14 Q: And this was the composite sketch that was generated --

15 A: Yes.

16 Q: -- that you mentioned?

17 A: Yeah.

18 Q: What, if anything, did you do with the composite sketch
19 once you had it?

20 A: We gave it to the major at the Sheriff's Office. He put
21 it out through the media.

22 Q: Now, as a result of this sketch going out, what, if
23 anything, happened to the investigation?

24 A: It started making a turn. We started getting anonymous
25 tips called in about who the sketch was and who it could be.

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1 Q: Now, at this point, did the name Christopher Peterson
2 surface in relation to your investigation?

3 A: That's when the name developed, yes.

4 Q: Now, what, if anything, did you do after his name
5 surfaced as a possible suspect?

6 A: I pulled up his -- his build, his photo. When I saw the
7 photo, I saw the build. I saw it resembled the sketch.

8 Q: Do you recall specifically what that build in terms of
9 description was?

10 A: He was, like 5'6", 200 and something pounds.

11 Q: And this was consistent with what you had been told by
12 both Lunn and Lisbon?

13 A: By the both victims, yes.

14 Q: Okay. Now, after being armed with this information,
15 what, if anything, did you do?

16 A: We sent a -- the information to SLED to do a photo line-
17 up -- to get a photo line-up done to try to show to Marcus
18 since he did the sketch to see could he identify him.

19 Q: I understand. And do you have that with you?

20 A: Yes, I do.

21 MR. TUCKER: Your Honor, if I may approach?

22 THE COURT: Sure.

23 MR. TUCKER: And, Your Honor, at this point, I would move
24 this line-up be admitted into evidence.

25 THE COURT: Any objections?

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 MR. DEBERRY: No, Your Honor.

2 THE COURT: All right. That would be State's Number 145;
3 is that correct?

4 MR. TUCKER: Yes.

5 THE COURT: Into evidence without objection.

6 MR. TUCKER: Okay.

7 (WHEREUPON, State's Exhibit Number 145, the photo line-
8 up, was admitted into evidence.)

9 BY MR. TUCKER:

10 Q: Investigator McFadden, what, if anything, did you do with
11 that line-up once you had it generated?

12 A: We called the victim again, Marcus Lisbon, and we met him
13 at the Pet -- not Pet Lovers, but PetSmart.

14 Q: Now, in connection with the original incident date of
15 January the 6th, how much time had elapsed until you were at
16 this point in your investigation?

17 A: A couple of weeks had passed then because it was, like,
18 the 20th. A couple of weeks passed.

19 Q: I understand. Now, when you met with Marcus Lisbon, was
20 he able after viewing the photo array to pick anybody out?

21 A: No. He wasn't able to positively pick anybody out. Just
22 when he picked -- he picked number 3 and he said, "I can't say
23 it's any of these guys, but don't rule number 3 out."

24 MR. DEBERRY: Objection, Your Honor.

25 THE COURT: Sustained.

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 MR. DEBERRY: This is hearsay.

2 THE COURT: Sustained.

3 BY MR. TUCKER:

4 Q: And for the record, what -- number 3, who was that?

5 A: Christopher Peterson.

6 Q: Okay.

7 MR. TUCKER: And, Your Honor, I'd like to publish this to
8 the jury as well.

9 THE COURT: Sure.

10 BY MR. TUCKER:

11 Q: Now, after this conversation that you had, what, if
12 anything, happened next?

13 A: Once that happened, at some point we got Peterson in.

14 Q: Okay. Do you recall the date that -- when you met with
15 Mr. Peterson?

16 A: The 10th.

17 Q: Now, when you first encountered Mr. Peterson, did you
18 notice anything about the way that he walked?

19 A: Yeah. The tips also -- the tips also brought in that he
20 was shot during the incident.

21 Q: I understand.

22 MR. TUCKER: And, Your Honor, if I may approach?

23 THE COURT: Sure.

24 MR. TUCKER: And, Your Honor, if I could approach the
25 witness?

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 THE COURT: All right.

2 BY MR. TUCKER:

3 Q: Investigator McFadden, I'm showing you what's been marked
4 State's 13 and ask if you recognize that picture?

5 A: Yeah. That's Christopher Peterson in his room showing us
6 his right thigh.

7 Q: Okay.

8 A: Or leg.

9 Q: What -- was there anything in terms of that particular
10 picture that drew your attention?

11 A: Yeah. There was a small scar near the knee area.

12 MR. TUCKER: And, Your Honor, if I could publish this to
13 the jury as well?

14 THE COURT: Yes, sir.

15 BY MR. TUCKER:

16 Q: Now, on the 10th when you were speaking to Mr. Peterson,
17 was there anyone with you?

18 A: Yes. Investigator Chad Collins.

19 Q: Now, when you had Mr. Peterson there, did you read him
20 what is standardly required or referred to as the Miranda
21 warning?

22 A: Yes, we do.

23 Q: And did you use a particularized form when you read him
24 his Miranda warning?

25 A: Yes. The Sheriff's Office has got a Miranda form.

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 MR. TUCKER: And, Your Honor, I would ask to approach?

2 THE COURT: Sure.

3 BY MR. TUCKER:

4 Q: And I would ask if you recognize that form?

5 A: Yeah. This is the original Miranda form.

6 Q: Without showing the jury, if you could.

7 A: Okay.

8 Q: Just identify it.

9 A: This is the original Miranda form.

10 Q: Okay. And your signature is one of the witnesses that's
11 on there?

12 A: Yes.

13 Q: Okay.

14 MR. TUCKER: And, Your Honor, at this point, I would ask
15 that this form dated 4/10/2013 be admitted as evidence.

16 THE COURT: Any objections?

17 MR. DEBERRY: No, Your Honor.

18 THE COURT: State's 146 into evidence without objection.

19 (WHEREUPON, State's Exhibit Number 146, the Miranda form
20 dated 4/10/2013, was admitted into evidence.)

21 BY MR. TUCKER:

22 Q: Now, Investigator McFadden, if you will, could you read
23 the first line where it says the Constitution requires that
24 I/we inform you that?

25 A: We advised he does have the right to remain silent.

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 Q: Now, there is a line out to the left of that. What is
2 that line for?

3 A: That way if you understand or you got any questions about
4 it, you initial it.

5 Q: Now, is there -- are there initials there?

6 A: Yes. CP.

7 Q: And who do you -- who does CP refer to?

8 A: Christopher Peterson.

9 Q: Now, the line under that too, could you read that for us,
10 please?

11 A: Anything you say can and will be used against you in a
12 court of law.

13 Q: Now, likewise, is CP's initials there by two?

14 A: Correct. CP.

15 Q: If you could, read three for us, please?

16 A: You have the right to talk with a lawyer to have them
17 present while being questioned.

18 Q: And likewise, did Mr. Peterson initial that line?

19 A: Correct. CP.

20 Q: Four, please?

21 A: If you cannot afford to hire a lawyer, one will be
22 appointed to represent you before any questioning if you wish.

23 Q: Now, also did Mr. Peterson initial that line?

24 A: Yes, he did.

25 Q: And could you read five?

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 A: You can decide at any time to exercise your right and not
2 answer any questions or make any statements.

3 Q: Now, did he also initial that line?

4 A: Yes, he did.

5 Q: And six, please?

6 A: Do you understand each right as they were given to you --
7 as they were explained to you?

8 Q: Now, there's a line out to the right of that for someone
9 to indicate yes or no. Could you read what's indicated there?

10 A: He indicated yes.

11 Q: Now, who wrote yes there? Was that you or Mr. Peterson?

12 A: No. Mr. Peterson.

13 Q: And likewise, did Mr. Peterson initial that line?

14 A: Yes, he did.

15 Q: And seven?

16 A: Seven. Having these rights in mind, do you wish to talk
17 to us now?

18 Q: And likewise, there's a line to the right that says 'yes?

19 A: Yes. He put yes.

20 Q: And one to the left with his initials; is that correct?

21 A: CP, yes. Christopher Peterson.

22 Q: Now, if you could, read -- down below, it says waiver of
23 rights. Could you read that aloud, please?

24 A: Yeah. We have read the statement of your rights and
25 understand my rights. I'm willing to make a statement and

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 answer any questions. I do not want a lawyer at this time. I
2 understand. I know what I'm doing. No promises or threats
3 have been made to me, nor pressure of any kind have been used
4 against me by anyone.

5 Q: Now, there's a signature line right below that. Could
6 you read what that's indicating?

7 A: That's an X for a signature mark and that's Christopher
8 Peterson's signature.

9 Q: And below that?

10 A: That's me as one witness and my signature.

11 Q: Now, at any time did Mr. Peterson indicate he did not
12 understand any of these rights as you explained to him?

13 A: No. No, he didn't. He understood them.

14 Q: Did you or Investigator Collins, who was in your presence
15 -- did they pressure Mr. Peterson at any time to sign this
16 form?

17 A: No. No, we didn't. He -- even after reading the waiver,
18 he signed it.

19 Q: Okay. Was he promised anything --

20 A: No.

21 Q: -- in connection or in exchange for making a statement?

22 A: No, he wasn't.

23 Q: Was he coerced in any way?

24 A: No.

25 Q: Is it fair to say that he made this waiver freely,

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 voluntarily, and intelligently?

2 A: Yes, he did.

3 Q: Now, after that occurred, did you ask Mr. Peterson a
4 series of questions regarding his possible involvement with
5 the events that took place on January the 6th, 2013?

6 A: Yes, I did.

7 Q: Do you recall how the interview started out?

8 A: Well, basically with the Miranda form. Then he said he
9 didn't -- he wasn't around. He didn't go to Brittany Place.
10 The boy lied -- just basically lied about being present at the
11 incident.

12 Q: Okay. Did you ask him anything about how he injured his
13 leg?

14 A: Yes, I did. After he told -- was saying that, I said,
15 well, you got a injury to your leg, and he kind of looked and
16 he said, yeah, I hurt it at Nucor working.

17 Q: Now, did you subsequently follow up to see if he, in
18 fact, did work at Nucor?

19 A: Yeah. Me and Investigator Collins got the information,
20 contacted the job site. He was never employed there.

21 Q: So that was --

22 A: A lie.

23 Q: -- false?

24 A: Yeah. He said he hurt it on a re -- he fell on a rebar.

25 Q: Now, he also indicated to you that -- I believe you

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 mentioned that he was nowhere near Place?

2 A: Yeah. He denied being there at Brittany Place and having

3 any involvement with it.

4 Q: Did he make any other statements of any kind regarding

5 January 6th, 2013, and his possible involvement?

6 A: No, not at that time. I think he denied everything at

7 that time.

8 Q: Now, subsequently, was the interview ended?

9 A: Yeah. It was ended that day.

10 Q: Okay. Now, at some point thereafter, did Mr. Peterson

11 initiate contact with you --

12 A: Yeah.

13 Q: -- indicating he wished to make another statement?

14 A: Yes. It was requested the next day.

15 Q: Okay.

16 A: Wishing to talk.

17 Q: Now, on April the 11th at around 4:20, do you recall the

18 circumstances surrounding when you made contact with Mr.

19 Peterson?

20 A: Yes. He wanted to -- he wanted to give a statement again

21 in reference to Brittany Place.

22 Q: And likewise, were you -- did you follow the same process

23 as you followed the day before?

24 A: Yes. The same process. Interview form, Miranda form,

25 and everything.

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 Q: Now, again without going through every single line as we
2 did with the first one, at the end of reading Mr. Peterson his
3 Miranda form again, did he indicate to you that he understood
4 the Miranda form?

5 A: Yes. He put yes, he understood, and he wished to talk.

6 Q: Okay. Did he sign that Miranda form as well?

7 A: Yeah. He signed the waiver on the bottom saying he
8 wasn't threatened or pressured in any way to make a statement.

9 MR. TUCKER: And if I could approach, Your Honor?

10 THE COURT: Sure.

11 BY MR. TUCKER:

12 Q: And, Investigator McFadden, I'd ask if you could identify
13 that?

14 A: This is the second form on the 11th when he asked to come
15 back and talk to us about the incident.

16 Q: Okay.

17 MR. TUCKER: And, Your Honor, I would ask that this be
18 admitted into evidence at this time.

19 THE COURT: Any objections?

20 MR. DEBERRY: No, Your Honor.

21 THE COURT: All right. State's Number 147 admitted into
22 evidence without objection.

23 (WHEREUPON, State's Exhibit Number 147, the Miranda form
24 dated 4/11/2013, was admitted into evidence.)

25 BY MR. TUCKER:

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 Q: Now, this particular interview, Investigator McFadden,
2 was it recorded?

3 A: Yes, it was.

4 Q: Was it recorded both from an audio and visual standpoint?

5 A: Yes, it was.

6 Q: Now, I ask you to look at and see if you recognize it?

7 A: Yeah. This is the disk, the CD what we record we the
8 audio and video on at the Sheriff's Office.

9 Q: Okay.

10 MR. TUCKER: And, Your Honor, I would ask that this be
11 admitted into evidence at this time.

12 THE COURT: Any objections?

13 MR. DEBERRY: No objection.

14 THE COURT: State's 148 admitted into evidence.

15 (WHEREUPON, State's Exhibit Number 148, the CD/DVD
16 containing the recorded statement of the defendant dated
17 4/11/2013, was admitted into evidence. NOT TRANSCRIBED
18 HEREIN.)

19 MR. TUCKER: Okay. And, Your Honor, at this point, I
20 wish to publish the interview that occurred on the 11th to the
21 jury.

22 THE COURT: Sure. All right.

23 (WHEREUPON, the witness left the witness stand to stand
24 next to the screen before the jury.)

25 (WHEREUPON, State's Exhibit Number 148, the videotape of

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 the interview, was played in open court. NOT TRANSCRIBED
2 HEREIN. The videotape was stopped each time a question
3 was asked during the playing of the videotape.)

4 BY MR. TUCKER:

5 Q: And, Investigator McFadden, I may ask you a question or
6 two. If you would, speak loudly so the court reporter can
7 note your response. But could you explain what we're looking
8 at right there before anyone enters the room?

9 A: Yeah. That's the interview room with two cameras, one
10 back here behind me and one on the other side behind the
11 interviewed individual.

12 Q: Okay.

13 (WHEREUPON, there was a pause in the questioning as the
14 videotape was played and then stopped.)

15 BY MR. TUCKER:

16 Q: Investigator McFadden, who are we looking at right now?

17 A: You're looking at me and Investigator Chad Collins and
18 also Christopher Peterson.

19 Q: Okay.

20 MR. TUCKER: If you could, continue, please.

21 (WHEREUPON, there was a pause in the questioning as the
22 videotape was played and then stopped.)

23 BY MR. TUCKER:

24 Q: Now, Investigator McFadden, you had just asked him about
25 telling his side of the story. To what were you referring?

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 A: The Brittany Place incident.

2 Q: Thank you.

3 (WHEREUPON, there was a pause in the questioning as the
4 videotape was played and then stopped.)

5 MR. TUCKER: Stop it for me.

6 BY MR. TUCKER:

7 Q: Now, when you're having this kind of exchange with a
8 person who is giving a statement, are you trying to establish
9 any kind of rapport or --

10 A: Yeah.

11 Q: So are you talking in a friendly way to them?

12 A: Yeah. It's called the good cop/bad cop. I was the good
13 cop.

14 Q: I understand.

15 MR. TUCKER: If you can continue, please.

16 (WHEREUPON, there was a pause in the questioning as the
17 videotape was played and then stopped.)

18 BY MR. TUCKER:

19 Q: Now, Investigator McFadden, when he says I want to tell
20 you everything, this is after you had talked to him the day
21 before and he had denied being involved at all; correct?

22 A: Correct.

23 (WHEREUPON, there was a pause in the questioning as the
24 videotape was played and then stopped.)

25 MR. TUCKER: If you could stop it?

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 BY MR. TUCKER:

2 Q: Now, when he says went and knocked on the door, what
3 address or what residence was he referring to?

4 A: Apartment E, Brittany Place.

5 (WHEREUPON, there was a pause in the questioning as the
6 videotape was played and then stopped.)

7 MR. TUCKER: Stop it.

8 BY MR. TUCKER:

9 Q: Now, Mr. Peterson indicated that he knocked on the door
10 and he was wearing a hoodie and the door opened up and he
11 began to struggle with an individual who was inside the
12 apartment. Did your investigation reveal who that individual
13 was with whom he struggled?

14 A: Yeah. We knew that night that was Marcus. We knew that
15 he struggled with Marcus.

16 Q: Now, when you say Marcus, are you referring to Marcus
17 Lisbon?

18 A: Marcus Lisbon, yes.

19 Q: And he indicated that as soon as the door opened up they
20 began to struggle?

21 A: Yes. That's correct.

22 (WHEREUPON, there was a pause in the questioning as the
23 videotape was played and then stopped.)

24 MR. TUCKER: If you could stop there?

25 BY MR. TUCKER:

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 Q: Now, I want to make sure I'm clear, Investigator

2 McFadden, but he's talking about leaving the scene with a
3 gunshot wound himself; correct?

4 A: Correct.

5 Q: And he indicated he did not go to the hospital?

6 A: Yeah. He couldn't go to the hospital he said. It was
7 too hot.

8 Q: And did he indicate that he told his mom a different
9 account of what happened?

10 A: Yes, he did.

11 Q: With regards to his demeanor at this point, you're just
12 sitting right off camera; correct?

13 A: Correct.

14 Q: Okay.

15 (WHEREUPON, there was a pause in the questioning as the
16 videotape was played and then stopped.)

17 MR. TUCKER: If you'll stop it there?

18 BY MR. TUCKER:

19 Q: Now, he references a rental car there. Did you
20 subsequently verify that information?

21 A: Yeah. Correct. But the rental car was after the
22 incident.

23 Q: Okay. So when he -- that car he's referring to, that's
24 another misstatement?

25 A: Yeah. That's another misstatement.

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 Q: Okay.

2 (WHEREUPON, there was a pause in the questioning as the
3 videotape was played and then stopped.)

4 MR. TUCKER: You can stop it there.

5 BY MR. TUCKER:

6 Q: Now, in this segment, Christopher Peterson is talking
7 about this person he refers to as Gangster Fred.

8 A: Yeah.

9 Q: Were you able to identify to whom he was referring?

10 A: Yeah. Reginald Johnson's brother, Gregory Johnson.

11 Q: Now, were you able to follow up any of the information
12 that he's telling you about this situation between Gangster
13 Fred and Luther Lisbon?

14 A: Yes, I was.

15 Q: Were you able to find out whether there was any validity
16 to it?

17 A: They said there was none. It was really no situation.
18 Fred had owed some money and the money got lost or drugs got
19 lost or something like that.

20 Q: But you weren't able to verify any of that?

21 A: No. We couldn't verify none of that.

22 (WHEREUPON, there was a pause in the questioning as the
23 videotape was played and then stopped.)

24 MR. TUCKER: You can stop there.

25 BY MR. TUCKER:

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 Q: Now, in this exchange, Mr. Peterson is talking about
2 getting \$2,000?

3 A: Correct.

4 Q: And he indicated in this segment that he got it from
5 Reginald Johnson, who was with him?

6 A: That's correct.

7 Q: And that the money came from inside the apartment?

8 A: Correct.

9 Q: Okay.

10 (WHEREUPON, there was a pause in the questioning as the
11 videotape was played and then stopped.)

12 MR. TUCKER: Stop it.

13 BY MR. TUCKER:

14 Q: Now, at this point in your investigation, had the name
15 Reginald Johnson surfaced from anybody other than Christopher
16 Peterson?

17 A: No. That was the first time we heard Reginald Johnson.

18 MR. TUCKER: If you could continue?

19 (WHEREUPON, there was a pause in the questioning as the
20 videotape was played and then stopped.)

21 MR. TUCKER: Stop it there.

22 BY MR. TUCKER:

23 Q: Now again, Mr. Peterson is telling you that he was the
24 one who knocked on the door?

25 A: And took a step in.

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 Q: And he was the first one --

2 A: In the door.

3 Q: -- that encountered anybody on the other side?

4 A: Yes. Correct.

5 Q: Okay. And again, did your investigation reveal who that
6 person was?

7 A: Yeah. Marcus.

8 Q: And you're referring to Marcus Lisbon?

9 A: Marcus Lisbon. That's correct.

10 (WHEREUPON, there was a pause in the questioning as the
11 videotape was played and then stopped.)

12 MR. TUCKER: You can stop it there.

13 BY MR. TUCKER:

14 Q: Now, as he's described events, is that consistent with
15 what you knew at this point in your investigation?

16 A: Correct. Some of it, yeah.

17 Q: Okay.

18 MR. TUCKER: If you can continue?

19 (WHEREUPON, there was a pause in the questioning as the
20 videotape was played and then stopped.)

21 MR. TUCKER: You can stop it.

22 BY MR. TUCKER:

23 Q: Now, at this point, had he indicated that there was
24 anybody else inside the apartment that was doing any shooting?

25 A: No.

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 Q: Who did he indicate, according to Mr. Peterson, was doing
2 the shooting at this point?
3 A: His homie, Reginald.
4 Q: Who was that?
5 A: Reginald Johnson.
6 MR. TUCKER: If you could continue?
7 (WHEREUPON, there was a pause in the questioning as the
8 videotape was played and then stopped.)
9 MR. TUCKER: You can stop there.
10 BY MR. TUCKER:
11 Q: Now, he described the individual that he was with;
12 correct?
13 A: Correct.
14 Q: And he indicated that the person -- referring to Reginald
15 Johnson, how did he describe him in relationship to his own
16 build?
17 A: He said he was big and tall.
18 Q: In terms of build, how would you describe Christopher
19 Peterson?
20 A: He was thicker.
21 Q: Do you have an approximate weight at this point?
22 A: Like, 240 -- 50.
23 Q: Do you recall how tall he was?
24 A: 5' 6".
25 Q: Okay.

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 MR. TUCKER: If you could continue?

2 (WHEREUPON, there was a pause in the questioning as the
3 videotape was played and then stopped.)

4 MR. TUCKER: You can stop it there.

5 BY MR. TUCKER:

6 Q: Now, Investigator McFadden, why did you ask that
7 particular question?

8 A: Because the information developed the first person in the
9 door was why they was fighting because there was a gun.

10 Q: And according to Christopher Peterson's own statement,
11 that was him?

12 A: He was the first person through the door. That's why I
13 had to ask him that question. The information developed said
14 the first person into the door was armed with a gun; so that's
15 why the struggle started.

16 Q: Okay.

17 MR. TUCKER: If you could continue, please?

18 (WHEREUPON, there was a pause in the questioning as the
19 videotape was played and then stopped.)

20 MR. TUCKER: If you could stop it?

21 BY MR. TUCKER:

22 Q: Now, you asked him what kind of gun was shot and he said
23 --

24 A: A nine -- a nine millimeter.

25 Q: And for my recollection, what were the shell casings

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 found there at the incident location?

2 A: All nine millimeter.

3 (WHEREUPON, there was a pause in the questioning as the
4 videotape was played and then stopped.)

5 MR. TUCKER: Stop there.

6 BY MR. TUCKER:

7 Q: Now again, this is a discussion about what happened when
8 the door first opened up?

9 A: Uh-huh.

10 Q: Now, when you said he was on the money, what were you
11 referring to?

12 A: The sketch, everything, all the details about the door.

13 Q: And he indicated that the sketch looked like himself? He
14 even admitted that?

15 A: Yes.

16 (WHEREUPON, there was a pause in the questioning as the
17 videotape was played and then stopped.)

18 BY MR. TUCKER:

19 Q: Was there any conversation after that about anything
20 relevant to what went on?

21 A: I don't think so. I don't think there was.

22 Q: Okay.

23 MR. TUCKER: If you could put that down?

24 MR. DEBERRY: Your Honor, can we approach just a second?

25 THE COURT: Sure.

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 (WHEREUPON, a bench conference was held in the presence
2 of the jury but out of the hearing of the jury off the
3 record, after which the proceedings continued as
4 follows.)

5 THE COURT: All right. Members of the jury, let's take a
6 15-minute break and we'll be back with you at that time.

7 (WHEREUPON, the jury exited the courtroom at 2:33 p.m.)

8 (WHEREUPON, there was a pause in the proceedings for the
9 defendant and his counsel to confer.)

10 (WHEREUPON, a bench conference was held off the record.)

11 (WHEREUPON, there was a break in the proceedings from
12 2:36 p.m. until 2:39 p.m.)

13 THE COURT: Go ahead and bring them on out.

14 THE BAILIFF: There's some in the bathroom, Your Honor.

15 THE COURT: Okay. Just whenever they're ready.

16 (WHEREUPON, the jury entered the courtroom at 2:41 p.m.)

17 THE COURT: All right. You may continue.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. TUCKER:

20 Q: Investigator McFadden, after this interview -- which
21 occurred on the 11th; is that correct?

22 A: Correct.

23 Q: What, if anything, occurred after the interview?

24 A: Warrants were obtained for Reginald.

25 Q: I understand. After that in terms of the investigation,

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 was there anything by way of a follow-up?

2 A: Oh, yes. We -- we did take Peterson out to the scene --
3 back to the scene.

4 Q: Okay. Now again, we'll walk back through the process.
5 On the 23rd of April, 2013, you indicated that you picked up
6 Mr. Peterson and you and Investigator Collins did what?

7 A: Took him back to the location incident scene.

8 Q: Now, in terms of -- since you were going to be talking
9 about the case and getting some information from him, again
10 did you go through the same process in terms of Miranda
11 warnings that you did on the first two previous occasions when
12 you spoke to Christopher Peterson?

13 A: Correct. We did.

14 Q: Okay. And again, I want to show you and ask you if you
15 recognize it?

16 A: Correct. That's the Miranda form we did on that day.

17 Q: Okay. And again, is it substantially the same or exactly
18 the same as the first two that you did?

19 A: Correct.

20 MR. TUCKER: And, Your Honor, at this time, I would ask
21 that it be admitted as evidence.

22 THE COURT: Any objections?

23 MR. DEBERRY: No objection, Your Honor.

24 THE COURT: State's Number 149 in evidence without
25 objection.

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 (WHEREUPON, State's Exhibit Number 149, a Miranda form
2 dated 4/23/2013, was admitted into evidence.)

3 MR. TUCKER: Okay.

4 BY MR. TUCKER:

5 Q: Now, the purpose of this particular outing, for want of a
6 better description, was to kind of go out and look at these
7 places firsthand that he had told you about during the April
8 11th statement?

9 A: Correct. Correct.

10 Q: Now, if I could, I'm going to --

11 MR. TUCKER: Your Honor, if he could step down for a
12 moment?

13 THE COURT: Sure.

14 (WHEREUPON, the witness complied.)

15 (WHEREUPON, State's Exhibit Number 136 was displayed for
16 the jury.)

17 BY MR. TUCKER:

18 Q: Now, when he was giving the statement, he mentioned that
19 he and Reginald Johnson had parked a distance away from the
20 incident location, which is Apartment E; correct?

21 A: Correct.

22 Q: Were you able to get him to take you to where that was?

23 A: Yes. The incident location, again, is right here. And
24 he was trying to explain to us what they did at the incident
25 location. They called --

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 Q: Is there a pointer right there? I want to move back --

2 A: I'm sorry.

3 Q: -- so we can get everybody involved here.

4 A: The incident location, again, was here. They -- he was

5 trying to explain in the statement about where he parked and I

6 saw him draw it. So that day, he could take us and walk us

7 through it, and they parked over here --

8 Q: Okay.

9 A: -- at this corner.

10 Q: Okay. And you were able to verify that with him in the

11 car with you?

12 A: Correct.

13 Q: Now, in terms of the statement -- and I'm assuming y'all

14 had him recreate his steps from when he parked and went to the

15 apartment?

16 A: Yeah. We actually got out and we walked --

17 Q: Okay.

18 A: -- across the complex.

19 Q: Okay. And he took you on the exact same route?

20 A: Yeah. He said it was the exact same route they took --

21 Q: Okay.

22 A: -- as he explained it.

23 Q: All right. Now, he indicated that -- when they left, did

24 he show you which way they went back to the car?

25 A: He said he -- that he went this way back towards the car

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 and Reginald went across the parking lot.

2 Q: Okay. And, of course, this again was according to Mr.
3 Peterson?

4 A: Correct.

5 Q: All right. Did anything else occur on that particular
6 day with regards to him showing you where he parked and where
7 they went?

8 A: No. We -- no. I mean he went back over the statement
9 about going up to the door and him knocking on the door saying
10 his name. We walked back through the whole scenario.

11 Q: Okay.

12 A: Yeah.

13 Q: So this was again pretty much what he had told you on the
14 11th?

15 A: Yeah, in the video.

16 Q: Okay. After that after you talked to him, what, if
17 anything else, did you do in terms of the investigation?

18 A: We identified Reginald Johnson at that point. We finally
19 were able to identify Reginald Johnson.

20 Q: Okay. And was he picked up?

21 A: Yeah. Shortly after.

22 Q: Okay. And when he came in, did he give you any kind of a
23 statement?

24 A: No. We brought him in, gave him Miranda warnings. He
25 said it's a very serious crime and he would like to have his

THOMAS MCFADDEN - DIRECT BY MR. TUCKER

1 lawyer present before he said anything.

2 Q: Okay. And did all questioning with regards to him stop
3 at that point?

4 A: Yeah. Everything stopped.

5 Q: Having been in proximity to Mr. Johnson when that
6 occurred, how tall was he?

7 A: He was -- he was a little taller than Peterson, about
8 5'8" like I said.

9 Q: And how would you describe his build in relationship to
10 Mr. Peterson?

11 A: He wasn't as thick as Peterson, but he had decent size to
12 him. But not as thick as Peterson was.

13 Q: Okay. If you saw the two standing next to each other,
14 would you be able to pick one out as more stocky than the
15 other?

16 A: Yes. Yes.

17 Q: Now, also I want to draw your attention to April the 10th.
18 Did you notice anything in addition to the -- him walking with
19 a slight limp about Mr. Peterson's appearance that kind of
20 caught your attention?

21 A: The gold teeth in his mouth.

22 Q: Okay.

23 A: Yeah.

24 Q: And you distinctly remember seeing those on the 10th?

25 A: Yes.

26

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 Q: Okay.

2 MR. TUCKER: Your Honor, I believe those are all the
3 questions I have at this point.

4 THE COURT: All right. Cross?

5 CROSS-EXAMINATION

6 BY MR. DEBERRY:

7 Q: Good afternoon.

8 A: Good afternoon.

9 Q: How you doing?

10 A: Great.

11 Q: Good. Thank you for being here.

12 A: You're welcome.

13 MR. DEBERRY: Give me just a second.

14 Q: You said you arrived after most people had already gotten
15 to the scene that night?

16 A: Yes, I did.

17 Q: Okay. You were in here when Deputy Pate took the stand
18 and said that he spent some time on the scene with Mr. Lunn
19 before he was transported?

20 A: Yes. I heard him say that.

21 Q: All right. A GSR kit couldn't have been done at that
22 time?

23 A: No. They was -- he -- they was probably working on him
24 at that time. They wouldn't -- they wouldn't have touched
25 him. Usually at most scenes, if they're able to bag them,

THOMAS MCFADDEN - CROSS BY MR. DEBERRY.

1 we'll tell them bag the hands and let -- let us forensics take
2 care of it later.

3 Q: Uh-huh.

4 A: But I guess the shape he was in he couldn't have been.
5 He was shot, especially in the -- in the upper torso. They
6 wouldn't have been able to hold him around and let somebody
7 bag his hands. They were trying to save his life.

8 Q: All right. And where was Lunn? What's your
9 understanding of where Lunn was?

10 A: If I showed you on the sketch again? Do you want to hold
11 it back up?

12 Q: Okay. You stay right there.

13 A: Okay. Again, the incident location is here.

14 Q: Uh-huh.

15 A: Lunn ran out. When he ran out, he was here at the edge
16 of this gated community by the bushes.

17 Q: Is there a gate up here?

18 A: No. When they keep saying gate around -- you see this
19 location? There's a gate all the way around. There's a bush
20 there. So that's why they kept referring near the gated
21 community.

22 Q: In the CAD and EMS report, they say he was up around the
23 gate.

24 A: The gate is going to be this. Y'all are talking about
25 the entrance. That was the gated entrance. He wasn't at the

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 entrance. He was here.

2 Q: Well, the other deputies also said he was up right here.

3 A: I saw them saying the gate, but not there. Here. That's
4 about -- when they say a hundred yards, that would be more
5 than a hundred yards.

6 Q: Okay.

7 A: This right here was where he was at.

8 Q: Did you do any investigation or did you look at that spot
9 where he was?

10 A: No. When we came out, it was days later when we went out
11 there. There wasn't nothing out that morning.

12 Q: You didn't go out there that night?

13 A: No. When I circled out, I came out and they told me the
14 shape they were in and I went back to the hospital because I
15 thought I could get a statement or something just in case they
16 did die, just find out what was going on --

17 Q: Okay.

18 A: -- before he died. They said how bad he was.

19 Q: Y'all didn't -- so when was the next time you returned to
20 the scene?

21 A: We preserved it. We preserved it. Probably the next
22 day, me -- me and Collins and some other people went out
23 because they roped it off and preserved it so we could go back
24 to see it.

25 Q: Now, let me ask you something. You talked -- there's

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

- 1 been some talk about a line-up.
- 2 A: Yes.
- 3 Q: And you were showing it to Reginald Johnson or -- I mean
- 4 not Reginald Johnson, but you were showing it to Marcus
- 5 Lisbon; is that right?
- 6 A: Correct.
- 7 Q: And he was the individual that was supposedly there?
- 8 A: Correct.
- 9 Q: Okay. And he didn't positively identify Christopher
- 10 Peterson, did he?
- 11 A: No. He just said don't rule him out.
- 12 Q: Okay. He didn't positively identify him?
- 13 A: No. He never -- he said just don't rule him out.
- 14 Q: Now, isn't it true that you showed him a line-up with
- 15 Reginald Johnson in it?
- 16 A: There was a line-up with Reginald, but I think that we
- 17 showed that to Chris.
- 18 Q: You sure?
- 19 A: I'm --
- 20 Q: In your report, it says that you showed it to Marcus
- 21 Lisbon.
- 22 A: The -- we may have, but I'm pretty sure I think we showed
- 23 one to Chris as well to make sure we had the right Reggie. I
- 24 would have to look back at the line-up if they had it.
- 25 Q: Are you disagreeing that your report says you showed it

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 to --

2 A: No, I'm not. I ain't disagreeing. I don't remember
3 showing it to him. That was two-and-a-half years ago.

4 Q: Do you also not remember that Marcus Lisbon picked out
5 Reginald Johnson absolutely?

6 A: As Fred's brother. That was the only one we showed --

7 Q: No. As the shooter or as the person that was --

8 A: No. The only way we would have showed it to him to find
9 out was he Fred's brother. That's the only other way we would
10 have showed him a line-up because nobody saw the second guy.
11 So that's why when you said show it to him, he never saw him.
12 But you'll see it in the statement. They got a glimpse of the
13 second guy.

14 Q: Well, won't you agree that there could be an issue about
15 who the first guy and who the second guy is?

16 A: No. He told us who the first guy was.

17 Q: How about the man with the gun?

18 A: He told us he was the first guy.

19 Q: So are you saying it's not in your report that you showed
20 Marcus Lisbon a line-up with Reggie Johnson in it and he
21 picked him out?

22 A: I'm not saying that, but I said we didn't show him as the
23 shooter. That we showed him -- we knew -- he mentioned
24 Gangster Fred in his statement. We showed him. Was that his
25 brother? If that the case, we showed him a line-up and it had

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 to be for that, not as a shooter. He said he didn't see the
2 second guy. Chris said he was the first guy through the door.

3 MR. DEBERRY: I beg the Court's indulgence for just a
4 minute.

5 Q: Is this the line-up?

6 A: Yes.

7 Q: All right. And it's circled by Reginald Johnson?

8 A: Yes.

9 Q: Thank you.

10 A: What's the name on the bottom?

11 Q: I can't read it.

12 A: Bring it. I'll show -- if you bring it, I'll identify
13 the subject.

14 Q: It looks like Christopher Peterson's name on it.

15 A: It got Chris' name on it?

16 Q: Whose name is this?

17 A: The first name is Investigator Chad Collins. The second
18 name Investigator Thomas McFadden. The last name is
19 Christopher Peterson. We showed him to identify the co-
20 defendant who he said was with him.

21 Q: Did you ever show this line-up to Marcus Lisbon?

22 A: We -- he didn't see the second person. They just got a
23 glimpse of the second guy. I think the only way we would have
24 shown it to him, we would have said do you know who Gangster
25 Fred's brother is. That's the only reason we would show it to

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 him because everybody said he got a glimpse of the second guy
2 there at the scene.

3 Q: Tell me who is Gangster Fred?

4 A: Gregory Johnson. That's Reginald's brother.

5 Q: And you had information to believe that Gangster Fred and
6 the victim who lost his life in this case, Mr. Luther Lisbon,
7 had a problem going on?

8 A: They said there was some kind of disagreement. That was
9 the information that was given.

10 Q: And you charged Gangster Fred's brother in this murder?

11 A: Correct.

12 Q: Okay. And for two-and-a-half years or approximately two
13 years, did -- did you and the State have a deal with
14 Christopher Peterson to testify at this trial against Reginald
15 Johnson?

16 A: Yeah. The information that he gave, we told him he would
17 be a State witness.

18 Q: So you believed him?

19 A: That was the only story we had.

20 Q: Also --

21 A: If you get my statement, I said, you know, he going to
22 talk at some point in time.

23 Q: All right.

24 A: So that's true because we already knew there was holes in
25 that statement. We knew the first person at the door was

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

- 1 armed. That's why I asked him that question. We didn't -- we
2 didn't know what Reggie was going to say because Reggie got
3 there and said I'd rather have my lawyer with me.
- 4 Q: Well, let's talk about --
- 5 A: For two years -- two-and-a-half years he never spoke.
- 6 Q: Okay. And then it was time for his trial; right?
- 7 A: Correct.
- 8 Q: And he decided he'd give a statement against Christopher
9 Peterson?
- 10 A: He decided he going to tell what happened. We said we
11 wanted to hear it. He said what are you going to do. We
12 thought he wasn't going to put himself at the scene because
13 the only reason he was at the scene was because of Christopher
14 Peterson. He didn't even have to put himself there.
- 15 Q: Okay. So for two-and-a-half years, you were going to use
16 Peterson's statement --
- 17 A: Because he's the only one that told a story.
- 18 Q: -- against Reggie Johnson?
- 19 A: Correct.
- 20 Q: Okay. Well, let me ask you this. You talk about what
21 you knew. Are you confident that Marcus Lisbon is the one
22 that answered the door?
- 23 A: Confident.
- 24 Q: What makes you believe that?
- 25 A: His story. Everything could -- well, except Luther

THOMAS MCFADDEN -CROSS BY MR. DEBERRY

1 couldn't tell his story, but with David and him the only two
2 in there and with Peterson -- with his statement, we knew that
3 was Marcus. Three people.

4 Q: You also understand that Marcus himself gave two
5 statements that says he wasn't in the apartment when it --
6 when the shooting started?

7 A: If he did, he didn't give that to me.

8 Q: He gave one to Investigator Collins and gave one to
9 Investigator Cain.

10 A: Well, I guess if you know what the scene was and what
11 might have been in the apartment, he might not want to put
12 himself there, but to me he didn't give that. He said he
13 answered the door.

14 Q: All right. And you're the lead investigator in this
15 case?

16 A: No. Investigator Collins is lead. I was assisting on
17 this. We flip every -- every homicide.

18 Q: And so you don't -- you're not familiar with this entire
19 case then?

20 A: No, I'm familiar with it.

21 Q: And you weren't -- you never knew that Lisbon put --
22 Marcus Lisbon puts himself outside when this thing happened?

23 A: When we spoke to Investigator Cain the first night of it,
24 she was, like, he wasn't cooperative as much then, the first
25 night in the car.

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 Q: He wasn't cooperative?

2 A: No, not with her.

3 Q: When he came to speak to you, was he cooperative with
4 you?

5 A: Correct.

6 Q: Mr. Lisbon -- Marcus Lisbon was?

7 A: Yes.

8 Q: Didn't he miss an appointment with you one time?

9 A: Yeah. He -- he had to have surgery. They realized the
10 leg wasn't just injured; it was broken.

11 Q: Oh.

12 A: He jumped off the balcony.

13 Q: And do you ever recall him making a statement that said
14 that he wanted his -- his attorney?

15 A: I can't recall. I'd have to look at his statement. I
16 don't recall.

17 Q: Now, is it your theory -- you were in here when Mr.
18 Tucker made his opening statement -- that a gun went off at
19 the struggle -- with the struggle at the door and that's what
20 went through the door -- the front door?

21 A: Correct.

22 Q: Can you explain the trajectory on that theory?

23 A: Well, when -- you'll see when Luther gave his statement,
24 the first thing he saw when he saw the gun he --

25 Q: Who?

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 A: Correction. Marcus. When he gave his statement, he
2 knocked it up -- knocked -- he said he knocked the weapon up.
3 When he saw it, he went for the weapon. The only theory I
4 thought -- when he hit that weapon, the first round fired off.
5 And you'll hear the statement from the other co-defendant as
6 well. When the fired shot went off --

7 Q: Wouldn't it make sense that if there was a struggle over
8 a weapon between two individuals that the muzzle would be
9 pointed up?

10 A: It just depends. You got to be in that situation. It
11 depends.

12 Q: Well, it would be strange for it to get angled down,
13 wouldn't it?

14 A: They said it went down at some point in time.

15 Q: Sure it did.

16 A: Okay.

17 Q: It did. But now, wouldn't it make sense that Reginald
18 Johnson was standing behind Christopher Peterson and shot over
19 his back trying to kill Luther Lisbon?

20 A: And shot Chris on the leg over his back?

21 Q: I don't know what's your theory. I was going to ask you
22 about that in a little bit. I'm not --

23 A: No. That wasn't my theory. When he -- when he said
24 that, that's why in that statement you saw me say, Chris,
25 listen to me. If you had a gun --

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 Q: You said what now?

2 A: That I told him listen to me in the statement. You heard
3 me then. Tell the truth. This is your time to tell us if you
4 had a gun. That's why I told him that. And that might --
5 their intention might not have wasn't going in there and
6 shooting and firing off, but when the altercation --

7 Q: Have you ever considered -- what's your understanding of
8 how -- where Luther got shot?

9 A: Luther was -- when they came in -- well, we don't have
10 the photos up.

11 Q: I can show it to you.

12 A: Yes. I'll show you the longer chair they were sitting
13 in.

14 Q: I can just show you the sketch of the apartment.

15 A: Okay.

16 Q: State's Exhibit 2.

17 A: Okay.

18 Q: I guess if you'll come down this way, that might help.

19 A: All right. I'll show it to the jury.

20 (WHEREUPON, the witness exited the witness stand.)

21 A: When they first come in the apartment, this is the door.
22 He knocks at the door. A struggle takes place in this door.

23 Q: Wait a minute. I think this is the door.

24 A: Oh, okay. That's a -- that's not opening a door. That's
25 the apartment door. The struggle takes place at the door.

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 They're sitting here. Luther is sitting here. They thought
2 Luther jumped up and ran to the back evidently when the shots
3 went off. I'm not saying -- when the shots went off, he must
4 have got struck during that first altercation. The first shot
5 could hit him because the other witness thought he ran toward
6 the hallway. He could have gotten up and fell toward that
7 way. So that was my theory that he might have caught it when
8 they first -- when the whole incident took off at the door.
9 He could have gotten hit then.

10 Q: Where was Luther? Where was Luther when everybody
11 responded?

12 A: They said when they got there he was laying here in the
13 doorway.

14 Q: In the doorway?

15 A: Yeah. And you'll hear Marcus give a statement as well
16 that he came back and he was holding his side --

17 Q: Let's just -- let's wait and hear from Marcus.

18 A: Okay.

19 Q: Is there not a -- when Christopher tells you that he's
20 struggling with the man that opened the door and then shots
21 start going off and the man he's struggling with says, "I'm
22 hit," does that not give you any indication that that was
23 probably Luther Lisbon?

24 A: No. Because Marcus was clearly fighting him at the door.
25 They were still sitting in the couch.

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 Q: Marcus said he wasn't even inside.

2 A: Marcus said he was inside.

3 Q: Later.

4 A: He said he was inside.

5 Q: Well, doesn't it make sense though that if Christopher is
6 struggling with the man at the front door, one round goes over
7 his back trying to get him, and the next round hits Luther?

8 He says, "I'm shot." And Christopher is shot too, and he says
9 he just ran. That's believable?

10 A: No. The theory what they --

11 Q: You believed it for two years, didn't you?

12 A: No. Never.

13 Q: All right.

14 A: Investigator Collins didn't believe it either.

15 Q: So you were going to use a statement to --

16 A: If Reggie didn't talk -- if Reggie never came up and
17 talked, we was going to have to go with his statement. Reggie
18 was going to have to go with whatever he said.

19 Q: Are you telling this jury that you were going to
20 participate in a conviction for murder --

21 A: Yes, sir.

22 Q: -- against somebody who you believed didn't do it?

23 MR. TUCKER: Your Honor, I would object to this line of
24 questioning. I think he's already answered that in terms of
25 how the prosecution was proceeding and his investigation was

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 proceeding.

2 THE COURT: I'm going to overrule it. You can continue.

3 MR. DEBERRY: Thank you.

4 BY MR. DEBERRY:

5 Q: Is that your statement?

6 A: That's my statement. If one defendant cooperates, if
7 that's his story, that's what we'll go with if he's
8 cooperating. The other one don't cooperate, he got his day in
9 court. He'd have had his day in court just as well.

10 Q: Do you believe that's reckless?

11 A: No. That's not reckless. That's the system. He has his
12 right.

13 Q: So you have a right to remain silent in this system and,
14 if you do, you're going to be prosecuted for murder?

15 A: Yes. If the system holds up like it should, he wouldn't
16 be prosecuted. As long as it -- as long as it -- as long as
17 the system do what he said. That's his right not to speak and
18 say anything what happened.

19 Q: But he was going to face trial?

20 A: He didn't. He came forward.

21 Q: All right. What was the angle -- did the bullet pass
22 through Mr. Luther Lisbon?

23 A: Yes.

24 Q: And do you -- are you familiar with which way it passed
25 through?

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 A: I think it was a downward trajectory.

2 Q: Downward?

3 A: Yeah.

4 Q: From right to left?

5 A: Yes. Correct.

6 Q: And -- and up here and out the back?

7 A: Yeah. I think it hit him in the liver area.

8 Q: If I -- if I could -- if you'll step down?

9 (WHEREUPON, the witness complied.)

10 Q: And I'll just demonstrate. I don't want to -- I'm not a
11 -- I'm not hurting you or anything. But if you and I -- if
12 I'm Christopher Peterson --

13 THE COURT: Why don't you turn sideways so the jury can
14 see?

15 MR. DEBERRY: Okay.

16 BY MR. DEBERRY:

17 Q: If I'm Christopher Peterson and you are Luther Lisbon --

18 A: Uh-huh.

19 Q: I understand you don't believe that -- that theory. I
20 come and knock on the door. Somebody says, "Who is it?" I
21 say, "I'm Buck." The door opens and you and I begin to
22 struggle.

23 A: Uh-huh.

24 Q: Okay? All right. Now, if the door opens right behind
25 you --

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 A: Uh-huh.

2 Q: -- and you're back is to the inside of the apartment --

3 A: Uh-huh.

4 Q: -- and I'm facing out -- my back is facing outside of the
5 apartment like it would have been had somebody opened the door
6 and two people met in the doorway --

7 A: Uh-huh.

8 Q: -- and we begin to struggle, okay? And there's a shooter
9 behind me, who is the brother of Gangster Fred, who has a
10 problem with Luther Lisbon.

11 A: Uh-huh.

12 Q: And he wants to kill you and he shoots over my shoulder,
13 number one --

14 A: Uh-huh.

15 Q: -- and misses and it goes through the door. And then if
16 you and I turn at any angle or if we turn this way and he
17 shoots again and it comes in your right side and you and I are
18 engaged and it comes out of your back -- if you'll just turn
19 right around this way? This way. I know it's confusing, but
20 the bullet went in here and came out back on this side; right?
21 Do you agree with that?

22 A: From -- from right to left.

23 Q: Okay. It went in from right to left?

24 A: From right to left.

25 Q: Your right?

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

- 1 A: Yeah.
- 2 Q: From right -- from his right to my left is confusing. It
3 comes out this side?
- 4 A: Yeah.
- 5 Q: But if you and I are engaged, my right knee could be
6 right here?
- 7 A: Correct.
- 8 Q: And the bullet went in Christopher Peterson's right knee
9 on the inside; right?
- 10 A: Uh-huh.
- 11 Q: All right. You can take the stand.
- 12 (WHEREUPON, the witness complied.)
- 13 Q: We watched the video earlier. Christopher Peterson
14 signed the Miranda forms, which is a constitutional -- you
15 know, your right to remain silent, you know, United States law
16 that governs, you know, questioning of people in custody, and
17 he decided he'd tell you the truth. Now, the first day he
18 didn't tell you the truth, did he?
- 19 A: Nope.
- 20 Q: Now, it was perfectly clear that the second day he came
21 and he initiated the contact with you on his own?
- 22 A: Correct.
- 23 Q: You didn't go get him and ask him to talk to you or
24 anything like that?
- 25 A: No.

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 Q: He came back on his own. And when he signed that form --
2 and we watched it on video -- what hand did he sign it with?

3 A: I would have to go back and look. I think he might have
4 signed with his right hand.

5 Q: His right hand? He --

6 A: Yes.

7 Q: -- signed with his right hand? All right. How would a
8 right-handed individual shoot himself? Is it your theory he
9 shot himself?

10 A: No. During the struggle, he was shot.

11 Q: Well, who shot him?

12 A: He was firing. I don't know which way. When he -- when
13 they struggled -- he struggled twice at the door with two
14 victims. So at some point in time, somebody --

15 Q: He shot himself?

16 A: -- pushed the gun down. He had to -- it had to happen --

17 Q: Somebody's pistol fell down?

18 A: I said at some point in time one of them -- they
19 struggled. Both victims said they fought with him at the door
20 with the gun. At some point in time, it had to be pushed down
21 to be shot in the leg at some point in time.

22 Q: Unless it came out of Luther Lisbon and went into his
23 leg?

24 A: Or it could have went out of David Lunn and went into his
25 leg. See, you got -- we got a bunch of theories the way it

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 happened, but he struggled.

2 Q: How likely is it for a right-handed shooter to shoot
3 himself inside of the right knee?

4 A: If you're struggling, it's a struggle. You've got to
5 remember the struggle because I'm going to push it down.
6 You're not shooting me. I'm not letting you get it up. I'd
7 rather get hit in my leg or my foot too. I'm going to hold
8 that weapon down if I'm struggling with you, not up.

9 Q: Well, nobody says that they -- they struggled over a gun?

10 A: You'll hear when they testify.

11 Q: Okay. All right. But you do agree the angles and the
12 situation -- and the other thing that I'd like for you to
13 explain is that Luther Lisbon by all accounts passed away in
14 that doorway. By one account, he passed away outside or he
15 was outside on the breezeway.

16 A: No. The doorway. The breezeway was somebody else. The
17 doorway. He was inside.

18 Q: He was inside the doorway?

19 A: Inside the apartment.

20 Q: Okay. And there's -- and do you have information to
21 believe that he was on this couch and that he ran this way
22 when he got shot?

23 A: According to what -- they got a glimpse. When the shots
24 started, they thought he turned. Lunn thought he turned like
25 he was going towards the bedroom.

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 Q: Uh-huh.

2 A: Lunn said he tried to dodge -- well, you'll hear what he
3 said.

4 Q: There's absolutely zero -- won't you agree with me that
5 there's zero physical or forensic evidence at all that
6 indicates that he got shot anywhere other than where he was
7 laying?

8 A: No, but he -- with the blood -- he wouldn't have had a
9 bunch of blood flow. If you watch him, you can see -- he'll
10 explain to you he wouldn't see a bunch of blood flow from
11 him when he got hit.

12 Q: Who will explain?

13 A: His brother will tell you what -- he was talking to him
14 when he came back in.

15 Q: Okay.

16 A: And what he was doing.

17 Q: So under that theory, he ran -- he tried to run away --

18 A: That -- that what --

19 Q: -- but at some point in time he ran back to the door?

20 A: He may have. David thought he went down the hallway. He
21 may have failed. That's what I was saying when I explained to
22 you. He could have turned and thought he went to the door.
23 He could have dropped right then. He could have then.

24 Q: So it makes perfect sense that he was the one struggling
25 at the door with Christopher Peterson?

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

- 1 A: No. You said yourself he's right-handed. He came
2 through the door with his right hand. If I push it down, the
3 first -- the angle going towards that couch." He could have
4 got it right there. I'm not saying one of the guys walked
5 over to him and shot him.
- 6 Q: There's no -- there's no bullets recovered inside. You
7 understand that, don't you?
- 8 A: No. Forensics said they never recovered any bullets in
9 there.
- 10 Q: And the bullet passed through Mr. Lunn -- I mean Mr. Lunn
11 and Mr. Luther Lisbon?
- 12 A: Correct.
- 13 Q: It's somewhere?
- 14 A: It's somewhere.
- 15 Q: You think it's in Mr. Peterson's leg?
- 16 A: That's a theory. There's one in his leg. It slowed
17 down. Something slowed it down.
- 18 Q: And you don't -- and it's your theory that it's not
19 strange to you that wound up by his hand?
- 20 A: What?
- 21 Q: That his -- that the inside of his right knee was shot
22 with his right hand?
- 23 A: Not if everybody's saying they struggled with the gunman
24 at the door. The first person through the door, no.
- 25 Q: Now, you know from being lead investigator in this -- in

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 this crime that there was an eyewitness that saw two people
2 getting across the parking lot. One had a gun in his left
3 hand; right?

4 A: Correct.

5 Q: Okay. Is Reggie Johnson left-handed?

6 A: I would have to check and see. I don't think we got a
7 statement from Reggie to see left or right.

8 Q: Is Marcus Lisbon left-handed?

9 A: You would have to ask Marcus.

10 Q: Is David Lunn left-handed?

11 A: You would have to ask them two. I didn't see.

12 Q: Not part of your investigation?

13 A: Well, you'd have to see. I'm not sure.

14 Q: Would that be good information to know?

15 A: Yeah. You would have to look on the statements. You'll
16 tell when they signed their paperwork.

17 Q: By all accounts in your entire investigation, it seems to
18 me that this whole situation took place in a matter of
19 seconds.

20 A: Correct.

21 Q: Would you agree with that?

22 A: Correct.

23 Q: All right.

24 A: The shooting part of it.

25 Q: Now, there was a new indictment in this case in April of

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

- 1 this year?
- 2 A: Correct.
- 3 Q: And what was that indictment for?
- 4 A: Armed robbery.
- 5 Q: Armed robbery? So you never believed this was an armed
- 6 robbery until April of this year?
- 7 A: No. We believed that, but we only had one statement, one
- 8 thing to support it. We saw the trail of money. We know
- 9 something was taken.
- 10 Q: Okay.
- 11 A: But we couldn't -- that was just that one statement we
- 12 had from Christopher Peterson.
- 13 Q: Well, how -- if it was an armed robbery, wouldn't you
- 14 agree -- how many armed robberies have you investigated?
- 15 A: During this 18 years, there ain't no telling.
- 16 Q: A lot?
- 17 A: A lot.
- 18 Q: Most of the time in an armed robbery, don't -- isn't it
- 19 common that the perpetrators announce what they're there for?
- 20 A: Yes. Usually they'll come in and say give it up or --
- 21 Q: Do they usually knock on the door and tell them who they
- 22 are?
- 23 A: Yeah. To get in -- to gain entry. Plenty of them knock
- 24 on the door just to gain entry.
- 25 Q: And tell them their name?

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 A: If they don't know them.

2 Q: Okay.

3 A: Yeah.

4 Q: And out of all of that, the chaos that ensued I mean, it
5 seems unlikely that it was an armed robbery to me. I don't
6 understand, and there was so much money left and --

7 A: There was a trail leaving. So we know stuff was taken.

8 Q: Uh-huh.

9 A: We know they took money. We figured there was -- there
10 probably could have been drugs taken, but we know money was
11 taken. There could have been something else taken, but only
12 we knew money. There was a trail of money.

13 Q: How do you know money was taken?

14 A: We could see the money that was going on the path by that
15 apartment.

16 Q: All right. You don't know whose it was though, do you?

17 A: No.

18 Q: All right. Did you find any money by a fence?

19 A: That -- when they spoke of that apartment complex, yeah.

20 Q: Uh-huh.

21 A: By the little wooded trail, yeah.

22 Q: And did the -- is it a wooded trail or a fence?

23 A: There's a wood -- there's part woods and they keep
24 speaking of a fence because there are houses back there and
25 they block the apartments off. The houses have fences. So

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 that's why they keep speaking of this fence.

2 Q: Okay.

3 A: There's a woods, a little trail. There's fences because

4 there are houses on the other side.

5 Q: Okay. You were in here when Deputy Gifford testified?

6 A: Correct.

7 Q: And he said that he found some \$20 bills right beside a

8 fence where it looked like somebody jumped the fence?

9 A: That there he's speaking of when he saw that 20 on the

10 ground.

11 Q: Do you think that same area is the pictures we know about

12 with the \$20 bill?

13 A: Correct. If they would have turned the camera further,

14 you'd have saw the little ditch line and the little fence

15 area.

16 Q: Well, the way he said it, it sure made you feel like the

17 money was laid right beside the fence.

18 A: No. I know. I know what you're talking about.

19 Q: Were you there?

20 A: I went back. I told you I went back to the scene, yeah.

21 Q: Before they picked up the money?

22 A: No. When they showed me where it was. In the picture --

23 when you got the picture, they say --

24 Q: Right. There's just one place that they showed you with

25 money?

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 A: Yeah.

2 Q: And not two?

3 A: No.

4 Q: All that has been testified to and it sure sounds like
5 there is more than one place where there's money?

6 A: I just knew of one and the rest in the house.

7 Q: Okay. What did you learn about a dog search?

8 A: They said there were dogs on the ground --

9 Q: All right.

10 A: -- during that night.

11 Q: Is that all you know?

12 A: That's all I knew. I don't think nothing was developed
13 from it. I never heard anything being developed from it.

14 Q: Now, did you talk to the K-9 operators?

15 A: No.

16 Q: Or handlers?

17 A: No. I didn't talk to them.

18 Q: Have you seen their report?

19 A: No. I didn't examine their report.

20 Q: Okay. It's into evidence as State's Exhibit Number 137.

21 MR. DEBERRY: May I approach, Your Honor?

22 THE COURT: Sure.

23 BY MR. DEBERRY:

24 Q: The third page of that report has a map on it?

25 A: Correct.

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

- 1 Q: Okay. And they got an X right at the Brittany Drive
2 Apartments?
- 3 A: Okay.
- 4 Q: And then they got a pen mark that goes quite a ways, by a
5 lake, and continues across a field and all the way back to
6 West Palmetto Street?
- 7 A: Uh-huh.
- 8 Q: You weren't familiar with that?
- 9 A: No. I never asked them about the trail. As far as I
10 know, they didn't develop a suspect with the trail.
- 11 Q: Right. They didn't catch anybody?
- 12 A: No.
- 13 Q: Okay. So you believe that Christopher Peterson and
14 Reggie Johnson met back at the vehicle and they left?
- 15 A: They left. They left the area.
- 16 Q: All right. Well, who -- now, the trail started where the
17 \$20 bill was; is that right?
- 18 A: I think that's what Gifford was saying. I don't think he
19 knew where the trail started. I don't know where the trail
20 started at. I guess you'd have to ask the dog people where it
21 started at.
- 22 Q: But it certainly went on for a while, didn't it?
- 23 A: Yeah. They did. I don't have a clue.
- 24 Q: And do you know at the very end of the trail they found a
25 cell phone?

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 A: No. There was a phone -- no, no, no, no, no. There
2 wasn't no cell phone at the end of the trail, was there?

3 Q: Where was the phone?

4 A: A lady -- a neighbor called about a phone being in his
5 yard in the neighborhood.

6 Q: Uh-huh.

7 A: Yeah. That was --

8 Q: And that's where the dogs came through?

9 A: Yeah. That's what area they -- when they crossed near
10 the fence, it must be in that area over there. Yeah, not
11 right at --

12 Q: Where was the neighbor?

13 A: Maybe Arrowood. Investigator Collins went out and
14 collected it. He'll be able to tell you more about that.

15 Q: All right.

16 A: Yeah.

17 Q: Whose phone was it?

18 A: Investigator Collins would be able to tell you more about
19 the phone.

20 Q: You don't know?

21 A: Huh-uh.

22 Q: And you don't know if there was a phone found at the very
23 end of the trail?

24 A: Nope.

25 Q: Throughout your investigation and when I read the way you

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 interrogated all the witnesses and everybody in this case and
2 you were doing your job, it seemed like you -- you kept asking
3 about a third person. That's true; right?

4 A: Correct.

5 Q: Why did you think there was a third person?

6 A: Because of the information about the Gangster Fred
7 individual, that's why we were asking. We wanted to make sure
8 he wasn't behind what took place. Was he involved? Did he
9 initiate it? So that's why that's the third person we were
10 referring to. Was he the reason they went there? And no one
11 indicated he was. So we never developed any information
12 saying he initiated all that.

13 Q: Has anything happened since -- since this incident in
14 retaliation against Gangster Fred?

15 MR. TUCKER: Objection, Your Honor.

16 THE COURT: Y'all come on up and let me talk to you.

17 (WHEREUPON, a bench conference was held in the presence
18 of the jury but out of the hearing of the jury as
19 follows.)

20 THE COURT: All right.

21 MR. TUCKER: Now, this is the very matter we spoke of.

22 THE COURT: Tell me about it now that I know a little bit
23 about what's going on. Why do you want to bring it in?

24 MR. DEBERRY: Well, David Lunn and Marcus Lisbon are
25 charged with attempted murder on an attempt to shoot the house

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 of Gangster Fred. It is the brother --

2 THE TUCKER: Of the parents.

3 MR. DEBERRY: Who is the brother of Reginald Johnson, who
4 is a co-defendant in this case.

5 THE COURT: And that's that got to do with this case?

6 MR. DEBERRY: Because Gangster Fred was retaliated
7 against. And there's evidence in this record that Gangster
8 Fred had a --

9 THE COURT: Gangster Fred didn't like Luther Lisbon.

10 MR. DEBERRY: Right. And he --

11 THE COURT: What's there to retaliate? Luther is dead.

12 MR. DEBERRY: Luther's brother tried to go kill Gangster
13 Fred.

14 THE COURT: Who is Luther's brother?

15 MR. DEBERRY: Marcus Lisbon.

16 MR. TUCKER: That's Marcus Lisbon. He was charged, as
17 was David Lunn.

18 THE COURT: All right. Come again? Then Marcus -- what
19 do you have to say about that? Relevant or not?

20 MR. TUCKER: I don't think so, Your Honor.

21 THE COURT: All right.

22 MR. TUCKER: Again, it's almost seven months after this
23 incident. Again, it's remote in time. It's a charge. It's
24 not a conviction of any type.

25 THE COURT: All right.

THOMAS MCFADDEN - CROSS BY MR. DEBERRY.

1 MR. TUCKER: In particular, I think that all this is is
2 to muddy the water. I think its prejudicial value far
3 outweighs its probative value. We're talking different
4 victims. We're talking different defendants.

5 MR. DEBERRY: Not --

6 MR. TUCKER: And there is no correlation except the fact
7 that it was the parent of one of the victims.

8 THE COURT: It seems to me it would be relevant to assist
9 proving his theory, which is that Reginald Johnson did the
10 killing instead of --

11 MR. TUCKER: Christopher Peterson.

12 MR. DEBERRY: Absolutely.

13 THE COURT: That's what you're saying?

14 MR. DEBERRY: Absolutely.

15 THE COURT: That's your whole case?

16 MR. TUCKER: Well, under accomplice liability, Your
17 Honor, we'll get into that at the end. It will be a hand of
18 all. Both of them are equally culpable and they --

19 THE COURT: And certainly you can cross -- cross-examine
20 him --

21 MR. DEBERRY: Sure.

22 THE COURT: -- as much as you want.

23 MR. TUCKER: And also, Your Honor, in terms of Marcus
24 Lisbon and David Lunn testifying, certainly they have a Fifth
25 Amendment right against self-incrimination. Their case is

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 still pending.

2 THE COURT: Uh-huh.

3 MR. TUCKER: If you will allow a question, I think the
4 only thing that he can ask is were they charged and, you know,
5 who the victims were. Beyond that, I don't think he can -- he
6 can go -- again, he would be forcing those witnesses in the
7 unenviable position of having to defend themselves on the
8 stand where they otherwise might not want to. And again, they
9 can invoke the Fifth Amendment at that point.

10 THE COURT: How far you going with it? Are you just
11 going to ask him about it?

12 MR. DEBERRY: Yeah. I'm going to just ask him about it.
13 When we get to his witnesses, there's certainly bias and
14 motive for them to be untruthful based on they're being
15 prosecuted by this office.

16 MR. TUCKER: Well, it seems to me that would be less
17 likely for them to come in and cooperate by that theory, but
18 I'm saying if it is allowed, Your Honor, I think it can only
19 be -- it can only be offered for the limited purpose of saying
20 were you charged with this offense of -- involving these
21 victims.

22 THE COURT: And then you argue in closing as to what it
23 was, retaliation and all that stuff. Does that sound fair?

24 MR. DEBERRY: Yeah. All I want him to -- I mean I think
25 it's fair game, yeah.

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1 THE COURT: It did happen, yeah, and then you can argue
2 in conclusion.

3 MR. TUCKER: But so we're clear, he cannot go into the
4 facts underlying or any facts beyond the fact that they were
5 charged?

6 MR. DEBERRY: Well, I mean --

7 THE COURT: I think that covers it for you anyway. Just
8 say on such and such a date --

9 MR. DEBERRY: What facts are you talking about?

10 MR. TUCKER: Well, involving the charges you're talking
11 about wanting to bring up.

12 THE COURT: He's talking about the details and all that
13 stuff. I would think you could say that --

14 MR. DEBERRY: They were charged with shooting at them.

15 THE COURT: You can say that Marcus Lisbon and David Lunn
16 -- isn't it true that at a later date they went and shot up
17 the house of --

18 MR. TUCKER: Well, I think he can only ask if they were
19 charged, Your Honor. Obviously, I think to say that they did
20 it is a --

21 MR. DEBERRY: I understand that. They're not convicted.

22 THE COURT: All right. Go ahead.

23 MR. TUCKER: So we're clear, he can only ask him about
24 whether or not he knows if they were charged? Is that your
25 ruling, Your Honor?

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1 THE COURT: Yeah. I mean he's the only witness on the
2 stand.

3 (WHEREUPON, the bench conference ended.)

4 CONTINUED CROSS-EXAMINATION

5 BY MR. DEBERRY:

6 Q: Investigator McFadden, is it your understanding that
7 David Lunn and Marcus Lisbon have been charged with attempted
8 murder in retaliation of this crime?

9 A: Correct.

10 Q: And who are the victims of that crime?

11 A: I don't know the -- the people that were there.

12 Q: Well, was it the home of Gangster Fred?

13 A: The grandparents of Reginald Johnson, which is Gangster
14 Fred's --

15 Q: That's --

16 A: Yeah.

17 Q: That's Gangster Fred?

18 A: One of the co-defendants in this case, they retaliated at
19 his grandmother's residence, correct.

20 Q: And that's where Gangster Fred lives?

21 A: No. Gangster Fred don't live there.

22 Q: All right.

23 A: Reginald stayed there.

24 Q: All right. And that's the co-defendant that you were
25 going to put on trial for murder?

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1 A: Correct.

2 Q: All right. In your -- in your experience as a law
3 enforcement officer, when somebody gets into a situation where
4 they're scared for their life, do you see them make dishonest
5 or untrue statements?

6 A: Correct.

7 Q: In this situation -- I mean I don't want your opinion as
8 to whether or not Christopher Peterson was -- was -- was not
9 being truthful when he first talked to you, but isn't it
10 likely that he was scared for his life or that a person in his
11 position would be?

12 MR. TUCKER: Your Honor, I would object. That calls for
13 speculation on Investigator --

14 THE COURT: Sustained.

15 MR. TUCKER: -- McFadden's part.

16 BY MR. DEBERRY:

17 Q: Do you not believe that the money that was given to him
18 by Reginald Johnson that he says -- that he said don't go to
19 the hospital and don't tell anybody, here's some money. That
20 doesn't make sense to you?

21 A: No.

22 Q: It didn't make sense to you the two years that you were
23 going to use that story to blame Reginald Johnson for this?

24 A: He -- if he took it to trial, then he was going to have
25 to face this.

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1 Q: So if he was going to take it to trial, you were going to
2 use that against him?

3 A: Well, I don't know what his defense was going to be, but
4 Chris' statement was going to be used against him.

5 Q: But now you've changed your mind?

6 A: Once he spoke.

7 Q: Okay. What do you take about the evidence that's in the
8 record and that's introduced in this case that tells us that
9 the victim, Mr. Luther Lisbon, his brother, Marcus Lisbon, and
10 David Lunn -- of those three, two got shot we know, not
11 Marcus, but Luther and David?

12 A: Correct.

13 Q: And Christopher Peterson and Reginald Johnson -- all of
14 their known blood standards were sent to SLED for DNA
15 analysis. Now, also sent were the samples of blood taken from
16 the scene; right?

17 A: Correct.

18 Q: What's your explanation of the only blood that comes back
19 from the scene that even tests positive for blood comes back
20 as Marcus Lisbon's blood?

21 A: My theory about --

22 MR. TUCKER: Your Honor, I would object. I think this
23 testimony or this question is outside the area of Investigator
24 McFadden's experience. He's not a trained forensics person.
25 He doesn't work at SLED. He's not familiar with how a sample

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1 is processed. I don't think it's a fair question to this
2 particular witness.

3 MR. DEBERRY: That's -- that's not the question I'm
4 asking, Judge. I just want to know as an investigator what's
5 his take on the results.

6 THE COURT: I'm going to overrule that. Go ahead.

7 BY MR. DEBERRY:

8 Q: What's your take on the results?

9 A: Well, he had long -- he had pants on. He was shot --
10 Peterson was shot through the leg; so I figure he wasn't
11 pouring out blood at the scene like he said, and he said he
12 was shot. He was in the doorway. So evidently, he wasn't
13 pouring out blood.

14 Q: All right.

15 A: He admitted himself he was shot.

16 Q: Okay.

17 A: So -- and his blood wasn't there. He admitted he was
18 shot.

19 Q: Right.

20 A: So evidently, he wasn't pouring blood out at the scene.
21 Luther got shot and they said it was a lot of internal. So
22 that's probably the theory why his wasn't there.

23 Q: Okay.

24 A: Marcus broke his leg jumping off the second floor where
25 they were at. Maybe he stayed a little more. He said he

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1 kneeled down. Maybe that was it. He had a mark on his hand
2 on the backside of his hand with some blood on it.

3 Q: How about Lunn?

4 A: Lunn said he fled out of the apartment. So if he bled,
5 he bled outside. A lot of his stuff was internal because he
6 had some serious internal injury and bleeding they had to get
7 in there to stop.

8 Q: He had a through and through one?

9 A: He -- no. He's still got something in his body. He's
10 got a bullet lodged in him.

11 Q: One was a through and through; right?

12 A: Yeah. I think one was, but one's still lodged in him.

13 Q: All right. Well, so I understand that maybe there's not
14 a lot of blood, but there's some blood; right?

15 A: Yeah. Yes, sir.

16 Q: Or what looks like to be blood. That doesn't concern you
17 that we don't know whose it is?

18 A: No. It doesn't concern me about I didn't know who it
19 was.

20 Q: Is that normal?

21 A: If I got the facts of what every defendant told me, I
22 just need facts. Anything could happen at that scene. I just
23 -- I go by the facts.

24 Q: You're right about that.

25 A: Yeah. Anything could happen.

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

- 1 Q: Sure.
- 2 A: I go by facts.
- 3 Q: Sure.
- 4 A: And they all gave the facts. It's a puzzle.
- 5 Q: Now, when you took Peterson back out to the scene, he was
- 6 cooperating; right?
- 7 A: Correct.
- 8 Q: He was trying to do everything he can to help you?
- 9 A: Correct.
- 10 Q: And that's what you believed?
- 11 A: That's what I believed, yeah.
- 12 Q: But now you think he was trying to mislead you?
- 13 A: No. The whole part with me asking him about having a
- 14 gun, a lot of times people want to put themselves at a scene,
- 15 but they think because I don't have a weapon I'm different
- 16 from the other person there. So they don't want to put a gun
- 17 in their hand in all cases.
- 18 Q: Uh-huh.
- 19 A: Even the shooter in the other cases will come and say I
- 20 wasn't armed.
- 21 Q: Okay.
- 22 A: I was sitting in the car. I didn't go in the house.
- 23 Q: Okay.
- 24 A: It don't matter.
- 25 Q: But -- and every time Peterson talked to you about what

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1 happened, he was consistent in that he didn't know these
2 people. Didn't he tell you that?

3 A: Correct.

4 Q: And he didn't -- and he knew that Reggie wanted to go
5 talk to Luther for his brother?

6 A: Correct.

7 Q: But he didn't know anything that was going to happen?

8 A: That's what he said.

9 Q: And he sure didn't plan on getting shot?

10 A: That's correct.

11 Q: All right.

12 A: That's the only thing that changed.

13 Q: Now, when he showed you how he left there, was it
14 consistent with -- I think you already said --

15 A: Yeah.

16 Q: -- he went around towards the roadside and got to the
17 car?

18 A: That's what he said.

19 Q: And we believe -- you believe that; right?

20 A: There was -- that was conflicting to us because of what
21 witnesses were saying, but, you know, he said he went where he
22 went.

23 Q: All right. And the witnesses were conflicting with that
24 and the witnesses saw a guy with a gun in his left hand?

25 A: Yeah. Two individuals fitting their build going that

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1 way, one with a gun and one without.

2 Q: And the gun was in his left hand?

3 A: Correct.

4 Q: All right.

5 A: I don't know where that right hand was at. . It could have
6 been on that knee.

7 Q: It could have been? You sure about that?

8 A: Just a theory.

9 Q: Thank you. Isn't it uncommon for people to do the act of
10 armed robbery with the face -- with no mask on?

11 A: No.

12 MR. TUCKER: Your Honor, again, we're getting way off
13 field. He's asking about cases that aren't even remotely
14 related to why we're here.

15 THE COURT: I'm going to overrule it. I think it's
16 relevant.

17 BY MR. DEBERRY:

18 Q: On most armed robberies that you investigate, are the
19 people's faces covered?

20 A: On the -- on the ones that are not involved in illegal
21 activity. See, if this go down and that don't happen, this
22 don't -- the shooting don't happen and nobody died, law
23 enforcement probably would never know about this robbery.

24 Q: Why do you say that?

25 A: Because if there's illegal stuff in the house, they'll

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 never call and say I got robbed. So why cover my face?
2 They're not going to call to say they came to the house and
3 they took this and they did this. They'll never even call us.
4 There will probably be retaliation like you said. You try to
5 figure out why all these shootings going on and why all this
6 stuff is involved.

7 Q: So you don't think they would still want to at least
8 conceal their identity if it was only an armed robbery?

9 A: If they knew them, they would. If they knew them, yeah.

10 Q: I the --

11 A: If the victim knew the individuals that were robbing
12 them, they would cover their face. If you don't have a clue
13 who they are, then there's no need.

14 Q: But there's always a chance to run into each other
15 somewhere?

16 A: Evidently they wasn't thinking about that.

17 Q: Okay. They wouldn't have done that -- or Christopher
18 Peterson wouldn't have covered his face if he thought he was
19 just going to speak to these people?

20 A: I guess that hoodie was enough to conceal.

21 Q: Well, it was January the 6th and it was raining; right?

22 A: No. It wasn't raining.

23 Q: Well, the ground was wet?

24 A: It wasn't. He had a hoodie. He concealed himself
25 enough.

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 Q: Okay. But not his face; right?

2 A: Not his face.

3 Q: Okay. Now -- well, I'll save that question. I may be

4 finished. Just give me one second.

5 A: Okay.

6 Q: Is there any pointblank evidence on Luther Lisbon?

7 A: On Luther?

8 Q: Yes, sir.

9 A: You'd probably have to ask forensics was it pointblank.

10 Q: Okay.

11 A: Yeah.

12 Q: You don't know that?

13 A: No. I wouldn't know, no.

14 Q: But you know he did have gunshot residue on his hands?

15 A: For who?

16 Q: Luther Lisbon.

17 A: Yeah. I think I did read -- heard that that they said he

18 had gunshot residue.

19 Q: Does that concern you?

20 A: Not really.

21 Q: How do you explain that?

22 A: On Luther?

23 Q: Yes, sir.

24 A: I wouldn't know because all the witnesses missed him.

25 They -- the only thing they saw him turn. I wouldn't know

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 unless he got in a struggle, but that would be a --

2 Q: Was there any evidence on that door where that bullet
3 hole went through there that that was pointblank? Somebody
4 that was real close shot that door?

5 A: What? At that door?

6 Q: Yeah.

7 A: There was a struggle at the door.

8 Q: Was there any evidence that a gun was fired, like, within
9 enough -- within a close enough distance to leave gunpowder on
10 that door?

11 A: If the struggle happened at the door -- all the struggle
12 was at the door. I don't know about the gunpowder residue
13 being on the door.

14 Q: You don't know?

15 A: I don't think they swabbed the door.

16 Q: Okay. Had Luther been shot when he was running around
17 the corner back to the back of his apartment like -- like
18 y'all think, wouldn't the gunshot have gone in his left side?

19 A: No. Sitting down. See, they never moved. They didn't
20 move until the altercation when they -- when that caught their
21 attention. When they saw the struggle, then the gun went off.
22 He's probably still sitting down when he got it and then
23 jumped up and the -- everybody else thought he had turned to
24 go that way. He could have fell when he turned.

25 Q: Well, what's your explanation when Christopher says the

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

- 1 guy he was struggling with says I'm hit?
- 2 A: Well, he could have heard --
- 3 Q: Who could it have been?
- 4 A: If that happened that fast and if he hollered out he got
- 5 shot in the chest and they got all that going on, he could
- 6 have been yelling, but he could have been yelling from that
- 7 chair I'm hit. He could have heard it.
- 8 Q: It's pretty clear in his statement.
- 9 A: However it went, but that don't mean it was Marcus
- 10 because Marcus said he was never hit. He fought with him.
- 11 Q: Well, we know it wasn't Marcus.
- 12 A: Because Marcus said he almost -- he thought he was going
- 13 to be shot in the head the way it went by.
- 14 Q: We know Marcus didn't get shot.
- 15 A: No. But he was being shot at. The way you hear it --
- 16 Q: Maybe so.
- 17 A: You'll hear him say that, but Luther could have yelled
- 18 from the chair I'm hit, and he may be --
- 19 Q: Luther could have shot at him?
- 20 A: He could have been correct that Luther was hit from that
- 21 first shot.
- 22 Q: It's pretty clear from the video that we showed -- that
- 23 they showed the jury that Christopher Peterson was struggling
- 24 with the man that answered the door, and the man that answered
- 25 the door got shot.

THOMAS MCFADDEN - CROSS BY MR. DEBERRY

1 A: No. He didn't get shot.

2 Q: Yeah, he did.

3 A: No, he didn't.

4 Q: That's what he said.

5 MR. TUCKER: Your Honor?

6 A: No, he didn't.

7 THE COURT: Sustained.

8 MR. TUCKER: We're getting argumentative here.

9 THE COURT: Sustained.

10 BY MR. DEBERRY:

11 A: He didn't get shot.

12 Q: All right. You can't say for sure where Luther was when
13 he got shot, can you?

14 A: No. That's just a theory.

15 Q: Okay. Thank you so much.

16 MR. DEBERRY: That's all I've got.

17 THE COURT: All right. Redirect?

18 MR. TUCKER: Oh, yeah. Just a few, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. TUCKER:

21 Q: Now, Investigator McFadden, since Mr. Deberry brought it
22 up --

23 A: Uh-huh.

24 Q: He referenced the witness who said he saw a person
25 running across the parking lot with a gun in his left hand?

THOMAS MCFADDEN - REDIRECT BY MR. TUCKER

1 A: Correct.

2 Q: And in fact, Mr. Deberry went to great lengths to point
3 out that Mr. Peterson was right-handed, did he not?

4 A: Correct.

5 Q: Now, this person also said that it was the heavier-set,
6 stockier fellow of the two running across the parking lot who
7 had the gun in his left hand?

8 A: Correct.

9 Q: Now, if a person had been shot in the right knee and he
10 was right-handed, which hand would he most likely bend down to
11 try to grab his right knee?

12 A: The right hand.

13 Q: In pain?

14 A: Yes.

15 Q: And what would he do if he had a gun in his right hand?

16 A: He's put it in his left hand.

17 Q: Shift to his left like that?

18 A: Correct.

19 MR. TUCKER: Now, Keith, if you could, raise the screen
20 and bring up the scale drawing.

21 (WHEREUPON, State's Exhibit Number 2 was shown on the
22 screen for the jury.)

23 MR. TUCKER: And, Investigator McFadden, if I could ask
24 you to step down briefly?

25 (WHEREUPON, the witness complied.)

THOMAS MCFADDEN - REDIRECT BY MR. TUCKER

1 BY MR. TUCKER:

2 Q: Now, if we could, this is the front door to the
3 apartment, is it not?

4 A: Correct.

5 Q: Okay. So the door opens inward to the left if you were
6 standing on the outside?

7 A: Correct.

8 Q: Now, Luther Lisbon, according to your investigation, was
9 sitting here on the couch to the right?

10 A: Correct.

11 Q: So he would have been in direct line of sight to the
12 door, would he not?

13 A: Correct.

14 Q: Now, if I can come around on this side, please? And if
15 you could, put that pointer down for a moment.

16 A: Okay.

17 Q: And turn sideways so the jury -- well, actually, we need
18 to turn this way. Now, imagine you're on the other side of
19 the door and I am Christopher Peterson as I come in. I knock
20 on the door. The door opens up. Out pops the gun. What's
21 the first thing you do?

22 A: Down with the gun.

23 Q: Now, let me ask you this now. In what direction would
24 that gun have been?

25 A: Towards that couch.

THOMAS MCFADDEN - REDIRECT BY MR. TUCKER

1 Q: Would it have been directly where Luther Lisbon had been
2 sitting on that couch?

3 A: Correct.

4 Q: Now, again take my hand, if you will. Now, if we're
5 struggling at that point, the gun goes off, and I struggle,
6 now what angle is that gun? Down? Isn't that consistent with
7 what was on the front door?

8 A: Correct.

9 Q: Thank you. If you could, take a seat.

10 (WHEREUPON, the witness returns to the witness stand and
11 the screen is lowered.)

12 Q: Based on your investigation, is there any credible
13 evidence that this person that Mr. Deberry refers to as
14 Gangster Fred had anything to do with what took place over at
15 apartment that Luther Lisbon was staying at on January
16 the 6th, 2013?

17 A: No.

18 Q: Are you confident that your investigation revealed that
19 it was Christopher Peterson who was first in the door when the
20 door opened up and it was Marcus Lisbon that Christopher
21 Peterson struggled with?

22 A: Correct.

23 Q: Are you confident that it was Mr. Peterson who had a
24 firearm who fired those two shots and the rest of the shots
25 that were fired inside that apartment?

THOMAS MCFADDEN - RECROSS BY MR. DEBERRY

1 A: Correct.

2 MR. TUCKER: Thank you.

3 MR. DEBERRY: If I may, I just have a few, Your Honor.

4 THE COURT: And that's it.

5 RECROSS-EXAMINATION

6 BY MR. DEBERRY:

7 Q: You're confident now, but it's just been theories so far;
8 is that correct?

9 A: I was always confident.

10 Q: Okay.

11 A: I haven't lost not one night of sleep with them two in
12 jail.

13 Q: I understand.

14 A: Not one.

15 Q: Okay. I've been through this case. I've been -- I know
16 I've been reading everything about this case for two-and-a-
17 half years. All your reports, all the investigations, all the
18 -- everything. The witness that we're talking about, he never
19 says anything about anybody grabbing his right knee as he's
20 running across the parking lot?

21 A: Nope.

22 Q: And you yourself just said before Mr. Tucker got up that,
23 hey, maybe that's why the gun was in his left hand?

24 A: Correct.

25 Q: Just -- and then you said it was just a theory; right?

THOMAS MCFADDEN - RECROSS BY MR. DEBERRY

1 A: Yep. Just a theory.

2 Q: Okay. But now is that what you believe happened?

3 A: Just a theory on why the gun was in his left hand.

4 Q: Right. But the witness didn't say the man was bent over
5 hobbling across the parking lot, did he?

6 A: He said he was hurting or hobbling. You heard his
7 statement. He said he couldn't run. He was hurting.

8 Q: But the witness didn't say that?

9 A: Peterson said it with his own mouth.

10 Q: Well, I understand that. He didn't say he was holding
11 his knee, did he?

12 A: No. He wasn't going to say that.

13 Q: Right. And the witness didn't say it either?

14 A: Nope.

15 Q: Okay. It's just a theory?

16 A: Just a theory.

17 MR. DEBERRY: Thank you.

18 THE COURT: All right. You may step down.

19 THE WITNESS: Thank you, Your Honor.

20 MR. TUCKER: The next witness, Your Honor? At this time,
21 the State would call Marcus Lisbon to the stand.

22 THE COURT: All right. Y'all come on up here and come up
23 here, Mr. Deberry.

24 (WHEREUPON, a bench conference was held in the presence
25 of the jury but out of the hearing of the jury as

1 follows.)

2 THE COURT: Y'all do me a favor. That way we don't have
3 to send the jury out. You need to tell your crowd and you
4 need to tell your crowd that they need to chill out. I don't
5 want them talking and nodding their heads. They're all
6 getting ready to act up a little bit. I could either do it or
7 y'all could do it.

8 MR. TUCKER: And, Your Honor, it might be better from
9 that standpoint if I call David Lunn first just to get him out
10 of the way. They're going to be the same witnesses inside the
11 thing, but in just looking at the dynamics of the situation,
12 it might kind of --

13 MR. DEBERRY: No. I got some questions about what I can
14 get into with these other witnesses.

15 THE COURT: Go ahead.

16 MR. DEBERRY: Can I -- I mean I can ask them are they
17 charged and being prosecuted by this office?

18 THE COURT: Just like you did that other guy.

19 MR. DEBERRY: Yeah.

20 MR. TUCKER: And that's --

21 MR. DEBERRY: And can I say -- what can I say about
22 Gangster Fred?

23 THE COURT: They already know about Gangster Fred.

24 MR. TUCKER: I think Thomas -- and don't you know who's
25 living there? I mean it's the grandparents. I don't think

1 you can get into who was there.

2 MR. DEBERRY: I'm just going to say the Johnson's house.

3 MR. TUCKER: Well, I think you can say Reginald Johnson's
4 grandparents' house because that's what he testified to.

5 THE COURT: If you want to call it the Johnson house or
6 whatever you want to. I mean that's about it.

7 MR. DEBERRY: Okay.

8 THE COURT: Y'all got his record cleared up? What are
9 you going to do with that?

10 MR. TUCKER: I think so. It's three failure to stop for
11 a blue light.

12 THE CLERK: If you will, sir, just stand right there for
13 just a second.

14 MR. TUCKER: This is Marcus. I'm going to go ahead and
15 put Marcus up since he's in here.

16 THE COURT: Okay. Talk to your crowd.

17 THE CLERK: Are you ready, Judge?

18 THE COURT: Hold on one second. I guess so.

19 (WHEREUPON, the bench conference ended.)

20 THE CLERK: If you will, sir, stop right there. Sir?
21 Just listen. Come to the Bible. Place your left hand on the
22 Bible and raise your right hand. Do you swear to tell the
23 truth, the whole truth, and nothing but the truth, so help you
24 God?

25 THE WITNESS: I do.

MARCUS LISBON - DIRECT BY MR. TUCKER

1 THE CLERK: Please be seated.

2 THE COURT: All right. Before we start, I want to tell
3 everybody in the audience I've been seeing some rumblings,
4 I've been seeing some head shaking, I've been seeing some
5 people making faces. I'm not going to have any disruptions in
6 this courtroom. You're welcome to be here. You're welcome to
7 stay here, but you better sit there like a knot on a log. If
8 I see you doing something, I'm going to put you in jail. If
9 you want to leave now, leave. Otherwise, you're welcome, but
10 you better abide by what I said. Everybody okay?

11 MR. TUCKER: Thank you, Your Honor.

12 THE CLERK: If you will, sir, place -- state your full
13 name.

14 THE WITNESS: Marcus Lisbon.

15 MR. TUCKER: Okay.

16 MARCUS LISBON, being first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. TUCKER:

20 Q: Marcus, how old are you?

21 A: Thirty-two.

22 Q: And do you have any family?

23 A: Yes, I do.

24 Q: Could you list them for me, please?

25 A: I have a mother, Deloris; father, Luther; older brother,

MARCUS LISBON - DIRECT BY MR. TUCKER

1 Gerald; sister, Shavon; brother, Luther.

2 Q: Now, Luther. How old was Luther?

3 A: Thirty-one.

4 Q: Was he your younger brother or older brother?

5 A: He was thirty-one at the time he deceased. He was one

6 year older than me.

7 Q: He was one year older?

8 A: Yes.

9 Q: Suffice it to say, it would be fair to say you were

10 pretty close with Luther?

11 A: Yes, sir.

12 Q: Now, let me ask you a couple of questions. No one is

13 perfect and we certainly don't want to maintain that you are.

14 Have you three convictions on your record since 2005 for

15 failure to stop for a blue light?

16 A: Yes, sir.

17 Q: Also, were you charged after this initial incident for

18 attempted murder of firing some shots into the Johnson house?

19 And I'm not asking you to say whether or not you're guilty.

20 I'm just simply asking whether or not you were charged.

21 A: Yes, sir. I was charged with it. Yes, sir.

22 Q: Okay. That's all I need you to say. Okay. Now, Marcus,

23 having gotten that out of the way, I want to turn your

24 attentions to January the 6th, 2013. Do you recall what you

25 were doing that day on a Sunday?

MARCUS LISBON - DIRECT BY MR. TUCKER

- 1 A: Yes, sir. I was watching a football game.
- 2 Q: Now, where were you watching that football game?
- 3 A: At my brother's house.
- 4 Q: Now, when you say your brother, are you referring to your
- 5 brother, Luther?
- 6 A: Yes, sir.
- 7 Q: Now, was his house at Place Apartments?
- 8 A: Yes, sir. I don't know the exact address, but yes, sir.
- 9 Q: But he lived there --
- 10 A: It sound like that.
- 11 Q: -- in the apartment buildings?
- 12 A: Yes, sir.
- 13 Q: Now, do you recall what you were doing earlier that day?
- 14 Did you spend the night with him that Saturday night or had
- 15 you gone over that Sunday?
- 16 A: I went over there that Sunday.
- 17 Q: Now, was this something that you and your brother did
- 18 quite often?
- 19 A: Yeah. We got together a lot to watch games and
- 20 conversate and whatnot.
- 21 Q: Do you recall what time you got there?
- 22 A: It was early. It was -- I'd just say around afternoon --
- 23 around noontime.
- 24 Q: Okay.
- 25 A: Around three o'clock -- two o'clock.

MARCUS LISBON - DIRECT BY MR. TUCKER

1 Q: Was there anyone else there with Luther when you arrived?

2 A: I can't be sure if -- I think Mr. David came after I came

3 -- after I was already there.

4 Q: Now, when you say David, are you referring to David Lunn?

5 A: Yes, sir.

6 Q: What relationship -- Mr. Lunn, what was he to Luther

7 Lisbon?

8 A: Friend.

9 Q: They were friends? Now, let me ask you this, Luther --

10 or Marcus. I'm sorry. As the day progressed, did you leave

11 that apartment at any point?

12 A: I may have left and came right back, you know, but I was

13 there for the most part.

14 Q: So you were there pretty much the entire day?

15 A: Yes, sir.

16 Q: Now, Marcus, I know this is going to be difficult for you

17 and I know this is emotional for you, but I need you to do the

18 best you can to get through this. Okay?

19 A: Yes, sir.

20 Q: Now, at approximately seven p.m., did anything happen

21 while you were at your brother's apartment? And when I mean

22 happen, certainly out of the ordinary.

23 A: Well, after -- well, my mother came for the first part.

24 She came and dropped us off some food and she left.

25 Q: Do you recall what time that was?

MARCUS LISBON - DIRECT BY MR. TUCKER

1 A: Not the exact time, but it was around seven or something
2 like that.

3 Q: Okay. Now, thereafter, after your mom had left, did
4 anything unusual happen?

5 A: Yeah. Well, I got a knock at the door and --

6 Q: Let me ask you this before we get into that. If you
7 would, step down.

8 (WHEREUPON, the witness complied.)

9 THE COURT: And if you would, go ahead and spit out your
10 chewing gum.

11 THE WITNESS: Oh, I'm sorry.

12 (WHEREUPON, the witness complied.)

13 BY MR. TUCKER:

14 Q: And, Marcus, I'm going to show you what's already been
15 admitted into evidence as State's 2. Now, at this scale
16 drawing, this is the front door to your brother's apartment,
17 is it not?

18 A: Yes, sir.

19 Q: Okay. Now, right here is a couch and here's a loveseat,
20 and I imagine this is the TV that you were watching the
21 football games on?

22 A: Yes, sir.

23 Q: Now, do you recall where you were sitting when a knock on
24 the door after your mom had left?

25 A: I was sitting right here.

MARCUS LISBON - DIRECT BY MR. TUCKER

1 Q: Okay. So that's the loveseat closest to the door?

2 A: Yes, sir.

3 Q: Now, do you recall where Luther was sitting?

4 A: Right here.

5 Q: Okay. Where was David Lunn sitting?

6 A: Right here.

7 Q: Okay. Now, was there anyone else in the apartment when
8 that knock on the door occurred?

9 A: No, sir.

10 Q: Okay.

11 MR. TUCKER: And, Your Honor, if I could just show this
12 to the jury?

13 THE COURT: Okay.

14 MR. TUCKER: And actually, Mr. Godbolt is back and rather
15 than have them strain their eyes, I'll have him pull it up and
16 have him -- Marcus, if you will, step down here, please.

17 THE WITNESS: Okay. Where do you want me?

18 MR. TUCKER: Yes, sir. You're good right there. And
19 that's a pointer, if you'll just point. If you could, just
20 step back just a little bit, Marcus, so those fellows behind
21 you can see. Okay.

22 (WHEREUPON, State's Exhibit Number 2 is shown on the
23 screen for the jury.)

24 BY MR. TUCKER:

25 Q: Now, as you indicated, this is the front door and you

MARCUS LISBON - DIRECT BY MR. TUCKER

1 were sitting in the loveseat here closest to the door?

2 A: Yes, sir.

3 Q: And you testified that your brother, Luther, was sitting
4 here?

5 A: Yes, sir.

6 Q: And I need you to speak up Marcus when --

7 A: All right.

8 Q: -- you respond to my questions so the court reporter can
9 take it down. And David Lunn was sitting there; correct?

10 A: Yes, sir.

11 Q: All right. Now, when the knock at the door occurred,
12 what did you do, if anything?

13 A: Well, the first thing I did because I realized the door
14 was unlocked, I jumped up and locked the door.

15 Q: Okay. What happened then?

16 A: I peeped through the peephole and I asked who is it --
17 who was it and --

18 Q: Let me ask you this. When you peeped through the
19 peephole, were you able to make out the person who was
20 standing on the other side of the door?

21 A: I could. I noticed it was this brown-skinned male.

22 Q: Okay. Now, at that point what, if anything, did you do?

23 A: I asked who is it again because the first time he
24 actually said a name, but we had the TV on and there was a
25 radio right there that was on and I couldn't hear exactly what

MARCUS LISBON - DIRECT BY MR. TUCKER

1 the name was that was said.

2 Q: Okay. Now, after that what, if anything, did you do?

3 A: I asked who is it again and at the moment I realized it

4 had to -- it -- I figured it must have been somebody I knew

5 because, like I said, the door was unlocked and if it was

6 something funny, I figured they would have just came in, but I

7 wasn't thinking nothing like that.

8 Q: Okay.

9 A: Like I said, my mother just left. So I figured it could

10 have been anybody from my family.

11 Q: Okay. At that point, did you open the door?

12 A: Yeah. I opened the door.

13 Q: Okay. And tell me and the ladies and gentlemen of the

14 jury exactly what happened when that door opened up?

15 A: When I opened the door, a guy tried to walk in.

16 Q: Could you describe that guy, please?

17 A: He was a short, stocky male.

18 Q: Okay. Do you recall how he was dressed?

19 A: Dark clothes.

20 Q: Had you ever seen him before?

21 A: No.

22 Q: All right. Now, as he walked in, what, if anything,

23 happened? Or as he tried to walk in.

24 A: I kind of tried to -- because I didn't know who he was, I

25 didn't want to let him in, but after I let him, he pulled out

MARCUS LISBON - DIRECT BY MR. TUCKER

1 a gun.

2 Q: Okay. Do you recall if the gun was in his right or left
3 hand?

4 A: I mean I can't really --

5 Q: Well, that's understandable. You saw the gun though,
6 didn't you?

7 A: He pulled a gun I know.

8 Q: Okay.

9 A: That's what I seen.

10 Q: What, if anything, did you do at that point?

11 A: At first, really I didn't know -- didn't realize what was
12 going on, and my first instinct was -- I think I -- I think I
13 either punched him in the face or I grabbed his arms.

14 Q: And I understand this did happen fast, but --

15 A: Yeah. It happened real quick. So I can't remember which
16 -- I mean which order it went, but I did remember grabbing his
17 arms and I do remember punching him.

18 Q: Do you recall forcing the gun kind of away from you?

19 A: Yeah. I grabbed his arms and pushed the gun towards him.

20 Q: Okay. Did the gun go off at that point?

21 A: Yes, sir.

22 Q: All right. Now, at that point as you're in the door and
23 you're looking out, are you able to see a second sus -- or
24 subject at that point?

25 A: Yes, sir.

MARCUS LISBON - DIRECT BY MR. TUCKER

1 Q: Okay. What was the second person doing?

2 A: He was behind him and, as I realized what was going on, I
3 figured that they was about to try to kill us.

4 Q: Okay. Now, at that point did the struggle -- as you're
5 standing here at the door, did the struggle kind of move into
6 the -- kind of this particular area of the apartment with you
7 standing in front of the front door as it was opened up at
8 that point?

9 A: Once we got into a struggle, I never -- I never --
10 everything else that happened between me and him happened on
11 the -- on the balcony.

12 Q: Okay. Now, do you recall if there was -- when you still
13 had the gun and the gun went off the first time, do you recall
14 if the gun went off a second time?

15 A: Yes, sir. After the first shot came, he left and he came
16 up and I don't know how it happened, you know. He came and
17 kind of aimed at my face and I grabbed his arms again and the
18 shot went off again.

19 Q: Okay. Now, would you say that this shot was kind of over
20 your head?

21 A: Yes, sir.

22 Q: Do you -- is it fair to say you were kind of standing
23 close to the door when that happened?

24 A: Uh-huh. Yeah. I was still -- we was still in this area.
25 Yes, sir.

MARCUS LISBON - DIRECT BY MR. TUCKER

1 Q: But the front door was kind of behind you at that point
2 still?

3 A: Yes, sir.

4 Q: All right. Now, at this point -- do you recall after
5 that second shot what, if anything, happened?

6 A: After the second shot, I kind of realized that the guy
7 was trying to kill me; so I kind of pushed him off of me and I
8 made a run for it.

9 Q: Okay. Now, when you say made a run for it, this would be
10 outside on the balcony?

11 A: Yes, on the balcony. I went and jumped off of here on
12 the balcony.

13 Q: Okay. So you just kind of jumped over, not even
14 bothering going down the stairs?

15 A: Yeah. Because I figured bullets was flying and I was in
16 the way.

17 Q: Not that I blame you now, mind you. Now, after you
18 jumped off, did you notice that you had sustained any kind of
19 injury? Was it difficult to walk when you got up?

20 A: Yeah. When I got up, I realized that my foot was
21 hurting. At first, I thought it was a shot. I thought I got
22 shot in the foot because, like I said, we was struggling for
23 the gun. So I went over to this area and checked myself for
24 bullet holes.

25 Q: Okay.

MARCUS LISBON - DIRECT BY MR. TUCKER

1 A: And I realized that I just had obviously broke my foot.

2 Q: Well, did you also hear any additional gunshots beyond

3 those first two as you left the apartment?

4 A: Yes. I heard around five or six.

5 Q: Okay.

6 A: Well --

7 Q: Counting those two that you --

8 A: Yes, sir.

9 Q: -- first heard?

10 A: A total of five or six shots. Yes, sir.

11 Q: Okay. And I understand it was difficult to keep --

12 A: That's what I heard.

13 Q: -- count under those circumstances.

14 A: Yes, sir.

15 Q: Now, prior to leaving out of the apartment and running,

16 did you see or hear your brother, Luther, in any way? Did you

17 have a --

18 A: As I heard, like, when we was still going through this, I

19 heard him say my name, Marcus. So I guess he thought I was

20 shot.

21 Q: Okay. Now, do you recall where he was or do you have a

22 conscious thought about where he was seeing him the last time

23 as you left the apartment?

24 A: Leaving the apartment, he was -- because he was -- I

25 think he was -- he was sitting right here.

MARCUS LISBON - DIRECT BY MR. TUCKER

1 Q: Okay. And David Lunn would have been sitting to his left
2 here on this end of the couch; is that correct?

3 A: Yes, sir.

4 Q: Okay. Now, as you left and you heard additional
5 gunshots, about how long was it before you came back to the
6 apartment?

7 A: I would say around -- between three and five minutes.

8 Q: Okay. Now, when you came back to the apartment, you
9 mentioned that you -- your foot was hurt.

10 A: Uh-huh.

11 Q: Did you have a presence of your hand being injured?

12 A: Yes, sir. I had an injury right here on my fingers right
13 here. I thought it was from slipping over the balcony, but it
14 just hurt like something I ain't never felt before.

15 Q: Okay. But you had a presence that that was -- that your
16 hand was cut and that you were bleeding?

17 A: Uh-huh.

18 Q: All right. Now, when you come back to the apartment, as
19 you were coming back did you see anything about those two
20 fellows as you came back?

21 A: Did I see --

22 Q: Did you see them again when you came back this way?

23 A: Oh, no. They were gone.

24 Q: All right. Now, also as you were leaving the apartment
25 after you were shot at and you struggled with the first guy,

MARCUS LISBON - DIRECT BY MR. TUCKER

1 did you again have a presence of mind of where the second guy
2 was?

3 A: No. At that point, I didn't. I seen the second guy as
4 the shooting was going on. The first shot was fired, but then
5 after a while I didn't see him anymore.

6 Q: Okay. Did you get a good look in terms of his physical
7 size and description?

8 A: I didn't.

9 Q: Well, let me ask you this. In relationship to the first
10 guy that you encountered, the one that you struggled with --

11 A: Yeah. He was a taller guy.

12 Q: He was taller than him?

13 A: Uh-huh.

14 Q: In terms of build, would you say he was thinner?

15 A: Uh-huh.

16 Q: The first guy that you encountered when the door opened
17 up, would you say he was stocky?

18 A: Stocky, short.

19 Q: Okay. Now, as you come back into the apartment, what, if
20 anything, did you notice?

21 A: My brother was laying -- he was here.

22 Q: Okay. Could you tell from that point that your brother
23 was in some sort of distress?

24 A: Yeah. He was on his knees.

25 Q: Okay. Let me ask you this, Marcus, and I know this is

MARCUS LISBON - DIRECT BY MR. TUCKER

1 difficult, but do you recall him saying anything to you at
2 that point?

3 A: Yeah. He said -- he didn't say -- the first thing he
4 said to me was he needed some water. No. First, he told me
5 to put some pressure on it. He said he needed to put some
6 pressure on his wound.

7 Q: Now, let me ask you this. Did you notice that his hands
8 were kind of in the area where he was wounded?

9 A: It could have been. Yeah. I think he was on his knees.
10 I can't really recall the details of that, but --

11 Q: I can understand.

12 A: -- I'm pretty sure he grabbed -- that he grabbed his
13 wound.

14 Q: Okay.

15 A: Because he showed me where it was at.

16 Q: All right.

17 A: I believe he showed me where it was at.

18 Q: And is that where you remained until help arrived?

19 A: You mean this here?

20 Q: Yes.

21 A: Yes. Well, yes. Sometimes I was by the door. I was
22 getting help, telling my buddy from right here to call the
23 police, ambulance, and that. So we was in this area.

24 Q: Now, were you able to stand at this point or were you
25 kind of on your knees or something else?

MARCUS LISBON - DIRECT BY MR. TUCKER

1 A: I was on my knees. I couldn't stand.

2 Q: Okay. And you yelled for someone to call the police?

3 A: Yeah. There was a guy that came out.

4 Q: And then you went back into the apartment?

5 A: I stayed with my brother. My brother -- at that point,

6 he had crawled over to this area.

7 Q: Okay. So your brother was moving, but he wasn't up

8 walking obviously?

9 A: Uh-huh.

10 Q: Now, at that point did you go into the apartment and move

11 anything?

12 A: Not -- well, probably when I came in here -- when I came

13 back in here, my brother -- he did wanted a gun and I grabbed

14 a gun.

15 Q: Why did you grab a gun?

16 A: In case the guy was still around, sir.

17 Q: Okay. So you more or less grabbed it for self-defense in

18 case he came back?

19 A: Yes, sir.

20 Q: All right. And, Marcus, I'm going to ask you a question.

21 Now, prior to the knock on the door, was there any money or

22 cash money kind of laying out in plain sight where you guys

23 were sitting?

24 A: If my memory serve correct, there was -- I mean, you

25 know, that wasn't something I was thinking to, but there could

MARCUS LISBON - DIRECT BY MR. TUCKER

1 have been some laying on this table.

2 Q: Okay. Do you recall -- right here on this table?

3 A: Uh-huh.

4 Q: Do you recall how much money approximately was there?

5 A: Not approximately. I would be guessing.

6 Q: Okay. Was it a lot?

7 A: It was a good bit.

8 Q: Okay. Enough where you would notice if somebody were

9 looking in that direction? Would that be fair to say?

10 A: Yes.

11 Q: Okay. Whose money was that?

12 A: Not mine. It wasn't mine. It must have been my

13 brother's.

14 Q: Okay. Now, there was money elsewhere in the apartment.

15 Do you know whose money that was?

16 A: I had some money here.

17 Q: Okay. Now, if you will, have a seat back up here.

18 (WHEREUPON, the witness complied.)

19 Q: Okay. Marcus, after this happened and --

20 THE COURT: You may want to get the pointer.

21 MR. TUCKER: Okay. I'll get that back from you.

22 BY MR. TUCKER:

23 Q: Now, after this happened, law enforcement and EMS

24 arrived; is that correct?

25 A: Yes, sir.

MARCUS LISBON - DIRECT BY MR. TUCKER

- 1 Q: Do you recall talking to the deputy sheriffs that night?
- 2 A: Yes, sir.
- 3 Q: Now, suffice it to say, were you kind of in pain yourself
- 4 and --
- 5 A: Yes, sir.
- 6 Q: -- what your injuries were? And obviously, I imagine
- 7 seeing your brother in that shape was somewhat traumatic for
- 8 you and stressful as well?
- 9 A: Yes, sir.
- 10 Q: Now, were you able to tell law enforcement anything about
- 11 the person with whom you struggled and who had shot the gun?
- 12 A: He was a short, stocky fellow.
- 13 Q: Okay. Now, subsequently did you receive treatment for
- 14 the injury to your leg?
- 15 A: Yes, sir. I had a broken foot in four different places.
- 16 Q: Okay. Now, were you able to talk to law enforcement
- 17 sometime thereafter, give or take about a week, and give them
- 18 a little bit better description of the man you saw right there
- 19 in the door?
- 20 A: Yes, sir. I -- yes, sir.
- 21 Q: All right. Now, as a result of what you told law
- 22 enforcement, did they contact a forensic artist who came and
- 23 got some information from you regarding a sketch?
- 24 A: Yes, sir.
- 25 Q: All right.

MARCUS LISBON - DIRECT BY MR. TUCKER

1 MR. TUCKER: May I approach, Your Honor.

2 THE COURT: Sure.

3 BY MR. TUCKER:

4 Q: Marcus, I'm going to ask you to look at what's been
5 marked as State's Exhibit 1. Is that the sketch that the
6 sketch artist rendered after you spoke to him about who you
7 saw?

8 A: Yes, sir.

9 Q: Okay. Now, subsequently Investigators McFadden and
10 Collins contacted you about looking at a photo line-up; is
11 that correct?

12 A: Uh-huh.

13 Q: Okay.

14 MR. TUCKER: And, Your Honor, if I could approach again?

15 THE COURT: Sure.

16 BY MR. TUCKER:

17 Q: And, Marcus, I'm going to hand you what's been marked
18 State's Exhibit -- or State's Evidence 145, and is this the
19 line-up that law enforcement showed you that -- I think it was
20 in the Pet Lovers parking lot.

21 A: It seems like it, yes, sir.

22 Q: And Investigator McFadden testified that you said I can't
23 be sure, but don't rule out Number 3; is that correct?

24 A: I probably said it. I probably said something like that.

25 Q: Okay. Now, Marcus, do you see the man that you struggled

MARCUS LISBON - DIRECT BY MR. TUCKER

1 with that night when the door opened up, first in the door,
2 who knocked on the door, and had the gun? Do you see him in
3 this courtroom today?

4 A: I see the guy y'all arrested.

5 Q: All right. Is that the guy that you saw in your
6 apartment that night?

7 A: I mean he might have been there. I mean if I -- if I go
8 off the -- from that night, I can't -- I can't pinpoint
9 because it was so quick, but the guy -- after I found out
10 y'all arrested this guy, I seem to fit all the descriptions of
11 it, yeah.

12 Q: Okay.

13 A: But I couldn't pinpoint him right then and there. I
14 couldn't tell you, but after y'all said he was there, he
15 admitted to being there --

16 Q: Okay.

17 A: -- I guess it was him.

18 Q: Is he consistent at least with the person that you saw
19 that night in terms of build and terms of height and terms of
20 complexion?

21 A: Uh-huh. It's possible.

22 Q: Okay.

23 A: Very possible.

24 Q: Now, when law enforcement talked to you that first night,
25 you indicated to them initially that you had kind of come up

MARCUS LISBON - DIRECT BY MR. TUCKER

1 on the scene after the incident had begun?

2 A: Yes, sir.

3 Q: And you got to the top of the stairs and somebody turned
4 around and took a shot or two and then you left at that point?

5 A: Yes, sir.

6 Q: Now, that was not correct, was it?

7 A: No, sir.

8 Q: Why did you tell law enforcement that?

9 A: I didn't want to be involved, you know.

10 Q: Well, I mean now this was your brother. You're going to
11 have to explain this to me so I can understand it I'm sure.

12 A: Well, this was a bad decision, you know, a spur-of-the-
13 moment thought. It was a bad decision. I shouldn't have did
14 that. I shouldn't have lied to the officers.

15 Q: Okay. And this -- again, this was the night that this
16 all happened; correct?

17 A: Yes, sir.

18 Q: All right. Now, subsequently did you meet with law
19 enforcement and give them a more detailed statement about a
20 week or so after the incident first occurred?

21 A: Yes, sir.

22 Q: All right. Now, in that statement did you pretty much
23 tell them what you've testified here to today?

24 A: Yes, sir.

25 Q: Now, again, you're confident and you're positive that

MARCUS LISBON - DIRECT BY MR. TUCKER

1 when that door opened up that the person that you struggled
2 with was the shorter of the two individuals and he was the
3 stockier of the two individuals?

4 A: Yes, sir.

5 Q: Now, at any point while you were dealing with this
6 individual, did you see the second person enter the apartment
7 in any way?

8 A: I didn't.

9 Q: Now, do you recall -- after initially seeing him, do you
10 recall seeing him at any point after the shooting started?

11 A: After the shooting started, I didn't. Like, when it
12 first started, I seen him, and then I didn't see him anymore.

13 Q: Now, did you notice if that person had a weapon in his
14 hand?

15 A: It could have been possible. Man, I was just fighting
16 for my life then.

17 Q: I understand. Now, with regards to jumping off the
18 balcony and getting injured, you told law enforcement when you
19 gave that detailed statement pretty much that's what happened
20 in terms of you -- how you left the apartment?

21 A: Uh-huh.

22 Q: All right. Now, when you came back into the apartment,
23 in that particular statement it's the same as you've testified
24 here today; is that correct?

25 A: Yes, sir.

MARCUS LISBON - DIRECT BY MR. TUCKER

1 Q: Okay. Now, with regards to the investigation, are you
2 quite certain that it was the first individual again that you
3 dealt with who had the gun?

4 A: That's what I know. The first -- the first person that
5 came to the door shot at and tried to kill me.

6 Q: And that was the shorter and the stockier?

7 A: The shorter, stocky guy.

8 Q: And he had on the dark clothing with a hoodie?

9 A: He had on dark clothing with no mask.

10 Q: Okay.

11 MR. TUCKER: Court's indulgence one moment, Your Honor.
12 Your Honor, I don't believe I have any additional questions.

13 THE COURT: All right. Mr. Deberry?

14 MR. DEBERRY: Thank you.

15 CROSS-EXAMINATION

16 BY MR. DEBERRY:

17 Q: Mr. Lisbon, good afternoon.

18 A: Thank you.

19 Q: You -- you need a break or are you good to go?

20 A: No. I'm good. Let's go.

21 Q: Okay. Well, first of all, I'd just like to say I'm
22 terribly sorry for what happened.

23 A: I appreciate it.

24 Q: Okay. And I sincerely mean that.

25 A: Okay.

MARCUS LISBON - CROSS BY MR. DEBERRY

- 1 Q: Now, Mr. Tucker asked you and you confirmed that you have
2 been charged since this incident with attempted murder against
3 the Johnsons; is that correct?
- 4 A: Yes.
- 5 Q: And are you being prosecuted by Mr. Tucker's office?
- 6 A: I don't know who I'm being prosecuted -- I'm being
7 prosecuted.
- 8 Q: Okay.
- 9 A: I couldn't tell you by who.
- 10 Q: And when you come to court for that, you come here?
- 11 A: Yes.
- 12 Q: Okay. And it's not been resolved yet?
- 13 A: No.
- 14 Q: Okay. All right. Now, Marcus, I want to just ask you a
15 few things and I'll be real brief I promise you. You said you
16 heard -- or you think altogether there was probably five or
17 six shots?
- 18 A: From what I heard. I went into an area. I went into an
19 area --
- 20 Q: You got away?
- 21 A: An area away. I could have not heard some shots.
- 22 Q: Right. But you think you heard maybe five or six shots?
- 23 A: That's what I heard.
- 24 Q: It could have been more or less or you think --
- 25 A: More or less.

MARCUS LISBON - CROSS BY MR. DEBERRY

1 Q: Okay. And -- and you told Investigator Cain -- she was a
2 lady, like, a blonde-headed lady that arrived, one of the
3 first investigators. She said that you were sitting outside
4 and I guess the EMS people were trying to help Luther, and you
5 talked to her to begin with. Do you remember that?

6 A: Uh-huh. I think I do.

7 Q: Okay. And -- and you told her that you were coming up
8 the steps when -- when you heard the shooting start?

9 A: Yes.

10 Q: Okay. And I think Mr. Tucker just asked you about that
11 and you just said that was a bad decision?

12 A: Yes.

13 Q: That you shouldn't have. You didn't want to be involved;
14 right?

15 A: Yes.

16 Q: Okay. And then a little bit later that night,
17 Investigator Collins -- you were sitting in the back of a
18 patrol car?

19 A: Uh-huh.

20 Q: I mean you weren't arrested that night, were you?

21 A: No. My foot was just hurting me. I couldn't really
22 move.

23 Q: So they were just helping you along?

24 A: Yes.

25 Q: Now, when -- before that when you were still talking to

MARCUS LISBON - CROSS BY MR. DEBERRY

1 the lady, she -- she says that you asked for your lawyer one
2 time. Do you remember that?

3 A: I asked her do I need one because -- I just asked her do
4 I need one.

5 Q: You thought you may have --

6 A: Because -- because they did a GSR on me and whatnot, and
7 I was just asking.

8 Q: All right.

9 A: I was going to try to figure out what they thought
10 because me being on the scene, you know, anyone's a suspect,
11 and I ain't wanted them to think I was a suspect.

12 Q: Sure. You felt a little uneasy about --

13 A: Yeah.

14 Q: -- what was going on?

15 A: I didn't ask her. I didn't say I need a lawyer. I asked
16 her --

17 Q: I understand.

18 A: -- do I need a lawyer.

19 Q: Sure. I understand. Okay. And then a little bit later,
20 Investigator Collins came out to where you were in the -- in
21 the patrol car and he talked to you a little bit. Do you
22 remember that?

23 A: Who?

24 Q: Investigator Collins.

25 A: Yes, sir.

MARCUS LISBON - CROSS BY MR. DEBERRY

1 Q: And that night while you were still there in the back of
2 the patrol car --

3 A: Uh-huh.

4 Q: -- he came out and he introduced himself and he asked you
5 a few questions. Do you remember that?

6 A: I mean if you -- if you bring up the questions, I'll see
7 if I can recall.

8 Q: Okay. Well, I think he just kind of was trying to get a
9 feel for what happened. And he asked you did you get a good
10 look at -- you told him that you did see the person that had
11 the gun?

12 A: Uh-huh.

13 Q: And then he asked you to describe the person to me?

14 A: Uh-huh.

15 Q: And you told him --

16 THE COURT: You need to answer yes or no and not uh-huh.

17 THE WITNESS: Yes, sir.

18 MR. DEBERRY: Okay.

19 BY MR. DEBERRY:

20 Q: And you told him that the person you saw was a light-
21 skinned black male and he was wearing all black. Do you
22 remember that?

23 A: I said what?

24 Q: You told Mr. -- or Investigator Collins that night that
25 the person you saw was a light-skinned black male.

MARCUS LISBON - CROSS BY MR. DEBERRY

1 A: A light-skinned black male?

2 Q: Yes, sir.

3 A: I could have said that I guess. If that's what's on

4 record, that's what I said.

5 Q: And that was that night?

6 A: Yes.

7 Q: Okay. Now, you said when you jumped over -- over the

8 rail and got away from the situation, you ran around -- where

9 did you run?

10 A: I went to the -- in the corner in some bushes and made

11 sure I ain't took --

12 Q: In the corner into some bushes?

13 A: Yeah. Like in the area.

14 Q: Like across the parking lot?

15 A: No. In the corner of the apartments.

16 Q: There was some bushes there?

17 A: Yeah. I went around there and checked to see if I was

18 shot.

19 Q: Okay. Are you left-handed or right-handed?

20 A: Left-handed.

21 Q: You're left-handed? Now, when you left, you don't have

22 any idea what the second guy did, do you?

23 A: Not a clue.

24 Q: And you were gone? All right. Well, let me ask you

25 this. At some point in time when you were talking to

MARCUS LISBON - CROSS BY MR. DEBERRY

1 investigators, you asked them about some guy named McCall.

2 A: McCall?

3 Q: Yeah.

4 A: I don't recall that. Can you be more specific?

5 Q: All right. Give me just a second. I think it was when
6 -- did you go to the Florence County Sheriff's Office a couple
7 times and talked with Investigators McFadden and Collins?

8 A: Yes, I did..

9 Q: Okay. Do you ever recall saying to them and telling them
10 that you think the second guy may have shot too?

11 A: I mean it was possible. It was -- I mean it was
12 possible.

13 Q: Okay.

14 A: Yeah. It was possible. I think it was possible. I
15 don't know. I didn't see. Did I see fire coming from a
16 barrel from the second guy? No. But could he have been shot
17 and shooting? I mean they came and tried to rob us and shots
18 were fired.

19 Q: I understand. Okay.

20 A: It's possible he could have been shooting.

21 Q: At some point when you were talking to Investigator
22 Collins, you mentioned a name, a McCall guy.

23 A: I can't recall that. If you could be more specific, I
24 can --

25 Q: Okay.

MARCUS LISBON - CROSS BY MR. DEBERRY

1 A: -- recollect.

2 Q: Well, you said that y'all need to question him more. Do
3 you remember that?

4 A: No.

5 Q: Do you remember telling Investigator Collins that they
6 needed to question some guy named McCall?

7 A: I don't even -- I don't know a McCall.

8 Q: Okay. But I mean if it's on the record, you must have
9 said it; right?

10 A: Yeah. You got a full name?

11 Q: No. I think that's all you said was McCall.

12 A: No. I don't know a -- somebody by the name of McCall. I
13 don't even know him. It must be a typo. If you give me a
14 better name? I don't recall calling nobody McCall.

15 Q: I understand.

16 A: That sound like a last name.

17 Q: I understand.

18 A: I might know the first name.

19 Q: I don't know that.

20 A: Okay.

21 Q: All right. How about Brianna Black?

22 A: Brianna?

23 Q: Brianna Black?

24 A: I was -- I was questioned about a Brianna, some Brianna.
25 I was questioned about someone named Brianna, Brianna Smith or

MARCUS LISBON - CROSS BY MR. DEBERRY

1 something like that.

2 Q: What did you know about her?

3 A: Nothing. Somebody questioned me about her. I never seen
4 her a day in my life either, but I did know a Brianna and I
5 figured -- I thought it could have been her they was talking
6 about, but to find out it wasn't her they was talking about.

7 Q: Now, at one point in your statement when you're talking
8 to Investigator Collins, you said, you know, but he didn't
9 tell me to lay down or hands up or nothing?

10 A: Yeah. He didn't.

11 Q: All right. And then you said I thought the guy in the
12 back shot at me. Do you remember saying that?

13 A: Man, I thought a lot of things. I thought I was going to
14 die.

15 Q: Right. And I understand that. I understand. Would you
16 -- would you think that my client is light-skinned?

17 A: I mean I don't know nothing about your client.

18 Q: I mean just from his appearance?

19 A: Compared to -- compared to others, he's light-skinned,
20 yeah.

21 Q: Okay. All right. Well, I appreciate you coming and I'm
22 sorry for your loss.

23 A: Okay.

24 Q: All right. Thank you very much.

25 A: I appreciate it.

MARCUS LISBON - REDIRECT BY MR. TUCKER

REDIRECT EXAMINATION

1
2 BY MR. TUCKER:

3 Q: Marcus, just briefly. What were you wearing the night
4 that this incident occurred?

5 A: A yellow Number 2 Polo shirt.

6 Q: Okay. So you didn't have any sort of dark-colored
7 clothing?

8 A: No, sir, not at all. I had on bright yellow, a bright
9 yellow shirt. Yes, sir.

10 Q: Okay. Thank you. That's all I have.

11 A: Okay. Thank you.

12 THE COURT: Call your next witness.

13 MR. TUCKER: At this point, the State calls David Lunn to
14 the stand, Your Honor.

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

17 THE CLERK: If you will, sir, come to the witness stand.
18 Place your left hand on the Bible and raise your right hand.
19 Do you swear to tell the truth, the whole truth, and nothing
20 but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Please be seated and state your full name for
23 the record.

24 THE WITNESS: David J. Lunn II.

25 DAVID LUNN, being first duly

DAVID LUNN - DIRECT BY MR. TUCKER

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. TUCKER:

4 Q: David, do you mind I call you David?

5 A: No. That's fine.

6 Q: David, are you married?

7 A: Yes, sir.

8 Q: Do you have any kids?

9 A: Not yet.

10 Q: I hear you. Always hopeful though, huh?

11 A: Yeah.

12 Q: Do you have any other family members living here in
13 Florence County?

14 A: I do.

15 Q: Now, how long have you lived in Florence County?

16 A: Basically my entire life.

17 Q: Now, specifically I want to ask if you know an
18 individual, Luther Lisbon?

19 A: Yeah.

20 Q: Do you know his brother, Marcus?

21 A: I do.

22 Q: Do you know the Lisbon family kind of as a whole?

23 A: Yeah.

24 Q: How long have you known them?

25 A: Since around the sixth grade.

DAVID LUNN - DIRECT BY MR. TUCKER

1 Q: All right. So quite a few years now?

2 A: Maybe before. Yeah.

3 Q: Now, let me ask you this. How close were you and Luther

4 --

5 A: Very.

6 Q: -- in terms of friends?

7 A: Very, very close.

8 Q: Now, were you closer to Luther than you were Marcus?

9 A: About the same. We all considered each other family, you
10 know, close personal friends, you know. We'd frequent each
11 other's houses on holidays or typical family -- you know,
12 family functions.

13 Q: Now, let me ask you specifically did you go over to
14 Luther's apartment much over off of Brittany Place?

15 A: Yeah.

16 Q: Do you -- at Do you recall the apartment number
17 offhand?

18 A: I don't.

19 Q: But you know it certainly when you saw it?

20 A: Yeah. I know how to get there.

21 Q: Now, had you -- did you spend -- were you spending a good
22 deal of time around 2013 over there?

23 A: To be honest, I didn't have a lot of free time in those
24 times, but more so than not, you know, they would -- we would
25 meet up out of town, you know, because I promote parties and

DAVID LUNN - DIRECT BY MR. TUCKER

1 I'm also an entertainer myself. And so typically, you know,
2 in my free time, like, when I'm in town or whatever, you know,
3 I'd always drop in or, you know, if I had something going on
4 out of town, they would -- you know, basically they were some
5 of my biggest supporters. They would show up to most of my
6 shows and, you know, if their schedules didn't conflict with
7 mine, you know, they would come see me or, you know, whenever
8 I'm in town I make it a point to swing by there, you know.

9 Q: I understand.

10 A: Typical.

11 Q: Directing your attention to January the 6th, 2013 --

12 A: Yes, sir.

13 Q: Do you recall -- that was a Sunday. Do you recall being
14 over at Luther's apartment?

15 A: Yes, sir.

16 Q: Do you recall what time you got there?

17 A: It had to be around game time.

18 Q: Now, when you say game time, do you mean football?

19 A: It was football season. So it was around -- I know we
20 sat over there and watched -- it was the playoffs. It was
21 playoff season. So we sat over there the majority of that
22 Sunday afternoon.

23 Q: Now, do you recall being over there as the evening
24 approached around seven -- 7:30?

25 A: Yeah. It was dark. We had just wrapped up watching the

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1 games.

2 Q: Now, who was in the apartment at that point?

3 A: Luther, Marcus, and I -- and myself.

4 Q: Anybody else in there?

5 A: No.

6 Q: All right. Now, Marcus had testified that his mom had
7 stopped by and dropped off some food. Do you recall that?

8 A: Yes, she did.

9 Q: Now, I want to ask you specifically after the food was
10 dropped off and getting close to around seven or shortly
11 thereafter, did anything unusual happen?

12 A: Yeah. Shortly after, yeah. Shortly after she left, we
13 received an unexpected knock at the door.

14 Q: Okay. Let me ask you this. If you could, step down.

15 A: Okay.

16 Q: Actually, if you would sit right there, let me take a
17 look at this.

18 MR. TUCKER: Can you pull it up, Keith? State's 2.

19 Q: Now, I'm going to -- I'm going to need you to step down
20 now. We'll be able to raise this thing up.

21 A: You're welcome.

22 (WHEREUPON, the witness complied.)

23 (WHEREUPON, State's Exhibit Number 2 was displayed on the
24 screen in front of the jury.)

25 BY MR. TUCKER:

DAVID LUNN - DIRECT BY MR. TUCKER

1 Q: If you would hold that?

2 A: Okay.

3 Q: If you would stand over there?

4 A: Okay.

5 Q: Okay. David, this is a scale drawing of the apartment
6 that you were in --

7 A: Right.

8 Q: -- that belonged to Luther?

9 A: Right.

10 Q: Now, I direct your attention to the front door. Does it
11 accurately reflect where the furniture was, that being a
12 couch, TV, loveseat?

13 A: Yes, sir.

14 Q: All right.

15 A: This would be the couch right here that I was sitting on.

16 Q: Now, at or around the time that this person knocked on
17 the door and this unexpected event happened, where were you
18 sitting?

19 A: I was sitting on this couch right here.

20 Q: Now, do you recall whether you were sitting to Luther's
21 left or whether he was sitting to your right?

22 A: I know at one point in the evening -- see, it was just
23 kind of like, you know, if one guy gets up and goes to the
24 bathroom or something and, you know, if I happen to for any
25 reason get up or, you know, if both people leave the couch and

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- 1 one of us comes back first, you know, we might swap seats.
- 2 Q: Right.
- 3 A: You know, but at the -- I know I was on this couch.
- 4 Q: Okay. Now --
- 5 A: I may have been sitting to the left when the actual knock
- 6 came.
- 7 Q: Now, Marcus had testified that he was in the loveseat,
- 8 Luther was here --
- 9 A: Yeah.
- 10 Q: -- and you were at this end of the couch. Any reason to
- 11 dispute that?
- 12 A: No. None whatsoever.
- 13 Q: And do you recall what you were doing just before the
- 14 knock?
- 15 A: Yeah. Because a matter of fact, yeah, because I had -- I
- 16 had -- that's exactly -- that's exactly right. I sat here
- 17 because I had to -- I needed a socket for my laptop. I was
- 18 doing some social media networking and we were just kind of,
- 19 you know, just chilling out.
- 20 Q: Okay. Now, could you see the front door clearly from
- 21 where you were sitting?
- 22 A: Yeah.
- 23 Q: Now, when the knock occurred, what, if anything, did you
- 24 notice Marcus doing?
- 25 A: He got up to answer the door.

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1 Q: All right. And do you recall what happened when the door
2 opened up?

3 A: Yeah. All hell broke loose, so to speak.

4 Q: Okay. Now, did you get a look at the person who was
5 standing on the other side of the door?

6 A: Briefly, yes.

7 Q: All right. Could you describe him?

8 A: Honestly, what I remember from that evening was gold
9 teeth and a gun.

10 Q: Okay. Would you describe him as being stocky? Short?

11 A: Relatively. You know, I'm short myself. So he may have
12 been, you know, a little bigger than me, but, you know --

13 Q: Okay.

14 A: -- around, yeah.

15 Q: Any doubt in your mind that that first person when the
16 door opened up, that's the person that Marcus began to
17 struggle with almost immediately? Is that correct?

18 A: Yeah. Definitely.

19 Q: Now, do you recall if a -- if you heard a gunshot at this
20 point?

21 A: Yeah.

22 Q: Now, did that gunshot come from a weapon that that man
23 was holding with whom Marcus was struggling there at the front
24 door?

25 A: Yeah.

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1 Q: Now, do you recall after that first shot what you were
2 doing?

3 A: You know, I was stunned. I put my laptop down and
4 simultaneously you might say Luther got off the couch and, you
5 know, bent the corner, like, going down the hallway.

6 Q: Did you see what happened to him after that?

7 A: No. That was the last time I saw him.

8 Q: Okay. And once you got up off the couch, on this diagram
9 which way did you move?

10 A: I kind of turned to make my way, you know, around. I
11 tried to kind of circumvent the living room because, you know,
12 I'm wanting to get to the door to kind of, you know --

13 Q: Oh, I don't doubt it.

14 A: -- get out of there.

15 Q: I don't blame you one bit.

16 A: You know, I'm being cautious because I don't know -- you
17 know, I don't know what to expect. So --

18 Q: Do you know if a second shot -- or had you heard a second
19 shot being fired at that point?

20 A: I'm not so clear on that, no.

21 Q: Suffice it to say, it was kind of, like, chaotic in
22 there?

23 A: Yeah. It was -- it was pandemonium.

24 Q: Now, as you were moving this way, was Marcus still
25 struggling with the individual kind of right in this

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1 particular area?

2 A: Yeah. At this point, Marcus and the individual had left
3 the room. So --

4 Q: Now, when you say left the room, had they just kind of --

5 A: Yeah. Kind of onto the balcony, onto the -- well, out of
6 the door.

7 Q: All right.

8 A: Out of my sight, out of my line of sight.

9 Q: Did you see a second individual?

10 A: Initially when the door opened and -- this diagram as I'm
11 looking right here, because it -- I mean the dimensions kind
12 of don't accurately --

13 Q: I gotcha. It's not to scale?

14 A: -- depict -- yeah -- my angle of -- my angle of view
15 because from where I was sitting when the door opened, I could
16 see out into the hallway. So I mean from -- from this diagram
17 it would seem as if I couldn't, but --

18 Q: Now --

19 A: -- in reality, you know, the room was a little bit wider
20 you may say. So, you know, I could actually see out of the
21 doorway.

22 Q: I gotcha.

23 A: And from my view -- from my vantage point, I saw at least
24 two individuals at the door --

25 Q: Right.

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- 1 A: -- at the time of the first gunshot.
- 2 Q: Were they side by side or were they one behind the other?
- 3 A: One behind the other.
- 4 Q: Now -- and the one standing in front when the door opened
- 5 up, that's the one Marcus struggled with?
- 6 A: That's correct.
- 7 Q: And that's the one who had the gun?
- 8 A: That's correct.
- 9 Q: Now, did -- at any point, did the second individual from
- 10 where you could see him from this time had gotten up and moved
- 11 over here, did this second individual ever come into the
- 12 apartment?
- 13 A: No, not while I was in there.
- 14 Q: All right. Now, at some point you mentioned they moved
- 15 out here. Now, at some point did the individual with whom
- 16 Marcus had struggled and who had fired the gun come back into
- 17 the apartment?
- 18 A: Mind you, I would -- I would like to say that it was the
- 19 same person --
- 20 Q: Right.
- 21 A: -- but I know -- I know an individual came back into the
- 22 apartment.
- 23 Q: Was he dressed the same?
- 24 A: That was dressed the same.
- 25 Q: Did he appear to be the same build?

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- 1 A: Appeared to be the same build.
- 2 Q: Now, when this individual came back in, what, if
- 3 anything, happened?
- 4 A: I merely put my hands up, you know.
- 5 Q: So he looked at you?
- 6 A: Yeah.
- 7 Q: Now, was he armed?
- 8 A: Yes.
- 9 Q: Okay. Could you see his gun?
- 10 A: Yes. He had a gun pointed at me.
- 11 Q: All right. And you put your hands up like so?
- 12 A: Yeah.
- 13 Q: And then what happened?
- 14 A: I put my hands up and, you know, kind of began walking
- 15 slowly towards him, you know, trying to get close enough to
- 16 him to go for the gun or something.
- 17 Q: Okay. And then what happened?
- 18 A: He shot me.
- 19 Q: All right. Do you recall where you were shot?
- 20 A: I was shot in my upper chest.
- 21 Q: Okay. Now --
- 22 A: Right here.
- 23 (WHEREUPON, the witness gestured.)
- 24 Q: At that point what, if anything, did you do?
- 25 A: Well, I immediately charged him. After I kind of saw it

DAVID LUNN - DIRECT BY MR. TUCKER

1 in slow motion and saw it go in and out, I just -- you know, I
2 charged him.

3 Q: Okay.

4 A: I went for the gun.

5 Q: Now, at that point, were you wrestling with this
6 individual?

7 A: Yes, sir.

8 Q: Now, again, was he dressed all in black?

9 A: Yes, sir.

10 Q: At this point as you're wrestling with him for the gun,
11 did he appear to be stockier or heavier than you?

12 A: I would -- I want to say so, but, you know, I've been,
13 you know, in-between then and now I've been, you know,
14 studying and you know how they say about -- I know the experts
15 would probably get up here and say, you know, it could have
16 been fear, it could have been adrenaline, but I'm going to say
17 yeah, he was bigger than me. When I got up on him, I would
18 say yeah.

19 Q: Okay.

20 A: He was bigger than me.

21 Q: Now, as y'all were struggling with the gun, were you shot
22 a second time?

23 A: Yes, I was.

24 Q: Now, this was while you were kind of close in with him
25 and while y'all were struggling for the gun?

DAVID LUNN - DIRECT BY MR. TUCKER

1 A: Yes, sir.

2 Q: Okay. Now, at that point what, if anything, happened?

3 A: I stumbled out of the doorway and was basically
4 struggling to keep my balance as I fell down the staircase.

5 Q: Now, at that point, did you have a sense that another
6 shot come from inside the apartment out in your direction?

7 A: Yes, sir. I actually thought for a second that the
8 assailant was behind me actually attempting to, you know,
9 shoot me again. And I didn't stop to look back, of course,
10 you know. I kept moving.

11 Q: Right.

12 A: So that's why I -- you know, I heard the shots and
13 assumed that they were for me, but, you know.

14 Q: Did you have a presence that that round struck something,
15 like anything outside the apartment as you were going down?

16 A: No. I didn't hear any ricochets or anything like that.
17 I just heard shots.

18 Q: And you were at that point still trying to get out of
19 there?

20 A: That's correct. Well, I was out. I was just striving to
21 not break my neck falling down these stairs and getting, you
22 know, to safety.

23 Q: Okay. Now, David, I'm going to ask you a question with
24 regards to money. There was testimony and there were crime
25 scene photos. There was a good bit of money in or around that

DAVID LUNN - DIRECT BY MR. TUCKER

1 apartment. Did you see that while you were there?

2 A: No, sir.

3 Q: Okay. Did you see any money on this particular table?

4 A: No.

5 Q: Marcus testified that he thought that there was a large
6 amount there. He couldn't tell exactly how much, but --

7 A: No. That wouldn't have been my focus anyway, sir.

8 Q: I can understand that. Now, after you were shot once
9 here and then twice as you charged that darker-clothing,
10 heavy-set fellow, it's consistent with the same person that
11 Marcus struggled with when the door opened up; correct?

12 A: They had similar builds. If they weren't the same
13 person, they looked pretty much alike.

14 Q: Now, you mentioned something. You saw gold teeth and a
15 gun; is that correct?

16 A: That's all I could -- when I woke up in the hospital from
17 that drug-induced coma, that's all that -- that was what I
18 recall.

19 Q: Okay. Now, do you recall when you made it out and into
20 the parking lot --

21 A: Yes, sir.

22 MR. TUCKER: If you would, put that down, Keith.

23 Q: And if you will stand right there for just one more
24 moment? And what I'm showing you is State's Evidence 136.

25 And if you will, just kind of walk right around, and this is

DAVID LUNN - DIRECT BY MR. TUCKER

1 Brittany Drive?

2 A: Yes, sir.

3 Q: Right here would have been This was Luther's
4 apartment in this general direction. When you came out, which
5 way do you recall running?

6 A: I went this way.

7 Q: Okay. Do you recall how far you got before you
8 collapsed?

9 A: Yeah. I made it to right here.

10 Q: Right there?

11 A: Yes, sir.

12 Q: Okay. And did you stay there until law enforcement
13 arrived?

14 A: I did.

15 Q: At this point when law enforcement arrived, did you
16 indicate to them that you had been shot?

17 A: Yes, sir.

18 Q: And if you would, go back to your seat back up there.

19 (WHEREUPON, the witness complied.)

20 Q: Now, at that point, do you recall anything other than
21 being loaded into EMS and taken to the hospital?

22 A: I recall them questioning me as to where I was coming
23 from or, you know, they asked me the same -- the first
24 question that you asked me do I recall the apartment number,
25 and they were asking me that and I didn't know then.

DAVID LUNN - DIRECT BY MR. TUCKER

1 Q: Okay.

2 A: I mean I couldn't -- I didn't know the number.

3 Q: And you'd been -- you were shot twice at this point; is

4 that correct?

5 A: That's correct.

6 Q: Now, at some point after answering a few preliminary

7 questions and then assessing how badly you were injured, when

8 you got the hospital, do you recall what happened?

9 A: As I said, it was a few days before I was even cognizant.

10 Q: But you had surgery?

11 A: Yes, sir.

12 Q: Now, you were shot once in the upper chest and then you

13 were shot once in the stomach; is that correct?

14 A: That's correct.

15 Q: Do you recall if you had any sort of follow-up treatment

16 with regards to --

17 A: Yeah. I had a colostomy bag for around six months, and

18 then they did the reversal surgery after -- after about --

19 after six -- well, about six or nine months.

20 Q: So you were wounded pretty badly?

21 A: Yeah.

22 Q: Now -- and this may sound like a stupid question and it's

23 almost stupid leaving my mouth, but were you in fear for your

24 life that night?

25 A: Yes, sir.

DAVID LUNN - DIRECT BY MR. TUCKER

1 Q: Now, at some point after you leave the hospital or even
2 actually while you were in the hospital, did investigators
3 McFadden and Collins come to visit you?

4 A: Yes, sir.

5 Q: Now, were you able -- again, given your state and the
6 fact that you were still undergoing treatment, were you able
7 to tell them anything of any significance while you were in
8 the hospital?

9 A: Basically what I told you all today.

10 Q: Okay. At some point when you were discharged, did you go
11 to their office out at Effingham --

12 A: Yes, sir.

13 Q: -- and sit down and give them a statement?

14 A: Yes, sir.

15 Q: When you described the individual that you saw and the
16 one that you struggled with and the one that Marcus struggled
17 with, did they put you in touch or have a forensic artist talk
18 to you about giving descriptions?

19 A: Well, the forensic artist actually worked a little bit
20 more closer with Marcus due to the fact that I couldn't give
21 them as much description as they may have needed to form a
22 composite sketch.

23 Q: I understand, but were you shown the composite sketch
24 after it was completed?

25 A: Yes, sir.

DAVID LUNN - DIRECT BY MR. TUCKER

1 Q: All right.

2 MR. TUCKER: And if I may approach, Your Honor?

3 THE COURT: Sure.

4 BY MR. TUCKER:

5 Q: And I'll show you what's been marked State's Exhibit 1.

6 Is that the composite sketch that the artist showed you?

7 A: Yes, sir.

8 Q: Okay. And is that consistent with the individual who
9 entered your apart -- or Luther's apartment that night?

10 A: I approved it.. I mean, you know --

11 Q: And I understand. Again, it was a rather chaotic --

12 A: Yes. And, you know, this is a composite sketch. So I --
13 you know.

14 Q: Okay. Now, after that, did you do anything? Did law
15 enforcement come back and ask you to look at any sort of
16 photographs or make any further --

17 A: I was given -- I was given a -- a -- a -- a line-up sheet
18 in the hospital.

19 Q: Okay.

20 A: So before they even -- we even made the composite sketch,
21 I was given a line-up, but I wasn't able to pick any one
22 individual. No one really stood out to me from the -- the
23 line-up.

24 Q: Okay. Now, again as you sit here today --

25 A: Yes, sir.

DAVID LUNN - DIRECT BY MR. TUCKER

1 Q: The individual that Marcus struggled with -- and I
2 understand they left out and came back within a short minute,
3 but that person that Marcus struggled with had the same
4 physical characteristics that the person that shot you twice
5 and that you struggled with for the gun; is that correct?

6 A: Yes, sir.

7 Q: All right. Now, David, I want to ask you do you have a
8 conviction for some sort of drug offense in 2008 out of
9 Georgia?

10 A: Yes, sir.

11 Q: And also I want to ask you were you charged in 2013
12 around August with Marcus Lisbon -- and I'm asking you about
13 charging. I'm not asking what the status of it is. But were
14 you charged with going over to the Johnson's house and firing
15 a few rounds into it?

16 A: I've been accused, yes, sir.

17 Q: Okay. You've been accused?

18 A: Yes, sir.

19 Q: Okay.

20 MR. TUCKER: Court's indulgence, Your Honor. Your Honor,
21 I believe that's all the questions I have of Mr. Lunn.

22 THE COURT: All right. Mr. Deberry?

23 MR. DEBERRY: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. DEBERRY:

DAVID LUNN - CROSS BY MR. DEBERRY

- 1 Q: Mr. Lunn, thank you for being here.
- 2 A: Yes, sir.
- 3 Q: I've just got a few questions for you. I'll tell you
4 right off the get-go I'm sorry for what took place. I really
5 am. We're searching for the truth of the matter here today
6 and that's what we're after.
- 7 A: Okay.
- 8 Q: Okay. I'll just pick up where Mr. Tucker left off. What
9 -- what is your charge that you're charged with?
- 10 A: I'm actually not even sure.
- 11 Q: Is it attempted murder?
- 12 A: Yes, sir.
- 13 Q: Okay. And that was in the house of the Johnsons?
- 14 A: Yes, sir.
- 15 Q: Okay. And do you -- do you understand that you're being
16 prosecuted by Mr. Tucker's office?
- 17 A: Yes, sir.
- 18 Q: Okay. And that happened after this crime?
- 19 A: Yes, sir.
- 20 Q: And you knew that Mr. Reginald Johnson was charged in
21 this crime?
- 22 A: Yes.
- 23 Q: Okay. When I was looking back at the statements that you
24 gave to law enforcement, you know, over the course of time and
25 after you healed up -- and I'm glad you made it. One thing

DAVID LUNN - CROSS BY MR. DEBERRY

1 that kind of stuck out to me was -- was that you said the day
2 was kind of blurry.

3 A: Uh-huh.

4 Q: And I understand you underwent some surgeries and --

5 A: That's correct.

6 Q: And you spent some time in ICU?

7 A: Yes, sir.

8 Q: And I think they didn't even know if you were going to
9 make it for a while; is that right?

10 A: It was touch and go.

11 Q: Right. Now, did that affect your memory any?

12 A: I don't think so.

13 Q: All right.

14 A: It may have, but I don't think so.

15 Q: Right. Would that be why you kind of say that things
16 were a little blurry?

17 A: Well, not necessarily. It was just the intensity of the
18 moment itself. You know?

19 Q: Sure.

20 A: Yeah.

21 Q: I understand. Now, at one point in time you said that
22 everybody went out of the -- out of your view?

23 A: That's correct.

24 Q: And then -- and then somebody re-entered the apartment?

25 A: Yes, sir.

DAVID LUNN - CROSS BY MR. DEBERRY

1 Q: All right. So you don't have any idea whether or not the
2 same person re-entered or not? It may have been, may not have
3 been?

4 A: I don't know.

5 Q: Okay. That's fair to say?

6 A: That's fair.

7 Q: It could have been, may not have been?

8 A: I don't know.

9 Q: All right. Of your gunshots, did any -- did one of them
10 stay -- did they both exit your --

11 A: Yes, sir. One of them actually is lodged in my back
12 right now.

13 Q: It's still there?

14 A: Yes, sir.

15 Q: And where is the other one?

16 A: It went in and out, as I said before.

17 Q: It went in and out?

18 A: Yes, sir.

19 Q: And you shot -- you were shot inside the apartment?

20 A: Yes, sir.

21 Q: Okay. And your testimony is that your back would have
22 been towards --

23 A: My back would have been towards the balcony. Where we
24 at? Towards the balcony.

25 Q: Okay.

DAVID LUNN - CROSS BY MR. DEBERRY

- 1 A: I was standing right here when I was shot the first time.
- 2 Q: Okay. Facing?
- 3 A: Facing the doorway.
- 4 Q: Okay. And this is State's Exhibit 2. All right. And it
- 5 definitely went out of you there; right?
- 6 A: Oh, yeah.
- 7 Q: All right.
- 8 A: In and out.
- 9 Q: And that caused some bleeding?
- 10 A: I'm sure it did.
- 11 Q: Yeah.
- 12 A: Yeah.
- 13 Q: And the other shot probably caused some bleeding too I
- 14 would imagine?
- 15 A: I would imagine so.
- 16 Q: Yeah. And so then you were able to get past the shooter?
- 17 A: Yeah.
- 18 Q: And what you -- you can't really tell anything else that
- 19 went on in the apartment?
- 20 A: I stumbled down the stairs and made my way to the road
- 21 and called 9-1-1.
- 22 Q: Okay. You would imagine that you bled from wherever you
- 23 -- from where you were shot until where you were picked up by
- 24 EMS?
- 25 A: Yeah. I would say so.

DAVID LUNN - CROSS BY MR. DEBERRY

- 1 Q: Do you know if you lost a lot of blood?
- 2 A: Yeah.
- 3 Q: Okay.
- 4 A: Yeah. I had to get a couple transfusions actually.
- 5 Q: Okay. You say you were shot one time at pointblank
- 6 range?
- 7 A: Yes, sir.
- 8 Q: Which one was that?
- 9 A: The gunshot wound to my stomach.
- 10 Q: Okay. Do you know if any -- if they checked for any
- 11 gunpowder residue on your stomach or anything?
- 12 A: Pretty safe to say that it was there.
- 13 Q: Okay.
- 14 A: I mean I'm not sure if they ran tests. As I said, I was
- 15 out of it, you know.
- 16 Q: I understand.
- 17 A: Yeah.
- 18 Q: Now, you had quite a bit of money in your pocket and you
- 19 -- why did you carry so much cash?
- 20 A: As I said, I'm a promoter and also an entertainer myself.
- 21 So it wasn't -- it isn't uncommon for me to have thousands of
- 22 dollars on me at any given time.
- 23 Q: Okay. Is it usually in small bills?
- 24 A: However they pay me.
- 25 Q: Okay. When you fell down the stairs, do you know if you

DAVID LUNN - CROSS BY MR. DEBERRY

1 bled anywhere during that process?

2 A: I'm pretty sure I did.

3 Q: You would think so.

4 A: I don't know how much, but it would be safe to say yeah.

5 Q: Now, you testified that they showed you the line-up?

6 A: Yes, sir.

7 Q: And you just couldn't pick anybody out?

8 A: Nobody really stood out to me.

9 Q: I understand. And when you talked to the composite
10 sketch man --

11 A: Yes, sir.

12 Q: -- you just couldn't provide him enough information?

13 A: I just couldn't do it.

14 Q: All right. I don't have any further questions. Thank
15 you so much.

16 A: Thank you.

17 THE COURT: Redirect?

18 MR. TUCKER: Nothing on follow-up, Your Honor.

19 THE COURT: All right. You may step down. Do you have
20 another witness?

21 MR. TUCKER: Your Honor, I think that would conclude it
22 for today.

23 THE COURT: All right. Members of the jury, we'll see
24 you at 9:30 in the morning and we'll continue with this trial.
25 Do not discuss the case with anybody, and have a good night.

1 Everybody else remain seated until the jury is excused.

2 (WHEREUPON, the jury exited the courtroom at 4:38 p.m.)

3 THE COURT: All right. See you at 9:30 in the morning.

4 MR. TUCKER: Thank you, Your Honor.

5 MR. DEBERRY: Thank you.

6 (WHEREUPON, the proceedings adjourned for the day at 4:39
7 p.m.)

8 JUNE 17, 2015

9 (WHEREUPON, the proceedings resumed at 9:50 a.m.)

10 THE COURT: How about the defendant Have we got him?

11 MR. TUCKER: I think they're in the process of bringing
12 him in, Your Honor.

13 THE COURT: All right.

14 (WHEREUPON, there was a pause in the proceedings until
15 the defendant entered the courtroom.)

16 THE COURT: All right. If you'll go ahead and bring out
17 the jury?

18 (WHEREUPON, the jury entered the courtroom at 9:52 a.m.)

19 THE COURT: All right. Good morning. I apologize for
20 the delay. We're waiting on a witness and that witness is not
21 here yet. So we're going to take somebody else in turn. If
22 you'll call your next witness?

23 MR. TUCKER: Thank you, Your Honor. At this time, the
24 State would call James Green to the stand.

25 (WHEREUPON, there was a pause in the proceedings until

JAMES GREEN - DIRECT BY MR. TUCKER

1 the witness entered the courtroom.

2 THE CLERK: If you will, sir, come to the witness stand.

3 Place your left hand on the Bible and raise your right hand.

4 Do you swear to tell the truth, the whole truth, and nothing

5 but the truth, so help you God?

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Please be seated and state your full name for

8 the record.

9 THE WITNESS: James William Green.

10 JAMES GREEN, being first duly sworn,

11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. TUCKER:

14 Q: First, let me get your correct job title, Mr. Green?

15 A: I'm a forensic scientist.

16 Q: Are you referred to as an agent with SLED?

17 A: Yes, sir. I'm also a forensics agent.

18 Q: Okay. All right. Agent Green, I think I let the cat out
19 of the bag with that question, but where do you work?

20 A: I'm employed by the South Carolina Law Enforcement
21 Division, commonly referred to as SLED.

22 Q: In what capacity are you employed?

23 A: I'm a firearms examiner in the forensic services
24 laboratory.

25 Q: Could you tell me a little bit about what a firearms

JAMES GREEN - DIRECT BY MR. TUCKER

1 examiner does in your particular department?

2 A: A firearms examiner examines firearms and fired
3 ammunition components, bullets and cartridge cases, to see if
4 they were been fired by a firearm, if a firearm was submitted,
5 or different firearms.

6 Q: Did you have any sort of special training with regards to
7 your job?

8 A: Yes, sir. When I was hired at SLED, I started the SLED
9 firearms and tool mark course instruction. It's about a three
10 -- three-and-a-half year course of instruction taught in-house
11 in an apprentice-type fashion. Learning and studying under
12 the course-qualified examiners learning to do what I do now.

13 Q: Is there any sort of certification or accreditation that
14 you have to go through in the capacity of your job?

15 A: There's under -- like, on-the-job training. We do
16 proficiency-type testing every year in the fields of study
17 that I do.

18 Q: Now, have you testified in court before?

19 A: Yes, sir.

20 Q: In what capacity?

21 A: As a firearms examiner and in the field of firearms and
22 ammunition.

23 Q: Do you have an idea as to how many times?

24 A: I think I'm -- 40 times state and one time federal.

25 Q: Okay. Have you ever been qualified as an expert in

JAMES GREEN - DIRECT BY MR. TUCKER

1 firearms examination?

2 A: Yes, sir.

3 Q: Okay.

4 MR. TUCKER: Your Honor, at this point, I would ask that
5 the witness be considered a firearm expert.

6 THE COURT: Any objections?

7 MR. DEBERRY: No objections, Your Honor.

8 THE COURT: All right. The motion is granted.

9 MR. TUCKER: Thank you.

10 BY MR. TUCKER:

11 Q: Agent Green, were you employed in your current capacity
12 on or about February the 13th, 2013?

13 A: Yes, sir.

14 Q: Okay. Do you recall -- and I want to hand you -- Agent,
15 this is a chain of custody form there. Specifically, do you
16 recall conducting an examination on five shell casings, nine
17 millimeter, that were submitted to SLED for analysis by the
18 Florence County Sheriff's Office?

19 A: Yes, sir.

20 Q: Now, can you tell me how do you go about getting the
21 particular pieces of evidence? How does it come into SLED and
22 how does it come back around you?

23 A: When submitting agencies bring evidence into the
24 laboratory, they bring it in downstairs for our evidence
25 control department. There, they log in the evidence saying

JAMES GREEN - DIRECT BY MR. TUCKER:

1 what items they have to be examined in the laboratory through
2 all the departments and which individual item they want and
3 what they want done to it. You know, let's say this item they
4 want firearms done to, this item they want DNA, and everything
5 is given an assignment. It's also given a lab number, which
6 is a SLED laboratory number that starts with the letter L and
7 then the year and then whatever the numbers are afterwards.
8 And each individual item is given its own specific item
9 number, which is tracked all the way throughout the process.
10 So the SLED item number may not be the same as the submitting
11 agency's item number.

12 Q: And is that just internally so you guys can keep track of
13 what's what and where it's at?

14 A: Yes, sir. That's so if I report on Item 1, let's say
15 it's a gun, and DNA does a report on Item 1 and it's a swab.
16 So there's no confusion, Item 1 is always going to be the same
17 thing tracked throughout the laboratory.

18 Q: Okay.

19 MR. TUCKER: And, Your Honor, if I may approach?

20 THE COURT: Sure.

21 BY MR. TUCKER:

22 Q: Now, Agent Green, I want to hand you what's been marked
23 or admitted as State's Evidence 140, and I believe that there
24 are four others. I believe that -- well, let's wait and pull
25 them out. 140, State's 139, 138, 142, and 141. Also, I'd ask

JAMES GREEN - DIRECT BY MR. TUCKER

1 you if you would look at the envelope in which they were
2 located and ask if there's anything on there that kind of
3 helps you identify what you're looking at?

4 A: Yes, sir. My initials are written in marker right here
5 on the envelope. When the evidence comes into evidence
6 control or what we call log-in, it's put in sealed containers,
7 and then it is set aside in their storage vault or secure area
8 until the analyst assigned to the case comes downstairs and
9 gets the evidence.

10 What I did was I went downstairs and got this package and
11 took it up to my office and put it in my evidence locker. I
12 have a secured room that only I have the key to and my
13 supervisor has the key to. And I set it there until I get a
14 chance to work the case. And when I'm done, I open it up and
15 inspect the package and make sure no one has tampered with any
16 of the seals and then begin working the case.

17 Q: Okay. Now, do you recall what the Florence County
18 Sheriff's Office requested that you do specifically with those
19 shell casings?

20 A: It was just a general firearms exam. We get that a lot.
21 And it's just they were asking to see if I could determine if
22 all these cartridge cases were fired by the same firearm.

23 Q: Now, in conjunction with your job or in furtherance of
24 it, did you prepare any kind of written report?

25 A: Yes, sir. With every examination, we do our examinations

JAMES GREEN - DIRECT BY MR. TUCKER

1 in a case, a formal written report is given to the submitting
2 agency.

3 Q: And do you have the report with you?

4 A: Yes, sir, I do.

5 MR. TUCKER: And, Your Honor, if I could -- or may I
6 approach?

7 THE COURT: Sure.

8 BY MR. TUCKER:

9 Q: And I ask you if you recognize this? It should be the
10 exact same as what you're looking at.

11 A: Yes, sir. This is the firearms report dated February
12 12th, 2013, I prepared in this case.

13 Q: Okay.

14 MR. TUCKER: And, Your Honor, I'd like to move at this
15 point this into evidence.

16 THE COURT: Any objections?

17 MR. DEBERRY: No objections.

18 THE COURT: All right. State's 150 into evidence without
19 objection.

20 (WHEREUPON, State's Exhibit Number 150, the firearms
21 examination report, was admitted into evidence.)

22 BY MR. TUCKER:

23 Q: Now, Agent Green, in looking at your report and looking
24 at the five shell casings -- and I guess the logical place to
25 start is what -- how do you begin an examination of shell

JAMES GREEN - DIRECT BY MR. TUCKER

1 casings?

2 A: What I do -- first of all, the first thing I do is once I
3 examine the package and make sure it hasn't been tampered
4 with, I open up the packaging and take photographs as I go of
5 the packaging so when I'm putting everything back together,
6 the right stuff goes with it. And, like, I'll look at the
7 markings left on the box and make sure the markings for what
8 they want to be Item 1 or whatever the item is matches what it
9 says on the box, matches what it is in my paperwork, so
10 there's no transposition. I don't mix up what evidence item
11 is which. And then I'll look at each one and make sure I
12 assume we have the same caliber. In this case, State's
13 Exhibits 138 through 142 were all the same caliber.

14 Q: And what caliber was that?

15 A: Nine millimeter Ruger.

16 Q: Now, anything else struck you about the particular shell
17 casings when you conducted your initial examination?

18 A: They were different brands.

19 Q: Okay. And how many different brands were there?

20 A: I believe there were two.

21 Q: Do you recall how many of one and what type and how many
22 of the other?

23 A: May I refer to my notes?

24 Q: Absolutely.

25 A: State's Exhibits 138 and 139 were one brand and then

JAMES GREEN - DIRECT BY MR. TUCKER

1 State's Exhibits 140 through 142 were the same brand.

2 Q: Okay. 138 and 139, what brand were they?

3 A: It's a German name. I'll spell it. Well, it's
4 abbreviated RWS, but it's spelled R-h-e-i-n-i-s-c-h hyphen W-
5 e-s-p-f-a-l-i-c-h-e-n. Third word S-p-r-e-n-g-s-t-o-f-f.

6 Q: Okay. I think for my purposes I'll refer to that as the
7 other kind.

8 A: Or RWS. Yes, sir.

9 Q: And the other shell casings, what particular brand were
10 they?

11 A: They were Winchester.

12 Q: Okay. That's a lot easier to say and spell I would
13 imagine.

14 A: Yes, sir.

15 Q: Could you tell the ladies and gentlemen of the jury when
16 you were looking at the shell casings what you were doing in
17 terms of trying to ascertain whether they were all fired by
18 the same handgun?

19 A: Yes, sir. Our primary tool we use is a comparison
20 microscope. It's two microscopes joined together by an
21 optical bridge that lets us look at two objects
22 simultaneously. And what we're looking for are tiny scratches
23 or striations that are left on the -- in this instance
24 cartridge cases by the firearm. When a firearm is created,
25 the process of metal against metal contact, each firearm will

JAMES GREEN - DIRECT BY MR. TUCKER

1 mark individually and separately. So if you all were all
2 firearms, for this instance, you would all mark separately
3 based on how you were made even though you were made by the
4 same company at the same time.

5 Q: Even if it's the same caliber?

6 A: Yes, sir.

7 Q: Even if it's the same type of firearm?

8 A: Yes, sir.

9 Q: Now, with regards to making the marks on the shell
10 casings, what are you looking for exactly there?

11 A: Specifically, when cartridge cases are fired and the
12 firing pin hits the primer of the cartridge case, the firing
13 -- excuse me. The gunpowder starts to burn and creates a gas,
14 which expels the bullet down the barrel.

15 Well, in Newtonian physics, it's equal and opposite
16 reactions. As the bullet goes down the barrel is cartridge
17 cases forced against the breach face of the firearm. The
18 breach face is the support column where the firing pin comes
19 through. And the marks left on the breach face during
20 manufacture will get transferred to the primer and the head of
21 the cartridge case.

22 So that's what we're looking for primarily when we're
23 looking at cartridge cases. There's also extractor marks,
24 ejector marks, chain marks, that sort of thing. But primarily
25 we're looking for the firing pin and breach face, and those

JAMES GREEN - DIRECT BY MR. TUCKER

1 are put on the cartridge cases as the cartridge is discharged
2 and the cartridge case is literally slammed back up against
3 the breach face taking on the markings left during manufacture
4 of the firearm.

5 Q: Now, even if we could ascertain if one firearm fired a
6 number of rounds, is it possible that even though all the
7 shell casings came out of the same gun, is it possible that
8 even after an examination you wouldn't be able to positively
9 say if it came from the same gun?

10 A: Yes, sir. There's a couple different reasons for that.
11 The biggest reason we see in ammunition differences, different
12 ammunitions and different makeups of the brass or the nickel
13 primers, the hardness or the softness can affect the gun --
14 excuse me -- affect the way in which a gun marks. I worked a
15 case recently where even though I shot the gun myself into the
16 tank, if I wouldn't have known that I wouldn't have known the
17 cartridge cases came from the same gun because of the
18 difference in the brands.

19 Q: So if a -- if there are two types of ammunition and they
20 fire from the same gun, based on the differences in
21 ammunition, you may not be able to positively say just looking
22 at it with your examination that it came from the same weapon?

23 A: Correct. Sometimes that does happen.

24 Q: Okay. Now, drawing your attention specifically to your
25 examination of these particular five nine-millimeter shell

JAMES GREEN - DIRECT BY MR. TUCKER

1 casings, were you able to reach any sort of conclusions after
2 your examination?

3 A: Yes, sir. State's Exhibits 138 and 139 are RWS cartridge
4 casings; they were fired by the same firearm. State's
5 Exhibits 140, 141 and 142, the Winchester cartridge cases,
6 they were fired by the same firearm. However, it was
7 inconclusive as to whether -- that's a famous word for I don't
8 know -- State's Exhibits 138 and 139 were fired by the firearm
9 that fired 141, 141, and 142.

10 Q: Would it be possible that all five were, in fact, fired
11 by the same firearm, but due to the different two types of
12 ammunition you just wouldn't be able to call it conclusively?

13 A: Yes, sir. That is a possibility.

14 Q: Is one other possibility there were more than one gun?

15 A: Yes, sir.

16 Q: Okay. But possible that one gun fired all five?

17 A: Correct.

18 Q: Okay.

19 MR. TUCKER: I believe those are all the questions I
20 have.

21 THE COURT: All right. Mr. Deberry?

22 MR. DEBERRY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. DEBERRY:

25 Q: Agent Green, thank you for being here.

JAMES GREEN - CROSS BY MR. DEBERRY

1 A: You're welcome.

2 Q: So just to clear it up for the jury, I just have a few
3 questions for you, but basically the way you testified earlier
4 it seems-- would you compare the marks that a firearm, a
5 particular firearm, leaves on a shell casing is sort of like a
6 fingerprint that a person would leave somewhere?

7 A: Yes, sir. They commonly -- for a good example, people
8 say that the markings a firearm leaves on a bullet or
9 cartridge case is kind of like a fingerprint. It's unique to
10 that firearm.

11 Q: Okay. And so the results of what you tested are that --
12 you tested five shell casings; correct?

13 A: Correct.

14 Q: And you can tell with certainty that three of them were
15 fired out of the same gun and you can tell with certainty that
16 the other two were fired out of the same gun?

17 A: Correct.

18 Q: And is it correct that you testified to the jury that you
19 don't know if they were -- if they were all fired out of the
20 same gun or out of two guns?

21 A: Correct.

22 Q: Okay. Now, the solicitor didn't ask you about the rest
23 of your report. Let me ask you first do you get -- do you get
24 any background information with these -- with these requests?

25 A: The information is -- when the evidence is logged in,

JAMES GREEN - CROSS BY MR. DEBERRY

1 they also log in the incident report or whatever information
2 they have into the section of our evidence tracking system,
3 but I don't look at that information. I mean it's there, but
4 I don't look at it.

5 Q: So you don't -- so you have access to the incident
6 report?

7 A: On some instances, yes, sir.

8 Q: Okay. But you don't -- you don't look at it?

9 A: No, sir. It has no bearing on what I do.

10 Q: All right. Well, if you go to the second page of your
11 report, it says that you did some comparisons to another case?

12 A: Yes, sir.

13 Q: Who requested that you do that?

14 A: That would have been done by a submitting agency. They
15 asked that we -- it's a common occurrence that they get one
16 case and they want to compare it to another case.

17 Q: The Florence County Sheriff's Office?

18 A: In this instance, yes, sir, it would have been Florence
19 County and Florence PD, Florence City PD.

20 Q: All right. And so what did you do as a result of that?

21 A: I looked at the cartridge cases in this instance, so
22 State's Exhibits 138 through 141, and compared them against
23 fired cartridge cases submitted in a Florence PD case.

24 Q: And what were your results?

25 A: The items -- well, the cases -- the cartridge cases from

JAMES GREEN - CROSS BY MR. DEBERRY

1 the Florence Police Department case were not fired by the
2 firearm or firearms that fired the cartridge cases in this
3 case.

4 Q: Okay. So would -- would you say it would be logical to
5 believe that some investigator thought that maybe --

6 MR. TUCKER: Your Honor, I would object. That's pure
7 speculation on the witness' part what he's asking.

8 MR. DEBERRY: Can I ask the question?

9 THE COURT: Let me hear the question.

10 By Mr. Deberry:

11 Q: Let me phrase it where maybe you can answer it. By
12 having a request like that, would you -- would you think that
13 the two cases were thought by the investigator to be related?

14 MR. TUCKER: Again, Your Honor, I think that would call
15 for speculation on his part. He wouldn't know what the
16 motivation for one submitting agency would be.

17 THE COURT: Are you asking his opinion? As an expert?

18 MR. DEBERRY: Yes, sir.

19 THE COURT: All right. I'm going to overrule it. Go
20 ahead. You can answer it.

21 BY MR. DEBERRY

22 A: Okay. This is a very common occurrence. Sometimes it's
23 just we have the same or similar caliber and we want to
24 compare it. Sometimes they do have investigative leads. I
25 don't know what happens. I just know that the request comes

JAMES GREEN - CROSS BY MR. DEBERRY

1 in and we do it as requested.

2 Q: Okay. And if there was an investigative lead, you think
3 you would have found it in the incident report?

4 A: I didn't look at the incident report; so I don't know.

5 Q: So you couldn't disagree with me if I told you that it
6 was not -- that there's no --

7 MR. TUCKER: Your Honor, again, we're getting into --
8 he's asking him to get in through the back door what he
9 couldn't get in through the front door. He asked and he
10 answered. He told him he didn't read the incident report and
11 I think that's as far as it can go with that line of
12 questioning.

13 THE COURT: I agree. You can rephrase your question and
14 see if it'll come in.

15 MR. DEBERRY: All right.

16 BY MR. DEBERRY:

17 Q: What I would -- what I would ask is you didn't -- you
18 testified that you didn't look at the report that was
19 submitted?

20 A: Right.

21 Q: So you can't say whether or not there's any information
22 in there about a related case or about these -- or about these
23 other shell casings that you examined?

24 A: Correct, I have no knowledge because I did not look at
25 it.

JAMES GREEN - CROSS BY MR. DEBERRY

1 Q: Okay.

2 MR. DEBERRY: Just a second.

3 Q: You testified earlier that basically inconclusive means
4 -- what did you say inconclusive means?

5 A: It's I don't know. There's some information that makes
6 me think they could have been fired by the same gun, but
7 there's not enough for me to say, yes, it was fired by the
8 same.

9 Q: So it's inconclusive?

10 A: Correct.

11 Q: Thank you.

12 THE COURT: Redirect?

13 MR. TUCKER: No, Your Honor. I would also ask that Agent
14 Green be released from his subpoena.

15 THE COURT: Any objections?

16 MR. DEBERRY: No, Your Honor.

17 THE COURT: All right. Have a good day. Thank you for
18 coming. If you will, call your next witness.

19 MR. TUCKER: Your Honor, at this time, the State calls
20 Jennifer Stoner to the stand.

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

23 THE CLERK: I you would, ma'am, come to the witness
24 stand. Place your left hand on the Bible and raise your right
25 hand. Do you swear to tell the truth, the whole truth, and

JENNIFER NATE - DIRECT BY MR. TUCKER

1 nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated and state your full name for
4 the record.

5 THE WITNESS: Jennifer M. Nate.

6 DIRECT EXAMINATION

7 BY MR. TUCKER:

8 Q: Mrs. Nate, when -- I think the first time we talked on
9 the phone you had a different last name. What was that?

10 A: It was Stoner.

11 Q: And you've since married I take it?

12 A: Yes, sir.

13 Q: What is your rank?

14 A: I'm a lieutenant.

15 Q: Now -- and where are you employed?

16 A: I'm employed by the South Carolina Law Enforcement
17 Division in the trace evidence section.

18 Q: Now, when you say trace evidence, what exactly do you
19 mean?

20 A: Trace evidence is one of the sections in the forensic
21 laboratory. We do several different types of analyses. We
22 analyze gunshot residue, glass cases, explosives, paint,
23 fiber, trace other cases, and fire debris.

24 Q: And how long have you been employed at SLED?

25 A: I've been employed at SLED for 17 years.

JENNIFER NATE - DIRECT BY MR. TUCKER

1 Q: Did you have any sort of prior law enforcement experience
2 before joining SLED?

3 A: I did not.

4 Q: Do you have any sort of specialized training that allows
5 you to do your job there at SLED?

6 A: I have a Bachelor of Science degree from a small state
7 school in Pennsylvania that I received in 1997. Upon
8 completion of that degree, I performed an internship at SLED
9 in the trace section. I was then hired in the drugs section,
10 where I worked for a year, and then transferred back to trace.

11 I began a four-year training program in trace, where I
12 trained under the lieutenant and other senior analysts. I've
13 also taken numerous courses on the instrumentation we use, on
14 the types of analyses we perform, and I attend yearly meetings
15 and updates on classes.

16 Q: Now, have you testified in court before?

17 A: I have.

18 Q: And just a ballpark figure, how many times do you think?

19 A: Around eight.

20 Q: Have you ever been qualified as an expert in the field of
21 trace evidence analysis?

22 Q: I have been qualified in trace evidence and in GSR in
23 particular.

24 Q: Okay.

25 MR. TUCKER: Your Honor, at this point, I would ask that

JENNIFER NATE - DIRECT BY MR. TUCKER

1 Lieutenant Nate be considered an expert in the field of GSR
2 analysis.

3 MR. DEBERRY: No objection, Your Honor.

4 THE COURT: All right. The motion is granted.

5 BY MR. TUCKER:

6 Q: Lieutenant Nate, were you employed with SLED on or about
7 October the 15th, 2013?

8 A: I was.

9 Q: Now, do you recall getting involved in an investigation
10 of gunshot residue kits that were submitted by the Florence
11 County Sheriff's Office? The lab number I believe is L-13-
12 00500.

13 A: I don't particularly recall the case. We work so many
14 cases, but I have -- when we work a case, we --it goes into
15 our custody which is recorded and we have our initials on the
16 pages of the case file and the dates that we performed the
17 analyses.

18 Q: I assume --

19 A: And I did that on this case.

20 Q: Now --

21 MR. TUCKER: May I approach, Your Honor?

22 THE COURT: Sure.

23 BY MR. TUCKER:

24 Q: There is a -- what is referred to as a chain evidence
25 log. In looking at that, do you recall -- I guess if you

JENNIFER NATE - DIRECT BY MR. TUCKER

1 could explain to the jury how evidence comes to SLED and how
2 you get it back to your particular department?

3 A: This is the certified chain of custody as we call it. It
4 tracks all of the evidence from a particular case. Each case
5 that is submitted is given a unique lab number and each one
6 will contain a chain of custody.

7 When evidence is submitted to SLED, it is submitted by
8 the law enforcement agencies throughout the state or through
9 SLED itself. They come into an evidence intake area where the
10 evidence is assigned a unique lab number and each item -- each
11 item of evidence is assigned a unique item number. That is
12 all recorded and then it is taken into intake where they
13 disseminate the evidence to each department.

14 Q: Okay. Now, I would imagine that -- in furtherance of
15 your duties there, do you prepare written reports as you do
16 your examinations?

17 A: I do.

18 Q: Okay.

19 MR. TUCKER: And, Your Honor, if I could approach?

20 THE COURT: Sure.

21 BY MR. TUCKER:

22 Q: And I ask if you recognize what I am handing you?

23 A: This appears to be a copy of the report that I issued on
24 this case.

25 MR. TUCKER: And, Your Honor, at this point, I would ask

JENNIFER NATE - DIRECT BY MR. TUCKER

1 that this be moved into evidence.

2 THE COURT: Any objections?

3 MR. DEBERRY: No, Your Honor.

4 THE COURT: State's Number 151 into evidence without
5 objection.

6 (WHEREUPON, State's Exhibit Number 151, the GSR report,
7 was admitted into evidence.)

8 BY MR. TUCKER:

9 Q: Now, Lieutenant Nate, if you could, could you tell us
10 when you retrieve a sample or a piece of evidence for
11 examination what you do with it?

12 A: For a GSR in particular?

13 Q: Yes.

14 A: In gunshot residue, a GSR kit is collected by an
15 investigating officer or sometimes the coroners collect them
16 or the medical examiners or some of our SLED agents will
17 collect them as well. The kit is collected by them, they fill
18 out the information sheet on that kit, and it's submitted to
19 us. When we receive the kit, it's usually in an envelope or a
20 box.

21 Q: Let me break in right there this might be a good point --

22 MR. TUCKER: If I may approach, Your Honor?

23 Q: I'm handing you what's already been admitted into
24 evidence as State's 144 and 143, and I'm also going to hand
25 you the envelope. I'm sure that will help you as well. And I

JENNIFER NATE - DIRECT BY MR. TUCKER

1 ask if you recognize those three items?

2 A: These are the actual gunshot residue collection kits, and
3 these are -- they come in this packaging from the vendor.
4 This is the envelope that it's placed in prior to submission
5 so that these -- both of these items come into my department
6 to me in particular; so they'll package them together if they
7 can so you don't have ten or twelve different items of
8 evidence going separately.

9 In this case, this is the envelope that it was received
10 it. We receive the evidence and we check to make sure it's
11 sealed. If it's not sealed or initialed, we'll document that.
12 We then open up the GSR kits, which will be comprised of what
13 we call particle lives. They are round sample containers
14 about this big.

15 Q: And, Lieutenant, if I may break-in? If you want to,
16 unless there's an objection from the Court, if you would, open
17 one of those and kind of show the folks of the jury kind of
18 what they look like.

19 A: Is there no objection?

20 THE COURT: No objection.

21 (WHEREUPON, the witness complied.)

22 A: When these come to us also, they are sealed with this
23 strip of tape. They are not sealed -- when the officer gets
24 them, they're sealed. They open them and this strip of tape
25 is inside for them to reseal it prior to submission to us.

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1 All this other tape, I put on there after I finished the
2 analysis. And the other way we can identify these is when we
3 receive evidence, we will put an actual item number and tag on
4 it with our initials and date.

5 These are what we call the particle lifts. They are
6 collected from the four areas of the hands. If you can see,
7 there is a black circle inside of it. It has an adhesive on
8 it which is kind of like a Band-aid adhesive. It doesn't do
9 any damage, but it picks up any particles that are present on
10 the hands.

11 So the officer will open this up and he'll take -- this
12 is the back of the right hand. So he will dab the particle
13 lifts onto -- take this lid off and dab it all over that area
14 of the hand to collect anything that is present on that hand,
15 which we then analyze to see if gunshot residue is present.
16 And they will do that for each area of the hand, which is why
17 the report will say right palm, right back, left palm, and
18 left back. They are all the four areas of your hands.

19 Q: Now, what are you exactly looking for when you're
20 conducting your examination with these kits?

21 A: When we conduct a gunshot residue examination, we use a
22 scanning electron microscope and we're looking for particles
23 on the hands that contain barium, antimony, and lead, or any
24 combination of those elements because these elements are found
25 in gunshot residue. All three in combination are unique to

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1 gunshot residue.

2 So we set up an automated analysis and the instrument
3 will map out this particle lift, and then we physically go
4 back and relocate all the particles the instrument found,
5 perform an x-ray analysis on it to tell us what the element
6 is, and then we use that data to generate our report..

7 Q: Now, is it like -- can you call something positive for
8 gunshot residue or negative for gunshot residue or what are
9 the values assigned to your conclusions?

10 A: With gunshot residue, we can say that there was no
11 gunshot residue present, but if we have a negative for a
12 gunshot residue case, it doesn't mean that person did not fire
13 a gun or was not near a weapon. Gunshot residue is very
14 fragile. It can be removed. After six hours if you're near a
15 gun or fire a weapon, you won't have anything left on your
16 hands after that timeframe.

17 Q: Why is that?

18 A: It is so fragile. It's on the surface of your hands. If
19 you wash your hands, you'll remove it. So therefore, if we
20 have a negative, we can't say it's because they didn't fire a
21 gun. We don't know what happened from the time of the
22 potential firing until the kit was collected. We can just say
23 there's no evidence at this point to support it, but they
24 could have fired.

25 Q: Okay. Now, directing your attention to what we've

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1 already marked as State's 151, your report in this particular
2 case, directing your attention to Item 6, could you tell the
3 jury what that is?

4 A: Item 6 was the GSR kit from Marcus Lisbon.

5 Q: And let me ask you this. I mean you certainly don't meet
6 the individuals from whom these kits are taken. It's just
7 you're going by what law enforcement tells you?

8 A: I go strictly by what law enforcement tells me and on the
9 information sheet that they fill out and include in the
10 gunshot residue kit.

11 Q: I understand. Now, going back to Item 6, what did you do
12 when you first got that sample?

13 A: When I receive the sample, I open it up. I determine and
14 make sure that the kit was sealed and initialed. I open up
15 the information sheet, determine if the person that the kit
16 was taken on is deceased or living because I have to verify
17 the timeframe in which the kit was taken. Once I do that, I
18 then set the samples up for analysis on the scanning electron
19 microscope.

20 Q: Okay. Now, is that a process that you stand there with
21 or do you put it in the microscope and it runs for a period of
22 time or how does that work exactly?

23 A: It's an automated run. So I don't stay with it the
24 entire time. I set up a sequence table so that I let the
25 instrument know which samples are in which particular slots on

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1 the instrument. I set up the parameters that I want it to run
2 to. I check the -- what we call the QA/QC on the instrument
3 to make sure it's working within the proper parameters. And
4 then I basically hit a start button and it usually analyzes
5 overnight. It takes anywhere from two to four hours per
6 sample, and we usually run probably over two days' time
7 frames.

8 Q: Okay. Now, do you -- or did you reach any sort of
9 conclusions with regards to Item 6, which is the GSR kit taken
10 from Marcus Lisbon?

11 A: I did.

12 Q: And what was that?

13 A: On the four samples of the hand, on the right palm and
14 the left palm and the left back, I did not find any particles
15 that were consistent or could be classified as gunshot
16 residue.

17 Q: Did that tell you anything about what occurred? In other
18 words, had he fired a firearm or did that result give you any
19 sort of help whatsoever?

20 A: It does not because it's a negative result. So therefore
21 the residue could have been removed prior to the kit being
22 collected.

23 Q: I understand. Did you find anything else with regards to
24 Item 6, the GSR kit that was taken from Marcus Lisbon?

25 A: On the back of the right hand, I found round particles

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1 that are associated with gunshot residue. So I found
2 particles that were round, they contained lead, and they are
3 considered a part of gunshot residue.

4 Q: Now, when you say particles of gunshot residue were
5 found, what does that mean exactly?

6 A: When the instrument performs its analysis and it will --
7 if I can find one to show you. It will trap the particles
8 that it finds that it feels are particles of interest. We
9 then go back and verify that it is, in fact, a particle of
10 interest. And this is our datasheet and that brown circle
11 there is actually the particle that I went back. I made sure
12 it was round and I took an x-ray of it to determine what its
13 composition was to see that it was, in fact, made of lead.

14 Q: Now, does that conclusion in and of itself mean that
15 Marcus Lisbon fired a weapon or a gun?

16 A: No, sir. Whenever we find gunshot residue on a person's
17 hands, it means that they could have fired a weapon, they
18 could have been near a weapon when it was fired, or they could
19 have handled something that had gunshot residue on it. Of
20 those three scenarios, I can't tell you which is more likely.
21 With a shooting victim, since they were shot by a gun, they
22 could have residue on their hands from being shot and I can't
23 tell you whether or not they fired a gun or if they have that
24 residue present from being shot.

25 Q: Okay. But this particular one, I believe the -- it's

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1 Item 6.2 in your report. One of those three things that you
2 could say is that he was near or at least his right hand, the
3 back of, was near a firearm when it was discharged?

4 A: Yes, sir.

5 Q: Okay. Now, also Item 6.3, if I could direct your
6 attention to that. It says left palm.

7 A: Uh-huh.

8 A: And did you find any sort of gunshot residue with regards
9 to that particular item?

10 A: I did not.

11 Q: All right. Were there any other items found in terms of
12 being consistent with gunshot residue with regards to Marcus
13 Lisbon?

14 A: For Item Number 6, no. It was only on the right back --
15 back on the right hand.

16 Q: Okay. Now, directing your attention to Item 7. That is
17 I believe a gunshot residue kit obtained from the deceased in
18 this case, Luther Sherod Lisbon.

19 A: That is what I have written is who that was submitted
20 from.

21 Q: Okay. Now, could you tell us what you found with regards
22 to that particular GSR?

23 A: On item 7, which was the kid submitted from Luther Sherod
24 Lisbon, on the sample collected from the right palm and the
25 right back, I did not find any gunshot residue. Those two

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1 samples were negative.

2 Q: Okay. And how about were there any other items that you
3 found?

4 A: On this sample collected from the left palm, I found
5 particles of gunshot residue, which means I found particles
6 that contained barium, antimony, and lead. And on the back of
7 the left hand, I found one round particle associated with
8 gunshot residue.

9 Q: Now, you mentioned, before we turn to Luther Lisbon, that
10 one of the things is that the deceased sometimes will have
11 gunshot residue on their hands?

12 A: Yes.

13 Q: And again, if you could, explain to the ladies and
14 gentlemen of the jury how that would occur.

15 A: When a person is shot, the gun is pointed towards that
16 person, of course, so all of the residue that comes out of the
17 barrel of the gun is aimed towards that person. So it is --
18 they will have gunshot residue deposited on them from being
19 shot if it's within a certain distance.

20 Q: Now, is there any way that your examination could reveal
21 how close or how far a person was when they were shot?

22 A: We cannot.

23 Q: Does your examination or could it reveal whether a person
24 was sitting or standing when the GSR was deposited on them?

25 A: No, sir.

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1 Q: Okay. With regards to the sample from Luther Lisbon, you
2 mentioned that he could have been in proximity to a gun when
3 it was discharged. If a person were shot and if a person were
4 to put their hand over where they were shot at, would it be
5 possible to get lead particles or things like that on their
6 hand just from putting their hand on the wound?

7 A: Yes.

8 MR. TUCKER: Judge, I believe that's all the questions I
9 have.

10 THE COURT: All right. Cross?

11 CROSS-EXAMINATION

12 BY MR. DEBERRY:

13 Q: Ms. Nate, thank you for being here this morning. I don't
14 think I have many questions at all. I just want to ask you
15 are these the only two gunshot residue kits that were
16 submitted in this case?

17 A: Those are the only two kits that I received this case,
18 yes.

19 Q: Okay. Do you ever receive any gunshot residue kits from
20 items such as items of evidence, not necessarily off of
21 people's skin?

22 A: We do in certain circumstances depending on what the
23 items are. We can receive -- we receive clothing to test for
24 gunshot residue. We have -- I think I've tested a screen door
25 at one point, but normally the majority of the things that we

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1 receive are hand kits.

2 Q: Okay. And both of these individuals, Marcus and Luther
3 Lisbon, tested positive in some respect for gunshot residue?

4 A: In some respect on some of the areas, yes, sir.

5 MR. DEBERRY: That's all I have. Thank you.

6 THE COURT: All right.

7 MR. TUCKER: No redirect, Your Honor. And I would ask if
8 Lieutenant Nate could be excused from her subpoena.

9 THE COURT: Any objections?

10 MR. DEBERRY: No, Your Honor.

11 THE COURT: All right. You have a good day.

12 THE WITNESS: Thank you, Judge.

13 THE COURT: All right. Call your next witness.

14 MR. TUCKER: Your Honor, if we may approach?

15 THE COURT: Sure..

16 (WHEREUPON, a bench conference was held in the presence
17 of the jury but out of the hearing of the jury off the
18 record.).

19 THE COURT: Members of the jury, let's take a short
20 break. They have some matters they have to take up before
21 this next witness comes out. So you just relax and we'll be
22 back with you in a moment.

23 (WHEREUPON, the jury exited the courtroom at 10:29 a.m.)

24 THE COURT: All right.

25 MR. TUCKER: And, Judge, we're going to be back here.

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1 THE COURT: All right. Let me know when you're ready.

2 (Whereupon, there was a break in the proceedings from
3 10:30 a.m. until 10:52 a.m.)

4 THE COURT: All right. Are you ready?

5 MR. TUCKER: We're ready.

6 THE COURT: All right. Go ahead and bring out the jury.

7 (WHEREUPON, the jury entered the courtroom at 10:52 a.m.)

8 THE COURT: All right. Call your next witness.

9 MR. TUCKER: Thank you, Your Honor. At this time, the
10 State would call Dr. Ellen Riemer.

11 THE CLERK: If you will, ma'am, come to the witness stand
12 and place your left hand on the Bible and raise your right
13 hand. Do you swear to tell the truth, the whole truth, and
14 nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated and state your full name for
17 the record.

18 THE WITNESS: My name is Dr. Ellen Riemer.

19 DR. ELLEN RIEMER, being first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. TUCKER:

23 Q: Dr. Riemer, where are you employed?

24 A: I'm employed at the Medical University of South Carolina.

25 Q: In what capacity?

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1 A: I'm an associate professor of pathology and a forensic
2 pathologist.

3 Q: Could you explain to the ladies and gentlemen of the jury
4 a little bit about what a forensic pathologist does?

5 A: Yes. A forensic pathologist is a physician who has
6 specialized training in forensic pathology so that I'm able to
7 evaluate injuries of -- I examine deceased individuals and
8 evaluate their injuries and all of the injuries that are on
9 them in order to determine the cause and manner of death.

10 Q: And how long have you been employed by the Medical
11 University of South Carolina?

12 A: I've worked there for six-and-a-half years.

13 Q: Now, did you work at any other hospital prior to coming
14 to MUSC?

15 A: Yes. Prior to coming to MUSC, I was a forensic
16 pathologist at Wake Forest University Baptist Medical Center
17 in Winston-Salem, North Carolina, where I was for six years.

18 Q: And what -- you were in the pathology department there as
19 well?

20 A: Yes. I was in the pathology department and worked as a
21 forensic pathologist there as well.

22 Q: Could you tell the ladies and gentlemen of the jury a
23 little bit about your educational background, please?

24 A: Yes. Well, I -- after receiving my college degree, my
25 bachelor's, I went to law school and got a J.D., and then

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1 practiced law for five years, but didn't -- wasn't happy. So
2 I went to medical school and then I received an M.D. after
3 four years.

4 And then I did my training in pathology, residency
5 training, at Columbia University College of Physicians and
6 Surgeons in New York, and then I did sub-specialty training in
7 forensic pathology at the Office of the Chief Medical Examiner
8 of the State of Maryland, followed by an additional year of
9 sub-specialty training in cardiovascular and pulmonary
10 pathology at Johns Hopkins University School of Medicine.

11 Q: Have you received any sort of certification or do you
12 hold any sort of certifications with regards to your field?

13 A: Yes. I'm board-certified in pathology and board-
14 certified in forensic pathology. So both.

15 Q: Have you testified in court before in your capacity as a
16 forensic pathologist?

17 A: Yes.

18 Q: Have you ever been qualified as an expert in the field of
19 forensic pathology?

20 A: Many times.

21 MR. TUCKER: Judge, at this point I would tender Dr.
22 Riemer as an expert in forensic pathology.

23 THE COURT: Any objections?

24 MR. DEBERRY: No, Your Honor.

25 THE COURT: All right. Motion is granted.

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1 BY MR. TUCKER:

2 Q: Dr. Riemer, drawing your attention to January the 7th,
3 2013, were you employed by the Medical University of South
4 Carolina?

5 A: Yes.

6 Q: And you were a forensic pathologist then; correct?

7 A: Yes.

8 Q: Now drawing your attention to -- it was around 11:30. Do
9 you recall performing an autopsy on the body of Luther Lisbon?

10 A: Yes.

11 Q: And could you just explain to us a little bit about how a
12 body comes to you and how you begin your aspect of things?

13 A: Yes. When an individual dies under suspicious
14 circumstances, the coroner of the -- of -- in this case, the
15 coroner of Florence County was investigating the death and
16 determined that an autopsy was needed to determine the cause
17 and manner of death and a full autopsy examination be
18 performed. And so he calls my -- he called my assistant and
19 requested that an autopsy be performed, and then we scheduled
20 a time.

21 And then after the body is brought to the Medical
22 University of South Carolina, I examine the body externally
23 and internally by a special surgical-type procedure with
24 surgical tools. And I go through all the organs, the internal
25 organs of the body, and after my autopsy is complete, I'm -- I

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1 determined the cause of death.

2 Q: I understand. Now, as you're performing your
3 examination, do you dictate notes or things of that nature?

4 A: Well, I take notes during my examination and then, after
5 it's all done, I'll write the report.

6 Q: Okay.

7 MR. TUCKER: And if I may approach, Your Honor?

8 THE COURT: Sure.

9 BY MR. TUCKER:

10 Q: Doctor, I'm showing you what's been marked State's
11 Evidence 156 and ask if you can identify it?

12 A: Yes. This is a copy of the autopsy report that I
13 performed on Luther Libson [sic].

14 Q: Okay. And you have a copy of that in front of you?

15 A: Yes.

16 Q: Now, how do you begin your examination? I'm assuming you
17 properly identify the body and make sure in fact that is the
18 one that you're supposed to be doing?

19 A: Yes. You know, anytime I receive a body, I make sure
20 that there is sufficient identification on the body so I know
21 that the person who I'm examining is indeed the person that I
22 was asked to examine. And this individual had identification
23 tags on him with his name, Luther Libson.

24 Q: And I believe there may be a typo. It's got Libson, but
25 I think the last name is actually Lisbon.

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1 A: Oh, okay.

2 Q: Okay. Now, how do you begin your examination once you've
3 properly identified the body?

4 A: Yes. Well, I -- before I look inside the body, I look
5 externally all over the body. So the front of the body, the
6 back of the body, the top, the bottom. I look for any
7 abnormalities whatsoever, be it natural disease or evidence of
8 injury. I -- I weigh the body. You know, my assistants help
9 me weigh the body and I measure his height. And so just a
10 basic external examination and where I'm looking for any
11 abnormalities on the body. And after that's complete, I
12 proceed to the internal examination where I examine the
13 internal organs of the body and see what abnormalities exist
14 of the internal organs.

15 Q: Now, do you have any conversation with the investigating
16 officers working the case that you're doing an examination
17 for?

18 A: No.

19 Q: Okay. Do you ascertain the date of death from an outside
20 source?

21 A: Yeah. I'm told by the coroner the date of death and --
22 and the time of death.

23 Q: Now, does your report indicate what the date of death was
24 with regards to Luther Lisbon?

25 A: Yes. January 6th, 2013.

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1 Q: Okay.

2 A: And I was told the time of death was 9:30 p.m.

3 Q: Okay. Now, you noticed that you begin by doing kind of
4 like an overall visual inspection --

5 A: Yes.

6 Q: -- of the body?

7 A: Yes.

8 Q: Did that visual inspection reveal anything of note to
9 you?

10 A: Yes. There were -- there was an entrance gunshot wound
11 on the right side of the abdomen, so on the belly. And there
12 was an exit gunshot wound on the left side of the body not far
13 from the buttock.

14 Q: Okay.

15 MR. TUCKER: And if you will raise that?

16 (WHEREUPON, the screen was raised for the jury to see the
17 photographs.)

18 BY MR. TUCKER:

19 Q: Doctor, if you could, step down.

20 (WHEREUPON, the witness complied.)

21 MR. TUCKER: Okay. And could you pull up what's been
22 marked State's Exhibit 152?

23 BY MR. TUCKER:

24 Q: And, Doctor, do you recognize that picture?

25 A: Yes. This is a photograph that I took at the

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1 commencement of the autopsy that shows an entrance gunshot
2 wound on the right side of the abdomen.

3 MR. TUCKER: And at this point, Your Honor, it's already
4 been marked, but we move that State's 152 by admitted into
5 evidence.

6 THE COURT: Any objection?

7 MR. DEBERRY: No, Your Honor.

8 THE COURT: All right. 152 is into evidence without
9 objection.

10 (WHEREUPON, State's Exhibit Number 152, a color
11 photograph, was admitted into evidence.)

12 BY MR. TUCKER:

13 Q: And, Doctor, can you please --

14 A: Okay. So that's an entrance gunshot wound.

15 Q: Could you explain how you're able to ascertain that's an
16 entrance wound --

17 A: Yes.

18 Q: -- versus any other?

19 A: Well, it's a nice defect. It's very regular and it's got
20 an abrasion collar, an abrasion border, which is made by when
21 the bullet pierces through the skin. It kind of scrapes along
22 the edges of the skin and causes an abrasion or scrape on the
23 skin margins, and that's characteristic of an entrance gunshot
24 wound.

25 Q: Okay. And if we could back up just a little bit? The

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1 wound that's kind of down to the left on the bottom of that
2 picture --

3 A: Yes.

4 Q: What is that?

5 A: Yeah. That's not a wound. That's actually an incision,
6 a cutting, a cut that is made by doctors in the emergency
7 department when they were trying to save his life.

8 Q: Okay. Now, how were you able to determine that? Did you
9 make a call back there or just based on --

10 A: No.

11 Q: -- your training and experience you know what that is?

12 A: I know that that's a very standard incision. It's not
13 any -- it's a surgical incision. It's not an injury that
14 occurred abnormal. It's a -- and it goes into the chest
15 cavity so doctors can look. You know, people were trying to
16 save his life and have access to the heart potentially and
17 give a cardiac massage if they want.

18 Q: Okay.

19 MR. TUCKER: And if we could, 153.

20 Q: And, Doctor -- and I'm going to need you to speak up just
21 a little bit so the court reporter can take down what you're
22 saying.

23 A: Okay.

24 Q: And if you could identify that picture, please?

25 A: Yes. So this is the -- a photograph of the -- the

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1 entrance gunshot wound on the right side of the decedent's
2 abdomen.

3 Q: Okay. And it shows the discoloration --

4 A: Yeah.

5 Q: -- or the abrasion collar?

6 A: So this is a very nice abrasion collar, and you can see
7 that it's not completely concentric. It's actually a little
8 bit more on the top part of the entrance defect. So that
9 indicates that it's kind of -- you know, you can sort of use
10 your logic and you can imagine the bullet sort of coming from
11 that direction as opposed to downward. Like upward, because
12 if it was coming from this direction, we might have more of an
13 abrasion here. So it sort of gives me a general idea of the
14 direction of the bullet and, you know, because this is where
15 the biggest abrasion is, I can see it's kind of going in there
16 and then I was able to see that the exit wound was in fact,
17 you know, sort of at the end where I might expect it to be,
18 which was on the left side of the flank.

19 Q: Okay.

20 MR. TUCKER: And, Your Honor, we'd move what's been
21 marked State's 153 into evidence at this point.

22 THE COURT: Any objections?

23 MR. DEBERRY: No, Your Honor.

24 THE COURT: 153 into evidence without objection.

25 (WHEREUPON, State's Exhibit Number 153, a color

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1 photograph, was admitted into evidence.)

2 BY MR. TUCKER:

3 Q: Now again, Doctor, if you could -- you indicated that
4 that particular photo demonstrated what you thought to be the
5 angle of a bullet when it went in?

6 A: Well, it's helpful. It's not always a hundred percent.
7 You can't always -- I can't -- the real way I know the angle
8 of the bullet is because I found the exit wound.

9 Q: I gotcha.

10 A: Okay. So, you know, it sort of gives me an idea of why
11 there's a lot of abrasion on the top right part and not -- and
12 less on the bottom. So it's helpful, but the real -- the real
13 test is where the exit was, and that -- the entrance wound was
14 connected to the exit and I had two holes. And there's a
15 wound path moving through organs between the entrance and the
16 exit, and this has characteristics of an entrance wound and
17 the other defect has characteristics of an exit wound.

18 Q: I understand.

19 A: So this doesn't tell me the whole story.

20 Q: I gotcha.

21 MR. TUCKER: If we could look at 154?

22 Q: And could you identify what we're looking at there?

23 A: Okay. So this is -- this is the -- Mr. Lisbon's arm, and
24 so this is the curvature of the left buttock. And then this
25 is an exit defect.

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1 Q: And, Doctor, if you could --

2 MR. TUCKER: Your Honor, at this point we're looking at
3 what's been marked State's 154 and we would move that into
4 evidence at this time.

5 THE COURT: Any objections?

6 MR. DEBERRY: No, Your Honor.

7 THE COURT: State's 154 into evidence without objection.

8 (WHEREUPON, State's Exhibit Number 154, a color
9 photograph, was admitted into evidence.)

10 BY MR. TUCKER:

11 Q: If you could, continue, please.

12 A: Okay. So this has characteristics of an exit wound. You
13 can see that it looks like it's kind of split open, as opposed
14 to the entrance wound which actually leaves a really big hole.
15 This is almost like you could put the pieces -- you can almost
16 put it back together. It's kind of like torn open as if
17 somebody is tearing through a curtain. You're going to sort
18 of tear -- you know, cause the skin to sort of flap open. And
19 so this is a kind of mark that's made when a bullet exits the
20 body.

21 Q: So it's not like what we see on TV? It's not a perfectly
22 round --

23 A: No.

24 Q: -- entrance or exit?

25 A: Right. And exit wounds generally have more irregular

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1 margins, which is the case here.

2 Q: Okay.

3 MR. TUCKER: And if we could look at 155?

4 Q: And is that just a closer-up picture of what we looked at

5 --

6 A: Yes.

7 Q: -- on 154?

8 A: So you can see that there's, like, a lot of torn edges
9 here without scraping. Here's a little bit of a scrape and,
10 you know, there may have been -- when the bullet was coming
11 out over here, you can see it's basically making a tear, but
12 it could have actually -- if he was wearing, like, underwear
13 or jeans with a belt or something, a little piece of skin
14 could have, like, pressed up against whatever he was wearing
15 at the time and caused a little bit of an abrasion, but pretty
16 much the rest of the wound doesn't have any abrasion on the
17 edges. It's kind of more just torn without abrasions.

18 Q: But in your expert medical opinion, no doubt that is the
19 entrance -- or exit wound?

20 A: Yes. Well, I have two -- I have two wounds and the other
21 is clearly the entrance wound and this is clearly the exit
22 wound.

23 Q: Okay.

24 MR. TUCKER: And, Your Honor, that was 155 and we would
25 ask that it be admitted into evidence at this point.

DR. ELLEN RIEMER - DIRECT BY MR. TUCKER

1 THE COURT: Any objections?

2 MR. DEBERRY: No, Your Honor.

3 THE COURT: State's 155 into evidence without objection.

4 (WHEREUPON, State's Exhibit Number 155, a color
5 photograph, was admitted into evidence.)

6 BY MR. TUCKER:

7 Q: And, Doctor, now that we've had a good look at the exit
8 wound and we've had a good look at the entrance wound, while
9 you've got that pointer in your hand, could you kind of turn
10 to the jury and kind of show the trajectory that the bullet
11 took when it entered his body?

12 A: Sure. Okay. So the entrance wound -- I'll just sort of
13 demonstrate on myself -- was over here. You can sort of see
14 it as between the belly button and the right nipple, like,
15 over here, and the exit is kind of over there. And so it's
16 going from left -- right to left. From right to left, and
17 sort of front to back and in a downward direction.

18 Q: Now, from that could you tell whether or not Mr. Lisbon
19 was sitting or standing or anything of that nature?

20 A: No.

21 Q: Okay. But the entrance wound was higher and the exit
22 wound was lower and it was down to the right, if I understand
23 you correctly, and it was downward?

24 A: Yes. But that's all relative just to his own body. It
25 doesn't tell me what position he was in when he was shot.

DR. ELLEN RIEMER - DIRECT BY MR. TUCKER

1 Q: I understand. Okay. And, Doctor, if you could, take the
2 stand.

3 (WHEREUPON, the witness complied.)

4 Q: Now, Doctor, you indicated that you did the external
5 examination and then you did an internal examination as well;
6 correct?

7 A: Correct.

8 Q: Now, could you tell what happened once the bullet hit Mr.
9 Lisbon and what happened to Mr. Lisbon once that occurred?

10 A: Well, I was able to track the path of the bullet through
11 the body from the time it entered the body on the right side
12 of the abdomen and where it exited on the left side of the
13 body. And while the bullet was in the body, it went through
14 the right ninth costal cartilage. So it kind of went into the
15 -- you know, not one of the ribs, but one of the pieces of
16 cartilage that supports the lower rib in the front. And then
17 it went through the omentum, which is a kind of fiber fatty
18 tissue that covers the organs in the front. Then it went
19 through the liver and then multiple loops of the small
20 intestine. It then went through the superior mesenteric
21 artery. So there was a defect in the superior mesenteric
22 artery from the bullet as it went through the body, and that's
23 a major -- a major blood vessel. And then went through the
24 tail of the pancreas. So the pancreas and then continued
25 through soft tissue and exited the left side of the flank.

DR. ELLEN RIEMER - DIRECT BY MR. TUCKER

1 Q: Now, do you have an opinion as to what would have
2 happened to Mr. Lisbon once that occurred or once that bullet
3 went through him?

4 A: Yes. Well, he was bleeding extensively into his
5 abdominal cavity. And at the autopsy, there was one and a
6 half liters of blood that was collected -- that I collected
7 from the abdominal cavity, which was bleeding as the result of
8 these injuries. So he bled out into his abdomen.

9 Q: Okay. Now, do you have an opinion based on a medical
10 degree of certainty as to what the manner of death was?

11 A: Homicide.

12 Q: And do you have an opinion as to the cause of death?

13 A: Gunshot wound of abdomen.

14 Q: Okay. And you were able to make these conclusions based
15 on your external and internal examination of Mr. Lisbon?

16 A: Yes.

17 Q: And again, I just want to make sure I'm clear. When you
18 mentioned that he bled out in his abdomen, would a person --
19 given the examination that you performed, would there have
20 been a lot of external blood loss with regards to Mr. Lisbon?

21 A: Not necessarily. I don't know what -- how much blood was
22 outside of the body, but it was -- enough blood was on the in
23 -- collected on the inside of the body to cause his death.

24 Q: Okay. And that was a direct result of the gunshot; is
25 that correct?

DR. ELLEN RIEMER - CROSS BY MR. DEBERRY

1 A: Yes.

2 Q: Okay.

3 MR. TUCKER: I believe those are all the questions I
4 have, Your Honor.

5 THE COURT: All right. Cross?

6 CROSS-EXAMINATION

7 BY MR. DEBERRY:

8 Q: Dr. Riemer, is there any evidence that you ascertained
9 through your autopsy that would indicate how -- the distance
10 the shooter was from the body?

11 A: No.

12 Q: Okay. Do you have any measurements as -- as relates to
13 the difference in the height of the entrance wound and the
14 difference of the height of the exit wound?

15 A: Yes. The entrance wound was 20 and 3/4 inches below the
16 top of the head, and the exit wound was 29 and 1/8 inches
17 below the top of the head. So the exit wound was about eight-
18 and-a-half inches lower, about that if you can subtract 29 and
19 1/8 minus 20 and 3/4.

20 Q: We'll call it eight and a half.

21 A: Okay..

22 Q: Sounds good to me. Okay. So -- so there's definitely,
23 as you indicated to the jury, a difference. I mean a downward
24 angle on the trajectory?

25 A: Yes. It's a downward angle.

DR. ELLEN RIEMER - CROSS BY MR. DEBERRY

1 Q: Okay. All right. Well, thank you very much.

2 MR. DEBERRY: I don't have any other questions.

3 THE COURT: Redirect?

4 MR. TUCKER: Nothing on redirect, Your Honor.

5 THE COURT: All right. You have a nice day. Thank you.

6 THE WITNESS: Thank you.

7 MR. TUCKER: Your Honor, obviously we would ask that Dr.

8 Riemer be released from her subpoena.

9 THE COURT: Any objections?

10 MR. DEBERRY: No, Your Honor.

11 THE COURT: All right. Have a good day. All right.

12 Call your next witness.

13 MR. TUCKER: At this time, Your Honor, the State would

14 call Reginald Johnson.

15 (WHEREUPON, there was a pause in the proceedings while

16 waiting for the witness to enter the courtroom.)

17 (WHEREUPON, a member of the jury approached the bench and

18 asked for a break.)

19 THE COURT: Members of the jury, we're going to take a

20 short break. Let me know, if you would, if you're feeling

21 better. All right. Please do not discuss the case.

22 (WHEREUPON, the jury exited the courtroom at 11:15 a.m.)

23 THE COURT: He wasn't feeling good.

24 MR. TUCKER: Oh, okay.

25 THE COURT: And I asked him was it because of the

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 pictures and he said he didn't know. So if the bailiff -- if
2 Kesha could maybe get him a Coke and some crackers or
3 something, that might help. Keep an eye on him and make sure
4 he's okay and let me know when he feels better.

5 THE BAILIFF: Okay. Yes, sir.

6 (WHEREUPON, there was a break in the proceedings from
7 11:17 a.m. until 11:24 a.m.)

8 THE COURT: Go ahead and bring in the jury.

9 (WHEREUPON, the jury entered the courtroom at 11:24 a.m.,
10 at which time the witness was already seated in the
11 witness stand.)

12 THE COURT: Go ahead and call your next witness.

13 MR. TUCKER: Thank you. At this time, Your Honor, the
14 State would call Reginald Daniel Johnson.

15 THE COURT: All right. If you would, stand and be sworn
16 in.

17 (WHEREUPON, the witness complied.)

18 THE CLERK: Place your left hand on the Bible and raise
19 your right hand as much as you can. Do you swear to tell the
20 truth, the whole truth, and nothing but the truth, so help you
21 God?

22 THE WITNESS: Yes.

23 THE CLERK: Please be seated and state your full name for
24 the record.

25 THE WITNESS: Reginald Daniel Johnson.

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 REGINALD JOHNSON, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. TUCKER:

5 Q: Mr. Johnson, how old are you?

6 A: Thirty.

7 Q: Where do you live normally? I see you're in an orange
8 jumpsuit. You're currently out at the detention center, but
9 where do you normally live?

10 A: Street, Florence.

11 Q: Now, are you from Florence County originally?

12 A: Yes, sir.

13 Q: All right. How far did you get in school?

14 A: Tenth grade.

15 Q: And have you had employment since you left school?

16 A: Yes, sir.

17 Q: What kind of jobs did you do?

18 A: Restaurant jobs and sanitation.

19 Q: Okay. Let me ask you about your prior record, Mr.

20 Johnson. Back in April of 2003, were you convicted for what
21 looks to be possession of a Schedule I, II or III substance
22 with intent to distribute?

23 A: Yes, sir.

24 Q: Were you also charged in 2004 and convicted for what
25 looks to be assault and battery of a high and aggravated

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 nature?

2 A: Yes, sir.

3 Q: And on or about April of 2013, were you also charged and
4 subsequently indicted for murder, attempted murder, possession
5 of a crime -- or possession of a weapon during a crime of
6 violence, and conspiracy?

7 A: Yes, sir.

8 Q: Okay. And those charges are currently pending; is that
9 correct?

10 A: Yes, sir.

11 Q: In fact, that's kind of what you're doing here today,
12 isn't it?

13 A: Yes, sir.

14 Q: Now, in exchange for your testimony here today, is it
15 true that you're receiving -- or what you will be pleading to
16 upon agreement with the State is you'll be pleading to one
17 count of accessory after the fact; is that correct?

18 A: Yes, sir.

19 Q: And it was explained to your -- or by your attorney that
20 that carries up to 15 years?

21 A: Yes, sir.

22 Q: And that if you testify truthfully, there currently is a
23 recommendation that you receive a cap of eight years; is that
24 correct?

25 A: Yes, sir.

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 Q: All right. Now, to receive that plea bargain, what is
2 your understanding of what you have to do?

3 A: I have to tell the truth about what happened.

4 Q: Okay. Now, when you say tell the truth about what
5 happened, specifically we're referring to what happened on
6 January the 6th, 2013; is that correct?

7 A: Yes, sir.

8 Q: Now, on that date and time, can you tell us what happened
9 that morning, if you can recall?

10 A: I got up with Chris Peterson earlier that day.

11 Q: Now, when you say Christopher Peterson, are you referring
12 to the defendant in this case?

13 A: Yes, sir.

14 Q: And do you see him in the courtroom?

15 A: Yes, sir.

16 Q: Okay. Where is he?

17 A: Sitting right there.

18 MR. TUCKER: Your Honor, if the record can reflect he has
19 identified the defendant?

20 THE COURT: The record will so reflect.

21 BY MR. TUCKER:

22 Q: How do you know Christopher Peterson?

23 A: From the neighborhood.

24 Q: Okay. How long would you say you knew him up to that
25 point?

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 A: I'd say about ten years.

2 Q: Okay. Would you say you're good friends with him?

3 A: Yeah.

4 Q: All right. Now, on that morning you got up with

5 Christopher Peterson, did y'all have a conversation about

6 anything in particular?

7 A: Yes, sir. How we was going to get some money.

8 Q: All right. And I take it at that point y'all were both

9 broke?

10 A: Yes, sir.

11 Q: All right. When you talk about getting some money, what

12 were some of the -- the options that you discussed with

13 Christopher Peterson?

14 A: We was going to rob somebody.

15 Q: All right. Did -- was there a discussion as to who you

16 were going to rob?

17 A: Yes, sir.

18 Q: All right. Who was that?

19 A: Luther Lisbon.

20 Q: Okay. Now, when you said rob somebody, what was your

21 understanding of rob somebody? What was that to mean?

22 A: We were just going to go there and take their money.

23 Q: All right. Now, when you say we were just going to go

24 there, was that going to be armed?

25 A: Yes, sir.

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 Q: All right. Now, at that point, did you have access to a
2 firearm?

3 A: Yes, sir.

4 Q: And then, in fact, did you get one?

5 A: Yes, sir.

6 Q: And what kind of firearm was that?

7 A: A nine.

8 Q: When you say nine, do you mean a nine millimeter?

9 A: Yes, sir.

10 Q: Now, at that point, to your knowledge was Christopher
11 Peterson also armed?

12 A: Yes, sir.

13 Q: And what kind of firearm did he have?

14 A: A nine millimeter.

15 Q: All right. And you saw him with that nine millimeter?

16 A: Yes, sir.

17 Q: Now -- and again, this was a conversation you had with
18 him about going to Luther Lisbon's house for the purpose of
19 robbing him?

20 A: Yes, sir.

21 Q: At gunpoint?

22 A: Yes, sir.

23 Q: Now, at some point did y'all kind of put the wheels in
24 motion to accomplish this?

25 A: Yes, sir.

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 Q: Do you recall about what time it was when y'all embarked
2 or left to go over to Luther Lisbon's?

3 A: I don't remember what time it was. I know it was
4 afternoon.

5 Q: Okay. Was it getting dark outside?

6 A: Yes, sir.

7 Q: Now, let me ask you this. How did you know Luther Lisbon
8 would have money?

9 A: We knew some of the same people.

10 Q: When you say we knew, are you talking about you and you
11 knew some people in common with Luther Lisbon?

12 A: Yes, sir.

13 Q: And from that association, did you know that he was prone
14 to having a lot of money there with him?

15 A: Yes, sir.

16 Q: Now, it's -- you weren't here for previous testimony, but
17 it's been kind of put out that there was an individual
18 referred to as Gangster Fred. Do you know who that is?

19 A: Yes, sir.

20 Q: Who is that?

21 A: My brother.

22 Q: What's your brother's name?

23 A: Gregory Johnson.

24 Q: Now, did Gregory Johnson put you up to this?

25 A: No, sir.

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 Q: Did Gregory Johnson have anything to do with what
2 happened on January the 6th, 2013?

3 A: No, sir.

4 Q: Now, you indicated that up in the evening you and
5 Christopher Peterson left to go over to Luther Lisbon's; is
6 that correct?

7 A: Yes, sir.

8 Q: Who knew where Luther lived?

9 A: I did.

10 Q: Now, whose car were y'all in at this point?

11 A: His mother's.

12 Q: When you say his mother's, are you referring to --

13 A: Christopher Peterson's.

14 Q: Okay. What kind of car was that?

15 A: A truck, white.

16 Q: All right. Now, when y'all arrived at the area where
17 Luther Lisbon lived, did you know it as Brittany Place
18 Apartments?

19 A: Yes, sir.

20 Q: Now, did y'all park right in front of where Luther lived
21 or did y'all park somewhere down from there?

22 A: No, sir. We parked at some apartments up from him.

23 Q: Now, was there any discussion about what was going to
24 happen when y'all got there as y'all pulled up?

25 A: Well, before that we just had supposed to lay him down

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 and get his money.

2 Q: You were supposed to lay him down and get his money?

3 A: Yes, sir.

4 Q: Now, when you say lay him down, what did you mean?

5 A: Put him on the floor.

6 Q: All right. When you got there and you parked, how far

7 did you walk until you got to the apartment building where

8 Luther was?

9 A: It was the next set of apartments.

10 Q: So y'all kind of parked down away and then walked over?

11 A: Yes, sir.

12 Q: What was the purpose in doing that?

13 A: Just so nobody wouldn't see how we got there.

14 Q: Okay. Now, did you know Luther Lisbon? Had you ever met

15 him?

16 A: Yes, sir.

17 Q: All right. How well did you know Luther?

18 A: Well, we wasn't friends or anything, but I knew him.

19 Q: All right. You didn't spend any time with him though I

20 would imagine?

21 A: Not really.

22 Q: All right. Did you know anybody in Luther's family?

23 A: His brother.

24 Q: Which one?

25 A: Marcus Lisbon.

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 Q: Okay. And how well did you know Marcus?

2 A: All right. We wasn't friends or anything though.

3 Q: Okay. Would you recognize Marcus when you would see him
4 out in the street?

5 A: Yes, sir.

6 Q: All right. Now, as you were walking up to Luther's, you
7 were armed with a pistol?

8 A: Yes, sir.

9 Q: And to your knowledge was Christopher Peterson also armed
10 with a pistol?

11 A: Yes, sir.

12 Q: Now, what kind of clothing did Christopher Peterson have
13 on as y'all were heading up to Luther's apartment?

14 A: Dark clothing, black jeans, a black hoodie.

15 Q: Okay. And were you dressed kind of similarly?

16 A: Yes, sir.

17 Q: Now, in relationship to Christopher Peterson, are you
18 taller than Christopher Peterson?

19 A: Yes, sir.

20 Q: In terms of build, are you slender or more slender than
21 Christopher Peterson?

22 A: Yes, sir.

23 Q: How much do you weigh?

24 A: I weigh probably about 210 right now.

25 Q: Okay. Now, back on 2013 -- if you're like me you

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 probably have put on a little weight since 2013 to now.

2 A: Yeah.

3 Q: Were you thinner then?

4 A: Yes, sir. I was, like, 204.

5 Q: Okay. Now, as y'all were going up the steps to Luther's

6 place, is there any discussion between you and Christopher

7 Peterson about what's going to happen when y'all get up there?

8 A: No, sir.

9 Q: All right. And when you get to the top of the stairs,

10 y'all go to Luther Lisbon's apartment?

11 A: Yes, sir.

12 Q: Okay. Do you recall where you were -- or let me ask you

13 this. Who knocked on the door?

14 A: Christopher Peterson.

15 Q: Now, was there any discussion about who was going to do

16 that in terms of whether you were going to do it or whether he

17 was going to do it--

18 A: Yes, sir.

19 Q: -- in terms of knocking on the door?

20 A: Yes, sir.

21 Q: All right. What was the conversation?

22 A: Just for him to knock on the door.

23 Q: All right. Now, at this point, was it your understanding

24 that when a person opened the door that y'all were going to go

25 in there, lay Luther down, as you said put him on the ground,

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 and then take his money?

2 A: Yes, sir.

3 Q: All right.

4 MR. TUCKER: Let's see here. If I may approach, Your
5 Honor?

6 THE COURT: Sure.

7 BY MR. TUCKER:

8 Q: Reginald, I'm going to show you what's been done as a
9 scale drawing and ask if you could indicate -- if this is the
10 front door to Luther's apartment, could you indicate where you
11 were when Christopher knocked on the door?

12 A: I was on the side of the steps right there.

13 Q: And if you could, step down for me, please.

14 (WHEREUPON, the witness complied.)

15 Q: Okay. If y'all come off the top of the stairs, that's
16 the front door. It opens this way. Where was Christopher
17 standing when he knocked on the door?

18 A: In front of the door.

19 Q: Right here?

20 A: Yes, sir.

21 Q: And where were you standing?

22 A: Right here on the side.

23 Q: Right here?

24 A: Yes, sir.

25 Q: Okay. Now, in terms of the door opening up -- I'm going

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 to set this down. Watch your step there. Now again, if you
2 could just indicate here where you were standing?

3 A: Right on this side.

4 Q: Right here? And Christopher was standing right here?

5 A: Yes, sir.

6 Q: Okay. All right. If you could have a seat back up
7 there?

8 (WHEREUPON, the witness complied.)

9 Q: Okay. Reginald, tell me what happened the minute that
10 the door opened up?

11 A: When the door opened up, I looked inside and I seen,
12 like, three people, but I couldn't see the person who opened
13 the door.

14 Q: Okay. Now, when you say three people, is that the one
15 opening the door and two others inside the apartment?

16 A: No. It was three others inside the apartment and the
17 person who opened the door.

18 Q: Okay. Now, when the door opened up, what happened?

19 A: When the door opened up and I looked in, I seen there was
20 more than who had supposed to been in there.

21 Q: Okay.

22 A: So I --

23 Q: And did that cause you personally any concern?

24 A: Yes, sir.

25 Q: Now, did you have your pistol out at this point?

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 A: Yes, sir.

2 Q: Now, did Christopher have his pistol out?

3 A: Yeah. He pulled it out.

4 Q: All right. When the door was opening up, did he pull it
5 out or did he have it in his hand already when the door opened
6 up?

7 A: He pulled it out when the door opened up.

8 Q: Okay. Now, what happened the minute that that occurred
9 when the door opened up?

10 A: A couple seconds after that, he shot.

11 Q: Okay. Did you see him struggle with anybody there in the
12 doorway?

13 A: No, sir.

14 Q: All right.

15 A: That was kind of like inside the door.

16 Q: So they were inside the doorway?

17 A: Yes, sir.

18 Q: Could you see or could you tell if there was a struggle
19 going on?

20 A: I didn't see it.

21 Q: All right. Now, were you still kind of flattened up
22 against the wall?

23 A: Yes, sir.

24 Q: Now, did you go into that apartment at this point?

25 A: No, sir.

REGINALD JOHNSON - DIRECT BY MR. TUCKER

- 1 Q: All right. Now, tell the ladies and gentlemen of the
2 jury what you saw as soon as the door opened up and
3 Christopher kind of stepped into the doorway.
- 4 A: After I heard a couple shots, then some people ran out.
- 5 Q: Okay.
- 6 A: Two people ran out.
- 7 Q: Did you recognize any of the people that ran out?
- 8 A: Not at the time because they ran out fast.
- 9 Q: All right. Now, after you heard a couple of shots and
10 people ran out, what happens next?
- 11 A: After they ran out and ran down the stairs, then I went
12 down the stairs.
- 13 Q: All right.
- 14 A: I left.
- 15 Q: Now, was Christopher still in the apartment?
- 16 A: Yes, sir.
- 17 Q: All right. Now, at any point prior to leaving, did you
18 go into the apartment?
- 19 A: No, sir.
- 20 Q: Now, at any point did you kind of -- you mentioned that
21 when the door opened up you kind of looked around and --
- 22 A: Yeah.
- 23 Q: -- looked inside the apartment?
- 24 A: Yes, sir.
- 25 Q: At any point thereafter did you look around inside the

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 apartment?

2 A: No, sir.

3 Q: And you heard a couple of gunshots?

4 A: Yes, sir.

5 Q: After those initial couple of gunshots, did you hear any
6 additional gunshots?

7 A: Yes. I heard about --

8 Q: How many did you hear?

9 A: I think one or two after that.

10 Q: Okay. Now, I imagine things were happening pretty fast?

11 A: Yes, sir.

12 Q: Nobody is going to fault you, I certainly ain't, if you
13 just didn't take a pen out and write how many you heard down,
14 but you heard -- if you had to put a figure to it, how many do
15 you think you heard from the moment that Christopher Peterson
16 stepped into the apartment until you left?

17 A: Probably, like, five.

18 Q: Okay. Now, at any time did you go inside the apartment
19 for the purpose of getting any money?

20 A: No, sir.

21 Q: All right. So as soon as you heard the shots and you saw
22 people running out, you left and fled down the stairs?

23 A: Yes, sir.

24 Q: Now, as far as you knew, was Christopher Peterson still
25 in that apartment?

REGINALD JOHNSON - DIRECT BY MR. TUCKER

- 1 A: Yes, sir.
- 2 Q: Now, when is the next time after that that you see
- 3 Christopher Peterson?
- 4 A: In the parking lot. We was going back to the car.
- 5 Q: All right. Did he say anything to you as y'all were in
- 6 that parking lot going back to the car?
- 7 A: No, sir.
- 8 Q: Now, did he have his pistol still out at that point?
- 9 A: Yes, sir.
- 10 Q: Now, when you get to the car, did he say anything to you?
- 11 A: No, sir. We was driving off.
- 12 Q: Okay. Did he have -- did you see him with any money at
- 13 this point?
- 14 A: No, sir. Just the gun.
- 15 Q: All right. Now, at some point did he indicate to you
- 16 that he had been shot?
- 17 A: Yes, sir. When we got almost back.
- 18 Q: You got almost back? He was in the car already?
- 19 A: No. Back to his mother's house.
- 20 Q: All right. So at that point he mentioned that he had
- 21 been shot?
- 22 A: Yes, sir.
- 23 Q: Did he indicate to you where on his body he had been
- 24 shot?
- 25 A: In the leg.

REGINALD JOHNSON - DIRECT BY MR. TUCKER

- 1 Q: Did he say which one or could you tell which one?
- 2 A: The right one.
- 3 Q: The right leg?
- 4 A: Yes, sir.
- 5 Q: Did it appear to be the knee area or the upper leg?
- 6 A: Around the knee.
- 7 Q: All right. Now, did he ask to go to the hospital or ask
- 8 you to take him to get medical attention?
- 9 A: No, sir.
- 10 Q: Now, that night when you were at his mother's place, did
- 11 you drop him off?
- 12 A: Yes, sir.
- 13 Q: Did you stay with him?
- 14 A: No, sir.
- 15 Q: All right. Did you see any money?
- 16 A: Yes, sir.
- 17 Q: All right. Did he have money on him at this point?
- 18 A: Yes, sir.
- 19 Q: Now, you hadn't made any stops by an ATM or any other
- 20 place from the time you left Luther's until you get to his
- 21 mother's house; correct?
- 22 A: Correct.
- 23 Q: How much money would you think he had on him at this
- 24 point?
- 25 A: With the money I got from him?

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 Q: No. At this point, how much money do you think he had on
2 him?

3 A: It was probably like two or three thousand.

4 Q: Now, at some point did he give you some money?

5 A: Yes, sir.

6 Q: How much money did he give you?

7 A: A thousand -- \$1,000.

8 Q: All right. Did he say anything to you when he gave you
9 that money?

10 A: No, sir.

11 Q: Now, after you drop him off at your mother -- or his
12 mother's rather and he gives you the money, what do you do at
13 that point?

14 A: I went home.

15 Q: Now, if you rode over to Luther's in Christopher
16 Peterson's mom's truck, how did you get from Christopher
17 Peterson's house to your house?

18 A: I walked.

19 Q: How far away is that?

20 A: Like three blocks.

21 Q: Now, what did you do, if anything, when you got home?

22 A: I got a ride to a motel.

23 Q: Do you recall which motel it was?

24 A: It was -- I can't think of the name of it, but it's
25 across from Tommy's.

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 Q: Across from?

2 A: Tommy's on Irby Street.

3 Q: Okay. Now, when you got -- was that the next day that
4 you got the hotel?

5 A: No. I got it that night.

6 Q: You got it that night? So we're still talking about the
7 evening of January the 6th, 2013?

8 A: Yes, sir.

9 Q: Now, do you recall about what time this was?

10 A: I think it was around twelve.

11 Q: So we're talking midnight?

12 A: Yeah.

13 Q: Now -- and again, in case I skipped over it, I want to
14 make sure I'm clear. When you went to Luther's, it was dark
15 outside?

16 A: Yes, sir.

17 Q: But you just don't know what time it was?

18 A: No, sir.

19 Q: All right. Now, after you check into the hotel on the
20 night of January the 6th, now we're talking about the morning
21 of January the 7th.

22 A: Uh-huh.

23 Q: Did you meet up with Christopher Peterson or did you have
24 occasion to talk to him that day?

25 A: Yes, sir.

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 Q: When was that?

2 A: I met up with him later that afternoon.

3 Q: Where did you meet with him at?

4 A: Motel 6.

5 Q: All right. Now, was that the same hotel you were staying

6 at or was this a different one?

7 A: That was a different one.

8 Q: Now, did he already have a room there?

9 A: Yes, sir.

10 Q: All right. And when you met there, what, if anything,

11 did you do?

12 A: Not -- not too much. We just -- what we did? Oh, I let

13 him know I was about to get a rental car.

14 Q: Okay. Now, you were using some of the money that he had

15 given you or that you had gotten from that robbery --

16 A: Yes, sir.

17 Q: -- to get a rental car?

18 A: Yes, sir.

19 Q: Now, at this point did you see Christopher with any

20 additional money?

21 A: I didn't see him have any money out at the time.

22 Q: Okay. And again, did it appear he was still wounded in

23 the right knee I take it?

24 A: Yes, sir.

25 Q: Did he indicate whether he had gone to the hospital or

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 anything?

2 A: No, sir.

3 Q: Was there any discussion about any information that you
4 came into possession of or him about somebody actually dying
5 as a result of that shooting and robbery that you guys had
6 committed?

7 A: At the time, I didn't hear about it.

8 Q: When -- do you recall when you were made aware that
9 someone had actually died?

10 A: A couple days later.

11 Q: So it was a couple days later?

12 A: Yes, sir.

13 Q: All right. Now, in the interim, you say that you went to
14 get a rental car. How much interaction did you have with
15 Christopher Peterson that day? We're talking now January the
16 7th.

17 A: I didn't have too much. After I got the rental car, I
18 didn't have too much. I didn't meet up with him that much
19 that day.

20 Q: Okay. Now, after that day, did you have any sort of
21 meeting with Christopher Peterson or did you and he hang
22 around any much after that?

23 A: Yes, sir. Because I got a room at Motel 6.

24 Q: All right. So now we're talking this would be January
25 the 8th or some day thereafter?

REGINALD JOHNSON - DIRECT BY MR. TUCKER

- 1 A: Yes, sir.
- 2 Q: Now, he was still staying at the Motel 6?
- 3 A: Yes, sir.
- 4 Q: And you rented a room there as well?
- 5 A: Yes, sir. But the first -- the first room I had, it
- 6 wasn't in my name.
- 7 Q: Whose name was the room in?
- 8 A: William Wood's.
- 9 Q: Now, had somebody already rented that room or is that the
- 10 name you gave the clerk when you checked in?
- 11 A: No. That's the -- the first -- the first time I got the
- 12 room, my friend rented it for me, the same person who rented
- 13 the car for me.
- 14 Q: Okay. And that was William Wood?
- 15 A: Yes, sir.
- 16 Q: Now, did William Wood have anything to do with the armed
- 17 robbery and the shooting?
- 18 A: No, sir.
- 19 Q: Was he there with you?
- 20 A: No, sir.
- 21 Q: All right. And I want to be clear here too. Now, was
- 22 there anybody else with you and Christopher Peterson when you
- 23 planned the armed robbery of Luther Lisbon?
- 24 A: No, sir.
- 25 Q: Was there anybody with you and Christopher Peterson when

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 you went to Luther Lisbon's apartment?

2 A: No, sir.

3 Q: Now, was there anybody else with you when you and
4 Christopher Peterson -- when the door opened up and the
5 shooting occurred?

6 A: No, sir.

7 Q: And you're absolutely positive that you did not go into
8 that apartment?

9 A: Yes, sir.

10 Q: All right. Now going back to when you rented the hotel.
11 This was around January the 8th in William Wood's name. How
12 much interaction did you have with Christopher Peterson after
13 that?

14 A: I would let him use the rental car a couple times.

15 Q: Okay. Now, at what point thereafter did you find out
16 that someone had died in connection with this robbery?

17 A: It was -- it was a couple days later after we got the
18 room at the Motel 6.

19 Q: All right. Did you and Christopher Peterson have any
20 discussions along those lines about the person dying?

21 A: No, sir.

22 Q: So y'all didn't talk about it?

23 A: No, sir.

24 Q: It didn't come up at all?

25 A: We just -- we just heard about it. Like, I heard about

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 it and we ain't had no deep conversation about it though.

2 Q: I understand. Now, at some point thereafter in the -- in
3 the days and weeks to come, were you aware that the police had
4 kind of focused on Christopher Peterson as a suspect?

5 A: I heard -- heard his name a lot.

6 Q: All right. Now, did you become aware that he was
7 arrested on or about -- sometime in April the 10th area?

8 A: Yes, sir.

9 Q: Now, at some point did the police come to see you?

10 A: Yes, sir.

11 Q: Do you recall who from the Sheriff's Office that you
12 spoke to?

13 A: Yes, sir. The detective right here.

14 Q: Okay. And is it -- you spoke to Investigator Thomas
15 McFadden, who is on the right, and Investigator Chad Collins,
16 who is to his right but on the left?

17 A: Yes, sir.

18 Q: All right. And did you cooperate and tell them
19 everything you knew at that point?

20 A: No, sir.

21 Q: Why not?

22 A: I was nervous.

23 Q: I can imagine. I mean at this point you knew that
24 someone had died and there was a lot of trouble to be had over
25 this; is that correct?

REGINALD JOHNSON - DIRECT BY MR. TUCKER

1 A: Yes, sir.

2 Q: Now, at some point thereafter in terms of cooperating
3 through your attorney, did you tell everything that you knew
4 at that point when the plea agreement was reached between
5 yourself and my office?

6 A: Yes, sir.

7 Q: Now -- and again, what are the requirements of your plea
8 agreement?

9 A: For me to tell the truth.

10 Q: And is that what you've done here today?

11 A: Yes, sir.

12 Q: Now, Reginald, there may be some people thinking that
13 you'd say anything right now to try to get out from underneath
14 all the time you were looking at. Do you understand that?

15 A: Yes, sir.

16 Q: Now, is that what you've done is you've just told us a
17 lie here just to get out of a possible life sentence?

18 A: No, sir.

19 Q: Is what you've told here today the truth?

20 A: Yes, sir.

21 Q: All right.

22 MR. TUCKER: If I could have just a moment?

23 THE COURT: Sure.

24 MR. TUCKER: I believe those are all the questions I
25 have, Your Honor.

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 THE COURT: All right. Cross-examination?

2 MR. DEBERRY: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. DEBERRY:

5 Q: Mr. Johnson, how are you doing?

6 A: All right.

7 Q: The solicitor indicated that you've got some prior
8 convictions on your record; is that correct?

9 A: Yes, sir.

10 Q: One for possession with intent to distribute some type of
11 drugs?

12 A: Yes, sir.

13 Q: Did you serve any time for that?

14 A: In -- in jail.

15 Q: How long?

16 A: Around about, like, a day.

17 Q: Okay. So you didn't get -- thereafter, you received --
18 or are you speaking of the day you got arrested for --

19 A: Yes, sir.

20 Q: -- the distributing the drugs?

21 A: Yes, sir.

22 Q: All right. And then thereafter, you were convicted of
23 that crime; correct?

24 A: Uh-huh.

25 Q: Did you have to spend any more time in prison or jail?

REGINALD JOHNSON - CROSS BY MR. DEBERRY

- 1 A: No, sir.
- 2 Q: You got a free ride on that?
- 3 A: I got probation.
- 4 Q: Probation? Okay. And then later on, you got convicted
- 5 or you got charged and then convicted of assault and battery
- 6 of a high and aggravated nature?
- 7 A: Yes, sir.
- 8 Q: Now, I believe at the time that carried up to ten years
- 9 or maybe up to 15 years in prison?
- 10 A: Yes, sir.
- 11 Q: Did -- how much time did you spend in prison or in jail
- 12 when you got arrested for that?
- 13 A: About four -- four to five months in jail.
- 14 Q: So you never bonded out?
- 15 A: No, sir.
- 16 Q: All right. And then did you plead guilty to that crime?
- 17 A: Yes, sir.
- 18 Q: And did you go to prison as a result of that?
- 19 A: No, sir.
- 20 Q: Still hadn't done the prison thing then?
- 21 A: No, sir.
- 22 Q: All right. And when did you get arrested for these
- 23 charges?
- 24 A: It was I think April 10th.
- 25 Q: Of?

REGINALD JOHNSON - CROSS BY MR. DEBERRY

- 1 A: 2013.
- 2 Q: 2013? So April the 10th of this year, you've already done
- 3 two years in the county jail; is that correct?
- 4 A: Yes, sir.
- 5 Q: Do you enjoy your time there?
- 6 A: No, sir.
- 7 Q: All right. And you understand that you have an
- 8 opportunity to go to prison after your testimony here today?
- 9 A: Yes, sir.
- 10 Q: All right. Now, you understand that you're charged with
- 11 murder in this case?
- 12 A: Yes, sir.
- 13 Q: Do you know what the penalty for murder is?
- 14 A: Life.
- 15 Q: All right. Do you know if it's got a minimum sentence
- 16 that can be imposed?
- 17 A: Thirty years.
- 18 Q: So if you're convicted or if you plead guilty to murder,
- 19 then you have to go to prison for no less than 30 and you can
- 20 be sentenced up to life in prison; is that right?
- 21 A: Yes, sir.
- 22 Q: Is that your understanding? Okay. That's on your murder
- 23 charge; right?
- 24 A: Yes, sir.
- 25 Q: You're also charged with attempted murder?

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 A: Yes, sir.

2 Q: Do you understand that? Do you know what the penalty for
3 that is?

4 A: I think 25 years.

5 Q: It's up to -- it's up to 20 years.

6 A: Okay.

7 Q: Okay? So there's 20 years for attempted murder. There's
8 conspiracy that you're charged with and indicted for. Do you
9 understand that?

10 A: Yes, sir.

11 Q: And do you know the penalty for conspiracy?

12 A: No, sir.

13 Q: Well, it's up to five years. Would you disagree with me
14 on that?

15 A: I agree.

16 Q: Okay. You're also charged with possession of a weapon
17 during a violent crime. That carries up to five years. Did
18 you know that?

19 A: Yes, sir.

20 Q: All right. Now, are you charged with armed robbery?

21 A: No, sir.

22 Q: You're not charged with armed robbery?

23 A: No, sir.

24 Q: Do you understand Christopher Peterson is charged with
25 armed robbery?

REGINALD JOHNSON - CROSS BY MR. DEBERRY

- 1 A: No, I didn't know that.
- 2 Q: You didn't know that?
- 3 A: Huh-uh.
- 4 Q: All right. When did you cooperate? When did you decide
- 5 that you were going to give a statement?
- 6 A: I don't know the exact date.
- 7 Q: Was it this year?
- 8 A: Yes, sir.
- 9 Q: In April?
- 10 A: Yes, sir. I think so.
- 11 Q: On the eve of a trial where you were going to be tried
- 12 for these crimes?
- 13 A: Yes, sir.
- 14 Q: How many times did your trial almost take place?
- 15 A: I don't recall how many times, sir.
- 16 Q: Multiple times?
- 17 A: A couple, yes, sir.
- 18 Q: And you were going to be the one that was going to face
- 19 all of these charges?
- 20 A: Yes, sir.
- 21 Q: And do you understand that you were facing -- do you
- 22 understand that these charges can be held -- or can be
- 23 sentenced consecutively?
- 24 A: Yes, sir.
- 25 Q: Do you know what that means?

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 A: Yes, sir.

2 Q: What does that mean?

3 A: One after the other.

4 Q: So in other words, you'd have to do one sentence before
5 you could start doing the next?

6 A: Yes, sir.

7 Q: Okay. And so you understand that after -- if you were
8 convicted for murder, you'd have to try to serve a life
9 sentence and then you would have to serve 20 more years --

10 A: Yes, sir.

11 Q: -- for the attempted murder, and then you could have to
12 serve another five years --

13 A: Yes, sir.

14 Q: -- for conspiracy, and another five years for the
15 possession of a weapon during a violent crime?

16 A: Yes, sir.

17 Q: All right. So altogether if you were just to get 30
18 years on -- on the murder and not a life sentence, then you're
19 looking at 60 years possibly in prison?

20 A: Yes, sir.

21 Q: And you understand that prison is not like what you're
22 living at now out in Effingham?

23 A: Yes, sir.

24 Q: What is your understanding of prison?

25 A: I never been there. I just -- I know I wouldn't like it.

REGINALD JOHNSON - CROSS BY MR. DEBERRY

- 1 Q: You wouldn't like that?
- 2 A: No.
- 3 Q: Do you understand these are violent crimes?
- 4 A: Yes, sir.
- 5 Q: Do you understand there's a difference in the way you
- 6 have to spend your time in prison if you're convicted of
- 7 violent crimes?
- 8 A: I don't know the conditions.
- 9 Q: You know -- do you know that it's worse than if you're
- 10 convicted for non-violent crimes?
- 11 A: Yes, sir.
- 12 Q: A whole lot worse?
- 13 A: I think locked up is being locked up.
- 14 Q: All right. So you're not aware that if you're a violent
- 15 -- if you're sentenced under violent crimes that you're in a
- 16 whole different population with violent criminals?
- 17 A: Yes, sir.
- 18 Q: You know about that?
- 19 A: Yeah.
- 20 Q: Are you trying to avoid that?
- 21 A: Yes, sir.
- 22 Q: This deal that you got for accessory after the fact, is
- 23 that violent or non-violent?
- 24 A: Non-violent.
- 25 Q: All right. And what's your understanding when the

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 solicitor says you've got a cap of eight years? What does
2 that mean?

3 A: That I can get up to eight years.

4 Q: But you could get less?

5 A: Yes, sir.

6 Q: If the solicitor asks for less or if your attorney asks
7 for less. You just can't get more than eight. Is that the
8 deal?

9 A: Yes, sir.

10 Q: Do you think that's a good deal?

11 A: Yes, sir.

12 Q: And that's why you're testifying?

13 A: No, sir.

14 Q: Okay. And your brother -- if you were to implicate him
15 in these -- in this crime as the person who directed you to go
16 and do these things, that would cause trouble for him,
17 wouldn't it?

18 A: Yes, sir.

19 Q: You wouldn't want to do that, would you?

20 A: No, sir.

21 Q: Right. All right. Have they ever offered you any deal
22 prior to -- prior to you just before trial one afternoon
23 saying, hey, I want -- what can I do to save my life? Any
24 deals before then?

25 A: Yes, sir.

REGINALD JOHNSON - CROSS BY MR. DEBERRY

- 1 Q: What was it?
- 2 A: I think 28 or 25.
- 3 Q: They were going to let you off with about 28 years?
- 4 A: Yes, sir.
- 5 Q: You didn't want that deal?
- 6 A: No, sir.
- 7 Q: All right. How much time -- let's get this right. You
- 8 spent almost -- over two years out here at the county jail
- 9 waiting on trial and hadn't said a word; right?
- 10 A: Yes, sir.
- 11 Q: Since then, since you struck this deal with the
- 12 prosecutor to save you life in prison, how -- how many times
- 13 have you spoken with Mr. Tucker?
- 14 A: One.
- 15 Q: You've only spoken with him one time?
- 16 A: After that.
- 17 Q: How many times have y'all met and talked about your
- 18 testimony?
- 19 A: Twice.
- 20 Q: Now it's two times?
- 21 A: You said after the deal. But altogether it was two
- 22 times.
- 23 Q: You've only talked to Todd Tucker twice about you
- 24 testifying here today?
- 25 A: Yes, sir.

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 Q: How many times did you talk to him this week?

2 A: One.

3 Q: When was that?

4 A: That was -- no, I didn't talk to him this week. It was
5 the last week I talked to him one time.

6 Q: All right. How many times did you talk to him? Did you
7 talk to him this morning?

8 A: No, sir.

9 Q: Did you talk to him -- you must have talked to him when
10 you made a deal with him?

11 A: Yes, sir.

12 Q: All right. Did you talk to him anymore after that?

13 A: That's the only two times.

14 Q: Has he tried to suggest to you what he thought happened?

15 A: No, sir.

16 Q: Okay. So he hasn't suggested anything to you about his
17 theory in this case?

18 A: No. He just asked me what happened.

19 Q: Okay. You also think it's a deal that you didn't get
20 indicted for armed robbery?

21 A: I didn't know about the armed robbery.

22 Q: You didn't know about an armed robbery?

23 A: I didn't know he got charged -- Christopher Peterson got
24 charged with armed robbery because I never got charged with
25 armed robbery.

REGINALD JOHNSON - CROSS BY MR. DEBERRY

- 1 Q: Sure. Now, you said that y'all were driving in
2 Christopher Peterson's mama's truck?
- 3 A: Yes, sir.
- 4 Q: And then you said that you dropped him off at his mama's
5 house.
- 6 A: That's where I left him, yes, sir.
- 7 Q: So you drove home with his mama's truck?
- 8 A: No. I left the truck there.
- 9 Q: Okay. That's what you call dropping somebody off?
- 10 A: No, sir. But that's what happened.
- 11 Q: Okay. Let me show you what's been marked as State's
12 Exhibit Number 136. If you need to, you can stand up. Are
13 you familiar with this?
- 14 A: Yes, sir.
- 15 Q: What is this?
- 16 A: Is that where the -- the apartment is at?
- 17 Q: Which apartment did -- did this take place at?
- 18 A: The -- it was the top apartments. I can't tell which end
19 it started.
- 20 Q: I think this is a gate down here.
- 21 A: Oh, that's the gate? The second row apartments.
- 22 Q: Let me just grab something for you. Hang on just a
23 second. If you -- if you will, I'm just going to get you to
24 point with this. Okay. Could you show the jury where you're
25 talking about?

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 A: What are you talking about? Which -- which end? The
2 first -- the front gate?

3 Q: I can't tell you that. I don't know.

4 A: See, I seen it -- it was in the afternoon, but I know it
5 was the second -- second row of apartments. And how this
6 picture is, it don't look like it.

7 Q: That's not the place?

8 A: I didn't see it from -- from the top like this. I can't
9 recognize it, sir.

10 Q: Where did y'all come in?

11 A: We came in from the front.

12 Q: So if this is the front, where would it have happened?

13 A: If that's the front, it wasn't set up like that because
14 the -- it would have been some apartments behind it. Yeah.
15 It wasn't set up like that.

16 Q: You were the one that knew where y'all were going; right?

17 A: Yeah. Because I know how to get there. When you first
18 come through the apartments, it's the first row of apartments,
19 and then you walk -- you can -- there's a second row, and I
20 don't see the trees that was on the side either.

21 Q: The trees?

22 A: Uh-huh.

23 Q: Where do you think the trees should be?

24 A: Near -- it should be near the end. Well, if this the
25 front one, it would have been the second apartment, but I

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 didn't see them set up like that. So it would have been
2 somewhere over here in these apartments.

3 Q: Where would you have parked?

4 A: We'd have parked in the first row.

5 Q: Where now?

6 A: In the first row.

7 Q: Before you got there?

8 A: Well, we -- yeah. When you pulled into the apartments --

9 Q: So you say you parked and went up this way?

10 A: If that's how it's supposed to be set up, but I don't see
11 -- it didn't look like that at night or, when you're driving,
12 you don't see it from the top like that.

13 Q: Well, let me just say if -- let's just -- well, let's
14 just assume that this is where -- this was the apartment.
15 Okay? If that was the apartment, tell me where you would have
16 parked at.

17 A: The apartments wasn't set up like that, sir, because we
18 parked on another -- another row of apartments.

19 Q: So you parked up there maybe?

20 A: Yes, sir. No. If -- see, if this -- if this was the
21 beginning, we came in and we walked over here, but we parked
22 over here because we parked near the beginning of it when you
23 first come in.

24 Q: When you left out of the apartment building and you ran,
25 did you run across the parking lot?

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 A: Yes, sir. We run across around the back of the buildings
2 on this side.

3 Q: All right. Did you and Christopher Peterson go the same
4 way?

5 A: Yes, sir.

6 Q: Y'all ran together the whole time?

7 A: He was behind me, but yeah, we ran the same way.

8 Q: Did y'all get at the car -- to the car at the same time?

9 A: Yes, sir.

10 Q: And what -- and where do you think it was?

11 A: It had to be on this side if this is the beginning of the
12 apartments.

13 Q: It would be on that side?

14 A: Yeah.

15 Q: Did you ever jump any fences?

16 A: No, sir. We ran by a fence on the side.

17 Q: Where?

18 A: By the -- the woods because the houses and all right
19 here. So there's a gate between the apartments and the
20 houses.

21 Q: All right. But you can't -- you can't make heads or
22 tails out of this?

23 A: Because I didn't see how it come in like that. It
24 doesn't look like that when you ride into it.

25 Q: All right. Did you see where any of the other people --

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 you ran out behind several other people is what you testified;
2 is that right?
3 A: Yes, sir.
4 Q: Did you see where they went?
5 A: No, sir. I didn't see any of them come through the
6 parking lot.
7 Q: How many ran out?
8 A: I seen two.
9 Q: But when you opened the door, you seen three plus the man
10 that opened the door; right?
11 A: Yes, sir.
12 Q: That would be four people in that apartment?
13 A: Yes, sir.
14 Q: But you ran off pretty early on so you wouldn't know what
15 happened then?
16 A: No, sir. Not after I walked off.
17 Q: You walked off? Where is your gun?
18 A: I threw it away.
19 Q: Where?
20 A: In the trash.
21 Q: Where?
22 A: In the dumpster at the -- yeah, at the trash dump behind
23 -- where that is? Food Lion.
24 Q: You were scared they were going to find out that it had
25 been fired?

REGINALD JOHNSON - CROSS BY MR. DEBERRY

- 1 A: No, sir.
- 2 Q: Why did you throw it away?
- 3 A: Because I didn't want to have any guns on me.
- 4 Q: And it was a nine millimeter; right?
- 5 A: Yes, sir.
- 6 Q: What color was it?
- 7 A: Black.
- 8 Q: What kind of bullets did you have for it?
- 9 A: Nine millimeter bullets.
- 10 Q: Were they all the same kind?
- 11 A: Yes, sir. Well, it should be, yeah. I don't --
- 12 Q: Same brand?
- 13 A: Yes, sir.
- 14 Q: Do you know that for sure?
- 15 A: Yes, sir.
- 16 Q: What kind were they?
- 17 A: I don't know. I can't recall, sir.
- 18 Q: Winchesters?
- 19 MR. TUCKER: Your Honor --
- 20 A: I can't recall.
- 21 MR. TUCKER: He's asked and answered. I believe he asked
- 22 and he told him he didn't know.
- 23 THE COURT: Sustained.
- 24 BY MR. DEBERRY:
- 25 Q: So you testified that y'all -- that the plan was to go in

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 and lay the man down and take his money?

2 A: Yes, sir.

3 Q: And then you testified that there was some people there
4 that weren't supposed to be there?

5 A: Yes, sir.

6 Q: That's what you said? So how did you know that they
7 weren't supposed to be there?

8 A: I just thought he'd stay by hisself.

9 Q: Nobody gave you any information that said he was there
10 alone?

11 A: No, sir. But I was just thinking he was going to be
12 there by hisself since it was in the afternoon like that.

13 Q: So somebody told you he was supposed to be alone?

14 A: No. Nobody told me he was supposed to be alone.

15 Q: Okay. Well, why did you think he was supposed to be
16 alone?

17 A: That was just what I was thinking.

18 Q: Okay. Had you ever been there before?

19 A: No, sir.

20 Q: How did you know how to get there?

21 A: Because the person both of us knew told me how to get
22 there.

23 Q: Is that William Wood?

24 A: No, sir.

25 Q: Is that your brother, Fred?

REGINALD JOHNSON - CROSS BY MR. DEBERRY

- 1 A: No, sir.
- 2 Q: Well, who was that?
- 3 A: A girl both of us know.
- 4 Q: Brianna Black?
- 5 A: No, sir.
- 6 Q: Well, who was it? Somebody named McCall?
- 7 A: No. Her name is Ashley.
- 8 Q: Ashley who?
- 9 A: I can't recall her last name, sir.
- 10 Q: Did she tell you there should be a bunch of money there?
- 11 A: She knows that he has a lot of money on him too.
- 12 Q: So you conspired with Ashley, who you don't know her last
- 13 name, to figure out where this place was and there's a lot of
- 14 money there and that there was only supposed to be one person
- 15 there; is that right?
- 16 A: No. I didn't conspire with her. I just, you know,
- 17 normally asked her questions. She ain't know what I was going
- 18 to do.
- 19 Q: Are those normal conversations you have with people?
- 20 A: Yeah. If I want to find something out.
- 21 Q: You want to find out how much money somebody has, how
- 22 many people are supposed to be there, and where they live,
- 23 that's normal?
- 24 A: I never asked her how many people supposed to be there?
- 25 Q: Where does this lady live?

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 A: I can't recall, sir.

2 Q: Florence?

3 A: No. She stay in Cheraw.

4 Q: Cheraw?

5 A: Yeah. But she strips down here. Well, she did.

6 Q: She's a stripper?

7 A: Yes, sir.

8 Q: Where did she strip?

9 A: At Diamond's.

10 Q: You go to that -- you went there a lot?

11 A: Yeah.

12 Q: And that's where you got this information from?

13 A: No. When we talked in a room before. She likes to get

14 rooms. That's why I don't know where she stayed at.

15 Q: So that's how you figured out this would be a good person

16 to go rob?

17 A: No. I been know he sell drugs and have money.

18 Q: How do you know that?

19 A: Because he used to stay in the neighborhood that I stayed

20 in.

21 Q: But a stripped named Ashley, who you don't know where she

22 lives or what her last name is, gave you information that he

23 was there alone, he had a bunch of money, and where he lived?

24 A: She told me where he lived. She ain't say that. We

25 ain't never asked about who was supposed to be there.

REGINALD JOHNSON - CROSS BY MR. DEBERRY

- 1 Q: Okay. How often did you talk to her?
- 2 A: Not -- not too often.
- 3 Q: Did you share any of your money with her?
- 4 A: No, sir.
- 5 Q: Have you talked to her since this?
- 6 A: No, sir.
- 7 Q: You seen her lately or since you --
- 8 A: No, sir. I was locked up.
- 9 Q: Before you were locked up?
- 10 A: I don't know, sir. She wasn't my girlfriend or anything.
- 11 Q: She didn't come to the Motel 6 or wherever you were?
- 12 A: No, sir.
- 13 Q: Did you have any girls there?
- 14 A: Yes.
- 15 Q: Brianna Black?
- 16 A: No, sir.
- 17 Q: Who -- who was there with you?
- 18 A: Different girls I met off, like, chat lines and stuff.
- 19 Q: All right. And you had a pocket full of money?
- 20 A: Yes, sir.
- 21 Q: How did -- everything happened real fast; is that right?
- 22 A: Yes, sir.
- 23 Q: Now, you say you ran alongside Christopher Peterson back
- 24 to the car; is that right?
- 25 A: I said he was behind me.

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 Q: How -- how long after you got to the car did he get to
2 the car?

3 A: Seconds. Because we -- when we came around the car, we
4 was together.

5 Q: And you know he got shot? You know that; right?

6 A: Yes, sir.

7 Q: In the knee. So could he run or do you know or you
8 weren't paying attention?

9 A: At the time, he was moving pretty fast.

10 Q: He was moving pretty good to get -- trying to get away I
11 assume?

12 A: Yeah.

13 Q: Okay. Now, you left as soon as it happened; right? As
14 soon as the shots started being fired, you -- you testified
15 you turned around and ran?

16 A: No. That was after people done ran out. Yes, sir. Then
17 I ran.

18 Q: But it all happened in how long? How many seconds?

19 A: I can't tell how -- the seconds.

20 Q: Real fast?

21 A: Fast.

22 Q: Fast?

23 A: Yeah.

24 Q: Because I mean if we're just putting everybody's story
25 together, in your testimony you said the door opens, shots

REGINALD JOHNSON - CROSS BY MR. DEBERRY

- 1 begin to get fired, you turn around and run, you know
- 2 Christopher Peterson is right behind you, y'all get to the
- 3 car, and y'all take off; right? That's -- that's your story;
- 4 right?
- 5 A: Yeah.
- 6 Q: So who had time to scrape up thousands of dollars?
- 7 A: I don't know how he picked it up or anything.
- 8 Q: Did somebody else pay you to do this job?
- 9 A: No, sir.
- 10 Q: Your brother?
- 11 A: No, sir.
- 12 Q: Ashley?
- 13 A: No, sir.
- 14 Q: How about the man who had you the rental car and a hotel
- 15 room waiting on you, Mr. Wood?
- 16 A: No, sir. He didn't have it waiting on me. I asked him
- 17 to get it for me.
- 18 Q: Okay. But y'all -- but you agree all this happened bang,
- 19 bang, and everybody was running away?
- 20 A: Yes. After I ran out first, yes, sir.
- 21 Q: All right. And you say you got \$1,000?
- 22 A: Yes, sir.
- 23 Q: All right. Did you ever tell Christopher Peterson he
- 24 better not go to the hospital?
- 25 A: No, sir.

REGINALD JOHNSON - CROSS BY MR. DEBERRY

- 1 Q: Did you think that would have been a bad idea?
- 2 A: Yes, sir.
- 3 Q: So he probably shouldn't have gone to the hospital;
- 4 right?
- 5 A: Yes, sir.
- 6 Q: And if y'all -- if you had planned to go there to do an
- 7 armed robbery, did you have a mask on?
- 8 A: No, sir.
- 9 Q: Did Christopher Peterson have a mask on?
- 10 A: No, sir.
- 11 Q: So why wouldn't you -- if you were just planning to go
- 12 rob somebody, lay him down and take his money, why wouldn't
- 13 you cover your face?
- 14 A: I wouldn't have thought about it at the time.
- 15 Q: So you thought about talking to a lady and soliciting
- 16 information about where there's a bunch of money, about where
- 17 there's a man that lives by himself, about where his apartment
- 18 is exactly, you thought about all that stuff, but when you go
- 19 to do the armed robbery that you're not even indicted for, you
- 20 decide it's not a good time to cover your face up?
- 21 A: No, sir.
- 22 Q: You just didn't think about it?
- 23 A: I wasn't too much worried about it at the time.
- 24 Q: Why?
- 25 A: It really didn't cross my mind to get one.

REGINALD JOHNSON - CROSS BY MR. DEBERRY

- 1 Q: Is that because you planned to go there and kill Luther
2 Lisbon?
- 3 A: No, sir.
- 4 Q: And he was the only one that was supposed to be there?
- 5 A: He was the only person that --
- 6 Q: Is that why you didn't cover your face?
- 7 A: No, sir.
- 8 Q: And you -- and you're up there testifying because you
9 didn't want to have to go to trial and you didn't want to have
10 to serve the rest of your life in prison and because you're
11 getting a deal to go serve non-violent time and be out in just
12 a little while; is that right?
- 13 A: So what's your question, sir?
- 14 Q: I'm just asking why you're testifying.
- 15 A: Because after -- pretty much for my deal.
- 16 Q: I understand. Mr. Tucker asked you a question about you
17 having a conversation with Christopher Peterson about a man
18 dying. You can't recall that, can you?
- 19 A: We didn't have no deep conversation.
- 20 Q: Okay. He asked you that several times, didn't he?
- 21 A: Yes, sir.
- 22 Q: Did you and Mr. Tucker ever talk about that before?
- 23 A: I can't recall. It might have came up. I can't recall
24 it though.
- 25 Q: I figured that. All right. And he also said right

REGINALD JOHNSON - CROSS BY MR. DEBERRY

1 before he sat down that at some point -- that just at some
2 random point you decided maybe it's good if you tell a story;
3 is that right?

4 A: I have to tell the truth.

5 Q: And that was right on the eve of your trial?

6 A: Yes, sir.

7 Q: All right. Thank you very much.

8 THE COURT: Redirect?

9 MR. TUCKER: No redirect, Your Honor.

10 THE COURT: All right. You may step down. Thank you.

11 Any more witnesses before lunch?

12 MR. TUCKER: No, Your Honor. Like I said, I think it
13 would be a good time to stop for lunch, and the next one may
14 be a little lengthy.

15 THE COURT: All right. Members of the jury, we're going
16 to take a break until 2:15. Do not discuss the case and have
17 a nice lunch. Everybody else remain seated while the jury is
18 excused.

19 (WHEREUPON, the jury exited the courtroom at 12:15 p.m.)

20 THE COURT: How many more witnesses do you have?

21 MR. TUCKER: One, Your Honor.

22 THE COURT: And you're going to talk with your client
23 over lunch as to whether he wants to testify or not?

24 MR. DEBERRY: Yes, sir, Judge.

25 THE COURT: Sounds good. See you at 2:15.

1 MR. TUCKER: Thank you, Judge.

2 (WHEREUPON, there was a break in the proceedings from
3 12:16 p.m. until 2:13 p.m.)

4 THE COURT: All right. Y'all come on up and let's talk
5 about scheduling.

6 (WHEREUPON, a bench conference was held off the record.)

7 THE COURT: All right. Go ahead and bring out the jury.

8 (WHEREUPON, the jury entered the courtroom at 2:15 p.m.)

9 THE COURT: All right. If you'll call your next witness?

10 MR. TUCKER: Your Honor, at this time, the State would
11 rest.

12 THE COURT: All right. Members of the jury, I hate to
13 send you back out, but I have to take up motions at this time
14 outside of your presence. If you'd be so kind as to step into
15 the jury room, we're going to take those motions up and we'll
16 come back to you.

17 (WHEREUPON, the jury exited the courtroom at 2:16 p.m.)

18 THE COURT: All right. Why don't we go ahead and hear
19 motions and then I'll let you talk with your client.

20 MR. DEBERRY: Thank you, Your Honor. At this time, I
21 would like to renew all objections and motions of any kind
22 that I've made throughout this trial and before this trial.

23 I'd also like to make a motion for a directed verdict
24 based on the fact that we don't believe there's any evidence
25 in the -- in the record that could tend to prove my client

1 guilty beyond a reasonable doubt. We just don't believe it's
2 there, especially not for an armed robbery, Your Honor, and
3 likewise with all charges.

4 THE COURT: All right. I'm going to respectfully deny
5 those motions. I think there's enough there. All right.
6 Anything else?

7 MR. DEBERRY: Not at this time.

8 THE COURT: All right. Do you want to --

9 MR. TUCKER: Nothing from the State, Your Honor.

10 THE COURT: All right. Do you want to talk with your
11 client?

12 MR. DEBERRY: Yes, sir.

13 THE COURT: All right. Let me know when you're ready.

14 MR. DEBERRY: Okay.

15 (WHEREUPON, there was a break in the proceedings from
16 2:17 p.m. until 2:28 p.m.)

17 THE COURT: All right. What's up?

18 (WHEREUPON, a bench conference was held off the record.)

19 THE COURT: All right. The State has had an opportunity
20 to look at the charge and the verdict form. Any objections?

21 MR. TUCKER: No objections, Your Honor. I would just
22 reiterate I wanted to take a look at the felony murder rule
23 and possible implications it has in this trial and be heard on
24 it in the morning if I, after doing a little reading, think it
25 needs to apply as well.

1 THE COURT: All right. The burden is on you to remember
2 that.

3 MR. TUCKER: Yes.

4 THE COURT: Other than that, all of this is in order as
5 far as you're concerned?

6 MR. TUCKER: Yes, sir.

7 THE COURT: All right. How about the defense?

8 MR. DEBERRY: No objection, Your Honor.

9 THE COURT: All right. Sounds good. All right. And,
10 Mr. Peterson, if you would, please stand.

11 (Whereupon, the defendant complied.)

12 THE COURT: And if you would, come over here and put your
13 hand on the Bible. Raise your right hand. I'm going to swear
14 you in real quick.

15 (Whereupon, the defendant complied.).

16 THE COURT: Left hand on the Bible. Raise your right
17 hand. Do you swear to tell the whole truth and nothing but
18 the truth, so help you God?

19 THE DEFENDANT: I do.

20 THE COURT: All right. Mr. Peterson, I want to go over
21 your constitutional right to remain silent. If you have any
22 questions at all, do not hesitate to ask me. The first thing
23 I want to tell you is that when your time comes, if you would
24 like to testify, you can come over here and you can be sworn
25 in and you can testify any way that you and your lawyer see

1 fit that are within the bounds of evidence. Do you understand
2 that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: However, I do want you to understand that if
5 you do testify, you may be cross-examined on any and all
6 relevant issues in connection with your case. Furthermore, if
7 you have a criminal record and it involves crimes of
8 dishonesty or false statements or crimes that carry a
9 punishment of more than one year and the Court determines that
10 the probative value of admitting same outweighs its
11 prejudicial effect, then your criminal record may be
12 introduced to attack your credibility. Do you understand
13 those risks?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Do you understand also that you
16 do not have to testify and nobody can make you testify because
17 you have the constitutional right to remain silent?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And I want you to understand that if you
20 exercise that right, I'll tell that jury they cannot use that
21 against you in any way. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I'll tell the jury they cannot even talk
24 about that fact in the jury room. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I would tell the jury the fact that you did
2 not testify is to have absolutely no prejudice against you.
3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Have you talked with your lawyer
6 as to whether you wish to testify or not?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Has he answered all of your
9 questions?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Has he explained everything to you as I have?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. And what are your wishes?

14 THE DEFENDANT: To testify.

15 THE COURT: All right. Thank you very much. I
16 appreciate that. I'll make a finding for the record that you
17 made that decision freely, intelligently, and with the advice
18 of competent counsel. You may have a seat.

19 MR. DEBERRY: Your Honor, if I may?

20 THE COURT: You may.

21 MR. DEBERRY: Earlier I'm not sure if we were on the
22 record or not, but there was two charges, one that's pending
23 and one that's a previous -- 2008?

24 MR. TUCKER: Yes.

25 MR. DEBERRY: And one was a strong-armed robbery.

1 THE COURT: That's not coming in. I think that's more
2 prejudicial than it is probative by far --

3 MR. DEBERRY: Okay.

4 THE COURT: -- considering that he's facing an armed
5 robbery in this trial. If he didn't have the armed robbery
6 charge, I'm okay with it, but not in this case.

7 MR. DEBERRY: Thank you. And also, any subsequent charge
8 is not relevant.

9 THE COURT: You're talking about the Gangster Freddy
10 stuff?

11 MR. DEBERRY: No, sir.

12 THE COURT: What are you talking about?

13 MR. DEBERRY: There is a subsequent charge on his record
14 that's still pending that is not related.

15 THE COURT: I see.

16 MR. DEBERRY: And I think the solicitor agrees that's not
17 related.

18 THE COURT: Yeah, I agree. Any objection to that?

19 MR. TUCKER: No, Your Honor. It involves an attempted
20 murder of his mother I believe. In fact, that occurred on or
21 about April the 10th of 2013.

22 THE COURT: All right. Well, that doesn't come in. We
23 don't talk about that. All right.

24 MR. DEBERRY: Thank you.

25 THE COURT: Anything else?

1 MR. DEBERRY: No, Your Honor. I would say this for -- I
2 know that Ms. Webb from SLED is here and I don't -- I think
3 Tony Moore with the Sheriff's Office should be here any
4 minute. I want to speak to my client for just a second and
5 see which order we'd like to put them up in.

6 THE COURT: Sure. You can do that while the clerk is
7 taking their lunch orders for tomorrow.

8 MR. DEBERRY: Okay.

9 THE COURT: Go ahead and talk to him.

10 MR. DEBERRY: All right.

11 (WHEREUPON, there was a pause in the proceedings.)

12 THE COURT: All right. Go ahead and bring out the jury.

13 (WHEREUPON, the jury entered the courtroom at 2:42 p.m.)

14 THE COURT: All right. If you'll call your first
15 witness?

16 MR. DEBERRY: Thank you, Your Honor. The defense calls
17 Amanda Webb.

18 THE CLERK: If you will, ma'am, come to the witness stand
19 and if you'll stop right in front of the Bible? Place your
20 left hand on the Bible and raise your right hand. Do you
21 swear to tell the truth, the whole truth, and nothing but the
22 truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Please be seated and state your full name for
25 the record.

AMANDA WEBB - DIRECT BY MR. DEBERRY

1 THE WITNESS: Amanda Webb.

2 MR. DEBERRY: May I approach, Your Honor.

3 THE COURT: Uh-huh.

4 MR. DEBERRY: Can I have this marked as Defense 1?

5 AMANDA WEBB, being first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. DEBERRY:

9 Q: Good afternoon, Ms. Webb.

10 A: Good afternoon.

11 Q: Thank you for being here. Could you tell the jury where
12 you're employed and where you were previously employed?

13 A: I'm currently employed at the South Carolina Department
14 of Health and Environmental Control, and I was previously
15 employed with the South Carolina Law Enforcement Division.

16 Q: All right. And how long did you work at the South
17 Carolina Law Enforcement Division?

18 A: I was a month shy of seven years.

19 Q: All right. And what was -- what were your job duties
20 there at South Carolina Law Enforcement Division?

21 A: Well, the whole seven years, I worked in the DNA analysis
22 department. And I was responsible for testing and identifying
23 body fluids and performing DNA analysis to get DNA profiles
24 and compare and determine if someone could have possibly been
25 at a crime scene.

AMANDA WEBB - DIRECT BY MR. DEBERRY

1 Q: Okay. And what sort of training did you have to have to
2 do that?

3 A: Well, I have a Bachelor's of Science in forensic
4 chemistry, and I also have a Master's of Science in forensic
5 science. And I -- upon getting my master's, I was hired on at
6 SLED, and I trained for approximately a year and a half under
7 independent DNA analysts. And there were many tests and
8 samples I had to proficiently get the correct answer on and
9 then I was deemed independent, and there was many tests I had
10 to take throughout the whole seven years and pass those tests
11 as well.

12 Q: So how long were you independent of those seven years?

13 A: About 5 and a half years.

14 Q: All right. And you tested I guess many, many DNA
15 profiles? Is that -- is that how you say it?

16 A: Oh, yes. Many profiles, probably close to 700 -- 800
17 cases and there's lots of profiles in each case.

18 Q: Okay. And have you ever testified in court before?

19 A: Yes, I have. Around 30, plus or minus a couple.

20 Q: And were you recognized as an expert witness in those
21 situations?

22 A: Yes, I was.

23 Q: Okay. And an expert in DNA analysis?

24 A: Yes. Correct.

25 Q: Okay.

AMANDA WEBB - DIRECT BY MR. DEBERRY

1 MR. DEBERRY: Your Honor, at this time, I'd like to move
2 to have the Court recognize Ms. Webb as an expert.

3 THE COURT: Any objections?

4 MR. TUCKER: Without objection.

5 THE COURT: All right. Motion is granted.

6 BY MR. DEBERRY:

7 Q: And I'm sure you know why you're here today; is that
8 correct?

9 A: That is correct.

10 Q: Okay. And do you have your lab report with you?

11 A: Yes, I do.

12 Q: Okay. And before we get into that, can you just -- and I
13 don't want to take up too much time scientifically, but can
14 you just kind of explain the short version of DNA and what --
15 what that means?

16 A: Sure. DNA is a chemical found in your body, and you get
17 half from your mom and half from your dad, and the DNA that
18 forensics tests is unique to an individual. And so you can
19 develop DNA profiles from body fluids or skin cells or
20 something that might be left behind at a crime scene and then
21 you compare that to the DNA profile of an individual. We call
22 those known standards because we know who it comes from. And
23 so then you can compare the crime scene samples to an
24 individual to see if they could have been at the crime scene
25 or could be eliminated from the samples that we tested.

AMANDA WEBB - DIRECT BY MR. DEBERRY

1 Q: Okay. And in this case, did you receive some known DNA
2 standards?

3 A: Yes, I did.

4 Q: Could you tell us from whom? I mean you're -- well,
5 first of all, how did you get in possession of these
6 standards?

7 A: These standards were submitted to SLED by the Florence
8 County Sheriff's Office.

9 Q: Okay. And then from there, is it a protected procedure
10 as far as who is in control of the standards?

11 A: Yes, it is. Once they are submitted into the building at
12 SLED, then they are on secured storage shelving until the time
13 that I need to do my analysis or another analyst would need to
14 do any analysis on an item. And it's all secured and there's
15 a barcode that's tracked electronically and it keeps track in
16 our computer system of who has control of the object at what
17 time.

18 Q: All right. And was there a specific lab number or case
19 number assigned to this package?

20 A: Yes, there was.

21 Q: Can you -- which case number?

22 A: L-13-00500.

23 Q: All right. And I'm going to just show you -- well, the
24 copy I have has got -- is three pages. I think there's a --
25 what does the fourth page look like?

AMANDA WEBB - DIRECT BY MR. DEBERRY

1 A: The fourth page is the table with all the numbers from
2 the DNA profiles.

3 Q: Okay.. Let me get that. I've got that actually. Could
4 you just take a look at this and just see if that's a copy of
5 your report?

6 A: Certainly. Yes, it is.

7 Q: Okay.

8 MR. DEBERRY: And, Your Honor, at this time, I'd like to
9 move this report into evidence.

10 THE COURT: Any objections?

11 MR. TUCKER: No objection, Your Honor.

12 THE COURT: All right. That will be Defense Number 1 in
13 evidence without objection.

14 (Whereupon, Defendant's Exhibit Number 1, the DNA report,
15 was admitted into evidence.).

16 MR. DEBERRY: Thank you, Your Honor.

17 BY MR. DEBERRY:

18 Q: All right, Ms. Webb. So if we get down to the specifics
19 of what your involvement was in this case, could you tell the
20 jury who you received blood standards or buccal swabs from in
21 this case?

22 A: Yes.. I received a blood standard from the victim, Luther
23 Lisbon, and that again is just the DNA. It's blood from the
24 victim. I know it's from him so I can use that to develop a
25 DNA profile and I know it's his DNA.

AMANDA WEBB - DIRECT BY MR. DEBERRY

1 And I also received buccal swabs. Buccal swabs are -- is
2 just a Q-tip that's rubbed on the inside of the cheek and it
3 collects the DNA cells that are on the inside of the cheek.

4 And I received buccal swabs from the victim David Lunn, the
5 victim Marcus Lisbon, the suspect Christopher Peterson, and
6 the suspect Gregory Johnson.

7 Q: And were you able to develop a profile from all of those
8 individuals?

9 A: Yes, I was.

10 Q: Okay. Now, were you also provided with swabs near Tower
11 Marker Number 6, 7, and 8?

12 A: Yes, I was.

13 Q: And you're not familiar with where these markers were or
14 anything? You're just -- you received those samples from the
15 Florence County Sheriff's Office; right?

16 A: That's correct.

17 Q: Okay. So of those samples that you received from the
18 Florence County Sheriff's office, did any of those -- or first
19 of all, tell me could you identify what they were?

20 A: Well, they were swabs. So when I opened the envelopes, I
21 had to look at them. It just looks like cotton swabs, and
22 there is room on a log-in sheet for the officers to request
23 what type of testing they would like SLED to perform. And on
24 the swabs, it requested a DNA analysis and a test for blood.

25 So when I was looking at the swabs, I was looking for any

AMANDA WEBB - DIRECT BY MR. DEBERRY

1 sort of brown or dark or reddish stain that would resemble
2 what dried blood might look like. And so I tested the swabs
3 for -- for blood. There were -- two of those were negative
4 and that was the swabs from Tower Marker 6 and Tower Marker 7.
5 They were negative for blood; so I didn't take them to DNA
6 because I didn't see any stain whatsoever on the swabs and so
7 it kind of indicated to me that there probably wasn't blood on
8 them.

9 And the test -- the chemical test that I do for blood is
10 very sensitive. It's a color reaction. It turns bright pink
11 if the chemicals hit the -- hit blood, and there was no color
12 reaction. So that -- it's very sensitive and a negative from
13 that indicates to me that there probably wasn't anything
14 there.

15 And the swab from Tower Marker 8 did return a positive
16 result for the chemical test for blood. So I took that for
17 DNA analysis and was able to develop a DNA profile.

18 Q: And did it match any of the profiles that were the
19 standards that were provided for you?

20 A: Yes, it did.

21 Q: All right. And whose was it?

22 A: The DNA profile from the swab from Tower Marker Number 8
23 matches the DNA profile of Marcus Lisbon. And the probability
24 of randomly selecting an unrelated individual having a DNA
25 profile matching this item is approximately one in 310

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1 quadrillion.

2 What that means is just kind of how rare the profile is
3 in the population of the world population actually and it
4 gives -- it gives weight to the evidence. So one in 310 quad
5 -- quintillion -- excuse me -- that's a very good stat that
6 would indicate to me with my experience that it really
7 wouldn't be anybody else. To put it in perspective,
8 quintillion, it goes million, billion, trillion, quadrillion,
9 quintillion. So that's the type of number we're looking at
10 here.

11 Q: Okay. And no other matches on there?

12 A: No, no other matches. That was the only item I was able
13 to develop a DNA profile from.

14 Q: All right. And is that all the interaction you had in
15 this case?

16 A: Yeah. There was a swab submitted from the victim David
17 Lunn's ring, but I wasn't able to get a DNA profile from it.

18 Q: All right. Why -- do you have any idea why they would
19 have swabbed his ring?

20 A: I think -- I'm presuming it would be because if they
21 think there's an altercation and if someone were to punch
22 someone possibly or struggle with and fight and have hands on
23 someone's hands and maybe to remove skin cells from another
24 person onto that ring. That's what we call touch DNA when you
25 touch something and you might get DNA on you or from the other

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1 person. It's very difficult to recover touch DNA.. You have
2 to really be rubbing hard and transfer quite a few skin cells.
3 Q: Did your request to perform this work by the Florence
4 County Sheriff's Office provide any details about them looking
5 for touch DNA or any of that sort of thing?

6 A: Yes, it does. It does request touch DNA for that
7 particular item. It's my Item Number 14 and I can see here on
8 the log-in sheet from Florence County that it says DNA touch.

9 Q: Okay. But there was no -- no luck there?

10 A: No. I didn't develop a profile.

11 Q: All right. Well, thank you so much for coming and I know
12 it's an inconvenience, but it's very important and please
13 drive safely to wherever you have to go to to get home. And
14 if Mr. Tucker has any questions, I guess you have to answer
15 those too.

16 A: Okay. Thank you.

17 MR. TUCKER: Thank you.

18 CROSS-EXAMINATION

19 BY MR. TUCKER:

20 Q: Ms. Webb, I'll be brief. Now, if I could kind of sum up,
21 you were given some buccal swabs from the Florence County
22 Sheriff's Office?

23 A: Yes. Correct.

24 Q: And you processed those in the normal ordinary course of
25 what your employment was then with SLED; is that correct?

AMANDA WEBB - CROSS BY MR. TUCKER

1 A: Yes. Correct.

2 Q: Now, of the samples that were submitted to you, you
3 developed one that identified Marcus Lisbon as one of the
4 persons that apparently left a blood drop there that was
5 recovered and submitted to you for analysis; is that correct?

6 A: Yes, that's correct.

7 Q: All right. And I believe you indicated that you were
8 also given a ring or swabs from a ring, and you indicated that
9 the touch DNA is very difficult to extract because it has to
10 be -- if I could paraphrase, it has to really be ground in
11 there or words to that effect; correct?

12 A: Yes, that's correct.

13 Q: And certainly you don't know the circumstances
14 surrounding where the blood was or who was standing where or
15 who did what to whom; is that correct?

16 A: No. I did receive an incident report, but it's very
17 brief. It just says there was an altercation and they went to
18 the scene and collected swabs. There's really not much detail
19 on it.

20 MR. TUCKER: Thank you. I believe that's all the
21 questions I have.

22 THE COURT: All right. Any redirect?

23 MR. DEBERRY: No, Your Honor.

24 THE COURT: All right. Call your next witness.

25 MR. DEBERRY: We'd ask that Ms. Webb be released from her

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1 subpoena.

2 THE COURT: Any objections?

3 MR. TUCKER: No objection.

4 THE COURT: You have a good day.

5 THE WITNESS: Thank you, Your Honor.

6 MR. DEBERRY: Your Honor, we call Mr. Tony Moore with the
7 Florence County Sheriff's Office.

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

10 THE CLERK: If you will, sir, place your left hand on the
11 Bible and raise your right hand. Do you swear 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: Please be seated and state your full name for
16 the record.

17 THE WITNESS: Anthony Brian Moore.

18 DIRECT EXAMINATION

19 BY MR. DEBERRY:

20 Q: Thank you, Mr. Moore. Let me grab one thing out of
21 evidence. I'll be right with you.

22 A: Okay.

23 MR. DEBERRY: Do you know where the dog report is? Thank
24 you. Let me grab one other thing.

25 Q: What's your rank, Mr. Moore?

TONY MOORE - DIRECT BY MR. DEBERRY

- 1 A: Corporal.
- 2 Q: Corporal? And how long have you been with the Florence
- 3 County Sheriff's Office?
- 4 A: About four and a half years.
- 5 Q: Four and a half years? Do you have any law-enforcement
- 6 experience prior to that?
- 7 A: No, sir.
- 8 Q: All right. What sort of work did you do before then?
- 9 A: I ran a trucking company --
- 10 Q: Okay.
- 11 A: -- and coached high school football.
- 12 Q: Okay. Are you from the Florence area?
- 13 A: I am.
- 14 Q: Okay. And what -- what are your job duties as a corporal
- 15 with the Florence County Sheriff's Office now?
- 16 A: I am an officer on the criminal enforcement unit, as well
- 17 as the tracking team supervisor.
- 18 Q: Tracking team supervisor?
- 19 A: Yes, sir.
- 20 Q: And what is the criminal enforcement unit? That's a
- 21 patrol unit?
- 22 A: Traffic unit.
- 23 Q: Okay. And so you're supervisor on that?
- 24 A: No, sir. Just --
- 25 Q: Okay.

TONY MOORE - DIRECT BY MR. DEBERRY

- 1 A: -- an officer on the team.
- 2 Q: All right.
- 3 A: Six-man team.
- 4 Q: Now, are you on call most of the time with your tracking
5 situation?
- 6 A: For the most part. I mean we've got an eight-man team
7 and we've got four guys that rotate call, but --
- 8 Q: Okay.
- 9 A: -- being over everything, I stay pretty available.
- 10 Q: And what sort of -- do you use a bloodhound or what sort
11 of dog do you use?
- 12 A: Correct. Bloodhound. Mine is a bloodhound cross-bred
13 with a plott.
- 14 Q: Okay. And what is a plott?
- 15 A: It's pretty -- pretty much like a bloodhound. It's just
16 got -- their energy and drive is a lot higher. Your
17 methodical bloodhound is a little slower.
- 18 Q: Sure.
- 19 A: So we cross-bred them to kind of speed up the drive.
- 20 Q: So they -- they got a lot of hunting background I would
21 say -- I would guess?
- 22 A: Correct.
- 23 Q: And back in January -- or January the 6th of 2013, you
24 were working with the Florence County Sheriff's Office?
- 25 A: Yes, sir.

TONY MOORE - DIRECT BY MR. DEBERRY

- 1 Q: And you were on the tracking team that day?
- 2 A: Yes, sir.
- 3 Q: And do you remember responding to Brittany Drive
- 4 Apartments?
- 5 A: I do.
- 6 Q: In connection with this case?
- 7 A: Yes, sir.
- 8 Q: Okay. And I'm going to show you what's marked as State's
- 9 Exhibit 137.
- 10 A: Okay.
- 11 Q: Is this a copy of your report?
- 12 A: Yes, sir.
- 13 Q: All right. Now, what's the name of your dog?
- 14 A: Savannah.
- 15 Q: Savannah? And how old is she?
- 16 A: She is now nine.
- 17 Q: She's nine? So she has some -- so she would have been
- 18 six or seven then?
- 19 A: Right.
- 20 Q: Now, do you -- how long had you handled her?
- 21 A: Probably that night about -- I'd say somewhere between
- 22 six months to a year.
- 23 Q: All right. And does she lives with you?
- 24 A: She does.
- 25 Q: And so you take care of her?

TONY MOORE - DIRECT BY MR. DEBERRY

1 A: Right.

2 Q: And y'all got a --

3 A: Correct.

4 Q: I'm sure you've got a bond with her.

5 A: She goes everywhere I go.

6 Q: All right. So she's in your car all the time?

7 A: Pretty much.

8 Q: And you work when she's working?

9 A: That's right.

10 Q: Yeah. I understand. Now, is she successful?

11 A: She is.

12 Q: And can you just tell the jury a little bit about her

13 training and her background and what y'all have done together?

14 Q: I mean we do training weekly that consists of just

15 various people that's on the tracking team just laying tracks,

16 whether it be an urban environment or rural environment, a lot

17 of woods, swamps, neighborhoods, things like that because you

18 got your hard surfaces and your waters and different

19 contaminations. You know, contaminations are normally higher

20 in rural areas than it is in woods and stuff like that.

21 But I mean sometimes you have scent articles and

22 sometimes you don't. When you have a scent article, you put

23 it in a bag, we harness the scent, the dogs cast it out of the

24 bag to get the track and try to locate the scent. It's not

25 always you have a scent article; so you would draw what we

TONY MOORE - DIRECT BY MR. DEBERRY

1 call last seen, last known area. We cast the dog from that
2 and they'll pick up on the freshest track. You read the dog
3 from there.

4 Q: Now, on the night in question, I was looking at some
5 pictures and things. It looks like it was -- it would have
6 been colder weather I would assume?

7 A: Right.

8 Q: First of January and it was a little damp. Are those
9 conditions ideal for tracking?

10 A: The rule generally, you know, the more damper it is, the
11 better it is. The hotter it is, the tougher it is.

12 Q: Right. So being in the wintertime and with some moisture
13 on the ground, that's good for you or bad for you?

14 A: It helps you.

15 Q: Right.

16 A: It helps the scent stick to the ground as opposed to --

17 Q: Okay.

18 A: -- dry, windblown.

19 Q: Now, when you say -- when you said a contamination, you
20 mean like on a -- would you explain that?

21 A: Well, you've got --

22 Q: I guess you mean contaminating the track or something?

23 A: Right. I mean if you're going off of the last seen and
24 if you're using that aspect -- I'm assuming that's what you're
25 asking. And there's ten guys that were standing there, then

TONY MOORE - DIRECT BY MR. DEBERRY

1 you really don't know who you're tracking.

2 Q: I understand. Okay. I thought when you said

3 contamination, you might have meant where somebody tries to

4 trick the dog or something like that.

5 A: I mean I guess anything's possible.

6 Q: Sure.

7 A: But --

8 Q: Sure. Okay. Now, have you ever apprehended suspects?

9 A: Yes, sir.

10 Q: By tracking?

11 A: We have.

12 Q: And you've been successful with Savannah doing that?

13 A: Yes, sir.

14 Q: And since she was six or seven, that's -- would you say

15 that would be her prime time?

16 A: I would say years five to eight.

17 Q: Right. And she had a lot of training on up to that

18 point?

19 A: She has. True.

20 Q: Okay. Well, out of all the hounds at the Florence County

21 Sheriff's Office, would she be one of the better ones?

22 A: That would be my opinion, yes, sir.

23 Q: Do you think she's the best?

24 A: I do.

25 Q: Okay. Now, let's get into your report. If you read

TONY MOORE - DIRECT BY MR. DEBERRY

1 through your report -- and I'll just kind of highlight a few
2 things.

3 A: Okay.

4 Q: It kind of tells us where you began near the apartment
5 complex, and the final page has a map; is that right?

6 A: Correct.

7 Q: And there's an X on each end of the map?

8 A: Correct.

9 Q: And at one X, is that -- it says right at Brittany Drive
10 and the other X is over off of West Palmetto Street?

11 A: Correct.

12 Q: Is that right? So am I assuming correctly that the
13 Brittany Drive X is where this began?

14 A: Correct. Yes, sir.

15 Q: Okay. All right. And do you know how you started the
16 track? I mean was it a -- you said a scent article or some
17 money or what was it?

18 A: No. We started right out front of the apartment door,
19 cast her at the apartment door. We went down the stairs and
20 continued across the parking lot to the apartments on the side
21 that was closest to the woods. I guess that would be if
22 you're facing West Palmetto, it would be on your left-hand
23 side.

24 Q: All right. Let me just show you and see if we can get
25 familiar with this.

TONY MOORE - DIRECT BY MR. DEBERRY

1 A: Okay.

2 Q: This is marked as State's Exhibit Number 136. We've got
3 a pointer over here. Let me get that.

4 A: Okay.

5 Q: Now, this is the entranceway to these apartments and this
6 is where one victim was found I believe in this apartment
7 building.

8 A: Okay.

9 Q: Could you -- so is that -- that's where you're testifying
10 you started this track?

11 A: Right. At that apartment complex.

12 Q: All right.

13 A: At the door of that.

14 Q: At the door there? And could you just show with the
15 pointer where -- where you remember traveling?

16 A: This is where we started in this area. I believe it was
17 on the second floor. We went down the stairs and came across
18 to this area. Between these woods, there is a fence in here.

19 Q: All right.

20 A: We continued to that area out in front of -- I believe
21 this should be West Palmetto over here.

22 Q: Uh-huh.

23 A: All right. And that's where the dog went here. We did
24 not make it all the way to West Palmetto before she turned and
25 went this way traveling west on West Palmetto just off of West

TONY MOORE - DIRECT BY MR. DEBERRY

1 Palmetto in that lot.

2 Q: Okay. And is that, like, a vacant lot?

3 A: Best I can remember, it is.

4 Q: Okay.

5 A: It's just --

6 Q: Now, you're saying you kind of just went down -- down
7 West Palmetto, but not out where anybody could see him on the
8 track like traffic-wise?

9 A: Well, I mean it was -- it was a safe distance away from
10 West Palmetto that we wouldn't be obstructed with any vehicles
11 as far as the dog getting hurt or anything like that.

12 Q: Right. And if there was a -- and the suspect, whoever's
13 track you were tracking, they wouldn't have been able to be
14 seen by traffic?

15 A: Where we were at at that part, yeah, they would be.

16 Q: Oh, they would have been?

17 A: Yes, sir.

18 Q: Okay. But they didn't go up on the sidewalk or anything?

19 A: We did not track on the sidewalk, no, sir.

20 Q: All right. Now, the track went on for quite a while;
21 right?

22 A: Correct.

23 Q: Did it -- and it turned away from West Palmetto?

24 A: It did. Yes, sir.

25 Q: And kind of down the edge of another road?

TONY MOORE - DIRECT BY MR. DEBERRY

1 A: Correct.

2 Q: And just continued on down Westchester Drive?

3 A: It did. Yes, sir.

4 Q: Okay. And at one time your report says that it tracked

5 into the woods behind a residence there?

6 A: Right. That would have been off of South Cashua.

7 Q: Okay. Continued down Mears, Ridgeway, and Forest Lake

8 Drive?

9 A: I need to find out where you're at there.

10 Q: About a third of the way down.

11 A: Correct. Yes, sir.

12 Q: All right. And then down a little ways later it says

13 west down Forest Lake Drive, the K-9 tracked the side of the

14 wood line to -- to the rear of a house and the waterfront?

15 A: Correct.

16 Q: The K-9 went down the waterfront. So he went by a lake?

17 A: Right.

18 Q: Okay. To a block of woods?

19 A: Yes, sir.

20 Q: And then it says K-9 became very excited and then pulling

21 extremely hard?

22 A: Right.

23 Q: What does that indicate to you?

24 A: In the area where we -- the K-9 actually stopped at the

25 lake and began baying at the lake. We -- I pulled -- got the

TONY MOORE - DIRECT BY MR. DEBERRY

1 dog working again. She worked down the lake and in the rear
2 of these -- it was actually between two residences at the rear
3 between the residences and the lake. There was a small block
4 of woods, maybe just a couple high pines or something like
5 that and some underbrush.

6 There was a log laying down inside the underbrush and the
7 dog just -- it worked that area for a long time. Which I mean
8 had somebody been laying there, they are going to develop a
9 scent pool if they'd have laid there for any amount of time,
10 which is going to slow the dog way down and he's going to have
11 to develop and work his way back out of it in time due to the
12 scent pool.

13 Q: But when you said the K-9 became very excited and pulling
14 extremely hard, would that make you believe you're on a hot
15 track?

16 A: Absolutely.

17 Q: No doubt in your mind about that, is it?

18 A: No, sir.

19 Q: You train with this dog every week?

20 A: I do.

21 Q: So you weren't -- you don't think you were just following
22 a ghost track, do you?

23 A: I don't.

24 Q: All right. Now, you said she began to bay at a pond
25 there or at a lake?

TONY MOORE - DIRECT BY MR. DEBERRY

1 A: At a lake.

2 Q: Okay. So if you're hot on somebody's trail, they may try

3 to slip in the water on you?

4 A: It's possible.

5 Q: Yeah.

6 A: Anything's possible.

7 Q: And then when she pulled up there kind of at the head of

8 the lake, that would be a reasonable place for somebody to

9 slip out and try to hide again?

10 A: I guess. I mean --

11 Q: That's what the dog told you?

12 A: Right. I mean it just told me that the track we was on

13 that that subject had been there.

14 Q: Right. No doubt about that in your mind?

15 A: I mean the dog's not perfect. I mean they make mistakes

16 just like humans.

17 Q: Right. But -- but you tracked this track from that

18 apartment and it got -- would you say it got hotter and

19 hotter?

20 A: I'd say it was very hot to start with. She worked.

21 Obviously, the longer it gets, the tireder she's going to get,

22 just like anybody else. She's going to slow down and that's

23 -- my job is to handle her to keep her slowed down as much as

24 possible so she doesn't get too winded and she's able to

25 continue on.

TONY MOORE - DIRECT BY MR. DEBERRY

1 Q: Right. Okay. So the track continues on past the lake.
2 You move it on from -- from where you're talking about.
3 A: Yes, sir.
4 Q: It comes up Stanley Drive?
5 A: Correct. Yes, sir.
6 Q: And then it crosses a field?
7 A: Yes, sir.
8 Q: All right. And then it comes back up I guess Ebenezer
9 Road?
10 A: No. We crossed the edge of the field, which is actually
11 the field that's between West Palmetto -- no, excuse me --
12 South Cashua and Stanley. That field kind of sits where it
13 meets West Palmetto there at the traffic light.
14 Q: Okay. In any event, the track continues another good
15 ways. Would you say this was over a mile or so or longer --
16 further?
17 A: I was never, you know, checking to see for sure, but --
18 Q: Right.
19 A: I'm not certain how long it was, but I mean my guess is
20 that it would be around that area.
21 Q: Okay. So it's quite -- I mean a pretty long track?
22 A: Yes, sir.
23 Q: All right. And at the bottom of your written report, it
24 says that the K-9 pulled extremely hard in the shallow ditches
25 while tracking down Forest Lake Drive. The last -- the last

TONY MOORE - DIRECT BY MR. DEBERRY

1 sentence there.

2 A: Correct.

3 Q: All right.

4 A: That's where we made the turn. Yes, sir.

5 Q: And that would be indicative of somebody trying to -- if

6 they're running in the ditch, they probably don't want to be

7 seen?

8 A: Right. Just -- I guess.

9 Q: I understand. All right. And then you come all the way

10 almost up to West Palmetto Street and then you come to the X.

11 And I talked to you one day last week I believe and you said

12 that it ended in a parking lot?

13 A: Right. It was at the apartment complex there on Stanley

14 Drive where I pulled the dog off the track.

15 Q: All right. And what did you find there?

16 A: We just worked around those apartments over and over and

17 over just seeing if she would commit to a door. If she showed

18 interest to a door, it would serve to pay more interest.

19 Q: All right.

20 A: She gave no interest in any doors and that's when I ended

21 the track, but I didn't locate anything in that apartment

22 complex or that parking lot.

23 Q: All right. When I talked to you last week, you indicated

24 that --

25 A: Right. I was -- when you called me on the phone, I was

TONY MOORE - DIRECT BY MR. DEBERRY

1 trying to think back because I didn't have this in front of
2 me.

3 Q: Right.

4 A: And I have since looked at it.

5 Q: All right. What -- what did you tell me last week?

6 A: I thought there might have been a possible cell phone,
7 but I could not remember.

8 Q: All right. You found a cell -- that you found a cell
9 phone at the end of the track?

10 A: Well, I didn't tell you I did find a cell phone.

11 Q: Well, you --

12 A: I told you that --

13 Q: Well, you told me then, but now you're saying you might
14 not have?

15 A: I didn't tell you I found a cell phone last week.

16 Q: Okay.

17 A: That ain't what I told you.

18 Q: All right. Well, what did you tell me?

19 A: I told you it seemed like there was a cell phone or
20 something involved on that track.

21 Q: Okay. All right. Now, let me ask you this.

22 A: But I do a lot of tracking.

23 Q: Would you disagree with me that a cell phone was found on
24 the dog track and that that's in the investigator's reports?

25 MR. TUCKER: Your Honor, I've been rather patient, but

TONY MOORE - DIRECT BY MR. DEBERRY

1 he's doing a lot of leading with his witness here and I would
2 ask that he --

3 THE COURT: Sustained.

4 BY MR. DEBERRY:

5 Q: Do you understand that -- could you disagree that there
6 was a cell phone found on the track?

7 A: Could I disagree?

8 Q: Right.

9 A: I couldn't be 100 percent certain --

10 Q: Okay.

11 A: -- either way.

12 Q: All right.

13 A: My job is working with the dog.

14 A: Right. And there's no -- there's no question in your
15 mind that you were following an individual from the -- from
16 those apartments?

17 A: Yes, sir.

18 Q: All right. Thank you very much.

19 A: Thank you.

20 Q: I appreciate you coming.

21 MR. TUCKER: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. TUCKER:

24 Q: Corporal Moore, I have just a few questions.

25 A: Yes, sir.

TONY MOORE - CROSS BY MR. TUCKER

1 Q: To begin with, you mentioned, if I heard you correctly,
2 that lots of people in an area could contaminate a scene in
3 terms of what you do with the dog?

4 A: Absolutely.

5 Q: Could you elaborate on that, please? In other words, how
6 does that kind of confuse the animal or does it?

7 A: I mean it will. I mean if you've got a crime scene and
8 there's a bunch of traffic that's entered the crime scene
9 before I get there, then it could definitely confuse the dog.

10 Q: Now, do you recall what time you responded out that night
11 to that incident?

12 A: I mean I got it here on the report. It was -- we began
13 to track at 2110 hours.

14 Q: Okay. And for non-military and non-law-enforcement folk,
15 what is that?

16 A: 9:10 p.m. I'm sorry.

17 Q: Okay. Now, when you got there, I mean was there fire,
18 EMS, Sheriff's Department personnel? Was there a lot of folks
19 there?

20 A: Well, there was personnel there, yes, sir. Several,
21 because I came all the way from Pamplico.

22 Q: Okay. Now -- and you looked at this apartment complex
23 and you were actually out there that night; correct?

24 A: Correct. Yes, sir.

25 Q: Now, that to me looks like a rather large apartment

TONY MOORE - CROSS BY MR. TUCKER

1 complex. Would you agree?

2 A: Absolutely.

3 Q: Now, do you live over in that area?

4 A: I do not.

5 Q: So you don't know much foot traffic is in or around that

6 apartment complex on any given day?

7 A: No, sir.

8 Q: And certainly you couldn't testify as to how much foot

9 traffic was in or around that apartment complex coming out

10 that evening?

11 A: No, sir.

12 Q: All right. Now, let me ask you this now. You mentioned

13 that the dog came out of the -- or you picked up a scent

14 coming out of the apartment in question; is that right?

15 A: Yes, sir.

16 Q: And the dog tracked, you know, from there and went around

17 and I believe Mr. DeBerry kind of led you to where the dog

18 tracked; is that correct?

19 A: Right.

20 Q: All right. Now, is there something or are there things

21 that would cause a dog once to pick up a scent to kind of get

22 off scent and start tracking something else?

23 A: Well, definitely. I mean a cross-track. Something that

24 crosses it when you're going off of the last seen and not a

25 scent article.

TONY MOORE - CROSS BY MR. TUCKER

1 Q: Okay. And what kind of things would do that, in other
2 words?

3 A: I mean some dogs sometimes jump. An animal crossing, a
4 deer or a rabbit, you know, a squirrel could throw the dog
5 off. I mean people obviously, vehicles.

6 Q: I understand.

7 A: Carbon dioxide kills human scent.

8 Q: I understand completely. Now, you mentioned -- I believe
9 Mr. DeBerry referenced a lake. You were kind of around a body
10 of water where the dog went, and also leading out of the
11 apartment complex and on the other side of the road and all
12 around it. A good number of trees, would you say?

13 A: Oh, yeah.

14 Q: At this time of year or that time of year rather, deer,
15 rabbit, squirrel, all kinds of animals at and about?

16 A: Yes, sir.

17 Q: Okay. And also, you mentioned around the lake that the
18 dog kind of led up to something and looked like it kind of
19 pulled hard and then something was laying there?

20 A: Right.

21 Q: There's no way you can say that was an actual person; it
22 could have been some sort of animal?

23 A: Right. I mean anything's possible.

24 Q: All right. And you also mentioned that the dog is not
25 perfect. It does make mistakes?

TONY MOORE - CROSS BY MR. TUCKER

1 A: Absolutely.

2 Q: And one of those mistakes would be it catches a scent and
3 then kind of gets off scent and then gets around a body of
4 water where there would be animals all around and kind of --
5 kind of pick up on that?

6 A: Yes, sir.

7 Q: All right. And you also mentioned that the further away
8 the dog gets, it gets tired?

9 A: It will. Yes, sir. Absolutely.

10 Q: I don't blame him. You said about a mile; right? That
11 certainly would have been tiring. But at any rate, when you
12 were over off of West Palmetto in that Stanley Drive area, it
13 was a little bit more than a mile from where you picked up
14 that original scent; is that correct?

15 A: Yes, sir. I'd say it was a mile or better.

16 Q: Okay. And also, there's no way you can say that the
17 track that came out of that apartment belonged to a suspect
18 that the Sheriff's Office was pursuing in connection with this
19 shooting incident, can you?

20 A: I mean I can't say with absolute certainty, no, sir.

21 Q: Okay.

22 MR. TUCKER: I believe those are all the questions I
23 have, Your Honor.

24 THE COURT: Redirect?

25 MR. DEBERRY: Just -- just a couple, Your Honor.

TONY MOORE - REDIRECT BY MR. DEBERRY

REDIRECT EXAMINATION

1
2 BY MR. DEBERRY:

3 Q: You were called out to track whoever left that scene,
4 weren't you?

5 A: I was.

6 Q: That was the purpose?

7 A: Yes, sir.

8 Q: And you -- by your report, it indicates that it was a
9 pretty steady track. Wouldn't you agree with that?

10 A: Yes, sir.

11 Q: All right. And your dog -- you trained with her every
12 week and she was six or seven years old at that time. You
13 think she's the best there is; right?

14 MR. TUCKER: Your Honor, I would object. The purpose of
15 recross is to bring up matters that were brought out on cross.

16 THE COURT: Certainly.

17 MR. TUCKER: Now we're plowing ground that he made when
18 he did direct.

19 THE COURT: All right.

20 MR. DEBERRY: If I could just ask the question?

21 THE COURT: Go ahead and ask it and let me hear what it
22 is.

23 BY MR. DEBERRY:

24 Q: Do you have any trouble with your dog running a deer?

25 A: I have had one time, but not lately, no, sir.

TONY MOORE - REDIRECT BY MR. DEBERRY

- 1 Q: All right.
- 2 A: Not to my knowledge.
- 3 Q: And one time out of all the handling that you've ever
- 4 done?
- 5 A: Right.
- 6 Q: And these -- and this track that you went on for however
- 7 long it was and through the ditches and along the sides of the
- 8 road and along the edge of the pond and into the woods and
- 9 across the fields and behind the houses, were those -- was
- 10 that a well-traveled footpath?
- 11 A: Was it?
- 12 Q: Yeah.
- 13 A: I mean I wouldn't know.
- 14 Q: I mean in other words, did it appear to you to have been
- 15 traveled by a bunch of people like where you see people that
- 16 travel a lot from say a store to an apartment complex or
- 17 something?
- 18 A: Are you asking me if I saw a lot of people traveling
- 19 while I was on the track?
- 20 Q: No. What I'm asking you is if you noticed that that
- 21 track was like a -- like a well-used footpath for whatever
- 22 reason or was it just a track?
- 23 A: I mean the other end -- the section of woods behind the
- 24 houses off South Cashua, we were on residential roads.
- 25 Q: Right.

TONY MOORE - REDIRECT BY MR. DEBERRY

1 A: I mean I don't think the track was on the roads.

2 Q: There's no evidence that it was like a path that people
3 walked all the time for whatever reason?

4 A: No, sir.

5 Q: Thank you.

6 MR. DEBERRY: That's all I have.

7 THE WITNESS: Okay.

8 MR. TUCKER: Nothing further, Your Honor.

9 THE COURT: All right. You may step down. Thank you.

10 THE WITNESS: Thank you.

11 THE COURT: Call your next witness.

12 MR. DEBERRY: Your Honor, we'd call Christopher Peterson.

13 THE CLERK: If you will, sir, place your left hand on the
14 Bible and raise your right hand. Do you swear to tell the
15 truth, the whole truth, and nothing but the truth, so help you
16 God?

17 THE DEFENDANT: Yes, I do.

18 THE CLERK: Please be seated and state your full name for
19 the record.

20 THE DEFENDANT: Christopher Mayhue Peterson.

21 CHRISTOPHER PETERSON, being first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION.

24 BY MR. DEBERRY:

25 Q: All right. Christopher, if you'll speak up and just try

CHRISTOPHER PETERSON - DIRECT BY MR. DEBERRY

1 to talk as clearly as you can because it's real important what
2 you have to say and everybody needs to understand that. Okay?
3 You understand that you don't have to take this stand here
4 today; right? You understand that you have the right to
5 remain silent?

6 A: Yes, sir.

7 Q: All right. And can you tell this jury in your own words
8 why? And it's your decision to take this stand here today?

9 A: Yes. Because I sat here for three days and watched
10 people put their hand on that Bible and I know if it was me
11 and I got killed, I would want my mother to know what happened
12 to me. Nobody has said what happened to this man, but I will
13 today tell what happened to his family.

14 Q: All right. Isn't it true that you've already given some
15 statements in this case?

16 A: Yes, sir.

17 Q: All right. And isn't it true that you've been
18 incarcerated on this charge for -- or these charges in
19 connection with this case for over two years I guess?

20 A: Yes.

21 Q: All right. And have you been fully cooperative with law
22 enforcement?

23 A: Yes. The whole two years.

24 Q: And you talked with them often and told them everything
25 they wanted to know?

CHRISTOPHER PETERSON - DIRECT BY MR. DEBERRY

1 A: Yes, I did.

2 Q: All right. And have you talked with Mr. Tucker on many
3 occasions?

4 A: Yes. I've talked to Mr. Tucker on occasion.

5 Q: All right. And were you planning to testify in this
6 trial?

7 A: Yes, I was.

8 Q: All right. And is that -- and I mean is that no
9 different from the reasons why you're testifying here today?

10 A: No.

11 Q: All right. And you understand that if you're convicted,
12 you're facing a lot of time in prison?

13 A: Yes.

14 Q: Possibly even the rest of your life?

15 A: I understand that, but --

16 Q: Okay. Now, let me ask you are you here today to tell a
17 different story of what happened?

18 A: No, I'm not.

19 Q: Okay. All right. And your time that you've spent so far
20 incarcerated thinking about these charges, what -- has it led
21 you to be a different person or what's going on?

22 A: Yes. Throughout this time, I have actually found the
23 Lord.

24 Q: Okay.

25 MR. TUCKER: Judge, I would object at this particular

CHRISTOPHER PETERSON - DIRECT BY MR. DEBERRY

1 kind of question. If he's talking about some sort of an
2 experience out at the jail, it has no relevance to what's
3 going on here in this courtroom as it relates to this case.

4 THE COURT: Just go ahead and move on.

5 MR. DEBERRY: All right.

6 BY MR. DEBERRY:

7 Q: Well, are you here today to tell the truth?

8 A: Yes, I am.

9 Q: All right. So, Mr. Peterson, if you will, please tell
10 the ladies -- the ladies and gentlemen of this jury what took
11 place on the night of January the 6th, 2013?

12 A: On that day, actually I wasn't -- he said I was with him
13 earlier that day. I wasn't. I was in Tara Village watching a
14 football game.

15 Q: When you say he, who are you talking about?

16 A: Reginald.

17 Q: Is that the one that testified earlier today?

18 A: Yes, sir.

19 Q: All right. And was he a friend of yours?

20 A: Yes, sir. We was associates.

21 Q: Okay. And did you know his brother?

22 A: Yes.

23 Q: And what's his name?

24 A: Fred.

25 Q: Okay. And did y'all -- y'all were friends and y'all hung

CHRISTOPHER PETERSON - DIRECT BY MR. DEBERRY

1 out together?

2 A: No. We didn't hang out, but we did conversate from time
3 to time.

4 Q: Okay. And yet from time to time you would do things
5 together?

6 A: Yes.

7 Q: Okay. All right. So go ahead.

8 A: Yes. So on that date, me and Reggie, we didn't get up
9 until -- I was at my mother's. Like I said, I was in Tara
10 Village and I left after the football game went off. I think
11 it was a Red -- a Redskins game. I left there from Tara
12 Village and went to my mother's house.

13 Q: Okay. That was before you went to Brittany Drive?

14 A: Yes.

15 Q: And so -- and this was a Sunday?

16 A: Sunday.

17 Q: All right. So you would be talking about the one o'clock
18 game?

19 MR. TUCKER: Judge, I would object to the leading.

20 MR. TUCKER: Sustained.

21 BY MR. DEBERRY:

22 A: I don't know what time the game was.

23 Q: Okay. So you watched a football game. Go ahead.

24 A: Yes. I watched the football game and I left there.
25 Barnett came and picked me up and dropped me off at my

CHRISTOPHER PETERSON - DIRECT BY MR. DEBERRY

1 mother's house. Reggie called me. I don't know what time it
2 was, but he asked me to ride with him. He asked me to ride
3 with him and we'd go -- he said he was going to talk to the
4 plug. At that time, I didn't know the plug's name was Rod
5 until after we was there, but he said we was going to talk to
6 the plug.

7 Q: Now, what is a plug?

8 A: The guy that -- the dope man.

9 Q: Okay.

10 A: He said he was going to talk to the plug.

11 Q: And that's all you knew?

12 A: Yes. He said -- what he said was he was going to talk to
13 the plug. From his understanding, Gangster Fred can't get no
14 dope right now. So if Gangster Fred can't get no dope right
15 now, he can't get no dope right now. So he was going to talk
16 to the man to see can he get everything straight.

17 Q: And that's Reginald?

18 A: That's Reginald.

19 Q: All right. And you were with him?

20 A: Yes.

21 Q: And you agreed to go?

22 A: Yes.

23 Q: Okay. Continue on.

24 A: Yes, sir. We went there. I knocked on the door, but I
25 noticed that the parking lot that we parked in, we didn't go

CHRISTOPHER PETERSON - DIRECT BY MR. DEBERRY

1 into those apartment complexes. We walked across, but I had a
2 feeling what was going on because sometimes when you go to buy
3 you go to buy dope, you don't go to the apartment or the
4 house. You know, sometimes you park in the area in that yard.

5 Q: Uh-huh.

6 A: So sometimes you'll park away from them. So I
7 understand, but I didn't think nothing else like that other
8 thing what happened was going to happen.

9 Q: Okay.

10 A: But anyway, we went on up in there. I knocked on the
11 door. I said -- he just said who was it -- who is it and I
12 said Buck. Buck is my name. But the guy answered the door.
13 When he answered the door, I walk up and --

14 Q: Let me ask you this question. Do you know who answered
15 the door?

16 A: Now I do.

17 Q: Well, who answered the door?

18 A: Rod answered the door.

19 Q: And who is Rod?

20 A: The guy that is dead.

21 Q: Mr. Luther Lisbon?

22 A: Yes.

23 Q: And how did you know him as Rod?

24 A: I didn't know him as Rod.

25 Q: Okay.

CHRISTOPHER PETERSON - DIRECT BY MR. DEBERRY

1 A: I only knew his name after he was dead after you hear it
2 in the streets.

3 Q: So how do you -- so later you learned that his name was
4 Rod?

5 A: Yes.

6 Q: Okay. How do you know that it was him that answered the
7 door?

8 A: I didn't know that until afterwards.

9 Q: Okay. Well, how do you know?

10 A: Now, because he was dead.

11 Q: Well, explain. Explain that.

12 A: The guy that answered the door, he and I tussled, but let
13 me explain that first. When I stepped up -- you got to step
14 up. It's not just a walk-in. You have to step up inside on
15 top of the -- to get into the apartment like that step there.
16 You have to step up and go in.

17 When I stepped up, he and I -- and it wasn't -- it wasn't
18 that he just grabbed me at first. I reached out my hand to
19 shake this man's hand. I reached out my hand to shake his
20 hand. So when he grabbed me, I thought that it was something
21 because I had on a black hoodie and just he didn't know me,
22 but right after he grabbed me, that's when the gunshot went
23 off. So I'm figuring that he had to see the gun reached over
24 my shoulder.

25 So he and I tussled. We turned and then while we turned,

CHRISTOPHER PETERSON - DIRECT BY MR. DEBERRY

1 that's when he got shot again. That's when he got shot. The
2 bullet went through and hit me in my leg, but I never -- the
3 only thing -- I had told him -- I said that he got shot, I got
4 shot. I just -- the the only thing I didn't say was he got
5 shot and the bullet went through him and hit me in my leg. If
6 I would have shot myself, the bullet would have went through
7 my leg.

8 Q: Okay.

9 A: The only reason the bullet didn't go through my leg was
10 because it went through a body first.

11 Q: Now, did -- I saw -- we saw your statement earlier. You
12 said that when you all -- when you and Luther were engaged at
13 the -- in the doorway that he said he got shot.

14 A: Yes.

15 Q: Now, are you sure that he said that?

16 A: Yes.

17 Q: Are you sure that that came from the person standing
18 right in front of you or somebody in that apartment?

19 A: No. It was the guy right there. We was right here.

20 Q: All right. And you believe that's the same time you got
21 shot?

22 A: I know it was the same time I got shot.

23 Q: All right. And so back up. When -- when you knocked on
24 the door, did you have a gun?

25 A: No.

CHRISTOPHER PETERSON - DIRECT BY MR. DEBERRY

- 1 Q: What was your understanding of why you were going there
2 and what you were going to do?
- 3 A: I didn't have no involvement. He was just going to talk
4 to the man to get something -- to get this whole situation
5 squared away. From my understanding, his brother -- the guy
6 -- the plug at the time -- I didn't know his name, but his
7 name is Rod. He didn't -- he wasn't getting drugs to his
8 brother for some odd reason. I don't know. I don't deal with
9 that area.
- 10 Q: Now, his brother being?
- 11 A: Gangster Fred.
- 12 Q: Okay.
- 13 A: I don't -- I don't have nothing to do with that, but I
14 just know that he couldn't get drugs at the time. So if his
15 brother don't get drugs, he ain't getting drugs.
- 16 Q: Now, who is he?
- 17 A: Reginald. Reggie Johnson.
- 18 Q: He just testified?
- 19 A: Yes.
- 20 Q: Okay.
- 21 A: So if he --
- 22 Q: And so did you believe that there was going to be any
23 trouble when you went there?
- 24 A: No. For what? I don't know these people.
- 25 Q: You knew you were going there to talk about drugs?

CHRISTOPHER PETERSON - DIRECT BY MR. DEBERRY

1 A: That's it.

2 Q: All right. Did you have any plans to commit an armed
3 robbery?

4 A: None whatsoever.

5 Q: Did you have a gun?

6 A: No.

7 Q: Did you shoot anybody?

8 A: I did not shoot anyone.

9 Q: All right. When the door opened, you told him your name;
10 right?

11 A: Yes.

12 Q: Now, did you have a mask on?

13 A: No, I didn't.

14 Q: Okay. When the door opened, what did you see?

15 A: I see the guy that opened the door and there was three
16 other people.

17 Q: There was three other people?

18 A: Yeah. It looked like three other people sitting in the
19 apartment.

20 Q: So there was four people there is your testimony?

21 A: Yes.

22 Q: Okay. Now, you -- do you think that maybe Rod or who we
23 know as Luther saw somebody with a gun?

24 A: Yeah. I'm thinking he did. Why else would he grab me?

25 Q: And that's why you -

CHRISTOPHER PETERSON - DIRECT BY MR. DEBERRY

1 A: I don't even think he grabbed me. I thought he was,
2 like, using me as a shield. That's the only way I feel like
3 he grabbed me. He was using me as a shield. But when he
4 grabbed me and I turned, he turned and when he got shot, the
5 bullet went through and hit me in my leg.

6 Q: Okay. So if you and I were standing, you know, tussling
7 back and forth --

8 A: Do you want me to step down?

9 Q: If you want to.

10 (WHEREUPON, the defendant complied.)

11 Q: Just face me right here. So if I'm --

12 A: You'll have to turn around so I can show you how it
13 happened.

14 Q: Okay. Now, I'll be Rod.

15 A: Yes, sir.

16 Q: Or Luther.

17 A: You're Rod, yes, sir.

18 Q: Okay. And I wind up with a bullet hole right in here and
19 it came out right in here.

20 A: Uh-huh.

21 Q: Okay. So how could that happen?

22 A: I'm about to show you.

23 Q: All right.

24 A: When he grabbed me --

25 Q: Okay.

CHRISTOPHER PETERSON - DIRECT BY MR. DEBERRY

1 A: When he turned, we turned like this.

2 Q: All right.

3 A: The door is right here. Reggie is standing behind the
4 door right here. We turned.

5 Q: All right.

6 A: He's not all the way turned yet before he gets shot.

7 Q: Okay.

8 A: When he gets shot, the bullet comes -- and my leg is
9 still here.

10 Q: Okay.

11 A: The bullet went straight out and hit me right here in my
12 leg.

13 Q: All right. And that's the inside of your right knee?

14 A: The inside of my right knee.

15 Q: Okay. And you're right-handed?

16 A: I'm right-handed.

17 Q: And again, how do you know he got shot at that instant?

18 A: He said he got shot.

19 Q: And what did he do?

20 A: Well, he -- well, he -- I helped him. When he -- he was
21 falling, I helped him lay down right there at the door. And
22 then I ran out.

23 Q: Right in the doorway?

24 A: Yes, sir. I helped him. I helped lay down right there
25 at the door. And I ran out the door. Reggie was still