

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID LEE WALKER,

APPELLANT

APPELLATE CASE NO. 2015-000519

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,)
)
 PLAINTIFF,)
)
 -VS-)
)
 DAVID LEE WALKER,)
)
 DEFENDANT.)
 _____)

2014-GS-30-0228, -0229
TRANSCRIPT OF RECORD

FEBRUARY 23-27, 2015
LAURENS, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR., JUDGE; AND A JURY

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

O. WARREN MOWRY, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

ELIZABETH P. WIYGUL, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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1 TRIAL DAY 1-02/22/14

2 THE COURT: Mr. Walker, how are you, sir?

3 THE DEFENDANT: I'm doing pretty good, sir.

4 THE COURT: Mr. Walker, Ms. Wiygul, your attorney, a
5 few moments ago --

6 THE DEFENDANT: She's fired.

7 THE COURT: Okay.

8 THE DEFENDANT: My family going to get me an attorney.

9 THE COURT: Mr. Walker, we are going to proceed with
10 the trial at this particular point in time.

11 THE DEFENDANT: Well, you all can go ahead without me.
12 I won't be here. My family going to get me an attorney,
13 because it's railroad, it's bootlegged from the getup, and
14 it's a setup and I know it's a setup, and it ain't going to
15 happen. I don't want her as my attorney. I only seen this
16 woman for two -- two times and now I'm going to trial with
17 her. It ain't going to happen. It ain't going to happen.

18 THE COURT: Mr. Walker, I need -- before you leave,
19 sir, I desperately need to tell you something. Okay, sir?

20 THE DEFENDANT: You all can go with the trial without
21 me. I won't be here.

22 THE COURT: You realize, Mr. Walker, that you will be
23 at a disadvantage if you go forward without you being
24 present --

25 THE DEFENDANT: It doesn't matter. I'm already at a

1 disadvantage. Y'all can call out and take my case in. My
2 momma will get Carl Allen and he'll take my case and y'all
3 can go from there. I don't give a damn.

4 THE COURT: The record should --

5 THE DEFENDANT: It's going to happen without me.

6 THE COURT: The record should reflect that Mr. Walker
7 was quite adamant and was walking out of the courtroom as I
8 was trying to address him about the disadvantage that he may
9 very well be in if the case goes forward without him being
10 present. He has decided to leave the courtroom, apparently
11 under some volition, and I'm assuming that the court
12 reporter has made a record of what was said to him.

13 MS. Wiygul, anything that you want to put on the record
14 to address with the court concerning your client's
15 situation?

16 MS. WIYGUL: Your Honor, I think I'd have to make the
17 motion to be relieved in light of Mr. Walker's adamance that
18 I am fired. This is the first I've heard about it. Up
19 until this morning he seemed very pleased with my services.
20 I spoke with him via phone last night from the jail. I'd
21 ask that the court consider continuing this matter and give
22 me an opportunity to contact Mr. Allen and see if Mr.
23 Walker's family has, in fact, contacted him about retaining
24 him.

25 I reiterate the fact that we have received a lot of

1 this discovery within the last two weeks. I feel like I am
2 prepared to go to trial with what we have. We are very
3 prepared to argue the pretrial motion. We'd ask that the
4 court consider continuing the matter.

5 Would the court like me to go on and address the
6 proposed voir dire that's been handed up also at this time?

7 THE COURT: In a moment I'll let you do that.

8 Solicitor, let me ask you then. Has your office received
9 any communication from Carl Allen's office?

10 MR. MOWRY: None, Your Honor. And candidly, Mr. Walker
11 has been talking about this for months. He has fired Mr.
12 Howe as well saying at that point -- this was back in, what,
13 November? Actually earlier than that, I believe, when Ms.
14 Wiygul was appointed. But he fired Mr. Howe with the
15 declaration that he was going to go hire his own attorney.
16 Ms. Wiygul was appointed in case that did not happen. So I
17 will give you a little bit of the history, Your Honor.

18 You're already aware of Johnny Saxon. Johnny Lee
19 Saxon, the co-defendant. He --

20 THE COURT: That's the gentleman last week, I believe -
21 -

22 MR. MOWRY: Yes, sir.

23 THE COURT: -- who's been discharged. He had already
24 fired Laura Saunders, or he had sought to. She had been
25 appointed. She was relieved. And then he had contacted, I

1 believe, the public defender asking that another attorney be
2 appointed. I've not as yet had an opportunity to speak to
3 the Clerk of Court about appointing another attorney for
4 him. But apparently there is also a third defendant that
5 has been through some --

6 MR. MOWRY: Yes, sir. Christopher Wells.

7 THE COURT: I believe last week Mr. Sanders was so
8 irrate and his conduct was so destructive to the court, the
9 court found itself compelled to hold in him contempt. That
10 is the first time I've ever actually had to do that.

11 But do you want to speak as to the other co-defendant?

12 MR. MOWRY: Yes, sir. Christopher Wells was arrested
13 about a little over a year. Right about the same time as
14 Mr. Saxon was. He was appointed Mr. Nasrollahi and recently
15 fired him. I get confused how this one worked. I can't
16 remember if it was Mr. Saxon that had Brian Able briefly or
17 if it was Mr. Wells. But all three of them have said
18 essentially, "We don't want attorneys from the Eighth
19 Circuit." So clearly there is a great deal of communication
20 going on. Pardon me. It was Mr. Walker that had Brian Able
21 for a bit. That -- I knew that was in there somehow. And
22 then Ms. Wiygul. So he has made a game of this, Your Honor,
23 just trying to delay and stir up the process.

24 THE COURT: The court is inclined to find that clearly
25 discussions at requesting a new attorney or hiring a new

1 attorney is nothing more than an effort at delay on behalf
2 of Mr Walker. And it is quite clear from the court's
3 contact last week with the co-defendant and what was put on
4 the record at that particular hearing that the court is in a
5 position where some individuals are simply attempting to
6 delay and game the system by repeatedly -- repeatedly
7 requesting other counsel to be appointed, because Ms. Wiygul
8 has said that she is prepared to move forward with the case.
9 I do realize there are some motions that we're going to be
10 putting on the record here at a later point in time. But
11 because Ms. Wiygul is prepared with this case at this
12 particular point in time, because there's no indication that
13 Mr. Allen or any other attorney has been retained, because
14 all indications are that Mr. Walker was satisfied last
15 evening with Ms. Wiygul's assistance, the court is inclined
16 to go forward and find that this is simply a situation where
17 Mr. Walker is attempting, as I said a moment ago, to game
18 the system.

19 The court also finds that by his conduct and by his
20 expressed statements, Mr. Walker has decided to absence
21 himself from the proceedings. The court has made an effort
22 to advise him that he is at a disadvantage in that regard.
23 I have asked the investigator for the Solicitor's Office
24 whether a capability exists for closed circuit transmission
25 of these proceedings to Mr. Walker, whether that capability

1 exists, and he informs me that we simply do not have that
2 capability.

3 Ms. Wiygul, I realize you have Mr. Powers there who is
4 going to be assisting you as your investigator. If you
5 would care to have some sort of a video feed hooked up, or
6 something along those lines, if Mr. Powers is able to do
7 that, I'm more than happy to try and make that happen for
8 you. But I think we are where we are.

9 MS. WIYGUL: Your Honor, unfortunately I don't believe
10 either Mr. Powers or myself have access to the video
11 capabilities that that would require. I would point out to
12 the court, I believe that Mr. Walker's mother and aunt are
13 in the courthouse. If the court would be willing to at
14 least question them as to their ability and plans to hire
15 new counsel.

16 THE COURT: I don't know what they look like or where
17 they are.

18 MS. WIYGUL: I do, Your Honor.

19 THE COURT: Certainly. If you want to -- let's do
20 this. Go ahead, Ms. Wiygul, if you want to have them come
21 in here. If you want to just speak with them privately
22 about that, I'd be more than happy to hear what they have to
23 say. I'm a little bit hesitant to question family members
24 of the Defendant's in open court on the record. I think I'd
25 be more comfortable with you asking that question. You and

1 Mr. Powers.

2 MS. WIYGUL: Yes, sir.

3 THE COURT: All right. So we'll be at ease for a few
4 moments while you do that.

5 (Whereupon, a brief recess was held.)

6 THE COURT: Ladies and gentlemen of the jury panel,
7 thank you for your continued patience with us today. We're
8 about to select a jury in the case of the *State of South*
9 *Carolina vs. David Lee Walker*. This is case -- these are
10 case numbers 14-GS-03-229 and -228. Ladies and gentlemen,
11 the State of South Carolina alleges that Mr. Walker
12 committed the offenses of murder and possession of a weapon
13 during the commission of a violent crime.

14 Now, I'll instruct you at the get-go that an
15 indictment, ladies and gentlemen, is nothing more than an
16 accusation. It's just the method by which a case is brought
17 into this court. And again, the allegations of the
18 indictment are in no way, shape or form, proof of any of the
19 allegations contained in the indictment. Again, this is
20 merely a piece of paper. This is merely pieces of paper,
21 ladies and gentlemen, by which a case is brought to this
22 court.

23 Now, the State has alleged that Mr. Walker did in
24 Laurens County on or about October the 31st of 2013
25 willfully, feloniously and with malice aforethought kill one

1 Johnny Cheeks by means of shooting him, and that the said
2 Johnny Cheeks did die in Spartanburg County as approximate
3 result thereof on or about November the 1st, 2013 in
4 violation of the laws of this state against the peace and
5 dignity of this state. The state also alleges that on that
6 same date Mr. Walker did on October 31st, 2013 possess or
7 visibly display what appeared to be a firearm, or visibly
8 displayed a knife during the commission of a violent
9 offense, mainly murder, in violation of the sections so
10 named provided against the peace and dignity of the state.

11 Now, in this case, ladies and gentlemen, the Defendant,
12 Mr. Walker, is being represented by Ms. Wiygul. Ms. Wiygul,
13 would you care to stand and introduce yourself to the jury
14 panel, please.

15 MS. WIYGUL: My name is Elizabeth Wiygul. I'm a
16 defense attorney out of Greenville.

17 THE COURT: Thank you very much. And you are assisted
18 with -- by Mr. Powers and you are an investigator. Is that
19 correct, Mr. Powers? You care to stand.

20 MS. WIYGUL: That's correct.

21 THE COURT: Jimmy Powers out of Greenville --
22 Greenwood.

23 MR. POWERS: Greenwood.

24 THE COURT: Thank you. The State of South Carolina is
25 being represented by Mr. Mowry and Mr. Neely. Gentlemen, if

1 you'd care to introduce yourselves to the jury, and anyone
2 seated at the counsel table.

3 MR. MOWRY: Thank you, Your Honor. My name is Warren
4 Mowry. I'm the Deputy Solicitor and prosecutor here in
5 Laurens County. Ruston Neely is one of our assistants.
6 Another attorney in our office. Margaret Boykin, sitting at
7 the end of the table, she is another of our attorneys. And
8 Walter Bentley is our Solicitor's Office investigator.

9 (Whereupon, jury panel voir dire begins.)

10 THE COURT: Ladies and gentlemen, the way the jury
11 selection works in General Sessions is probably just a
12 little bit different than in Common Pleas Court. In General
13 Sessions if your name is called what I'm going to need you
14 to do is simply come forward and stand right kind of here
15 where this table is. The Bailiff will show you where to
16 stand. And at that point in time the Solicitor will have an
17 opportunity to either seek you or to excuse you. The
18 Defendant will have a similar opportunity. I will tell you
19 what I tell every jury, or every jury panel. If for some
20 reason one of the parties asks that you not serve on this
21 jury, don't take it personally. Okay? It could be
22 something as simple as what you have on today. It could be
23 something as simple as what you're wearing or where you
24 work. Don't be insulted. Every lawyer has a different way
25 of picking a jury. So please, nobody be offended.

1 follow those instructions. Okay?

2 With that, I hope you have a pleasant evening. Wear
3 those juror badges back tomorrow. They'll help identify you
4 at the front door and will help the bailiffs and security
5 personnel to get you to the jury room.

6 With that, I'm not going to keep you any further. I'm
7 going to say I hope you have a dry and warm and good evening
8 and I'll see you all tomorrow morning hopefully at 9:30.
9 Okay? If there is no delay and it's okay to get here, come
10 and be here at 9:30 tomorrow morning and we'll start the
11 trial promptly at that time. I do have some other matters
12 I'm going to have to take up concerning this case.
13 Hopefully some of the other issues I'm going to work
14 through. Those are merely legal issues, and hopefully we
15 can do something to try and shorten or expedite this case
16 for you as much as possible.

17 With that, have a great evening, and the Clerk will
18 join you out back. The bailiffs will show you the best way
19 to get out. Okay? You all follow them. Thank you.

20 (Whereupon, the jury was released for the day at 12:53
21 p.m.)

22 THE COURT: The jury is out. Ms. Wiygul, did you --
23 apparently -- my clerk just passed me a note. Apparently
24 you have spoken to Mr. Walker's family, his mother, and --

25 MS. WIYGUL: That's correct, Your Honor. She's present

1 in the courtroom. She has informed me that the family is
2 unfortunately without the financial means to obtain private
3 counsel.

4 THE COURT: All right. Very good. The jury has not
5 been sworn at this particular moment and time. Are we okay
6 to take up the motions after lunch, or do you want to go
7 ahead and address a few of them, Ms. Wiygul?

8 MS. WIYGUL: Your Honor, I would appreciate it if we
9 could go on and just address the motions that have to do
10 with the issues that have arisen this morning.

11 THE COURT: Certainly, go right ahead then, please.

12 MS. WIYGUL: I would make a motion that the case be
13 continued in order to have a new jury panel. That's based
14 upon the jury panel being tainted as is shown by the
15 comments made by juror number 36, whenever he approached the
16 floor, stating that he overheard comments and witnessed
17 behaviors of the Defendant that would cause him not to be
18 able to be impartial in this trial. He also indicated that
19 he had overheard the comments of seven to nine others in the
20 jury panel that caused him to believe they felt the same
21 way. I realize the court did question the jury panel as to
22 that issue. However, we would simply submit that that was
23 not sufficient to cure the issue and that the jury panel has
24 been tainted.

25 THE COURT: Does the State have a position on this?

1 on the *State vs. David Lee Walker*. Mr Walker is not present
2 in the courtroom. Ms. Wiygul, I'm assuming that your
3 client's mother had an opportunity to talk to him over our
4 lunch break. Anything that's been related to you?

5 MS. WIYGUL: Your Honor, I attempted to speak with Mr.
6 Walker after lunch. He will not even speak with me at this
7 point, except to reiterate that he doesn't think it's fair
8 and that I've been fired. The State has relayed a plea
9 offer that I've been unable to relay to Mr. Walker because
10 he won't listen to me relay it. I would ask that that be
11 relayed to him.

12 I'm also asking the court to make sure that Mr. Walker
13 understands he has the right to proceed pro se with me being
14 appointed as stand-by counsel. It's my understanding that
15 the court does plan to try him in his absence if he does not
16 choose that option.

17 THE COURT: So that I can apprise Mr. Walker of the
18 offer that has been extended, Solicitor, what exactly has
19 been put on the table?

20 MR. MOWRY: Initially, Your Honor, the offer was a plea
21 to voluntary manslaughter for 30 years. If he'll plea to
22 voluntary manslaughter we'll leave it to the discretion of
23 the court. Stand up plea.

24 MS. WIYGUL: And the 30-year offer has been relayed to
25 Mr. Walker and he rejected it. He has not heard the offer

1 for a stand up plea.

2 THE COURT: So two to three on voluntary?

3 MR. MOWRY: Yes, sir. I have just spoken with the
4 family about that. Told them that I was going to make that
5 offer to the court. I do not hold out much of an
6 opportunity that he's going to accept it, but nonetheless I
7 want the offer to be made.

8 THE COURT: Well, legally he's entitled to be informed
9 of that offer. Let's have Mr. Walker join us, please, sir.

10 (Whereupon, the Defendant enters the courtroom.)

11 THE COURT: The record should reflect that Mr. Walker
12 is back. Mr. Walker, I asked that they have you step out
13 here because I do need to tell you something. Inform you of
14 something. Two things. And then ask you a couple of
15 questions.

16 First of all, Mr. Walker, the State has made an offer
17 on your case to allow you to plead guilty to voluntary
18 manslaughter, and your attorney told me that she had limited
19 to no success communicating that offer to you. Voluntary
20 manslaughter carries a minimum of two years and a maximum of
21 30 years, and sentencing would be at the discretion of the
22 court. Obviously your lawyer has an ethical obligation --

23 THE DEFENDANT: She's not my attorney anymore.

24 THE COURT: Well, that's the other thing I was going to
25 talk to you about, Mr. Walker. At this point in time the

1 court has not relieved Ms. Wiygul of any representation --

2 THE DEFENDANT: I'll be leaving.

3 THE COURT: I just really need to talk to you, sir. So
4 please, if you could, allow me to say a few things, sir.

5 If you fire Ms. Wiygul, Mr. Walker, if I allowed you to
6 do that, you realize that you would be acting as your own
7 attorney.

8 THE DEFENDANT: No. I'll have another lawyer.

9 THE COURT: And that's something else. I don't know if
10 your family has had an opportunity to tell you yet, or has -
11 - they've communicated to Ms. Wiygul that they're simply not
12 in a position financially to retain an attorney.

13 THE DEFENDANT: (Unintelligible) going to get one. She
14 already told me. She's setting this up today. She going to
15 get me a lawyer. I'm going to get a lawyer. Because all
16 this stuff is staged and is cahoots and all, and I'm not
17 going to be a part of it, Your Honor. If you want to try me
18 in absent, you go ahead and try me in absence. All you're
19 going to do is make me rich.

20 THE COURT: Mr. Walker -- Mr. Walker, I have not
21 relieved her. So as of this moment and time she is still
22 your attorney.

23 THE DEFENDANT: She is fired for me. You can't tell me
24 who going to represent me. You can't -- you can't -

25 THE COURT: Mr. Walker -

1 THE DEFENDANT: You're not going to tell me who going
2 to represent me.

3 MS. WIYGUL: Let him stay here and let him talk.

4 THE DEFENDANT: And I'll make sure the Supreme Court
5 hears of that.

6 THE COURT: And that's perfectly fine, Mr. Walker. I'm
7 happy for you to write --

8 THE DEFENDANT: Yeah.

9 THE COURT: -- and talk to whoever you want to, sir.
10 But the point is, when you applied for counsel, when you
11 asked for the attorney --

12 THE DEFENDANT: I didn't apply for it. He did it. I
13 didn't apply for nothing. He gave it to him. That's his -
14 He gave it to -

15 THE COURT: Mr. Walker --

16 MS. WIYGUL: Just listen to what needs to be said and
17 we'll take you back. Okay.

18 THE COURT: The court has appointed her. Okay? At
19 this point in time she is your attorney. I have not
20 released her. You do not have the authority to fire her
21 unless you decide that you're going to proceed without an
22 attorney and represent yourself, which you have the right --

23 THE DEFENDANT: She is fired. She is fired and I'm
24 going to get an attorney. I'm not able to represent myself.
25 She is fired.

1 THE COURT: But, Mr. Walker, as you stated a moment
2 ago, because you're unable to represent yourself, and
3 because I do feel like you would be at a disadvantage if you
4 were to represent yourself --

5 THE DEFENDANT: I'm at a disadvantage in this
6 courtroom. I'm already at a disadvantage.

7 THE COURT: Mr. Walker, I assure you that I will afford
8 you a fair trial. A hundred percent fair trial, sir.

9 THE DEFENDANT: An attorney is always -- You ain't got
10 nothing to do with it, Judge. I already know what's going
11 on. I'm here. I'm already --

12 THE COURT: Mr. Walker --

13 THE DEFENDANT: And you part of it, Judge Addy. You a
14 part of it, because you been allowing this stuff to going on
15 in your courtroom. You're a part of it.

16 THE COURT: Mr. Walker, I appreciate your frustration.
17 I sincerely do. Ms. Wiygul, at this point in time, is your
18 attorney. She is going to remain your attorney unless you
19 decide to represent yourself. Again, I would ask you to
20 reconsider your decision since --

21 THE DEFENDANT: No, she's fired. You can go ahead. I
22 won't be back in this courtroom.

23 THE COURT: -- to reconsider your decision not to be
24 present while the case is going on.

25 THE DEFENDANT: No. No. She's not my attorney. And

1 if you want to proceed without me, I'm telling you she's not
2 my attorney, I will make sure the lawsuit falls on you, too.
3 So go ahead and proceed. She is not my attorney. And put
4 that on the record. She is not my attorney.

5 THE COURT: She is writing down everything that's being
6 said, Mr. Walker.

7 THE DEFENDANT: Yeah, she is not my attorney. She been
8 to see me two times. She has not had enough time to prepare
9 my case. She is not my attorney.

10 THE COURT: Mr. Walker, there --

11 THE DEFENDANT: She is not my attorney.

12 THE COURT: -- there are a number of motions that I'm
13 going to be taking up briefly here. Are you sure that you
14 don't want to be present?

15 THE DEFENDANT: No, I don't want to be present. I want
16 to go back to the jail. She is not my attorney. And I
17 state that for the record, so when I do get my new attorney
18 and you all proceeding with trial I'll find out who all the
19 lawsuit go to.

20 THE COURT: All right. Very good.

21 THE DEFENDANT: She is not my attorney.

22 THE COURT: Very good, Mr. Walker. Thank you. You may
23 have a good day.

24 THE DEFENDANT: Thank you. You have the same.

25 THE COURT: Yes, sir. Please take him back.

1 (Whereupon, the Defendant exited from the courtroom.)

2 THE COURT: Well, it would appear that a trial is going
3 to be necessary. Mr. Walker does not seem interested in
4 accepting the plea to involuntary manslaughter. And, Ms.
5 Wiygul, you will remain as counsel for Mr. Walker.

6 MS. WIYGUL: And, Your Honor, just to clarify the
7 record and make sure I am covered, I would like to renew my
8 motion to be relieved in light of Mr. Walker's most recent
9 comments and ask if the court is specifically ordering that
10 I continue to represent Mr. Walker.

11 THE COURT: I am ordering that you continue to
12 represent Mr. Walker. Again, as I said before lunch, this
13 appears to be an effort -- an eleventh hour effort to delay
14 these proceedings. That's the only conclusion that the
15 court can reach. You have been in communication with Mr.
16 Walker while the case is going on, and as you said earlier
17 today, the conversation was quite polite and very amiable
18 last evening when you spoke to him at the jail by phone.
19 It's clear to the court -- crystal clear, that Mr. Walker
20 merely trying to delay these proceedings and game the
21 system. And he's had enough lawyers appointed. Many more
22 lawyers than perhaps should have been appointed. Everybody
23 was wanting -- everybody associated with this case was
24 wanting someone outside of Laurens County, and he had
25 someone outside of Laurens County and for whatever reason

1 that's still not good enough.

2 Solicitor, you're standing to tell me something?

3 MR. MOWRY: I was just simply going to add for the
4 record, Your Honor, that Your Honor recalls Mr. Saxon from
5 last week. It's almost verbatim the same kind of comments
6 and innuendo that Mr. Saxon made. So clearly there is a
7 concerted plan on their part to try to disrupt the process.

8 THE COURT: That is entirely possible and that would
9 not surprise me if that were to be the case. But at the
10 very least, the court finds that Mr. Walker's attempt to
11 fire his attorney at the eleventh hour, that's nothing more
12 than a delaying tactic. His family has already told us that
13 they can't afford an attorney for him. He says he'll be at
14 a disadvantage, he does not want to proceed pro se. So, Ms.
15 Wiygul, that leaves you as counsel for Mr. Walker despite
16 his protestations.

17 MS. WIYGUL: Yes, Your Honor.

18 THE COURT: Let's address any other housekeeping
19 matters before we go into your motions.

20 MS. WIYGUL: Your Honor, only that at this time we do
21 not plan to proceed with a *Jackson v. Denno* motion in light
22 of the State's indication that they only plan to introduce a
23 statement that was allegedly made at the scene, and also in
24 light of Mr. Walker's refusal to participate.

25 MR. MOWRY: That is correct, Your Honor. The gist of

1 the statements would have come from Deputy Timmons and
2 Detective Investigator Cheek. Essentially they were -- and
3 Ms. Wiygul and I have discussed this. They were an
4 investigatory typed -- matter of fact, with Deputy Timmons
5 the statement initially was volunteered. Was not even the
6 response of a comment or anything from Deputy Timmons. He
7 volunteered that two guys had jumped him and that his arm
8 was broken. And only later on did they determine that he
9 had been shot. He said essentially the same thing to
10 Detective Cheek. That would have been the extent of the
11 statement that we would have gotten from him.

12 THE COURT: Very good.

13 MR. MOWRY: Oh, I --

14 THE COURT: Yes, sir.

15 MR. MOWRY: Just for the record also, Your Honor. To
16 Detective Cheek he described a tan Bronco with two
17 individuals in it as being the vehicle that had left the
18 scene.

19 THE COURT: All right. Ms Wiygul.

20 MS. WIYGUL: Your Honor, our first motion is a motion
21 to continue. That motion is based upon our issues with a
22 gunshot residue expert. The court was -- the court does
23 have a written motion on this, and the court was kind enough
24 to appoint an expert at our request on or about February
25 17th. Last week. And that was after we were provided the

1 gunshot residue kit, or case file from SLED. I believe that
2 was provided to the Solicitor's Office last week, and they
3 got it to us the same day they got it. But it was only last
4 week. It has come to our attention this morning that the
5 expert that was retained actually is not an expert in
6 gunshot residue. We are making every effort to find another
7 expert. I've put out requests to attorneys in Greenville
8 and have people working on it up there and down here, and
9 the Public Defender's Office down here is attempting to help
10 us find someone. But my concern is that if we're not able
11 to find someone then we would -- we would not be able to put
12 up an adequate case.

13 And if the court would let me go on and list the other
14 issues for a motion for continuance?

15 THE COURT: Let's deal with them one at a time just so
16 it's a little bit clear. How does gunshot residue play into
17 the State's theory of this case, Solicitor?

18 MR. MOWRY: Your Honor, gunshot residue, we would
19 submit there's testimony that the particles that constitute
20 gunshot residue were found on both hands of David Walker,
21 and that Detective Cheek did the GSR test -- or did the
22 swabs for the GSR. Those were submitted to SLED, and
23 gunshot residue, we would submit, was found on David Walker.

24 THE COURT: All right. And, Ms. Wiygul, with regard to
25 the GSR, how does obtaining an expert factor into the

1 defense of this case?

2 MS. WIYGUL: Your Honor, it involves the report
3 generated by SLED, by the gunshot residue expert at SLED,
4 does seem to indicate what Mr. Mowry just put on the record.
5 The actual case kit reflects something different. It
6 reflects that the -- on the right palm there was no primer
7 or anything that could be considered gunshot residue was
8 found. On the back of the right hand one round particle
9 consistent with gunshot residue was found. On the left
10 palm, one round particle associated with gunshot residue was
11 found. And on the back left -- or the back of the left hand
12 two round particles associated with gunshot residue are
13 found. The case file kit itself has a little chart as part
14 of it. The first column is gunshot residue particles.
15 That's zero all the way down. The second is consistent.
16 The third is associated. And that has the appropriate
17 numbers under it.

18 This is a very, very scientific based area. It does
19 require an expert's knowledge to explain it so that it makes
20 sense to a layperson. Our concern is that hearing from only
21 one expert they're going to hear what the State wants them
22 to hear and we're not going to have the opportunity to
23 explain how many particles you would actually expect to find
24 on a person that has fired a gun. Not being able to hear
25 the fact that there are contributors in the environment that

1 could lead to the associated or consistent particles. The
2 fact that Mr. Walker works on cars is very relevant, because
3 a lot of the barium and other elements that are found in
4 gunshot residue are also found with mechanics. So there's
5 just a lot of issues with that that are going to need to be
6 clarified for this jury.

7 MR. MOWRY: And I believe Ms. Stoner would be a perfect
8 person to do that, Your Honor. Let me also put out that the
9 Defense has had the report from Ms. Stoner since the outset.
10 It was only last week that they requested the file itself
11 that led to the generation of the report, and we retrieved
12 that for her rather quickly. We did not have that in our
13 possession ourselves. I've gone down and spoken with Ms.
14 Stoner. I've talked with her about this case and have, you
15 know, prepared her for courtroom testimony. That sort of
16 thing. But we did not have -- we have not requested this
17 report ourselves. Ms. Wiygul now has it. She can ask her
18 questions on that all day long.

19 MS. WIYGUL: And, Your Honor, I would simply submit
20 that there is voluminous case law in this state that in this
21 type of case where the state has a gunshot residue expert
22 that the Defense is absolutely entitled to have one also.

23 THE COURT: I don't disagree necessarily. I would ask
24 that, first of all, you attempt to -- as we discussed this
25 morning, attempt to contact your own witness on this

1 particular issue. And when would you anticipate Ms. -- or
2 Agent Stoner testifying, Solicitor?

3 MR. MOWRY: Probably -- I'm guessing Wednesday, Your
4 Honor.

5 THE COURT: Wednesday?

6 MR. MOWRY: Yes, sir.

7 THE COURT: All right. In your conversations with
8 Agent Stoner did you discuss any of the issues that Ms.
9 Wiygul has sort of alluded to, or some of them from her
10 perspective?

11 MR. MOWRY: Yes, sir. She has testified for me on that
12 very issue, and she will also testify that there are
13 environmental factors that might lead to a false positive.
14 That my account for these items, all she will say is that
15 these are elements of gunpowder residue.

16 THE COURT: All right. Let's move on to the next
17 request for a continuance then.

18 MS. WIYGUL: Your Honor, the second request would just
19 be renewed on the basis of the jury issues that have already
20 been ruled on.

21 THE COURT: Okay, very good.

22 MS. WIYGUL: And the last one would simply be that
23 while Mr. Mowry is absolutely correct, it's my understanding
24 they got me the case kit from SLED on the day I requested
25 it, and I don't think they had it prior to that. I was

1 appointed on this case in November, I believe.

2 MR. MOWRY: November 7th, I believe.

3 MS. WIYGUL: November 7th. I was -- it's my
4 understanding, and the State can correct me if I'm wrong,
5 that immediately upon being appointed I was provided what
6 they had been provided at that time. A lot more information
7 was provided two weeks ago, I believe, on -- the Tuesday
8 after President's Day, Your Honor.

9 MR. MOWRY: As Ms. Wiygul has made requests we have
10 done everything we could to fulfill them.

11 MS. WIYGUL: And that -- some of the material included
12 over 300 pages of medical records from the victim. I
13 thought --

14 MR. MOWRY: From the victim or the Defendant?

15 MS. WIYGUL: From the victim. I was under the
16 impression that they would also have the medical records
17 from -- of the Defendant at that time. They did not. The
18 court signed an order ordering that the hospital provide
19 those records. I believe Mr. Bentley actually drove up to
20 Spartanburg to get those, not this past Friday but the
21 Friday previous. He got all of those records. We got
22 copies of those on that day. However, they didn't include
23 the x-rays. And the x-rays we were not provided until this
24 Friday -- this past Friday. I have not even provided a copy
25 to the Solicitor's Office yet because it was provided in a

1 DVD and I forgot to bring it with me. But I will provide
2 that in the morning.

3 All just to say, Your Honor, there's an awful lot of
4 things that need further investigation in this case that
5 simply haven't been investigated. And we would make a
6 motion for a continuance based on that.

7 THE COURT: All right.

8 MR. MOWRY: I will tell, Your Honor, that the State has
9 subpoena Dr. Lepage, Paul Lepage, from Spartanburg.
10 Ironically, he was the attending physician for both the
11 victim and the Defendant in this case, and performed surgery
12 on the victim prior to his death. He is going to be in
13 court and will be available to testify.

14 THE COURT: When do you anticipate him being able to
15 join us?

16 MR. MOWRY: I suspect Wednesday as well, Your Honor.

17 THE COURT: With regard to the Defendant's motion for a
18 continuance, that's going to be denied, unless I hear more.
19 At this point in time I think certainly the case as it
20 stands -- obviously if there was some failure to investigate
21 or some failure on behalf of law enforcement to uncover some
22 -- or to turn over some rock that nears to the benefit of
23 the Defendant clearly and could help contribute to
24 reasonable doubt. So I don't know that that's necessarily a
25 major concern on the Defendant's behalf. Usually my

1 experience is Defense attorneys prefer for things to be left
2 unexamined because it allows them leeway to make the
3 reasonable doubt argument.

4 As far as the GSR and the motion to continue because of
5 that, I do understand where the Defense is coming from and I
6 would encourage you to go ahead and figure out who you can
7 get to take a second look at this on behalf of Mr. Walker.
8 I'm more than happy to sign whatever funding orders are
9 necessary to make that happen. At the same time, it also
10 sounds as if the SLED agent would be in a position to
11 address some or most, if not all, of the Defense concerns.
12 But I'll just let that sort of float out there for the
13 moment.

14 MS. WIYGUL: Yes, Your Honor.

15 THE COURT: Any other motions?

16 MS. WIYGUL: Yes, Your Honor. We filed this morning a
17 motion to compel testing and production. As Your Honor just
18 noted, any times in cases of this nature there's a rock that
19 wasn't turned over. There's a gravel pit in this case. The
20 written motion that was filed this morning lists at least 15
21 items that were not tested for some reason or another done
22 at SLED. Either they were not submitted to SLED, or after
23 SLED's request for DNA the Sheriff's Office simply did not
24 send them what they told them they needed to perform the
25 testing.

1 We're also asking that the court order the Sheriff's
2 Office to send the DNA to SLED, as SLED requested that they
3 do. And that request is in the attachment, which is a
4 letter from SLED dated April 18th, 2014 addressed to Brian
5 Cheek. That letter says that the requirements for routine
6 analysis by the SLED DNA casework department have not been
7 met. Known DNA standards are needed. Please submit a
8 Buccal swab. There's no other indicator anywhere in the
9 case file that I saw that indicates that Investigator Cheek
10 ever responded to SLED one way or the other. The items that
11 were requested were never sent.

12 I'd also ask that the court order the production of all
13 notes taken in this case by all law enforcement officers,
14 and that all of those handwritten notes, or typed notes,
15 whatever they may have, be turned over to the Defense.
16 That's based -- that request is based on the lack of record-
17 keeping during this case. The lack of following procedure.
18 Just basic procedures were not followed. They chose to take
19 gunshot residue from David Walker. They chose not to take
20 it from the witness, that admitted to handling one of the
21 guns. It's just -- just very odd things.

22 MR. MOWRY: Your Honor, let me just interject there.
23 The witness had admitted handling a gun. And one of the
24 things that Ms. Stoner will testify to is that merely
25 handling a gun can -- especially one that has been recently

1 fired, can leave deposits of gunshot residue on the
2 handler's hands. So once the person had handled the gun, it
3 would have come as no surprise whatsoever if GSR was found
4 on her hands. That's one of the reasons that that was not
5 accomplished. It wasn't gotten from the victim in this case
6 because he was in surgery the whole time. And there is a
7 shelf life for GSR. Essentially after six hours SLED says
8 that any taking of GSR is no longer going to be accurate.
9 And she talks about a number of items that were not analyzed
10 by SLED. Look at number eight. Four rounds of 380 ammo,
11 two spent brace, two unspent brace. Those were analyzed by
12 SLED firearms. The Lorcin .380 handgun, likewise. The
13 Rossi .38 Special revolver, likewise. All those items were
14 examined by SLED.

15 MS. WIYGUL: And, Your Honor, while they might have
16 been examined by one department of SLED they weren't
17 necessarily examined by -- like something might have been
18 tested by the firearms department. But they didn't look at
19 it for latent.

20 MR. MOWRY: Yes, sir, they did. The Lorcin was
21 examined for latent prints and that came back negative.

22 MS. WIYGUL: I believe the Lorcin was. The Rossi was
23 not.

24 MR. MOWRY: Well, in any event. Also clothes. A red
25 shirt, gray shorts. The Defendant's clothing. We would

1 have expected to have found the Defendant's blood on that.
2 Number 15, victim's bloody clothes that were cut off of him
3 by EMS and collected at the hospital. It would have come as
4 no surprise that we would have found the victim's blood on
5 that. So I don't quite understand this blanket assertion
6 that these items were not analyzed. There is a limited
7 amount -- there are limited resources that SLED has. I
8 know, Your Honor, has heard many times Defense attorneys
9 talk about the awesome power of the State. But as Your
10 Honor well knows, the SLED lab has protocols. There are
11 only certain things that they can do. You can't send 40
12 items down there and ask them to identify -- or examine them
13 all for DNA. They will generally make you chose five or
14 fewer.

15 So in any event, Your Honor, the law enforcement got
16 what they believe they needed. If Ms. Wiygul sees a hole or
17 a flaw in what they did she can certain question them about
18 that. But I see no reason to continue this case for this
19 purpose.

20 MS. WIYGUL: Your Honor, we'd also request that the
21 personnel file of Lieutenant Brian Cheek be handed over to
22 Defense, simply because he was in charge of this
23 investigation. The --

24 THE COURT: Before I go there, let's get back on the
25 question of the DNA. I understand your position perhaps of

1 latent prints, Ms. Wiygul. But the letter from SLED, which
2 is attached to your motion, the letter is dated April 18th
3 of 2014 wherein they request Buccal swabs from the victim
4 and the subjects for comparison purposes. Clearly in April
5 of last year it would not have been possible to obtain such
6 a swab from the decedent in this case. And it occurs to me,
7 Ms. Wiygul, that in light of your client's recent
8 recalcitrance, obtaining a Buccal swab from him by a murder
9 hearing is going to be problematic.

10 MS. WIYGUL: Your Honor, I understand that. It's been
11 Mr. Walker's position throughout that he wants to give
12 whatever evidence he can. He wants to have the item removed
13 from his body. He is -- as it's been relayed to me
14 previously, he's willing to submit a swab. No one's ever
15 asked him.

16 It's also my understanding that all three of those
17 gentlemen would be in CODIS already. So --

18 THE COURT: My understanding is, having gone down this
19 road before, typically SLED will do an analysis based solely
20 on the date that's included in CODIS, or held by CODIS and -
21 -

22 MS. WIYGUL: And I understand that, Your Honor. And
23 that's why it's so important that the lead investigator
24 respond to a request from SLED. And there's just no mention
25 of it.

1 THE COURT: All right. With regard, Solicitor, to the
2 request for the notes law enforcement took on these cases,
3 do you have a position on that?

4 MR. MOWRY: Your Honor, the way the deputies work it,
5 it's my understanding is that they will report based on
6 their notes at the scene and the notes are not retained.
7 The electronic record that they create is, but the notes
8 themselves, the written notes themselves generally are not
9 kept.

10 THE COURT: All right. So you've spoken to them and
11 they have no personal notes; is that correct?

12 MR. MOWRY: That's correct, Your Honor.

13 THE COURT: And the personal file, what's the State's
14 position on that?

15 MR. MOWRY: I don't understand the purpose behind that,
16 Your Honor. If Ms. Wiygul could enlighten me.

17 MS. WIYGUL: Your Honor, it's absolutely Mr. Walker's
18 right to know in a situation like this whether this is a
19 pattern. Whether there's a pattern of investigations that
20 are led by this gentleman not submitting, not replying to
21 requests from SLED, not following procedures that are
22 generally followed by every other law enforcement in the
23 state. For example, Your Honor. A search warrant was
24 issued for the Defendant's phone. My understanding is that
25 the return that was provided to the Solicitor's Office has

1 two words typed on it by Lieutenant Cheek. It says, "No
2 record." I believe the Solicitor has requested that they be
3 provided so they can provide me with something saying there
4 was no record. Something from the actual phone company
5 stating that an effort was made. To the best of my
6 knowledge, to date nothing has been produced.

7 THE COURT: What were they looking for?

8 MR. MOWRY: Looking to see what numbers he had spoken -
9 - he had called earlier, Your Honor.

10 THE COURT: Well, Solicitor, do you have -- or do you
11 want to talk to Mr. Cheek about this, or you want to -- you
12 have a -- you want to take any particular position?

13 MR. MOWRY: Your Honor, I've talked wit Lieutenant
14 Cheek. He does not have any problem with the Defense taking
15 a look at his personnel file. So I think that pretty well
16 moots that point.

17 MS. WIYGUL: Your Honor, I'd still be interested in his
18 response about the phone records.

19 MR. MOWRY: The response about the phone records, Your
20 Honor, it was submitted to a SLED agent. Apparently he took
21 a look at it and said, "There's nothing here that we can
22 retrieve," or something along those lines.

23 MS. WIYGUL: Your Honor, I would ask -- and I
24 understand that it wouldn't be something they could do right
25 this second. But I would ask for some type of written

1 documentation of who that was submitted to and who tested it
2 and why it wasn't submitted to the phone company and --

3 MR. MOWRY: Your Honor, that is -- that is -- that is
4 fine for cross-examination but it has absolutely nothing to
5 do with a motion for a continuance.

6 THE COURT: I would tend to agree. If you feel like
7 the case has been inadequately investigated, Ms. Wiygul, we
8 can clearly go down that road, and you'll have a lot of
9 latitude on cross to do exactly that. Simply because things
10 were not necessarily documented, I don't know that that
11 necessarily -- we can't unring the bell. We can't go back
12 and, as I said in chambers, take photographs of the scene
13 that you felt should have been taken. There's various ways
14 to approach a case, various ways to approach an
15 investigation. And I think that what you are addressing
16 would be more appropriately handled on cross as opposed to
17 in the context of a motion for a continuance.

18 MS. WIYGUL: Yes, Your Honor.

19 THE COURT: But I do see what you're saying. And since
20 there's no objection we'll just, I guess, have whoever the
21 personnel person is get the file, or give it to you, or give
22 it to somebody and bring it over at some point.

23 MS. WIYGUL: Thank you, Your Honor. And the remaining
24 motion is a motion to compel the removal of the bullet that
25 is currently located in Mr. Walker. And I'd like to correct

1 one thing in here, Your Honor.

2 The motions reflect that the Defendant was arrested on
3 or about November 2nd, 2013. I believe he was actually
4 arrested on or about December 11th of 2013.

5 My understanding is that the plan -- the doctor's plan
6 was to remove this bullet. That Mr. Walker had to get in a
7 little bit better physical shape before they could perform
8 that surgery in a safe manner. He was sent home. And I
9 believe he was released from the hospital on or about
10 November 6th. The law enforcement was notified when he was
11 released. He was at home going through physical therapy.
12 He was on a walker. He was partially paralyzed. And then
13 they made the decision to go on and take him into custody
14 prior to that surgery being performed. He very much wants
15 the surgery, Your Honor. He is adamant that the bullet that
16 is inside of him did not come from the victim's gun. That
17 it will reflect and support his allegation that he did not
18 have a gun. That someone was behind him shooting at both of
19 them. Mr. Walker was shot in the back. The medical records
20 which the State provided on or about February 13th -- and
21 that's the date that they got them. The medical reflects --
22 medical records reflect that Mr. Walker had bullet fragments
23 left in his body. Mr. Walker has told me throughout that
24 there is a bullet there, but I didn't have any documentation
25 about it. We were able, this past Friday on February 20th,

1 to obtain a copy of his x-rays. A copy of the most clearer
2 of those x-rays is attached to this motion. And it doesn't
3 just show a fragment. It shows a bullet. Most often this
4 type of request is coming from the State, because they want
5 the evidence to prove the Defendant guilty. This is a case
6 where the Defendant is asking for the bullet to be removed
7 basically so he can prove his innocence. He has the right
8 to produce all evidence. It's very relevant to this case.
9 The State's theory may be hand of one, hand of all, but the
10 State has made numerous comments stating that Mr. Walker
11 fired a gun. The indictment does not read hand of one, hand
12 of all. It says Mr. Walker fired a gun. And it's been my
13 understanding throughout from reading all of the discovery
14 that has been provided that the theory is that Mr. Walker
15 shot Mr. Cheeks. That's what they allege the witness has
16 said. That's what they've alleged the victim said.

17 THE COURT: Solicitor, what's the State's position?

18 MR. MOWRY: Your Honor, we have reports from the same
19 medical records that Ms. Wiygul referred to. I'll refer you
20 to a -- and I'll make these court's exhibits, if you like.
21 But there was an ordering physician, Mica J. Roy, who asked
22 for, it looks like, a CT scan, and it says, "Multiple bullet
23 fragments -- fragments are identified in the left posterior
24 neck." Also, there is a report that says there is a
25 punctuate bullet fragment within the left lateral recess of

1 C-4. There are also fractures of the left articular pillar
2 of C-5. There are multiple small bullet fragments within
3 the fracture sites extending along the bullet track to the
4 bullet lodge within the left posterior cervical soft tissues
5 at level C-6. Essentially, Your Honor, if the bullet is in
6 fragments there is almost nothing of evidentiary value that
7 can be gained from it. Additionally, Ms. Wiygul has been
8 aware, quite frankly, that we believe that three people were
9 involved in this incident. I do not believe that had the
10 other person done the shooting that the Lorcin semiautomatic
11 would have been left at the scene. We believe that Mr.
12 Walker did do the shooting. However, if the jury believes
13 that the State has failed to prove that case beyond a
14 reasonable doubt, then they would still be justified in
15 convicting the Defendant of murder, in our view, based on
16 felony murder rule. The fact that they had gone down there
17 to rob the victim and the homicide was a logical
18 continuation or an extension of the robbery, and hand of one
19 is hand of all. The fact that one of the other co-
20 defendants may well have shot the Defendant -- or the
21 victim, I should say, the Defendant is just as responsible
22 as the shooter in that case.

23 MS. WIYGUL: And, Your Honor, I would just submit to
24 the court that it's very relevant whether the bullet that is
25 in Mr. Walker came from the victim, which would mean that

1 the victim shot Mr. Walker in the back, or if it came from
2 another weapon. If it came from the .380, if it can be,
3 matched to the gun that was at the scene, then that makes it
4 very clear that Mr. Walker did not have a gun, because he
5 couldn't have shot himself that way at that angle.

6 MR. MOWRY: Your Honor, I will grant --

7 MS. WIYGUL: I would --

8 MR. MOWRY: Oh, I'm sorry.

9 MS. WIYGUL: I would also like to respond very briefly
10 to Mr. Mowry's comments about fragments. And I'll give him
11 my copies of these, Your Honor. I'm showing Mr. Mowry,
12 which the written reports that are included with the x-ray
13 DVD, and one reflects that C4-C5, it references a major
14 bullet fragment. And then there's another one talking about
15 C4-C5 multiple small bullet fragments within the fracture
16 sites extending along the bullet track to the bullet lodged
17 with the left posterior cervical soft tissues.

18 MR. MOWRY: I believe that's exactly what I handed you
19 a moment ago, Your Honor.

20 MS. WIYGUL: And it specifically references a bullet.
21 Yes, there are a lot of bullet fragments, but there's also
22 something large enough to test and tell whether it came from
23 a .380 or a 38.

24 MR. MOWRY: Once again, Your Honor, grant that Ms.
25 Wiygul has had this for about three and a half months, but

1 we did not hear a request for this until the last couple of
2 days. Mr. Walker has been under arrest for more than a
3 year, and again, we did not hear a word about this from him
4 at any other time.

5 MS. WIYGUL: And, Your Honor, I did not feel it would
6 be an appropriate motion to make based on the only
7 information we have -- had at the time was fragments.

8 THE COURT: All right. I think it was represented to
9 me, Solicitor, in chambers that the State is not alleging
10 that there were any hollow point bullets which would have
11 collapsed or anything like that, or mushroomed upon striking
12 the --

13 MR. MOWRY: That's correct, Your Honor.

14 THE COURT: Okay. Well, clearly the first problem --
15 and I do understand what is written in the motion. But
16 again, the -- there are a couple of 50 cent questions.
17 First of all, obviously in light of Mr. Walker's hesitancy
18 to participate in these proceedings, how beneficial would it
19 be if we were to delay this. Is he going to consent to
20 surgery. Would he agree to surgery. Because obviously this
21 is the Defense motion and he has some, shall we say, well
22 voiced suspicions about counsel and the court. So I'm not
23 even sure -- or I'm not convinced, if he's not even willing
24 to come in here and stick around for the trial, I don't know
25 how willing he's going to be to go under the knife to

1 retrieve this bullet or bullet fragments, assuming for the
2 moment that the fragment or the bullet could even be
3 examined and determined -- a determination made which gun it
4 came from.

5 MS. WIYGUL: Your Honor, it's my understanding that
6 .380 bullets are jacketed and 38 bullets are led. So that
7 should be easy to tell. And I'd have no -- I'd ask that the
8 court ask Mr. Walker, because his upset over hearing that I
9 thought this motion would be denied was directly what led to
10 him being so upset with me this morning.

11 THE COURT: Okay. Well, it there's also a question --
12 I realize the motion -- the statement is made that it can be
13 done safely. But it does sound like any surgery to remove
14 the fragments is going to be very close to the spine. The
15 spinal cord. And my general understanding, doctors do not
16 like messing around that particular area for obvious
17 reasons. I guess the second question is can this be done
18 safely and is there somebody who would do it in a situation
19 where it's not causing him any inconvenience or disability.

20 MS. WIYGUL: And again, Your Honor, the information I
21 have from Mr. Walker is that his doctors did plan to perform
22 that surgery.

23 THE COURT: I understand if Mr. Walker were
24 participating in this hearing and perhaps I could hear that
25 out of his own mouth maybe we would be a little bit -- or

1 the court would be a little bit more inclined to delay this.
2 But as things stand now, I don't see where -- the report
3 references fragments. I do see where the report references
4 fragments. There is a reference to a bullet in the stuff
5 that was given to me just a moment ago. The records that
6 were provided just a moment ago. Solicitor, do you want to
7 say something else?

8 MR. MOWRY: Well, I was just going to refer to a
9 Supreme Court case, *State vs. Allen*, this is 291 S.E.2nd
10 459. This is a case that refers to another matter, *State*
11 *vs. Richards* in Missouri talking about a situation in which
12 removal of a bullet four inches below the skin in the
13 Defendant's right hip was considered proper. And that was
14 on the State's motion. And I think what the court said in
15 that case is illustrative. This would not be a minor or a
16 major operation. There were no vital organs in the
17 particular area where the bullet was lodged. The operation
18 would not be a difficult one with x-ray equipment available.
19 There would be no danger to life, limb, tissue, muscle or
20 ligaments. And I would submit, as Your Honor has noted,
21 that the position of the bullet near the spinal cord is a
22 clearly different animal. And the only person that we have
23 indication from that the bullet was going to be removed is
24 the assertion that Ms. Wiygul has made via Mr. Walker, as
25 Your Honor noted. And so, I would say given the

1 circumstances that the potential danger of the bullet near
2 the spinal cord or any fragments of it near the spinal cord,
3 the considerable possibility that there is going to be
4 nothing of evidentiary value that is going to be obtained
5 from these fragments, all of that, along with the dilatory
6 nature of Mr. Walker, certainly the nature that he has
7 exhibited over the last several hours, would be a pretty
8 good indication that this is just another one of those
9 tactics.

10 MS. WIYGUL: And, Your Honor, I would submit that a
11 Defendant has the right to decide what evidence he wants to
12 present to the jury.

13 THE COURT: I don't disagree. Let me ask you this.
14 You say that there were roughly 300 pages of records --

15 MS. WIYGUL: Yes, Your Honor.

16 THE COURT: -- for Mr. Walker --

17 MS. WIYGUL: Yes, Your Honor.

18 THE COURT: -- that you've had a chance to review. I'm
19 assuming that's the standard stuff; doctor's notes,
20 dictations, things like that?

21 MS. WIYGUL: Yes, Your Honor. And I could not find
22 anything referencing -- I could not understand it well
23 enough to find anything indicating one way or the other
24 whether they did or did not plan on surgery.

25 THE COURT: So there's no statement in the medical

1 records, so far as you can tell, that the doctor had had a
2 discussion with Mr. Walker about the possibility of removing
3 the bullet. Was there any discussion about whether it was
4 causing him discomfort, pain, limited motion, anything like
5 that?

6 MS. WIYGUL: Your Honor, only in handwritten notes that
7 -- well, there were handwritten notes. I just couldn't read
8 them. But in the typed stuff that I could read I could not
9 find anything mentioning it one way or the other.

10 THE COURT: How long was he treated at the hospital
11 before he was released? Does anyone know?

12 MR. MOWRY: Several days at least.

13 MS. WIYGUL: I believe maybe a week, two weeks. About
14 two weeks, Your Honor. I believe he was taken that night,
15 and I think he was released November 6th.

16 MR. MOWRY: I believe that's correct.

17 MS. WIYGUL: So it would be about a week.

18 THE COURT: What was the prognosis when he entered the
19 hospital? Does anybody know? Obviously he was brought in
20 for a gunshot. He'd lost blood. Had he -- ICU --

21 MR. MOWRY: I can assure you that his prognosis was a
22 great deal better than the victim's in this case, Your
23 Honor.

24 THE COURT: Certainly. But the reason -- and the
25 reason I ask is that would play into the risk/reward of a

1 doctor. You know, obviously if a physician has got a
2 patient that was extremely close to death they may be very
3 hesitant to go back in and risk messing around with a bullet
4 that isn't causing any problems if the patient has survived
5 that kind of a gunshot.

6 MR. MOWRY: I will tell, Your Honor, that he was
7 coherent. He was responding appropriately to the officers.
8 He was not raving or anything like that. He was sitting
9 upright on the porch before he was taken by the EMTs.

10 MS. WIYGUL: My understanding is that he had been
11 dragged into a chair on the porch and was unable to lift his
12 neck.

13 MR. MOWRY: He had not been touched by anybody. He had
14 positioned himself there. He had brought himself from the
15 driveway where the incident took place and had beaten on the
16 door, and then sat down on the porch.

17 MS. WIYGUL: A factual issue, Your Honor.

18 MR. MOWRY: This is what the witnesses would say, Your
19 Honor. This is not going to controverted.

20 MS. WIYGUL: I did ask Mr. Walker, because I had the
21 same concerns with the court with it being that close to the
22 spine, and I asked him, "Do you realize if you have this, I
23 don't know what your doctors told you, but with it being
24 that close to your spine it could leave you paralyzed or
25 something." What Mr. Walker told me is that he'd rather

1 take the chance of being paralyzed and be at home then be
2 able to walk around in jail.

3 THE COURT: And that may very well be a position that
4 he is happy to take. Understand however -- and, Ms. Wiygul,
5 you've probably done a little bit of med mal as well. A
6 physician is going to take a much different, you know,
7 approach to that Hippocratic oath that says "First do no
8 harm". As much as Mr. Walker may want the bullet, if it's -
9 - to remove the bullet, he's going to have a hard time
10 finding a surgeon to go in there and obtain that. And
11 that's why I asked about the medical records and whether
12 there was any showing or any -- whether the defense could
13 make any showing that this had been discussed that this was
14 a possibility and it was something that the doctor had
15 recommended for Mr. Walker.

16 MS. WIYGUL: And, Your Honor, I don't know -- I know
17 that the State put on the record that they have called Dr.
18 Lepage as a witness and anticipate him testifying on
19 Wednesday. I don't know if they have him available via
20 phone or anything of that nature where perhaps an email or
21 something could be sent to him just simply asking is it
22 feasible to remove this bullet.

23 THE COURT: Right. I'm more than happy to just hold
24 off. He's an ER doctor, or a surgeon?

25 MR. MOWRY: He's a surgeon, Your Honor.

1 THE COURT: He's a surgeon?

2 MR. MOWRY: Yes, sir.

3 THE COURT: I have no problem, Ms. Wiygul, with you or
4 the Solicitor or anyone else just talking to this doctor and
5 just finding out what his opinion is. That's probably not a
6 half bad idea. Again, absence I'm showing this can be done
7 safely, absence I'm showing from the 300 pages of medical
8 records that this was, in fact, discussed with your client,
9 I'm inclined to deny your motion for a continuance on those
10 grounds. Because again, if it was discussed with your
11 client by somebody at the hospital, I would think that it
12 would have been documented. I do know it is not at all
13 unusual for people who have been shot, if the bullet isn't
14 causing a problem, often the physician's attitude is leave
15 it in there. And we've got lots of people -- not only
16 Oliver North, but lots of other people probably walking
17 around with bullets in them that they picked up overseas.
18 But I'll let you talk to the doctor about that and we'll see
19 where it goes.

20 MR. MOWRY: Hippocratic oath, of course, Your Honor,
21 starts out "First do no harm."

22 THE COURT: I said it a minute ago. You're right.

23 MR. MOWRY: The doctor's cell phone number, Mr. Bentley
24 has that. He has spoken with the doctor via the cell phone
25 before. He's been cooperative with us. I have no doubt

1 that he would be with Mr. -- or Ms. Wiygul. And Mr. Bentley
2 has said that he would be glad to place the call.

3 THE COURT: Certainly. Anything else that we need to
4 address --

5 MS. WIYGUL: No, Your Honor.

6 THE COURT: -- on this case at this moment? Very good.

7 Ms. Wiygul, obviously you've been in touch with your
8 client's mother. If for some reason he should change his
9 mind and decide to participate, again, I would welcome him
10 back. Just ask his mother to let you know if he were to
11 make that decision. I'm assuming they'll be conversing this
12 evening and perhaps he will change his mind. But I think we
13 know where we stand with these various motions. If you
14 could provide her with the cell phone, or you all go and do
15 it on speaker phone, and at least maybe we can get that
16 question answered.

17 What time do you want to start in the morning, assuming
18 that --

19 MR. MOWRY: Assuming that we're not arctic, Your Honor.
20 You had told the jury 9:30.

21 THE COURT: I'll be here -- certainly I'll be here
22 before then.

23 MR. MOWRY: I'll be here by 8:30, so...

24 THE COURT: Good enough. Let me make sure I get you
25 all's phone numbers. I thought I had yours, Ms. Wiygul, but

1 I may have misplaced it. Let me get you all's cell phone
2 numbers and I'll give you mine and my clerks.

3 MR. MOWRY: Yes, sir.

4 THE COURT: We're off the record.

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6 (Whereupon, State's Exhibit Nos. 2 through 28 were
7 marked for identification.)

8 THE COURT: We will go back on the record on cases 14-
9 228 and 229, *State vs. David Lee Walker*. The Solicitors are
10 present. The counsel for the Defendant is present. Mr.
11 Walker is not present. I was informed before I came out
12 here that Mr. Walker told the jail staff this morning that
13 he was basically refusing to come to court. I have just
14 been handed a note from Mr. Walker. It's signed by him. It
15 says, quote, "I am not going to court no time soon," end
16 quote, and it's dated today's date signed by Mr. Walker and
17 witnessed by him. The court is going to make this a Court's
18 Exhibit No. 1, I believe is what we were at.

19 MR. MOWRY: And I will just put on the record, Your
20 Honor, that signatures for the witnesses are hard to read,
21 but it's Lieutenant Champagne and I believe it's Detention
22 Officer Cunningham with the -- with the Laurens County
23 Detention Center.

24 THE COURT: Very good. I've asked the Detention Center
25 Officer, Court Officer, that for each day -- I want for each

1 day that this trial is going on that they invite Mr. Walker
2 to join us, and if he should refuse to do so we'll follow
3 the same procedure today. Get a statement in writing, have
4 it witnessed, have it dated, and signed by Mr. Walker that
5 he is continuing to refuse to come to court.

6 (Whereupon, Court's Handwritten Note from
7 Defendant was marked as Court's Exhibit No. 1 for
8 identification.)

9 THE COURT: My Clerk just handed me a note indicating
10 that, Ms. Wiygul, apparently the Defendant's sister has now
11 said that they are hiring an attorney?

12 MS. WIYGUL: Your Honor, I spoke with the Defendant's
13 mother after court yesterday. She indicated that the family
14 is in the process of raising money to hire a private
15 attorney. She indicated they were speaking with an attorney
16 in Clinton. His sister then called me at about 4:30
17 yesterday afternoon, Eliza McDowell, and informed me that
18 the family plans to hire Steve Henry but he was currently
19 out of town. I was unable to reach Mr. Walker's mother this
20 morning. I left her a couple of messages. I spoke with his
21 sister. The sister informed me that the family is currently
22 out hiring someone. And that's all the knowledge I have on
23 that.

24 THE COURT: All right. Well, out of deference to the -
25 - I would like to afford the Sixth Amendment some level of

1 deference, but obviously we have a jury back there. We've
2 already been delayed because of the weather this morning,
3 the snow. The court is, again, like I say yesterday,
4 compelled to find that this last minute effort at hiring an
5 attorney while these charges have been pending for over a
6 year, this is nothing more than another effort at delay. If
7 Mr. Walker, his family had intended to hire an attorney they
8 needed to do so before now. And that is where we are.

9 MR. MOWRY: And, Your Honor, if I could just correlate
10 that. This is about the same kind of situation as we had
11 with the -- with the projectile. The removal of the
12 projectile. Medically it was never going to happen, but he
13 Defendant was trying to delay things by saying, "Yeah, I'm
14 going to get it taken out." So with all due respect to Ms.
15 Wiygul, and I have a great deal -- I'm confident that's --
16 that your finding is exactly right.

17 THE COURT: While we're on the subject of the
18 projectile, the records should also reflect that counsel for
19 the Defendant and the State did have an opportunity to speak
20 yesterday by cell phone with the physician, the surgeon who
21 operated, I believe, on both of the -- it was represented
22 that the surgeon operated on both the decedent and Mr.
23 Walker, and apparently he indicated to all concerned that
24 the location of the bullet fragments are such that it --
25 they were located, I think, around the C4 area of the spine,

1 C5.

2 MS. WIYGUL: C4-C5. That's correct, Your Honor.

3 MR. MOWRY: Yes, sir.

4 MS. WIYGUL: And just to clarify, I don't believe Dr.
5 Lepage operated on both individuals. I believe he operated
6 on Mr. Cheeks --

7 MR. MOWRY: On the victim.

8 MS. WIYGUL: -- and treated --

9 MR. MOWRY: He was the attending physician for Mr.
10 Walker.

11 MS. WIYGUL: Correct.

12 MR. MOWRY: He's listed as such.

13 THE COURT: Okay. My mistake. But regardless, he had
14 indicated that it would not be medically appropriate to
15 operate on that area due to the risk of causing either -- I
16 can't remember if he said paralysis or pain in the shoulder
17 area of Mr. Walker. And it's one of those situations where
18 if the fragments are not causing the patient any pain, he
19 would not be inclined to operate due to the risks associated
20 with the location of the bullet fragments in the spine. But
21 correct me if I mischaracterize the conversation that you
22 all had with the doctor.

23 MS. WIYGUL: Your Honor, Dr. Lepage stated that -- my
24 recollection is that he stated he would not consider
25 removing the bullet unless there was some type of infection

1 or severe pain because the removal would be likely to result
2 in paralysis of the Defendant's shoulder.

3 THE COURT: Does that sound about right, Mr Mowry?

4 MR. MOWRY: Yes, sir.

5 THE COURT: Ms. Wiygul, before we bring the jury in I
6 think you had a few extra motions you just wanted to renew?

7 MS. WIYGUL: Your Honor, that's correct. I would renew
8 the motion to compel the removal of the bullet for testing.
9 Despite the potential for paralysis, it's my understanding
10 in speaking with Mr. Walker that he feels like the risk
11 would be worth the potential benefit.

12 THE COURT: All right. For the reasons stated
13 yesterday, there's been no showing that there is any
14 physician who would be willing to undertake such a surgery,
15 and the only evidence that the court has is what has been
16 represented to the court through counsel after speaking with
17 Dr. Lepage. That is, that they could not ethically and
18 medically engage in such a surgery due to the risks
19 associated with that surgery. So I appreciate your -- you
20 had something you wanted to --

21 MR. MOWRY: I was just going to simply summarize, Your
22 Honor, that this would be tantamount to -- the prejudicial
23 effect would far outweigh the probative value in the case.

24 THE COURT: In the medical sense.

25 MR. MOWRY: Yes, sir.

1 THE COURT: Perhaps you're correct. So the court will
2 deny the motion for a continuance on that ground.

3 MS. WIYGUL: And, Your Honor, we also made the motion
4 to compel the testing of evidence. And we would withdraw
5 the production portion of that motion. I would put on the
6 record that this morning Lieutenant Cheek provided me with a
7 copy of his personnel file. I did review that and do not
8 believe there is anything relevant in the file to this case.

9 THE COURT: Very good.

10 MR. MOWRY: Our concern, Your Honor, clearly, with
11 copying the file with personal information and sensitive
12 numbers and that sort of thing, I think Ms. Wiygul will
13 probably feel compelled to give copies of that to Mr.
14 Walker, and under the circumstances I don't believe that
15 would be used well. So we did allow her to review it, to
16 take a look at it, but we have not provided a copy of it.

17 MS. WIYGUL: That is correct, Your Honor. And just for
18 the record, the only thing that existed in that file was
19 Lieutenant Cheek's application and the records of his
20 promotions.

21 THE COURT: I see. Very good. In that case, I see no
22 reason to make a copy, a court's exhibit, or the State to
23 provide a hard copy to the Defendant.

24 MS. WIYGUL: Your Honor, we would also renew our motion
25 to continue based on the lack of gunshot residue expert. I

1 continued to make efforts, the Public Defender's Office in
2 Laurens is continuing it's efforts to reach someone. I've
3 left messages for two experts at this point. I have not
4 heard back from either of them, and we are continuing those
5 efforts. But we would renew our motion on that basis.

6 THE COURT: Solicitor?

7 MR. MOWRY: And candidly, Your Honor, even though Ms.
8 Stoner is a State's witness, I think Your Honor knows as
9 well as I do that the SLED testimony is never going to be
10 stilted one way or the other. They just present the
11 scientific evidence. And they are like Jack Webb in
12 Dragnet. It's just the facts. So if she asks questions of
13 Ms. Stoner, Ms. Stoner will give her blunt answers and
14 candid answers.

15 THE COURT: I have no reason to -- I have no reason to
16 doubt the State's characterization of the SLED agent's
17 willingness to be forthright with the parties and with the
18 court. The way I'm going to handle this particular motion,
19 Ms. Wiygul, is I understand the questions you're going to
20 want to pose to a GSR expert. Clearly those questions can
21 be asked of Agent Stoner with SLED. I will hold in abeyance
22 any ruling on your motion, and should the court find that
23 the Defense would be warranted in getting an expert and
24 you're unable to locate one, the court will entertain a
25 motion for a mistrial. But I would ask that you continue to

1 look for that expert, get one on retainer, so that you can
2 have an independent review as you requested and as the law
3 suggests you may be entitled to. At the same time, if that
4 same testimony can be elicited from Agent Stoner, that may
5 solve the problem going forward. So that's how I'm going to
6 address that situation.

7 MS. WIYGUL: Yes, Your Honor. I would also renew the
8 motion on the basis of the Defendant's wishes. Just to
9 preserve the record, the Defendant has made it very clear he
10 does not feel I am adequately representing him. He has put
11 on the record that I am fired. That he plans to sue me if
12 we proceed without him with me representing him. His family
13 has indicated that they're out hiring someone but has given
14 me no contact information to verify that or any specific
15 name to check with. It's my understanding that the court is
16 ordering me to proceed with this trial.

17 THE COURT: Ms. Wiygul, you are appointed by the court.
18 Clearly you're an officer of the court, an agent of the
19 court. And at this point in time, for reasons I've already
20 gone through ad nauseam, the court is not inclined to
21 replace you. Should his family retain someone who wants to
22 come in here and assist you in some fashion, or undertake
23 representation mid-trial, that's that lawyer's business.
24 But as things stand now, your client does not have authority
25 to fire you, as he has fired so many other previous

1 attorneys. And the court, because he said yesterday he's
2 not in the position to proceed pro se, he's not in the
3 position to represent himself, he has to be one of two
4 things; either represented or pro se. He says he cannot be
5 pro se. He cannot adequately defend himself. Therefore,
6 you are it. And the court appreciates your sacrifice in the
7 coming days on behalf of Mr. Walker and the work that I know
8 that you have done for him. That's where we are.

9 MS. WIYGUL: And, Your Honor, just to preserve the
10 record, I just renew the motions to continue based on the
11 jury and the discovery.

12 THE COURT: Understood. Same ruling as before. Those
13 motions are denied.

14 MS. WIYGUL: Thank you, Your Honor.

15 (Whereupon, there was a brief pause in the
16 proceedings.)

17 MS. WIYGUL: Your Honor, before the jury comes in, we
18 would make a motion to sequester any witnesses.

19 THE COURT: All right..

20 MR. MOWRY: Your Honor, we have pretty much already
21 done so. Investigator Cheek is our chief investigator and
22 we would ask that he be allowed to remain.

23 THE COURT: Any other individuals who are filing in at
24 this point? I'm assuming the families of -

25 MR. MOWRY: These are all family members, none of whom

1 remarks and then we'll proceed with the trial.

2 Any objections from the State?

3 MR. MOWRY: No exceptions, no objections, Your Honor.

4 MS. WIYGUL: None from the Defense, Your Honor.

5 THE COURT: Very good. We'll now begin the trial.

6 Solicitor, you're recognized for opening, sir.

7 MR. MOWRY: Thank you very much, Your Honor.

8 OPENING STATEMENT

9 BY MR. MOWRY: Ladies and gentlemen, let me reintroduce
10 myself, if I may. Again, I'm Warren Mowry. I am the Deputy
11 Solicitor here in Laurens County. And together with Ruston
12 Neely and Walter Bentley and the Sheriff's Office
13 investigator in this case, Brian Cheek, we are charged with
14 the responsibility of presenting the case against David Lee
15 Walker. We represent the State in this case. Every
16 criminal case that's brought in South Carolina is brought in
17 the name of the people of the State, and that's why you
18 always here cases in South Carolina titled The State versus
19 whomever.

20 Today, as the Judge told you, we are presenting two
21 charges to you against David Lee Walker. David Lee Walker
22 is charged in these indictments, and indictments are nothing
23 more than charging papers, as His Honor told you. They're
24 just the vehicle by which we bring these cases against Mr.
25 Walking into court. He is charged with two criminal

1 offenses. He is charged with murder and he is charged with
2 possession of a weapon during the commission of a violent
3 crime. And His Honor will instruct you at the appropriate
4 time exactly what the elements of these charges are. But I
5 will tell you that murder in South Carolina is considered a
6 violent crime.

7 Now, every criminal case that's brought in South
8 Carolina there are certain facts that revolve around them.
9 First of all, as His Honor instructed you, everyone is
10 presumed innocent until proven guilty. You can imagine how
11 it would be if somebody came to you and accused you of
12 something back on October 19th of 2013. I have no idea what
13 I was doing that day. I'm not absolutely sure where I was.
14 How can you defend yourself against something like that.
15 That's why in the United States every person charged with a
16 criminal offense is presumed innocent and it's up to the
17 State, it's up to us, to prove that person guilty. It's a
18 burden we accept. It's a burden we are glad to accept. And
19 we must prove these Defendants guilty beyond a reasonable
20 doubt. That's kind of a term of art. When you ask somebody
21 what does that mean -- my mother was an English teacher.
22 She would smack me upside the head, not literally but
23 figuratively, if I defined a term by using the term itself.
24 But there's really no better way to do it. A reasonable
25 doubt is a doubt for which you can give a reason. It's not

1 a whimsical doubt. It's not some fanciful doubt. It's a
2 substantial doubt. So if we can prove this case to you,
3 ladies and gentlemen, to the point that you are firmly
4 convinced of this Defendant's guilt we have proved this case
5 to you beyond a reasonable doubt. Now, let me give you an
6 example. I've never been to Russia. I'll be perfectly
7 honest with you, I have no real desire to go. But never
8 having been there myself, can I be convinced that Russia
9 doesn't exist. I was a history major in college. Virtually
10 ever course I took dealt with Russia. I've seen pictures of
11 Russia. I've seen Nikita Khrushchev, the photographs of
12 him, and Leonid Brezhnev, and Mikhail Gorbachev, and
13 Vladimir Putin all throughout history and they purport to
14 lead Russia. So I would have to really be out -- way on out
15 there to insist that Russia doesn't exist. I don't have a
16 reasonable doubt that the country of Russia exists. I may
17 not have been there. I may not have personally experienced
18 the country. But I've got to believe reasonably that it
19 exists.

20 Now, a couple of things about this case that I want you
21 to be aware of. Most of the time in criminal cases you're
22 just going to hear from witnesses. Now, there may have been
23 witnesses that may have had a traumatic event happen to
24 them, but they come in here and they testify to you and it's
25 kind of a sterile recitation. This one's different. This

1 one's different. We've got a lot of real time recordings
2 that you're going to be hearing a number of them. We have a
3 911 call from a lady named Kelly Ball who was with the
4 victim, who was there when David Walker and two other
5 individuals came to the victim's house, Johnny Lee Cheeks.
6 She can testify as to what went on. She can testify that
7 Mr. Cheeks went out in the yard, that a scuffle broke out,
8 she heard shots and she pulled him back in. You will hear
9 the 911 call that she made. You will see deputy cams, the
10 body cams that deputies wear in modern times. You will see
11 them. You will hear what went on. You will hear the raw
12 emotion. So you will be able to experience as much as we
13 can exactly what went on at the crime scene.

14 Now, as His Honor told you, we are alleging, we will
15 prove to you that on Halloween night, October 13th, 2013,
16 David Lee Walker and two other individuals, Johnny Lee Saxon
17 and Christopher Wells, went to the home of Johnny Lee Cheeks
18 in Enoree. As I said, they went there with the -- and met
19 with him there. But they went there with the intention to
20 rob him. You will hear from Mr. Walker's own niece who will
21 testify to you that the Defendant came to her earlier that
22 evening with Christopher Wells, with Johnny Saxon looking
23 for another gun. They had one. They wanted another one.
24 And there were going to, in Mr. Walker's words, go rob a
25 drug dealer in Enoree that lived with a white woman. You

1 will hear that testimony. You will find out that Mr. Cheeks
2 did occasionally did drugs. He sold liquor out of his
3 house, which is a single-wide trailer. You will hear from
4 Kelly Ball who was with him that night. All of those
5 factors match up.

6 Now, Ms. Ball will testify to you, ladies and
7 gentlemen, that she heard shots. She doesn't know who fired
8 them. We submit to you that David Lee Walker was the
9 shooter, and we will present to you scientific evidence that
10 will support that conclusion. Mr. Walker was also found at
11 the scene. He also had been shot. We submit to you that he
12 was shot by Johnny Lee Cheeks. And we concluded, ladies and
13 gentlemen, that at the end of the trial, once you have heard
14 all the evidence, that you will be convinced beyond a
15 reasonable doubt that this Defendant is guilty.

16 Now, let me just talk a little bit about the charges.
17 Murder. His Honor will instruct you on the law at the close
18 of the trial. Let me just give you a little primer on it
19 right now. Murder, by definition, is an unlawful killing of
20 a human being with malice aforethought either expressed or
21 implied. That's the definition of it. Let me tell you just
22 real quickly what we're talking about. Every murder is a
23 homicide. Every murder is a killing of a human being by
24 another person. But not every killing of a human being by
25 another person is necessarily a crime. There are a couple

1 of different types of homicide. Some homicides are
2 justified. You have a right to defend yourself, and if
3 somebody is attacking you, say, comes in your house, breaks
4 into your house and is attacking you, you have a right to
5 defend yourself up to and including deadly force in order to
6 repel that attack. If you're a U.S. soldier in wartime and
7 you kill an enemy, that is justified. It is a killing of
8 another person by a human being, but it is justified. There
9 are times, ladies and gentlemen, when there is a traffic
10 accident. You're not doing anything wrong but somebody
11 darts out from between two parts vehicles and you were
12 obeying all the rules of the road, could not have missed
13 them. Just impossible. And one person hits another and
14 that pedestrian dies. It's a tragic turn of events, but
15 it's not criminal. That's excusable. This, however, ladies
16 and gentlemen, this crime with which Mr. Walker is charged
17 is neither justified nor excusable. It is criminal. It is
18 murder. We will prove every element of this crime to you
19 beyond a reasonable doubt. We are confident that you're
20 going to come back at the close of this trial with a guilty
21 -- a verdict of guilty.

22 Additionally Mr. Walker is charged with possession of a
23 weapon during a violent crime. Our legislature believes
24 that the use of a knife or a gun during the commission of a
25 violent crime enhances the danger in that crime. And that's

1 why this particular crime exists on the books.

2 Now, I told you, ladies and gentlemen, that we believe
3 that Mr. Walker was the one that fired the gun, and we
4 believe that you would be justified in convicting him of
5 that crime at the close of the trial. But, ladies and
6 gentlemen, even if you are not convinced beyond a reasonable
7 doubt that David Walker was the gunman, you would still be
8 justified in convicting him of murder. Now, how is that?
9 There are a couple of elements that I want you to be aware
10 of. A couple rules of law that you need to be cognizant of.
11 The first is called the felony murder rule. In felony
12 murder, if a person is in the commission of a felony and the
13 victim dies as a result of that felony, if it's reasonably
14 foreseeable that somebody's going to die, or somebody could
15 die, even if you didn't intend for that person to die, the
16 perpetrator would still be responsible for the death of the
17 individual. Let me give you an example. Let's say an armed
18 robbery was being committed and the perpetrator was so
19 concerned that somebody was going to die that he actually
20 unloaded the gun. He went in to make that robbery with an
21 unloaded gun. Put the gun in the store-keepers face and
22 said, "Give me your money," and unbeknownst to him the
23 store-keeper had heart problems and had a fatal heart attack
24 and dropped dead during the commission of that armed
25 robbery. That individual would still be responsible for the

1 death of the victim. And there's one other element that I
2 want you to be aware of. In South Carolina, and in most
3 states in this country, the law is that when two or more
4 individuals combined together, they conspire basically to
5 commit a criminal act, then whatever act is committed by one
6 could be chargeable to all. The little catch phrase on it
7 is "The hand of one is the hand of all." So if one person
8 commits a crime during the course of that conduct, everybody
9 is responsible for it. Everybody involved in that crime is
10 responsible for it.

11 We submit to you, ladies and gentlemen, that David
12 Walker, Christopher Wells, and Johnny Lee Saxon went to
13 Enoree that night with the intention of robbing Johnny Lee
14 Cheeks, and in the commission of that robbery Mr. Cheeks was
15 shot, grievously wounded, and later died as a result of his
16 wounds. If you believe that the three of them went there
17 with that purpose and that Mr. Cheeks was killed as a result
18 of that robbery, even if you're not certain beyond a
19 reasonable doubt that David Lee Walker was the shooter,
20 you're justified in convicting him of the murder
21 nonetheless.

22 Now, you may be asking -- you hear the name Christopher
23 Wells and Johnny Lee Saxon, where are they. They're day in
24 court will come, just as Mr. Walker's has this week. We
25 will try them down the line. Mr. Walker's is the first of

1 the three. But all three are guilty. Every single one of
2 them are guilty of the murder of Johnny Lee Cheeks.

3 Now, there are three things I like to ask a jury to do
4 during the course of a trial. The first is to listen very
5 carefully to the testimony that comes off the witness stand,
6 because it is this testimony, and then the exhibits, the
7 physical exhibits, that you will be able to look at, to be
8 able to see. It is only from that that you are to render
9 your verdict. What I'm telling you right now, as the Judge
10 told you, is not evidence. What Ms. Wiygul will tell you in
11 a little while is not evidence. The evidence is going to
12 come from the witness stand. Ms. Wiygul and I are
13 advocates. We're not going to intentionally mislead you.
14 But the people that we put on the witness stand have been
15 involved in this case. They know certain facts and they
16 will convey them to you. So listen very carefully to what
17 they have to say, because it is from that testimony and the
18 physical exhibits that we present to you that you are to
19 render your verdict. That's one.

20 Second thing, is that at the close of the trial His
21 Honor will instruct you in the law that's appropriate to
22 this case. He is the law giver. You are the fact finder.
23 He is the law giver. So whatever law he instructs you,
24 that's the law that you must take back there to the jury
25 room. May not be the law as you think it is. May not be

1 the law as you think it ought to be. But by your oath, it's
2 the law that you have to take and to decide on when you got
3 back there -- back there to the jury room.

4 The third thing, ladies and gentlemen. Each and every
5 one of you all comes from a different background, different
6 lifestyle, different job, whatever it may be. But every one
7 of you all has at least one thing in common, and that's
8 commonsense. That's the reason that the Defense and the
9 Prosecution wanted to put you on the jury. We believe that
10 every one of you can listen to the evidence, can hear the
11 evidence, can accept the law as His Honor will instruct you,
12 and then go back there into the jury room, and when you're
13 considering the evidence and when you're applying that law
14 to the evidence that you've heard, you will use your
15 commonsense. And if you do all those three things, ladies
16 and gentlemen, you're going to come back with a just, a
17 fair, and a true verdict. And that's all any of us ask.
18 Thank you all very much.

19 THE COURT: Thank you, Mr. Mowry. Ms. Wiygul, you're
20 recognized, ma'am.

21 OPENING STATEMENT

22 BY MS. WIYGUL: One question you may be asking
23 yourselves is not only where are Mr. Saxon and where are Mr.
24 Wells, but where is Mr. Walker. Mr. Walker has chosen not
25 to attend this trial because he doesn't trust the system.

1 The Judge told you yesterday that the Rules of Evidence have
2 been designed over hundreds of years, and they've been
3 designed in order to ensure that you, the jury, get the
4 best, the most accurate information that you need to decide
5 this case, and that you'll get that information from the
6 witness stand during this trial. Well, he's right. Over
7 the past hundreds of years they've also designed, through
8 trial and error, through advances in forensic science and
9 technology, procedures that are followed during criminal
10 investigations. Those procedures are followed for a very
11 important reason. They're followed to make sure that the
12 right people go to jail. They're followed to make sure that
13 innocent people don't go to jail. These procedures are
14 basic. They're followed by police departments and
15 investigating agencies all over our country.

16 I take exception to something that Mr. Mowry said
17 during his opening. He said, and I wrote it down because it
18 kind of surprised me, that you need to listen very carefully
19 to what the witnesses say that they did or saw and look at
20 the physical evidence, and it is only from that that you
21 must render your verdict, and that's something not true.
22 You must also consider what they didn't do that they should
23 have done, because it's very easy to manipulate facts. In
24 studies, in investigations, it's very easy to take someone
25 from point A to number 35 if you get to decide what people

1 hear and you get to decide what evidence gets tested and you
2 get to decide what evidence never gets since to SLED and you
3 get to decide what evidence the jury gets to see.

4 Just to clarify. Mr. Mowry said that this incident did
5 occur on Halloween. That was October 31st, 2013. Now, the
6 State has, in its opening, given you a preview of things to
7 come. Basically this is our case and we're going to prove
8 it to you and we're going to prove it to you beyond a
9 reasonable doubt, but if we don't, you can choose option B.
10 Oh, and if we don't prove that then you can choose option C.
11 I submit to you that Mr. Walker, whether he's here or not
12 physically, he has a right for this State, for this jury to
13 make the State prove their case beyond a reasonable doubt.
14 Not just prove that they think he's guilty, and they're not
15 sure if it's because of this, that or the other, but they
16 think he is, so you all just take their word for it. Well,
17 that's not what this system was designed to do. If we were
18 going to do that we may as well be in Russia. We're not in
19 Russia. We're in Laurens, South Carolina where a defendant
20 has a right for the State to prove them guilty beyond a
21 reasonable doubt. They have a right to be presumed innocent
22 until found guilty by a jury. And that didn't happen in
23 this case, because from two minutes into the case the
24 presumption started. And you'll see it. The presumption
25 that Mr. Walker is guilty. Like I said, if you start with

TORIS MOORE: DIRECT EXAMINATION

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1 the conclusion you want, you can find a way to get there.
2 That's what the State's done in this case. It's not fair to
3 Mr. Walker. It's not fair to Mr. Cheeks, because Mr. Cheeks
4 has the right to have the person that actually shot him be
5 punished for it. We're confident that at the end of this
6 trial you're going to take notice of what was not done in
7 this case. That because of the failures during the
8 investigation you will find Mr. Walker not guilty. Thank
9 you.

10 THE COURT: Thank you, Ms. Wiygul. Solicitor, call
11 your first witness, please.

12 MR. MOWRY: Your Honor, could Ms. Wiygul and I approach
13 for just a moment?

14 THE COURT: Sure.

15 (Whereupon, a sidebar was held.)

16 THE COURT: Go ahead and call your first witness,
17 please.

18 MR. MOWRY: I call Toris Moore.

19 TORIS MOORE, having been first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MOWRY:

23 Q You are Toris Moore?

24 A Yes, sir.

25 Q Ms. Moore, what relationship are you to the Defendant

TORIS MOORE: DIRECT EXAMINATION

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1 in this case, David Lee Walker?

2 A That's my uncle.

3 Q So you are his niece; is that right?

4 A Yes, sir.

5 Q Let me hand you what's been marked as Court's Exhibit

6 No. 2 and ask you if you can identify the person in that

7 picture?

8 A Yes, sir.

9 Q Who is that?

10 A David Walker.

11 Q Thank you. Now, Toris, whereabouts do you live? Just

12 what city do you live in?

13 A Fountain Inn, South Carolina.

14 Q Fountain Inn? In the Laurens side or the Greenville

15 side?

16 A The Laurens side.

17 Q Okay. Let me ask you to think back to the Halloween

18 night, October 31st of 2013. Did you have any encounter

19 with David Lee Walker that evening?

20 A Yes, sir.

21 Q Describe for us, if you would, the circumstances. How

22 did that come -- where were you, how did that come about,

23 that sort of thing.

24 A I was spending the night with a friend down in Gray

25 Court on Sawmill Road, and later on that night that's when I

TORIS MOORE: DIRECT EXAMINATION

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1 encountered my Uncle David at -- on Sawmill Road at Helen's
2 house.

3 Q Describe how that came about. What did you all talk
4 about?

5 A When I went outside --

6 Q Well, let me ask you this first. What had you been
7 doing that night?

8 A I went trick-or-treating with my friend and some kids.

9 Q And once you all got back on Sawmill Road you met David
10 Walker, or met -- saw him there?

11 A Yeah, it was a couple hours later.

12 Q About what time of night was that?

13 A Around maybe 10:30, 11:00, approximately.

14 Q So later on in the evening then?

15 A Yeah, it was later on in the evening.

16 Q Describe what you all talked about.

17 A He basically asked me for a gun and --

18 Q Asked you for a gun?

19 A Yes, sir. And he told me what him and the two other
20 defendants was going to do.

21 Q Did you -- was he there with anybody else?

22 A Yes, he was there with -- I know him as Nightmare.

23 Q You know him as Nightmare?

24 A Yes, sir.

25 Q Did you later find out that his name was Christopher

- 1 Wells?
- 2 A Christopher Wells. Yes, sir.
- 3 Q Who else was he there with?
- 4 A Johnny Lee Saxon.
- 5 Q All right. So the three of them were there together?
- 6 A Yes, sir.
- 7 Q And David Walker asked you for a gun; is that right?
- 8 A Yes, sir.
- 9 Q Why did he say he needed a gun?
- 10 A He say he was going to Enoree to rob an older man at
- 11 his house.
- 12 Q Did he say anything about this older man in Enoree?
- 13 A He said he sold liquor and stayed with a white woman.
- 14 Q So he sold liquor, drugs out of his house --
- 15 A Yes, sir.
- 16 Q -- and stayed there with a white woman?
- 17 A Yes, sir.
- 18 Q What did you tell David Lee Walker when he made this
- 19 request for the gun?
- 20 A I told him I had my momma sold it to a pawn shop.
- 21 Q So you had had a gun?
- 22 A Yes, sir.
- 23 Q Legally?
- 24 A Yes, sir.
- 25 Q Is that right?

TORIS MOORE: DIRECT EXAMINATION

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1 A Yes, sir.

2 Q Had she, in fact, sold it to a pawn shop?

3 A No, sir.

4 Q Why did you tell him that?

5 A I didn't want no part of him doing what he was doing.

6 Q After you had this conversation with him, after you
7 told him that you didn't have a gun to give him, did he
8 leave?

9 A Yes, sir.

10 Q Did he tell you whether or not he needed the gun
11 because they didn't have any guns, or did he indicate to you
12 whether or not he had one?

13 A No, sir. They told me -- he told me that he only had
14 one gun, which was Christopher Wells' gun.

15 Q So they already had a gun --

16 A Yes, sir.

17 Q -- but they wanted another one; is that right?

18 A Yes, sir.

19 Q Did you see David Lee Walker anymore that night?

20 A No more that night.

21 Q What's the next you heard of David Lee Walker?

22 A I got a text saying that he got hurt. So then I called
23 my grandmother and I asked them what happened.

24 Q When was that?

25 A That was the next morning.

TORIS MOORE: CROSS-EXAMINATION

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1 MR. MOWRY: Beg the court's indulgence just one moment.

2 THE COURT: Yes, sir.

3 MR. MOWRY: Thank you, Toris. That's all I have..

4 Answer any of Ms. Wiygul's questions.

5 THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MS. WIYGUL:

8 Q Ms. Moore, how old are you?

9 A I'm 31.

10 Q And where do you live?

11 A I live in Fountain Inn. You want my physical address?

12 Q No. Who do you live with?

13 A I stay with my grandmother.

14 Q And what relation is your grandmother to Mr. Walker?

15 A That's his mother.

16 Q So you actually live at his mother's home?

17 A Yes, sir -- yes, ma'am.

18 Q Okay. Did you tell the police about this on November

19 1st --

20 A No, ma'am.

21 Q -- 2013?

22 A No, ma'am.

23 Q Did you tell the police about this in December of 2013?

24 A I'm honestly not sure when I told the police about it.

25 Q Ma'am, did you tell the police this for the first time

TORIS MOORE: CROSS-EXAMINATION

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1 in late January of 2014, more than a year after this event?

2 A No, ma'am. It wasn't more than a year that I did.

3 MS. WIYGUL: Permission to approach the witness.

4 THE COURT: Please.

5 Q Ma'am -- and I apologize. Would you have spoken to
6 them in late January of 2014? So not a year later, but
7 about three months after the event?

8 A Yes, ma'am.

9 Q Okay. Now, to your knowledge, was Mr. Walker
10 hospitalized?

11 A Yes, ma'am.

12 Q And do you know how long he was in the hospital?

13 A Maybe a week and a half, two weeks.

14 Q And when he was released from the hospital where did he
15 go?

16 A He came to my grandmother's house. His mother's house.

17 Q So you lived with him, too?

18 A Yes, ma'am.

19 Q What was his physical condition at that time?

20 A He could walk. He was walking with a walker.

21 Q He had a walker?

22 A Uh-huh.

23 Q And was he going through physical therapy?

24 A Yes.

25 Q And were you having to help take care of him with his

TORIS MOORE: CROSS-EXAMINATION

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1 mother?

2 A My grandmother, yeah. I did.

3 Q Ma'am, did the police ever come out to the house to
4 speak with you or to David?

5 A They came to speak with David.

6 Q About how many times did they come?

7 A Maybe about three times while I was there.

8 Q They came three times while you were physically
9 present?

10 A When I was physically present.

11 Q And did you ever speak to the police --

12 A No.

13 Q -- while they were there?

14 A No.

15 Q You never -- who came out whenever you saw them?

16 A Officer Cheek.

17 Q This gentlemen sitting right here?

18 A Yes, ma'am.

19 Q And he came out all three times that you saw the police
20 there?

21 A Yes, ma'am.

22 Q And you still live with Ms. Walker?

23 A Yes, ma'am.

24 Q Now, when was Mr. Walker arrested? Do you recall?

25 A Around January. Sometime in January.

TORIS MOORE: CROSS EXAMINATION

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1 MS. WIYGUL: I have no further questions. Thank you,
2 ma'am.

3 REDIRECT EXAMINATION

4 BY MR. MOWRY:

5 Q Ms. Toris, just a couple of questions. Ms. Wiygul
6 asked you about when you made the statement.

7 A Yes, sir.

8 Q And I believe it's January 23rd, 2014; is that right?

9 A Yes, sir.

10 Q A little less than three months after the Halloween
11 that you described earlier. You said that you were there
12 several times when Lieutenant Cheek came to your -- the
13 place you were living; is that right?

14 A Yes.

15 Q Your grandmother's house?

16 A Yes, sir.

17 Q did he ever ask you any questions?

18 A No, he didn't ask me any questions. The last time I
19 seen him he asked me was he there and I told him no.

20 THE COURT: Ma'am, if you could, scooch that microphone
21 just a little closer to you. One of the jurors is having a
22 little bit of trouble hearing you. Thank you.

23 Q So he didn't ask you questions?

24 A No.

25 Q Did he ask you questions to elicit your statement on

TORIS MOORE: RECROSS-EXAMINATION

110

1 the 23rd?

2 A Yes.

3 Q So he came to you and asked you questions. Would it be
4 fair to say that you were willing to talk to him, just not
5 really willing to volunteer your statement?

6 A Yes, sir.

7 Q And David Lee Walker is your uncle?

8 A Yes, sir.

9 Q And you were living with his mother?

10 A Yes, sir.

11 Q Your grandmother?

12 A Yes, sir.

13 MR. MOWRY: Thank you. That's all I have.

14 MS. WIYGUL: Just one question, Your Honor.

15 RECROSS-EXAMINATION

16 BY MS. WIYGUL:

17 Q Ma'am, when you gave your statement, or answered the
18 questions, you didn't do that at your house, did you?

19 A No, sir -- no, ma'am.

20 Q You voluntarily went down to the Fountain Inn Police
21 Department, didn't you?

22 A Yes, ma'am.

23 MS. WIYGUL: Thank you.

24 THE COURT: Thank you, ma'am. You can step down.

25 MR. MOWRY: Your Honor, she is under subpoena. We

KELLY BALL: DIRECT EXAMINATION

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1 would ask that she be excused from that subpoena at this
2 time.

3 MS. WIYGUL: We have no objection to that, Your Honor.

4 THE COURT: Ma'am, you're free to go. Thank you very
5 much.

6 (Whereupon, the witness steps down from the witness
7 stand.)

8 THE COURT: Call your next witness, please.

9 MR. MOWRY: Kelly Ball.

10 KELLY BALL, having been first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MOWRY:

14 Q Could you state your name for the record and then could
15 you spell it for us?

16 A Kelly Ball, K-e-l-l-y, B-a-l-l.

17 Q Kelly, I don't mean to embarrass you or anything, but
18 you've got a little bit of a criminal record, do you not?

19 A Correct.

20 Q You've got a criminal domestic violence conviction from
21 2002; is that right?

22 A Correct.

23 Q And I believe you also have a burglary from 2013; is
24 that right?

25 A Correct.

KELLY BALL: DIRECT EXAMINATION

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1 Q And you have received a sentence of five years
2 suspended on 18 months probation for that; is that right?

3 A Correct.

4 Q And I believe you also have a possession -- or, excuse
5 me, a breach of peace charge; is that right?

6 A Correct.

7 Q Do you have any drug convictions or anything like that?

8 A I do not.

9 Q Did you know the victim in this case, Johnny Lee
10 Cheeks?

11 A I did.

12 Q What did you know him by?

13 A Lee.

14 Q Lee. Did he also go by Johnny? If I called him Johnny
15 would you know who I was talking about? Did he also use
16 that name or was it mostly Lee?

17 A It was mostly Lee.

18 Q How did you know him?

19 A We had been friends for 12 years. I had met him
20 through my children's father.

21 Q Say again? You met him how?

22 A Through my children's father many years ago. I'd say
23 it was about 12 years ago. At that time he lived at a
24 different location. But I met him about 12 years ago.

25 Q Whereabouts do you live now?

KELLY BALL: DIRECT EXAMINATION

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1 A I live in Enoree.

2 Q And did Lee Cheeks live in Enoree as well?

3 A Off and on. Throughout the 12 years, off and on.

4 Q Well, let's talk about October 31st of 2013. Did he
5 live in Enoree then?

6 A He did live in Enoree the, but on the Laurens County
7 side.

8 Q Where -- what street -- what road did he live on?

9 A River Hill Road.

10 Q Let me show you this chart which has already been
11 premarked as State's Exhibit No. 12. Whereabouts is his
12 residence? If this is River Hill Road right here --

13 A Uh-huh.

14 Q -- is this his residence right here in the middle?

15 A Correct.

16 Q What kind of residence was it?

17 A It was a trailer.

18 Q Double-wide, single-wide, what?

19 A Single-wide.

20 Q What did he do out of that trailer?

21 A He was a lawn care person. He did lawns for people in
22 the neighborhood, anybody in the community.

23 Q Specifically what did he do? Did he occasionally sell
24 drugs out of the house?

25 A Correct.

KELLY BALL: DIRECT EXAMINATION

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1 Q Did he sell bottles of liquor out of the house, or on
2 his property?

3 A Correct.

4 Q Somebody wanted to come by and get a pint bottle he'd
5 be willing to sell them one?

6 A Correct.

7 Q Matter of fact, had you yourself bought drugs from him
8 in the past?

9 A I have.

10 Q How often would you see him?

11 A Over the last five years daily.

12 Q Did you see him on October 31st of 2013?

13 A I did.

14 Q Describe the circumstances of how you saw him?

15 A He came and picked me up at a friend's. It was on The
16 Hill in the neighborhood.

17 Q About what time of day was that? I'm sorry.

18 A I would say somewhere between 7:30 and 8:30. I can't
19 pinpoint the exact time. Somewhere between 7:30 and 8:30.
20 He picked me up on what's called The Hills at Enoree.

21 Q What were you doing at The Hill?

22 A It was Halloween. Me and my daughter had give out
23 candy. It was getting late, like I say. It got late trick
24 or treating, so we went to some friend's house to give their
25 children candy and he picked me up from there.

KELLY BALL: DIRECT EXAMINATION

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1 Q And you say he picked you up at 7:30 or 8:00; is that
2 right?

3 A Yeah, I would say closer to 8:30 because I do remember
4 it was well after dark.

5 Q Did you have your car?

6 A No, I did not have a -- at that time I did not have a
7 car.

8 Q Where did you all go after he picked you up from The
9 Hill?

10 A He picked me up from The Hill. We went directly to the
11 Waffle House on 221 in Laurens. He went -- I remained in
12 the vehicle. He went inside and got our food, came back
13 out.

14 Q Had he ordered food prior to going over there, or how
15 did that work?

16 A Correct. He had ordered food before ever going to the
17 Waffle House.

18 Q So he called in an order --

19 A Correct.

20 Q -- and you all went there to pick it up? When you were
21 going back to his -- when you left the Waffle House who was
22 driving?

23 A I was driving to the Waffle House and I was driving
24 from the Waffle House.

25 Q What was Mr. Cheek doing when you all were leaving?

KELLY BALL: DIRECT EXAMINATION

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1 A As we left he began to open his plate and on the way
2 home he began to eat. It was a large plate.

3 Q How far do you think it was? How long did it take you,
4 I should say, to get from the Waffle House to where you all
5 were going?

6 A I would say eight minutes.

7 Q Was your daughter still with you?

8 A No.

9 Q Was it just you and Mr. Cheeks that had left The Hill?

10 A Lee and I only.

11 Q So Mr. Cheeks was eating his meal as you were driving;
12 is that right?

13 A Correct.

14 Q Where did you all end up?

15 A At his home.

16 Q And this was the place that you had already pointed out
17 on State's Exhibit No. 2; is that right?

18 A Correct.

19 Q Right there?

20 A Correct.

21 Q What did you all do when you got there?

22 A When we got there we exited the vehicle. Unlocked the
23 door to the home. We went in.

24 Q What were you all doing while --

25 A He was still continuing to eat his plate, like I said.

KELLY BALL: DIRECT EXAMINATION

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1 From the Waffle House, so of course he wasn't finished
2 eating a large plate. He was still eating.

3 Q How long did you all stay there in that situation?

4 A We were there for about three minutes and there was a
5 knock on the door.

6 Q So very shortly after you got there there was a knock
7 at the door; is that right?

8 A Correct. We just barely had time for him to open his
9 plate and him begin to finish what he didn't finish in
10 between Laurens and Enoree.

11 Q What happened when you heard the knock at the door?

12 A I remained in my seat. He went to answer the door.

13 Q Had you been there before when he might have sold
14 liquor or whatever --

15 A Many, many times.

16 Q Many, many times. Okay. Did you get involved in that
17 kind of activity or --

18 A Normally I was told to mind my own business. The door
19 was -- it was set up to where my chair was blocked. Once he
20 opened the door, the door would open up and it would block
21 anyone who entered that door from seeing me or from me
22 seeing anyone who came to that door.

23 Q So any transaction that took place was generally going
24 to take place at the door and you wouldn't be able to see
25 who was --

1 A Correct. And they wouldn't see me either.

2 Q All right. On this particular occasion what happened?

3 A On this particular occasion -- normally, like I say, he
4 would open the door and block the hallway. But this
5 particular occasion that's not what took place. As soon as
6 he opened the door he exited the door.

7 Q So he went outside?

8 A Correct. But he did not pull the door to behind him.
9 But there is a screen glass door covering that door that he
10 did slam hard enough to where I could tell from that
11 experience I had been there, it was slammed hard enough to
12 where he tried to get the door to catch. Just the screen
13 door only though. But it didn't catch.

14 Q Was that unusual for him to do that?

15 A Very unusual.

16 Q To leave the house and go into the yard?

17 A Very unusual.

18 Q What happened then?

19 A I began to hear some bickering. Some arguing back and
20 forth. Some cursing.

21 Q How many voices did you hear?

22 A I heard three voices.

23 Q Did you recognize Mr. Cheeks' voice?

24 A Yes.

25 Q Did you recognize either of the other two voices?

KELLY BALL: DIRECT EXAMINATION

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1 A I did not.

2 Q What did you hear next?

3 A The next thing I hear was some scuffling. I still
4 wasn't fully alarmed at that time, but I did hear some
5 scuffling and a loud thud. Then briefly after -- I'd say
6 seconds after I heard a gunshot.

7 Q Just a single gunshot?

8 A One single gunshot at first.

9 Q And then what did you hear?

10 A After the first gunshot, of course, I come up out of my
11 seat and started down the hall. I would say within three
12 seconds or so I heard four additional gunshots. At that
13 time I made my way to the door.

14 Q Are you sure about that number?

15 A I'm almost positive.

16 Q So you heard one gunshot, then a pause, and then a
17 series --

18 A Four.

19 Q -- of more gunshots?

20 A Correct.

21 Q What happened then?

22 A At that point I -- like I said, I was running down the
23 hall. Like I said, the door was never shut. The screen
24 door didn't shut, but did try to get it to slam and it just
25 banged and cracked open. So I went down -- because, see, I

KELLY BALL: DIRECT EXAMINATION

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1 could still see someone standing in the driveway that's not
2 Lee. So I'm leaning down, because, see, on his porch is a
3 railing. So I felt protected by that railing, so I bent
4 down in the screen door screaming, "Lee, are you okay?" And
5 he said, "No, I've been shot. Get me help."

6 Q Who was this other individual? Did you later find out
7 who it was?

8 A The other individual laying in the yard was David Lee
9 Walker. I did not know him at that time, but I did later
10 find out his name.

11 Q Let me show you what's been marked as State's Exhibit
12 No. 2 -- or Court's Exhibit --

13 MS. WIYGUL: Your Honor, I'm going to object to this.
14 There's been no testimony from this witness that she ever
15 saw Mr. Walker's face while he was laying in the yard, that
16 she has any personal information about this other than what
17 she's been told.

18 THE COURT: Well, he can ask her if she recognizes that
19 individual in the photo.

20 Q Did you get a better look later that night?

21 A Okay. One time I leaned out the door. Of course,
22 before I ever made it to the door I went and dialed 911.
23 Once I got into the yard I made it to Lee. Once I went and
24 got Lee, that's when I realized, oh, my gosh, there's
25 another individual laying in this yard.

KELLY BALL: DIRECT EXAMINATION

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1 Q And let me show you what's been marked as Court's
2 Exhibit No. 2. Do you recognize that person?

3 A Yes.

4 Q Who is that?

5 A That's David Lee Walker.

6 Q And that's the person who you saw in the yard that
7 night?

8 A Right. In the driveway now.

9 Q Yeah.

10 A Let's make this clear.

11 Q Right.

12 A I did not see his face at that time because he's all
13 balled up from where he'd been shot as well. He was -- So at
14 that point I did not see his face.

15 Q But you saw him later that night; is that right?

16 A I did.

17 Q And that is the person in Court's Exhibit No. 2; is
18 that right?

19 A Yes.

20 Q Once you had -- did you see anybody else? You said you
21 saw David Walker. You said you saw Johnny Lee Cheeks. Did
22 you see anybody else?

23 A There was an additional individual with David Lee
24 Walker who ran away from the scene.

25 Q How good a look did you get at that individual?

KELLY BALL: DIRECT EXAMINATION

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1 A We made eye contact.

2 Q So you saw him full-faced; is that right?

3 A Correct.

4 Q How good was the lighting there?

5 A It wasn't great. But down in the area where there were
6 standing he had so many solar lights right there, and there
7 is a street light at the top. So from where he was standing
8 I got a good look at that individual.

9 Q Were you able later to identify that individual?

10 A I was.

11 Q What was that individual's name?

12 A Christopher Wells.

13 Q All right. Once you had seen Mr. Cheeks in the yard,
14 once you had seen the other individual lying in the driveway
15 that you identified as David Lee Walker, once you saw
16 Christopher Wells. What happened then?

17 A I see Christopher Wells before I ever make it out the
18 door to Lee. Once he and I make eye -- made eye contact he
19 run out the driveway and I ran out to the yard.

20 Q Where did you go when you went in the yard?

21 A I went directly to Lee.

22 Q What happened then?

23 A I went to see -- I leaned down to Lee to begin to try
24 to get him out of the yard. That's when I realized there is
25 another individual collapsed in the yard as well.

KELLY BALL: DIRECT EXAMINATION

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1 Q And that turned out to be David Lee Walker; is that
2 right?

3 A Correct.

4 Q Where did Mr. Wells go?

5 A Mr. Wells ran away to a vehicle that -- I did not get a
6 close look at that vehicle right then because the way it was
7 parked. It was parked on the side of his driveway and it
8 was covered by brush. All I could see was some metal pieces
9 off the car through that brush. I knew there was a vehicle
10 was there. Once they - Once they turned their headlights
11 on to go away I could definitely see it was definitely a car
12 and I watched it pass by the driveway.

13 Q Do you know what a Ford Bronco looks like?

14 A I do.

15 Q Was that in any way a Ford Bronco?

16 A No, sir.

17 Q When the car drove off -- let me ask you this. Was Mr.
18 Wells the passenger or was he the driver?

19 A Mr. Wells was not the driver.

20 Q Did you ever get a look at the driver?

21 A I did not.

22 Q Where did Mr. Wells get in the car? What part of the
23 car was he in?

24 A He was in the backseat. There was not a front seat
25 passenger.

KELLY BALL: DIRECT EXAMINATION

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1 Q So two people in the car. One of whom was Christopher
2 Wells. And David Lee Walker is lying in the driveway; is
3 that correct?

4 A Correct.

5 Q Once that had happened, once the car with Christopher
6 Wells and this other individual drove off what did you do?

7 A That's when I continued until I got Lee all the way
8 into the home. I --

9 Q Had you already called 911 at that point?

10 A I called 911 before I ever exited the home to pull him
11 out of the yard.

12 Q How long did this process in the yard take?

13 A Now I would say it maybe took five to seven minutes.
14 But back then it felt like 15 to 20 minutes.

15 Q But you did it pretty quickly?

16 A Correct.

17 Q Got him in from the yard, into the house. What kind of
18 condition did he seem to be in as far as you could tell?

19 A He was not in very -- he was talking. He was
20 responsive. But he was shot. He had been shot twice. But
21 there wasn't huge amounts of blood or anything, so at that
22 point I felt like he was going to survive it.

23 Q Where did it appear he was wounded?

24 A In the neck. It was a minor wound, but he had also
25 been shot in the back.

KELLY BALL: DIRECT EXAMINATION

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1 Q Did you know if he had been shot in the back or if that
2 was a exit wound or --

3 A I don't know if it was an exit wound or an enter wound.
4 That was just from my looking at him he's shot on his body.

5 Q What was his state of mind? How was he behaving?

6 MS. WIYGUL: Objection, Your Honor. This witness is
7 not qualified to judge another's state of mind.

8 THE COURT: Sustained as to the state of mind question.
9 But as far as how he was behaving or anything he may have
10 done she can testify as to what she observed.

11 Q How was Mr. Cheeks behaving at that point?

12 A He was in a panic state. We had three phones going. I
13 had dialed his son from one, I had dialed my mother from
14 one, and 911 from one. Of course, 911 was first. Once I
15 got him into the home, at that point is when I dialed his
16 son's number from his phone and dialed my momma's phone from
17 my phone, because she helped get me calm down so I could
18 talk to 911 a little better.

19 Q You say that he was in a panic state?

20 A Yes.

21 Q He'd just been shot; is that right?

22 A Correct.

23 Q What did he say to you at that time?

24 A I'm going to lay here and die.

25 Q Did he give you any description as to what had happened

KELLY BALL: DIRECT EXAMINATION

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1 outside?

2 A No.

3 Q What happened then?

4 A What happened once Lee was in a panic state?

5 Q Once you had him inside. He was in the state that you
6 have just described. What happened then?

7 A Within just, I would say, three, four minutes maybe
8 there is a bang, bang, bang, large knock at the door. And I
9 panicked and I said, "There's been a tragic situation in
10 here. I'm not letting anyone in." And that's when there
11 was another bang, bang, bang, bang, over and over and over
12 really loudly. And that was very strange for anyone to
13 knock on his door like that.

14 Q And this is while you were on the phone to 911; is that
15 right?

16 A Correct.

17 Q After all these bangs came did Johnny Lee Cheeks say
18 anything to you?

19 A Yes. I eventually said "Who is it?" I said we've had
20 a tragic situation. They needed to leave. I wasn't anyone
21 in, because I was afraid for his life and mine at that
22 point. And when I said, "Who is it," they just continued
23 on. He said, "David."

24 Q Who said David?

25 A Lee said -- no, David said "It's David."

KELLY BALL: DIRECT EXAMINATION

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1 Q So the person on the other side of the door said, "It's
2 David"; is that right?

3 A Correct.

4 Q Did Johnny Lee Cheeks say anything at that time?

5 A Yes, he did. Immediately he responded and he said, "Do
6 not open that door. That is who shot me."

7 Q So the person on the other side said, "It's David," and
8 Johnny Lee Cheeks immediately said to you, "Don't let him
9 in. He's the one who shot me."

10 A Correct.

11 Q What happened then?

12 A I became even more fearful than what I was. I became
13 even more panic-stricken than I was before. And so did he.
14 So did Lee. At that time I began to fear that he was going
15 to enter the home and take Lee out right there in front of
16 me and kill me as well is what my thoughts were.

17 Q What happened after that?

18 A I would say within a -- the knocking stopped. It was
19 just suddenly stopped. At that time I didn't realize it,
20 but later on what happened is paralysis had set in and he
21 had fell back paralyzed onto the swing that was right there
22 by the door.

23 Q What happened after that?

24 A Shortly within, I would say, maybe three to five more
25 minutes max there was many more bang, bang, bangs at the

KELLY BALL: DIRECT EXAMINATION

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1 door and it was law enforcement and EMT.

2 Q Okay. Now, as soon as you heard the shots in the yard
3 you say you got on the phone to 911; is that right?

4 A Correct.

5 Q And I'm going to show you what's been marked as State's
6 Exhibit No. 7. This is a recording of the 911 call. Have
7 you had a chance to listen to that?

8 A I have.

9 Q Is it a fair and accurate recording of what went on
10 that night?

11 A It is a fair and accurate recording. However, there is
12 a really bad reception, so it did miss a lot of what it
13 would have gotten if the reception had been better.

14 Q I'm going to show you a couple other items, if I may.
15 This is State's Exhibit No. 10. A little medallion there.
16 Do you recognize that?

17 A Yes.

18 Q What is that?

19 A It is a medallion from a necklace that belonged to Lee.

20 Q Was he wearing it that night?

21 A Yes.

22 Q Did he habitually wear this?

23 A Yes.

24 Q I'm going to show you State's Exhibit No. 11. Do you
25 recognize this gold colored chain?

KELLY BALL: DIRECT EXAMINATION

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1 A Yes.

2 Q What is that?

3 A That's the chain that the medallion was on.

4 Q So the medallion was attached to this chain; is that
5 right?

6 A Correct.

7 Q And you saw that on Johnny Lee Cheeks that night; is
8 that right?

9 A Correct.

10 Q Now, when Lee went out in the yard do you know whether
11 he took anything with him?

12 A He took what he had on, of course, which would consist
13 of his billfold, his keys, his -- his gun.

14 Q What kind of gun did he have?

15 A I do not know guns well, so it was just a small
16 handgun.

17 Q Was it an automatic or a semiautomatic or a revolver?
18 The one with the cylinder.

19 A Okay, so revolver.

20 Q Okay. Let me show you State's Exhibit No. 4 and ask
21 you if that appears to be the revolver.

22 A That is the gun.

23 Q Okay. Did you see that gun later on that night?

24 A I did.

25 Q How did that happen?

KELLY BALL: DIRECT EXAMINATION

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1 A Once I drug Lee back into the home and locked the door
2 behind us the gun was laying beside him, and once the man,
3 David, began to knock on the door again, he looked at me and
4 he told me, he said, "Get the gun and put it where it goes."
5 So I picked up a piece of mail that had been knocked down
6 beside his bed, I reached down and picked the gun up, and I
7 put it between the mattress and the box spring. That was
8 what he meant by where it goes.

9 Q So you picked it up with a piece of paper --

10 A Correct.

11 Q -- and put it back and put it under the mattress; is
12 that right?

13 A Correct.

14 Q Did you later retrieve that gun?

15 A I did.

16 Q How did that happen? How did that come about?

17 A Law enforcement came in and Lee -- law enforcement
18 asked Lee, "Well, where is your gun that you shot him back
19 with," and Lee looked at me and said, "Give them the gun,"
20 and that's what I did.

21 Q Did you show them where it was?

22 A I did. They had me reach and get the piece of mail and
23 pick it back up myself and hand it to them.

24 Q So law enforcement had you get it and hand it to them;
25 is that right?

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1 A Correct.

2 MR. MOWRY: I beg the Court's indulgence, Your Honor.

3 THE COURT: Yes, sir.

4 Q Kelly, I'm going to show you some photographs --

5 A Okay.

6 Q -- and I want you to tell me if you recognize these.

7 I'm going to show you what's been already marked as State's

8 Exhibit No. 18. Do you recognize that?

9 A Yes. That's Lee's vehicle.

10 Q And there is a structure behind it. What is that?

11 A A structure behind it?

12 Q Yeah. You see a structure in the background. What is

13 that?

14 A That's his home.

15 Q Okay. So that's the place that you're talking about?

16 A Correct. That's where we were.

17 Q I'm going to show you two pictures, State's Exhibit 16

18 and 17. Do you recognize those?

19 A Yes.

20 Q What are those?

21 A Lee's gun.

22 Q Where is that located? Where are those pictures taken?

23 A On the bed.

24 Q So this is on top of the mattress that the gun was

25 actually under; is that right --

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1 A Correct.

2 Q -- when law enforcement got there? Let me show you
3 two more pictures, if I may. I'm going to show you State's
4 Exhibit 21. And you see this little thing down there. What
5 is that?

6 A That's the medallion on the necklace.

7 Q And also State's Exhibit No. 15. Can you identify the
8 thing right next to the marker there?

9 A Yes. The chain that Lee's medallion was on that he was
10 wearing.

11 Q So those are photographs of State's Exhibit No. 10, the
12 little crucifix medallion, and State's Exhibit No. 11, the
13 chain that the medallion was on; is that right?

14 A Correct.

15 Q Kelly, what kind of state were you in that night after
16 the shooting?

17 A I was panicky. I was pretty panicky. I was afraid. I
18 did not know these people, you know. That was the first
19 time I had ever seen their faces and I was very confused and
20 very afraid.

21 Q And you've heard your -- the 911 conversation. Does
22 that state of mind come out pretty much in that -- in that
23 audio?

24 A Yes. I was pretty panicky stricken in the 911 call.

25 MR. MOWRY: Thank you very much, Kelly. Answer any of

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1 Ms. Wiygul's questions, please.

2 THE COURT: Ms. Wiygul, forgive me for just a moment.

3 Ladies and gentlemen, I don't know if you need a break. I
4 desperately need one. So we are going to take about a five
5 minute break. It's a little unusual to break between a
6 witness, but I can't wait much longer.

7 Don't talk about the case. If you need to refresh
8 yourself, do so. We'll get back on the record in about five
9 or 10 minutes. Okay? You are adjourned for the time.

10 And, ma'am, you can step down. Just don't talk about
11 your testimony with anybody while we're on break. Okay?

12 THE WITNESS: Thank you.

13 (Whereupon, the witness steps down from the witness
14 stand.)

15 (Whereupon, the jury exited the courtroom at 12:23
16 p.m.)

17 (Whereupon, a recess was held from 12:23 p.m. to
18 p.m.)

19 MS. WIYGUL: Your Honor, before the jury comes in I do
20 want to put one thing on the record.

21 THE COURT: Certainly, go ahead. We're back on the
22 record. Go ahead, Ms. Wiygul.

23 MS. WIYGUL: Your Honor, I would just like it noted for
24 the record that I have only just been provided a copy of the
25 photo lineup containing the picture of Christopher Wells.

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1 THE COURT: Is it the State's intention to inquire of
2 this witness about the lineup?

3 MR. MOWRY: No, sir.

4 THE COURT: Your Honor, the State has already had the
5 witness testify that she identified Christopher Wells, and
6 the statement and incident report documents that that was
7 done through the photo lineup.

8 THE COURT: Correct.

9 MR. MOWRY: This is the first she had requested of it,
10 Your Honor. If she had asked me for the lineup, I'd give
11 it.

12 THE COURT: Are there other witnesses that are going to
13 testify about the lineup?

14 MR. MOWRY: It's not my intention. No, sir.

15 MS. WIYGUL: Your Honor, I feel like I am bound to be
16 able to effectively represent Mr. Walker to ask her about
17 the discrepancy in the testimony she just gave which makes
18 it sound like she recognized him that night as opposed to
19 she identified him weeks later in a photo lineup after
20 identifying someone else that night.

21 MR. MOWRY: And I don't have any trouble with that,
22 Your Honor, because I asked her "Did you later learn the
23 person's name."

24 THE COURT: Okay. So the witness that we're concerned
25 with, who is testifying right now, she did view a lineup

KELLY BALL: DIRECT EXAMINATION

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1 later on?

2 MR. MOWRY: Yes, sir. And picked Mr. Wells out of it.

3 THE COURT: All right. I think that's something you
4 can address on cross, Ms. Wiygul, if you desire, because
5 obviously I get your point and it can be handled that way, I
6 suppose, on cross.

7 MS. WIYGUL: Thank you, Your Honor. And just for the
8 record, I had requested this in passing last week after
9 learning of its existence. I don't believe it's something
10 the Solicitor was trying to hide, but I did only get a copy
11 of both it and Ms. Ball's criminal record. I would ask that
12 the State go ahead and provide me with any criminal records
13 of any other witnesses that they plan on calling.

14 THE COURT: If you could, that would be helpful.

15 MR. MOWRY: Everybody else is a professional, Your
16 Honor; either law enforcement or medical or scientific.

17 THE COURT: The Court will assume then that no criminal
18 history exists for those individuals.

19 MR. MOWRY: Very good. The last witness, I think I saw
20 her come in. Ma'am, if you will come on down, please.

21 One of the jurors has requested to take notes. I will
22 be allowing that. I'll give them the standard instruction
23 on taking notes and not getting distracted.

24 MR. MOWRY: And just for the record, Your Honor, Toris
25 Moore's record -- criminal history is an arrest for a DUI.

KELLY BALL: CROSS-EXAMINATION

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1 No conviction.

2 MS. WIYGUL: That's correct, Your Honor, and that one
3 had been previously provided.

4 THE COURT: Let's have the jury back in, please.

5 (Whereupon, the jury entered the courtroom at 12:36
6 p.m.)

7 THE COURT: The record should reflect that the jury is
8 back and is seated.

9 Ladies and gentlemen, two quick housekeeping matters.
10 First of all, I wanted to let you know that the firearm that
11 was alluded to a moment ago that was shown to this witness,
12 that firearm has already been inspected by someone with law
13 enforcement. It's been rendered -- with that lock it's been
14 rendered incapable of being fired. Okay? At all points in
15 time, if it's necessary to any of the lawyers or any witness
16 to handle a firearm they'll either be pointing it at the
17 floor or at the ceiling, and the bullets or any live
18 ammunition will be completely separate from the firearm at
19 any point in time. I just wanted to let you know that. I
20 assume you already had assumed that. But again, any firearm
21 has already been inspected and it is not able to be fired in
22 this courtroom.

23 Additionally, the bailiff told me that one or more of
24 you all wanted to take notes. That's perfectly fine. If
25 you want to take notes, that's okay. I meant to address

KELLY BALL: CROSS-EXAMINATION

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1 that with you earlier in my opening remarks. I will tell
2 you, please try to keep your note taking from distracting
3 you from the testimony. And additionally, when you leave
4 the courtroom this evening or at lunch, please leave your
5 notes here as well. So put some sort of -- if you're going
6 to take notes, put some sort of special identifier under the
7 notepad so that you can recognize it as your own. Leave
8 those here. And again, those are your private notes. So
9 when the case is concluded I'll ask that you take those with
10 you when you do leave. Okay?

11 With that, we are still in the examination of Ms. Ball.
12 Ms. Wiygul, your cross, please.

13 CROSS-EXAMINATION

14 BY MS. WIYGUL:

15 Q Ms. Ball.

16 A Yes.

17 Q You gave two handwritten statements in this case,
18 correct?

19 A Correct.

20 Q And did you give that first statement on November 1st
21 of 2013, the day after the incident?

22 A Correct.

23 Q And did you give your second statement November 5th of
24 that year?

25 A Yes.

1 Q A little less than a week after that?

2 A Yes.

3 Q In those statements -- in your earlier testimony you
4 mentioned that you heard three voices arguing; is that
5 correct?

6 A Correct.

7 Q And yet in both of these statements you only mentioned
8 hearing two voices; is that right?

9 A I'm not -- I'm not sure what I wrote. I was still
10 panic stricken. Like you said, this is the week of this
11 happening. Initially I didn't even realize it because I was
12 hearing Lee being hit and beat up. I didn't realize that
13 until whenever -- I know I heard some thuds, but it never
14 dawned on me to where. But that was what was taking place.

15 MS. WIYGUL: May I approach the witness for a moment?

16 THE COURT: Please.

17 Q Ms. Ball, I'm handing you two documents. Could you
18 identify those documents?

19 A Both of these are in my handwriting. These are written
20 statements by me.

21 Q And do you believe that reviewing those written
22 statements would help refresh your memory as to what you had
23 to say on those dates?

24 A On those dates, like I said, I was still so panic
25 stricken and so much had taken place that I was still

KELLY BALL: CROSS-EXAMINATION

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1 processing everything in my own mind.

2 Q I understand that, ma'am. And I'm asking you, would
3 looking at those documents help to refresh your memory as to
4 what you told the officers on November 1st and November 5th
5 of 2013?

6 A I know what happened without reading the documents.
7 But if that's what you would like me to do, I don't mind
8 doing that.

9 Q Ma'am, what I'm asking is in those two handwritten
10 statements that you wrote up for the police --

11 A Uh-huh.

12 Q -- did you say there were three voices?

13 A I don't know. I don't see where I wrote that I heard
14 two voices. I don't see at all where I wrote that I only
15 heard two voices. The only thing I wrote here is that I
16 heard --

17 Q Ma'am, I'm not asking that you read your handwritten
18 statement. I'm asking is there anywhere in that handwritten
19 statement from November 1st or November 5th where you had
20 told the officers that you had heard three voices that
21 night?

22 A It's not on the handwritten statement that I said that
23 I heard three voices. It is not written that I said I heard
24 three voices.

25 Q Thank you, ma'am.

KELLY BALL: CROSS-EXAMINATION

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1 A I heard Lee's voice and David's voice.

2 Q Thank you, ma'am. So just to clarify. These two
3 statements that you gave the police, you did not tell them
4 you heard three voices?

5 A No.

6 Q Could you relay again -- just to clarify. You took the
7 gun from Mr. Cheeks and put it under the mattress or under
8 the bed?

9 A No. Under the mattress in between the box spring and
10 the mattress.

11 Q So you put it between the box spring and the mattress?

12 A Right. That would be the way he normally kept it.

13 Q I understand that. When you put it in there did you
14 have it in the holster?

15 A No, it was not. It was not in the holster.

16 Q It was not in a holster?

17 A It was not in a holster.

18 Q Was it in anything?

19 A No.

20 Q Now, you stated that the officers had you pick it up.

21 A Correct. They asked me where it was. I lifted the
22 mattress, reached over and got a piece of mail, pulled it up
23 and handed it to him.

24 Q And did they ask you to do that out of fear of their
25 own safety?

KELLY BALL: CROSS-EXAMINATION

141

1 A No, not that I would think.

2 MR. MOWRY: Your Honor, I would object to that
3 question. There's no way she could know what other people
4 were thinking.

5 THE COURT: Calls for speculation. But if she was told
6 why they wanted it that's perfectly fine.

7 Q Ms. Ball, are you aware of why the officer had you
8 collect evidence from the scene with a piece of paper
9 instead of using gloves and having an officer collect that
10 gun?

11 A I know that he had a small dog that was running around
12 -- the officers let in the entire time that we had to later
13 -- they couldn't -- because his dog was right at me not
14 letting them get near me and they wanted -- So I don't know
15 if that had something to do with it or not. But other than
16 that, I don't have a clue.

17 Q And you said it's a very small dog?

18 A Yes. It's a Chihuahua.

19 Q Okay. And the Chihuahua belonged to Mr. Cheeks?

20 A Yes.

21 Q Was the Chihuahua running around the scene this whole
22 time?

23 A Yes.

24 Q Now, you mentioned that --

25 A Inside the home though. The dog was never let out.

KELLY BALL: CROSS-EXAMINATION

142

1 Q You stated that there were three phones. Three cell
2 phones in use during this time period, correct?

3 A Correct.

4 Q You had your phone and you were on the phone with --

5 A 911.

6 Q -- 911. You had Mr. Cheeks' phone and you were on the
7 phone with his son?

8 A No. I never talked to his son. Mr. Cheeks -- we had
9 his phone, asked me to pull up his phone and hit send, and I
10 left it laying there with him.

11 Q So you had called his son for him and left the phone
12 with him?

13 A Correct. But we were still close enough to where
14 anyone on either phone could have heard us both.

15 Q Ma'am, who did the third phone belong to?

16 A The third phone belonged to Christine Ball, which is my
17 mother, and I used her phone to call my father's phone,
18 because I was in such a panic that 911 just about couldn't
19 understand me anymore. So I asked her would it be okay to
20 use the other phone to call my mom. And that's what I did.
21 I called my mom. Let her know I was calling my mom from the
22 other phone, so that I could have the entire time I was
23 talking with 911 and was waiting for help to get there. I
24 was terrified. So, I mean, I wanted to talk to someone that
25 I felt safe.

KELLY BALL: CROSS-EXAMINATION

143

1 Q I understand, ma'am. I was just curious about the
2 three phones and the location.

3 A Okay.

4 Q To the best of your knowledge, did the police collect
5 those phones or test them for evidence?

6 A No. Not that I -- not mine. Now, as far as Lee's,
7 probably, but neither of my phones.

8 Q Ma'am, could you point out again where Mr. Cheeks'
9 residence is?

10 A (Witness indicating on photograph.)

11 Q All right. And could you -- I'm going to set up the
12 easel here. And could you come out and show us on this
13 aerial photograph where you were standing when you witnessed
14 someone running away?

15 A Uh-huh.

16 MS. WIYGUL: Just one moment and I'll set that up for
17 you, with the assistant of Mr. Bentley. Actually, I'm going
18 to let Mr. Bentley set that up.

19 Q No, ma'am, on the night of the incident, and in your
20 statements and in the statements you gave to the police at
21 the scene, do you recall telling them about an individual
22 that you saw running away?

23 A I did.

24 Q And do you recall describing that individual as a very
25 dark skinned black man?

1 A No, I do not. I told them that his appearance reminded
2 me of someone with a dark skin complexion that I knew
3 personally. That he reminded me of that person, but it was
4 not that person.

5 Q You told them that you thought it was someone named
6 Tye; is that correct?

7 A That he resembled his build, and that guy was dark
8 skinned. This guy was not dark skinned. The guy that ran
9 away had a light skinned complexion. Light skinned black
10 man.

11 Q So it's in your statement that you saw a very dark
12 skinned black man running away that resembled Tye.

13 A That's what my statement said. It said he resembled
14 Tye.

15 Q And to clarify. Who is Tye?

16 A He is just someone I know through Lee from Gray Court,
17 and --

18 Q Friend?

19 A I wouldn't exactly say that.

20 Q Ma'am, I'm going to show you your handwritten statement
21 again dated November 5th and ask that you look at --

22 A Lee had --

23 Q -- this last page.

24 A -- is not no dealer.

25 Q On page four.

KELLY BALL: CROSS-EXAMINATION

145

1 MR. MOWRY: Your Honor, if it would save time, I have
2 no objection to the entire statement being admitted.

3 THE COURT: Well, I'm going to let Ms. Wiygul try her
4 case.

5 A What do you want me to look at on the fourth page?

6 Q If you'd look at the last couple of sentences
7 discussing Tye.

8 A "I seen this man resemble a man named Tye." And I told
9 where he was from and that we had had dealings with him. I
10 never stated that he was a dealer. He had had prior
11 dealings with him, but not very often.

12 Q Now, at the time of the statement had you told the
13 officers that in the last couple of months Lee's re-ups on
14 dope had gotten more and more frequent with Tye?

15 A I don't know. It's possible that I said that. But it
16 was not his regular dealer. I don't doubt that, yes, I said
17 that. Yes, I'm sure I said that, but he was not his regular
18 dealer.

19 Q Now, why had he started dealing with Tye if he was not
20 his regular dealer?

21 A I do not know that. I tried my best to keep my nose
22 out of all his business. The only reason I know anything
23 that I did was because I drove him lots of places because he
24 didn't have a license.

25 Q And, ma'am, do you recall what your recollection was on

KELLY BALL: CROSS-EXAMINATION

146

1 November 5th about why he was buying more and more drugs
2 from Tye?

3 A That his normal --

4 Q Ma'am, you didn't identify Christopher Wells the night
5 of the incident, did you?

6 A I did not. I had never seen Christopher Wells prior to
7 that night.

8 Q You didn't identify Christopher Wells on November 1st
9 during your statement, did you?

10 A I did not. Like I said, I had never met the man. I
11 had no idea what his name was or where he was from. I
12 identified him in a lineup.

13 Q You identified him in a lineup?

14 A Correct.

15 Q When did you identify him in a lineup? On what date?

16 A I do not know the exact date. I would say late
17 November, early December.

18 Q And what were the circumstances you being shown that
19 lineup? Were you called and asked to come down to the
20 police station and look at something?

21 A They came to where I was.

22 Q They came to you?

23 A Correct.

24 Q And where were you?

25 A I was in Marshall Pickens.

KELLY BALL: CROSS-EXAMINATION

147

1 Q As a patient?

2 A Correct. I was grieving deeply.

3 Q And who came to visit you there?

4 A Officer Cheek, and several other men who I do not know
5 their name. But I know they're officers.

6 Q And did they only come that once?

7 A Is that the only time they ever came to me? No. They
8 came to me multiple times and I went to them multiple times.

9 Q When you say multiple times, could you take an estimate
10 on how many times you have dealt --

11 A I would say --

12 Q -- with Lieutenant Cheek?

13 A I would say I dealt with Lieutenant Cheek at the
14 Sheriff's Office two, possibly three times. And he came to
15 where I was at least two times, possibly three times.

16 Q Okay. And when he came to you, we know he came to see
17 you once at the hospital?

18 A Uh-huh.

19 Q Where else did he come to see you?

20 A He came to me at a motel and at a parking lot and I got
21 into the car with him and discussed some things that were
22 going on with him there.

23 Q When was that motel room meeting?

24 A The day after -- the day after the shooting.

25 Q November 1st? Is that -- were you at the hotel when

KELLY BALL: CROSS-EXAMINATION

148

1 you gave your first handwritten statement?

2 A No.

3 Q Where did you go to give your first handwritten
4 statement?

5 A Sheriff's Office.

6 Q Okay. I'm sorry, ma'am. Go ahead. And where was the
7 next time you met with him?

8 A The next time was at the Sheriff's Office.

9 Q And was that on November 5th when you gave your second
10 statement, or third statement?

11 A To the best of my -- to the best of my knowledge,
12 because a lot of that runs together. I was grieving very
13 badly.

14 Q So that's three times. And then we know about the
15 hospital visit. When else did he visit you?

16 A Those are only four times that I am positive he came to
17 visit me. For some reason I think he may have come to my
18 home one time, but it was just very briefly.

19 Q And when was that?

20 A In between -- I want to tell you it was in between the
21 motel and the -- me going back. In between those days. Or
22 maybe it's just where they had an officer take me home from
23 the Sheriff's Office that I -- at my home.

24 Q Ms. Ball, I'm going to ask if you'd step down here so
25 the jury can see this. I believe we have it all set up now.

KELLY BALL: CROSS-EXAMINATION

149

1 (Whereupon, the witness steps down from the witness
2 stand.)

3 Q On the night in question, just to clarify, this is Mr.
4 Cheeks' home?

5 A Correct.

6 Q And where was his vehicle parked on the night in
7 question? Is this the front at the bottom, or the front at
8 the top?

9 A This is the back. This is the back porch. This is the
10 front of the trailer. There's the driveway that you cannot
11 --

12 Q And I'm going to ask you to scoot over just a little so
13 the jury can see what you're pointing at.

14 A Okay. There is a driveway --

15 THE COURT: If you could, maybe slow down a little bit
16 because she needs to take down everything that's being said.
17 If you all can try to avoid talking over each other as much
18 as possible.

19 Q Go ahead.

20 A This is Lee's residence. This is the back porch. This
21 up here would be the front porch. Around the front porch
22 there is a -- fencing -- or it's not fencing. It's just a -
23 - it's a structure around the porch. Around the front
24 porch. Now, when I'm seeing Christopher run away, what you
25 asked me to come up here and --

KELLY BALL: CROSS-EXAMINATION

150

1 Q No, ma'am. When you saw the individual running away.

2 A Uh-huh. Okay. I was on this front porch here. Like I
3 said, this is the driveway. The car was parked here. I
4 came out this -- well, I was squatted at this front screen
5 door, because, like I say, the front porch is railed in and
6 I felt some protection from those rails, even though I can -
7 - I'm making eye contact with this individual. I finally
8 stood completely up. And once we had good eye contact he
9 turns and runs away.

10 Q So you are here?

11 A I'm here.

12 Q But then like where was he?

13 A He's about right here on the driveway. The vehicle is
14 parked right here. Lee's laying right here. David is
15 laying right there. And Christopher -- the other person was
16 standing right behind David, but David is already collapsed
17 on the ground. But I didn't know until, of course, I come
18 out that there was another individual collapsed on the
19 ground. But he was standing close by where David was laying
20 as he turned to run away.

21 Q So you didn't see the individual run away until after
22 you had gotten Mr. Cheeks back in the home?

23 A No. He run away before I ever --

24 Q You saw him when you first went out?

25 A Correct.

KELLY BALL: CROSS-EXAMINATION

151

1 Q And you saw him run up and get into a vehicle up here?

2 A This is the driveway.

3 Q He ran up the driveway and got to a vehicle right here?

4 A There's a -- like I say, you can see -- there's such a
5 brush right there, as you can see. I could -- I've stayed
6 at the home off and on ever since he moved into that home.

7 I could tell that there was some kind of vehicle down there.

8 But I couldn't, you know, make out the vehicle or anything
9 like that. But right in here was where the car was parked.

10 Q So you stated that you saw the individuals inside the
11 vehicle?

12 A No, ma'am.

13 Q You said you'd seen --

14 A No, ma'am. I seen someone -- I seen the one I know as
15 Christopher Wells run out of this driveway. The driver I
16 never seen.

17 Q And you couldn't make out --

18 A Except for in the car as he's driving away, and
19 Christopher -- the person I seen run away was in the
20 backseat.

21 Q You saw through the windows of the vehicle?

22 A That's right. There's a large street light up above at
23 the top of the hill right where the car had to go through.

24 Q Okay. Thank you, ma'am.

25 (Whereupon, the witness returns to the witness stand.)

KELLY BALL: CROSS-EXAMINATION

152

1 MS. WIYGUL: Begging the court's indulgence. We're
2 just trying to identify --

3 THE COURT: You're fine.

4 Q Ma'am, could you identify this?

5 A No.

6 Q You cannot identify this picture?

7 A No. It's a vehicle. It is a vehicle. I can see it's
8 a vehicle parked in front of a trailer.

9 Q And in the statements that you gave the officers you
10 never indicated that the other individual you saw at the
11 scene was with Mr. Walker, did you?

12 A Not that I know of. I never -- they were both -- they
13 came to the scene together. Only one of them left.

14 Q Ma'am, you don't know how you got to the scene, do you,
15 because you weren't there?

16 A I was there.

17 Q Were you outside watching someone come up?

18 A No. I was inside the home. No, I never seen anyone
19 pull up.

20 Q So what I'm asking you is in your prior statements, be
21 they written or one of the unrecorded ones, did you ever
22 mention --

23 A That they came together. I did not.

24 Q Okay. Thank you, ma'am.

25 MR. MOWRY: If it please the Court, Your Honor.

KELLY BALL: CROSS-EXAMINATION

153

1 MS. WIYGUL: I'm not done yet.

2 MR. MOWRY: Oh, I thought you were done. Pardon me.

3 Q Now, what's the layout of this trailer? How many
4 bedrooms is it?

5 A Three small bedrooms. One was used as like a junk
6 room. One was made into like just a couch, Futon kind of
7 bed, and the other one was Lee's bedroom.

8 Q Did at some point when you -- just one moment. Before
9 you went outside on this night you mentioned something about
10 you went down the hall.

11 A Correct.

12 Q What did you go down the hall for?

13 A Once I heard that first gunshot I got up off the chair
14 in the livingroom, and you have to go down the hall in the
15 home.

16 Q And that's why I was asking you about the layout of the
17 trailer. So the living room did not actually -- when you
18 went in the front door you did not enter the livingroom?

19 A No, ma'am.

20 Q What room did you enter?

21 A A hallway.

22 Q A hallway?

23 A Correct.

24 Q And how long was the hallway?

25 A Ten feet, 12 feet maybe.

KELLY BALL: CROSS-EXAMINATION

154

1 Q So when you said you went down the hallway, you didn't
2 mean length-wise down the trailer? You just meant down that
3 short hallway?

4 A Correct.

5 Q Okay. Thank you, ma'am. Did Lee normally carry his
6 gun wherever he went?

7 A Yes.

8 Q And did he have -- did he carry it just stuck in his
9 waistband or did he have a holster for it?

10 A Normally Lee would have his pistol in his pocket.

11 Q In his pocket?

12 A In his pocket. But once he would get into the vehicle
13 he would take it out of his pocket and wherever he had it in
14 the vehicle. But we had just returned from picking up his
15 food. He still had his gun in his pocket.

16 Q So did Lee own a holster and a belt for the holster for
17 his gun?

18 A I think so.

19 Q Do you know where they were that night?

20 A I don't know. I do not even know if he was wearing it
21 that night. I never paid that much close attention because
22 it was just normal for him to wear his gun and him have it
23 for our protection if something was to happen.

24 Q Where did Mr. Cheeks keep his liquor and his drugs?

25 A In the outbuilding.

KELLY BALL: CROSS-EXAMINATION

155

1 Q In the outbuilding outside of the trailer?

2 A Right. But he did keep a small amount on him, just for
3 whatever clientele was coming to the door.

4 Q Did you make any attempts to retrieve those drugs
5 before the police got there?

6 A No. They got everything. They took everything on his
7 body immediately. I made it to where he was laying in the
8 yard, he let me know immediately.

9 Q So you did ask him? You did -- you were going to get
10 the drugs but he did not have any on him?

11 A He did not. He told me they took everything.

12 Q Is it your belief that the gold chain and medallion
13 that he normally wore were yanked off of him that night?

14 A That's -- yeah.

15 Q And whenever you went up to -- when you were squatting
16 down beside Mr. Lee were you actually feeling his pockets to
17 make sure he didn't have any drugs on him?

18 A Yeah. Only thing I felt was his shirt front pocket and
19 he looked at me and said, "They got everything. Everything.
20 Everything on my person they took."

21 Q And I understand that, ma'am. What I'm asking you is
22 were you looking for the drugs?

23 A No. I mean, I wanted to know what he had on him and
24 what he did not. Of course, I did not want the police to
25 get there and he still have drugs on him. But he let me

KELLY BALL: CROSS-EXAMINATION

156

1 know immediately that there's no point. They've taken
2 everything. They've taken the keys. They took -- I
3 couldn't even drive to the hospital if I wanted to. They
4 took the keys to the home, the vehicles, everything.

5 Q So just to clarify. You were patting his pockets to
6 make sure he didn't have any drugs?

7 A I didn't want -- I did not want law enforcement to
8 arrive with drugs on his. Yes, ma'am.

9 Q Now, you stated that Mr. Cheeks had the majority of his
10 supply of liquor and drugs out in his shed on his property;
11 is that correct?

12 A Correct.

13 Q Did you tell that information to the police?

14 A Yes.

15 Q Did the police search that shed?

16 A I'm not -- I'm not sure about that. As soon as the
17 police got into the home I was escorted from the home by 10
18 to 12 officers up the hill into a police car. I'm not aware
19 of what they searched and what they did not search.

20 Q But that didn't happen until after you had been there a
21 while, correct?

22 A No. Immediately when they came in the door. They
23 escorted me out before they even got Lee up to a helicopter.

24 Q I thought they had to go get the gun?

25 A I was standing beside the bed when they entered the

KELLY BALL: CROSS-EXAMINATION

157

1 home. That was their first question. I was in the home, I
2 would say, three minutes after the police arrived and they
3 escorted me away from the scene, because you still got the
4 shooter and the victim laying there. They escorted me up
5 the hill into a police car. I was in the home no more than,
6 I would say, two and half, three minutes after the police
7 arrived they got me out away from the scene.

8 Q Did you ever return to the home?

9 A Yes. They asked me to stay at home. They asked me did
10 I mind staying at the home. And I did until about 2:00 a.m.
11 and I got too afraid. And I called my daughter and I asked
12 her to come get me.

13 Q Okay. I'm sorry. I'm a little bit confused. You
14 returned to Mr. Cheeks' trailer that night?

15 A Right. As soon as they were done with their scene and
16 they had talked to me and they felt good with what they had
17 gotten from me, and they had gotten Lee out of there,
18 transported -- they transported to wherever Lee went, they
19 walked me back down the hill to the home.

20 Q So during the two, three hours while -- how long was it
21 that they were clearing the scene? How long were you left
22 sitting in the police car?

23 A I'd say until probably 11:30, 12:00.

24 Q During the next day?

25 A Uh-huh.

KELLY BALL: CROSS-EXAMINATION

158

1 Q So there were police on the scene for a good eight
2 hours?

3 A No.

4 Q About approximately what time would you say the police
5 got there?

6 A Around 10:00-ish. Right around 10:00-ish.

7 Q So when you say 11:30, you mean at night?

8 A 11:30, 12:00 at night, correct.

9 Q Okay. So the officers were actually only on the scene
10 about an hour and a half?

11 A Hour and a half, two hours maybe.

12 Q Thank you, ma'am. When you returned to the -- you sat
13 in the police car the whole time while they were there?

14 A Correct. While they were doing anything they had to do
15 on that scene to clear anything they needed to look at or
16 whatever, I was in a vehicle. I couldn't see anything that
17 was going on at the bottom of the hill. As you can see the
18 picture, it's on a hill.

19 Q Could you see them carrying Mr. Walker up?

20 A No. I never seen Mr. Walker come up. I did see Lee
21 come up.

22 Q You did see them carrying Mr. Cheeks up?

23 A Lee. But once they began to bring Lee up they moved
24 the vehicle I was in away from the driveway. Once I could
25 see them coming up they pulled the vehicle further away from

KELLY BALL: CROSS-EXAMINATION

159

1 the home. But, I mean, there was police cars everywhere.

2 So we just sort of inching up in the middle of them to where

3 I'm getting further and further away from the home, so I

4 can't see anything anymore.

5 Q Ma'am, when you returned to the home, did you check the
6 shed?

7 A No. Once the police were gone I walked out to the shed
8 to check and make sure if the doors were unlocked, anything
9 like that. To enter the shed, the people took keys to the
10 shed.

11 Q I understand. So had the shed been opened whenever you
12 went down there?

13 A The shed had not been tampered with as far as I could
14 tell.

15 Q Okay. So to the best of your knowledge, the police
16 made no effort to find out what or who might have been --

17 A I can't say that.

18 Q -- in that shed?

19 A I can't say that. I can't say that they did not go in
20 and they did not put the lock right back on. I can't say
21 that.

22 Q You don't know?

23 A I do not know.

24 Q Thank you, ma'am. You did not enter the shed?

25 A I did not enter the shed.

KELLY BALL: CROSS-EXAMINATION

160

1 Q Did you at any point in the future ever see inside that
2 shed again?

3 A No, never again.

4 Q Had you ever seen inside of the shed previously?

5 A Of course.

6 Q Approximately how big was the shed?

7 A I don't know. Small -- it was just a small shed.

8 Q Is there a picture of it on this aerial photograph?

9 A You cannot see it on the photograph.

10 Q Can you point to approximately where the shed was?

11 A Right in here.

12 Q The shed was out here?

13 A Right.

14 Q Mr. Cheeks Suburban was right here?

15 A Mr. Cheeks Suburban was parked right here in the
16 driveway all the way just about as close to the front porch
17 as you can get.

18 Q And this is where they were shot?

19 A Yeah, correct.

20 Q Thank you. Ma'am, approximately how much liquor was in
21 that shed?

22 A I don't know.

23 Q Was it more than a case?

24 A I wouldn't know. I would definitely not. I've never
25 seen more than a case in there at a time.

KELLY BALL: REDIRECT EXAMINATION

161

1 Q And what kind of drugs did Mr. Cheeks sell?

2 A Crack cocaine.

3 Q And how much of that was in the shed?

4 A He never had really huge large quantities on him. I
5 would say maybe a few grams.

6 Q But he had been getting more and more recently,
7 correct?

8 A Correct.

9 MS. WIYGUL: Thank you, Ma'am. I don't have any
10 further questions.

11 THE COURT: Redirect?

12 MR. MOWRY: Just a few questions, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. MOWRY:

15 Q Kelly, do you wear a watch?

16 A I don't.

17 Q Did you wear a watch the evening of October 31st of
18 2013?

19 A No.

20 Q So when you state the times are you --

21 A I could be hugely off. I could be off like 30 minutes
22 to an hour.

23 Q Okay. Any question on the first statement that it was
24 at 1:35 in the morning on the next day, on November 1st,

25 2013?

KELLY BALL: REDIRECT EXAMINATION

162

1 A Say what, now?

2 Q The statement that you made --

3 A Uh-huh.

4 Q -- within hours of the event.

5 A Correct, yeah.

6 Q It's at 1:35.

7 A November 1st, because I was still -- we were still at
8 the scene. I made that statement -- wrote that statement
9 while I was the police at the scene.

10 Q Right. Now, Ms. Wiygul asked you about the
11 individuals. You know, she said that you don't know that
12 they came together.

13 A That's what she said.

14 Q The individuals that came to the house. When you
15 arrived back at Mr. Cheeks' resident from The Hill -- or
16 from going to the Waffle House, I'm sorry --

17 A Uh-huh.

18 Q -- was there a car at the top of the driveway as you
19 described?

20 A No, sir.

21 Q Was David Walker at the residence?

22 A No, sir. No one was at the residence when we returned
23 from the Waffle House.

24 Q And within a matter of a few minutes the car was there.
25 You saw the car leave, right?

KELLY BALL: RECROSS-EXAMINATION

163

1 A Right. The car passed the driveway to exit the crime
2 scene.

3 Q And you saw David Walker's body lying in the driveway;
4 is that right?

5 A Correct.

6 Q And you saw an individual you later identified as
7 Christopher Wells in the driveway run away from there; is
8 that right?

9 A Correct. Standing close by where David's body was
10 laying.

11 Q Jump into a car and then ride off; is that right?

12 A Correct.

13 Q When you got out to Lee, he told you they took
14 everything?

15 A Correct.

16 Q Did you intend to drive him to the hospital to get him
17 help?

18 A Midway. After I had made the 911 call and I had him
19 inside the home he's telling me just to get him in the car
20 and drive him to the hospital. And I looked at him and told
21 him, "I can't. We don't have the keys. They took
22 everything."

23 Q You weren't able to find keys; is that right?

24 A Right. They got them. They had to.

25 Q You talked about the dog as well. Lee's dog; is that

KELLY BALL: RECROSS-EXAMINATION

164

1 right?

2 A Correct.

3 Q You said it was a Chihuahua?

4 A Correct.

5 Q What's the dog's name?

6 A Peanut.

7 Q Do you hear the dog's name mentioned on the 911 audio?

8 A I don't think so.

9 Q Did the dog actually bite one of the deputies? Do you
10 know that?

11 A I do not know that. I was made at one point to take a
12 blanket -- or wrap her in that blanket and put her into
13 another bedroom that was just an extra sitting room that we
14 had and put her in there and close the door because they
15 were -- Because, you know, she was around the officers and
16 the EMTs.

17 Q So you cleared her on out of there; is that right?

18 A Right.

19 MR. MOWRY: Thank you, ma'am. That's all I've got.

20 RECROSS-EXAMINATION

21 BY MS. WIYGUL:

22 Q Ma'am, when the car left, when you saw the car leaving
23 --

24 A Yes.

25 Q -- did it -- which way did it go? Did it go in front

MARTY CRAIN: DIRECT EXAMINATION

171

1 (Whereupon, the witness stepped down from the witness
2 stand.)

3 THE COURT: That will be State's what, Mr. Neely?

4 MR. NEELY: I believe it's State's No. 7, Your Honor.

5 (Whereupon, State's Exhibit No. 7 was entered into
6 evidence.)

7 MR. NEELY: Permission to publish, Your Honor?

8 THE COURT: Please.

9 (Whereupon, the 911 audio was played for the jury.)

10 THE COURT: Mr. Mowry, if you'll call your next
11 witness, please, sir.

12 MR. MOWRY: I call Marty Crain.

13 MARTY CRAIN, having been first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MOWRY:

17 Q You are Marty Crain?

18 A Yes, sir.

19 Q And I believe you are a lieutenant with the Laurens
20 County Sheriff's Office; is that right?

21 A Yes, sir.

22 Q How long have you been employed with the Sheriff's
23 Office?

24 A Almost 18 years.

25 Q And what are your duties currently with the Sheriff's

MARTY CRAIN: DIRECT EXAMINATION

172

1 Office?

2 A Supervisor on patrol division.

3 Q How long have you been employed in that capacity?

4 A As a lieutenant for 11 years.

5 Q Were you employed in that capacity back on Halloween
6 night, October 31, 2013?

7 A Yes, sir.

8 Q What shift were you working that evening?

9 A The 7:00 p.m. to 7:00 a.m., Bravo shift.

10 Q Right. So a 12 hour shift; is that right?

11 A Yes, sir.

12 Q What are your duties generally as a shift supervisor?

13 A All calls that are serviced that are coming in to the
14 911 center for Laurens County or the Sheriff's Office go
15 into dispatch. They assign the call to me and I assign the
16 call to the deputy that works that specific area.

17 Q Do you also respond yourself --

18 A I do.

19 Q -- in certain instances? What criteria do you use to
20 make a determination whether you respond personally?

21 A Based on the type of call, or if they specifically
22 request a supervisor to be on scene. But based on the type
23 of call is when I decide whether I respond or not, or just
24 send one deputy or two deputies.

25 Q And did you receive information about a 911 call on the

MARTY CRAIN: DIRECT EXAMINATION

173

1 evening of October 31st that you, in fact, responded to?

2 A I did.

3 Q Where was that call originated from?

4 A The Enoree area.

5 Q And about what time did that come in?

6 A I don't recall. I remember it was later in the
7 evening.

8 Q 11:00, midnight, something like that?

9 A Somewhere around in there.

10 Q So about the middle of your shift?

11 A Yes, sir.

12 Q What did you do at the time you got that call?

13 A Gave the call to the officer that works the -- is
14 assigned to that area as well and --

15 Q What's his name?

16 A Deputy Taylor. Assigned the call to several other
17 units on the shift, because of the nature of the call that
18 we received, and we all responded in an emergency capacity.

19 Q What uniformed officers besides you and Deputy Taylor
20 came to the scene?

21 A Sergeant Roger Timmons and Deputy Steven Sweat.

22 Q Who arrived first?

23 A I did.

24 Q How far in advance of the others did you get there?

25 A Not long.

MARTY CRAIN: DIRECT EXAMINATION

174

1 Q So everybody kind of got there around the same time?

2 A Yes, sir.

3 Q But you got there first?

4 A Yes, sir.

5 Q What did you do when you first got there?

6 A As I was pulling up to the scene I activated my camera
7 that we wear on our uniform. We refer to it as a deputy
8 cam. Once I got out of the vehicle I approached the
9 residence. I observed an individual on the porch sitting in
10 a chair. I heard some screaming from inside the house.
11 Knocked on the door and tried to make contact with those
12 individuals, which those individuals later I made contact
13 with..

14 Q Okay. Let me hand you what's been marked as Court's
15 Exhibit No. 2 and ask you if you can identify that picture.

16 A Yes.

17 Q Who is that, please, sir?

18 A That's Mr. Walker.

19 Q Is that the individual that you saw sitting on the
20 porch --

21 A Yes.

22 Q -- at the front door of the trailer?

23 A Yes, sir.

24 Q And that's at [REDACTED] River Hill Road; is that right?

25 A Yes, sir.

MARTY CRAIN: DIRECT EXAMINATION

175

1 Q Okay. Did you notice anything unusual about Mr. Walker
2 when you got there?

3 A He was slumped over.

4 Q Did you see any visible wounds on him at the time?

5 A At that current moment, no, sir.

6 Q What did you do after you saw Mr. Walker?

7 A I told Sergeant Timmons to keep an eye on him as I
8 tried to make contact with the individuals that was
9 screaming inside the house.

10 Q So Sergeant Timmons had arrived there as well; is that
11 right?

12 A Yes, sir. He was there maybe 10, 15 seconds after
13 myself.

14 Q How did you make contact with the people inside the
15 house?

16 A I kept knocking and knocking and knocking on the door.
17 Finally a female individual answered the door and unlocked
18 the door.

19 Q Prior to opening the door had you heard any noises from
20 inside the house?

21 A Just her screaming and hollering.

22 Q When the door was opened what did you see?

23 A The door -- actually, when she tried to open it it
24 wouldn't open all the way because there was another
25 individual who was laying behind the door who had the door

MARTY CRAIN: DIRECT EXAMINATION

176

1 kind of blocked.

2 Q Who did you determine later on that that individual
3 was?

4 A Mr. Johnny Cheeks.

5 Q Did he -- could you see any visible wounds on him?

6 A Yes, he was bleeding. Stated he had been shot.

7 Q You were able to communicate with him?

8 A Briefly.

9 Q What did you say to him?

10 A I asked him where was he hit, who done it, what all
11 occurred, and which he answered to me. And then I advised
12 him that medical was on the way.

13 Q Where did he say he was hit?

14 A He said he was hit in the chest and he thought he was
15 hit in the face.

16 Q Did you see a visible wound on him?

17 A Yes, sir. On his neck.

18 Q On his neck?

19 A Yes, sir.

20 Q Do you recall which side?

21 A I'm pretty sure it was on -- it was his right side.

22 Q So you asked him if he'd been -- if he was hurt. You
23 asked him who did it?

24 A Yes, sir.

25 Q What did he say to that?

MARTY CRAIN: DIRECT EXAMINATION

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- 1 A The person on the porch.
- 2 Q The person on the porch did it; is that right?
- 3 A Yes, sir.
- 4 Q Who was it that was sitting on the porch?
- 5 A David Walker.. Yes, sir.
- 6 Q Court's Exhibit No. 2.
- 7 A The man in the picture.
- 8 Q What did you do then?
- 9 A I advised him to hang on, that medical was in route.
- 10 The female that was there was still pretty irrate. The
- 11 other officers had to get outside security --
- 12 Q Was she angry or hysterical?
- 13 A She was hysterical.
- 14 Q So she was panicking?
- 15 A Yes, sir.
- 16 Q Not mad or anything --
- 17 A No.
- 18 Q -- she was just panicking?
- 19 A No, sir. I had to advise her that she -- to calm down,
- 20 because she was going to have to be the one that I was going
- 21 to need to get information from.
- 22 Q Okay. Let me just ask you this. Was there a dog at
- 23 the scene?
- 24 A Yes, sir.
- 25 Q Did you have a run-in with the dog?

MARTY CRAIN: DIRECT EXAMINATION

178

1 A Yes, sir. It bit me.

2 Q What -- described that.

3 A It was a smaller dog. It kept barking very loudly,
4 kept running around where the victim was at. As I was
5 trying to render aid to the victim to find out what was
6 going on, because the whole situation was chaotic, the
7 female was hysterical, the dog kept running around yapping
8 and it bit me on the front of my shin.

9 Q And did you threaten to shoot the dog at the time?

10 A Yes, sir. I did. I threatened to shoot the dog, and I
11 told her that she needed to remove the dog and put it
12 somewhere.

13 Q Did you have any intention of shooting the dog?

14 A No, sir.

15 Q But that got the dog out of the --

16 A Yes, sir. It got her coherent enough to get the dog
17 and put the dog in a room.

18 Q Okay. And all of this is being recorded; is that
19 right?

20 A Yes, sir.

21 Q What happened then?

22 A Medical arrived. Other officers were on scene. We
23 cleared the scene for medical to come in and start rendering
24 aid to Mr. Cheeks.

25 Q So your purpose there that night was what?

MARTY CRAIN: DIRECT EXAMINATION

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1 A To render aid and clear the scene and make sure the
2 scene was controlled for any interior items that would be
3 located, and to make sure that the responding emergency
4 personnel wouldn't be in harms way.

5 Q When you were dealing with Johnny Lee Cheeks, describe
6 what you did to render aid to him?

7 A Tried to keep him calm. Tried to keep him from moving
8 as much as possible. The -- I could see blood from -- it
9 appeared to be a secondary wound, but because of his
10 clothing I couldn't really tell where it was at. I was
11 trying not to move him too terribly much because of that
12 secondary wound. Once he started getting a little sick and
13 --

14 Q Did he do some vomiting?

15 A Yes, sir. And I just tried to keep him calm and let
16 him know that everything was going, you know, to be okay.
17 That EMS was on their way and emergency personnel were
18 there.

19 Q When you had -- when he started vomiting did you have
20 any concern about his well-being?

21 A Yes, sir. Because -- because he was originally lying
22 flat on his back, and I knew, you know, if he continued
23 vomiting laying on his back he may choke.

24 Q So what did you do in response -- in reaction to that?

25 A Myself and Deputy Sweat, once Deputy Sweat was able to

MARTY CRAIN: DIRECT EXAMINATION

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1 make it into the residence, we were able to move him back a
2 little bit and kind of set him up and over. To try to set
3 him up to keep that from occurring.

4 Q To keep his airway clear?

5 A Yes, sir.

6 Q When did that did you see anything unusual?

7 A Yes, sir. I found a bullet.

8 Q Let me hand you what's been marked as State's Exhibit
9 No. 27. Is that what you saw?

10 A Yes, sir. It fell out of his clothing.

11 Q And -- just a moment. This is State's Exhibit No. 9.

12 Does that correlate to what you saw?

13 A Yes.

14 Q In the picture?

15 A Yes, sir.

16 Q Did you collect this evidence?

17 A No, sir. I did not.

18 Q Who did?

19 A Deputy Taylor.

20 Q But that was under your supervision later on; is that
21 right?

22 A Yes, sir.

23 MR. MOWRY: Give me just one moment.

24 THE COURT: Yes, sir.

25 Q While you were there did you notify any investigator?

MARTY CRAIN: DIRECT EXAMINATION

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1 A Yes.

2 Q Who did you -- who did you call?

3 A Our first call was to contact dispatch. Have dispatch
4 notify an investigator on call. Whichever investigator
5 would be on call. At that time it was Lieutenant Cheek.

6 Q And Lieutenant Cheek responded the scene; is that
7 right?

8 A Yes.

9 Q Mr. Crain, let me hand you what's been marked as
10 State's Exhibit No. 5. Do you recognize that?

11 A A DVD.

12 Q Yes, sir. Is this your -- the DVD of your deputy cam?

13 A I believe so.

14 Q Have you reviewed the deputy cam yourself since that
15 time?

16 A I have. I have.

17 Q Does it fairly and accurately depict what went on that
18 night?

19 A Yes, sir.

20 MR. MOWRY: Your Honor, I would offer this as a State's
21 exhibit at this time.

22 MS. WIYGUL: Without objection.

23 THE COURT: Admitting it into evidence at this point?

24 MR. MOWRY: Yes, sir.

25 THE COURT: State's 5 is in evidence without objection.

25 Q Lieutenant Crain, you stated that you were the first on

MARTY CRAIN: CROSS-EXAMINATION

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1 the scene; is that correct?

2 A Yes, ma'am.

3 Q And you were the shift supervisor?

4 A Yes, ma'am.

5 Q Would that mean you were in charge of the crime scene?

6 A No, ma'am. It just means that I was the first officer
7 on scene.

8 Q Who would have been in charge of that crime scene?

9 A Every officer that was on scene was in charge of
10 securing the crime scene.

11 Q Is there anyone in a crime scene that's assigned to be
12 in charge?

13 A Once the investigator is notified, once the
14 investigator arrives, he's in charge of the crime scene.

15 Q So Lieutenant Cheeks -- or Cheek would have been in
16 charge of the crime scene?

17 A Yes, ma'am.

18 Q And how long were you on the scene before Lieutenant
19 Cheek arrived?

20 A I don't recall.

21 Q Do you know if Ms. Ball was still on the scene when
22 Lieutenant Cheek arrived?

23 A Ms. Ball was still on the scene. Ms. Ball was in the
24 residence.

25 Q Okay. Lieutenant, did you observe any of the items

MARTY CRAIN: CROSS-EXAMINATION

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1 lying in the yard at the scene?

2 A After -- after the medical had came in and was
3 rendering aid to Mr. Cheek, yes.

4 Q Do you know if some glasses were located?

5 A Yes, I believe glasses were located.

6 Q And did those glasses belong to Mr. Cheeks?

7 A I don't know who the glasses belonged to.

8 Q Did you -- you stated that you had on a body cam,
9 correct?

10 A Yes, ma'am.

11 Q Did all the officers on the scene have a body cam?

12 A I'm not sure if all officers on scene had one, but
13 usually every officer has one, yes.

14 Q How does the police department keep track of who comes
15 and goes at crime scene?

16 A We most the time do a crime scene log.

17 Q Did they do a crime scene log in this case?

18 A I'm not sure.

19 Q Who would have been in charge of having a crime scene
20 log?

21 A Normally the last deputy on scene starts the
22 information.

23 Q And do you know who the last deputy on the scene was in
24 this case?

25 A No, ma'am. I was rendering aid to Mr. Cheeks.

MARTY CRAIN: CROSS-EXAMINATION

185

1 Q Okay. What's the purpose of a crime scene log?

2 A To make sure who -- to know who comes and goes inside a
3 crime scene.

4 Q Why is that important?

5 A In case any evidence is disturbed or we know who comes
6 in and any evidence can be removed.

7 Q And is some type of document kept or record kept of any
8 evidence removed from a crime scene?

9 A Yes, ma'am. When we do the initial report we do an
10 evidence log as well and we enter it into evidence.

11 Q And who prepares that log?

12 A Most of the time it's in the report that the deputy --
13 the deputy had placed evidence.

14 Q Prepares it?

15 A Yes, ma'am.

16 Q Is there one deputy that's in charge of evidence at a
17 crime scene?

18 A Not necessarily, no. Usually there's just one deputy
19 in charge of collecting the evidence.

20 Q Officer, can you walk us through and just the general
21 procedure of how you work a crime scene? Just step one,
22 step two.

23 A Step one, once you arrive on scene you secure the
24 scene. Make sure if anybody is there that needs help you
25 render aid. You secure the crime scene. You keep anybody

MARTY CRAIN: CROSS-EXAMINATION

186

1 that was not there out from the crime scene. You locate and
2 photograph and collect evidentiary items.

3 Q Thank you, sir. And all of this is documented,
4 correct?

5 A Yes, ma'am.

6 Q Now, you stated that you had on a body cam.

7 A Yes, ma'am.

8 Q And I believe Officer or Deputy Sweat and Deputy
9 Timmons also had on body cams?

10 A Yes, ma'am.

11 Q Were you all the only three out there with body cams?

12 A Deputy Taylor may have a body cam. I haven't -- if he
13 did, I haven't reviewed his video.

14 Q So the four of you were on the scene, and at some point
15 Lieutenant Cheek showed up on the scene. Who else was on
16 the scene other than the EMS personnel?

17 A Fire department.

18 Q Fire department was on the scene?

19 A First responders. They're called every time EMS is
20 called out for a medical call.

21 Q Did you call forensics to the scene?

22 A Our investigations division, once they arrive on scene,
23 take over that. It's up to them to do that.

24 Q Okay. So your job is to take care of the initial
25 whatever you find when you get there?

MARTY CRAIN: CROSS-EXAMINATION

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1 A Yes, ma'am.

2 Q And then you all call in the investigator to oversee
3 the investigation --

4 A Yes, ma'am.

5 Q -- kind of umbrella?

6 A Yes, ma'am.

7 Q That makes sense. Thank you, sir. Lieutenant, did you
8 take any actual pictures of the scene?

9 A No, ma'am.

10 Q Do you know who took pictures of the scene?

11 A Sergeant -- or Deputy Sweat at the time.

12 Q And how would he have known what to get pictures of?

13 A Based on any evidentiary -- any item that was found
14 that could have ended up being determined to be evidentiary
15 he would have photographed.

16 Q Okay. Is it generally accepted practice to take an
17 overview picture? Just kind of this is what the crime scene
18 looks like?

19 A Yes, ma'am. Sometimes.

20 Q Sometimes?

21 A Sometimes. Some officers do, some officers don't.

22 Q So is that just kind of an officer's personal choice?

23 A I assume it is whenever they're taking photographs. I
24 personally do.

25 Q Take pictures of the whole picture?

MARTY CRAIN: CROSS-EXAMINATION

188

1 A Yes, ma'am.

2 Q Because you never know what's going to be important
3 later on, correct?

4 A Yes, ma'am.

5 Q Officer, did you collect any of the evidence from the
6 scene?

7 A No, ma'am.

8 Q Did you observe any of the other officers collecting
9 evidence from the scene?

10 A No, ma'am.

11 Q Do you know if it's standard practice when anyone --
12 when any officer or investigator is collecting evidence from
13 a scene to wear the gloves?

14 A Yes, ma'am.

15 Q And why is that important?

16 A So it doesn't get tainted.

17 Q And these aren't leather gloves we're talking about, is
18 it?

19 A No, ma'am. Most of the time it's latex gloves.

20 Q Latex gloves. And is that to protect any fingerprints
21 that might exist on the scene?

22 A Possibly.

23 Q And any DNA that might exist on the scene?

24 A Possibly.

25 MS. WIYGUL: I don't have any further questions. Thank

MARTY CRAIN: REDIRECT EXAMINATION

189

1 you, Lieutenant.

2 THE WITNESS: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. MOWRY:

5 Q Lieutenant, were you wearing gloves yourself?

6 A No, sir. Not at the beginning.

7 Q Not at the beginning?

8 A No, sir.

9 Q Were you later on?

10 A Yes, sir. I put on a rubber glove on my right hand
11 when I do a --

12 Q And what was the purpose for that?

13 A When I helped Mr. Cheek up because of where he was
14 bleeding.

15 Q So you were trying to protect yourself from bloodborne
16 pathogens; is that right?

17 A Yes, sir.

18 Q Let me show you State's Exhibits 18 and 19 and ask you
19 if you can identify those.

20 A Yes. That was the vehicle that was sitting in front of
21 the front porch when we arrived on scene.

22 Q Is that more or less the broad picture?

23 A Yes, sir. This is from the edge of the driveway down
24 to here.

25 Q And what is this?

1 A This is the markings for where they located items that
2 could possibly be of evidentiary value.

3 Q How were these items discovered?

4 A The officers that were -- other officers that was on
5 the scene located them in the yard.

6 Q And that would have been Deputy Sweat and --

7 A Deputy Taylor.

8 Q -- Deputy Taylor? Okay. And that was their principal
9 function there that night; is that right?

10 A Yes, sir. Because I was rendering aid to Mr. Cheek and
11 Sergeant Timmons was on the front porch with Mr. Walker.

12 MR. MOWRY: Beg the Court's indulgence. Your Honor, I
13 would offer these two pictures as State's Exhibits at this
14 time.

15 THE COURT: What are their numbers again?

16 MR. MOWRY: These are 18 and 19.

17 THE COURT: Any objection, Ms. Wiygul?

18 MS. WIYGUL: No, Your Honor.

19 THE COURT: Without objection, State's 18 and 19 are in
20 evidence.

21 (Whereupon, State's Exhibit Nos. 18 and 19 were entered
22 into evidence.)

23 MR. MOWRY: And that's all I have for this witness.

24 THE COURT: Any recross at this point?

25 MS. WIYGUL: Not until after the video, Your Honor.

MARTY CRAIN: REDIRECT EXAMINATION

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1 THE COURT: Very good. How long does the video last,
2 approximately?

3 MR. MOWRY: Twenty to 30 minutes, Your Honor. I'm not
4 exactly sure how long.

5 THE COURT: Any objection to allowing this officer just
6 step off the stand so that he's not up here the entire time
7 it's playing?

8 MS. WIYGUL: No objection.

9 THE COURT: If you want, just go back into the
10 audience, Officer. Are you going to play this on the
11 overhead?

12 MR. MOWRY: Yes, sir.

13 THE COURT: We'll take a quick five minutes so that we
14 can use the facilities and then we'll resume with this
15 video. Don't talk about the case yet. But we'll get this
16 booted up and ready to roll, and that way you can come right
17 back out and we'll just keep going. Okay? Don't discuss
18 the case. We'll be at ease for a few minutes.

19 (Whereupon, the jury exited the courtroom.)

20 (Whereupon, a brief recess was held.)

21 THE COURT: Let's have the jury out then, please.

22 (Whereupon, the jury entered the courtroom.)

23 THE COURT: The record should reflect that the jury is
24 back and is seated. I apologize for the delay, ladies and
25 gentlemen. We were having a little bit of technical

1 difficulties getting the C-ROM booted up.

2 At this point, Mr. Bentley, you may proceed.

3 (Whereupon, Body Cam of Lieutenant Crain was published
4 and viewed before the Jury.)

5 THE COURT: All right, Solicitor, as your last witness
6 to come back up and we'll see if there are any additional
7 questions for him please.

8 (Whereupon, the witness returns to the witness stand.)

9 THE COURT: And, of course, you're still under oath,
10 sir. Mr. Mowry.

11 MR. MOWRY: I have just a few questions, Your Honor.

12 Q Lieutenant Crain, once you had gotten inside we heard
13 you speaking with the victim. Again, what did he tell you?

14 A That the man on the porch shot him.

15 Q The man on the porch shot him. We see a flash of
16 another deputy that was assisting you in helping Mr. Cheeks
17 sit up. Who was that?

18 A Deputy Sweat.

19 Q That was Steve Sweat?

20 A Yes, sir.

21 Q And then we see another group of individuals come in.
22 Are those first responders?

23 A Yes.

24 Q The EMTS that were coming there to transport?

25 A Yes.

MARTY CRAIN: RECROSS-EXAMINATION

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1 Q We heard a voice shouting. Was that you, "Get back
2 behind the cars"?

3 A Yes.

4 Q Was that you?

5 A Yes, sir.

6 Q Who were you calling to?

7 A Family members. There was a lot of folks starting to
8 show up, parked in the road, coming down the hill.

9 Q And is this what you talk about securing the scene?

10 A Yes.

11 Q To keep people away from --

12 A Yes.

13 Q -- contaminating evidence or what have you?

14 A Yes.

15 Q Officer, would you say that this is a fairly typical
16 chaotic scene?

17 A Yes.

18 MR. MOWRY: Thank you, sir. That's all I have.

19 RECROSS-EXAMINATION

20 BY MS. MOWRY:

21 Q Deputy, just to clarify what was -- what we just
22 watched, because some of it wasn't real clear. When you
23 were standing out on the porch, just on the very last
24 portion of the --

25 MS. WIYGUL: I'm sorry. Can I ask that we turn this

MARTY CRAIN: RECROSS-EXAMINATION

194

1 off?

2 Q On the very last part, whenever you were out on the
3 porch where Mr. Walker was --

4 A Yes, ma'am.

5 Q -- did you hear Mr. Walker speaking to either EMS or
6 yourselves stating -- where someone was asking how he got
7 the hole in his back?

8 A Yes. I believe that was the first responder.

9 Q Okay. And Mr. Walker told whoever he was speaking with
10 that he'd been drinking, didn't he?

11 A I don't recall.

12 Q Okay. But if it's on the --

13 A Yeah.

14 Q -- video cam --

15 A If it's on the video, yeah.

16 Q You said that a lot of family members started showing
17 up. Was any type of record made of who showed up at that
18 scene?

19 A No, ma'am. Because they didn't -- they didn't actual
20 enter into the crime scene. They just showed up and started
21 down the -- at the beginning of the driveway. The
22 evidentiary -- the evidentiary value, the stuff of value,
23 didn't start until beyond the driveway.

24 Q And I know that normally whenever there's a crime scene
25 there's this bright yellow tape that says "Crime Scene --

MARTY CRAIN: RECROSS-EXAMINATION

195

- 1 A Yes, ma'am.
- 2 Q -- caution, stay out," something of that nature, and I
- 3 didn't see any of that. Was there any crime scene tape
- 4 used?
- 5 A It was up -- it was up by the cars. By the road.
- 6 Q So it was up at the cars by the road?
- 7 A Yes, ma'am.
- 8 Q Were the family members that showed up -- it looked
- 9 like they were down the driveway close to the trailer.
- 10 A I'm not sure when they showed up. I was -- as you can
- 11 tell from the video I was inside.
- 12 Q Understood, sir. To the best of your knowledge, did
- 13 you see crime scene tape put up at this crime scene?
- 14 A Yes, sir.
- 15 Q Where was it located?
- 16 A By the -- right at the driveway by the car.
- 17 Q At the edge of the driveway?
- 18 A Yes, ma'am.
- 19 Q And when you saw the crowd of people showing up they
- 20 were on the driveway, weren't they?
- 21 A Yes, ma'am. Yes, ma'am.
- 22 Q Now, you actually called Spartanburg deputies, didn't
- 23 you?
- 24 A I asked for their assistance before ever arriving due
- 25 to how close the residence is and the area close to the

MARTY CRAIN: RECROSS-EXAMINATION

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1 Spartanburg County line. I asked for them. And two of them
2 were actually already there when I was asking for their ETA.
3 There was already two Spartanburg County deputies up in the
4 road. They were down the road behind all the fire, EMS and
5 other cars parked on the road.

6 Q What other cars were parked in the road?

7 A Some of the family members, patrol cars, the fire
8 trucks. Stuff like that.

9 Q You don't know, do you?

10 A That's what was in the road. Because most of it was
11 still there when we got ready to leave. But I don't know
12 who particular cars they were.

13 Q To the best of your knowledge, as any record made of
14 whatever Spartanburg deputies were on the scene?

15 A Not -- I never talked to them or anything.

16 Q What about any EMS personnel that was on the scene?

17 A I never talked to the EMS either.

18 Q What about the firefighters?

19 A Only communication I had was what you saw on the video.

20 Q Now, in this video, at one point you were telling the
21 other officers they needed to get Ms. Ball to get rid of the
22 dog so that they could get the other gun; is that correct?

23 A Uh-huh.

24 Q Who actually obtained that gun? Was it you?

25 A No, it was not.

MARTY CRAIN: RECROSS-EXAMINATION

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1 Q Officer, was it ever appropriate to have a civilian
2 witness on a scene collect evidence?

3 A No. That's why you saw on the video I told her not to
4 touch it.

5 Q Yes, sir. I saw that. And did you make any type of
6 search for the 32 automatic?

7 A He said that his gun -- that there could possibly be a
8 second gun. And they -- they looked. I just told them to
9 look around.

10 Q But Mr. Cheeks told you that his gun was a 32 and was
11 not a revolver; is that --

12 A Yes, ma'am. Or he told me -- he told me his gun was a
13 32. I don't think he answered me if I said it was a
14 revolver or not.

15 Q Yes, sir. On the cam I believe the exact quote is,
16 "It's a 32. It's not a revolver."

17 A Okay.

18 Q And you said this was a typically chaotic scene; is
19 that correct?

20 A Yes, ma'am.

21 Q Because crime scenes are so chaotic and there's
22 hysterical people on the scene, and there's people showing
23 up out of nowhere, is that why documentation is so important
24 on the crime scene?

25 A Yes, ma'am.

JAMISON TAYLOR: DIRECT EXAMINATION

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1 MS. WIYGUL: Thank you, Officer.

2 MR. MOWRY: That's all I have, Your Honor.

3 THE COURT: Sir, thank you very much for coming. You
4 are free to go.

5 THE WITNESS: Thank you.

6 (Whereupon, the witness steps down from the witness
7 stand.)

8 THE COURT: Solicitor, if you'll call your next
9 witness.

10 MR. MOWRY: I believe Deputy Taylor is here. If he is,
11 I will go ahead and call him.

12 JAMISON TAYLOR, having been first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MOWRY:

16 Q Your name is Jamison Taylor?

17 A Yes, sir.

18 Q And I believe you go by Bubba; is that right?

19 A Yes, sir.

20 Q And I believe just very recently you became a father;
21 is that correct?

22 A Yes, sir. In fact my newborn son is still in PICU at
23 Spartanburg Regional.

24 MR. MOWRY: And if it's all right with Your Honor we
25 are calling him out of order so he can get on back.

JAMISON TAYLOR: DIRECT EXAMINATION

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1 THE COURT: Certainly.

2 Q How long have you been employed as a Deputy Sheriff in
3 Laurens County?

4 A The first time was about nine and a half years, almost
5 10. This time I've been back just over a year and a half.

6 Q And where were you in the interim?

7 A Union County Sheriff's Office for just about two years.

8 Q So you've got, what, close to 15 years in law
9 enforcement?

10 A Just over 12 and a half total.

11 Q What is your capacity with the Laurens County Sheriff's
12 Office right now?

13 A Uniform Patrol Division.

14 Q And were you employed in that capacity back on
15 Halloween night, October 31st, going into November 1st of
16 2013?

17 A Yes, sir. I was.

18 Q Were you working the second -- or the overnight shift?

19 A Yes, sir. I was.

20 Q And that went from 7:00 to 7:00; is that right?

21 A Yes, sir. 7:00 p to 7:00 a.

22 Q Late that evening did you receive a call to go to REDACTED
23 River Hill Road in Enoree?

24 A Yes, sir.

25 Q About what time did you receive that call? Do you

1 recall?

2 A I don't recall right offhand.

3 Q Roughly?

4 A I would say probably before midnight. Right around in
5 there.

6 Q When you received that call what did you do?

7 A I responded with lights and siren for emergent call.
8 Came up I-26. I was right there at 56 in Clinton. Came up
9 I-26 eastbound -- or, excuse me, westbound. Crossed over to
10 Spartanburg County, which was the closest avenue for me,
11 coming down Highway 92, which is Parker Street or Parker
12 Road, and crossed back over on 221 that would bring us back
13 in Laurens County riding on River Hill Road.

14 Q Were there other officers on scene when you got there?

15 A I believe there might have been.

16 Q Did you see Lieutenant Crain when you got there?

17 A I believe so. Yes, sir.

18 Q Did Deputy Sweat arrive?

19 A Yes, sir.

20 Q And Deputy Timmons?

21 A Yes, sir.

22 Q Ultimately were there other first responders that came
23 to the scene?

24 A There was fire department that arrived. I believe it
25 was Sandy Springs Fire Department. Laurens County EMS

JAMISON TAYLOR: DIRECT EXAMINATION

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1 arrived shortly after. We also requested assistance from
2 Spartanburg County on their division. I believe they sent
3 us two guys over there to help with, you know, crowd
4 control, keeping the family off the scene, stuff like.
5 Assist us.

6 Q When you got there what did you do?

7 A Pretty much I just secured the scene outside the
8 residence. Allowed, you know, EMS to come in and do what
9 they needed to do, the first responders with the fire
10 department, and just kept anybody that wasn't supposed to be
11 there out of the scene.

12 Q Did you put any tape around the scene?

13 A Yes, sir.

14 Q The yellow crime scene tape?

15 A Yes, sir.

16 Q And what's the purpose of that?

17 A It's pretty much to make a barrier for the public not
18 to cross. Keep people back off the scene so it doesn't get
19 contaminated by somebody outside the scene other than the
20 first responders, EMS, law enforcement that need to be
21 there.

22 Q How did you make a determination as to where to put the
23 tape?

24 A Pretty much we just put it along the edge of the
25 roadway from one end -- from one tree pretty much up the

JAMISON TAYLOR: DIRECT EXAMINATION

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1 road to another tree and kind of -- I believe we come down a
2 little bit to kind of cut the yard off to keep people out of
3 it.

4 Q All right. What was your purpose in being there beyond
5 that?

6 A To assist in the investigation on scene at that time.
7 I also stayed with them out in the yard. I believe we found
8 a firearm in the yard. And then I collected the evidence to
9 be turned into the Sheriff's Office.

10 Q Let me show you a -- there we go. Let me show you
11 State's Exhibit 28 and ask you if you recognize that?

12 A Yes, sir. This was the gun that was found in the yard
13 beside the truck that was sitting there at the residence.

14 Q And State's Exhibit 18 --

15 MR. MOWRY: Your Honor, I would offer 28 as an exhibit
16 at this time.

17 THE COURT: Any objection to 28?

18 MS. WIYGUL: No, Your Honor.

19 THE COURT: That's in evidence then without objection.

20 (Whereupon, State's Exhibit No. 28 was entered into
21 evidence.)

22 A This picture is the truck that was sitting in the yard.

23 Q And let me show you 19 as well.

24 A This is the same picture with the truck, just closer
25 up, with the other deputies in the yard, with the evidence

JAMISON TAYLOR: DIRECT EXAMINATION

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1 markers that we had placed around everything so we could
2 photograph it as need be.

3 Q Okay. Who was assisting you with evidence collection?

4 A I believe it would be Sergeant Sweat we helping me to
5 keep all our facts together to make sure we had everything
6 we needed to put in evidence.

7 Q How do you go about doing that process? What is the --
8 what is the protocol? What are the steps you took?

9 A Once you identify something as evidence you're going to
10 photograph it. Then you -- make sure you have gloves on,
11 whether it be -- you know, some kind of rubber gloves. You
12 pick it up. Place it into the evidence bag. Log the
13 evidence bag as to what time, date, and what item you put in
14 that bag with an evidence -- item number. And you sign off
15 on it. Once you get everything into our system, in our
16 evidence collection, and then you place it into a secure
17 locker where the evidence custodian would have access to it
18 and be able to process it into the Sheriff's Office.

19 Q And I believe you bagged everything; is that right?

20 A Yes, sir.

21 Q And you signed the bag?

22 A I signed it. Yes, sir.

23 Q And then turned the evidence into the evidence
24 custodian; is that right?

25 A Yes, sir.

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1 Q And who was that?

2 A I believe it was --

3 Q Was it Todd Alexander?

4 A Todd Alexander at that time. We had had a --

5 Q Changeover?

6 A -- changeover there. Yes, sir.

7 Q Yes, sir. So now it's Sergeant Sweat, but Deputy Sweat
8 at the time; is that right?

9 A That's right. Deputy Sweat at the time.

10 Q He was assisting you with this process?

11 A Yes, sir.

12 Q How did you all divide the labor?

13 A Pretty much I would hold -- he would hold the bag, or I
14 would hold the bag, whichever way it was. But ultimately I
15 collected everything. It was placed into my custody, signed
16 over, you know, through me, because I never let go of
17 anything. I place it in my patrol vehicle in the trunk,
18 which is secured. You wouldn't be able to get into it
19 without a key. Then once we cleared I transported
20 everything that I had collected from the scene to the
21 Sheriff's Office, entered it into our computer system, which
22 keeps record of everything, and then put it over into our
23 temporary locker under a lock. Padlock.

24 Q And I believe Sergeant Sweat took most of the
25 photographs, if not all of them; is that right?

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1 A Yes, sir.

2 Q Where did the evidence markers come from? The yellow
3 markers that were placed at the scene?

4 A I don't quite recall on those. I think my -- I think
5 Sergeant Timmons may have had them, to the best of my
6 recollection.

7 Q And then you all placed them where you all found
8 evidence; is that right?

9 A Yes, sir.

10 Q Describe that process. How did you -- how did you scan
11 the scene to try and find pieces of evidence that might be
12 appropriate in this case?

13 A Pretty much when we're looking for evidence, I mean,
14 you look for, you know, shell casings in this case. Of
15 course, we had found the firearm laying on the ground. You
16 put a marker beside it. It's the first piece that you find.
17 You find the bullet casing, or shell casing. You put it the
18 next number and you just mark as you go. That way you know
19 which one you're picking up first.

20 Q Matter of fact, on the deputy cam we just heard there
21 is a voice that says -- you know, you hear somebody talking
22 about firearms and then you hear another say, "I'm standing
23 over one. I'm not moving."

24 A Right.

25 Q Was that you that said that?

1 A I believe so. I'm not 100 percent sure.

2 Q And is that the firearm you had found?

3 A Yes, sir.

4 Q Let me just hand you a series of photographs and ask
5 you if you can identify them. This is State's Exhibit 26.

6 A This would be one of the shell casings that we found
7 kind of hid in the mulch of the yard.

8 Q Okay. 25?

9 A Another spent shell casing.

10 Q State's Exhibit 21?

11 A I believe that was a cross that came off of a necklace
12 that was found in the yard.

13 Q State's Exhibit 10?

14 A This is the cross that's in the picture for State's
15 Exhibit 21 that was found at -- there was a necklace, I
16 believe, found not far from them.

17 Q And speaking of which, State's Exhibit 15?

18 A That would be the rope chain type necklace that was
19 found in the yard.

20 Q And --

21 A That's it.

22 Q -- State's Exhibit 22?

23 A That's the same picture.

24 Q Okay. And on both the crucifix and the chain that you
25 had talked about depicted in the photographs, how do you

JAMISON TAYLOR: DIRECT EXAMINATION

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1 know that those are the ones that you collected from the
2 scene?

3 A They had my signature on the bag as being the one
4 collected, and it also shows a chain of custody where on
5 11/1/2013 I turned it into evidence.

6 Q And J.C. Taylor, that's you?

7 A J.L. Taylor, yes.

8 Q J.L. Taylor. I'm sorry. I misread.

9 MR. MOWRY: Your Honor, I would offer State's 11 and 10
10 as State's Exhibits at this time.

11 THE COURT: Any objection?

12 MS. WIYGUL: Is that the chain and the cross?

13 THE COURT: That's correct.

14 MS. WIYGUL: Without objection.

15 THE COURT: Those will be in evidence.

16 (Whereupon, State's Exhibit Nos. 10 and 11 were entered
17 into evidence.)

18 Q Now, Deputy, I want to show you a few more pictures, if
19 you don't mind. This is State's Exhibit 20. Do you
20 recognize that?

21 A That's spent shell casing.

22 Q And is this another one that you found?

23 A Yes, sir.

24 Q And did you, in fact, collect --

25 A Yes.

1 Q -- that picture -- or that shell casing?

2 A Yes, sir.

3 Q And State's Exhibit 14?

4 A That's another spent shell casing found in the same
5 yard.

6 Q All right. Let me show you these items. These are
7 State's Exhibits 9 and 29, and ask you if you recognize
8 those?

9 A Yes, sir.

10 Q What are those, please, sir?

11 A Number 9 is a spent shell casing, and both in Number 29
12 are spent shell casings.

13 Q And I believe there's something else in --

14 A Yes, sir. In Number 9 --

15 Q -- Number 9.

16 A -- there is a actual led bullet.

17 Q Led projectile?

18 A Yes, sir.

19 Q And where was that collected from? Do you recall?

20 A I believe on the front porch area.

21 Q Let me ask you -- let me show you State's Exhibit 27
22 and ask you if you recognize that?

23 A Yes, sir. That's projectiles that was found at the
24 residence, right in the front of the house.

25 Q And that correlates to the projectile right here,

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1 State's Exhibit -- in State's Exhibit No. 9; is that right?

2 A Yes.

3 MR. MOWRY: Your Honor, I would offer the photographs,
4 State's Exhibits 26, 25, 21, 15, 20 and 14 into evidence at
5 this time.

6 THE COURT: Give me those again. I'm lost.

7 MR. MOWRY: I'm sorry, Your Honor. 26, 25, 21, 15, 20
8 and 14.

9 THE COURT: Any objection?

10 MS. WIYGUL: Without objection, Your Honor.

11 THE COURT: Without objection, those exhibits will be
12 in evidence.

13 (Whereupon, State's Exhibit Nos. 14, 15, 20, 21, 25 and
14 26 were entered into evidence.)

15 MR. MOWRY: And also, if I have not already, State's
16 Exhibit 27.

17 MS. WIYGUL: Your Honor, I would simply ask for some
18 follow-up questions regarding, I believe, 29 as to his
19 personal knowledge of where the item was found when the
20 picture was taken.

21 THE COURT: Okay. You're seeking introduction though
22 of 27 at this point --

23 MR. MOWRY: Yes, sir.

24 THE COURT: -- and not 29? Any objection to 27?

25 MS. WIYGUL: No.

1 THE COURT: I don't have 29 into evidence yet.

2 MR. MOWRY: I believe -- 29, no, sir. I will not -- I
3 will not admit that until -- 29 or 9 until the SLED firearms
4 expert testifies.

5 THE COURT: 27 is in evidence.

6 MS. WIYGUL: I apologize. I think I may be confusing
7 myself here. Is 27 the picture?

8 MR. MOWRY: Yes.

9 MS. WIYGUL: I apologize for the confusion, Your Honor.
10 I would ask that more foundation be laid as to 27.

11 THE COURT: What is the --

12 MR. MOWRY: That's the projectile, Your Honor.

13 THE COURT: All right. If you want to ask some
14 additional questions, that's fine.

15 Q Did you collect the projectile?

16 A Yes, sir.

17 Q And is that a picture of it?

18 A Yes, sir.

19 Q Is that the picture of where you collected it from?

20 A Yes, sir.

21 MR. MOWRY: I believe that's --

22 MS. WIYGUL: I can ask questions on cross to clarify,
23 Your Honor. I won't object to admitting it.

24 THE COURT: Very good. 27 is in evidence.

25 (Whereupon, State's Exhibit No. 27 was entered into

JAMISON TAYLOR: DIRECT EXAMINATION

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1 evidence.

2 Q Did you also collect this pistol in the box that has
3 been marked State's Exhibit No. 4? Does that look familiar?

4 A Yes, sir.

5 Q And where did you collect that from? Do you recall?

6 A Not right offhand. But I do remember collecting it.

7 Q Let me hand you State's Exhibit 16 and 17 and ask you
8 if you recognize those?

9 A It's going to be the same firearm.

10 Q And where is that firearm located in the picture?

11 Where does it appear to be located?

12 A It appears to be on some kind of like cover or blanket
13 or something like that.

14 Q So was that gun collected from the bedroom?

15 A I believe it might have been.

16 Q All right, sir.

17 MR. MOWRY: I would offer these pictures as State's
18 Exhibits at this time, Your Honor.

19 MS. WIYGUL: Your Honor, at this time I'd object
20 because the officer has testified he collected it, but then
21 he testified he believed it might have been collected from
22 the bedroom. I just that he clarify whether he collected it
23 or not. And if he did, where did he get it.

24 THE COURT: I'm going to allow the Exhibits into
25 evidence, 16 and 17. You can go to that on cross or follow-

JAMISON TAYLOR: DIRECT EXAMINATION

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1 up by Mr. Mowry.

2 (Whereupon, State's Exhibit Nos. 16 and 17 were entered
3 into evidence.)

4 Q Did you take the gun into evidence yourself?

5 A Yes, sir.

6 Q And was Deputy Sweat with you when that happened --

7 A No.

8 Q -- to the best of your memory? Deputy Taylor, when you
9 are collecting evidence at a crime scene do you know
10 immediately whether or not something is going to be of
11 relevance to the case ultimately?

12 A It is a possibility it could be, so anything you think
13 that may going to be evidence in that case, or you might
14 need as evidence, you want to go ahead and collect it right
15 then.

16 Q Is it fair to say it's better to have it and not need
17 it than need it and not have it?

18 A Yes, sir.

19 Q So if you see something that you think might be
20 relevant you collect it; is that right?

21 A Yes, sir.

22 Q Does every piece of evidence you collect necessarily
23 turn out to have any evidentiary value?

24 A It just depends on the case.

25 Q But may or may not, is that right?

JAMISON TAYLOR: CROSS-EXAMINATION

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1 A Yes, sir.

2 MR. MOWRY: Thank you, sir. That's all I have.

3 THE WITNESS: Thank you.

4 THE COURT: Cross, Ms. Wiygul.

5 CROSS-EXAMINATION

6 BY MS. WIYGUL:

7 Q Deputy, you said that you collected --

8 A Are you looking for the revolver?

9 Q I am.

10 A It's right here.

11 Q Okay. So you collected this?

12 A Yes, ma'am.

13 Q Where did you collect it from?

14 A I believe it would be somewhere right around close to
15 the front of the house, in that area.

16 Q Okay. You collected this gun from the front of the
17 house. Was it near the sofa?

18 A It may have been. I don't recall right offhand.

19 Q At what point did you collect this?

20 A While we were going through everything after EMS had
21 done left with the victim. Whenever Lieutenant Cheek had
22 already got there, when we started getting everything
23 together.

24 Q Did you take the pictures of this firearm laying on the
25 mattress?

JAMISON TAYLOR: CROSS-EXAMINATION

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1 A I think Deputy Sweat might have.

2 Q Did you wear a body cam to the scene?

3 A I don't remember if I had it on right then or not. I
4 think it may have still been in the car charging.

5 Q You don't remember?

6 A No, ma'am.

7 Q Didn't you prepare an incident report in this case?

8 A Yes, ma'am.

9 Q Would you have documented in that incident report
10 everything that was important in this case?

11 A Yes, ma'am.

12 Q Would you have documented if you had found this gun
13 near the front of the house?

14 A Yes, ma'am.

15 Q Would it surprise you to know that that's not reflected
16 in the incident report? Officer, would it surprise you to
17 know that that information is not contained in the incident
18 report?

19 A Yes, ma'am.

20 Q And you don't know whether you had a body cam on or
21 not?

22 A I believe I left it in the car to charge because I had
23 already previously been on a call and it had died on me on -
24 - the battery had gone out. And when we got this call I was
25 trying to get up there to get the call.

JAMISON TAYLOR: CROSS-EXAMINATION

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1 Q When you were looking for evidence where did you look
2 for a 32 automatic handgun?

3 A Anywhere you have to - Could be in the yard, could be
4 in the house, could be in a vehicle.

5 Q Did you look for a 32 automatic handgun?

6 A I don't recall.

7 Q If you had looked for one would it be contained in your
8 incident report that you had made an effort to look for it?

9 A It's possible.

10 Q Would it surprise you to know that there is no mention
11 in your incident report of a 32 caliber automatic handgun?

12 A No, ma'am.

13 Q Officer, to the best of your knowledge were any guns
14 registered to Mr. Cheeks?

15 A Not to my knowledge. No, ma'am.

16 Q Were any guns registered to Ms. Ball?

17 A Not to my knowledge.

18 Q You collected Mr. Cheeks chain from the yard; is that
19 correct?

20 A Yes, ma'am.

21 Q Where did you find that item in the yard?

22 A I believe it was just in the general area not far from
23 where the crucifix was found.

24 Q If the incident reported that the neck chain was found
25 closer to the road near a small retaining wall, would you

1 agree that that's where it was located?

2 A Probably. Yes, ma'am.

3 Q If that's what the incident report says.

4 A Yes, ma'am.

5 Q Would looking at the incident report help to refresh
6 your memory as to where these items were located?

7 A Yes, ma'am.

8 Q I apologize, Deputy. I'm looking for the correct page.

9 MS. WIYGUL: Begging the Court's indulgence. I pulled
10 the page out early to have it at the ready and misplaced it.

11 THE COURT: You're fine.

12 Q If you could take a look at this, Deputy. Is that, in
13 fact, part of the incident report that you prepared in this
14 case?

15 A Yes, ma'am.

16 Q And does it seem to list the items of evidence that you
17 collected from the scene?

18 A Yes, ma'am.

19 Q And does it reflect that item number 1 was a gold charm
20 cross --

21 A Yes, ma'am.

22 Q -- that was located near the front driver's side bumper
23 of Mr. Cheeks' vehicle?

24 A Give me just one second. Yes, ma'am, along with the
25 two spent .380 caliber shell casings.

JAMISON TAYLOR: CROSS-EXAMINATION

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1 Q Okay. And that would be two of the spent brass, and
2 then you found another .380 spent brass next to the front
3 porch step beside a tree, didn't you?

4 A Give me just one second. Which item are you looking
5 for?

6 Q I believe it's item number 4 in your incident report.

7 A Yes, ma'am.

8 Q And the gold neck chain, item number 9 in your incident
9 report, it was located closer to the road near a small
10 retaining wall, wasn't it?

11 A Give me just one second. In this it just states that
12 the only thing -- it says item 5 --

13 Q And I believe that's a bottle of --

14 A -- a bottle of Seagram's liquor having blood splatter
15 on it, item number 5, was located upon the ground closer to
16 the road near a small retaining wall. A yellow in color
17 metal necklace, item number 9, was located upon the ground.

18 Q Do we know where on the ground?

19 A It doesn't state in there. Just upon the ground. But
20 it was on the same property.

21 Q But we don't know where on the property?

22 A It doesn't state in there right off.

23 Q And you don't recollect?

24 A No, ma'am.

25 Q These little placards, for lack of a better word, with

JAMISON TAYLOR: CROSS-EXAMINATION

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1 the numbers on them --

2 A The yellow placards.

3 Q Yes, sir. Where you mark the evidence that you found.

4 A Yes, ma'am.

5 Q Did you mark the neck chain where you found it with a
6 nine?

7 A I believe so. Yes, ma'am. It should have been -- be
8 listed as number 9, it would more than likely had placard
9 number 9 on it, I believe.

10 Q And would it be a closeup picture, something of this
11 nature?

12 A I can't tell.

13 Q This was -- I'm just asking --

14 A Similar to. It wouldn't be right on top -- if this was
15 evidence we wouldn't put it right on top of it. We would
16 put it either -- around it so that we could have it marked
17 for the evidence.

18 Q Now, when you bend down to get a picture of it right
19 there -- and I understand that, because that's where you can
20 actually see the item you're getting a picture of.

21 A Right.

22 Q Wouldn't it make sense to take a picture a little bit
23 farther back so you can see where the item was located in
24 the yard?

25 A It probably would be. Yes, ma'am.

JAMISON TAYLOR: CROSS-EXAMINATION

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1 Q Deputy, would you agree that glasses were found, item
2 number 8 in your incident report?

3 A Give me just one moment, please.

4 Q And I believe there was blood splatter, item number 7,
5 in your incident report.

6 A That was -- under the front bumper of the SUV a pair of
7 glasses was located on the ground. Blood splatter located
8 upon on the ground near the glasses, item number 7, in front
9 of the vent. Yes, ma'am.

10 Q And you collected those glasses from the scene,
11 correct?

12 A I believe so. Yes, ma'am.

13 Q And you had a kit and you collected the blood splatter
14 from the scene, didn't you?

15 A I'm not a crime scene technologist.

16 Q So you did not collect the blood splatter?

17 A No, ma'am. I'm not trained in collection of blood.

18 Q I understand that. Whose job would it be to collect
19 that blood splatter?

20 A It would either be the on-scene investigator of the
21 Sheriff's Office or SLED's crime scene.

22 Q Okay. To the best of your knowledge, was SLED's crime
23 scene investigative unit called to the scene?

24 A That's not my call. That would be the lead
25 investigator when he arrives.

1 Q And that would be investigator Cheek?

2 A Yes, ma'am.

3 Q All right. Deputy, did you also collect a white tank
4 top with blood on it that was left on the porch by EMS, item
5 number 10 in your incident report?

6 A Give me just one second. And along with another white
7 in color shirt. Should be marked item number 11.

8 Q Yes, sir. And those were marked items 10 and 11 in
9 your incident report; is that correct?

10 A Yes, ma'am.

11 Q And your incident report reflects that pictures were
12 taken of these items, doesn't it?

13 A Yeah, I believe so.

14 Q Does it indicate who took those pictures?

15 A No, ma'am.

16 Q Do you know how many deputies were on the scene just
17 with a camera? Not a body cam, but just with a camera to
18 take pictures?

19 A The regular -- just the regular Kodak cameras?

20 Q Yes, sir.

21 A I believe all of us had one, but I believe at the time
22 it was Deputy Sweat was the one that was taking pictures of
23 everything as we collected it.

24 Q Do you know of any reason why Deputy Sweat would not
25 have provided the pictures of those tee shirts -- or the tee

JAMISON TAYLOR: CROSS-EXAMINATION

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1 shirt and the tank top covered in blood?

2 A I have no idea. I can't answer for him.

3 Q Officer, there's also item number 12 in the incident
4 report that -- did you collect that also?

5 A Give me just a second. I've got to find it. I'm
6 sorry. It took me just a second to find where -- yes,
7 ma'am.

8 Q And what was that?

9 A It was a revolver that was found to have two spent
10 rounds and two unspent rounds in the cylinder of the weapon.
11 Of course, we have to take -- any time we have a loaded
12 firearm we have to make it what we call safe. We have to
13 take any loaded ammunition out of it, for our safety and
14 anybody else's safety, and we package the spent -- I believe
15 we package the spent rounds and the unspent rounds separate,
16 along with making sure the revolver was completely safe to
17 handle by evidence of anybody else with SLED for testing or
18 anything.

19 Q Yes, sir. To preserve the evidence you wear gloves,
20 correct?

21 A Yes, ma'am.

22 Q You're very careful where you lay stuff, correct?

23 A Yes, ma'am.

24 Q You put it into plastic bags or something to protect it
25 from contamination?

1 A In plastic -- in a plastic evidence bag that's sealed
2 with a -- I guess like a glue.

3 Q Yes, sir.

4 A A tamper resistant glue, or we put it into a paper
5 evidence bag.

6 Q And is that to preserve any fingerprints or DNA that
7 may exist on the evidence for the testing?

8 A Yes, ma'am.

9 Q And you followed those procedures in this case, didn't
10 you?

11 A Yes, ma'am.

12 Q Officer, who was in charge of this crime scene?

13 A After Lieutenant Cheek arrived it would have been the
14 supervisor on duty.

15 Q And after Lieutenant Cheek arrived who was in charge?

16 A He is.

17 Q Did you take the phone -- any of the phones that were
18 taken?

19 A I don't recall taking any phones.

20 Q That was my question, did you take any of the phones?

21 A I don't recall taking any phones.

22 Q If there was no mention in the incident report would
23 you agree that you did not take any phones?

24 A Yes, ma'am.

25 Q And this item here, sir. This projectile.

JAMISON TAYLOR: CROSS-EXAMINATION

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1 A Uh-huh.

2 Q Would you agree that it was actually located just
3 inside of the trailer?

4 A. Yes, I believe so. I believe the -- would be like the
5 threshold part.

6 Q Yes, sir.

7 A Or weather striping. And it was lying right there at
8 the door.

9 Q Right inside the door where it had fallen out of Mr.
10 Cheeks' clothing?

11 A Yes, ma'am.

12 Q Thank you, Deputy. Deputy, did you take any pictures
13 of the crime scene tape?

14 A Of the tape?

15 Q Yes, sir.

16 A No, ma'am. Not that I recall. The majority of the
17 pictures, I believe that Deputy Sweat took, were of the
18 evidence that we located; the firearms, projectiles, spent
19 rounds. I don't recall any pictures of the tape itself.

20 Q Sir, could you take a look at this box and the
21 information listed on it.

22 A All right.

23 Q Could you tell us what was contained within that box?

24 A Just one second. According to what our evidence
25 custodian -- for the label that he brings out for his

1 inventory to keep track of it before he takes it to SLED for
2 testing, shows, of course, the Laurens County Sheriff's
3 Office. He gives a case number of 13003508 --

4 Q And I apologize, Deputy. I won't make you read out all
5 the numbers. I'm just curious --

6 A What was in it.

7 Q -- what was in it.

8 A Okay. I'm sorry. It shows that a Rossi 38 Special
9 revolver with a wooden handle and holster was inside this
10 box.

11 Q Is that this gun?

12 A Yes, ma'am.

13 Q And did you collect a holster from the scene?

14 A I believe so, if it's listed in evidence if it was
15 there with it.

16 Q Could you take a look in the box? Do you recall
17 collecting that from the scene?

18 A Yes, ma'am.

19 Q And what are you holding?

20 A The holster.

21 Q And was that collected along with that revolver?

22 A Yes, ma'am.

23 Q And you stated you found it somewhere near the front of
24 the house?

25 A I believe so. Yes, ma'am.

JAMISON TAYLOR: CROSS-EXAMINATION

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- 1 Q And is there one more item there in the box, sir?
- 2 A There's a --
- 3 Q No, it's a little one.
- 4 A Oh, I'm sorry.
- 5 Q And can you tell us what that is, sir.
- 6 A It says here a swab from item 8, revolver right side
- 7 near ...
- 8 Q What does that mean?
- 9 A I'm guessing it's something that SLED did in their
- 10 forensics lab.
- 11 Q Thank you, sir. You can put it all back in the box.
- 12 Deputy, you were only in charge of collecting the evidence
- 13 and handing over the property into evidence; is that
- 14 correct?
- 15 A Yes, ma'am. That was -- once we got up there and got
- 16 the scene secure that was what I was assigned to do.
- 17 Q Was it up to you to decide what was sent to SLED to be
- 18 tested?
- 19 A No, ma'am.
- 20 Q Was it up to you to get forensics out to the scene to
- 21 investigate the scene?
- 22 A No, ma'am.
- 23 Q Can you show us on this aerial photograph just
- 24 approximately where you put the crime scene tape? And I
- 25 believe this is the house right here and this is the front.

JAMISON TAYLOR: REDIRECT EXAMINATION

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1 A Okay. The crime scene tape -- if this is the house,
2 this is the driveway down into the residence off of River
3 Hill Road in Enoree. The crime scene tape went from across
4 the driveway here, because my car was parked right here
5 going toward -- this would be going back toward to 21. My
6 car was right here on this corner, to kind of cut traffic
7 off. Keep any cars from going in. And then, of course,
8 Spartanburg County come up and parked close to mine, but not
9 too close. But they helped -- helped us maintain security
10 on that crime scene. But the tape went across from tree to
11 tree to kind of cut this off and keep anybody -- and we, of
12 course, could see anybody coming from here.

13 Q Would you have considered this entire piece of property
14 the crime scene?

15 A That may be. Yes, ma'am.

16 MS. WIYGUL: Thank you, sir. I have no further
17 questions.

18 THE COURT: Any redirect?

19 REDIRECT EXAMINATION

20 BY MR. MOWRY:

21 Q Deputy, I believe we've already referred to State's
22 Exhibit 19; is that right?

23 A Yes, sir. This is State's Exhibit 19.

24 Q What are those little yellow things in there?

25 A The yellow things are the evidence markers where we

JAMISON TAYLOR: REDIRECT EXAMINATION

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1 find stuff. We put a number with it to identify what we
2 have found as we take pictures. So we go 1 through --

3 Q And the car here was there when you got there; is that
4 right?

5 A Yes, sir.

6 Q The structure back here, that's where the victim was
7 found; is that right?

8 A Yes, sir. He was -- I believe he was found on the
9 front porch in a chair, swing, something like that. But he
10 was on the front porch when I got there.

11 Q So this would have been the porch area; is that right?

12 A Yes, sir.

13 Q This up here?

14 A That would be the front porch.

15 Q And the placards that we see, the little yellow markers
16 out there, correlate to the evidence that you discovered in
17 the yard; is that right?

18 A Yes, sir.

19 MR. MOWRY: Your Honor, I would offer that page of his
20 incident report that correlates to the numbers of the items
21 that he collected as evidence at this time. Ms. Wiygul
22 referred to it a great deal. I would simply offer it as
23 evidence.

24 MS. WIYGUL: I have no objection, Your Honor.

25 THE COURT: All right. Normally under the law we

JAMISON TAYLOR: REDIRECT EXAMINATION

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1 wouldn't admit an incident report, but if there's no
2 objection and that will help correlate the different
3 exhibits, we'll go ahead and allow it into evidence. What
4 would that be?

5 MR. MOWRY: This is number 30, Your Honor.

6 THE COURT: Okay. 30 into evidence without objection.

7 (Whereupon, State's Exhibit No. 30 was entered into
8 evidence.)

9 Q Just to be sure that we're literally reading off the
10 same page, can you look on here, and beginning with the
11 sentence that says, "The weapon that" go ahead and tell us
12 what that is and where it was found.

13 A All right. "The weapon that that Cheeks had described
14 shooting his assailant with was located under the master
15 bedroom bed. It was a black in color Rossi 38 Special
16 revolver with the holster, item number 16."

17 Q And would that correlate to this revolver and these
18 pictures 17 and 16?

19 A Yes, sir.

20 Q Now, based on your incident report, is there any doubt
21 where those items were found?

22 A No, sir.

23 Q Ms. Wiygul also asked you about calling out the
24 forensics unit. Is there a forensics unit with the
25 Sheriff's Office?

JAMISON TAYLOR: RECROSS-EXAMINATION

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1 A Not one that -- like Greenville, Spartanburg.

2 Q NCIS or something like that?

3 A Right. Normally if we have something like that, when
4 the investigator on scene normally would advise the State
5 Law Enforcement Division.

6 Q Or you all handle it in-house?

7 A Right.

8 Q Depending on the situation?

9 A Yeah, right.

10 MR. MOWRY: Thank you, sir. That's all.

11 RECROSS-EXAMINATION

12 BY MS. WIYGUL:

13 Q Deputy, you're aware that the victim told another
14 officer that his gun was a 32, not a revolver, correct?

15 A I don't recall. I wasn't right there when the victim
16 told the other officer that.

17 Q So when you just said you were -- that the Rossi that
18 the gun that the victim he said he shot someone with, you're
19 just repeating what you were told, correct?

20 A Yes, ma'am.

21 Q So you don't know?

22 A No, ma'am.

23 Q On that page of the incident report --

24 A This one?

25 Q Yes, sir.

1 A Okay.

2 Q Do you see a reference to a crime scene log that was
3 prepared in this case?

4 A No, ma'am. Not that I recall. But other -- other than
5 what we collected as evidence when we took pictures.

6 Q Could you please read this to me?

7 A "A crime scene log was collected by Deputy Sweat."

8 Q Okay. And would you agree that that seems to reflect
9 there was a crime scene log at this scene.

10 A Yes, ma'am.

11 Q And that it was in the possession of Deputy Sweat?

12 A Yes, ma'am.

13 Q These items number 12 that you recovered, were they out
14 of this gun? And, I'm sorry, when I say item 12 I mean on
15 your incident report.

16 A Yes, ma'am. I believe so.

17 MS. WIYGUL: Thank you, sir. I have no further
18 questions.

19 THE COURT: Thank you, sir. You can step down. You
20 are free to go, and congratulations on your son.

21 THE WITNESS: Thank you, Your Honor.

22 (Whereupon, the witness stepped down from the witness
23 stand.)

24 THE COURT: All right. We're going to get to at least
25 one more witness in this evening, but we're going to take a

1 brief break before we do that.

2 MR. MOWRY: Yes, sir.

3 THE COURT: Take five minutes, 10 minutes or so. If
4 you need to step outside -- I meant to mention this earlier.
5 If you need to step out and have a cigarette, let the
6 bailiff know. Okay? He'll get you outside. Don't talk
7 about the case yet. We'll be at ease for about five
8 minutes. Thank you.

9 (Whereupon, the jury exited the courtroom at 4:40 p.m.)

10 (Whereupon, a recess was held from 4:40 p.m. to 4:57
11 p.m.)

12 THE COURT: Let's go ahead and get back on the record.
13 A few quick housekeeping matters. First of all, the grand
14 jury foreperson, Ms. Thompson, was here earlier. I allowed
15 her to make a written report of the grand jury report.
16 Apparently there were 185 true bills, zero no bills, 18
17 people present. I received the written report, I have
18 signed it and we'll give that to the Clerk of Court.

19 Additionally, Mr. Mowry, while we were on break
20 apparently you found a document that would be the log of the
21 individuals that were present --

22 MR. MOWRY: Yes, sir.

23 THE COURT: -- on October 31st.

24 MR. MOWRY: And Lieutenant Cheek and Mr. Bentley and I
25 met. We went through page by page through Mr. Cheek's file

1 to make sure that we had everything and all three of us
2 missed this. But there is a handwritten list of the people
3 that were on the scene. I think most of the ones probably
4 Ms. Wiygul was aware of. But in any event, this was not
5 provided to her. We have made a copy of it and given it to
6 her at this point. I would submit that it is not material,
7 but we were late and it was our fault that we did not get it
8 to her.

9 THE COURT: All right. The list simply contains
10 simply a handwritten list of the individuals that were on
11 scene. Is that the only thing --

12 MR. MOWRY: Yes, sir. And I can make a court's exhibit
13 of our copy, if you like.

14 THE COURT: Please.

15 (Whereupon, List of Names Present at Crime Scene was
16 marked as Court's Exhibit No. 3 for identification.)

17 THE COURT: Ms. Wiygul, from our conversation in
18 chambers, you did have a motion for -- was it a mistrial or
19 a continuation?

20 MS. WIYGUL: Your Honor, I make a motion for a mistrial
21 in this case. This is a handwritten list. It's not dated.
22 We don't know who prepared it. We've already had two
23 officers testify that it didn't exist. We've asked
24 specifically for this document repeatedly and have been told
25 it does not exist by the State. I can't unring the bell of

1 my cross-examination on the two officers that have already
2 testified. And I'm without remedy as far as asking them any
3 questions about this document. I have not been able to look
4 into any of these people, speak with any of them, and it
5 could very well have been very material to this case.

6 THE COURT: The list the names on that list, Solicitor,
7 do they also correspond with names on the incident report?
8 Have you had a chance to compare the two?

9 MR. MOWRY: Well, there were fire people and there were
10 EMS that -- we called EMS ourselves to get the people that
11 were there and find out who had responded. Ms. Wiygul could
12 have done that herself, if she had wished. So I would
13 submit that this was not exactly a situation where the State
14 was in sole possession of the information. But we did have
15 the list. We did not -- not through malfeasance, just
16 oversight did not provide it.

17 MS. WIYGUL: Your Honor, there are 19 people listed on
18 this list. Eight of them are mentioned in the incident
19 report. Three of those being Mr. Walker, Mr. Cheeks and Ms.
20 Ball.

21 THE COURT: All right. Well again, just merely a list
22 of the individuals who were on the scene, the Court in
23 deciding a motion for a mistrial has to take into account
24 the character of the evidence. The way that I typically
25 address this kind of a situation is obviously the State is

1 not allowed allude to this during their case in chief. If,
2 Ms. Wiygul, you were to choose to use it in some fashion --
3 obviously I'm not going to restrict you at this point in
4 time. But because this is a relatively vanilla piece of
5 evidence, if it can be characterized as evidence. It's not
6 really probative of any of the issues involved in this case.
7 It's merely a listing of the individuals who were at that
8 location. I do understand your situation about unringing
9 the bell, things of that nature. But at the same time, if -
10 - because I'm basically keeping the State at this point from
11 alluding to it, if it otherwise does not make it into the
12 record, you're free to argue to the jury that they do not
13 have that list for their consideration. And I would
14 otherwise deny your motion for a mistrial just based on the
15 relatively vanilla nature of this particular document,
16 Court's 3. Had it been something along the lines of a
17 statement of the Defendant involved we would be talking
18 about a completely different animal obviously. If the
19 Defendant had given a confession. If that was what was
20 reflected on Court's 3 that, yes, he did with malice
21 aforethought shoot Mr. Cheeks, that would be a different
22 animal entirely and the court would be inclined to grant
23 your mistrial. But just a list of individuals, I don't
24 think that is of such import or significance to warrant
25 mistrying this case.

1 MS. WIYGUL: Your Honor, I would argue that that puts
2 the defense in the position of almost having to put up
3 evidence in this case, and I would request that the Court
4 consider an alternative. That the Court consider the
5 publishing the Court exhibit, this document to the jury,
6 with the information that this document was only within the
7 past few minutes provided to the Defense.

8 THE COURT: Does the State have any problem with that?

9 MR. MOWRY: Your Honor, I think your earlier ruling
10 that if she wants to talk about it, she can talk about it
11 and we won't bring it up at all is probably the appropriate
12 one.

13 MS. WIYGUL: And, Your Honor, my response would be that
14 since the State feels like it's really not that big a deal,
15 that it shouldn't be that big a deal for the jury to know
16 about it.

17 MR. MOWRY: Steve Sweat is going to testify in a couple
18 of minutes -- or, I guess, tomorrow morning, Your Honor, if
19 we're only going to do one more witness, and he's the one
20 who took the log.

21 THE COURT: All right. Well, that gives me the
22 opportunity to consider it overnight.

23 MR. MOWRY: Thank you, Your Honor.

24 MS. WIYGUL: Thank you, Your Honor. We would also make
25 a motion to continue the case to give us the time to

1 investigate the document, the information contained in it
2 and what probative value it may have.

3 THE COURT: All right. Obviously we have this evening
4 and we have numerous other State's witnesses to go, and
5 you're investigator -- your very capable investigator is
6 there with you. So you will have some time to see if there
7 are additional -- if there's additional material evidence
8 that could be collected from any of the other individual's
9 name on that list.

10 MS. WIYGUL: Your Honor, the one other thing I would
11 like to put on the record is that the State has previously
12 earlier in the trial put on the record that it has
13 questioned all of its officers and -- or during the motions
14 hearing and there were no handwritten notes in this case.

15 THE COURT: Do you want to speak to that, Solicitor?

16 MR. MOWRY: What I questioned them about, Your Honor,
17 was the presence of it. They -- and I think you also talked
18 about the evidence. Essentially what they did with the
19 evidence was catalog it. This is what we were talking
20 about. And they catalog it like this.

21 MS. WIYGUL: Your Honor, I understand what Mr. Mowry is
22 talking about and that's not what I'm referencing. What I
23 asked for was any handwritten notes taken by law
24 enforcement.

25 MR. MOWRY: This is what we have. This is what we were

1 discussing. I disagree with that assertion. We were
2 talking about evidence. And the evidence list is here.
3 It's done electronically, and then the handwritten notes are
4 done away with.

5 THE COURT: The court, in all likelihood, interpreted
6 your earlier motion in the same way that Mr. Mowry did, that
7 you were looking for substantive evidence, recollections --
8 recorded recollections, notes that were taken at the time
9 any officer was investigating the scene. Things which would
10 be relevant to an explanation of how this incident happened,
11 or evidence that was gathered. Things of that nature.
12 Again, I may very well, Ms. Wiygul, decide that I'm going to
13 tell the jury, "Hey, here's the list of individuals present.
14 This was only disclosed yesterday." I may give you the
15 relief that you're wanting. I'm just going to think about
16 it overnight.

17 MS. WIYGUL: Thank you, Your Honor. I would at this
18 time -- in light of my lack of clarification on my earlier
19 motion, I would make a motion to be provided with any
20 handwritten notes taken by any officer or any law
21 enforcement personnel in this case.

22 MR. MOWRY: Your Honor, I will give her the
23 opportunity, and her investigator the opportunity, to go
24 page by page through Detective Cheeks' file at the close of
25 court today.

1 MS. WIYGUL: And, Your Honor, I don't mean to be
2 difficult about this. But I don't just want the notes that
3 are in Mr. Cheeks' file. I want -- I'm making a motion for
4 any notes that were taken by law enforcement in this case.

5 THE COURT: I do understand your motion. In light of
6 what has transpired, may I suggest that you all go ahead and
7 contact Mr. Sweat and --

8 MR. MOWRY: He's here, Your Honor.

9 THE COURT: Is he going to be the next --

10 MR. MOWRY: No, sir. We're going to call him first
11 thing in the morning if we're only going to do one more
12 witness.

13 THE COURT: Who's the next witness?

14 MR. MOWRY: Detective -- or Deputy Timmons.

15 THE COURT: Timmons, all right. While your -- are you
16 going to do direct on Timmons?

17 MR. MOWRY: Yes, sir.

18 THE COURT: All right. Mr. Mowry, go talk to Mr. Sweat
19 and tell him that we need -- or, I'm sorry, Mr. Neely, go
20 talk to Mr. Sweat. And make sure that we've got every bit
21 of handwritten information he may have in his possession
22 concerning this case.

23 MR. MOWRY: And, Your Honor, just while we're at it, I
24 just want to bring up the fact that Rule 5 does say that the
25 State shall permit the Defense to inspect and copy. So, you

1 know, if they had wanted to look at Investigator Cheeks'
2 file, I would have allowed that. But we had provided them
3 with volumes. Everything that they have requested we have
4 given them. It's kind of hard for me, in a lot of cases, to
5 anticipate exactly what the Defense wants. And so, if we
6 don't get the request -- it's not necessarily all on us is
7 what I'm getting at.

8 THE COURT: I understand. I feel like the failure to
9 give this piece of paper to the Defense, I agree with you,
10 it was an oversight. It was not intentional. And perhaps -
11 - I do agree with you in your general characterization.

12 MS. WIYGUL: And, Your Honor, if I could just put on
13 the record. Mr. Mowry did offer to open up his file, and he
14 opened up his file to me and I was -- and I got a copy of
15 everything that was out of his file. And I was under the
16 mistaken understanding that his file contained everything
17 that was relevant to this case.

18 MR. MOWRY: I will tell Your Honor that back in ancient
19 days when I first started prosecuting, the courts -- I would
20 send a letter to defense attorneys that had filed a Rule 5
21 motion and I'd say, "I opened my file to you. Anything you
22 want to see you can," and that was sufficient. If the
23 defense attorneys did not take it upon themselves to
24 investigate any further, the judges came down on them. Not
25 on us.

1 THE COURT: No, I understand. I do understand your
2 position. I also understand Ms. Wiygul's position. She's
3 in a rather tenuous position based on some of the earlier
4 happenings in this particular case, and the Court wants to
5 afford her every possible opportunity to provide a good
6 defense that she had thus far provided to Mr. Walker, the
7 Defendant.

8 MR. MOWRY: And, Your Honor, I believe Mr. Bentley and
9 Mr. Neely have spoken with Detective --

10 THE COURT: Anything, Mr. Neely?

11 MR. MOWRY: Deputy Sweat. I'll spit it out.

12 MR. NEELY: Your Honor, I talked to Deputy Sweat. He
13 told me that he had a little notebook that he took the log
14 in. Didn't take any other notes whatsoever. And the book
15 itself is long gone. But I specifically asked him if
16 there's any other notes in that book, even if it's long
17 gone, and he said no, that's the only notes that he took.

18 I also spoke to Sergeant -

19 MR. MOWRY: Timmons.

20 MR. NEELY: Timmons. Excuse me. And he said he took
21 no notes whatsoever. Didn't handwrite anything. There will
22 be no notes for him. There never were.

23 THE COURT: All right. Ask Mr. Timmons to go ahead and
24 step in here while we bring the jury in.

25 How long will your direct of Sweat take?

ROBERT TIMMONS: DIRECT EXAMINATION

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1 MR. MOWRY: Not long. Oh, direct of Mr. Timmons or
2 Sweat?

3 THE COURT: Both.

4 MR. MOWRY: I can get them both tonight, I think, by
5 6:00. Mr. Timmons will not take long.

6 THE COURT: Don't let Sweat go then.

7 MR. MOWRY: Yes, sir. I don't believe he's taken off
8 yet.

9 (Whereupon, the jury entered the courtroom at 5:13
10 p.m.)

11 THE COURT: The jury is back and seated. Mr. Mowry,
12 call your next witness, please, sir.

13 MR. MOWRY: I call Robert Timmons.

14 ROBERT TIMMONS, having been first
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MOWRY:

18 Q You are Robert Timmons?

19 A Yes, sir.

20 Q And I believe you are a Sergeant with the Laurens
21 County Sheriff's Office; is that right?

22 A That's correct.

23 Q What are your duties as a sergeant with the Laurens
24 County Sheriff's Office?

25 A I supervise my shift and help the lieutenant with the

1 assistive duties.

2 Q And is your lieutenant Marty Crain?

3 A Yes, sir.

4 Q How testified earlier?

5 A Yes, sir.

6 Q Were you employed in that capacity back on Halloween
7 night of 2013?

8 A I was.

9 Q And you were working the overnight shift; is that
10 right?

11 A Yes, sir.

12 Q From 7:00 to 7:00?

13 A Yes, sir.

14 Q Along about 11:00 or 11:30, somewhere around in there,
15 did you receive a call to go to River Hill Road in Enoree?

16 A Yes, sir. I did.

17 Q How did you receive that call?

18 A Dispatch give us a call stating that an individual had
19 been shot, possibly two individuals, and we responded code
20 3, blue lights and sirens.

21 Q Okay. So as fast as you could?

22 A Yes, sir.

23 Q Where were you coming from?

24 A I don't remember. Probably near Laurens area.

25 Q Okay. So near the city of Laurens?

ROBERT TIMMONS: DIRECT EXAMINATION

243

1 A Yes, sir.

2 Q And you responded on out there? Took you a little
3 while to get there; is that right?

4 A Yes, sir.

5 Q How many folks have you got patrolling at night from
6 7:00 to 7:00?

7 A Six on each shift.

8 Q For the entire county?

9 A Yes, sir.

10 Q So on this call you had more than, what, two-thirds of
11 your shift, I guess; is that right?

12 A Yes, sir.

13 Q You and Mr. Crain, and Steve Sweat, who has testified,
14 and Bubba Taylor; is that right? Jamison Taylor.

15 A Yes.

16 Q When you got there what did you see?

17 A We went up to the house, and I was behind Lieutenant
18 Crain, and I seen an individual sitting on the front porch
19 in a swing. That's what I seen when I first approached up
20 on the scene.

21 Q Was your deputy cam going at the time?

22 A It was.

23 Q All right, sir.

24 A At that time it was not. But when I got there --

25 Q Okay. Let me hand you first Court's Exhibit No. 2. Do

ROBERT TIMMONS: DIRECT EXAMINATION

244

1 you recognize that individual?

2 A I do.

3 Q And is that the individual you saw?

4 A That's the individual that was sitting on the front
5 porch..

6 Q And did you later learn his name?

7 A It was Mr. Walker.

8 Q David Walker?

9 A Yes, sir.

10 Q And let me hand you -- your deputy cam recorded; is
11 that right?

12 A Yes, sir.

13 Q And you've looked at the videotape; is that right?

14 A Yes, sir.

15 Q Let me hand you State's Exhibit No. 6. . Do you
16 recognize that?

17 A Yes, sir.

18 Q What is that?

19 A That's my video from the deputy cam.

20 Q All right, sir.

21 MR. MOWRY: Your Honor, I would offer this as a State's
22 Exhibit at this time.

23 THE COURT: Any objection, Ms. Wiygul?

24 MS. WIYGUL: Without objection.

25 THE COURT: Without objection, State's 6 is in

ROBERT TIMMONS: DIRECT EXAMINATION

245

1 evidence.

2 (Whereupon, State's Exhibit No. 6 was entered into
3 evidence.)

4 Q Did everybody who was there have a specific task to
5 perform?

6 A It just basically fell into place to secure the scene.
7 And when I got there with Mr. Walker I just decided to stay
8 with him and keep -- keep eyes on him and make sure he was
9 okay.

10 Q Okay. So Lieutenant Crain was where?

11 A He went inside the residence with an individual inside.

12 Q And Deputy Taylor and Deputy Sweat were doing what?

13 A They were -- Deputy Sweat was outside securing the
14 perimeter for evidence, and Deputy Taylor found a weapon on
15 the side of the vehicle out in the front yard. He stood by
16 that weapon.

17 Q Did not want to leave that unsecured, did you?

18 A Right. Right.

19 Q Did Deputy Sweat go into the house at all?

20 A He did.

21 Q And do you know what he did in the house?

22 A From me seeing it, I do not know.

23 Q But he was in there assisting Lieutenant Crain, as best
24 you know; is that right?

25 A Yes, sir.

ROBERT TIMMONS: DIRECT EXAMINATION

246

1 Q So your job at that point was to sit out -- or stay
2 outside with David Walker?

3 A Yes, sir.

4 Q At that time did you consider David Walker a suspect in
5 the case?

6 A Not at that time, no.

7 Q What did you consider him?

8 A I seen he had blood on him and I figured he might been
9 a victim, or one of the individuals who shot.

10 Q Did you have any conversation with him? Did you speak
11 with him at all?

12 A I asked him if he'd been shot and he said no. And then
13 he -- he told me before I even asked him anything he was
14 jumped on.

15 Q And what did he say?

16 A He said he was jumped on and his arm was broken in two
17 places.

18 Q Did he say by whom he was jumped?

19 A He didn't say.

20 Q Did he say how many there were?

21 A He said a few people.

22 Q Did he say where they went?

23 A After further questions from Lieutenant Cheek, he said
24 they was individuals that took off in a tan Bronco.

25 Q So you were there when those questions were asked as

ROBERT TIMMONS: DIRECT EXAMINATION

247

1 well?

2 A Yes, sir.

3 Q Did you have anything else to do with Mr. Walker that
4 night?

5 A I just stood by him until EMS loaded him up.

6 Q And when they did that what was your purpose? What did
7 you do then?

8 A I went up to my patrol car and got evidence markers and
9 we placed them out with evidence that was found on the
10 scene.

11 Q So the evidence markers came from you; is that right?

12 A Yes, sir.

13 Q Did you place them yourself or did others do that?

14 A Placed a few, and some of them I handed out to Sweat.

15 Q You saw the scene after the evidence markers were
16 placed?

17 A Yes, sir.

18 Q Let me hand you State's Exhibit 19. Is that how it
19 appeared after the evidence markers began to be placed?

20 A It was.

21 Q And can you point out on there where Mr. Walker was
22 sitting?

23 A He was up here in -- up under the porch on a swing on
24 the backside.

25 Q Under this awning; is that right?

ROBERT TIMMONS: CROSS-EXAMINATION

248

1 A Yes, sir.

2 Q How close was -- I mean, you were able to see the
3 evidence collection, is that right, from where you were on
4 the porch?

5 A Yes, sir.

6 Q How close are we talking?

7 A From me to the desk in front.

8 Q So 15, 20 feet max; is that right?

9 A Yes, sir.

10 Q Deputy, just to make sure we're covered here. We've
11 heard talk that this location was close to the Spartanburg
12 County line.

13 A Yes, sir.

14 Q But it was in Enoree. Is it in Laurens County?

15 A It is.

16 MR. MOWRY: I believe that's all I have. Thank you,
17 sir. Answer any of Ms. Wiygul's questions.

18 CROSS-EXAMINATION

19 BY MS. WIYGUL:

20 Q Deputy, did you place evidence marker 9?

21 A I don't remember.

22 Q Do you keep any records of who identified which
23 evidence?

24 A No, I don't.

25 Q Do you know if anyone does?

ROBERT TIMMONS: CROSS-EXAMINATION

249

1 A I don't know.

2 Q How many people did you see on the scene that night?

3 A It was us four deputies and EMS and fire, but I can't
4 keep track of how many people was actually on the scene.

5 But I believe there was a record that was taken of who was
6 on the scene.

7 Q And Lieutenant Crain got to the scene first, correct?

8 A Yes, ma'am.

9 Q Were you the second one on the scene?

10 A Yes, ma'am.

11 Q Okay. Did you collect any of the evidence in this
12 case?

13 A I did not.

14 Q Did you take any of the pictures in this case?

15 A No.

16 Q Were you in charge of making any decisions in this case
17 about what went where or --

18 A No, ma'am.

19 Q -- what got tested?

20 A No, ma'am.

21 Q Were you in charge of calling forensics out to the
22 scene?

23 A No, ma'am.

24 Q Were you in charge of keeping any of the evidence that
25 was collected?

ROBERT TIMMONS: CROSS-EXAMINATION

250

1 A No, ma'am.

2 Q Do you recall who found the gold chain?

3 A I don't remember.

4 Q Did you see crime scene tape out at the scene?

5 A Yes, ma'am. I did.

6 Q And where was that crime scene tape?

7 A It was up at the road at the driveway.

8 Q You could see from the front porch. You probably had
9 the best view of what was going on outside; is that correct?

10 A Yes, ma'am.

11 Q And were deputies looking for evidence pretty much
12 everywhere, anywhere it might be on the ground?

13 A Yes, ma'am. They was all around the house. There was
14 a couple tents beside the house. They were checking that as
15 well. I also checked the tents out after Mr. Walker was
16 taken away.

17 Q Did you personally make any search for the 32
18 automatic?

19 A There was one gun that we found inside the residence
20 under the mattress, and I remember raising the mattress up.

21 Q You found the gun?

22 A No, I didn't find it. They was advised that it was
23 under that mattress and I raised the mattress up so Deputy
24 Taylor could retrieve it.

25 Q So the way that gun was -- and when we say "that gun"

ROBERT TIMMONS: CROSS-EXAMINATION

251

1 we're talking about this one?

2 A Yes, ma'am.

3 Q Does that look right?

4 A Yes, ma'am.

5 Q And you're telling us you lifted the mattress up and
6 Deputy Taylor reached his hand in and retrieved that gun?

7 A He got -- he took photographs before and then he,
8 right, got the weapon. He secured the weapon.

9 Q And bear with me, Deputy. Are those the pictures that
10 he took?

11 A Yes, ma'am.

12 Q When those pictures were taken was that the top
13 mattress or was the box spring where you had lifted the top
14 mattress off the bed?

15 A That was under the top mattress on the box spring.

16 Q Okay. But you were there when it was initially --

17 A Yes, ma'am.

18 Q -- uncovered?

19 A Right.

20 Q Could you smell any burn from it?

21 A No, ma'am.

22 Q Had it left any stippling or anything on the mattress
23 there?

24 A I didn't look close enough to see.

25 Q I'm showing you what's been marked as State's 17.

ROBERT TIMMONS: REDIRECT EXAMINATION

252

1 Okay. Do you see burn marks or anything on that white
2 mattress?

3 A No, ma'am.

4 Q Was the gun hot to the touch, or did Mr. Taylor say
5 anything about being hot to the touch?

6 A I didn't touch it and he didn't say anything about it.

7 Q Okay. To the best of your knowledge, did anybody ever
8 turn that 32 automatic into evidence?

9 A From my knowledge, Deputy Taylor would have since he
10 collected the evidence.

11 MR. WIYGUL: Thank you. I have no further questions.

12 REDIRECT EXAMINATION

13 BY MR. MOWRY:

14 Q Just let me ask you this. Did you -- you talked about
15 searching for evidence in the tent; is that right?

16 A Yes, sir.

17 Q Did you find anything of any evidentiary value there?

18 A No, sir.

19 Q And you said that you may have put out one or two
20 markers; is that right?

21 A Right.

22 Q Do you recall whether you did?

23 A I remember putting out a couple, but I don't remember
24 which numbers it was.

25 Q Were you putting them out after you had discovered

ROBERT TIMMONS: RECROSS-EXAMINATION

253

1 stuff or were you putting them out at the direction of
2 others?

3 A The direction of others.

4 Q So others pointed out to you. And would that have been
5 Taylor and Sweat?

6 A Most likely, yes.

7 Q Do you recall who revealed to you the location of the
8 Rossi revolver?

9 A Deputy Taylor did.

10 Q Okay. Deputy Taylor. Do you know where he got that
11 information?

12 A I think from Lieutenant Crain, because he advised there
13 was a weapon under the mattress.

14 MR. MOWRY: Thank you, sir. I believe that's all I
15 have.

16 THE COURT: Thank you. You can step down.

17 MS. WIYGUL: I have --

18 THE COURT: Oh, I'm sorry. Go ahead, please.

19 RECROSS-EXAMINATION

20 BY MS. WIYGUL:

21 Q Officer -- or Deputy -- I'm sorry, Sergeant. When you
22 were out there on the front porch watching all the officers
23 investigate everything did you see anyone go over to the
24 shed?

25 A No, ma'am.

ROBERT TIMMONS: RECROSS-EXAMINATION

254

1 Q Were people still left on the scene when you left?

2 A I believe we all cleared up about the same time. I
3 can't really remember.

4 MS. WIYGUL: Thank you.

5 THE COURT: Thank you, sir. Now you can step down.
6 You are free to go.

7 (Whereupon, the witness stepped down from the witness
8 stand.)

9 MR. MOWRY: Your Honor, it's my intention to publish
10 the deputy cam, but if you'd rather I call Sergeant Sweat I
11 can do that, too.

12 THE COURT: No. Go ahead and publish the body cam.
13 Should we ask him to stay in the event that there are
14 additional questions after the body cam? If you would, just
15 remain for a few more minutes, sir. You can publish.

16 THE COURT: Is this one approximately the same length,
17 Mr. Mowry?

18 MR. MOWRY: I think it's a little bit shorter, Your
19 Honor.

20 (Whereupon, Body Cam of Sergeant Timmons was published
21 and viewed before the Jury.)

22 THE COURT: Any additional questions of Officer Timmons
23 after reviewing the video from the State or the Defense?

24 MS. WIYGUL: Yes, Your Honor.

25 THE COURT: All right. Come on back up, please, sir.

ROBERT TIMMONS: RECROSS-EXAMINATION

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1 (Whereupon, the witness returns to the witness stand.)

2 THE COURT: Did you have any questions, Mr. Mowry?

3 MR. MOWRY: No, sir.

4 RECROSS-EXAMINATION

5 BY MS. WIYGUL:

6 Q Deputy, is it fair to say that on this video Mr. Walker
7 was so drunk he didn't even realize he'd been shot?

8 A I mean, I would say so.

9 Q You would or would not?

10 MR. MOWRY: Your Honor, I believe that calls for
11 speculation on his part.

12 THE COURT: All right.

13 MR. MOWRY: Especially the way it was phrased.

14 MS. WIYGUL: I can lay some foundation.

15 THE COURT: Rephrase the question. I'll sustain as to
16 the form of the question.

17 Q Deputy have you ever worked in a position -- or in your
18 position do you pull over drunk drivers?

19 A Yes, ma'am.

20 Q Are you trained to recognize when someone's been
21 drinking?

22 A Yes, ma'am.

23 Q Are you trained to tell when they're probably over the
24 legal limit?

25 A I can't tell if they're over the legal limit or not.

ROBERT TIMMONS: RECROSS-EXAMINATION

256

1 Q But can you tell when you have a suspicion that they're
2 over the legal limit?

3 A Some people are different and you encounter different
4 people. It just depends.

5 Q Deputy, how long have you been an officer?

6 A Eleven years.

7 Q In your 11 years as an active law enforcement officer
8 have you been trained to recognize when someone is under the
9 influence of alcohol?

10 A Yes, ma'am.

11 Q In your opinion, on the night in question, was Mr.
12 Walker under the influence of alcohol?

13 A Yes, ma'am.

14 Q When you asked him who shot him, did he know he'd been
15 shot?

16 A He said no, he was not shot. He said his arm's broken.

17 Q He thought his arm was broken?

18 A Right.

19 Q Deputy, where in this video were you laying out these
20 evidence placards?

21 A In the video -- there was not a video of that.

22 Q Where in the video were you lifting up the mattress for
23 the collection of this gun?

24 A It was after the video. My video camera had died.
25 That's why it cut off.

ROBERT TIMMONS: REDIRECT EXAMINATION

257

1 Q Okay. And when you say died, it just ran out of
2 battery?

3 A Battery. The batteries don't last very long in these
4 cameras.

5 Q Did you call one of the deputies on the scene either --
6 or with a charged body cam on to come and witness the
7 collection of this evidence?

8 A Deputy Taylor was there.

9 Q Did Deputy Taylor have his body cam on?

10 A No, I'm not sure.

11 Q Not knowing if Deputy Taylor had his body cam on, and
12 knowing that yours was no longer recording, did you call in
13 any other deputies that were there with a body cam on to
14 record the collecting of this evidence?

15 A No.

16 Q To record the collecting of any evidence?

17 A No, ma'am.

18 MS. WIYGUL: Thank you, sir. I have no further
19 questions.

20 THE COURT: Any redirect?

21 MR. MOWRY: Yes, sir.

22 REDIRECT EXAMINATION

23 BY MR. MOWRY:

24 Q Deputy, do you receive any kind of notification that
25 your body cam has died?

1 A No, sir.

2 Q So it just went off and you weren't aware of it; is
3 that right?

4 A Exactly.

5 Q Is it standard procedure for somebody to videotape the
6 collection of evidence for you all?

7 A No, sir.

8 Q I noticed when we showed Lieutenant Crain's video and
9 showed yours there's a difference in the clock in the lower
10 corner of the screen. Is either one of them accurate or --

11 A No, sir.

12 Q It's kind of like a camera; is that right? You know,
13 just a personal camera that the clock may or may not be
14 accurate?

15 A Yes, sir.

16 MR. MOWRY: I believe that's all I have, Your Honor.

17 MS. WIYGUL: No further questions.

18 THE COURT: Thank you, sir. You can step down. Now
19 you're free to go.

20 (Whereupon, the witness stepped down from the witness
21 stand.)

22 THE COURT: Ladies and gentlemen of the jury, my
23 experience in this job tells me that very often folks get
24 into a point where it becomes information overload, so we're
25 going to go ahead and break for the evening. Okay? I'm

1 going to ask that you be back tomorrow morning at 9:30.
2 There's -- then we'll -- there might be a little bit of
3 icing tonight, but I don't think it's going to be a problem.
4 The weather forecast is probably good for tomorrow morning.
5 So if you would, be back in the jury room tomorrow morning
6 at 9:30. And again, wear those badges back when you come
7 back. The same rule as before, the same rule as last night,
8 don't talk to anybody about the case. See you all at 9:30.
9 Hope you have a great evening. Take care.

10 (Whereupon, the jury exited the courtroom at 5:45 p.m.)

11 THE COURT: The jury is out. Anything before we close
12 the record today from the State?

13 MR. MOWRY: No, sir.

14 THE COURT: Ms. Wiygul:

15 MS. WIYGUL: No, Your Honor.

16 THE COURT: Very good. You all have a pleasant
17 evening. I'll see you all tomorrow morning.

18 TRIAL DAY 3-2/25/2014

19 MR. MOWRY: I called the jail this morning -- the
20 Detention Center this morning, asking them -- they were
21 under the impression they did not need to provide another
22 written confirmation from the Defendant that he did not want
23 to be in court today, so I asked to get him one -- get one
24 from him and then give us the information. I told them they
25 could just fax it up here. We have not received anything

1 from him yet.

2 THE COURT: All right. My clerk told me that, while we
3 wait on that confirmation, Ms. Wiygul, that you did have a
4 motion relating to the personnel file of the investigator in
5 this case?

6 MS. WIYGUL: Bryant Cheek. That's correct, Your Honor.

7 THE COURT: You want to renew that?

8 MS. WIYGUL: I do, Your Honor. I'd like to -- as the
9 Court is aware, Lieutenant Cheek brought over what he says
10 is his personnel file yesterday and let me review it. In
11 light of the issues that are arising in this case, I'm
12 asking that the Court issue an order to the Laurens County
13 Sheriff's Office that the entire personnel file of
14 Lieutenant Bryant Cheek be provided to the Court immediately
15 for an in camera review solely for the purpose of
16 determining whether his application and the sheets recording
17 his promotions are, in fact, the only documents contained
18 within that file. That motion is based on the concerns due
19 to the issues arising in this case, as well as the fact that
20 the Sheriff's Office is apparently accredited through 2006.
21 It's my understanding from speaking with other attorneys,
22 and from prior experience, that an accredited agency is
23 required to do annual reviews. So I would have expected to
24 see some annual reviews in that file.

25 THE COURT: Mr. Mowry, you may speak to their motion.

1 MR. MOWRY: I have no idea what the personnel policies
2 are with the Sheriff's Office, Your Honor.

3 THE COURT: The file that was provided to Wiygul
4 yesterday, is it the State's understanding that that is the
5 only file in existence for the Lieutenant?

6 MR. MOWRY: I have conferred just now with Lieutenant
7 and he has nodded in the affirmative. That is it.

8 THE COURT: All right.

9 MR. MOWRY: And he has it with him if you'd like to
10 take a look at it, Your Honor.

11 THE COURT: Please, if you would. I'll take a brief
12 moment to review that. Is there a major -- is Laurens
13 Sheriff's Department still accredited?

14 MS. WIYGUL: No, Your Honor. It's my understanding
15 they lost it in 2006.

16 THE COURT: Is there a major in charge of standards or
17 personnel or someone to that effect that would -- can you
18 speak to that, Lieutenant?

19 MS. WIYGUL: I would think human resources.

20 MR. MOWRY: Your Honor, I think --

21 LIEUTENANT CHEEK: It came from -- I think a name's on
22 it, Debbie Parker. And Captain Mickey Coats called her by
23 phone when you asked me to get it. She said give her 15
24 minutes. She said there's nothing in there but whatever she
25 put in that. She put it in there. She asked me did I want

1 to look at it. I said, "I don't want to look at it. Leave
2 it like that," and I -- the first time I opened it I gave it
3 to the lawyer.

4 THE COURT: Give me one moment, please.

5 (Whereupon, there was a brief pause in the
6 proceedings.)

7 THE COURT: The Court has reviewed 14 pages of
8 documents that relate to Lieutenant Cheek. Candidly, the
9 only thing the Court can find shocking in here is how poorly
10 law enforcement seems to be paid in Laurens County. Aside
11 from that, I agree with Ms. Wiygul's assertion yesterday
12 that there doesn't seem to be anything in here of particular
13 relevance to this case or anything resembling a personnel
14 review. It was represented to the Court a few moments ago
15 by you, Mr. Wiygul, I believe that Laurens Sheriff's
16 Department was not reaccredited in 2006.

17 MS. WIYGUL: That's my understanding, Your Honor. One
18 of the officers actually called over there this morning and
19 was told that they did not seek reaccreditation after the
20 2003 accreditation, and they run for three years.

21 THE COURT: All right. And it looks like the first
22 application for employment for Mr. Cheek was in January of
23 2003. And as you mentioned, Ms. Wiygul, part of the
24 accreditation would be annual reviews and things of that
25 nature, which could explain perhaps why there is no such

1 documentation in this material.

2 What I would ask the Solicitor's Office to do is to
3 simply, at your earliest convenience, if you could, contact
4 -- if I could, let me have the name of -- I need a name of
5 whoever is in charge of personnel and that kind of thing,
6 records of that nature, and simply get confirmation from
7 them that there are no other records related --

8 MR. MOWRY: I think Mr. Bentley knows who to contact,
9 Your Honor, and he can take care of that. I would say that
10 the State agreed to this simply to accommodate Ms. Wiygul
11 because she has an extraordinarily difficult client. But
12 going much further is going down a rabbit hole. And I don't
13 -- I don't see any purpose that's going to be fulfilled with
14 that.

15 THE COURT: I don't disagree.

16 MS. WIYGUL: And, Your Honor, candidly I'm hoping that
17 no purpose will be achieved except for verifying that that
18 is, in fact, the entire personal file.

19 MR. MOWRY: And I would --

20 MS. WIYGUL: However, after the comments made yesterday
21 about the emphasis being on me to go examine the Sheriff's
22 Office and law enforcement files and not taking the
23 Solicitor's word for it, after that I'm very leery.

24 THE COURT: I understand where both of you are coming
25 from. I need you to understand, Solicitor where the Court

1 is coming from. Assuming for the moment that the Court --
2 or that the State's theory on this case is correct, it is
3 entirely possible that at some future point in time, either
4 on direct appeal or in post conviction relief, the Court,
5 some other judge, some other judges, will have to address
6 some of these questions and the last thing --

7 MR. MOWRY: Yes, sir.

8 THE COURT: -- that I want is something popping up at
9 the very last minute that this stone was not left unturned,
10 and then we're -- the Court is in a difficult position. So
11 that's --

12 MR. MOWRY: I understand that, Your Honor. And I would
13 like to put out -- put on the record also that the first
14 question or first request for this kind of stuff was after
15 trial had commenced.

16 THE COURT: I do understand, and we are trying to work
17 through that.

18 MS. WIYGUL: Your Honor, if I could address the motion
19 made yesterday regarding the log.

20 THE COURT: Yes, ma'am. I was going to bring that up.
21 What was it that you were wanting me to instruct the jury
22 again?

23 MS. WIYGUL: I'm asking the Court to instruct -- to
24 publish the document to the jury to explain the requirements
25 of Rule 5 Brady motions, or explain the requirements of

1 providing discovery to the jury, and to explain to the jury
2 that that document was provided at approximately 4:30
3 yesterday afternoon. And I have no problem with the Court
4 saying that the Court does not believe it was deliberately
5 hidden by the State or anything of that nature.

6 MR. MOWRY: Your Honor, if I could just add for your
7 consideration. I told you yesterday that it was my belief
8 that this was -- that the information was available
9 elsewhere. The information was available elsewhere. Ms.
10 Wiygul had a copy of the Laurens County 911 CAD. It does
11 not have names of the individuals but it has unit numbers,
12 and that could have easily have been checked out. She could
13 have called any individual agency and said who was unit
14 number 1 or 5 or whatever it might be, and you can contact
15 them. So the mere fact that a handwritten note was not
16 given to her is absolutely no bearing. There's no prejudice
17 to this -- to her whatsoever. But I think it will be a
18 great prejudice to Your Honor if an instruction like that is
19 given. The mere fact that the note itself was not given is
20 cured by the fact that she already had the 911 CAD, and the
21 last several pages has the entire list of communications
22 from the individuals that were there by unit number.

23 MS. WIYGUL: Your Honor, after the discussions in Court
24 yesterday regarding this matter I did check my emails in
25 this case and I did find where I emailed Mr. Mowry and Mr.

1 Bentley in February 11th specifically requesting the crime
2 scene log that was mentioned in the incident report that had
3 been collected by Deputy Sweat, and Mr. Mowry's response at
4 that time on that date was, "We will check with Laurens
5 County Sheriff's Office on these."

6 MR. MOWRY: My point, Your Honor, is this is merely a
7 case of got you. It has no substantive value whatsoever.
8 It is just simply an attempt by Ms. Wiygul to beat up on the
9 police. That's all.

10 THE COURT: All right. What I'm going to do concerning
11 this question, we have -- the next witness who going to
12 testify is the one who actually created this log. And there
13 had been -- if a jury is going to a case, I'm a big believer
14 that they should judge it on accurate information. And at
15 this point in time, Solicitor, there has been the perception
16 that there was not a crime scene log done. There's been
17 testimony that that's part of normal procedure, et cetera.
18 Again, if I'm going to have a jury judge a case, I would
19 prefer that they judge it based upon facts.

20 What I'm inclined to do is explain to the jury that the
21 -- explain to the jury that the document is, in fact, a
22 crime scene log. It was discovered by the State at
23 approximately 4:30 yesterday afternoon. There was no
24 intention to hide this from anyone. It's simply a matter
25 where this turned up like sometimes a \$20 bill will turn up

1 in a coat pocket. Okay? Sometimes things happen. It was
2 not intentional. But it was provided yesterday, and I'll
3 let them know that, in fact, the crime scene log was done.
4 That the next witness was the one who did it, and it was not
5 provided to the Defense per Rule 5. I don't necessarily see
6 how it's Brady. It's not exculpatory. So if it were fall
7 under anything I would -- more likely it would not be Rule 5
8 as opposed to Brady. And also explain to them that in Court
9 -- in criminal court the obligation -- there is an
10 obligation on the State to provide the Defense with
11 certainly the information that they intend to use at trial,
12 but also, as a general rule, they typically provide the
13 entire file. For them, this was merely omitted from the
14 disclosure --

15 MR. MOWRY: Well, Your Honor, I appreciate that. I
16 would just simply, once again, reiterate that Rule 5
17 requires the State to allow the Defense to inspect and copy.
18 And if that had been a request for looking at Bryant Cheek's
19 file, we would have done it. Mr. Bentley and I did it. If
20 Ms. -- again, I cannot read the Defense's mind and --

21 THE COURT: I understand, Solicitor. And again, this
22 is a case where she was -- discovery was being provided on
23 an ongoing basis up until trial. I understand how the State
24 could have easily omitted what looks to the Court to be just
25 an innocuous document. So I understand completely how that

1 could happen. It was an oversight. I worked with lawyers
2 from the Solicitor's Office before and it's my belief that
3 this was nothing more than an oversight. There was no
4 intentional effort to hide this information. But I really
5 believe that it's important, in light of some of the
6 testimony that was elicited yesterday, that the jury be
7 informed that this document does, in fact, exist. It was
8 not provided to the Defense. Again, it was like it was not
9 something that the State necessarily intended to use at
10 trial. That's really the crux of Rule 5. Brady relates to
11 exculpatory information. I don't think that this is as big
12 of a deal as we are making it is what I'm saying. But I do
13 want the jury to have that information. I will explain to
14 them what Rule 5 requires. I'll tell them if the document
15 does list the 14, 15 names of the individuals there. If you
16 care to publish the document with the next witness I'll let
17 you do that.

18 MS. WIYGUL: But I would have to enter it into
19 evidence, Your Honor.

20 THE COURT: No. It's already -- I think it's already
21 in evidence as a Court's exhibit.

22 MS. WIYGUL: Court exhibit.

23 THE COURT: If you're concerned, Ms. Wiygul losing last
24 argument in the event that you choose not to present
25 defense, introduction of a single exhibit like this on

1 cross, in my opinion, would not constitute something that
2 would cause you to lose last argument under the rules.

3 MS. WIYGUL: Thank you, Your Honor.

4 THE COURT: At least that's the way I read the law.

5 MS. WIYGUL: Your Honor, just to ensure that the record
6 is complete, I would ask that the Court inquire of Mr. Mowry
7 what response he was given from the Laurens County Sheriff's
8 Office when he made inquiries specifically about whether
9 this crime scene log existed.

10 THE COURT: I think we've gone down this road enough
11 and apparently it was in Mr. Mowry's file. It was not?

12 MR. MOWRY: No, sir. It was in Mr. Cheek's --
13 Lieutenant Cheek's file. We went through his file. We
14 overlooked it, because it looked like nothing and we just
15 kept going.

16 Your Honor, I'd just like to put on the record as well
17 that we have bent over backwards to try to accommodate every
18 Defense request. This is just for the record. To the point
19 that we actually got one of Ms. Wiygul's -- we consented to
20 and got a judge to sign one of Ms. Wiygul's orders. Mr.
21 Bentley, my investigator, drove to Spartanburg to pick up
22 voluminous medical records. Made arrangements with them to
23 have them printed off, went and got them, and then delivered
24 them to Ms. Wiygul.

25 MS. WIYGUL: That's absolutely correct, Your Honor. I

1 believe I put that on the record earlier.

2 MR. MOWRY: And I wanted to make sure that that was
3 crystal clear. We have done everything we can to cooperate.
4 And I firmly believe that this is just a red herring.

5 THE COURT: I appreciate the State's position. Again,
6 I'm sticking with my earlier comments. In the case of this
7 import, it's best if the State, as a general rule, bend over
8 backwards, as you put it, Mr. Mowry, and try to accommodate
9 the Defense in every possible way, especially with the
10 posture that this case is presenting itself. And so, I
11 think we understand each other.

12 I would like, before I bring the jury out, to receive
13 at least verbal confirmation from someone that Mr. Walker is
14 not on his way. So even if they cannot get me a statement
15 faxed, if you would.

16 MR. MOWRY: Yes, sir.

17 THE COURT: We'll be at ease for a few months, and just
18 let me get confirmation from somebody. And get me a name --

19 MS. WIYGUL: And, Your Honor, before the jury comes
20 back I would like to just renew the motions I've already
21 made to preserve the record.

22 THE COURT: All right.

23 MS. WIYGUL: I believe --

24 THE COURT: You can keep talking. Mr. Neely's here.

25 MS. WIYGUL: I believe that we also -- Mr. Mowry and I

1 would like to just clarify what is and is not into evidence.

2 THE COURT: Certainly. When he comes back in you all
3 do that. I'll step off the bench for a few moments and you
4 can review with the court reporter, and to the extent you
5 need to, my notes with my clerk to confirm what is and is
6 not in evidence.

7 MS. WIYGUL: Thank you, Your Honor.

8 (Whereupon, a brief recess was held.)

9 THE COURT: Let's go back on the record. Has
10 everything had an opportunity to review the exhibits which
11 are in evidence so far. Do we know where we stand on that?

12 MR. MOWRY: Yes, sir.

13 MS. WIYGUL: Yes, yes.

14 THE COURT: We're in agreement then. Mr. Mowry, if you
15 want to take these documents back --

16 MR. MOWRY: Thank you, Your Honor.

17 THE COURT: Thank you. I understand, Mr. Mowry, that
18 you have had a conversation with someone at the Detention
19 Center.

20 MR. MOWRY: Yes, sir. I had a conversation with --
21 excuse me. She's now captain. Captain Tucker. She told me
22 verbally on the phone that Mr. Walker has declined to be
23 present in court again, and she is going to fax me written
24 documentation of that. She did not have possession of it at
25 the time of the phone conversation, but she is going to fax

1 it to our office number as soon as she does get it, and I
2 will provide that to the Court when I receive it.

3 Also, Your Honor, Mr. Bentley has called the personnel,
4 I guess, custodians with the Sheriff's Office and has
5 information for you, if you would like.

6 THE COURT: Certainly. I would be happy to hear from
7 you, Mr. Bentley.

8 MR. BENTLEY: Judge, I spoke to Captain Mickey Coats
9 with the Laurens County Sheriff's Office who is the
10 administrative captain. Told him the situation, which he
11 was kind of already aware of. I asked him about the
12 personnel -- about the personnel files. He told me they
13 were maintained by the county complex by Debbie Parker, who
14 was mentioned earlier, and that he -- like I said, he knew
15 about the situation. I did ask him about yearly reviews.
16 He said they don't perform yearly reviews and haven't in
17 quite some time. And I said, "Well, has Bryant Cheek ever
18 had a yearly reviewed?" He stated, "No." I said, "Does he
19 have any disciplinary action, writeups or anything," and he
20 stated, "No." And he stated, "All that would have been in
21 the file if he had." I did call Debbie Parker at the county
22 complex. She related the same -- same things to me, that
23 there are no yearly reviews in the file and no writeups in
24 the file. No disciplinary action in the file. She stated
25 the only thing she did not send in his personnel file that

1 she sent with him over to the court were his W4s and his
2 checking account information for direct deposit. Those are
3 the only things she excluded from the file. And that's kind
4 of the basis of the conversation.

5 Judge, just in all candor, I worked at the Sheriff's
6 Office from 1996 to the year 2000 and I don't -- they didn't
7 perform any reviews in my time there. I can't attest to
8 what they've done since then.

9 THE COURT: Very good. That answers the question. You
10 want to renew your motions?

11 MS. WIYGUL: That's correct, Your Honor. And just for
12 the Court's knowledge, Mr. Bentley did relay that
13 information to me and I have no need to see Lieutenant
14 Cheek's W4s or checking account information.

15 Your Honor, we would renew the motion for the mistrial
16 and the motion for continuance based upon the crime scene
17 log being produced yesterday.

18 THE COURT: Same ruling as yesterday.

19 MS. WIYGUL: We would also renew the motion to compel
20 testing of the evidence.

21 THE COURT: All right. The exact same ruling as
22 previously on Monday or Tuesday.

23 MS. WIYGUL: We would also renew the motion to compel
24 removal of the bullet from Mr. Walker and testing of that
25 bullet.

1 THE COURT: Same -- same ruling.

2 MR. MOWRY: Your Honor, I would submit that renewal of
3 motions that have already been made and ruled upon are
4 unnecessary.

5 MS. WIYGUL: Your Honor, I feel obligated to protect
6 the record in this case. There's been several recent court
7 cases where issues were not addressed solely because they
8 were not preserved appropriately at the trial court and I
9 just want to make sure the issues are all preserved.

10 THE COURT: I think the record is covered so far.. I'm
11 comfortable with all the rulings and all the previous
12 motions. So for purposes of the record and any appellate
13 review I would consider you at this point and time renewing
14 all previous motions, exact same arguments as before, and
15 the Court will rule the same way based upon our earlier
16 conversations. You can, at the close of the State's case,
17 again renew all motions, and I think that should protect you
18 from an appellate standpoint, and, of course, all evidence,
19 and at the close of trial if you choose to do so.

20 MS. WIYGUL: Thank you, Your Honor. And as requested
21 by the Court, just to update the Court on our search for a
22 gunshot residue expert, I still have not heard back from
23 anyone. I emailed another gentleman today. He was located
24 in Georgia and I have not yet heard back from him.

25 MR. MOWRY: And, Your Honor, Jennifer Stoner from SLED

1 is here. She is available to speak to Ms. Wiygul, if Ms.
2 Wiygul wishes to avail herself of that opportunity.

3 THE COURT: Certainly. That would probably be
4 appropriate at the break. So if you want to get some
5 answers to some questions Ms. Wiygul, certainly you can ask
6 Ms. Stoner and see how she would respond.

7 MS. WIYGUL: Thank you, Your Honor.

8 THE COURT: Let's have the jury, please.

9 MR. NEELY: And, Your Honor, I just handed Ms. Wiygul
10 the fax that we received from Mr. Walker. It says, "No
11 lawyer, no court."

12 THE COURT: All right. We'll make that a Court's
13 exhibit then shortly.

14 (Whereupon, the jury entered the courtroom at 10:15
15 a.m.)

16 THE COURT: Let the record reflect that the jury is
17 back and seated.

18 Ladies and gentlemen of the jury, thank you for being
19 here on time. I apologize for the delay in getting you out
20 here. We had a few housekeeping matters that we did need to
21 address.

22 Before we resume with testimony I'm going to inform you
23 that there has been some testimony so far concerning a crime
24 scene log. The rules of evidence in criminal cases, ladies
25 and gentlemen, generally require -- require the State to

1 provide any information in their possession. Particularly
2 information that the State intends to use in their case in
3 chief. Those rules require them to provide that information
4 to the Defense. In this case there have been questions
5 asked about a crime scene log. Unfortunately when the
6 Solicitor's Office was reviewing law enforcement's file they
7 missed finding the crime scene log. That was discovered
8 last evening, yesterday afternoon around 4:30, and the log
9 basically lists the various individuals which were on the
10 crime scene back on October the 31st of 2013. So the Court
11 can certainly see how the Solicitor may have inadvertently
12 omitted that or not realized its import and provided it to
13 the Defense, but I did want you to know, because the next
14 witness who's going to testify I believe is actually the one
15 who created this log. I did want you to know that that log,
16 in fact, does exist. It has now been provided to the
17 Defense, and certainly you may hear reference to it during
18 the next witness's testimony. Okay? So I just wanted to
19 bring you all up to speed on that. I don't think it was a
20 situation where anybody was trying to pull the wool over
21 anyone's eyes. I believe the document, again, is simply a
22 list of names. Handwritten list of names. So for
23 informational purposes I did want you to be aware that that
24 was the situation. That that crime scene log does exist and
25 it has now been provided to the Defense. It should have

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1 been provided sooner, but the omission was unintentional.

2 All right. At this point, Solicitor, if you'll call
3 your next witness, please.

4 MR. MOWRY: Your Honor, given the circumstances
5 involving the weather and the uncertainty that we have, we'd
6 like to call Dr. Ward out of order.

7 THE COURT: All right. Very good. Dr. Ward did not do
8 the crime scene log, ladies and gentlemen. We are going to
9 go ahead and take his testimony and then we'll get to the
10 guy who did take the log.

11 DR. MICHAEL WARD, having been first
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MOWRY:

15 Q Would you state your name for the record, please, sir?

16 A Michael Eugene Ward.

17 Q And I believe you are a medical doctor; is that right?

18 A Yes, I am.

19 Q Where did you receive your education and training to
20 become a doctor?

21 A I received my undergraduate degree in biology from the
22 University of Alabama. I have a master's degree in forensic
23 science from the University of Alabama at Birmingham. I
24 went to medical school at the University of South Alabama,
25 which is in Mobile. I did a four-year anatomic pathology

1 residency at the Medical University of South Carolina in
2 Charleston, and a one-year fellowship in forensic pathology
3 at the University of New Mexico in Albuquerque.

4 Q And are you, in fact, a forensic pathologist?

5 A Yes, I am.

6 Q Can you explain to the jury exactly what a forensic
7 pathologist is.

8 A Well, pathology is the study of disease and disease
9 processes and how they affect man. Forensics takes that one
10 step further to study disease, trauma or injuries and as to
11 how people die, and then the presentation of that
12 information in a court of law.

13 Q Essentially you will perform autopsies on individuals,
14 obviously deceased individuals, to determine in what manner
15 they died and what the cause was; is that right?

16 A Cause and manner of death, or how and why they died,
17 yes.

18 Q How long have you done that kind of work?

19 A I finished my fellowship in 1993.

20 Q And where are you employed currently?

21 A I'm employed by Pathology Associates of Greenville,
22 which is a private practice pathology group in Greenville.
23 And we have contracts with Greenville, Pickens and Laurens
24 County to perform medical legal autopsies for those
25 counties.

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1 Q Are you also a medical examiner in Greenville County?

2 A Yes, I am.

3 Q And at what level are you a medical examiner?

4 A I'm the chief medical examiner in Greenville County.

5 Q How many autopsies would you estimate that you have
6 performed in your career?

7 A Over 5,000 medical legal autopsies.

8 Q And how many times have you testified in court as to
9 the findings that you have determined from those autopsies?

10 A Well, over 100 times.

11 Q Have you been declared an expert in each of those
12 cases?

13 A Yes, I have.

14 MR. MOWRY: Your Honor, I would offer Dr. Ward as an
15 expert in forensic pathology.

16 MS. WIYGUL: No objection, Your Honor.

17 THE COURT: Ladies and gentlemen of the jury, normally
18 when a witness testifies they have to testify as to
19 something that they observed with one of their five senses.
20 Something they saw, smelled, heard, et cetera. An exception
21 to this rule exists, however, for witnesses that are
22 qualified in some particular field or profession. We call
23 those individuals expert witnesses. And an expert witness
24 is permitted to testify as to opinions that they have as
25 opposed to something that they merely saw or heard or

1 smelled. In this case the State and the Defense agree that
2 Dr. Ward is an expert in the field of forensic pathology.
3 Therefore, he can give opinions in that area. It does not
4 mean you have to accept his opinion, but it is evidence that
5 you may use as you deem appropriate. Okay?

6 Solicitor, you may proceed, sir.

7 MR. MOWRY: Thank you, Your Honor.

8 Q Dr. Ward, did you perform an autopsy on the victim in
9 this case, Johnny Lee Cheeks?

10 A Yes, I did.

11 Q When did you perform that autopsy?

12 A It was on November 2nd, 2013, and we began at 9:00 a.m.

13 Q Did you receive medical records that you reviewed prior
14 to the commencement of your autopsy?

15 A Yes, I did.

16 Q Where did you receive those medical records from?

17 A Spartanburg Regional Hospital.

18 Q Had Mr. Cheeks, according to your review of those
19 records, been treated and worked on, I guess you could say,
20 at Spartanburg Hospital?

21 A Yes, he had.

22 Q Did he, in fact, die at the hospital?

23 A Yes, he did.

24 Q Do you have a record as to when he was pronounced dead?

25 A He was pronounced dead on November 1st of 2013 at 12:56

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1 p.m.

2 Q And you performed the autopsy, what, about eight --
3 about 20 hours later, 21 hours later; is that right?

4 A That's correct.

5 Q What is the process for an autopsy?

6 A The initial portion of the autopsy is an external
7 examination where we examine the outer portion of the body
8 looking for any injuries, any indication of disease process,
9 any identifying characteristics, any -- in this case, any
10 medical intervention that may have occurred. Following the
11 external examination there's the internal examination where
12 we examined the inner portions of the body to include vital
13 organs to see any of those organs that may be diseased or
14 may have resulted in trauma.

15 Q According to the information that you received, did you
16 have information as to Mr. Cheek's age?

17 A Yes, I did.

18 Q And how old was he listed?

19 A Sixty-one years.

20 Q Did he appear -- his body appear to be consistent with
21 that age?

22 A Yes, it did.

23 Q Describe how you went about -- or the process that you
24 took from there. The external examination, what did you --
25 what did you know?

1 A There were various injuries to Mr. Cheeks. There was a
2 -- and each of these injuries had been partially treated
3 while at the hospital. So the first one we noted was a
4 gunshot wound to Mr. Cheeks' right neck which entered the
5 outside portion of the right neck, passing very
6 superficially. So only through the skin and the tissues
7 immediately beneath the skin, not involving any of the
8 underlying vital structures of the neck. So passing from
9 the right outer portion of the neck forward and slightly to
10 the left to exit this region. So basically going in here
11 and coming out here, but only going through the skin and
12 soft tissues. This had been sutured in the hospital in an
13 attempt to stop the bleeding from that area.

14 Q Just to state for the record. You were indicating on
15 your own neck that the bullet went from back towards the
16 front; is that right?

17 A Yes. It went from back to front and --

18 Q The wound, I should say.

19 A The wound sent from back to front and very slightly
20 from Mr. Cheeks' right to his left.

21 Q Let me ask you. From the appearance of it, do you have
22 an opinion as to how that wound occurred?

23 A Yes.

24 Q What is that opinion, please, sir?

25 A This was a gunshot wound to the neck.

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1 Q In your opinion, Doctor, did this wound appear to be
2 life-threatening?

3 A No, this would not have been a life-threatening injury.

4 Q Would you characterize it as more of a graze?

5 A Yes, I would.

6 Q Okay. Continue. What was the substance of the rest of
7 your external examination?

8 A The second one that we noted was a separate gunshot
9 wound to the abdomen, or to the stomach, which entered very
10 much in the midline. So if you draw a line that separates
11 the two halves, it was within that line, and about three
12 inches below the bellybutton. That wound went through the
13 skin and musculature of the abdominal wall. It passed
14 through loops of small intestine. It passed through the
15 stomach and through the liver, damaging some of the great
16 vessels that pass through the liver, and then exited out the
17 right back. And this exit wound was just below where you
18 can feel your ribs in the back. So as you walk down the
19 back, it was just below that. So this wound went from Mr.
20 Cheeks' front to his back. It went from left towards the
21 right side, and it went upward to exit back. And it passed
22 through the vital organs of the stomach, to include the
23 intestinal tract -- I'm sorry -- yeah, the intestinal tract,
24 stomach and liver.

25 Q So it went up from front to back; is that right?

1 A That is correct.

2 Q Was it a great slant or just slight or how would you
3 characterize the up and down?

4 A I would characterize it as gradual. It went up about
5 three inches through the thickness of Mr. Cheeks. So not a
6 great deal of him.

7 Q Would it have been consistent -- and again, what did
8 this appear to be?

9 A This was a gunshot wound.

10 Q Would it have been consistent with somebody holding a
11 gun at waist level and shooting from there, if Mr. Cheeks
12 was standing?

13 A Yes, it could be.

14 Q Had surgery been performed on Mr. Cheeks?

15 A Yes, it had.

16 Q Can you describe a little bit about the surgery that
17 you observed? The repairs that were made?

18 A The surgical procedure to Mr. Cheeks was called a
19 laparotomy, which basically means they have opened the skin
20 of the abdomen to look at the structures on the inside.
21 There had been surgical repair and removal of damaged
22 portions of Mr. Cheeks' intestinal tract. So they had taken
23 out portions of small intestine and reattached those. They
24 had taken out a portion of his stomach, and they had
25 surgically repaired the vasculature of his liver. And then

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1 when I saw Mr. Cheeks there were multiple what they call
2 surgical packs. Basically they're cloth like structures
3 placed in the wound to try to absorb blood and it helps to
4 stop the bleeding.

5 Q Did the fact that there had been surgery on Mr. Cheeks
6 have any effect on your ability to determine cause and
7 manner of death?

8 A No, it did not.

9 Q What would have been the result of a wound like the one
10 you described through his midsection?

11 A The gunshot wound to the liver primarily, with damage
12 to these very large vessels that pass through the liver
13 which receive a great deal of blood supply, would have
14 resulted in a great deal of hemorrhage or bleeding into Mr.
15 Cheeks abdominal cavity and subsequent death.

16 Q Doctor, there has been testimony that Mr. Cheeks was
17 alert, that he was conscious, that he was conversing with
18 investigators, law enforcement officers on the scene. Would
19 that be unusual considering the type of wound that you saw?

20 A No, I don't think so. I mean, as he's bleeding he's --
21 over a period of time will begin to lose more and more
22 blood. His blood pressure will drop and he will become
23 unconscious. But until that happens he would not have --
24 there were no immediately vital structures that were
25 damaged. So no trauma to vocal cords. No trauma to the

1 head. No trauma to the lungs that would keep him from being
2 able to breath. He simply would have bled out over a period
3 of time.

4 Q Might it appear though the wounds might be serious that
5 he would make it at the scene? If you were a law
6 enforcement officer, might it appear to a reasonable trained
7 law enforcement officer --

8 MS. WIYGUL: Objection, Your Honor. He is qualified as
9 an expert as a forensic pathologist. Not in what the law
10 enforcement officer might think.

11 MR. MOWRY: I'm not asking about a law enforcement --

12 THE COURT: I'll sustain that. If you want to ask as
13 though if an individual were to receive this type of injury
14 what would be his demeanor. What would be -- would he be
15 able to do X, Y or Z, that's a fair question.

16 Q What would he be capable of doing with a wound like
17 this?

18 A I suspect that each individual is different. But this
19 would be a painful wound, but it would not be one that would
20 keep him from being able to verbalize. It would not be able
21 -- to keep him from being able to ambulate. He would
22 certainly be conscious for a period of time until he lost a
23 sufficient amount of blood where he would become
24 unconscious.

25 Q And when you say ambulate, you mean to walk?

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1 A Yes, sir.

2 Q Would any -- would there be much external bleeding in a
3 situation like this, or would most of it be internal?

4 A I would expect that there would be more blood from the
5 wound to the neck. External blood from the wound to the
6 neck than from the wound to the abdomen. Most of this would
7 be inside the body.

8 Q Did you do anything else as far as the external
9 examination is concerned?

10 A We documented the wounds and the findings on the outer
11 portion of the body both photographically and on paper, and
12 that was the extent of the external examination.

13 Q Doctor, as part of your examination did you extract
14 fluids from Mr. Cheeks to test for toxicology purposes?

15 A While that is a standard operating procedure for most
16 of our medical legal autopsies, Mr. Cheeks had had a delay
17 from the time of the incident until his death, and had also
18 received multiple blood products. So instead of using
19 postmortem fluids, or fluids that were removed at autopsy,
20 we secured antemortem blood, or blood that was drawn at the
21 hospital for testing purposes at the hospital, and we used
22 that blood to run for toxicology.

23 Q And was that purpose fulfilled?

24 A Yes, it was.

25 Q Can you describe exactly what toxicology is for the

1 jury?

2 A Toxicology is -- we performed tests on fluids removed
3 from body. During the autopsy we test blood from various
4 sites. We may test urine or we may test fluid that is
5 removed from the eyes. And basically we're looking for any
6 drugs that may be present. These drugs include alcohol,
7 drugs which would be considered illicit drugs, or drugs that
8 you're not supposed to be able to purchase, and it may also
9 include a vast number of prescription medications.

10 Q Did you submit those fluids for testing?

11 A Yes, we did.

12 Q And did you receive results for those fluids, of the
13 tests?

14 A Yes, we did.

15 Q What were the results that you obtained?

16 A Mr. Cheeks had a metabolite of marijuana. The term for
17 that is Delta-9-carboxy-THC. Basically that is a metabolite
18 of marijuana. And he also had a blood alcohol, or blood
19 ethanol concentration of .083 percent.

20 Q Doctor, can you correlate those figures into every day
21 -- every day explanation? Exactly what do those figures
22 mean?

23 A A blood alcohol level of .083 would be roughly
24 equivalent to four or five different types of drinks. If
25 they were drinking beer, it's probably four or five beers.

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1 If you're drinking liquor, it's probably four or five, you
2 know, ounce and a half shots of liquor. And wine it's four
3 or five 12 ounce glasses of wine. Each unit usually
4 increases our blood alcohol level .02 percent. And so, he
5 had a .08, so you could figure that it might be four or five
6 depending on how much he may have metabolized. Depending on
7 his familiarity with alcohol he may or may not have appeared
8 intoxicated, depending on if he's used to drinking or not.
9 Naive individuals who do not drink maybe appear intoxicated.
10 But persons who are used to consuming alcohol, this may not
11 have affected him at all.

12 Q And what about the THC levels that you talked about?
13 The marijuana metabolite.

14 A The marijuana metabolite probably had no affect on Mr.
15 Cheeks. Marijuana, in itself, not the metabolite, can act
16 synergistically with alcohol. So while he may have a blood
17 alcohol that wouldn't necessarily be intoxicated, if you
18 combine that with marijuana it could have an increased
19 effect, or he may appear more intoxicated because of that.
20 But the marijuana metabolite probably had no effect. And
21 I'm not even sure when he would have consumed it. This is
22 simply the metabolite and not the active drug itself.

23 Q Okay. So sometime in the past -- sometime in the
24 recent past he consumed marijuana but it was not having
25 an effect on him at the time of the drawing of the

1 fluids; is that right?

2 A That would be my opinion, yes.

3 Q Describe how your examinations continued from that
4 point?

5 A Well, after the external examination we do an internal
6 examination where using various incisions in the skin we
7 were able to access and remove the organs of the chest, the
8 abdomen and the head to look at each of those organs to,
9 one, determine if there's been any trauma to those organs
10 and, two, to determine if there's any natural disease that
11 may be present.

12 Q Describe the physical means by which you perform that
13 internal examination. How do you go about doing that?

14 A Well, using the standard dissection techniques each of
15 those organs is removed and examined individually. So the
16 heart and the lungs are each separately removed. All the
17 organs of the abdominal cavity, which include the liver,
18 kidney, intestinal tract, pancreas. All those are each
19 individually removed and examined, as well as dissection of
20 the head to remove the brain.

21 Q What were your findings? Was there anything of remark
22 about any of the examinations that you did internally?

23 A The internal examination demonstrated the wound tract.
24 They demonstrated the presence of the surgical intervention
25 that we had read about from the medical records that there

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1 had been primary removal of portions of the small intestine
2 with reattachment, that there had been removal of a portion
3 of the stomach, and that there had been surgical repair of
4 the liver in the vasculature of the liver. It demonstrated
5 that gunshot wound to track. It demonstrated abundant
6 amounts of blood within the abdominal cavity. And then
7 looking at the organs of the chest, which are the heart and
8 lung, demonstrated significant pathology there.

9 Q And by what -- what do you mean by that particular
10 term? It demonstrated particular pathology there?

11 A Well, examination of the heart revealed that Mr. Cheeks
12 had what is commonly known as coronary artery disease in
13 that he had a buildup of plaque like material in the vessels
14 that supplied blood to the heart, to the extent that he had
15 previous coronary artery bypass grafting. So Mr. Cheeks had
16 had a previous heart attack. He had damage to the muscle of
17 his heart, some scarring, and they had gone in surgically,
18 removed veins from his legs and placed them bypassing the
19 damaged vessels of his heart. So it went from one part of
20 his heart, bypassing the damaged vessels and inserted beyond
21 that area to increase the blood supply through the heart.
22 So he had had a heart attack and a bypass, which is the
23 common phrase for that. And that had been at sometime in
24 the past long enough that those vessels were starting to
25 look like arteries again as opposed to looking like veins.

1 Q Were there any other chronic problems that Mr. -- that
2 you observed with Mr. Cheeks?

3 A Yes. Mr. Cheeks had also appeared to have been at some
4 time a cigarette smoker. He had abundant, what we call,
5 anthracosis, or this black like material, from smoking
6 cigarettes present in his lungs with damage to the lungs,
7 which we call emphysema.

8 Q Doctor, were these chronic problems that you just
9 described, were they the cause of his death?

10 A No, they weren't.

11 Q You observed the surgical attempts to save Mr. Cheeks;
12 is that right?

13 A Yes, I did.

14 Q In your experience, do they appear to be the standard
15 procedures that would have been used?

16 A Yes, they were.

17 Q So the doctors in Spartanburg were doing what they
18 could to save him; is that right?

19 A Yes, they were.

20 Q Doctor, based on your examination and your experience
21 as a forensic pathologist, do you have an opinion as to the
22 cause of death for Mr. Cheeks?

23 A Yes, I do.

24 Q And what is your opinion, please, sir?

25 A Mr. Cheeks died as a result of a gunshot wound of the

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1 abdomen.

2 Q Do you have an opinion as to the manner of death? And
3 if you explain what the manner of death is. Let me start
4 with that.

5 A Well, the manner of death describes how the injury
6 occurred, or how the death occurred. So by far and away
7 most people die as a result of natural disease. Disease
8 processes that we have that are the result of no one
9 individual cause. Just that we have natural disease
10 process. And we call that a natural death. If you die at
11 the hands of something that you do to yourself, if you die
12 as a result of injury that you cause yourself, self-
13 inflicted injury, we would call that a suicide. If you die
14 as a result of someone else causing you injury, we call that
15 a homicide. So in this case the manner of death was
16 homicide.

17 Q This was not a suicide?

18 A No, it was not.

19 Q Doctor, is there anything else with regard to your
20 examination that you would like to relay to the jury?

21 A I don't believe so, no.

22 MR. MOWRY: Thank you, sir. That's all the questions I
23 have. If you'd answer any of Ms. Wiygul's questions.

24 THE WITNESS: Certainly.

25 THE COURT: Ms. Wiygul.

1 CROSS-EXAMINATION

2 BY MS. WIYGUL:

3 Q Doctor, you stated that you took photos of the -- Mr.
4 Cheeks' wounds; is that correct?

5 A Yes, ma'am.

6 Q Were those provided to law enforcement?

7 A If they requested them. They're not -- they're not
8 released along with the autopsy report. But if they're
9 requested they're certainly available.

10 Q So you only provide them if they're requested?

11 A Yes.

12 Q Now, there was no projectile recovered from Mr. Cheeks;
13 is that correct?

14 A That is correct. Part of our procedure, especially in
15 gunshot wounds, is to x-ray the individual. So with Mr.
16 Cheeks we would have x-rayed his head and neck, his chest
17 and his abdomen looking for projectiles that may remain
18 inside the body and there were none.

19 Q And, sir, you stated that alcohol -- his blood alcohol
20 level at the time he was tested, and the fact that there was
21 some type of marijuana -- I forget the word.

22 A Metabolite.

23 Q Metabolite in his system. And Mr. Mowry made a point
24 that that would have no effect at the time of the drawing of
25 the fluids. Well, at the time of the drawing of the fluids

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1 Mr. Cheeks was deceased; is that correct?

2 A No, at -- usually, yes. But in this case these fluids
3 were drawn when Mr. Cheeks arrived at Spartanburg Regional
4 Emergency Room.

5 Q So you had not drawn those fluids?

6 A That's correct. They were drawn at Spartanburg
7 Regional.

8 Q Okay. Doctor, would the -- could you tell the amount
9 of blood that Mr. Cheeks had lost prior to his death?

10 A No, ma'am.

11 Q Would blood loss in some quantity have an effect on the
12 alcohol level or the metabolite level of the blood?

13 A No, ma'am. The metabolite level, it's -- this is --
14 marijuana is kind of a complex drug. It's very fat loving.
15 So as we ingest marijuana it's metabolite deposits itself in
16 our fat stores and over several days it leaches out.
17 Leaches from the fat back into the blood stream, which is
18 why you can have a positive marijuana test multiple days
19 after you consumed marijuana. The alcohol is -- goes into
20 the blood stream and becomes part of the blood in a
21 percentage, so that if I lose -- if I drink -- if I consume
22 four alcoholic containers, so if I drink four beers, and I
23 have a blood alcohol level of .08 roughly and I go to donate
24 blood at the blood center, then within the next -- before I
25 can metabolize that alcohol, even though I've lost a unit of

1 blood, the percentage of my blood will still be .08. I
2 won't have as much blood, but the bag that I donated with
3 also have a .08 alcohol level and I will have a .08 blood
4 alcohol level. Once they start giving Mr. Cheeks blood
5 products at the hospital then that will change those. But
6 these were drawn before they started giving him blood
7 products.

8 Q Thank you, Doctor. You stated that -- you described
9 the gunshot wounds that Mr. Cheeks suffered. The gunshot
10 wound to the neck, was there any stippling with that? Any
11 gunshot residue?

12 A Well, there was no stippling. Stippling -- when a
13 weapon is discharged four things exit the muzzle of the gun.
14 The bullet. We all know about that. The bullet comes out
15 and the bullet is being pushed out by gas which results from
16 burning gunpowder. So if the muzzle of the gun is close
17 enough to the target, and in this case would be the skin of
18 Mr. Cheeks -- if the muzzle of the gun is close enough, say,
19 within an inch or so, then the hot gas that's pushed --
20 pushing the bullet out will also strike the skin and can
21 cause charring or burning of the wound margins. So that's
22 within an inch or so. If you draw it back to within six
23 inches or so then the burned gunpowder, which we think of as
24 soot, can also deposit itself on the skin. So that'll look
25 like this really -- this really fine powder that's just

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1 deposited itself on the surface of the skin. This will wipe
2 away. So if it were present before he reached the hospital,
3 it certainly would have been removed as they were cleaning
4 the skin to examine the wound and then repair it. So there
5 could have been soot there, but that would certainly have
6 been removed at the time of his surgical intervention.
7 Gunpowder stippling is where unburned gunpowder actually
8 strikes the skin creating an abrasion of the skin, or a
9 scratch. And these are pinpoint little areas of a
10 scratching of the skin about the size of a grain of
11 gunpowder, which is a little bit bigger than a grain of
12 sand, so that even at autopsy, even several days after this
13 gunshot wound, you wouldn't have been able to see these
14 areas of scratching around the wound. So we did not see any
15 charring of the wound marking, so I don't think that it's
16 close within an inch. There was no stippling, so I don't
17 think it's within the range where the gunpowder stippling --
18 the unburned gunpowder is actually strike the skin.

19 Q And I apologize, Doctor. What range did you say you
20 would expect to see stippling within?

21 A Anywhere from a couple of inches out to about eight
22 inches.

23 Q And would that apply to both of the wounds, both the
24 neck wound and the stomach wound?

25 A It would, with the caveat of intervening clothing. You

1 don't think of having intervening clothing on the neck.

2 Most of us, you know, wouldn't -- unless it's cold and he

3 has a scarf or a jacket that comes out high. So there's

4 probably no intervening clothing. We saw no stippling or

5 any gunshot residue on the skin there. To the gunshot wound

6 to the abdomen there was no gunshot residue present.

7 However, I did not have the opportunity to examine his

8 clothing.

9 Q Would stippling have been detectable on his clothing
10 had the gun been held close to him?

11 A Gunshot residue would have been. Not stippling.

12 Q Gunshot residue would have been able to be tested on
13 the victim's clothes?

14 A Yes, ma'am.

15 Q But you were not provided those clothes; is that
16 correct?

17 A They were recovered at the hospital. Yes, ma'am.

18 Q If you had been provided those clothes would you have
19 performed the gunshot residue testing on the clothes if
20 requested?

21 A No, ma'am. I would have simply visually examined them.
22 I would not have performed any additional testing.

23 Q Would you -- what would you have been able to tell from
24 a visual examination?

25 A Well, sometimes there's visible soot, there's visible

1 unburnt gunpowder which we can see on clothing, which,
2 depending on how much blood may be present or around the
3 wound of the clothing, may or may not make that possible.
4 It may have been black clothing, which makes it very
5 difficult to see with the naked eye. There are certain
6 tests that you can perform in a laboratory that allows you
7 to look for and hopefully identify gunshot residue.

8 Q And these are actual labs that are set up specifically
9 for the purposes of testing for gunshot residue; is that
10 correct?

11 A That's correct.

12 Q Doctor, you stated that this would have been a very --
13 the stomach wound especially would have been a very painful
14 one; is that correct?

15 A Well, I think, in my opinion any gunshot wound is
16 likely to be very painful, yes.

17 Q If the victim had been in a prone horizontal lying down
18 on the floor position and someone had attempted to help him,
19 not realizing --

20 A Just after his gunshot wound?

21 Q Yes, after the gunshot wounds. And had basically sat
22 him up and bent him at the stomach to lean him against the
23 wall, would you anticipate that to have caused additional
24 pain?

25 A I would expect that it would. I don't know that it

1 would. But it seems reasonable that it would, yes.

2 Q Doctor, could you tell, or did you have any records in
3 the notes how long Mr. Cheeks as conscious? How long it was
4 before he lost consciousness after these wounds?

5 A No. I have not seen that in the chart, no.

6 Q And you retained biological fluids and tissue samples
7 from Mr. Cheeks as part of your autopsy process; is that
8 correct?

9 A That is correct.

10 Q And do you have those samples?

11 A We do. That's kind of a standard line that we put to
12 indicate that we keep certain tissues for further testing if
13 it's necessary. On individuals who have not received
14 multiple units of blood, which Mr. Cheeks did, at the time
15 of autopsy we take a sample of that decedent's blood and put
16 it on a card for possible DNA testing if that becomes
17 necessary. So we call that a blood spot. A dried blood
18 spot. We did not do that on Mr. Cheeks because much of that
19 blood was no longer his. It was whoever had donated blood
20 and they gave to him. What we do have from Mr. Cheeks are
21 various pieces of tissue that were removed at autopsy and
22 saved in a formalin jar in case we need to go back and do
23 further microscopic examination.

24 Q And can DNA testing be performed on the tissues and
25 samples that are the fluid and tissue samples that you

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1 retained?

2 A The -- we have no fluid. The blood samples that were
3 sent to the lab would have been destroyed after six months.

4 The tissues that we have, yes, you could do DNA
5 testing. Now, that may be limited DNA testing as it's fixed
6 in formalin, but you can get DNA from formalin fixed tissue.

7 Q Thank you, Doctor. You stated that during the external
8 exam you noted no other injuries other than the gunshot
9 wound; is that correct?

10 A That is correct.

11 Q And would that mean there were no bruising on the
12 knuckles? No scratches, no defensive wounds?

13 A That is correct.

14 Q So it didn't look like he'd been in a fight, he'd just
15 been shot?

16 A He had no injuries that were consistent with being in a
17 fight, yes.

18 MS. WIYGUL: Thank you, sir. I have no further
19 questions.

20 THE COURT: Anything on redirect?

21 MR. MOWRY: Just a few, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. MOWRY:

24 Q Doctor, Ms. Wiygul asked you a question about sitting
25 the victim up, whether it would cause extra pain in the

1 condition that Mr. Cheeks was in. Let me throw a couple of
2 other -- or another issue in there. If Mr. Cheeks were
3 vomiting, or if an individual were vomiting, what would be
4 the result of leaving him lying flat on the floor if the
5 person were vomiting?

6 A So the most important thing that you think about with
7 individuals who have an injury and may become sick and vomit
8 is to maintain their airway. So if we're laying on our back
9 and are unable to sit up on our own and if we vomit, then
10 much of that remains in your mouth and then you aspirate it,
11 or breath it, back into your lungs and get pneumonia, or can
12 get pneumonia from that, or even block your airway and not
13 be able to breath. So maintaining the airway is often a
14 very important or critical part of tending to a person who
15 may have an injury or some other trauma if they begin to
16 vomit.

17 Q So leaving him there might have caused him essentially
18 to drown in his own vomit; is that right?

19 A That's correct.

20 Q Now, Ms. Wiygul also asked you some questions about
21 toxicology and talked about the marijuana and the alcohol.
22 Was there anything else in his system?

23 A No, sir.

24 Q So marijuana sometime in the past, but not active, and
25 then a quantity of alcohol; is that right?

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1 A That is correct.

2 Q .08. Ms. Wiygul also asked you a question about DNA.

3 For what purpose would you, in your capacity, have performed
4 any DNA examinations, or requested them, I should say?

5 A For determination of cause and manner of death, which
6 is what I'm charged to do. DNA analysis in this situation
7 would not have been necessary. We routinely do DNA testing
8 for identification of an individual in whom we do not
9 already know the identification. So we had no reason to run
10 DNA on Mr. Cheeks.

11 Q No question about his identity?

12 A There was none.

13 MR. MOWRY: Thanks.

14 MS. WIYGUL: I have no further questions.

15 THE COURT: Doctor, thank you very much for coming,
16 sir. I appreciate it, and you are free to go.

17 THE WITNESS: Thank you.

18 (Whereupon, the witness stepped down from the witness
19 stand.)

20 THE COURT: Solicitor, if you'll call your next
21 witness, please.

22 MR. MOWRY: Yes, sir. We call Steven Sweat.

23 STEVEN SWEAT, having been first
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

STEVEN SWEAT: DIRECT EXAMINATION

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1 BY MR. MOWRY:

2 Q You are Steven Sweat?

3 A Yes, sir.

4 Q And I believe you are also a deputy with the Laurens
5 County Sheriff's Office; is that right?

6 A Yes, sir.

7 Q What is your capacity at this time with the Laurens
8 County Sheriff's Office?

9 A I work in the investigations unit.

10 Q And what is your rank?

11 A Sergeant.

12 Q Were you employed as a sergeant back in October of
13 2013?

14 A No, sir.

15 Q What were you doing then?

16 A I was a deputy. Just a regular uniform patrol duty.

17 Q So you were in uniform patrol. You would patrol the
18 roads in a patrol car; is that right?

19 A Yes, sir. I patrol, answer calls.

20 Q Was there a particular shift you were working?

21 A I was on Lieutenant Crain's shift.

22 Q And what hours did that run on Halloween night, October
23 31st of 2013?

24 A 645 p.m. to 7:00 a.m. the following morning.

25 Q So a 12 hour shift?

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1 A Yes, sir.

2 Q During that evening did you receive a call to go to
3 River Hill Road in Enoree?

4 A Yes, sir. We got a call, I believe it was at [REDACTED] River
5 Hill Road, in regards to two individuals reportedly being
6 shot.

7 Q Do you recall about what time that was received?

8 A I believe it was just before midnight.

9 Q What did you do -- where were you? Do you recall where
10 you were when you received that call?

11 A My zone is the Gray Court, Fountain Inn area, and it
12 does extend almost all the way down to Enoree. But I
13 believe I was somewhere between Gray Court and Hickory
14 Tavern.

15 Q So you were a good distance off; is that right?

16 A Yes, sir.

17 Q What did you do when you received that call?

18 A Stepped up to code 3, blue lights and siren and
19 responded to the incident location.

20 Q And with your blue lights and siren were you also
21 running in excess of the speed limit?

22 A Oh, absolutely. Yes, sir.

23 Q And that's required under those circumstances; is that
24 right?

25 A It was high priority call. Someone was reportedly

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1 serious injured.

2 Q You want to get there as fast as you can?

3 A Yes, sir.

4 Q There's been -- well, I won't go into that. Who else
5 was at the scene when you got there?

6 A Myself, Lieutenant Crain, Sergeant Timmons and Deputy
7 Taylor all responded initially and arrived within close
8 proximity.

9 Q So you all got there pretty much the same time; is that
10 right?

11 A Very close. Yes, sir.

12 Q Was there a division of labor when you got there? Did
13 somebody determine you do this and you do that, or did you
14 all just sort of take that on?

15 A We dove in and handled the scene as best we could
16 considering the circumstances. It was -- it was a shooting
17 call. We had to render aid and establish scene security
18 first and foremost.

19 Q How did you go about doing that?

20 A Well, first off when we got there we found an
21 individual on the front porch of the residence, later
22 identified as David Walker. He appeared to be wounded as he
23 had blood about his person. And then we were able to make
24 contact with an individual inside. Kelly Ball, I believe
25 her name was, was in the residence, and she unlocked the

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1 door for us to come in. We tried to make contact with her.
2 We found Mr. Cheeks laying on the floor. He appeared to
3 have been shot. He was -- he appeared to have been shot. I
4 want to say it was the shoulder and the neck. He wasn't
5 very -- he was responsive but he wasn't -- you couldn't get
6 through to him. He wasn't comprehending what we were trying
7 to ask him, tell him, so on and so forth. But we got the
8 scene cleared, made sure no one else was around that was
9 armed or anything like that.

10 Q How do you go about doing that?

11 A Well, in a call like this where someone has been
12 reportedly shot, we get in there and see signs of somebody
13 being shot, for officer safety, as well as further safety
14 for those there, we're going to go through -- go through the
15 house. Do a quick perimeter check and make sure there's no
16 one else armed inside. And check around the property as
17 well.

18 Q Is that called clearing the house?

19 A Yes, sir.

20 Q Or clearing the room?

21 A Yes, sir.

22 Q And did you find anybody else in the house?

23 A Just the three that I mentioned. We had Mr. Walker on
24 the front porch, Mr. Cheeks on the floor just inside the
25 doorway, and Ms. Ball.

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1 Q Okay. The structure itself, describe it, please.

2 A It was a single wide mobile home. It had a deck
3 attached to the side facing the roadway. I believe it was -
4 - I passed it off. I think it was like six foot by 12 foot.
5 And that's an estimate. It had a large tree growing in the
6 front yard. If you were looking at it from the roadway --

7 Q You're talking about the deck was six by 12?

8 A Yes, sir. Yes, sir.

9 Q Was that where Mr. Walker was located?

10 A Yes, sir.

11 Q And let me hand you what's been marked as Court's
12 Exhibit No. 2. Is that David Walker?

13 A Yes, sir.

14 Q Go ahead. I'm sorry.

15 A Directly in front of the deck there was a large tree
16 growing -- growing there. The driveway, if you're looking
17 at the house from the roadway, the driveway kind of came in
18 from the right and went down to that deck and toward that
19 tree. There's also a blue -- like I said, the Chevrolet SUV
20 with a bumper. It was a tag on it, which I can't recall.
21 It was owned by Mr. Cheeks. It was sitting in the driveway.

22 Q So you ran the tag on it --

23 A Yes, sir.

24 Q -- to make that determination?

25 A Yes, sir.

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1 Q Let me hand you what's I believe been admitted as
2 State's Exhibit No. 18 and ask you if you can identify that.

3 A That's the vehicle I was describing. Yes, sir.

4 Q And behind --

5 A There's the mobile home. That's the deck I was talking
6 about, and there's the tree right there. This was taken --
7 the picture was taken from the driveway area.

8 Q Correct. Was that the scene pretty much as it appeared
9 when you got there?

10 A Yes, sir.

11 Q All right. What else did you do after you did the
12 initial clearing of the house and the perimeter sweep?

13 A The scene secured, of course. The neighbors, I believe
14 some family members, arrived on the scene. Of course, to
15 preserve the scene we had to keep them out. We allowed the
16 -- of course, only emergency personnel entered the scene,
17 which included first responders such as firemen, EMTs and
18 the supervisors and the law enforcement personnel.

19 Q There has been talk of a log. Did you keep a log
20 yourself?

21 A Yes, sir. I conducted a -- I wrote down a list of
22 names of individuals who entered the crime scene. The crime
23 scene, of course, was established with crime scene tape.
24 Anybody went past that tape into the scene, their name was
25 logged down.

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1 Q And let me hand you what's been marked as Court's
2 Exhibit No. 3. Do you recognize that?

3 A Yes, sir.

4 Q And what is that, please, sir?

5 A That is names of the individuals who entered the crime
6 scene.

7 Q Is that your -- that is a photocopy; is that right?

8 A Yes, sir.

9 Q Is that your handwriting?

10 A Yes, sir.

11 Q And did you do that that evening?

12 A Yes, sir.

13 Q At what point would you write somebody's name down?

14 A When they passed the tape, or I discovered they passed
15 the tape.

16 Q So you're carrying a notebook writing that down; is
17 that right?

18 A Yes, sir.

19 Q What did you do then?

20 A I assisted the other deputies. Lieutenant Cheek had
21 arrived on scene after EMS did. Of course, we had the scene
22 cleared. He took over the scene and I assisted Deputy
23 Taylor with locating items of evidentiary value. We got
24 evidence bags from him so he could package such evidence.
25 While on the scene, too, I had my deputy cam active. I

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1 think it was active after I got there. Of course, the
2 battery went out on it, but most of this was recorded on it.

3 Q Would it have been pretty much the same thing as other
4 deputies recorded that night?

5 A Yes, sir. Just from different --

6 Q Let me show you a photograph that's been marked as
7 State's Exhibit No. 28 for identification. Do you recognize
8 that?

9 A Yes, I do.

10 Q What is that, please, sir?

11 A That is the .380 Lorcin handgun that was located on the
12 ground just behind the SUV that was shown up there toward
13 the driver's side.

14 Q Is this one of the items that you and Deputy Taylor
15 located?

16 A Yes, sir.

17 Q And let me go back to -- I'm sorry. Let me go back to
18 State's Exhibit No. 8.

19 MR. MOWRY: I would offer this photograph, State's
20 Exhibit No. 28, into evidence at this time, Your Honor.

21 MS. WIYGUL: Without objection.

22 THE COURT: Without objection, State's 28 is in
23 evidence.

24 (Whereupon, State's Exhibit No. 28 was entered into
25 evidence.)

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1 Q Let me go back to State's Exhibit No. 18. If you could
2 just describe in relation to the vehicle where the
3 photograph -- where the .380 pistol that you described in
4 State's Exhibit 28 was located.

5 A It was found on the ground towards the driver's side
6 rear of that SUV.

7 Q The driver's side rear --

8 A Yes.

9 Q -- of the SUV?

10 A Yes, sir.

11 Q Let me hand you what has been marked as State's Exhibit
12 No. 19. I believe it's actually admitted into evidence as
13 State's Exhibit 19. Do you recognize that?

14 A Yes, sir.

15 Q What is that, please, sir?

16 A That is a photograph that's got evidence markers placed
17 out.

18 COURT REPORTER: I'm sorry. I didn't hear that last
19 little bit.

20 THE COURT: Would you repeat that answer again, please.

21 THE WITNESS: That was a picture of the scene with some
22 of the evidence markers placed out and about.

23 MR. MOWRY: I believe -- well, I believe this is
24 already in evidence. If not, I would offer it as such.

25 THE COURT: That's 19? 19 is in evidence according to

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1 our records.

2 Q Now, each of those markers, what does that demonstrate?

3 What is that there to indicate to you?

4 A Those markers correlated an item of what we believe to
5 be an item of evidentiary value. They were located on the
6 scene.

7 Q Let me hand you what has been admitted, I believe, as
8 State's Exhibit No. 30 and ask you if you can identify that.

9 A This is the second page of the incident report.

10 Q And primarily the middle paragraph. The larger middle
11 paragraph. What does that record?

12 A It discusses the location of the different items of
13 evidence and where they were found on scene.

14 Q So each of the markers would correlate to the number in
15 that paragraph?

16 A Yes, sir.

17 Q Okay. The document itself, it's got Deputy Taylor's
18 name at the bottom. Did you assist in the preparation of
19 this document?

20 A No, I didn't.

21 Q All right, sir. Describe what else you did, please,
22 sir.

23 A I assisted with taking certain photographs of the
24 scene. More or less, other than that, like I mentioned
25 before, scene security. Deputy Taylor collected the items.

STEVEN SWEAT: DIRECT EXAMINATION

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1 I assisted the other personnel with helping in this
2 investigation.

3 Q Did you assist with the recovery of the Rossi 38?

4 A I believe I -- I was told where it was. But as far as
5 the actual handling, locating the item itself, I can't
6 recall.

7 Q Did you photograph the item?

8 MS. WIYGUL: Objection, Your Honor. He's already
9 testified he doesn't recall that, and there's been prior
10 testimony that someone else took those pictures.

11 THE COURT: All right. Well, he's testified that he
12 doesn't recall retrieving the 38. He hadn't testified about
13 the photos yet. You can ask the question.

14 Q I'm going to show you State's Exhibit 16 and 17. Did
15 you take these photographs, or did another deputy take those
16 photographs?

17 A (No verbal response.)

18 Q Okay. I'm going to show you -- at one point did you
19 assist in -- assist Lieutenant Crain in helping Mr. Cheeks
20 sit up?

21 A Yes, sir. He was laying on his back. Had a wound to
22 the neck, so we wanted to try to get him sitting upright.
23 He was located in the hallway just inside the doorway when
24 we first got there, and helped Mr. Cheeks sit up in I think
25 it was the bathroom, slash, laundry room. I helped him in

STEVEN SWEAT: DIRECT EXAMINATION

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1 there and sat him up against the wall or something inside so
2 he wasn't laying flat down on his back.

3 Q And the reason for that?

4 A I didn't want -- want him to bleed out.

5 Q Was he also vomiting at that time?

6 A Yes, sir. He was.

7 Q Was there a concern that he might strangle on his own
8 vomit?

9 A Absolutely. He was laying down, and you don't want to
10 vomit where he suffocated himself.

11 Q While he was being moved did Lieutenant Crain remark
12 anything about the presence of evidence?

13 A He said something about bullet or slug or something
14 like that falling out as we were moving him. I was -- I
15 didn't see it, but I remember him saying that. I was too
16 busy trying to move Mr. Cheeks.

17 Q Did you see the bullet afterwards?

18 A Yes, sir.

19 Q And let me show you State's Exhibit No. 27. Do you
20 recognize that?

21 A Yes, sir. That's the round that was seen afterwards.

22 Q Do you recall if you photographed that yourself?

23 A I can't be sure.

24 Q But this is the round that you saw?

25 A Yes, sir. Yes, sir.

STEVEN SWEAT: DIRECT EXAMINATION

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1 Q And the location in which it was found?

2 A Yes, sir.

3 Q What was done with that round?

4 A It was collected into evidence.

5 Q And was that part of your and Lieutenant -- or, excuse
6 me, and Deputy Taylor's task that night?

7 A Yes, sir.

8 Q So you all collected that and put it into evidence; is
9 that right?

10 A Yes, sir.

11 Q Additionally, Mr. Sweat, I showed you the photograph.
12 Let me show you this Lorcin semiautomatic. State's Exhibit
13 No. 2. Did you all collect that?

14 A Yes, sir. That's the same weapon.

15 Q And that's the same weapon that you saw in State's
16 Exhibit No. 28; is that right?

17 A Referring to that photograph, yes..

18 Q Yes. What else did you all locate while you were at
19 the scene?

20 A Beside the same SUV. I think it was on the ground
21 between --

22 Q And I'm going to hand you State's Exhibit No. 30 just
23 to refresh your memory if you need it.

24 A Yes, sir. Off the top of my head -- well --

25 Q Go ahead and review that if you need to.

STEVEN SWEAT: DIRECT EXAMINATION

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1 A Yes. On the ground, driver's side of the SUV that was
2 shown earlier, there were two .380 shell casings found
3 laying there.

4 Q Two .380 shell casings?

5 A Yes, sir. And they were identified as items two and
6 three, which were, of course, marked as well. There was
7 also a necklace laying in the same area. It had a cross
8 pendant. It was marked as item number 1.

9 Q Let me show you State's Exhibit 10. Does this appear
10 to be the cross pendant that you saw that night?

11 A It does.

12 Q And that was photographed as well?

13 A Yes, sir.

14 Q What else did you find?

15 A Under the -- right at the front kind of at the bumper
16 of that SUV there was a pair of glasses that was found on
17 the ground and what appeared to be a blood splatter right
18 beside it on the ground as well. Between the SUV and the
19 tree that I mentioned earlier that was right in front of the
20 deck there was a blue and silver - or grey colored hat
21 laying on the ground. There was also a liquor bottle. I
22 believe that had blood on it. Yes, it did. And another
23 .380 caliber shell casing located on the ground.

24 Q And all of those items were collected by you and Deputy
25 Taylor; is that right?

1 A Yes, sir.

2 Q Are you an expert in collection of forensic evidence?

3 A No, sir. I just received basic training.

4 Q And that is part of what you have to do as a deputy; is
5 that right?

6 A Yes.

7 Q What is your -- I guess, what are your criteria for
8 collection of evidence? Let me ask it this way. Is it
9 better to have more evidence than you need than less?

10 A I'd much rather have something and not need it than
11 need something and not have it.

12 Q Thank you, sir. What else did you collect? And you
13 can refer to the notes if have to.

14 A Yes, sir. There was, of course, a handgun from
15 earlier. It was found under the mattress in the master
16 bedroom of the residence that --

17 Q And that's State's Exhibit No. 4; is that right? The
18 Rossi -- sorry. A pistol.

19 A Yeah. Yes, sir. That was found in the master bedroom
20 in front of the mattress. Two shirts that Mr. Walker had
21 been wearing that were removed during his treatment by
22 medical personnel. They were taken into evidence. The
23 slug, bullet that fell by Mr. Cheeks when he was being moved
24 in the residence. And -- let me just review this to be
25 sure.

STEVEN SWEAT: DIRECT EXAMINATION

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1 Q Please do. Take your time.

2 A The handgun. The Lorcin .380 that you showed me a
3 while ago.

4 Q How extensive was your search? How far out did you all
5 go?

6 A We went all the way up to the driveway right there
7 where it met the road.

8 Q And this was about midnight; is that right?

9 A Yes, sir.

10 Q How were you lighting your way?

11 A Flashlight.

12 Q What kind of flashlight did you use?

13 A At the time I had just one of the large Maglights.

14 Q So powerful flashlight; is that right?

15 A Yes, sir. We -- I want to say we found another
16 necklace. Yes, sir. Closer to the road near a small
17 retaining wall we discovered a yellow colored necklace as
18 well that was located on the ground.

19 Q And would that --

20 A Yes, sir.

21 Q This is State's Exhibit No. 11. Does that appear to be
22 the necklace?

23 A Yes, sir.

24 Q So you found the medallion or the charm on it that
25 might have come from a necklace, and then a necklace; is

STEVEN SWEAT: DIRECT EXAMINATION

320

1 that right?

2 A It's documented that we found a yellow colored necklace
3 with a pendant near the door of the SUV, and we found a
4 separate necklace up in the roadway.

5 Q What else did you do while you were at the scene?

6 A Continue scene security. Help them wrap things up.
7 Once we got done, remove crime scene. Assisted EMS in
8 escorting the patients to the different ambulances so they
9 could be taken -- receive further medical treatment. Like I
10 said, administer crowd control.

11 Q Was there a crowd there?

12 A Yes, sir. It's a residential area up around there.

13 Q How did you all attempt to keep people back from the
14 crime scene itself?

15 A Well, we -- and we also put the crime scene tape up.

16 Q The yellow --

17 A Yes, sir.

18 Q -- plastic crime scene tape?

19 A Crime scene, sheriff's line, yeah.

20 Q Were there certain people that tried to cross it?

21 A There was some folks tried to come down there. I had
22 to explain to them what was going on and while we needed to
23 preserve with tape across the road, and just stayed over
24 there for the most part. No one else, like I said, entered
25 the scene except for emergency personnel.

STEVEN SWEAT: CROSS-EXAMINATION

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1 Q Okay. You had described a little bit about doing the
2 perimeter search.

3 A Yes, sir.

4 Q Now, most of what you have talked about was at the
5 front of the house. Did you also go elsewhere?

6 A The back of the residence, which was kind of hard to
7 get around if memory serves me correctly. But like I said,
8 we were looking mainly for people at that time. But we did
9 check around for evidence, and most of it was found on the
10 roadside of the house.

11 Q Did you find anything behind the house that was of any
12 interest to your -- appeared to be of any evidentiary value?

13 A Not that I recall. No, sir.

14 MR. MOWRY: Thank you, Sergeant Cheek. I believe
15 that's all I have. If you'd answer any of Ms. Wiygul's
16 questions, please.

17 THE WITNESS: Yes, sir.

18 THE COURT: Ms. Wiygul.

19 CROSS-EXAMINATION

20 BY MS. WIYGUL:

21 Q Sergeant Sweat --

22 A Yes, ma'am.

23 Q -- during your direct exam you noted that the pendant
24 had actually been found on a necklace near the bumper of the
25 SUV. Was that correct?

STEVEN SWEAT: CROSS-EXAMINATION

322

1 A Yes, ma'am.

2 Q So when you found this pendant it was attached to a
3 necklace?

4 A The way it was documented. Yes, ma'am. We worked --
5 like I said earlier, we all worked on this case together.
6 So I helped in the case, and then we all asked questions as
7 we were doing the incident. And it seems -- seems from my
8 memory that there was a necklace found with that pendant.

9 Q Yes, sir. And this necklace was found close to the
10 retaining wall, correct?

11 A Yes, ma'am.

12 Q Do you know if this necklace is broken? If the clasp
13 is broken?

14 A I can't tell from the way you're showing me right now.

15 Q You have no independent recall?

16 A No, ma'am.

17 Q Sir, who sealed that? Can you tell?

18 A Deputy Taylor.

19 Q So you have no way of knowing what would have happened
20 to the necklace that was on this pendant when it was found?

21 A No, ma'am.

22 Q Thank you, sir. Officer, you spoke about basic
23 training.

24 A Yes, ma'am.

25 Q And as a result of that basic training, when you got to

STEVEN SWEAT: CROSS-EXAMINATION

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1 that scene, being just a deputy at the time, you were trying
2 to follow what you had been taught to do; is that correct?

3 A Render aid and establish scene security. Yes, ma'am.

4 Q In basic training did they tell you that you need to
5 have a crime scene log to know who was on the crime scene?

6 A Yes, ma'am. I recall that. I try to do that every
7 crime scene I go to.

8 Q Did your supervisor or anyone provide you with a crime
9 scene control log?

10 A No, ma'am. I don't have that form -- well, I didn't
11 have that form in my car.

12 Q Have you since obtained some of those forms and keep
13 them in your car?

14 A I just kind of stuck with the ole notebook paper. It
15 seems to work pretty good.

16 Q Does the -- and some of the problems with the notebook
17 paper, can you tell from your notes when people got there?

18 A No, ma'am. I didn't log that. I just logged who come
19 in while we were on scene.

20 Q And can you tell what time they left?

21 A No, ma'am. We all left the scene -- I believe it was
22 documented on the first page of the report. It's got the
23 departure time when everybody exited -- left out.

24 Q You stated, or someone has stated, that some of the
25 family members of the victim and some other people from the

STEVEN SWEAT: CROSS-EXAMINATION

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1 neighborhood actually crossed the crime scene tape and came
2 partway down the driveway before you all were able to get
3 them to leave. Do you recollect that?

4 A I went up there to the road, but they were right there
5 at the driveway wondering what was going on. I explained to
6 them the gravity of the situation. And once they understood
7 that they backed up on the other side of the road, I
8 believe, near a telephone pole, if my memory serves me
9 correctly.

10 Q Whenever you were in the house assisting Deputy Taylor
11 with the collecting of evidence and the taking of pictures
12 and everything who was in charge of keeping this log, or
13 were you just doing the best job you could?

14 A Did the absolute best job I could. But then, of
15 course, after the scene was established we had, I think,
16 Captain on scene and some other law enforcement. I think
17 Spartanburg, or somebody from Spartanburg's jurisdiction
18 showed up and actually assisted us with -- after the tape
19 was put up, keeping anybody who was not emergency personnel
20 from crossing the tape.

21 Q Okay. So at the time were you kind of low man on the
22 totem pole? We've heard sergeants and lieutenants. At the
23 time as a deputy --

24 A I was just a regular deputy, ma'am.

25 Q Okay. But you took it on yourself to try and make a

STEVEN SWEAT: CROSS-EXAMINATION

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1 record of who was there, didn't you?

2 A Absolutely. I did what I'm supposed to do.

3 Q Why is that important?

4 A Preservation.

5 Q Preservation of what?

6 A The crime scene.

7 Q Because it's important to know whose DNA might be found
8 on that crime scene, isn't it?

9 A Well, footprints. I mean, we got to know who --

10 Q Fingerprints, hair, anything, correct?

11 A Yes, ma'am. That becomes --

12 Q What did you do with this crime scene log?

13 A When we got back to the office and we were preparing a
14 report and whatnot, of course, get everything typed up and I
15 give it to Deputy Taylor to turn in with his paperwork.

16 Q And who did he turn it into?

17 A Turn it into a box that we have that goes to the
18 investigations unit the next day for the said investigator,
19 in this case Lieutenant Cheek, to retrieve for the records.
20 Also administration gets a copy of it. It gets disbursed
21 where it needs to be.

22 Q So there's not just one copy?

23 A When we turn it in there is. There are other copies
24 that are made. Now, the admin, if they need something --
25 for instance, a victim's form. I have a copy of it made, or

STEVEN SWEAT: CROSS-EXAMINATION

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1 say a statement or something like that, admin might need it.

2 Their big concern was the incident report itself.

3 Q But everybody gets a copy of this, or the lead
4 investigator gets a copy of it?

5 A The admin and the investigator assigned to the case
6 would get a copy of the actual incident report. Yes, ma'am.

7 Q And the investigator assigned to this case was
8 Lieutenant Bryant Cheek?

9 A Yes, ma'am.

10 Q And you did what you were supposed to? You tried to
11 write down who was there, didn't you?

12 A Yes, ma'am.

13 Q And would you agree there's 18 names?

14 A I'd have to count them.

15 Q And just to clarify. You would have handed that over
16 to Deputy Taylor the day after the incident?

17 A I've got 19 names, ma'am.

18 Q 19.

19 A Give me a moment, please. Yes, ma'am. I've got 19
20 names. I'm sorry.

21 Q No problem. And you turned this in?

22 A It was given to Deputy Taylor to be turned in with the
23 incident report to incident report files.

24 Q And so, within a week or so of this incident occurring
25 this document was in that man's possession, correct?

STEVEN SWEAT: CROSS-EXAMINATION

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1 A I don't know. I didn't see what happened to it after
2 it was -- I would assume so, but it's --

3 Q If it was in his notebook, that's how it got there?

4 A Like I said, I don't know what happened to it. I can't
5 testify what happened after it went in the box.

6 Q I understand, Sergeant. Sergeant, was what you stated,
7 that once Lieutenant Cheek got there he was in charge,
8 correct?

9 A Correct.

10 Q Did he direct your actions at all, or did he just kind
11 of let everybody keep doing what they were doing?

12 A He asked me to assist in certain ways. Photographs,
13 for instance, or that. But yes, he was in control of the
14 scene.

15 Q Did he ask you to look in the shed?

16 A I can't recall that. I don't remember.

17 Q To the best of your knowledge -- and if you don't
18 recall, just say so. But to the best of your knowledge, did
19 anybody take a look at the shed?

20 A I don't know. I know I didn't.

21 MS. WIYGUL: Thank you very much, Sergeant. I
22 appreciate it.

23 THE WITNESS: Yes, ma'am.

24 MS. WIYGUL: And I am going to lay this over here for
25 the jury.

STEVEN SWEAT: REDIRECT EXAMINATION

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1 MR. MOWRY: It's a Court's exhibit, Your Honor.

2 THE COURT: Why don't we go ahead and make it -- why
3 don't we go ahead and make it a State's exhibit, if that's
4 okay, or somebody's exhibit. I have no problem with it
5 coming --

6 MS. WIYGUL: It was my understanding that the Court was
7 going to permit me to publish it to the jury through this
8 witness.

9 MR. MOWRY: If she wants to make it a Defense exhibit,
10 that's fine, Your Honor.

11 THE COURT: We'll, take care of that. But it is in
12 evidence. We'll mark it later and figure out exactly what
13 exhibit it's going to be. Right now it's Court's 3. But we
14 will consider it in evidence and it can be published to the
15 jury, if you choose.

16 MS. WIYGUL: Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. MOWRY:

19 Q Just a few questions, Sergeant Sweat. I'm going to go
20 back to the -- give me just a moment to locate those
21 pictures. I'm going to hand you the two items, State's
22 Exhibit No. 11. The gold chain. Can you see whether or not
23 there is a clasp there?

24 A Yes, sir.

25 Q Does that appear to be intact to you, or does that

STEVEN SWEAT: REDIRECT EXAMINATION

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1 appear to be unlinked?

2 A I'm not much on jewelry. It looks like some type of
3 connection is supposed to be there. But I --

4 Q But does it look like it's all -- does it look like
5 it's a loop or does it look like it's just one piece?

6 That's what I'm getting at.

7 A It looks like it's one piece that connects to the other
8 end to me.

9 Q Yeah. One piece that connects to the other end, but it
10 is not connected, is it?

11 A No, sir.

12 Q All right. And let me show you State's Exhibit No. 10.

13 A Yes, sir.

14 Q Now, that is the pendant; is that right?

15 A Yes, sir.

16 Q And you and Deputy Taylor were collecting these items;
17 is that right?

18 A Yes, sir.

19 Q Let me refer to State's Exhibit No. 21. And this item
20 right there where my finger is, does that have any

21 relationship to the pendant that I just put before you?

22 A Yes, sir. It looks like the same pendant. If I could
23 take a closer look at the picture.

24 Q Yes.

25 A Yes, sir. That's it.

STEVEN SWEAT: REDIRECT EXAMINATION

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1 Q And I'm also going to show you State's Exhibit No. 15.

2 It's got marker 9 there. What is this item here?

3 A If I can see the picture real quick, please.

4 Q Yeah, we can do that.

5 A It's going to be that necklace.

6 Q So does there appear to be a pendant on that necklace?

7 A No, sir.

8 Q So the necklace and the pendant described in State's

9 Exhibits 15 and 21 are separate; is that right?

10 A Yes, sir.

11 Q All right. Now, Sergeant Sweat, with regard to the log

12 of individuals that came on the scene. Is the handwritten

13 note the only piece of information that would tell us who

14 was on the scene or is there another means of recording all

15 that information?

16 A Absolutely. The deputy cam.

17 Q Deputy cam. How about CAD? The 911 CAD?

18 A Yes, sir. That, too.

19 Q Tell us what the 911 CAD is.

20 A It's a system at central dispatch where more or less

21 they keep records of the dispatcher's report, the county

22 units, first -- emergency personnel. So just, we'll -- when

23 we arrive on scene we call it 1023. That means we're there.

24 At that point the dispatcher would log into the computer

25 that my unit number 267 was on scene at [REDACTED] River Hill Road.

STEVEN SWEAT: RECROSS-EXAMINATION

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1 That also correlates over to EMS, fire department. It would
2 correlate with Laurens City in their jurisdiction -- City.

3 That all would be logged at 911 who was on scene.

4 Q So any kind of first responder you would have had that
5 information available electronically; is that right?

6 A Yes, sir.

7 Q The handwritten notes on your part --

8 A Back that up.

9 Q -- back it up? It's not in exclusion of it or anything
10 like that; is that right?

11 A Yes, sir.

12 MR. MOWRY: I believe that's all I have. Thank you,
13 sir.

14 RECROSS-EXAMINATION

15 BY MS. WIYGUL:

16 Q Deputy, on a CAD report everything is in -- like you
17 said, 1023 meant you got there, correct?

18 A Yes, ma'am.

19 Q Everything on a CAD report is in code, isn't it?

20 A Yes, ma'am.

21 Q And you stated that your unit number at the time was
22 267, correct?

23 A Yes, ma'am.

24 Q Unit numbers change, don't they?

25 A Of course, but --

STEVEN SWEAT: RECROSS-EXAMINATION

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1 Q And CAD reports --

2 MR. MOWRY: I ask that the witness be allowed to answer
3 the question, Your Honor.

4 THE COURT: And if you could, just speak up a little
5 bit, please --

6 THE WITNESS: Yes, sir.

7 THE COURT: -- because she's having difficulty hearing
8 some of what you're saying.

9 A Yes, they change, but the unit number can easily be
10 found in the records who was 267 --

11 Q Correct.

12 A -- or, since I'm now 220, you go back to the CAD record
13 it's going to be --

14 Q But a CAD report is in code and the numbers on it are
15 subject to change, correct?

16 A Yes, ma'am.

17 Q And you just have to go to the individual agencies to
18 translate everything, correct?

19 A More or less.

20 Q All right. Now, when you were collecting evidence from
21 the scene, under the front driver's side bumper right near
22 this pendant that was attached to a necklace when you saw
23 it, were there also glasses located with blood splatter?

24 A Well, I don't believe that's right. Under the bumper
25 were the glasses. On the driver's side of the SUV between --

STEVEN SWEAT: REDIRECT EXAMINATION

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1 - between the driver's side door and the front of the SUV
2 off to the side there was shell casings and a pendant and
3 necklace. You go around the front of the SUV, kind of right
4 under the bumper, that's where the glasses and blood
5 splatter was found.

6 Q So the glasses and the blood splatter were towards the
7 front of the car?

8 A Yeah.

9 Q And the pendant on the chain was at the back of the
10 car?

11 A No.

12 Q Okay. I'm sorry. I'm sorry, Sergeant. I'm not trying
13 to confuse you.

14 A All right. If you're looking at the car from the
15 driver's side, you have the front door, there's the back
16 door, there's the car area, there's the hood, the engine,
17 everything. If you come off toward yourself and go to the
18 front of the SUV a little bit, like it was shown with those
19 evidence markers in the picture of it, that's where the
20 pendant and the shell casings were found. You go around the
21 front of the truck, in a Chevrolet it's kind of like
22 underneath the bow tie, that's where the glasses and the
23 blood splatter was found in that area.

24 Q Okay. So about three, four feet in distance?

25 A No, ma'am. It's like -- like there's the bumper,

STEVEN SWEAT: REDIRECT EXAMINATION

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1 there's the glasses and the blood splatter.

2 Q Just to clarify. Approximately how far apart were the
3 glasses and the blood splatter and the pendant on the chain?

4 A Several feet.

5 Q So approximately three feet?

6 A Probably more than that, but I --

7 Q Three to five feet?

8 A Obviously I don't know. I don't know. I just know it
9 was -- I mean, from the front of the car to the driver door
10 of the car or a little further outward. Whatever distance
11 that would be, that's where the glasses were and that's
12 where the pendant and shell casings were.

13 MS. WIYGUL: Thank you, Officer.

14 THE WITNESS: Yes, ma'am.

15 REDIRECT EXAMINATION

16 BY MR. MOWRY:

17 Q Deputy Cheek, why has your number changed? Excuse me.
18 I did it again. Deputy Sweat, why did your ID number change
19 on your vehicle?

20 A My unit number changed because I got promoted.

21 Q But back then it was 267; is that right?

22 A Yes, sir.

23 Q And anyone who wanted to check could find 267; is that
24 correct?

25 A Yes, sir.

KIMBERLY MEARS: DIRECT EXAMINATION

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1 duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. NEELY:

4 Q Ms. Mears, if you would, would you please state your
5 full name for the record.

6 A Kimberly Mears.

7 Q And where do you currently work?

8 A The South Carolina Law Enforcement Division, which is
9 commonly known as SLED.

10 Q And how long have you worked there?

11 A I retired in 2007 and then transferred to the latent
12 prints department in 2011.

13 Q So you've worked in the latent prints in 2011?

14 A Yes.

15 Q And what do your responsibilities include in that
16 department?

17 A I process evidence submitted by local agencies for the
18 presence of latent prints, and I conduct fingerprint
19 comparison and search fingerprints on the automated
20 fingerprint identification system, which is known as AFIS.

21 Q What kind of training and education have you had as
22 related to that department?

23 A My education, I have a bachelor's degree in biology
24 from Winthrop University. And then my training, I completed
25 the SLED in-house training programs once I transferred to

KIMBERLY MEARS: DIRECT EXAMINATION

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1 the latent print department. And then I was accepted into
2 the latent print training program sponsored by the National
3 Institute of Justice, which was a 10 week program with
4 courses covering all aspects of fingerprint work.

5 Q In your estimation, how many times have you examined
6 objections for a latent print?

7 A It would be in the thousands.

8 Q Have you testified in court before about latent prints?

9 A Yes, I have.

10 Q How many times?

11 A This is my fifth time.

12 Q Have you ever been qualified as an expert before?

13 A Yes, I have.

14 Q How many times?

15 A Four times.

16 MR. NEELY: Your Honor, at this time I'd like to offer
17 Ms. Mears as an expert witness in the identification of
18 latent prints.

19 THE COURT: Any objection, Ms. Wiygul?

20 MS. WIYGUL: No objection.

21 THE COURT: As I explained with the doctor earlier,
22 ladies and gentlemen, in this case the parties agree that
23 Ms. Mears is an expert in the field of latent print
24 identification. Therefore, she can give opinion testimony
25 in this area. She's not limited to simply factual or

KIMBERLY MEARS: DIRECT EXAMINATION

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1 eyewitness type testimony. Her opinion is evidence that you
2 can use as you deem appropriate.

3 Mr. Neely, you may continue, sir.

4 MR. NEELY: Thank you, Your Honor.

5 Q Ms. Mears, if I may approach. Do you recognize this?

6 A Yes, I do.

7 Q And what is that?

8 A This is a copy of my report.

9 Q And what was your conclusion on that report?

10 A In this case I examined a handgun and my result was
11 that it was no value for identification.

12 Q And what kind of handgun was that?

13 A It's a Lorcin handgun.

14 Q And what does no value for identification mean?

15 A It means that partial fingerprints were developed on
16 the gun but it was not sufficient enough to use for any type
17 of comparison.

18 Q What does a partial fingerprint mean?

19 A If you look closely at your fingertips you'll see tiny
20 little raised lines on your skin. Those lines are what we
21 call ridges, and they're lined with sweat pores. Throughout
22 the day you exude sweat, or touch your face, or eat greasy
23 foods, and accumulates on those ridges. When you touch an
24 object that moisture is transferred to that surface
25 corresponding to the ridges on your skin, and that's what we

1 call a latent print. That's your fingerprint. Now, no
2 value or insufficient means that it's not a full
3 representation of your fingerprint and it's not enough to do
4 a comparison with a known print.

5 Q And what kind of process do you all use to pull
6 partials or full fingerprints from an object?

7 A In this case I used cyanoacrylate, which is the
8 chemical name for Super Glue. It was fumed, or heated to a
9 vapor so that the fumes adhere to the moisture on that
10 surface, and then I applied black powder to the surface.
11 And then if anything had been there of value I would lift it
12 using fancy tape and applying it to a piece of paper which
13 would then be a latent lift.

14 Q And just kind of going into that a little bit. You
15 know, on shows like CSI and stuff you see on TV and the
16 movies they'll put an object in like a computer, scan it,
17 pull the fingerprints, and then put it in the computer and
18 database it and correlate it. Is that how things really
19 work?

20 A No.

21 Q So the procedures that you all use, is that the normal
22 procedure?

23 A Yes, it is.

24 Q You said there was no fingerprints -- enough
25 fingerprint to come up with a value?

KIMBERLY MEARS: DIRECT EXAMINATION

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1 A That's correct.

2 Q Is that uncommon?

3 A No, it's not.

4 Q What kind of environmental factors can play into a
5 fingerprint not being to lift it?

6 A Leaving a fingerprint is a chance event that could
7 depend on the person themselves, the surface being touched,
8 and the environment that that object was in. In this case,
9 a handgun, the way you handle that object you're not
10 purposefully placing your hand perfectly on that surface.
11 You're handling it, your skin is moving against that
12 surface, causing any prints to possibly smudge, or the
13 person handling it might have dry callus hands. They might
14 not leave a lot of moisture to leave a good fingerprint.

15 Q So even if somebody is holding a gun, if they moved
16 their hand weird and didn't hold it just right, you could
17 have no fingerprints to be pulled?

18 A That's correct.

19 Q I'm going to ask you to identify the gun that you used.
20 Is this the gun that you -- the box --

21 A Yes.

22 Q And how can you tell?

23 A The serial number matches the serial number that's on
24 my report and my worksheet. And in then in the magazine
25 well I inscribed the lab number, item number and my initials

KIMBERLY MEARS: DIRECT EXAMINATION

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1 onto the object.

2 Q Thank you. And do some surfaces leave fingerprints
3 better than other surfaces?

4 A Yes, they can.

5 Q Can you describe that a little bit.

6 A A smooth piece of glass is -- a dry smooth piece of
7 glass would leave a better print than, say, this wood
8 bannister, because it does have a texture and the grain of
9 the wood can effect the fingerprints that are left.

10 Q And in this case there wasn't enough of a print to be
11 pulled; is that right?

12 A That's correct.

13 Q And SLED, once something is given to you, passes on
14 down the chain. In this case, once you finish your
15 examination of the gun who did you give it to?

16 A I transferred the item to James Green in the firearms
17 department.

18 Q And how long did your examination of the gun take?

19 A In this case I had it in my custody for approximately
20 40 minutes.

21 Q And again, is that unusual for an examination for
22 latent prints?

23 A No, it's not.

24 MR. NEELY: That's all I have. Please answer any
25 questions Ms. Wiygul has for you.

KIMBERLY MEARS: CROSS-EXAMINATION

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1 THE COURT: Ms. Wiygul.

2 CROSS-EXAMINATION

3 BY MS. WIYGUL:

4 Q Ms. Mears, was the only item you tested for latent
5 prints in this case the Lorcin handgun?

6 A Yes, it was.

7 Q And do you decide what you test or do you just test
8 what local law enforcement asks you to test?

9 A I do not decide. It already comes -- it comes to our
10 lab with existing assignments. And so, we just do what has
11 been tasked to that item.

12 Q And who tasks the items? Who decides what gets tested?

13 A The submitting agency.

14 Q And who was the submitting agency in this case?

15 A Laurens County Sheriff's Office.

16 Q And do you know what individual with Laurens County
17 Sheriff's Office would have made that decision?

18 A No. All I have is the individual that submitted
19 evidence.

20 Q And who's the individual that submitted the evidence?

21 A Todd Alexander.

22 Q And is that -- do you know, is that just the person
23 that runs the property -- or was running the property and
24 evidence room at that time?

25 A I'm not sure.

KIMBERLY MEARS: REDIRECT EXAMINATION

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1 Q What prints were you sent for comparison in this case?

2 Whose fingerprints were you sent?

3 A None.

4 Q You weren't sent any fingerprint cards in this case?

5 A No. All I had was the Lorcin handgun.

6 Q Were you told whether any fingerprints were taken from
7 any individuals in this case?

8 A No, I was not.

9 Q And to clarify, the only thing you were asked to test
10 as this handgun itself, correct?

11 A That's correct.

12 Q You were not sent the magazine from inside it, correct?

13 A No. Just the handgun.

14 MS. WIYGUL: I have no further questions. Thank you.

15 MR. NEELY: Just a brief redirect, Your Honor?

16 THE COURT: Sure, please.

17 REDIRECT EXAMINATION

18 BY MR. NEELY:

19 Q Ms. Mears, if there's no print to be pulled from the
20 gun, would it matter if there was any comparisons made?

21 A No, it would not.

22 MR. NEELY: Thank you.

23 THE COURT: Thank you, ma'am. You can step down. You
24 are free to go.

25 THE WITNESS: Thank you.

JENNIFER STONER: DIRECT EXAMINATION

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1 (Whereupon, the witness stepped down from the witness
2 stand.)

3 THE COURT: Call your next witness.

4 MR. MOWRY: We call Jennifer Stoner.

5 JENNIFER STONER, having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MOWRY:

9 Q You are Jennifer Stoner?

10 A Yes, sir.

11 Q And I believe you, like Ms. Mears, are an agent with
12 the State Law Enforcement Division commonly known as SLED;
13 is that right?

14 A Yes, sir.

15 Q What is your capacity with SLED?

16 A I am the lieutenant over the trace evidence section,
17 which basically means I'm the supervisor of one of the
18 sections in the forensic lab.

19 Q And what is trace evidence?

20 A Our section is trace evidence and we analyze several
21 different disciplines. We analyze gunshot residue, fiber
22 evidence, paint evidence, glass evidence, explosives, fire
23 debris, tape cases, and any other miscellaneous cases.

24 Q What kind of education and experience do you have to be
25 in the position you are in with SLED?

JENNIFER STONER: DIRECT EXAMINATION

370

1 A I have a bachelor of science degree, which is a
2 requirement into position. When hired, I went through a
3 three year in-house training program under the supervisor,
4 another senior analyst in the department. And once I was
5 deemed competent in the knowledge of trace evidence I was
6 then - I also took several outside courses that dealt with
7 the instrumentation that we use, and attend conventions and
8 classes ongoing.

9 Q Where was your undergraduate degree from?

10 A California University of Pennsylvania.

11 Q Okay. And how long have you been with SLED?

12 A Seventeen years.

13 Q Have you been in the trace evidence department the
14 entire time?

15 A I've been in trace evidence for 16 years.

16 Q 16 years.

17 A Uh-huh.

18 Q Where were you in that one year interim?

19 A I worked in the drug analysis department for my first
20 year.

21 Q But you -- for the last 16 years you've been in trace
22 evidence?

23 A Yes, sir.

24 Q And how long have you been the department head?

25 A Approximately like since 2010.

JENNIFER STONER: DIRECT EXAMINATION

371

1 Q So a good five years?

2 A Yes.

3 Q Have you testified in court regarding trace evidence?

4 A I have.

5 Q How about regarding gunshot residue?

6 A Yes.

7 Q How many times do you think you've testified in court?

8 A I've testified around 86 times, and probably about 75
9 of them were on gunshot residue.

10 Q And in each of those cases were you declared an expert
11 witness?

12 A Yes.

13 MR. MOWRY: Your Honor, at this time I would offer her
14 as an expert witness in trace evidence, specifically gunshot
15 residue.

16 MS. WIYGUL: Your Honor, we would have no objection as
17 to her being qualified as an expert in gunshot residue.

18 THE COURT: Were you going to go into other areas other
19 than GSR --

20 MR. MOWRY: No, sir.

21 THE COURT: -- or simply GSR?

22 MR. MOWRY: No, sir.

23 THE COURT: So she would be qualified as an --

24 MR. MOWRY: In GSR, that would be fine.

25 THE COURT: Again, ladies and gentlemen, in this case

JENNIFER STONER: DIRECT EXAMINATION

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1 the Defense and the State agree that Agent Stoner is an
2 expert in the field of gunshot residue, so she can give
3 opinion testimony in that area. It does not mean you have
4 to accept her opinion. It can be used as you deem
5 appropriate. Go ahead.

6 Q Agent Stoner, can you tell the jury exactly what
7 gunshot residue is?

8 A Gunshot residue is any residue that is expelled from a
9 weapon. A firearm that is fired. We perform tests to
10 analyze whether the elements that are present is residue.

11 Q Explain the mechanics of how gunshot residue is
12 produced.

13 A Gunshot residue is produced whenever a gun is fired.
14 Basically you have a firing pin. It hits the primer in your
15 cartridge. It ignites it. The heat and pressure then
16 ignite the primer in the cartridge. It expands until
17 there's enough pressure to force the bullet out of the gun.
18 When it does this there's high heat and pressure involved.
19 So the particles that we're looking for, these elements, are
20 in a high heat, high pressure environment which gives them a
21 certain morphology, they're expelled from the gun, and then
22 they adhere to anything in that vicinity.

23 Q And all this, the firing pin hitting the primer, the
24 primer exploding, the powder burning, and the projectile,
25 along with the gas, is in the burning particles being

JENNIFER STONER: DIRECT EXAMINATION

373

1 expelled from the muzzle of the gun, the barrel of the gun,
2 takes place in microseconds; isn't that right?

3 A Yes, sir.

4 Q What are you looking for with gunshot residue?

5 A With gunshot residue we use a scanning electron
6 microscope to look at samples that are collected from hands
7 or clothing of suspected shooters. We are looking for round
8 particles that contain three elements. They contain barium,
9 antimony and lead. We also look for particles that contain
10 combinations of these elements that are also round.

11 Q And how do you -- how does an individual going about
12 seeking gunshot residue?

13 A Seeking?

14 Q Yeah. How would an investigator go about gathering
15 that evidence?

16 A Gunshot residue collection kits are provided to the
17 agency's, or the agency can purchase their own kit. They
18 will open the kit and collect the samples. There are
19 directions in each kit, and they collect the samples from
20 each area of a person's hands.

21 Q Let me hand you two envelopes really, but this is the -
22 - the outer envelope has been marked as State's Exhibit No.
23 8, and ask you if you can identify that.

24 A This outer envelope is how we normally receive gunshot
25 residue kits, which is what this envelope contains.

JENNIFER STONER: DIRECT EXAMINATION

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1 Sometimes they'll be in a Ziploc type bag, but normally we
2 receive them in manilla envelopes. On here is the lab
3 number and an item number of that evidence.

4 Q And does that correspond to evidence that you receive?

5 A Yes. And on here, when we open this up, we then take
6 out the actual GSR kit. This is what the officers will
7 have. On the back we have the lab number and the item
8 number, along with the initials of the one who opened it.

9 Q How do you go about conducting this examination in your
10 lab?

11 A First, there's also paperwork in here that tells us who
12 this kit was collected from. We have to look at that to
13 make sure the kit was collected from a person in the correct
14 amount of time. Gunshot residue will not stay on your
15 hands, if you're a living person, for more than six hours
16 after firing a weapon, or have it deposited on your hands.
17 Therefore, if a kit was collected more than six hours after
18 the incident we do not process it. So we check that to make
19 sure it was collected within time, that we have all the
20 information we need on the kit, and then we take the
21 particle lift out.

22 Q Let me just ask you this. As far as the paperwork was
23 concerned, did all appear to be in order as far as this
24 timeframe was concerned and everything else?

25 A It did.

JENNIFER STONER: DIRECT EXAMINATION

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1 Q Would you have conducted the test otherwise -- or the
2 examination?

3 A If it was not in order, we're missing information, we'd
4 call the investigator and then wait for a return call to
5 verify time. If it was out of the time range we would not.

6 Q But there was no problem with it here?

7 A No. Each of these particle lifts is labeled. Right
8 palm, right back, left palm and left back. This corresponds
9 to the four areas of your hand. We make sure that each of
10 these are present in the kit to make sure we don't have two
11 that are labeled right back or two labeled right palm. The
12 officer would have taken the top off, and there's a small
13 black dabber in there --

14 Q A small black what? I'm sorry.

15 A We call it a dabber or a carbon strip. It has adhesive
16 on it. Like a band aid adhesive type. They dab it over
17 each area of the hand to collect any evidence that's on the
18 hands. So we have these. We look at them to make sure
19 there's not a lot of dirt and debris on them. That it looks
20 like it had been collected. And just write down the
21 observations if there's anything unusual. We then set them
22 up on the SEM. We set up an automated run --

23 Q The scanning electron microscope?

24 A Yes, sir.

25 Q Yes.

JENNIFER STONER: DIRECT EXAMINATION

376

1 A Set up the automated run. Run our controls, our
2 collaboration, and then usually come in the next day and
3 process it.

4 Q Was there anything out of order with the way this --
5 these lifts had been made?

6 A There was not.

7 Q So were you able to run the test?

8 A I was.

9 Q And who, according to the information you had, were
10 these lifts made from?

11 A According to the GSR information sheet, the subject's
12 full name was Walker, David Lee. That's who the lifts were
13 collected from.

14 Q And you received the four from the front and back of
15 both his right and left hands; is that right?

16 A I received a sample from the front and back of each
17 hand, yes.

18 Q Describe what happened then?

19 A Once the analysis is completed I go into the
20 instrument, and it will keep a running log of all the
21 particles that it finds. It takes a picture of them and
22 takes an x-ray spectrum of them to tell me what that
23 particle is made of. Whether it's lead, whether it's
24 cooper, whether it's a combination of elements. I have to
25 go in and physically relocation particle, which means I tell

JENNIFER STONER: DIRECT EXAMINATION

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1 the instrument at the stage to go to that particular point.

2 I look at that particle, focus it, take an x-ray of it, and

3 then I print the data to show what was found.

4 Q And what was the result of your examination?

5 A On the result of my examination -- we report each area

6 of the hands at this time. Like I'll have the results of

7 the right palm, the right back, the left palm and the left

8 back. On the right palm I did not find any gunshot residue

9 or any particles of interest. On the back of the right hand

10 I found one round particle that is consistent with gunshot

11 residue. Consistent with gunshot residue means that it may

12 have an environmental source, but it is found in gunshot

13 residue. On the left palm I found a round particular

14 associated with gunshot residue. This means I found a

15 particular that -- gunshot residue is a combination of three

16 elements, an associated particle is one single element. So

17 I found a round lead particle which can be associated with

18 gunshot residue.

19 Q I'm sorry. Consistent means that barium, antimony and

20 lead were found?

21 A Consisting particles can be several different types of

22 particles. It's normally two in combination. It can be a

23 lead antimony particle, a lead barium particle, a barium

24 aluminum particle, and there are several other particles.

25 But it's more than one element in combination with another.

1 Q I got you.

2 A And on the back of the left hand I found several round
3 particles associated with gunshot residue.

4 Q You said that there are environmental factors that
5 might explain the presence of gunshot residue. Can you give
6 us some examples of those?

7 A The environmental factors can't explain if I find
8 gunshot residue, which is the barium, antimony -- lead,
9 barium, antimony particle. Environmental factors can lead
10 to finding lead particles, or antimony particles, or even
11 lead magnesium particles. And some of these factors are
12 fibers, welding, anything power tool that uses a cartridge
13 or an air compression tool. But with these different types
14 of environmental contributors, we look at the population of
15 the particles. If I have a case and I have 1,000 particles
16 I find and only one of them is a round particle of interest,
17 we discount it because we can tell it's from an
18 environmental factor. But normally we see these particles
19 in gunshot residue. They are associated with gunshot
20 residue. And we look at the morphology. The morphology of
21 the particle, that being that it's round, that means that
22 it's not an environmental factor. It would be more from
23 gunshot residue.

24 Q Based on what you found in this case, do you have an
25 opinion as to whether or not gunshot residue was found on

JENNIFER STONER: DIRECT EXAMINATION

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1 David Lee Walker's hands?

2 A I found particles that were consistent and associated,
3 which I feel are from gunshot residue, but I cannot call
4 them gunshot residue because it was not the three component
5 particles.

6 Q Furthermore --

7 THE COURT: Forgive me, Solicitor. Slow down slightly.
8 I think you may have had a bit too much caffeine for lunch.
9 I've having a little difficulty keeping up with you. Okay?

10 THE WITNESS: I'm sorry.

11 THE COURT: To the extent that you can control that --
12 I'm a fast talker, too. But to the extent that you can, try
13 to, please. Go ahead, Solicitor.

14 A The question was what did I --

15 Q Do you have an opinion as to whether or not gunshot
16 residue was found on David Lee Walker's hands?

17 A From what we have seen in all the thousands of cases I
18 have worked, we see these particles in conjunction with
19 gunshot residue. But since I did not have particles of
20 lead, barium and antimony I cannot call it gunshot residue.
21 I can say they are consistent and associated with gunshot
22 residue. And in my opinion, I feel it was from the
23 discharge of a firearm.

24 Q Could you state whether or not David Lee Walker shot a
25 gun?

JENNIFER STONER: CROSS-EXAMINATION

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1 A In this case, since he was shot -- that was the
2 information that was on our sheet. The subject was shot. I
3 cannot tell you if this is on his hand from him firing a
4 weapon or from him being shot. Because if the gun was
5 pointed at him and he has a bullet passing through him, that
6 can put the residue on your hands.

7 Q Is there any significance to the fact that you found
8 particles associated with GSR, or consistent with GSR on the
9 back and front -- the palm and back of his left hand, and on
10 the back of his right hand? Is there any significance to
11 that?

12 A Not with the type of -- way GSR evidence is. Because
13 once you fire a weapon, or once you're near a weapon when
14 it's fired, that residue is very fragile. So it can be
15 removed. So I can't make a determination on lack of residue
16 because I do not know what happened once the incident took
17 place until the time the kit was collected.

18 Q Agent Stoner, I believe you were also submitted a box
19 of clothing from David Lee Walker; is that right?

20 A We were.

21 Q And on your report it says, "No analysis performed."
22 Was that right?

23 A That's correct.

24 Q Can you explain why that was the case?

25 A As I explained before, if someone is shot we expect to

JENNIFER STONER: CROSS-EXAMINATION

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1 find gunshot residue on them. So if I have clothing of
2 someone who was shot, I expect to find gunshot residue on
3 that clothing. I can't answer the question whether or not
4 they fired a weapon or were near a weapon when it was fired,
5 and we always expect to find it because of the bullet hole.
6 So therefore, we do not analyze clothing of a shooting
7 victim.

8 Q So it would have been redundant; is that right?

9 A It would have been redundant, and it's in our policy.

10 MR. MOWRY: Very good. Thank you, ma'am.

11 CROSS-EXAMINATION

12 BY MS. WIYGUL:

13 Q Agent Stoner, as the head of trace evidence department,
14 that would not involve DNA, would it?

15 A No, ma'am.

16 Q Just gunshot residue and fibers and the things you
17 listed earlier, correct?

18 A Yes, ma'am.

19 Q You can only test, or you only test what you're sent,
20 correct?

21 A That's correct.

22 Q If a local law enforcement agency does not send you
23 something you don't know it exists, do you?

24 A No.

25 Q If they don't ask you to test it, you don't perform a

1 test, do you?

2 A No.

3 Q When -- and you already stated that when identifiable
4 gunshot residue is on a person that has been shot, you can't
5 tell whether it's because the person shot a gun or because
6 they had been shot, correct?

7 A That's correct.

8 Q And in this particular case there's been a lot of talk
9 about associated and consistent particles. At some point in
10 your report is there actually a table that you have three
11 options and one is gunshot particles, and one is associated
12 particles, and one is consistent particles?

13 A That's not part of the report. That's our worksheet.
14 When we take our data and compile it, it goes into a
15 worksheet.

16 Q And did you prepare such a worksheet in this case?

17 A I did.

18 Q And under where it says "gunshot particles" --

19 A "Particles of gunshot residue."

20 Q "Particles of gunshot residue." And then it has the
21 front, back, left, right, correct?

22 A Yes.

23 Q How many gunshot residue particles were found in this
24 case?

25 A I do not have any.

JENNIFER STONER: CROSS-EXAMINATION

383

1 Q So none?

2 A Particles of gunshot residue, no.

3 Q Correct. So in this case you just simply can't tell
4 whether Mr. Walker fired a gun or not, correct?

5 A (Non-verbal response.)

6 Q Now, and you stated earlier, if SLED is missing
7 something they need to perform the testing that they've been
8 requested to do, then they write the local law enforcement
9 and ask them to send whatever they're missing.

10 A Our department -- like if I'm missing a time on the GSR
11 sheet, I would either call them or email them and ask them
12 for information that I need to complete my testing.

13 Q In a situation where if they had sent you this gunshot
14 kit -- gunshot residue kit and they had left something out
15 of it, what would you do?

16 A If they had left out like a particle lift or something?

17 Q Yes.

18 A I would call them to let them know. I would document
19 it, and then I would probably analyze -- if they had left
20 out the right palm, I would analyze the other three particle
21 lifts, which we have that happened. Sometimes we'll get a
22 person that's missing an arm and they only have to collect
23 the one hand. So we do have those cases when that has
24 happened. But if something is not right with the kit, then
25 you call and try to determine what has happened.

1 Q Okay. So just to clarify. In this case, there was no
2 gunshot residue found?

3 A No.

4 MS. WIYGUL: Thank you.

5 REDIRECT EXAMINATION

6 RESUMED BY MR. MOWRY:

7 Q But the particles you did find, how would you
8 characterize them?

9 A We characterize those as they are associated and
10 consistent with gunshot residue.

11 Q And in your opinion, was there gunshot residue on David
12 Lee Walker?

13 A In my opinion, I saw particles consistent which I
14 believe are from a gun.

15 MR. MOWRY: Thank you.

16 MS. WIYGUL: Your Honor, I'm going to ask the expert to
17 clarify whether this is her expert opinion or whether she
18 just feels that way.

19 THE COURT: Please proceed. Go ahead.

20 THE WITNESS: It is my expert opinion from all the
21 cases I've worked that when we see these particles they are
22 normally associated with gunshot residue. And we have done
23 test fires in-house where we test fire a weapon and we
24 normally find these particles. So we see them so much with
25 gunshot residue. When we see them, it fits morphology and

JENNIFER STONER: RECROSS-EXAMINATION

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1 this composition, we feel that it is from gunshot residue.
2 But due to the definition, we cannot call it gunshot
3 residue. But in my opinion it is what I see when I have
4 gunshot residue.

5 RECROSS-EXAMINATION

6 BY MS. WIYGUL:

7 Q But you cannot tell as an expert -- even if there were
8 gunshot residue particles found in this case, you can't tell
9 whether Mr. Walker fired a gun or not, correct?

10 A I cannot.

11 Q And in this case, there were no gunshot residue
12 particles found, correct?

13 A The particles classified as gunshot residue.

14 MS. WIYGUL: Thank you.

15 MR. MOWRY: Your Honor, may I ask one more -- just a
16 couple more questions?

17 REDIRECT EXAMINATION

18 BY MR. MOWRY:

19 Q How many times have you analyzed gunshot residue -- or
20 analyzed for gunshot residue in your 16 years in the trace
21 evidence department?

22 A It's over 2,000 cases.

23 Q And is that experience and training that you have had
24 in that 16 years in the trace evidence department, is that
25 the basis for the opinion you have described in court?

JAMES GREEN: DIRECT EXAMINATION

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1 A It is.

2 MR. MOWRY: Thank you.

3 THE COURT: Thank you so much. You can step down, and
4 you are free to go.

5 (Whereupon, the witness stepped down from the witness
6 stand.)

7 THE COURT: Solicitor, call your next witness, please.

8 MR. MOWRY: James Green.

9 And, Your Honor, Ms. Stoner and Ms. Mears came
10 together. I would ask that both of them be excused at this
11 time, if there's no objection?

12 MS. WIYGUL: No objection, Your Honor.

13 THE COURT: You are free to leave.

14 JAMES GREEN, having been first duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MOWRY:

18 Q You are James Green?

19 A Yes, sir.

20 Q And I believe you are an agent with the -- also an
21 agent with the State Law Enforcement Division commonly known
22 as SLED; is that right?

23 A Yes, sir.

24 Q And you told me you were having a little trouble
25 hearing right now; is that correct?

JAMES GREEN: DIRECT EXAMINATION

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1 A Yes, sir.

2 Q I don't think you'll have any trouble hearing me, but
3 if you have any trouble hearing anybody else, just
4 simply ask that the question be repeated. Okay?

5 A Okay.

6 Q How long have you been with SLED?

7 A Since June of 2005.

8 Q So about 10 years almost?

9 A Yes, sir.

10 Q What is your capacity with SLED? What do you do?

11 A I'm a forensic firearms examiner in the firearms -- or,
12 excuse me, in the forensics services laboratory.

13 Q What kind of training and experience do you have in
14 that capacity?

15 A Well, I have a bachelor's degree and a master's degree,
16 both from Charleston Southern University. And when I was
17 hired at SLED we have a course instruction taught by court
18 qualified firearms examiners. It's about a three, three and
19 a half year training cycle in an apprentice type fashion.
20 You sit and watch and learn what we do as they're working
21 cases.

22 Q And who was your trainer, I guess.

23 A Ira Cornell started off my training, and then Tracy
24 Kroger finished it.

25 Q And Ira Cornell had been with SLED in the firearms area

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1 for about 40 years; isn't that right?

2 A Yes, sir.

3 Q Have you testified in court regarding firearms
4 identification and firearms examination?

5 A Yes, sir. I have.

6 Q How many times would you estimate that you've testified
7 in court?

8 A 36.

9 Q 36?

10 A Yes, sir.

11 Q Have you been declared an expert before?

12 A Yes, sir.

13 Q In what field?

14 A In the field of firearms identification.

15 Q And how many times?

16 A 36. One time federal and 35 state.

17 Q So every time you've testified you've been declared an
18 expert; is that right?

19 A Yes, sir.

20 MR. MOWRY: And, Your Honor, I would ask that he be
21 declared an expert in firearm examination and
22 identification.

23 MS. WIYGUL: Without objection.

24 THE COURT: The same thing goes for Mr. Green as went
25 for the other witnesses. We have agreed -- the parties

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1 agree and the Court agrees that he's in expert in the field
2 of firearms examination and identification, so he can give
3 opinion testimony in those areas that you may use as you
4 deem appropriate. Go ahead.

5 MR. MOWRY: Thank you, Your Honor.

6 Q Number 37. Mr. Green, describe for the jury, if you
7 would, what firearms examination -- well, firearms
8 examination is all about. What kind of evidence can you
9 derive from firearms examination?

10 A Firearms identification is a discipline of forensic
11 science where we try to determine a common source or common
12 origin. If we are submitted -- we take evidence from all 46
13 counties in the state, and what they do is they'll submit
14 fired evidence to use; fired cartridge cases, fired bullets.
15 Sometimes just fired bullets, sometimes fired cartridge
16 cases. And sometimes even firearms are submitted. And our
17 requests are to see if they were all fired by the same gun.
18 And if a firearm is submitted, were they all fired by this
19 gun. We were able to do that because when firearms are
20 manufactured, tiny microscopic striations are left on the
21 working surface of the firearms, they come in contact with
22 the ammunition. If you think that all of us go to the beach
23 and we take the same break, and we all break three foot
24 sections of the beach. They're all going to look basically
25 the same. But microscopically they're going to be different

1 based on the grain structure of the sand and how much
2 pressure is applied by the tool. It's the same thing with
3 making firearms.

4 Q What kinds of, I guess, tool marks end up being left by
5 firearms?

6 A When you're speaking about fired bullets you'll have
7 land and groove impressions, and those are the rifling in a
8 barrel. They are determined by the manufacturer. It's like
9 five land and grooves and they'll -- rifling will be
10 determined -- the direction of the twist, I'm sorry, will be
11 determined by the manufacturer.

12 Q And land and groove is basically a peak and a valley;
13 isn't that right?

14 A Yes, sir. It's rifling put into the barrel of the
15 firearm to make the bullet spin. If you think of a
16 quarterback throwing a football it's in a spiral usually, if
17 he's a good quarterback. It's a nice tight spiral. It's
18 accurate. It goes where you want it to. And that's what
19 rifling is put in a barrel to do is to make the bullet spin.
20 When the bullet passes through the barrel tiny microscopic
21 marks are left on the bullet and it can let us identify that
22 bullet back to that particular firearm.

23 Q If you had a firearm like back in colonial days, a
24 smooth bore firearm, did that smooth bore effect the
25 accuracy of the weapon at all?

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1 A Yes, sir. What the rifling is, like I said, it's
2 designed to make the bullet spin and travel farther. If you
3 shoot through a smooth bore musket the ball -- the round
4 ball that is shot will actually go like the knuckle ball.
5 It wouldn't be very accurate and it would just kind of go
6 where it wanted to in the general direction of where you
7 have the muzzle pointed.

8 Q But the rifling would do what?

9 A The rifling engages the projectile and makes it spin
10 towards the target and makes it more accurate. And during
11 so it also leaves those microscope striations on the bullet.

12 Q Now, we hear about rifling. Is that only with the long
13 guns that we call rifles or can rifling also be in pistols?

14 A It can be in handguns or rifles, or some shotguns also
15 have rifled barrels.

16 Q What else could you find from firearms examination?
17 What other source of comparisons could you make?

18 A If we have cartridge cases -- let me back up. The
19 ammunition component is called the cartridge. It's a
20 complete piece of unfired ammunition. And that's composed
21 of the bullet or the projectile. The cartridge cases is
22 just simply the container primer in the gunpowder. When the
23 primer is crushed it sends a little flame through the flash
24 on the cartridge case because it ignites the gunpowder.
25 That burns at different rates. And when it reaches a

1 critical point the bullet travels down the barrel towards
2 the intended target. As that happens, the cartridge case is
3 pressed back up against the breechface of the firearm taking
4 any marks left by the manufacturer on the breechface of the
5 firearm. So in addition to looking at bullets, we can also
6 look at cartridge cases to see if they were fired by a
7 particular firearm.

8 Q So a projectile going through a rifled barrel would
9 have unique markings; is that right?

10 A Yes, sir.

11 Q And a breechface, or the firing pin striking the primer
12 could leave unique markings; is that right?

13 A Yes, sir.

14 Q Are there any other types of marks that could be made?

15 A There are ejector marks where the cartridge case hits a
16 fixed point on the firearm. It's ejected from the firearm.
17 There's extractor marks where the cartridge case is pulled
18 from the chamber. And there's also chamber marks. When the
19 powder burns the cartridge case expands and fill the chamber
20 walls, and when it's pulled out of the chamber in a
21 semiautomatic firearm some striations are left on the walls
22 of the cartridge case as well.

23 Q Now, when you talk about extractor marks or ejector
24 marks, can those come from only one type of firearm?

25 A There -- well, actually, can you rephrase?

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1 Q Well, let me ask you this. Would they come from a
2 semiautomatic weapon?

3 A Yes, sir.

4 Q Would they come from a revolver?

5 A No, sir.

6 Q But you could have the breechface marks --

7 A Yes, sir.

8 Q And you could have the lands and grooves, the
9 projectile marks; is that right?

10 A On the bullets. Yes, sir.

11 Q Describe for the jury, if you would, the difference
12 between a revolver and a semiautomatic pistol.

13 A A revolver is a firearm designed to be fired from the
14 hand usually, and it has a cylinder with multiple chambers.
15 When you pull the trigger or cock the hammer the cylinder
16 rotates mechanically, either clockwise or counterclockwise.
17 When the trigger is completely pulled the hammer falls
18 forward and shooting occurs. And it doesn't do anything
19 until you pull the trigger again and the cylinder rotates
20 again, which aligns the next cartridge to be fired. When
21 you shoot a semiautomatic pistol, or hand -- or any gun
22 however, when it's loaded and you pull the trigger, the
23 action of the firearm will eject and extract the cartridge -
24 - extract and then eject the cartridge case from the
25 firearm, and then it will load the next one ready to be

1 fired and all you have to do is pull the trigger. The gun
2 will actually load it and unload it. Whereas the revolver,
3 when you pull the trigger, that cylinder rotates a lane.
4 The main difference is the revolver -- when you pull the
5 trigger on a revolver the cartridge cases stay in the
6 firearm. The semiautomatic ejects.

7 Q Let me hand you this box that has been marked State's
8 Exhibit No. 4 and ask you if you can identify that.

9 A The outer box has my lab number and markings on it.
10 State's Exhibit 4 is a Rossi revolver, which is SLED item 8.
11 If you saw me rotate the firearm underneath it. Whenever we
12 get items of evidence in the firearms department, if it's
13 large enough what we'll do is we'll scribe our lab number,
14 our item number and our initials on it. So that's what I
15 was doing to see if this was a firearm I examined. And this
16 is a revolver. Remember I was talking about the cylinder
17 rotates? This is the cylinder right here that rotates. If
18 you load the cartridges into each chamber and then just pull
19 the trigger, the cylinder will rotate with each pull of the
20 trigger.

21 Q How many potential cartridges could that weapon hold?

22 A This is a five shot revolver.

23 Q Five shot revolver. Let me also hand you what's been
24 marked as State's Exhibit No. 13. Have you seen these items
25 before?

JAMES GREEN: DIRECT EXAMINATION

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1 A No, sir. None of them have my markings on them.

2 Q What do those appear to be though?

3 A There's one, two fired cartridge cases and then two
4 unfired cartridge cases.

5 Q Would they be rounds that might well fit into that gun
6 that you have before you?

7 A Yes, sir. They're all 38 Special caliber. This is the
8 caliber of the State's Exhibit 4 revolver.

9 Q But you were not asked to conduct any kind of
10 examination of that particular gun; is that right? I mean,
11 of those bullets?

12 A No, sir.

13 Q When you examine a revolver, you had talked about the
14 extractor marks and the ejector marks. Once again,
15 revolvers wouldn't make those, would they?

16 A No, sir.

17 Q So what particular piece of evidence would you be able
18 to examine and potentially compare as to being fired from
19 that gun?

20 A You would be able to compare the bullet. When we test
21 fired the firearm we'd recover the bullets and examine those
22 and compare them to the fired bullets. We can also compare
23 fired cartridge cases if some were submitted.

24 Q Did you receive another weapon?

25 A Yes, sir. I did.

JAMES GREEN: DIRECT EXAMINATION

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1 Q And could you describe that for us?

2 A If I may look at my report.

3 Q Yes.

4 A It was Lorcin model L380, an .380 auto caliber, with a
5 serial number of 438650. No magazine was submitted with it.

6 Q Let me submit to you State's Exhibit No. 2 and ask you
7 if you recognize that item.

8 A Yes, sir. State's Exhibit 2 is the SLED item number 7
9 pistol that was submitted in this case.

10 Q What did you do when you received that pistol. First
11 of all, who did you get it from?

12 A I believe Kimberly Mears from it to me.

13 Q From fingerprints; is that right?

14 A Yes.

15 Q Latent fingerprints.

16 A Yes, sir.

17 Q What was your purpose in receiving that weapon?

18 A Any time firearms are submitted in that case with fired
19 evidence components it's understood that when the submitting
20 agency requests firearms that what they want us to do is
21 examine the firearm, test fire, recover those specimens, the
22 cartridge case and the bullets, and compare those
23 microscopically with any fired ammunition components that
24 were submitted in the case.

25 Q Let me give you two items. These are State's Exhibit

JAMES GREEN: DIRECT EXAMINATION

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1 29 and 9, and ask you if you can identify those.

2 A Yes, sir. State's Exhibit 9 is the SLED item 3, fired
3 bullet, submitted in this case. It's also the State's --
4 it's also the SLED item 4, fired cartridge case submitted in
5 this case.

6 Q And what were you looking at with the fired projectile
7 and the cartridge case you just described?

8 A Once I looked at those I determined the caliber of the
9 bullet, and then I test fired both firearms and compared the
10 test specimens, the cartridge cases and the bullets, that I
11 fired from the two firearms submitted, so State's Exhibit 9,
12 to see if they were fired by one of the two firearms
13 submitted.

14 Q You said that the Lorcin came to you without a
15 magazine. What is a magazine?

16 A A magazine is a port of a semiautomatic pistol. In
17 this case it's a detachable magazine. If someone hold the
18 cartridges in alignment and you load the cartridges into the
19 magazine, you're going to insert the magazine into the
20 magazine well right here. And that holds the cartridges
21 until it's time to fire. You charge the pistol by pulling
22 the slide back, and the slide will actually move rearward of
23 the top of the magazine, release the slide. It will go
24 forward, trip the top cartridge off the magazine, load it
25 into the chamber, and the next one under the top one is

1 ready to be loaded when you next pull the trigger.

2 Q What brings the slide forward in the way you describe?

3 A There's a recoil spring inside the pistol. It's

4 mounted between the frame and the barrel. And as the slide

5 went rearward, the force of the spring moves it back

6 forward.

7 Q What would force the slide backwards?

8 A The inertia from being fired with the recoil.

9 Q So the expanding gases would also not only shoot the
10 bullet out but make the slide go back; is that right?

11 A Yes, sir.

12 Q And then it would strip the next round that set that in
13 the proper location for firing again; is that right?

14 A Yes, sir.

15 Q If you didn't have a magazine how were you able to load
16 the gun?

17 A I used a magazine from the SLED firearms reference
18 collection.

19 Q How did you go about testing this gun?

20 A Whenever we look at fire ammunition components we try

21 to use ammunition from our collection that's close to as

22 possible as to what was submitted. Different types of

23 ammunition may sometimes mark differently. So once I chose

24 the correct or proper type of ammunition to use as close to

25 what was submitted, I went into our bullet recovery room

JAMES GREEN: DIRECT EXAMINATION

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1 where we have a water tank, which is about three feet in
2 diameter and is two stories tall. And what water does, it
3 slows down the projectile and it is funneled down to the
4 bottom. It's like a little colander in the bottom attached
5 to a chain. We'll shoot down into the water, and the fire
6 cartridge cases and the bullets will fall down into the
7 water, slowly drift down to the bottom. Once we're done
8 firing, we'll pull the colander up and our test fire will be
9 in there.

10 Q What do you do with the shell casings?

11 A Well, if you got the gun low enough they'll fall into
12 the tank, too. But we have a plastic trap that when they're
13 ejected and extracted they get extracted and ejected into
14 the trap.

15 Q How many times did you test fire the weapon?

16 A As a general rule we test fire each firearm three to
17 four times to see if it's marking consistently. State's
18 Exhibit 2 I actually test fired seven different times,
19 because whenever I changed ammunition, or even different
20 boxes of the same ammunition, the markings were variable.
21 So I can -- if I shot Remington and then CBC I can match the
22 Remington test to each other. I can match the CBS test to
23 each other. But I couldn't match the two to each other, if
24 that makes any sense.

25 Q How would you describe the quality of a Lorcin firearm?

1 A They are cheaply made.

2 Q Does that have any effect on the consistency of the
3 shell casings or the projectiles?

4 A Yes, sir. Generally the lower quality scale of metal
5 used, the less likely it will be to mark consistently.

6 Q Let's talk about the projectile that was submitted to
7 you for examination. You had this for examination. You had
8 test projectiles that you recovered; is that right?

9 A Yes, sir.

10 Q Who do you go about examining and comparing those
11 items?

12 A The main instrument we use is what's called a
13 comparison microscope, and it's two microscopes connected by
14 an optical bridge that let's us look at two specimens, be it
15 evidence or test specimens, simultaneously. And we're able
16 to change magnification and use it to see. As I said
17 before, what we're looking for are really tiny microscopic
18 striations, and the lighting cast shadows, so we can see the
19 pattern of striations as they are through the comparison
20 microscope.

21 Q How many of those do you think you conducted in your
22 career?

23 A How many examinations?

24 Q Yes.

25 A Well, if we use this instance right here, your six

JAMES GREEN: DIRECT EXAMINATION

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1 lands and grooves, the State's Exhibit 9 bullet, and when I
2 shot State's Exhibit 2 pistol there's two -- excuse me,
3 there's six lands and grooves on there. Well, with every
4 examination I'll look at one land versus one land. Rotate
5 the bullet, one versus one, all the way. So I've got six
6 different lands to look out on this one versus six different
7 lands to look out on my test. And I shot the gun seven
8 times you can see it quickly adds up. But to answer your
9 question, I'd say probably in the 10s of thousands of
10 comparisons.

11 Q And were you able to compare this bullet in State's
12 Exhibit No. 9 with the test bullets that you fired?

13 A Yes, sir.

14 Q Were you able to reach a conclusion as to whether or
15 not the bullet with State's 9 came from the Lorcin gun
16 before you?

17 A Yes, sir. State's Exhibit 9, the bullet, was fired by
18 the State's Exhibit 2 pistol. The Lorcin.

19 Q So that bullet came from that gun; is that right?

20 A Yes, sir.

21 Q Were you able to do comparisons on the cartridge case
22 that's associated with State's 9 and the other two cartridge
23 cases associated with State's 29?

24 A Yes, sir. I was able to determine they were all fired
25 by the same firearm. However, they were inclusive with

1 State's Exhibit 2. And inclusive is a fancy word for I
2 can't tell. There were similar markings on the test
3 specimens I fired from State's Exhibit 2 and the cartridge
4 cases in State's Exhibit 9 and 29. There was enough there
5 for me to say it could be the same gun, but there wasn't
6 enough for me to say that is the gun, if that makes any
7 sense.

8 Q Couldn't testify in court for absolutely certainty that
9 -- or beyond a reasonable doubt that that's the gun, right?

10 A Correct. It could have been.

11 Q Would the sheath nature of the manufacturer have any
12 bearing on your inability to render a conclusion -- a
13 categorical conclusion?

14 A Yes, sir. That's the --

15 Q But there's no doubt about the bullet, is there?

16 A No, sir.

17 Q And what can you say about the three shell casings --
18 the cartridge cases that are there before you with 9 and 29?

19 A They were all fired by the same gun -- or, excuse me,
20 the same firearm, but they were inclusive with State's
21 Exhibit 2, but they were not fired by the -- I believe it's
22 State's Exhibit 4 revolver.

23 Q And they could have come from State's --

24 A 2.

25 Q -- 2; is that right?

JAMES GREEN: DIRECT EXAMINATION

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1 A Yes, sir.

2 MR. MOWRY: If you could bear with me for just a
3 moment, Your Honor.

4 THE COURT: Yes, sir.

5 MR. MOWRY: Your Honor, at this time I would move
6 State's 9, 29, 2 and 4 into evidence.

7 THE COURT: All right. That would be the bullet, the
8 cartridges, 2 would be the Rossi, 4 would be the Lorcin - or
9 vice versa?

10 MR. MOWRY: 4 is the Rossi and 2 is the Lorcin. Yes,
11 sir.

12 THE COURT: Any objection at this point?

13 MS. WIYGUL: Your Honor, I would only ask for
14 clarification as to whether State's 4 includes everything in
15 the box or just the Lorcin revolver -- or the Rossi.

16 MR. MOWRY: The Rossi revolver. We can make it just
17 the Rossi revolver, Your Honor, if we'd rather do it that
18 way.

19 MS. WIYGUL: I have no -- we've discussed everything in
20 the box.

21 MR. MOWRY: If you'd like to leave it like that, I'm --

22 THE COURT: We can just make 4 everything in the box,
23 which would include --

24 MR. MOWRY: That's correct.

25 THE COURT: -- which would include -- just for the

1 purposes of the record, let's go ahead and list what's in
2 the box. We've got the Rossi. We've got the holster. Is
3 that it?

4 MR. MOWRY: Yes, sir.

5 THE COURT: So the holster would be part of State's 4
6 as well.

7 MS. WIYGUL: Your Honor, I don't believe that's the
8 only thing in the box.

9 MR. MOWRY: You don't think that what? I'm sorry.

10 MS. WIYGUL: I don't believe the Rossi and the holster
11 are the only things in the box.

12 MR. MOWRY: No. There was a swab also that was taken.
13 And since there has been no testimony about that, I'm not
14 planning on admitting that. Just the firearm that he's
15 discussed.

16 MS. WIYGUL: Just for clarification, Your Honor. Is he
17 admitting everything in the box as State's Exhibit 4?

18 MR. MOWRY: I am admitting the gun and the holster.

19 THE COURT: We better do it this way. We're going to
20 give the holster another number. Let's keep them all in the
21 box, but the Rossi is definitely 4. Make the holster a new
22 number.

23 MS. WIYGUL: And, Your Honor, what about the belt
24 that's attached to the holster.

25 MR. MOWRY: That's part of the holster, Your Honor.

JAMES GREEN: CROSS-EXAMINATION

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1 THE COURT: I'm treating that as part of the holster.

2 MR. MOWRY: This is State's 31.

3 THE COURT: State's 9, 29, 2, 4 and 31 are in evidence.

4 MR. MOWRY: Thank you, Your Honor.

5 (Whereupon, State's Exhibit Nos. 2, 4, 9, 29 and 31 was
6 entered into evidence.)

7 MR. MOWRY: Thank you very much, Mr. Green. Answer any
8 of Ms. Wiygul's questions, please.

9 CROSS-EXAMINATION

10 BY MS. WIYGUL:

11 Q Mr. Green, were you sent any items or bullets to see if
12 they were fired by the 38 revolver?

13 A As I say, when they say firearms, we look at all the
14 fired components with each other and the test the firearm.
15 But there was no specific --

16 Q Did they send you any ammunition that it would have
17 been safe to try and test out of the 38 revolver?

18 A No, ma'am.

19 Q And you were not sent the magazine or three rounds of
20 .380 caliber ammunition that were removed from the Lorcin
21 handgun, correct?

22 A Correct. All I received was the Lorcin. I did not
23 receive the magazine or any cartridges.

24 Q And all you can do is test what they send you to test,
25 correct?

JAMES GREEN: CROSS-EXAMINATION

406

1 A Correct.

2 Q Did you have to make any corrections in the items that
3 were sent to you as far as what was in the boxes?

4 A Yes, ma'am.

5 Q Could you tell us about that.

6 A The item maker revolver's serial number was completed
7 listed and the belt was not listed on the evidence
8 submission forms. But that could be they considered the
9 belt and the holster as one. I just list them separately.

10 Q Did you remove any material from either of these guns?

11 A Yes, ma'am. I took a swab of reddish brown material
12 from the right side of the frame near the hammer of the
13 Rossi revolver.

14 Q Of the revolver?

15 A Yes, ma'am.

16 Q Did the reddish brown material appear to you to be
17 blood?

18 A That's not my expertise. But I've seen enough blood to
19 know that it looked like blood. It may not have been blood,
20 but it had the kind of reddish brown appearance. Yes,
21 ma'am.

22 Q Why did you preserve that material?

23 A As part of our policies and procedures, if we see
24 anything that may be of evidentiary value, no matter how
25 small, we will take a sample of it and return it, or have it

JAMES GREEN: REDIRECT EXAMINATION

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1 submitted to a different department if it's asked.

2 Q Who did you return -- or did you return it or did the
3 local law enforcement ask you to have it tested for DNA?

4 A It was returned with the package -- excuse me, the
5 Rossi revolver and it was mentioned in my notes that I
6 returned it without analysis, because I can't perform any
7 analysis on it.

8 Q But it was returned to the Laurens County Sheriff's
9 Office?

10 A Yes, ma'am.

11 Q Agent Green, do you have any information on who the
12 registered owners of the guns that you were sent are?

13 A No, ma'am. That's not something that my department
14 does.

15 Q And just to clarify. The only item that you were sent
16 that you could definitely match to a gun was the bullet
17 that's been -- that was found on the -- in other words,
18 State's 9?

19 A Yes, ma'am. The bullet.

20 Q So the other three shell casings that were sent, they
21 could have been fired from that gun and they could have been
22 fired from another gun. You just don't know?

23 A Right. They were fired by the same gun, but I don't
24 know if it was that gun or not.

25 MS. WIYGUL: I have no further questions. Thank you,

JAMES GREEN: REDIRECT EXAMINATION

408

1 sir.

2 REDIRECT EXAMINATION

3 BY MR. MOWRY:

4 Q Let me just ask you this, Mr. Green. Ms. Wiygul asked
5 you about registered owner. Does South Carolina have gun
6 registration?

7 A Not currently. No, sir.

8 Q So the gun could have been bought 20 years ago --

9 MS. WIYGUL: Objection, Your Honor. He's already
10 testified he doesn't know.

11 MR. MOWRY: He testified --

12 THE COURT: Overruled.

13 MR. MOWRY: He did not say he did not know.

14 THE COURT: Overruled. Go ahead.

15 Q So the gun could have been bought 20 years ago at a
16 garage sale; is that right?

17 A Yes, sir.

18 Q Or a neighbor could have sold it to another neighbor,
19 or to another neighbor, to another neighbor; is that right?

20 A That is correct.

21 Q There's no gun registration in South Carolina?

22 A Correct.

23 MR. MOWRY: Thank you, sir.

24 THE COURT: Thank you very much for coming, sir. You
25 are free to go.

BRYANT CHEEK: DIRECT EXAMINATION

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1 THE WITNESS: Thank you. Have a good day.

2 THE COURT: You, too.

3 (Whereupon, the witness stepped down from the witness
4 stand.)

5 THE COURT: We're probably at a good point for a mid
6 afternoon break, ladies and gentlemen, so we're going to be
7 at ease for a few moments. If you need to step outside,
8 that's fine. If you need to pop back and use the
9 facilities, that's great. Please just don't talk about the
10 case. I'll see you back here shortly. Thank you.

11 (Whereupon, the jury exited the courtroom at 3:16 p.m.)

12 (Whereupon, a recess was held from 3:16 p.m. to 3:37
13 p.m.)

14 THE COURT: Let the record reflect that the jury is
15 back and seated. At this point, selected your next witness,
16 Your Honor.

17 MR. MOWRY: I call Lieutenant Bryant Cheek.

18 BRYANT CHEEK, having been first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MOWRY:

22 Q You are Bryant Cheek?

23 A Yes, Bryant Cheek, C-h-e-e-k.

24 Q And -- well just so everyone understands. Is your name
25 spelled the same as the victim in this case, Johnny Lee

BRYANT CHEEK: DIRECT EXAMINATION

410

1 Cheeks?

2 A No. No, sir. My name is C-h-e-e-k. His is C-h-e-e-k-
3 s.

4 Q No relation?

5 A No relations.

6 Q You are a law enforcement officer; is that right?

7 A Yes, sir.

8 Q How long have you been employed as a law enforcement
9 officer?

10 A I've been working with the Laurens County Sheriff's
11 Office since 2003. Since March of 2003.

12 Q So almost 12 years; is that right?

13 A Yes, sir.

14 Q Do you have any other law enforcement experience
15 besides with Laurens County?

16 A No, sir. All with Laurens County.

17 Q What is your capacity with Laurens County at this time?

18 A I supervise investigating with Laurens County Sheriff's
19 Office.

20 Q And what is your rank?

21 A I am a lieutenant.

22 Q Were you employed in that capacity back on October 31st
23 of 2013?

24 A Yes, sir.

25 Q What hours do you normally work as an investigator?

BRYANT CHEEK: DIRECT EXAMINATION

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1 A We normally work Monday through Friday 9:00 to 5:00.

2 We served and rotated on call, and this particular week I

3 was on call. Any calls that come in after 5:00 the on call

4 investigator will respond to the scene.

5 Q Did you receive a call that night to proceed to [REDACTED]

6 River Hill Road in Enoree?

7 A Yes, sir.

8 Q About what time did you receive that call? Do you

9 recall?

10 A I'm not sure. I'd have to look at the incident report.

11 But I received a call through dispatch. The call came

12 through dispatch at 23:42.

13 Q 23:42. That's military time for 11:42 p.m.?

14 A Yes, sir.

15 Q And did you receive the call soon thereafter?

16 A Yes.

17 Q What did you do in response to that call?

18 A When I received the call, of course, I was at home

19 asleep. I put my clothes on and left the house and

20 responded to Enoree, River Hill Road with lights and siren.

21 Q What did you find when you got there?

22 A When I got to the scene I spoke with shift lieutenant,

23 Lieutenant Crain, Sergeant Timmons. They shared with me

24 some information as it relates to the incident of what had

25 taken place. They shared with me one victim, David Walker,

BRYANT CHEEK: DIRECT EXAMINATION

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1 was on the porch. Obviously Johnny Lee Cheeks was inside
2 the house. Also a possible witness inside the house by the
3 name if Kelly Ball.

4 Q Did you just call David Walker a victim in the case?

5 A Yes.

6 Q Why did you call him that?

7 A My initial information, in spite of what Lieutenant and
8 Sergeant Timmons was sharing with me, I also asked Mr.
9 Walker a couple of questions on the porch. He stated that
10 some guys and come and jumped on him. So at the time I
11 treated him as a victim as well.

12 Q You thought you had two shooting victims; is that
13 right?

14 A I thought I had two shooting victims based on the
15 information from Lieutenant Crain that both of them were
16 shot. Mr. Cheeks was shot. Mr. Walker was shot. And Ms.
17 Ball is inside the house.

18 Q Okay. Talk about the conduct of your investigation.
19 What did you do?

20 A The conduct of my investigation, throughout the
21 investigation, as Sergeant Crain and Deputy Sweat was in the
22 house. I guess fire and rescue and EMS was coming in. I
23 was on the porch with Mr. Timmons with David Walker. We
24 were listing to Mr. Cheeks state or share information as
25 relates to what happened.

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1 Q What did you hear Johnny Lee Cheeks say?

2 A I heard Mr. Cheeks state that they came to rob him.

3 David shot him. He shot David. And then Mr. Walker shot

4 him again. Or the man on -- let me rephrase that. "The man

5 on the porch shot me. I shot him. He shot me again."

6 Q Was there anybody that wasn't law enforcement or first

7 responder on the porch besides David Lee Walker?

8 A No, sir.

9 Q What happened then?

10 A We were talking to Mr. Walker about a couple of things.

11 And, of course, not long after that fire -- EMTs or fire

12 rescue was talking to him. A couple of the family members -

13 - or one of the family members I think was coming down the

14 driveway. We kind of escorted Ms. Ball out of the house

15 into a patrol car. I wanted to get information from her

16 since she was a witness. She went to the back of the car.

17 I talked to her a little bit. I talked to the family. I

18 shared with the family let us do our job. Back up. And I

19 wanted to protect Ms. Ball as well because it was very tense

20 in the situation.

21 Q Let me, just for the record, hand you what's been

22 marked as Court's Exhibit No. 2. Can you recognize the

23 person in that picture?

24 A That's Mr. David Lee Walker.

25 Q After you talked to Ms. Ball what happened then?

BRYANT CHEEK: DIRECT EXAMINATION

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1 A We talked with some of the family members a few minutes
2 and I talked with Ms. Ball. I explained to her what I
3 needed to get from her being the witness. I had gained some
4 information from Mr. Walker who stated that they had jumped
5 on him. I had heard what Mr. Cheeks had stated. I was
6 attempting to get as much information from them, because Mr.
7 Cheeks was still alive, talking, conscious. Mr. Walker was
8 still alive, talking and conscious. And I wanted to get
9 some information from Ms. Kelly Ball, but she was very
10 hysterical. So once we placed her in the back of the car I
11 gave her a few minutes to kind of gain her composure. I
12 spoke with some of the family members, came back and talked
13 with her again. Spoke with some of the family members, came
14 back and talked to her again. Spoke with some of the family
15 members, came back and talked to her again before we
16 obtained a written statement from her.

17 Q Okay. We've seen the videos. I mean, you've been in
18 here the entire trial; is that right?

19 A Yes, sir.

20 Q We had seen the deputy cam videos. Would you describe
21 the scene as chaotic?

22 A Yes. Of course, I think a dog had bit Lieutenant
23 Crain. Ms. Ball was very hysterical. The dog was barking.

24 Q You had two people that were shot.

25 A Two people that were shot. On one the porch and one in

BRYANT CHEEK: DIRECT EXAMINATION

415

1 the house. Family members was coming. People from the
2 community was coming. People were inquiring. It was
3 chaotic, for lack of better words.

4 Q And you have been an investigator for how long?

5 A I think since 2011.

6 Q So for four years?

7 A Yes.

8 Q But you've been in law enforcement for another 12; is
9 that right?

10 A Yes, sir.

11 Q How would you compare this scene as far as the activity
12 and everything that was going on to other scenes that you
13 have been involved with?

14 A Well, with the barking of the dog, it was very tense.
15 The dog was barking. We were trying -- I was trying -- we
16 were trying to gain as much information from the victims,
17 Mr. Walker, Mr. Cheeks, as well as Ms. Ball.

18 Q There was a little bit of a time constraint on getting
19 information from Mr. Cheeks and David Lee Walker; isn't that
20 right?

21 A Yes, sir.

22 Q They were about to be transported to the hospital?

23 A They were about to be transported. I stepped back and
24 let EMS do what they do. Spoke with the family. Spoke with
25 a couple of the deputies as it relates to the scene. Some

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1 things that needed to be processed things that needed to be
2 taken care of. I went and talked with the family members.
3 I talked with Ms. Ball, because at the time Ms. Ball was
4 really the only person I could talk with that wasn't being
5 attended by medical.

6 Q Talk about what went on after that.

7 A After I spoke with the family and talked with Ms. Ball
8 they transported both victims to Spartanburg Regional. Of
9 course, the deputies, Lieutenant Crain, his shift, the shift
10 that I used to work on, they processed the scene. They did
11 some other things as I was getting the statement from Ms.
12 Ball. I was talking to the family as it relates to
13 questions about Mr. Cheeks, trying to gain some other
14 information as it relates to the investigation. When we all
15 concluded the investigation of -- of the scene, and after I
16 finished getting the statement from Ms. Ball, after everyone
17 cleared up, I immediate drove to Spartanburg Regional
18 Hospital to check on both victims.

19 Q There has been question about the processing of the
20 scene for evidence. If you have a major case in Laurens
21 County is there a Laurens County forensics team?

22 A No, sir. We don't have no -- we're a small department.
23 We don't have a forensic team that come out to do forensics,
24 or crime scene unit.

25 Q Is there one in, for example, Greenville?

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1 A Greenville County has one, Anderson County has one,
2 Oconee County has one, Spartanburg have one. Some of the
3 larger departments have a specific crime scene unit that
4 process crime scenes all day. Yes, sir.

5 Q That's all they do?

6 A All they do.

7 Q But Laurens County has nothing comparable; is that
8 right?

9 A Laurens County -- no, sir.

10 Q In cases such as this what are your choices as far as
11 processing the crime scene?

12 A Each scene is different. I felt that we had the
13 ability to process the scene for several reasons. Both
14 victims were alive. We have a live witness. There was not
15 a dead body. We did not -- I felt that we -- I didn't want
16 to call South Carolina Law Enforcement Division to process
17 the scene. Sometimes we call them, sometimes we don't.
18 It's up to the investigating officer.

19 Q So it's a judgement call?

20 A It's a judgement call.

21 Q And what was your judgement that evening?

22 A In this particular -- it was my judgement that South
23 Carolina Law Enforcement Division was not needed.

24 Q What circumstances would cause you to call them out?

25 A If there was a dead body when we arrived, the majority

BRYANT CHEEK: DIRECT EXAMINATION

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1 of the time we would call them. When I arrived on the scene
2 the road deputies, Lieutenant Crain, Sergeant Timmons,
3 Deputy Sweat, Deputy Taylor, they had maintained the
4 integrity of the scene. They explained to me everything. I
5 saw some of the evidence briefly in the yard that was
6 contained. And I didn't feel the need to call SLED.

7 Q Did it appear to you when the two individuals were
8 transported that this was going to be anything more than an
9 assault?

10 A No, sir.

11 Q You did not think this was going to be a homicide?

12 A No. Again, Mr. Cheeks was alive and talking,
13 conscious. Mr. Walker was alive, talking and conscious.
14 The witness was alive and hysterical.

15 Q But you did not believe that you were going to be
16 looking at a homicide at that point?

17 A No, sir.

18 Q When did you find out things that deteriorated for Mr.
19 Cheeks?

20 A When I went to Spartanburg Regional I went around to
21 see Mr. Cheeks. He was in surgery. They had to take him
22 into surgery. I spoke with the doctor. I was looking for
23 Mr. Walker as well. Mr. Walker was somewhere up in his
24 room. I went and talked with him.

25 Q Don't go into what you said. But did you ask him -- or

BRYANT CHEEK: DIRECT EXAMINATION

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1 what he said. But did you ask him to allow you to perform a
2 gunshot residue test --

3 A Yes.

4 Q -- on him?

5 A Yes.

6 Q And was that, in fact, accomplished?

7 A Yes, sir.

8 Q He did consent to that?

9 A He consented to that.

10 Q And let me hand you these two items. The outside
11 envelope is marked State's Exhibit No. 8, and then the
12 inside envelope. Do you recognize those two?

13 A Yes. I recognize this one.

14 Q What is this inside white envelope that you're holding
15 in your right hand?

16 A This is a gunshot residue kit that I preformed on David
17 Walker at the time at Spartanburg Regional Hospital.

18 Q And how did you go about performing that test? What's
19 the process that you use to collect gunshot -- to do a test
20 for gunshot residue?

21 A After we open it up it's got information inside. It
22 has a sheet inside. It has these small things in them. It
23 has information sheet as it relates to the person that
24 you're performing it on. You put his name on there. What
25 happened, gun. Anything -- any pertinent information as it

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1 relates to it. Then it has right back, and then take it out
2 -- of course, I put on the latex gloves that's provided in
3 there as well. And then I began to dab his hand on the
4 right back. Put it in there. I then grabbed the right palm
5 and dabbed the right palm of his hand like this. I put it
6 in there. And proceeded to do the left. The left palm, as
7 well as the left back at the same time.

8 Q Now, Agent Stoner, who ended up doing the analysis,
9 testified that the kit itself is pretty self-explanatory.

10 A Pretty self -- yes, sir.

11 Q Can you describe what kind of information is included
12 in that?

13 A It has the date and the time, pertinent information as
14 it relates to the person that you're performing the GSR on.
15 Their name. Caliber of the gun. The nature of where you
16 take -- take the GSR kit. I think that's right. And some
17 of other information on there. I just can't recall all of
18 it.

19 Q How many of these have you done in your career, do you
20 think? Just a rough estimate.

21 A I've done -- I've done many. I've done -- in suicide
22 victims, homicide cases. I've done -- I don't know, but
23 I've performed many of them.

24 Q Would you say dozens?

25 A Over a dozen.

BRYANT CHEEK: DIRECT EXAMINATION

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1 Q Is there anything terribly complicated about this?

2 A No, sir.

3 Q Once you've done it you know how pretty much?

4 A Yes.

5 MR. MOWRY: Your Honor, I would offer State's Exhibit
6 No. 8 as an exhibit.

7 THE COURT: Any objection?

8 MS. WIYGUL: I would object, Your Honor. The expert
9 has already testified. Her testimony is in the record.
10 This isn't anything the jury would be able to look at and
11 get anything out of. So I would object to that.

12 THE COURT: Your objection is noted. This is just the
13 GSR kit --

14 MR. MOWRY: Yes, sir.

15 THE COURT: -- off of the Defendant?

16 MR. MOWRY: Yes, sir.

17 THE COURT: The objection is noted. Overruled.
18 State's 8 is in evidence.

19 (Whereupon, State's Exhibit No. 8 was entered into
20 evidence.)

21 Q Lieutenant Cheek, once you had gotten the information -
22 - or spoken with Kelly Ball and gotten her initial
23 statement, what kind of condition was she in at that time?
24 A She was still hysterical. She was very upset. It was
25 extremely difficult to talk with her. And I didn't want to

1 press her too much because of the nature of the situation
2 that just had occurred.

3 Q But you wanted to get information?

4 A I needed the information, so I again tried to talk with
5 her. Tried to talk to with her and calm her down. I left
6 her in the back of the car. Moved the family members away
7 from the car so that she could kind of relax. And I told
8 her I needed to get a statement from her.

9 Q Okay. And did you accomplish that that night?

10 A Yes, sir. I accomplished that that night.

11 Q Was that before or after you went to the hospital?

12 A That was before.

13 Q And that was about 1:30 or so on the morning of the
14 1st?

15 A I think 1:30, 1:35, somewhere along in there, a.m.

16 Q So a couple of hours after you had gotten the call?

17 A Yes.

18 Q By that time, after you had heard what Mr. Cheeks said,
19 and after you had talked with Kelly Ball, was your outlook
20 about Mr. Walker changing?

21 A No, sir. Not at that time.

22 Q You still considered him --

23 A I still considered him a victim in the case based upon
24 what he had shared with me. People came from out of the
25 woods, jumped him. So I was still considering him as a

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1 victim.

2 Q You still believed that was a plausible story?

3 A Yes, sir.

4 Q Let me just ask you this. Ms. Wiygul has asked several
5 -- several witnesses about a shed next to the trailer that
6 Mr. Cheeks had. Did you ever go and examine that shed?

7 A No, sir.

8 Q How come?

9 A The incident location had taken place just where -- out
10 in the front yard. I did not -- I didn't have any probable
11 cause to go to the shed. I didn't see a need to go to the
12 shed. There was no particular reason for law enforcement to
13 go to the shed.

14 Q What were you focused on that night?

15 A The original call came out as a shooting on River Hill
16 Road, so I was focused on the incident. The shooting that
17 had taken place.

18 Q You were focused on that shooting and who might have
19 shot?

20 A Yes, sir.

21 Q So not only did you not know about the shed, but that
22 was not really your --

23 A No, sir.

24 Q -- point of concern that night?

25 A No, sir.

BRYANT CHEEK: DIRECT EXAMINATION

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1 Q When you went to the hospital to perform the gunshot
2 residue collection on David Lee Walker, that you described
3 with State's Exhibit No. 8, did you try to get one on Mr.
4 Cheeks?

5 A Yes, sir. I was going to perform one on Mr. Cheeks as
6 well. Mr. Cheeks was in surgery at the time.

7 Q All right. Were you ever able to get one from him?

8 A No, sir. I went back the following day to do the same
9 thing, but he was in surgery again. Although he did admit
10 that he had shot a gun.

11 Q While he was at the trailer?

12 A At his home, yes.

13 Q At his home he said that?

14 A Yes, sir.

15 Q So would it have surprised you if you had found gunshot
16 residue on his hands?

17 A No, sir.

18 Q That would have been --

19 A Expected.

20 Q Yeah. He had told you already that he had shot a gun?

21 A Yes, sir.

22 Q Did you arrest David Walker that night?

23 A No, sir.

24 Q What did you do to continue the investigation?

25 A I continued the investigation. Went back to the

BRYANT CHEEK: DIRECT EXAMINATION

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1 hospital to speak with Mr. Cheeks. Of course, he was in
2 surgery again. I went around and spoke with Mr. Walker.

3 Q Don't go into what he said to you at that time. But
4 still unable to talk with Johnny Lee Cheeks; is that right?

5 A Yes, sir.

6 Q And matter of fact, about noon the next day he passed
7 away; isn't that correct?

8 A Yes.

9 Q What -- how did you continue your investigation?

10 A When I discovered that he passed, of course, I spoke
11 with the family and went back and we just continued the
12 investigation. Mr. Walker was still a patient at
13 Spartanburg Regional Hospital.

14 Q Did you determine to submit a number of items that
15 were collected that night for examination?

16 A Yes.

17 Q That other deputies collected?

18 A Yes.

19 Q As a matter of fact, did you submit the Lorcin handgun,
20 State's Exhibit No. 2, the shell casings that were found in
21 the yard, State's Exhibit 29 and the shell casing and
22 projectile, State's Exhibit No. 9. Were those submitted for
23 examination?

24 A Yes, sir.

25 Q Along with State's Exhibit No. 8, I believe, the

BRYANT CHEEK: DIRECT EXAMINATION

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1 gunshot residue kit?

2 A Yes, sir.

3 Q Did that take a little time?

4 A Take a little time as --

5 Q To have the examination conducted?

6 A With -- talking about Law Enforcement Division?

7 Q Yes.

8 A Yes, sir.

9 Q They've got quite a backlog; isn't that right?

10 A Yes, sir.

11 Q Once you had retrieved that information did your
12 opinion of Mr. Walker's status change?

13 A Yes.

14 Q What caused that to happen?

15 A The GSR kit that I performed on him that night came
16 back positive.

17 Q And what about the projectile? The bullet?

18 A It came back as a match.

19 Q And were you present when that bullet was found?

20 A Yes.

21 Q So you were there with Mr. Cheeks when Marty Crain and
22 Steven Sweat lifted him up and there was the projectile; is
23 that right?

24 A Yes. I was on the porch. The door was open and they
25 made mention of it. I wasn't actually in there. I was on

BRYANT CHEEK: DIRECT EXAMINATION

427

1 the porch.

2 Q I got you.

3 A Yes, sir.

4 Q At what point did you talk with Toris Moore, Mr.
5 Walker's niece?

6 A Through the course of the investigation each -- I went
7 to the house to talk to Mr. Walker when he was --

8 Q And again, don't go into what he said. But --

9 A I never talked with her until later on throughout the
10 course of the investigation.

11 Q I believe it was in January of 2014; isn't that right?

12 A Yes.

13 Q And the information that she provided, would you
14 consider that crucial as far as your investigation is
15 concerned?

16 A Yes.

17 Q Lieutenant Cheek, when David Walker was on the porch
18 did you hear him talk about the two men jumping him and
19 leaving in the Bronco?

20 A Yes.

21 Q Did you discover a Bronco in the vicinity?

22 A No, sir.

23 Q Did you put out a -- it's called a BOLO, I believe;
24 isn't that right?

25 A Yes.

BRYANT CHEEK: DIRECT EXAMINATION

428

1 Q Be on the lookout?

2 A Yes, sir.

3 Q For law enforcement to find a Bronco in the area.

4 A I think Lieutenant Crain had already put the BOLO out.

5 I didn't put the BOLO out. But I think he had put the BOLO

6 out.

7 Q And you had a tan Bronco; is that right?

8 A Yes, sir.

9 Q Was one found?

10 A No, sir.

11 Q I'm going to refer to the Rossi pistol from State's

12 Exhibit No. 4. Was that retrieved that night?

13 A Yes, sir.

14 Q And describe how that came about?

15 A It was discovered through the investigation,

16 information from Mr. Cheeks to Lieutenant Crain, that it had

17 been placed under the mattress, or between the box spring

18 and the mattress.

19 Q How did you go about having that collected? Let me ask

20 you this. Did Kelly Ball ever pick up the gun in your

21 presence?

22 A Not in my presence.

23 Q When you found out the location, what was done to

24 collect it?

25 A Ask me the question again.

BRYANT CHEEK: DIRECT EXAMINATION

429

1 Q When you found out the location of the Rossi revolver
2 how did you all go about -- how did law enforcement go about
3 collecting it?

4 A Oh, they, I think, lifted up the mattress, took
5 pictures of it and then secured the weapon.

6 Q So it was deputies that did that; is that right?

7 A From my understanding it was deputies.

8 Q You did not see that happen?

9 A I did not see that happen.

10 Q Was the Rossi submitted to SLED?

11 A Yes.

12 Q Why was it submitted to SLED?

13 A Throughout the course of the investigation, and based
14 upon what Mr. Cheeks had shared with me, we submitted the
15 gun, and the gun was not only tested, when the bullet that
16 was in Mr. Walker was extracted.

17 Q And was that ever accomplished?

18 A It was never accomplished.

19 Q And there was a medical reason for that; is that right?

20 A There was a medical reason for that, yeah.

21 Q Lieutenant Cheek, there has been some question about
22 submission of clothing from Mr. Cheeks and Mr. Walker for
23 DNA testing. Why was that not submitted for DNA?

24 A It was not submitted for DNA, I didn't think it was
25 important at the time to be submitted for DNA. I submitted

BRYANT CHEEK: DIRECT EXAMINATION

430

1 the GSR kit. I submitted the clothing for possible gunshot
2 residue from the clothing. Again, I thought it -- again,
3 Mr. Cheeks was alive, Mr. Walker was alive, and the witness
4 was alive.

5 Q And we saw both these men wearing those clothes that
6 night --

7 A Yes.

8 Q -- is that right?

9 A That's correct.

10 Q And there's no doubt both of them were shot and both of
11 them were bleeding.

12 A Yes, no doubt.

13 Q So would anything of evidentiary -- would it have been
14 of any evidentiary value to you to have gotten DNA testing
15 to confirm, yes, that's their blood?

16 A No, sir.

17 Q Mr. Cheek, there has been a couple -- or there has been
18 a couple of questions regarding gun registration. Did you
19 attempt to find any ownership or any information about the
20 Rossi gun?

21 A Yes. I think it was Lieutenant Crain, or Deputy
22 Taylor, or one of them ran the serial number from the
23 Lorcin.

24 Q Well, no. I was asking about the Rossi first.

25 A Oh, yes. They ran it and I think it came back clear.

BRYANT CHEEK: DIRECT EXAMINATION

431

1 Q So what does coming back clear mean?

2 A That it's not stolen.

3 Q Did you perform the same check on the Lorcin?

4 A Yes.

5 Q How did you go about doing that?

6 A One of the deputies ran the serial number through our
7 dispatch, and when they ran the serial number through our
8 dispatch it came back stolen from Kings Mountain, North
9 Carolina. One of the deputies -- of course, our dispatcher
10 was sent a hit for confirmation whether it was used. It was
11 stolen from there.

12 Q Do you have a year in which it was stolen?

13 A 1996.

14 MR. MOWRY: Beg the Court's indulgence one more moment.

15 THE COURT: Yes, sir.

16 Q Detective Cheek, there has also been talk about a
17 liquor bottle with what might have been blood on it. A pair
18 of glasses that might have had blood on it, or had blood on
19 them, and a baseball type cap. Those were all collected,
20 right?

21 A Yes.

22 Q Was any test performed on them?

23 A Not to my knowledge.

24 Q And you were the chief investigator; is that right?

25 A Yes, sir.

BRYANT CHEEK: DIRECT EXAMINATION

432

1 Q So if it was done you would have knowledge; is that
2 right?

3 A Yes, sir.

4 Q Any reason why that didn't happen?

5 A I'm not sure.

6 Q Would you agree that this was a pretty violent scene?

7 A Yes.

8 Q There had been gunshots?

9 A Yes.

10 Q There was blood?

11 A Yes.

12 Q And the fact that these items were there and had blood
13 on them. Did you see any evidentiary tie-in?

14 A No, sir.

15 Q Would that have come as a surprise to you?

16 A No, sir.

17 Q But they were collected; is that right?

18 A They were collected. They were bagged. The things
19 that I thought were of value and importance was submitted to
20 SLED for testing.

21 Q Okay. Mr. Cheek, were Christopher Wells and Johnny Lee
22 Saxon also arrested in relation to this case?

23 A Yes.

24 Q They're not at trial right now?

25 A No, sir.

BRYANT CHEEK: CROSS-EXAMINATION

433

1 Q Their cases are still pending; is that right?

2 A Yes, sir.

3 MR. MOWRY: Thank you, sir. That's all I have.

4 THE COURT: Cross.

5 CROSS-EXAMINATION

6 BY MS. WIYGUL:

7 Q Lieutenant Cheek, you stated that you issued, or one of
8 your -- you had one of your officers issue a BOLO that night
9 for a tan Bronco; is that correct?

10 A The BOLO, from my understanding, had already been
11 issued by Lieutenant Crain.

12 Q Sir, where would that documentation be found?

13 A Probably in the CAD.

14 Q Sir, would you please identify this document?

15 A This a Laurens County 911 CAD incident detail.

16 Q And is that from the incident that we're discussing
17 today?

18 A Yes. Yes, ma'am.

19 Q And could you please tell me in that CAD report it
20 lists a BOLO issued for a tan Bronco.

21 A The only thing I see is an older model gold or silver.

22 Q Sir, does that say an older molder gold or silver
23 Bronco?

24 A No, ma'am.

25 Q What does it say?

BRYANT CHEEK: CROSS-EXAMINATION

434

1 A It just says older model silver gold -- older model --

2 Q It doesn't say box car? Box type car?

3 A It says older model gold or silver.

4 Q Okay. What's that say?

5 A Older model box style headed back toward Laurens.

6 Q So you weren't looking for a tan Bronco that night,
7 were you? You were looking for a box style car as described
8 by Ms. Ball; isn't that right?

9 A That BOLO may have come out before I was in route.
10 That comes from the shift lieutenant.

11 Q Sir, when BOLOs are issued is there paperwork that's
12 produced?

13 A BOLO paperwork produced by the Sheriff's Office or the
14 paperwork produced by CAD?

15 Q By anybody at all, sir.

16 A It's produced by CAD.

17 Q Are you the investigating officer in this case?

18 A I am.

19 Q Is it your case?

20 A Yes, ma'am.

21 Q Is every piece of paperwork provided to you associated
22 with this case?

23 A Yes, ma'am.

24 Q Do you have any paperwork in your possession, or
25 anywhere else, that documents a BOLO being issued for a tan

BRYANT CHEEK: CROSS-EXAMINATION

435

1 Bronco?

2 A No, ma'am.

3 Q Sir, do you have any documentation of speaking with Mr.
4 Cheeks' family members at the scene on the night of the
5 incident?

6 A There's no documentation I spoke with them.

7 Q Did you take notes?

8 A No, ma'am.

9 Q Do you have a body cam?

10 A No, ma'am.

11 Q You don't have a body cam?

12 A No, ma'am. That's for the uniform patrol division.

13 Q Do you have a recorder?

14 A No, ma'am.

15 Q Do you have a notebook and a pen?

16 A Yes, ma'am.

17 Q Did it occur to you that it might be important to
18 record what these people told you at the scene about the
19 victim?

20 A They were crying and hollering.

21 Q Sir, did it occur to you that it might be important to
22 record what these people had to tell you at the scene?

23 A It was important to me what they had to tell me at the
24 scene, but it wasn't important to me to record what they
25 were telling me. I was trying to explain to them what was

BRYANT CHEEK: CROSS-EXAMINATION

436

1 going on.

2 Q It wasn't important enough to write it down?

3 A I didn't write it down.

4 Q Sir, you stated that initially you considered both Mr.
5 Walker and Mr. Cheeks victims; is that correct?

6 A Yes.

7 Q Are you familiar with something called fingernail
8 scrapings?

9 A Fingernail scrapings?

10 Q Fingernail scrapings.

11 A I don't understand what you're asking.

12 Q Have you -- when someone is assaulted, when they have
13 visible injuries and have told you they've been jumped on,
14 have you ever heard of taking scrapings from under their
15 fingernails --

16 A Yes.

17 Q -- to see if they got the DNA of the person that
18 attacked them?

19 A Yes, I heard of that.

20 Q Do you know how to do it?

21 A I've never done it.

22 Q Do you know how to do it?

23 A I've never performed it. I've never been trained --

24 Q Do you know how to do it?

25 A I've never done it.

BRYANT CHEEK: CROSS-EXAMINATION

437

1 Q Sir, that's not what I'm asking. Do you know how to do
2 it?

3 A I haven't been trained to do it on a crime scene.

4 Q Is the answer no, you do not know how to take
5 fingernail scrapings?

6 A I haven't been trained to take fingernail scrapings on
7 a crime scene.

8 Q Sir --

9 MR. MOWRY: I think he's asked and answered the
10 question, Your Honor.

11 MS. WIYGUL: He has not, Your Honor. While he may not
12 be trained to take them on a crime scene, I have no idea if
13 he knows how to take them in a bathroom, or at a Sheriff's
14 Office, or in a hospital.

15 THE COURT: All right. Let's handle it this way. Do
16 you know what they are, first of all? Do you know what
17 she's referring to when she says fingernail scrapings?

18 THE WITNESS: Yes. I assume I know. She said
19 fingernail scrapings. I mean, for me fingernail scrapings
20 could be --

21 Q Sir, I'm explaining what I mean. I mean, collecting
22 evidence --

23 A No, I did not collect evidence --

24 Q -- from a victim's fingernails?

25 A -- from his fingers. No, I did not.

BRYANT CHEEK: CROSS-EXAMINATION

438

1 Q I understand that you didn't. Do you know how to
2 collect evidence from under someone's fingernails?

3 A I --

4 Q Yes or no, and then you're welcome to explain.

5 A I haven't been trained in collecting evidence.

6 Q Lieutenant Cheek, I would very much appreciate it if
7 you would give me a yes or no answer and then you are more
8 than welcome to explain.

9 A No. Here's why. I haven't been trained in collecting
10 evidence from beneath fingernails.

11 Q Sir, was anybody on that scene trained in how to
12 collect evidence from under a victim's fingernails?

13 A We don't have a crime scene unit that's been trained.

14 Q I understand that, sir. I'm asking you, as the lead
15 investigator in this case.

16 A To my knowledge, no one as the Laurens County Sheriff's
17 Office has been trained to collect fingernail scrapings from
18 underneath a fingernail.

19 Q What about Deputy McMahan?

20 A Not that I know of.

21 Q Who is Deputy McMahan?

22 A He works in the uniform patrol.

23 Q With Laurens County Sheriff's Office?

24 A Yes, with Laurens County Sheriff's Office.

25 Q What about Dale Mitchell?

BRYANT CHEEK: CROSS-EXAMINATION

439

1 A Dale Mitchell?

2 Q Dale Mitchell.

3 A I don't know who that is.

4 Q He was on the scene that night.

5 A I still don't know who that is.

6 Q What about Donny Ward?

7 A Donny Ward is -- he works with the Laurens County

8 Sheriff's Office as a -- he's not a full-time deputy. He's

9 a reserve deputy.

10 Q Do you know, of your own personal knowledge, whether

11 any of the people on that scene were trained on how to

12 collect evidence from a victim's -- from under a victim's

13 fingernails?

14 A Not to my knowledge.

15 Q Sir, are you aware that Spartanburg County also

16 responded to this scene?

17 A Yes.

18 Q Are you aware that Spartanburg County does have a

19 forensics department?

20 A Yes.

21 Q Are you aware that Spartanburg County will permit their

22 forensics department to go outside their counties --

23 A Yes.

24 Q -- when they need assistance?

25 A Yes.

BRYANT CHEEK: CROSS-EXAMINATION

440

1 Q But you chose not to ask them to come?

2 A I did.

3 Q Sir, you're aware that a bullet -- that Mr. Walker was
4 actually shot in the back, correct?

5 A I'm not aware which way he was shot. I'm just aware
6 that he was shot.

7 Q So you were sitting out with him on the porch, weren't
8 you?

9 A Uh-huh.

10 Q You saw the bullet wound, didn't you?

11 A I didn't look at the wound.

12 Q You heard what was going on, didn't you?

13 A Uh-huh.

14 Q And you heard everything that's on these body cams.

15 A I did.

16 Q But you're telling -- is it your testimony today that
17 you didn't realize he'd been shot in the back?

18 A I knew he had been shot. I didn't know where he had
19 been shot at. I'm not an expert to determine the entry or
20 the exit wound.

21 Q And you went to the hospital in this case, didn't you?

22 A Yes, ma'am.

23 Q And you spoke with the doctor? Did you speak with any
24 of the people that were treating either Mr. Walker or Mr.
25 Cheeks?

BRYANT CHEEK: CROSS-EXAMINATION

441

1 A Mr. Cheeks was in surgery. Mr. Walker was in a room.

2 Q Yes, sir. And through those visits in your
3 investigation did you at some point in this investigation
4 become aware that Mr. Walker had been shot in the back?

5 A I was aware that he was shot. I wasn't aware he was
6 shot in the back.

7 Q Sir, do you -- have you watched all of the body cams in
8 this case?

9 A I have.

10 Q Both of the ones that were presented in court and not?

11 A Yes.

12 Q And have you reviewed all the materials in this case in
13 preparation for trial?

14 A Yes.

15 Q And you have copies of everything related to the
16 investigation of this case, don't you?

17 A Yes, ma'am.

18 Q And is it your testimony that you don't know where Mr.
19 Walker was shot?

20 A You asked me did I know whether or not he was shot in
21 the back that night.

22 Q Sir, I'm asking you at any point in your investigation
23 did you become aware that Mr. Walker had been shot in the
24 back?

25 A I was aware that Mr. Walker was shot.

BRYANT CHEEK: CROSS-EXAMINATION

442

1 Q Sir, yes or no. At any point during this investigation
2 did you become aware that Mr. Walker had been shot in the
3 back?

4 A I was aware that Mr. Walker was shot.

5 Q Sir, I'm asking you a yes or no question and then
6 you're welcome to explain.

7 THE COURT: You all are talking past each other here.
8 He's thinking that you're talking about only that particular
9 night. You are saying during the course of the entire
10 investigation.

11 MS. WIYGUL: Yes, sir.

12 THE COURT: So I think that's where there's a
13 miscommunication going on.

14 Q Sir, during the course of any -- between the night of
15 Halloween of 2013 and February 25th of 2015 did you become
16 aware that on the night in question Mr. Walker was shot in
17 the back?

18 A Yes.

19 Q Thank you. And Mr. Walker wanted the bullet removed
20 from his back, didn't he?

21 MR. MOWRY: Objection, Your Honor.

22 THE COURT: Sustained.

23 Q Sir, do you have any personal knowledge of whether the
24 bullet was left in Mr. Walker's back?

25 A Yes.

BRYANT CHEEK: CROSS-EXAMINATION

443

1 Q And was it left in his back?

2 A Yes.

3 Q And do you have any personal knowledge as to whether
4 Mr. Walker wanted that bullet removed from his back?

5 MR. MOWRY: Objection again, Your Honor.

6 THE COURT: Sustained. It's hearsay and it calls for
7 speculation.

8 Q Sir, at what point was the victim's wallet recovered?

9 A The victim's wallet was recovered many days after the
10 incident location -- I mean, the incident that night.

11 Q Approximately how many days later was the victim's
12 wallet recovered?

13 A I'm not sure. I'll have to find it.

14 Q While you're looking for that, sir, when the victim's
15 wallet was recovered, was it recovered because somebody was
16 in possession of the victim's credit cards that were stolen
17 that night?

18 MR. MOWRY: Say that again?

19 Q Did you become aware at some point in this
20 investigation that there was a person that was in possession
21 --

22 MR. MOWRY: Your Honor, I'm going to object at this
23 time. Because the wallet has not been admitted or even
24 mentioned in the State's case and chief. There is no charge
25 against Mr. Walker for armed robbery. And I would submit to

BRYANT CHEEK: CROSS-EXAMINATION

444

1 Your Honor that the wallet, as far as this case is
2 concerned, is irrelevant.

3 MS. WIYGUL: Your Honor, I think it goes directly as to
4 the State's alleged motive in this case. There's been
5 testimony from Ms. Ball that his wallet was taken that
6 night.

7 THE COURT: All right.

8 MR. MOWRY: No, there wasn't, Your Honor. The
9 testimony was everything was gone.

10 THE COURT: You all stay where you are. Come over
11 here.

12 (Whereupon, a side bar was held.)

13 THE COURT: Please proceed, Ms. Wiygul.

14 Q Officer, are you -- or Lieutenant, are you trained to
15 take DNA samples?

16 A No, ma'am.

17 Q You're a lieutenant and a lead investigating officer
18 and you don't know how to take DNA?

19 A Well, as in blood swabs?

20 Q Do you know how to take DNA samples from a suspect or a
21 victim, yes or no.

22 A We take swabs from -- when you say DNA are you talking
23 about swabs -- blood swabs?

24 Q Sir, if you'll answer yes or not I'll be happy to let
25 you explain, whichever way --

BRYANT CHEEK: CROSS-EXAMINATION

445

1 MR. MOWRY: Your Honor, he's asking for clarification
2 and she's just being accusatory.

3 THE COURT: Ms. Wiygul, there are many ways to take
4 DNA. He's probably not trained to draw blood. He's
5 probably to rub a Q-tip around somebody's mouth, so --

6 MS. WIYGUL: I'll clarify, Your Honor.

7 THE COURT: Let's get to it here, please.

8 Q Are you trained to take Buccal swabs?

9 A Yes.

10 Q Did you take any in this case?

11 A No, ma'am.

12 Q You stated that you didn't perform any gunshot residue
13 tests in this case except on Mr. Walker, correct?

14 A Yes.

15 Q Because he said he had not fired a gun, correct?

16 A I was going to perform a GSR on Mr. Cheeks as well, but
17 he was in surgery.

18 Q Why didn't you perform a gunshot residue kit on Ms.
19 Ball?

20 A I didn't.

21 Q I know you didn't. Why didn't you?

22 A I didn't.

23 Q I understand that, sir. Could you please answer the
24 question.

25 A Why I didn't? I didn't consider as a suspect. I

BRYANT CHEEK: CROSS-EXAMINATION

446

1 considered her as a victim.

2 Q What efforts did you make to locate the 32 automatic
3 that the victim told your deputy was his gun?

4 A I left that up to Lieutenant Crain.

5 Q Did you document it anywhere?

6 A No. I had left and I was talking with the family and
7 Ms. Ball, the witness.

8 Q Did you ever follow-up on it?

9 A What do you mean follow-up on it?

10 Q Did you ever ask Mr. Crain if he found it?

11 A When I was talking to Ms. Ball -- after they had
12 finished collecting the evidence we got together. We went
13 over what they had collected. They had collected
14 everything. They had documented everything. They had told
15 me everything that they had documented. Deputy Taylor put
16 it in the report. I told them I was going to continue to
17 talk to Ms. Ball. Finish getting the statement with Ms.
18 Ball. We cleared the scene. I went to Spartanburg
19 Hospital.

20 Q Sir, did you submit any DNA to SLED --

21 A No.

22 Q -- to be tested in this case?

23 A No, ma'am.

24 Q Did you submit any items to SLED that could have been
25 tested for DNA?

BRYANT CHEEK: CROSS-EXAMINATION

447

1 A I submitted Mr. Walker's clothes, the guns. At the
2 time I didn't see the need for DNA.

3 Q Sir, did you send items to SLED, yes or no, that were
4 capable of being tested for DNA?

5 A Yes.

6 Q Did you fail to send items to SLED that could have been
7 tested for DNA?

8 A I can't say I failed to send items to SLED to be tested
9 for DNA. I sent the necessary items that I thought were
10 pertinent to the investigation at the time.

11 Q To be tested for DNA?

12 A I didn't submit anything to be tested for DNA.

13 Q Did you receive a letter from SLED on April 18th --

14 A Yes.

15 Q -- or dated April 18th of 2014?

16 A Yes, I did.

17 MR. MOWRY: Your Honor --

18 Q What did that letter say?

19 MR. MOWRY: Your Honor, I must ask for a side bar or
20 take up a matter of law.

21 THE COURT: All right. Why don't we start with the
22 sidebar first and see where that leads us. Come on up.

23 (Whereupon, a sidebar was held.)

24 THE COURT: You may continue, Ms. Wiygul.

25 Q Officer, were glasses collected in this case?

BRYANT CHEEK: CROSS-EXAMINATION

448

1 A Yes.

2 Q Did you send them to SLED?

3 A No, I did not.

4 Q If the DNA on those glasses did not belong to either
5 Mr. Walker or Mr. Cheeks wouldn't that be important?

6 A Say that again?

7 Q If there was evidence on the scene at the site of the
8 struggle that told you someone else was there and who it
9 was, would that be important to your investigation?

10 A If the evidence told me that someone else was at the
11 scene?

12 Q Yes, sir. And who it was.

13 A In my evaluation of it, evidence that was at the scene,
14 yes.

15 Q Yes, it would be important?

16 A Yes.

17 Q And you could have gotten that information, couldn't
18 you?

19 A Could have had the information --

20 Q You could have gotten that information.

21 A -- by submitting it to SLED?

22 Q Yes, sir.

23 A I could have got the information from SLED only if --
24 whatever we submitted to SLED we also have to submit a
25 comparison.

BRYANT CHEEK: CROSS-EXAMINATION

449

1 Q Sir, did you ever ask Mr. Walker to submit a DNA
2 sample?

3 A No.

4 Q Did you ever attempt to get any of the blood that night
5 as a DNA sample?

6 A No.

7 Q Did you ever ask Ms. Ball for a DNA sample?

8 A No, I did not.

9 Q Did you ever take any fingerprints in this case?

10 A No.

11 Q Did you ever test for any fingerprints in this case?

12 A No.

13 Q Did Ms. Ball tell you that the keys to the shed had
14 been stolen from Mr. Cheeks?

15 A I don't recall.

16 Q You don't recall?

17 A Huh-uh.

18 Q At some point very early in the investigation, on the
19 night of the incident, did Ms. Ball tell you that someone
20 had robbed Mr. Cheeks?

21 A Ms. Ball was extremely hysterical.

22 Q I understand that. Did she tell you that someone had
23 robbed Mr. Cheeks?

24 A Yes.

25 Q Did she tell you they took her keys?

BRYANT CHEEK: CROSS-EXAMINATION

450

1 A I don't recall her stating whether or not they took his
2 keys.

3 Q Did you test the SUV right around where all the
4 evidence was found? This one right here. Did you brush any
5 of those doors or those nice flat surfaces to see if anybody
6 left prints on it?

7 A No, I did not.

8 Q Did you check it out to see if any blood got splashed
9 on it?

10 A No, I did not.

11 Q Sir, do you have any documentation about visiting or
12 meeting with Ms. Ball at the hotel room?

13 A No.

14 Q Any documentation about going to talk to her while she
15 was in the mental institution?

16 A No.

17 Q Is it your standard practice to interview witnesses
18 after they've been admitted for in-patient treatment to --

19 MR. MOWRY: Your Honor, that's just simply gratuitous.
20 She's brought this up at least three times now.

21 THE COURT: Sustained. Sustained.

22 Q Sir, do you believe it's important to document your
23 investigation?

24 A I do.

25 Q Then why didn't you?

BRYANT CHEEK: CROSS-EXAMINATION

451

1 A I documented the investigation to the best of my
2 ability. There were certain documentations left to other
3 officers.

4 Q But you're in charge, right?

5 A Yes.

6 Q It's your investigation, right?

7 A Yes.

8 Q You make the final decision on what goes to SLED,
9 right?

10 A Yes.

11 Q You made the decision on what gets tested, didn't you?

12 A Yes.

13 Q You made the decision not to look for any fingerprints,
14 didn't you?

15 A Yes.

16 Q You made the decision not to collect any DNA, didn't
17 you?

18 A I didn't see a need to collect DNA. I collect -- we
19 had the guns. We had some clothes. I collected clothes
20 from Spartanburg Regional. I did the GSR on the victim,
21 possible suspect. I attempted to do a GSR on Mr. Cheeks.
22 The call came out as a shooting.

23 Q Sir, it was approximately 13 minutes from the time of
24 the 911 call until the first officer arrived on that scene,
25 wasn't it?

BRYANT CHEEK: CROSS-EXAMINATION

452

1 A I'm not sure exactly what the time were -- was.

2 Q Sure, would reviewing the CAD report help refresh your
3 memory?

4 A (Witness reviews CAD report.)

5 Q Sir, does looking at that document help refresh your
6 memory?

7 A It's 10 minutes.

8 Q When did the 911 call come in?

9 A Dispatch time at 23:45, in route 23.45, arrival time,
10 23:55.

11 Q And who was the first officer on the scene? Sir, you
12 stated you'd reviewed your file in preparation for this
13 trial, correct?

14 A Yes.

15 Q And you've been sitting here during this entire trial,
16 correct?

17 A Yes.

18 Q And from reviewing your file and sitting here during
19 this trial, are you telling us you can't recall who the
20 first officer on the scene was?

21 A Lieutenant Marty Crain said that he was the first on
22 the scene. You asked me to look on here. I was looking for
23 the police number.

24 Q Sir, I don't need his number. I was just curious if
25 you knew the first officer on the scene?

BRYANT CHEEK: CROSS-EXAMINATION

453

1 A Yes, Lieutenant Marty Crain.

2 Q Sir, you issued a search warrant for the Defendant's
3 phone, didn't you?

4 A Yes.

5 Q Tell us about that, please.

6 A We issued the search warrant for the phone to see if
7 there was any pertinent information on the phone. We
8 discovered there wasn't no pertinent information on the
9 phone because the phone was a prepaid phone. They analyzed
10 the phone at SLED. They didn't come up with anything.

11 Q Sir, did you get a report from SLED stating that?

12 A I spoke with the individual on the phone.

13 Q Sir, did you receive a report from SLED --

14 A No, I did not.

15 Q -- stating what you just testified to?

16 A No, I did not. He just said no records found. I put
17 on the --

18 Q You just filled it in; is that correct? You didn't
19 document it, did you?

20 A Documented it on return.

21 Q Did you document it by getting something from SLED in
22 writing?

23 A No, sir. No, ma'am.

24 Q Sir, you swore out the warrants, the murder warrants --
25 or the warrants charging Mr. Walker with murder, didn't you?

BRYANT CHEEK: CROSS-EXAMINATION

454

1 A Yes, ma'am.

2 Q And you swore out the warrant charging Mr. Saxon and
3 Mr. Wells with the same murder, didn't you?

4 A Yes, ma'am.

5 Q And nowhere in those warrants does it say one -- hand
6 of all, does it?

7 MR. MOWRY: Objection, Your Honor.

8 THE COURT: Sustained. That is a legal issue for the
9 Court and not for this officer.

10 MS. WIYGUL: Your Honor, may I ask that I be permitted
11 simply to ask the officer as to what he swore to to get
12 these warrants.

13 MR. MOWRY: That's still going to be the legal issue,
14 Your Honor.

15 THE COURT: Somewhat of a legal issue. You can -- I
16 mean, if you're going to ask him that you're going to be
17 asking him his entire theory of this particular case.
18 You're on cross. I think you might be able to do better
19 questions. But you may proceed as you wish.

20 Q Lieutenant Cheek, how long have you been an officer?

21 A Since 2003.

22 Q Are you aware of the advances that have been made in
23 science in the last 13 years, 12 years?

24 A Advances as it relates to?

25 Q As it relates to criminal investigations.

BRYANT CHEEK: REDIRECT EXAMINATION

455

1 A Some advances, yes.

2 MS. WIYGUL: I don't have any further questions.

3 THE COURT: Mr. Mowry.

4 MR. MOWRY: Thank you, Your Honor. Just a few.

5 REDIRECT EXAMINATION

6 BY MR. MOWRY:

7 Q Ms. Wiygul asked you about family members that night,
8 whether you had documented what they said. Were they
9 telling you anything of importance with regard to the
10 investigation?

11 A No. They didn't give me any information as regards to
12 the investigation. They was just upset. They was
13 demanding. They were upset. They were angry. They were
14 fussing. They demanded answers. What went on, who's in the
15 house. Things of that nature.

16 Q Is that at all out of the ordinary --

17 A That's not out of the ordinary.

18 Q -- for families in a situation like that?

19 A It's not out of the ordinary for a family in a
20 situation of crises like that.

21 Q And were you trying to kind of quell their frustration?

22 A Yes.

23 Q Ms. Wiygul asked you about evidence, or whether or not
24 you'd taken a gunshot residue sample from Ms. Ball. Was
25 there any evidence from anybody that you spoke to that night

BRYANT CHEEK: REDIRECT EXAMINATION

456

1 or any evidence at the scene that she had fired a gun?

2 A No. No, sir.

3 Q She had said that she had not; isn't that right?

4 A Yes, sir.

5 Q How did Johnny Lee Cheeks say he got shot?

6 A He stated that he got shot -- the man sitting in the
7 swing shot him, he shot him, and then he shot him again.

8 Q So the man in the swing shot Johnny Lee Cheeks, Johnny
9 Lee Cheeks shot the man in the swing, the man in the swing
10 shot Johnny Lee Cheeks again?

11 A Yes.

12 Q And who was the man in the swing?

13 A David Walker.

14 Q Is that David Walker in Court's Exhibit No. 2?

15 A Yes.

16 Q Ms. Wiygul asked you about DNA from Kelly Ball. Did
17 Kelly Ball have any bleeding or visible wounds or anything
18 like that?

19 A Not that I noticed.

20 Q Okay. And Ms. Wiygul asked you about fingerprints.

21 Whether you had taken any fingerprints that night. Matter
22 of fact, the Lorcin .380 was submitted to SLED for a
23 fingerprint examination, was it not?

24 A Yes. Yes.

25 Q And that came back negative. Would it have been of any

BRYANT CHEEK: REDIRECT EXAMINATION

457

1 great import to you that Johnny Lee Cheeks' fingerprints
2 were on the revolver?

3 A No.

4 Q Would it have been of any great import to you that
5 David Walker's DNA were on David Walker's clothes?

6 A Yes.

7 Q It would be?

8 A No, not DNA on his clothes. No.

9 Q He bled on it, had he not?

10 A Yes.

11 Q Was it of any great import to you that Johnny Lee
12 Cheeks' DNA was on Johnny Lee Cheeks' clothes after he bled
13 on it?

14 A No.

15 Q Did you see anybody being scratched? Had anybody been
16 scratched that you could see?

17 A No.

18 Q What was the only reason that you did not get a GSR kit
19 accomplished from Johnny Lee Cheeks?

20 A I made an attempt to GSR Mr. Cheeks, as well as Mr.
21 Walker. Mr. Cheeks was in emergency surgery. I went around
22 and I GSR'd Mr. Walker. I came back the following day to
23 attempt to GSR him again and he was taken back into surgery.

24 Q And then died soon thereafter?

25 A And died soon thereafter.

1 Q You heard Jennifer Stoner's testimony, did you not?

2 The GSR analyst?

3 A Yes.

4 Q By the time you'd come back the second time after Mr.

5 Cheeks had gotten out of surgery --

6 A Yes, he would have been of no value.

7 Q It was outside the six hour window; isn't that right?

8 A The 6 hour window. Yes, sir.

9 MR. MOWRY: Thank you, sir. That's all I have.

10 THE COURT: Recross?

11 Ms. Wiygul: No, Your Honor.

12 THE COURT: Thank you very much, Lieutenant. You may
13 step down.

14 (Whereupon, the witness stepped down from the witness
15 stand.)

16 THE COURT: Any more witnesses for the State this
17 evening?

18 MR. MOWRY: There are no further witnesses, Your Honor,
19 and the State would rest at this time.

20 THE COURT: Ladies and gentlemen of the jury, we are at
21 5:00. I actually will request at 5:00. I got an email that
22 was forwarded to me a short while ago that apparently our
23 Governor everybody in the upper counties to go home and stay
24 there. So not being one to argue with the Governor, I'm
25 inclined to do what she is suggesting. In all candor, I

1 anticipate that Laurens County might be in for just a little
2 bit of the white stuff tomorrow, and it's entirely possible
3 -- I'm actually anticipating that court tomorrow will be
4 cancelled, which means we would reconvene on Friday. From
5 what I've seen, and if the roads are bad tomorrow, it
6 hopefully should be over and done with and we can resume
7 this on Friday and get it done on Friday. Okay? So my
8 instructions to you are going to be simply follow whatever
9 the county manager says. So if county offices are closed,
10 which I suspect they will be -- if county offices are
11 closed, just listen for the opening time on Friday and be
12 here 30 minutes after that opening time. Okay? Again, I
13 think its WYFF that covers most of this stuff for Laurens
14 and Greenwood. You can probably tune into them and they'll
15 take care of it. My secretary in Greenwood also sent me a
16 message that it's sleeting there, so it might be sleeting
17 here, too. Whatever you do, don't talk about the case. But
18 more importantly be very, very careful out there. Okay?
19 Especially for the next couple of days. I hope you have a
20 pleasant evening. If I see you tomorrow, that's great. If
21 I don't see you tomorrow, have a pleasant snow day and I'll
22 see you on Friday. With that, you are excused.

23 (Whereupon, the jury exited the courtroom at 4:54 p.m.)

24 THE COURT: The jury is out. The question, Ms. Wiygul,
25 you would move to renew all motions at this particular point

1 in time as well as move for a directive verdict, correct?

2 MS. WIYGUL: That is correct, Your Honor. I would move
3 for both of those.

4 THE COURT: The Court would find that there's evidence
5 of direct and circumstantial from which the jury can
6 concluded that Mr. Walker, in fact, would be guilty of these
7 offenses. So as far as the DV motion the Court would deny
8 that at this point. And all previous rulings on all
9 previous motions, same ruling stands. But the record is
10 protected for appellate purposes for you, Ms. Wiygul.

11 MS. WIYGUL: Your Honor, at this time, the Court
12 instructed me at the close of the State's case, we have not
13 been able to find a gunshot residue expert. I've reached
14 out. I've gotten no replies. So we would renew our motion
15 for a mistrial on that basis -- I'm sorry, a motion for a
16 continuance on that basis also.

17 THE COURT: At this point I am actually going to deny
18 that motion. The -- and Solicitor, if you want to put
19 something on that record, that's fine. But when Agent
20 Stoner testified, in all candor, it wasn't testimony that
21 the Court found terribly damning from the State's
22 perspective. Clearly there was particulate matter found.
23 But my recollection of her testimony and my note reflect
24 that she was not able to definitively say that GSR was
25 present because only some particles were found and not all

1 the particles that one would typically find. She said that
2 you would usually want to see lead, barium, and I believe it
3 was antimony.

4 MR. MOWRY: That's correct, Your Honor.

5 THE COURT: But if the State wants to supplement what I
6 have said, what your take on what her motion is with regard
7 to GSR, I'm happy to hear from you.

8 MR. MOWRY: Your Honor, the State's witness said that
9 in her view, in her opinion, it was gunshot residue. But
10 she also stated that she could not say whether or not it was
11 because the Defendant had fired a gun or been around a gun
12 being fired.

13 THE COURT: Good point.

14 MR. MOWRY: So under those circumstances -- and that
15 was the testimony I anticipated. That was why I was not of
16 the opinion that Ms. Wiygul was going to need anybody else.

17 THE COURT: And that -- I do understand your position,
18 Ms. Wiygul, and you're protected on the record. But I have
19 gotten parts of my notes where they reflect can't tell if
20 it's from him, the Defendant shooting the gun, or it's from
21 being shot or from close proximity. Cannot tell if
22 Defendant fired a shot or not. So I do understand your
23 position. I appreciate it. Motion for continuance is
24 denied.

25 MS. WIYGUL: Thank you, Your Honor.

1 MR. MOWRY: Thank you, Your Honor.

2 THE COURT: I will be emailing the email addresses I
3 have for all of you. Ms. Wiygul, I'm assuming you can
4 access that at your house?

5 MS. WIYGUL: Yes.

6 THE COURT: You're good? Okay. I'll send you those
7 proposed charges. Please take an opportunity to look at
8 those. Assuming for the moment -- I know that you're going
9 to want to attempt to converse with your client again, Ms.
10 Wiygul. But assuming for the moment that you won't be
11 putting up a defense, we'll go straight into argument and
12 charge. I'm betting it's going to be Friday morning.

13 MS. WIYGUL: Yes, Your Honor. I will attempt to --
14 assuming we get outside and the streets are clear I'll
15 attempt to go by there.

16 THE COURT: All right. That's your call. I'm sure the
17 jail would be more than happy to try and make your client
18 available by phone at the same time. But however you want
19 to address that is fine with me.

20 MR. MOWRY: Your Honor, obviously the State is going
21 to request charges on hand of one is hand of all, and on
22 felony murder. If you would like us to submit a proposed
23 charge, we'll be glad to do that.

24 MS. WIYGUL: And, Your Honor, I would object to both of
25 those charges on the basis that the State has not presented

1 any evidence to support either one of those theories. Their
2 entire arguments and every one of their witnesses and
3 testimony has been based on the idea that Mr. Walker shot
4 Mr. Cheeks and Mr. Cheeks shot Mr. Walker.

5 MR. MOWRY: Except for Toris Moore, Your Honor.

6 MS. WIYGUL: I would further point out, Your Honor,
7 that as the State has made clear to the Court, they've
8 chosen not to bring Mr. Walker to trial for armed robbery.
9 I believe that either of those instructions, especially the
10 felony murder, would necessitate them having the armed
11 robbery along with the murder and possession of a weapon
12 during a violent crime.

13 THE COURT: Let's handle it this way. You all take a
14 look at what my capable clerk and I come up with and then
15 get back to me on any additions or modifications you think
16 would be appropriate. And that will save you all the
17 trouble of having to submit proposed charges.

18 MR. MOWRY: Thank you, Your Honor.

19 THE COURT: I'm assuming you're going to want mere
20 presence charge.

21 MS. WIYGUL: Yes, Your Honor.

22 MR. MOWRY: And I appreciate the description as your
23 able clerk.

24 THE COURT: She is definitely able. Very good. You
25 all have a good day.

1 MR. MOWRY: Thank you, Your Honor.

2 THE COURT: Stay safe.

3 TRIAL DAY 4-02/26/14

4 THE COURT: Let's go ahead and address, if we may, a
5 few housekeeping matters. First, I have a statement again
6 from Mr. Walker. I think it says, "I do not have a law, l-
7 a-w --" oh, yes, it does say, "I do not have a lawyer. Know
8 court," k-n-o-w, court. And it is signed February 26, 2015.
9 So again Mr. Walker has declined to join us today.

10 MR. MOWRY: Yes, sir. That was faxed to our office
11 about 8:46 this morning.

12 THE COURT: The Court will make it a Court's exhibit.
13 It'll be number 5.

14 (Whereupon, Court's Exhibit No. 5 was entered into
15 evidence.)

16 THE COURT: Additionally, the Clerk has informed me
17 that one of the jurors, Mr. Jennings, called this morning
18 saying that his family, including himself, has a stomach
19 virus, so he cannot be here. I told him -- or asked the
20 Clerk to relay that he would be excused and that we'll use
21 one of the alternates, which we have two alternates; Joshua
22 Lindsay, L-I--d-s-a-y, and Daniel Perez. Do the parties
23 have any specific preference as to how -- one part of the
24 law says choose it randomly, the other part says pick them
25 in the order that they were picked.

1 MR. MOWRY: And that's the way I've always seen it
2 done, Your Honor, so that's what I would ask for here.

3 THE COURT: Just pick in the order that they were
4 picked?

5 MR. MOWRY: Yes, sir.

6 MS. WIYGUL: I would agree, Your Honor. And I believe
7 that would be Mr. Lindsey.

8 THE COURT: All right. We'll go with Mr. Lindsey then
9 since everybody is in agreement. And he'll be the new --
10 newest active member of the jury.

11 The record should also reflect that I did email
12 proposed charges to the attorneys last evening. I'm told
13 that they've had a chance to review the same. We met in
14 chambers briefly. The State has agreed to the proposed
15 charges. Ms. Wiygul, you do have an objection, I believe,
16 to the instruction on felony murder, as well as -- refresh
17 my memory.

18 MS. WIYGUL: Hand of one, hand of all.

19 THE COURT: All right. Do you want to be heard further
20 on that?

21 MS. WIYGUL: Just briefly, Your Honor. We would submit
22 that during the course of this trial there has not been
23 evidence presented that supports either of those
24 instructions. The State's theory of the case throughout the
25 testimony and evidence presented has been that Mr. Walker is

1 the one that shot Mr. Cheeks. The State has made it clear
2 that they made a conscientious strategy decision not to
3 bring the armed robbery charge along with this trial, and
4 not to attempt to prove that in this trial. And that has
5 resulted in the Defense making decisions it would not
6 otherwise have made in this trial, and we feel like it would
7 be unfair at this point to grant the State the benefit of
8 those jury instructions when they've already had the benefit
9 of not having the armed robbery elements presented at trial.

10 THE COURT: Would the State like to be heard on that,
11 Mr. Mowry?

12 MR. MOWRY: Sure, Your Honor. I think Toris Moore very
13 clearly testified that the Defendant and Wells and Saxon
14 intended to go as a group to Enoree and rob a drug dealer
15 who stayed with a white woman. Those were the elements.
16 Those were the bullet points. And each and every one of
17 those bullet points rang true with regard to Kelly Ball and
18 Johnny Lee Cheeks. So clearly there was a robbery planned.
19 Ms. Ball testified that Mr. Cheeks told her they took
20 everything. So clearly a robbery was committed. The fact
21 that David Lee Walker was shot at the scene means that he
22 was not one of the ones that fled with any loot from the
23 robbery, which is one of the reasons that we just decided
24 not to go with the charge.

25 The reason that we are saying that we believe Mr.

1 Walker was the shooter is because the victim said he was.
2 But if the jury, for whatever reason, is not convinced of
3 that -- of the accuracy of that statement beyond a
4 reasonable doubt, the law is pretty settled as far as hand
5 of one and felony murder is concerned. And clearly they
6 must have believed that one of the other ones involved did
7 the shooting if they don't believe Mr. Walker did. So
8 consequently, I think the hand of one is surely an
9 applicable charge in this matter.

10 THE COURT: The Court is going to stick with the
11 instructions as they have been prepared. There is evidence
12 from one -- from which one could include, that the hand of
13 one instruction is appropriate as well as the felony murder
14 inference.

15 Ms. Wiygul, anything else?

16 MS. WIYGUL: Your Honor, just a request to make another
17 Court exhibit. I attempted to visit Mr. Walker yesterday
18 after court. He -- I did go to the jail. He refused to
19 visit with me. They did prepare a document just documenting
20 that I attempted to visit and he refused to see me. They
21 made a copy of my driver's license during that visit. I
22 made a copy of that for the court reporter and I've simply
23 redacted the driver's license information.

24 MR. MOWRY: And obviously we have no objection to that,
25 Your Honor.

1 THE COURT: All right. That will be Court's 6 then.
2 We're at 5 with the other exhibit with Mr. Walker's refusal
3 to come today.

4 (Whereupon, Court's Exhibit No. 6 was entered into
5 evidence.)

6 THE COURT: All right. Standard procedure. State will
7 open. Defense will have final argument. From yesterday I
8 understand the State's position.

9 MR. MOWRY: Yes, sir.

10 THE COURT: We discussed that.

11 MR. MOWRY: Yes, sir.

12 THE COURT: And that's where we are. Let's have the
13 jury, please.

14 MR. MOWRY: Your Honor, before we do that, do we need
15 to do a -- just put on the record whether or not the Defense
16 is going to present a case?

17 THE COURT: Go ahead, please.

18 MS. WIYGUL: Your Honor, the Defense does not plan to
19 present a case at this time.

20 THE COURT: All right. Very good. All motions are
21 automatically renewed. Same rulings as before. And when
22 the jury comes out, Ms. Wiygul, just rest and then I'll
23 explain that we're going to go straight to closings. Okay?

24 MS. WIYGUL: Yes, Your Honor.

25 THE COURT: Let's have them, please.

1 (Whereupon, the jury entered the courtroom at 10:56
2 a.m.)

3 THE COURT: Let the record reflect that the jury is
4 present and seated. Ladies and gentlemen of the jury, good
5 morning. Thank you for coming back. I'm not very good at
6 predicting the future, apparently. I wasn't expecting to
7 see you all until tomorrow, but fortunately there was no
8 major storm. There was no major power outages. So we are
9 back on the record in the case of the State vs. David
10 Walker. Unfortunately one of your fellow jurors, Mr.
11 Jennings, is sick, and the family is also very sick, and I
12 have excused him from being here. And so, as a result of
13 that, Mr. Lindsey, Joshua Lindsey, Juror No. 111, you'll be
14 the -- you'll actively participate in the deliberations.
15 Okay, sir? So now you're a full member of the panel. Okay?

16 Now, ladies and gentlemen, we are resuming with the
17 trial of the State vs. David Walker. At this point, Ms.
18 Wiygul, defense?

19 MS. WIYGUL: Your Honor, at this point the Defense
20 rests.

21 THE COURT: Ladies and gentlemen, we've concluded the
22 portion of the case where you're going to receive evidence
23 and we're now going to enter that portion of the trial where
24 you will hear the closing argument of the attorneys. As I
25 said to you on Tuesday about opening statements, closing

1 statements obviously are not evidence in this case. They
2 are simply the attorneys' contention as to what has been
3 proven or what has not been proven. Even though their
4 statements are not evidence, you should still, of course,
5 pay close attention to what the lawyers say. During the
6 course of their closings it's normal for them to reference
7 facts that are in evidence in this case. However, if your
8 recollection of the facts differs from what the attorneys
9 say the facts are, you should go with your recollection as
10 opposed to what they say the facts are, because again, you
11 are the judges of the facts in this case. The way it will
12 proceed is the State will open first, to be followed by Ms.
13 Wiygul.

14 So at this point, Solicitor, you're acknowledged for
15 your closing, sir.

16 MR. MOWRY: Thank you very much, Your Honor.

17 CLOSING ARGUMENT

18 BY MR. MOWRY: Madam Foreman, ladies and gentlemen, I'm glad
19 to see everybody survived snowpocalypse. We have come to
20 near the close of the trial. Testimony is complete. There
21 will be no more evidence placed before you. What will
22 happen now, as His Honor told you, is Ms. Wiygul and I will
23 give you our summary, our version of what we had happened
24 over the last few days. You're obviously going to hear a
25 different view from each of us. But I wanted to review with

1 you what you saw, for example, on the body cam videos, and
2 what you heard on the 911 recording, because for all of its
3 panic and chaos and pandemonium this is really not that
4 complicated a case. It's fairly straightforward, as a
5 matter of fact. It's not often in a murder case that you
6 actually get to hear from the victim as you did in this
7 case, but you did. So let's take a look at what we've got.

8 I'm not going to go into incredible detail on everyone,
9 but Toris Moore, our very first witness, I submit to you is
10 a critical witness in this case. And what did she tell you?
11 She told you that on Halloween night, October 31st, 2013
12 she's at a house in Gray Court of Helen Saxon. And who
13 comes there? Johnny Lee Saxon, Christopher Wells, who she
14 knew as Nightmare, and her uncle, David Lee Walker. And
15 Walker came to her and said, "Have you got a gun? We're
16 going to go rob this drug dealer in Enoree who lives with a
17 white woman." Said they had one gun but they needed a
18 second one. So going to rob. Think about what Kelly Ball
19 says. What did Johnny Lee Cheeks tell her? "They took
20 everything." Car keys, money, drugs. They took everything.
21 They're going to go rob a drug dealer. Kelly Ball told you
22 that Johnny Lee Cheeks, yes, he sold drugs. He also sold
23 liquor out of the house, in Enoree. What was the address of
24 the scene of the crime? m [REDACTED] River Hill Road, Enoree. And
25 stayed with a white woman. Kelly Ball. And then Toris

1 heard the next day that David Walker had been shot and was
2 in the hospital. Who is Toris Moore? She is David Walker's
3 niece, as I said. She lives with her grandmother, David
4 Walker's mother. And yet she appeared before you this week
5 and testified the way she did. I'll come back to her later.

6 Now, Kelly Ball. Think about what she told you. She
7 told you that the victim, Johnny Lee Cheeks, picked her up
8 at a house. They went to the Waffle House so that he could
9 pick up some food that he had ordered, and then they drove
10 back to his house. They are sitting in the little
11 livingroom in that single wide trailer located right here on
12 State's Exhibit No., I believe, 12. Mr. Cheeks is eating
13 his food. They're just there for a few minutes when all of
14 a sudden here comes a knock at the door. Mr. Cheeks opens
15 the door, goes outside. Ms. Ball said she couldn't see who
16 was there, that she was shielded by the door, but she could
17 hear voices. She could hear, she said, three voices. Three
18 male voices. And they grew into an argument and a scuffle.
19 A struggle. She heard thuds outside, and then she heard
20 shots. She said she heard one shot, and there was a pause,
21 and then several more right in a row.

22 What do we hear from Johnny Lee Cheeks on the deputy
23 cams? I know with the barking dog and everything else that
24 got real old. But Johnny Lee Cheeks is on there and you can
25 hear him say, "He shot me, then I shot him, then he shot me

1 again." "Who shot you?" "The man on the porch." Who was
2 on the porch? David Lee Walker.

3 What else did Kelly Ball say? She said that after the
4 shooting she helped the victim get out of the yard. Took
5 him into the house. She said while she was out there she
6 did notice another body lying in the driveway, we now know
7 was David Lee Walker. But she saw a third person. She
8 later picked him out of a photo lineup. She said
9 Christopher Wells. And what did Wells do? Wells looked her
10 full in the face and then fled. He ran up the driveway. He
11 jumped into a car she described as a box type car. Jumped
12 into the backseat, she said, but there was a driver in the
13 car and they sped off. Who was the driver? Well, we don't
14 know for certain. But who do you imagine it was? Johnny
15 Saxon.

16 Johnny Saxon, of course, was the third person along
17 with Wells and Walker that was with Toris Moore. Toris
18 Moore, David Walker's niece, when she encountered them in
19 Gray Court that night.

20 Now, soon after Kelly got Lee inside -- you can hear
21 Kelly Ball on the 911 audio. She told you that she heard
22 incessant pounding, knocking, and then she began screaming
23 because she thought that the person that had shot Lee was
24 coming now after both of them. She also says that she heard
25 someone outside and she kept saying, "Who is it? Who is

1 it?" She heard someone say, "It's David." And the victim,
2 Johnny Lee Cheeks, according to her testimony, told her not
3 to let him in because he's the one who shot me. And soon
4 after we didn't hear anymore knocking, because David Walker
5 had sat down in a little porch swing right outside the door.
6 But there was more knocking right after that. Kelly Ball
7 said she was terrified that again it was going to be David
8 Walker. But instead this time it was the deputies coming to
9 the rescue.

10 The scene, ladies and gentlemen -- I'm glad we had the
11 body cam videos. I know those are a pain in the neck to
12 watch. But one thing that you can gleam from that is the
13 turmoil that law enforcement officers have to deal with in
14 cases like this. It was a ball of confusion. I'm the first
15 to admit. But law enforcement has to get control over that
16 scene because they don't know what happened. They don't
17 know who's the good guy and who's the bad guy. In this
18 case, even the hurt guy was the bad guy. So they not only
19 have to get control over the scene, they have to find out
20 what happened. They have to try and see that justice gets
21 done ultimately, but they also have to protect and safe the
22 injured.

23 Now, Ms. Wiygul, I'm sure is going to regale you with
24 flaws and missteps that law enforcement made in their
25 investigation. That's what defense attorneys do. But keep

1 in mind the pandemonium in that scene that you so clearly
2 saw in the body cam videos. You have two individuals shot.
3 Both, according to the testimony by several law enforcement
4 officers, believed to be victims initially. They thought
5 they had two victims and not just one. You had the time
6 crunch to get information and potentially evidence from Lee
7 Cheeks and David Walker before they were taken from the
8 scene to the hospital for medical treatment. You had that
9 barking, biting dog at the scene. Love dogs. I love dogs.
10 That would have been a major distraction. It was midnight.
11 You had the screaming, hysterical Kelly Ball to cope with.
12 You had a growing frustrated crowd outside the perimeter.
13 Outside the crime scene tape. Family and neighbors who had
14 to be kept back when their understandable instinct was to
15 come forward to find out what was happening. And for all
16 this, Ms. Wiygul demands a perfect investigation,
17 documentation, as if law enforcement officers had the calm
18 and the ability to write up every step just as they took it.
19 Could it have been better? I have a friend who is a crime
20 scene investigator with SLED. He's told me he's never seen
21 a perfect investigation. I submit that is the case here.
22 We don't have a perfect investigation. Sure, you can always
23 have the Monday morning quarterback. The person that wants
24 to tell you the would-a, the could-a, the should-a on how
25 things were done. How you could have had a different

1 outcome. But this is a crime scene, quite frankly, that
2 would not wait. You had wounded people that needed to be
3 transferred. You had a perimeter that might be breached.
4 This was a dynamic scene. This was not something that could
5 be held in suspended animation to allow the law enforcement
6 to work slowly and at their leisure.

7 And yet what do we have collected outside? All of
8 this will be back in the jury room with you. Collected
9 outside. Outside the trailer out in the driveway. You had
10 the chain that Kelly Ball identified as being around Johnny
11 Lee Cheeks' neck. We have a little crucifix, Christ on the
12 cross, that's in here, along with some of the mulch from the
13 driveway that was collected that night. Again, something
14 Kelly Ball had said was around Johnny Lee Cheeks' neck and
15 yet was detached, not only from his neck, but from the
16 chain. You have the shell casings from the .380, State's
17 Nos. 9 and 29, that you'll have back there with you.

18 Now, James Green, the firearms analyst, says he can't
19 say for sure that that came from the Lorcin. The .380 in
20 this box, State's No. 2. Can't say for certain it came from
21 there, because that gun is so cheaply made there's just no
22 consistency. But he can say they all came from the same
23 gun. And where were they found? Right next to where the
24 Lorcin .380 was found. Though he can't say where they came
25 -- for certain that they came from this gun. Ladies and

1 gentlemen, I think you all know they came from that gun.
2 It's just not reasonable to say they came from another
3 source. But what can James Green say? He told you, without
4 any doubt, any reasonable doubt, that this projectile
5 contained in the packet for State's Exhibit No. 9, was found
6 under Johnny Lee Cheeks when he was moved to keep from
7 drowning in his own vomit. The through and through shot
8 that Dr. Ward described. The projectile right here that
9 literally killed Johnny Lee Cheeks. This did come from this
10 gun. The pistol itself. You'll have this photograph back
11 there with you, State's Exhibit No. 28, found in the mulch.
12 Found near Mr. Cheeks' vehicle along with the other
13 evidence. The one you hear Deputy Taylor in the deputy cam
14 referring to. He says he's found a firearm. He was
15 standing over it and he wasn't moving to make sure that that
16 scene remained secure.

17 The Rossi, the 38 caliber pistol in State's Exhibit No.
18 4 that was found under the mattress when Kelly Ball told law
19 officers where it was. The one Johnny Cheeks had used to
20 shoot David Walker. We have the statements by Johnny Cheeks
21 that the Defendant shot him, overheard by Steve Sweat, by
22 Bryant Cheek himself, by Marty Crain, by Kelly Ball. We
23 have the statement that the Defendant made to Deputy Timmons
24 that the Defendant had been jumped by two unknown guys who
25 had left him with a broken arm. I think he had been shot,

1 which might well have begun to cast him in the role of
2 perpetrator rather than victim. And we have what Jennifer
3 Stoner in her opinion says was GSR on the Defendant's hands.

4 Now, keep in mind, once again, what Toris Moore told
5 you. Again, this is not a situation where she's got an ax
6 to grind. No friends to reward. No enemies to punish.
7 This is family to her. David Lee Walker is family, and
8 there's nothing to contradict what she tells you. And what
9 she tells you, ladies and gentlemen, is a step by step
10 roadmap of what Walker, Saxon and Wells did to Johnny Lee
11 Saxon -- Johnny Lee Cheeks that night.

12 Wells, Saxon and Walker went to [REDACTED] River Hill Road in
13 Enoree. They went there to rob. Remember, they took
14 everything. A man who sells drugs. According to Kelly Ball
15 that's the one. And stayed with Kelly Ball.

16 I don't blame Toris for being reluctant to testify or
17 to cooperate with law enforcement, but testify she did. And
18 she was here just to tell you the truth.

19 Now, the gunshot residue. Let's talk about that for
20 just a moment. Jennifer Stoner told you that there were
21 particles that she said in her opinion were gunshot residue
22 on both the back and front of the left hand and the back of
23 the right hand. Why not on the palm as well? If a person -
24 - I'm not going to put my finger on the trigger. Don't
25 worry. But if a person fired a gun with his right hand, his

1 palm is going to be covered by the grip of the gun. He
2 would get particles on the back of the right hand. If he
3 had his left hand out like this perhaps, seeing that a
4 victim might have had a gun as well, he might be going like
5 this, and when the shot goes off he's going to get it on the
6 front and back of his left hand as well.

7 Now, what wasn't done in this case. Ms. Wiygul spent a
8 great deal of time talking about various things. There was
9 no testing on the shell casings from the 38 Rossi. Okay.
10 So what? The shell casings were found in the cylinder of
11 the gun. Is there any doubt where they came from? And
12 there was no projectile to test. The projectile in Mr.
13 Walker is inoperable. You've heard that it could not be
14 removed for medical reasons. So we're not going to have it.
15 DNA. Ladies and gentlemen, why would we waste time and
16 valuable resources to test clothing when we already know
17 what the source is. We knew who was wearing it. David Lee
18 Walker and Johnny Lee Cheeks were shot in close proximity to
19 each other, and they both bled, and there might have been
20 blood spray or blood splatter when they were shot. So would
21 we be at all surprised that blood was found on their
22 clothing, or perhaps each other's blood was found on the
23 other's clothing. Is that going to be a surprise? No.

24 Now, we all know that police shows in the last 15 years
25 or so have dramatized, and Kimberly Mears, the DNA

1 technician told you -- or, excuse me, the fingerprint
2 technician told you, over dramatized DNA and forensics. But
3 just ask yourself what would have been gained from further
4 testing of the clothing. Jennifer Stoner said no sense in
5 testing for gunshot residue with the clothing because we
6 already had it on his hands. So what? And why would we
7 test Johnny Lee Cheeks' close for GSR when he said "I shot
8 him." He had fired a gun himself. Yes, we were not able to
9 collect the GSR from Johnny Lee Cheeks. Wasn't from lack of
10 trying. But saving a man's life in surgery, or trying to at
11 least, I submit to you trumps getting evidence that would
12 have been cumulative, superfluous, unnecessary. What would
13 we have learned from getting DNA or further testing of the
14 clothing, or testing of the shells from the Rossi that we
15 didn't already know? Nothing.

16 Now, ladies and gentlemen, His Honor is going to
17 instruct you in the law of felony murder. Listen very
18 closely when His Honor instructs you in that charge. We do
19 not have an armed robbery charge before you against Walker.
20 We chose to pursue this murder charge just to streamline
21 things. That's our decision. But we still believe that
22 there was an armed robbery that took place.

23 Once again, go back to Toris Moore. David Walker told
24 her chapter and verse about how the robbery was going down.
25 He told you -- told the person what he did, the location,

1 the time, and remember, Johnny Lee Cheeks, "They took
2 everything." And when a robbery with a gun is committed, is
3 it not a logical extension that someone is going to be
4 killed, and that is what happened here. That is the result
5 we have. And again, he's going to instruct you, as I told
6 you in my opening statement, on the law of the hand of one
7 is the hand of all. His Honor is going to tell you -- and
8 remember, you took an oath at the start of this trial to
9 follow the law as he gives it to you. When two or more
10 people join together in the commission of a crime then each
11 of them is responsible for everything the other person does
12 in furtherance of that crime. Anything that's a natural or
13 probable consequence of the plan that they have made
14 together. So two or more people, ladies and gentlemen, can
15 all be responsible for the same killing, the same death, the
16 same homicide under this theory. And while we believe that
17 we have proven to you beyond a reasonable doubt that it was
18 David Walker that shot and killed Johnny Lee Cheeks, the
19 concept of the hand of one is the hand of all will make the
20 others, Wells and Saxon, just as guilty as Walker is. And
21 if you are not for some reason convinced beyond a reasonable
22 doubt that David Walker was the shooter, we submit to you
23 that he is, but if for whatever reason you decide that he is
24 not, in spite of Johnny Lee Cheeks' dying declaration that
25 you instead think it might have been one of the others, it

1 doesn't really matter. The theory of the hand of one is the
2 hand of all makes them all equally guilty. And we submit to
3 you that you should bring back the verdict of guilty of
4 murder against David Walker.

5 Now, I want to talk for just a moment or two about the
6 character of Johnny Lee Cheeks and Kelly Ball. I don't
7 condone what Johnny Lee Cheeks was doing out of his house,
8 selling drugs. I prosecute people for that. Selling liquor
9 out of the house. That's a crime, too. Kelly Ball, she has
10 a criminal record. We brought that out. But ask yourself,
11 is anything that Johnny Lee Cheeks did worthy of David
12 Walker being judge, jury and executioner of him on that
13 evening. And I submit to you the answer is no. David
14 Walker has done something far worse. You have in David
15 Walker a person who will rob and kill another individual.

16 There's an old adage that lawyers like to tell. You
17 all may have heard it. But if you -- the saying goes if you
18 have the law in your favor, pound the law. If you have the
19 facts in your favor, pound the facts. If you don't have
20 either one of them, pound the table. And I submit to you
21 that's kind of what Ms. Wiygul has been doing. She doesn't
22 have the law in her favor. She doesn't have the facts in
23 her favor. But rather than pounding the table she's kind of
24 been pounding the police. Take it for whatever it's worth.
25 Like I said, this is not a perfect investigation, but it's

1 certainly an adequate investigation. And whatever else --
2 whatever else you think about this case, remember Toris
3 Moore's testimony. It's uncontroverted. It's
4 uncontradicted. It's undisputed. There's been no bias, no
5 prejudice brought out that could have induced her testimony.
6 And what does she reveal to you? That her uncle, David
7 Walker, man on the porch identified by so many people from
8 this witness stand, had a large part in the planning and the
9 robbery that ultimately led to Johnny Lee Cheeks' death.

10 Now, ladies and gentlemen, I'm about to wrap up. Most
11 of you all are probably saying thank goodness. I won't get
12 a chance to get back in front of you again. Ms. Wiygul is
13 going to talk about a number of things, and I'll probably be
14 over there shaking my head saying, "Man, I wish I covered
15 that," so please forgive me if I've gone on for a while. I
16 don't get a chance to do this again. Always better to have
17 the last argument and be able to respond to what the other
18 attorneys have said. But what I'd like you to do, the last
19 thing I want to bring before you, is to remember back to one
20 of the things I asked of you in my opening statement. I ask
21 you to do three things. I ask you to listen very carefully
22 to the testimony that comes off the witness stand. Because
23 again, it's only from that and the evidence that you
24 receive. All this stuff over here. Only from that that you
25 are to render your verdict. You've already done that

1 admirable. And we all thank you. Everybody involved in the
2 case thanks you for that. I ask you to continue to listen
3 very carefully in a few minutes when His Honor instructs you
4 in the law in this case. Remember, he is the law giver.
5 The law that he gives you, you've taken an oath to apply to
6 the facts that you've heard back there in the jury room.
7 It's the law that you must take with you when considering
8 this case when rendering your verdict. I ask you to do a
9 third thing. Use your commonsense. Your commonsense will
10 tell you that the State has proved its case beyond a
11 reasonable doubt and that you would be more than justified
12 in bringing back a verdict of guilty on both charges. Thank
13 you all very much.

14 THE COURT: Thank you, Mr. Mowry. Ms. Wiygul, you're
15 recognized for your closing now.

16 MS. WIYGUL: Thank you, Your Honor.

17 CLOSING ARGUMENT

18 BY MS. WIYGUL: I take exception to Mr. Mowry's comments
19 that I'm pounding on the police. I'm not. I have a lot of
20 family members that are police and they're good police, and
21 they go and they put their life on the line and they
22 investigate crimes, and they do everything within their
23 power to ensure that the guilty people go to jail. When
24 they start their investigations they start their
25 investigations with a blank slate, and the first thing they

1 do in their investigations is they collect all the evidence
2 that they can collect, because as you've heard Mr. Mowry say
3 witness after witness after witness, it's better to have it
4 and not need it than to need it and not have it. And so,
5 after they collected all that evidence then they look at it
6 and they see where it leads. But see, what they do is they
7 start at the beginning and then they go to step two, and
8 then they go to step three. And then they follow the
9 evidence and they follow that trail of evidence until it
10 leads them to the guilty person. I submit to you that we've
11 heard from a lot of good officers in this case. We heard
12 from Deputy Sweat, who's now Sergeant Sweat. And what did
13 he tell you under oath? He told you that when he saw this
14 medallion at the scene it was on a thin gold chain. It was
15 not on this. Because quite frankly, please, do what Mr.
16 Mowry asked you at the beginning of this trial. Use your
17 commonsense. Do people put very delicate crucifix
18 medallions on thick gold chains, or do they put them on thin
19 gold chains designed to hold crucifix medallions?

20 You heard that at 4:30 on Tuesday afternoon, after two
21 officers had testified that there was no crime scene log,
22 that at 4:30 on Tuesday afternoon I was provided a copy of
23 the crime scene log that Deputy Sweat did his best to
24 prepare in this case. It was provided after he found it.
25 He found it. He knew Deputy Sweat was going to take that

1 stand Wednesday morning, and he knew that Deputy Sweat takes
2 pride in his job. Sergeant Sweat. He knew that Sergeant
3 Sweat was going to take that stand and he was going to tell
4 you what he saw. He was going to tell you what he did,
5 because he's a good cop and that's his job. Deputy Sweat
6 also told you he was wearing a body cam that night, but the
7 State chose not to present that as evidence. But what we do
8 have is we have two body cams from the scene that night, and
9 we have a 911 recording, and I beg you to take the time
10 during your deliberations to rewatch both of those both cams
11 in their entirety, to listen to the 911 tape in its
12 entirety, because that's what really happened.

13 We heard a lot of testimony from Ms. Ball. And I
14 thought it was really interesting that Ms. Ball, who I think
15 everyone would accept has not had any training on how to
16 process a scene or the importance of preserving evidence and
17 forensics and things like fingerprints, even Ms. Ball, with
18 her mis-remembered reality, said that she took a piece of
19 paper and went and picked up the handgun with it. She knew
20 it was important to reserve evidence. Why didn't he? I
21 don't expect a perfect case. I don't expect a perfect
22 investigation. I don't intend to regale you with laws and
23 missteps. What I do take exception to is incompetence. Is
24 a complete lack of investigation. Is a choice by the lead
25 investigator not to take advantage of the investigative

1 tools he has at his hand. And we've seen it throughout the
2 investigation. Who chose not to have any DNA tests? He
3 didn't. Who chose not to get any fingerprints from the
4 scene? He did. Why? Because nobody had died? They take
5 fingerprints when a bicycle is stolen. If anyone ever
6 breaks into a car they stick tape on the window and see if
7 there's fingerprints because cars are great surfaces to hold
8 fingerprints. But despite the fact that everyone's in
9 agreement that some type of scuffle and the shooting
10 occurred right by this bumper of this SUV not one attempt
11 was made to take fingerprints off of it. And Mr. Mowry
12 said, "Oh, well, saving a life trumps investigation." Well,
13 yes, it does. But Mr. Walker and Mr. Cheeks were removed
14 from the scene and the scene was still there and they still
15 chose not to take any fingerprints. Not to look for any
16 fingerprints.

17 Ms. Ball had said repeatedly, "They took his keys.
18 They took the keys to the truck, to the shed, to the house.
19 They took his keys. They took everything." But nobody
20 checked the shed that was full of drugs and liquor. Nobody
21 tried to take fingerprints off the doorknob to see if maybe
22 whoever robbed Mr. Cheeks tried to open the shed up to see
23 if it was unlocked first. Nobody checked to see if maybe
24 someone was hiding in that shed the whole time, because they
25 could have been because they had the key. But he didn't

1 even open the door to look. That's not flaws and that's not
2 missteps. There will always be a would-a, should-a, could-
3 a. He could have had all the DNA that was collected tested.
4 Mr. Mowry's absolutely right. If Mr. Walker's blood was on
5 Mr. Cheeks, and Mr. Cheeks' blood was on Mr. Walker, and
6 their blood was on their own clothes, who cares. They'd
7 been in very close proximity when they were they were shot.
8 That's fine. But what if somebody else's blood was on those
9 clothes. What if it's still on the clothes. What if
10 somebody's else's blood was the red brownish substance that
11 was found on the revolver that Ms. Ball told the police
12 belonged to Mr. Cheeks. Whose blood was that? Well, we
13 know Mr. Cheeks told the police that his gun was a 32 and it
14 wasn't a revolver. And we know that Ms. Ball told us that
15 he never carried his gun in a holster. But the gun that the
16 State wants you to believe belonged to Mr. Cheeks is a
17 revolver with a holster. It's not flaws and it's not
18 missteps. What it is is reasonable doubt. Every piece of
19 DNA in this case that has not been tested constitutes
20 reasonable doubt because we do not know whose DNA it is and
21 they could have found out, but he chose not to. No
22 investigation is perfect, but they are generally documented.
23 But this man goes and meets witnesses at motel rooms and
24 mental institutions while they're a patient and their homes
25 and he doesn't take notes. Well, even if he doesn't have

1 access to the most modern technology, pen and paper are
2 pretty easy to find. But not one note did he take. Some
3 things just don't make sense. A lot of things in this case
4 just don't make sense, and every one of them constitutes
5 reasonable doubt.

6 I told you at the beginning of this trial that Mr.
7 Walker isn't here because he doesn't trust the system. He
8 doesn't trust the system. And I don't blame him. After
9 everything I was really curious about what Lieutenant Cheek
10 would say on the stand. About how he would explain some of
11 these things. And instead he took the stand and he lied.
12 Flat out lied. He told you during his direct examination
13 that that night he thought Mr. Walker was a victim, and he
14 was so concerned about it he put out a BOLO on a tan SUV,
15 but he didn't. And then when I asked he said, "Oh, I had
16 one of my deputies do it," but he didn't. How do we know he
17 didn't, because he looked at the CAD report and a BOLO was
18 issued that night for a brown box car that had been
19 described by Ms. Ball. It was the only one. And it took
20 him a while, with 12 years of experience, to figure that out
21 from his own CAD report, because those CAD reports are
22 complicated and they're written in code and no person is
23 identified by name. They're identified by unit numbers
24 which are subject to change. And because Deputy Sweat knew
25 that, he tried to keep a log of everyone that was at that

1 scene. But what do we know? We know that he wasn't outside
2 the whole time. We know that he was moving around the scene
3 and taking pictures and helping collect evidence. We don't
4 know if he got everyone on the scene or not. We don't know
5 what everyone that was on the scene saw, because quite
6 frankly, at 4:30 on Tuesday afternoon in mid trial, there
7 was no time left to track them down and ask them. And maybe
8 Mr. Mowry is right. Maybe that's my failing. I probably
9 should have taken that CAD report and taken the time and the
10 hours and the weeks it would have taken and tracked down
11 every single one of those individuals and talk to them. But
12 I didn't. And I'm asking you not to hold that against Mr.
13 Walker. It's the State's job to produce evidence beyond a
14 reasonable doubt, and Mr. Mowry's told you it's better to
15 have it and not need it than need it and not have it. Well,
16 we need it now. We need to know whose DNA was at the scene.
17 We need to know whose fingerprints were at that scene. We
18 need to know whose fingerprints Mr. Craig picked up from
19 SLED, because we know he didn't submit any fingerprints to
20 SLED. So whose fingerprints were those? I don't know.

21 We know that there were bloody glasses found at the
22 scene right where both men were shot. Right where Mr.
23 Walker had the snot beat out of him. Well, you can be sure
24 if they were Mr. Cheeks' glasses somebody would have
25 mentioned it. If they were Mr. Walkers' glasses somebody

1 would have mentioned it. Whose glasses were they? Whose
2 blood was on them? Were they prescription? Could they be
3 tracked down to a doctor who prescribed them to someone? I
4 don't know, because he didn't bother to check.

5 I would urge you, urge you to listen to this 911 call
6 in depth and to compare it to the testimony of Ms. Ball. On
7 the 911 call you can clearly hear Ms. Ball say, "The car I
8 had seen was headed back to Laurens, but that doesn't mean
9 the shooter was in the car. I don't know. I just know the
10 car I seen sped away right after." That's what she said as
11 it was happening. Immediately after it happened, before she
12 talked to Lieutenant Cheek. No mention of David Walker.
13 The 911 operator asked Ms. Ball, "Was it a male or a female
14 shooter?" "I don't know. I think it was a male." "Ma'am,
15 where is your shooter at?" "He's probably in the house."
16 "One person is in the house but there's someone else in the
17 front yard. I don't know who it is." "Where did the
18 shooter go?" "I don't know." "Do you know who it was?" "I
19 don't know. I saw an older box car speed away. That's all
20 I know." Please listen to that 911 call. We know that
21 before the police arrived she had the time to search Mr.
22 Cheeks' pockets to make sure he didn't have any dope on him.
23 She said she was trying to protect him from the police. We
24 know that the statement she gave the day after the incident
25 said that the individual she saw running away, that she

1 didn't recognize when she talked to the 911 operator, but
2 the day after see identified that person as looking an awful
3 lot like Mr. Cheeks' new drug dealer, Tye. We know that on
4 November 5th, in her second statement, she said the same
5 thing. "Very dark-skinned black male. Looked like Tye, his
6 new drug dealer. He started messing with him because the
7 old dealer got unreliable." And Lieutenant Cheek doesn't
8 think that's important enough to follow-up on? That's not
9 missteps and flaws.

10 Toris Moore, Mr. Cheeks' niece. Mr. Mowry told you she
11 has no reason to lie. She came forward and told the truth.
12 Well, she didn't come forward on Halloween of 2013 to try
13 and prevent a crime. She didn't come forward after Mr.
14 Walker had been injured and was in the hospital with partial
15 paralysis. She didn't come forward after Mr. Walker had
16 been released from the hospital and was staying at his
17 momma's house where she lived when he was partially
18 paralyzed and using a walker and undergoing physical
19 therapy. But what did she say when I asked her, "Did you
20 help your uncle out during this paralysis while he was so
21 fragile?" "I didn't help him." That's his niece. I don't
22 know why she would say what she did. But I don't know why a
23 niece wouldn't help her partially paralyzed uncle when he's
24 in need, and the only other woman living there is his momma.
25 What I do know is that more than a month after Mr. Walker

1 was arrested, after multiple visits to the house by this
2 man, during which Ms. Moore said nothing, but a month after
3 Mr. Walker's arrest she told Lieutenant Cheek what he wanted
4 to hear. I don't know why. But I know that when you look
5 at her testimony and who she gave her statement to and the
6 rest of the investigation, what there was of it, that I
7 don't believe her, because that --

8 MR. MOWRY: Your Honor, I have to object to that. She
9 is imposing her own opinion into the -- when she stated "I
10 don't believe her." That's not her prerogative.

11 THE COURT: Ms. Wiygul, I'll sustain the objection.
12 You may argue that perhaps her testimony is not worthy of
13 belief, but you cannot virtually vouch her.

14 MS. WIYGUL: Yes, Your Honor.

15 THE COURT: -- the credibility of -

16 MS. WIYGUL: Her testimony is not worthy of belief,
17 because if it were worthy of belief she'd have said
18 something on Halloween night, 2013 and Mr. Cheeks would not
19 be dead right now, and Mr. Walker would not be in jail, or
20 if he were in jail it wouldn't be for murder. Her testimony
21 is not worthy of belief because she didn't tell the police
22 after Mr. Cheeks had died. Her testimony is not worthy of
23 belief because she did not tell Lieutenant Cheek the story
24 during the multiple visits he made to that house. Her story
25 is not worthy of belief because she does not have the same

1 family loyalty that most people have, because if she did she
2 would have been helping her uncle and her grandmother when
3 they needed the help.

4 The body cam of Lieutenant Marty Crain, State Exhibit
5 No. 5. Please pay attention to that body cam. It's very
6 important, because that's the body cam that records Mr.
7 Cheeks telling Officer Crain, "My gun is a 32 caliber. It
8 is not a revolver." You can hear Mr. Walker and the EMS
9 personnel talking about the fact he has a hole in his back,
10 that he's been drinking, that he didn't realize he'd been
11 shot. Deputy Taylor told you he looked for that 32
12 automatic. He didn't find it. He didn't look in the shed.
13 Deputy Taylor was exhausted. I cannot hold that against
14 him. You heard -- Mr. Mowry told you before he even
15 testified that he's got a new baby and he's running on very
16 little sleep, and that showed. Luckily we do have the body
17 cams from the scene that show what happened.

18 What did we learn from Dr. Michael Ward, the gentlemen
19 that performed Mr. Cheeks' autopsy. We learned that the
20 only injuries Mr. Cheeks had were the two gunshot wounds.
21 We learned that he had no scraping or bruising on his hands,
22 as one would expect had he been in a fight. Please watch
23 the body cams. Look at Mr. Walker. He was in a fight with
24 somebody. It wasn't Mr. Cheeks. He told you about
25 stippling, which are small scratches left by gunshot residue

1 that can be detected on clothes, and if they're there that
2 means that the bullet was fired between two and 18 inches
3 from that. That would be important in this case, and we
4 could know whether it existed or not if Lieutenant Cheek had
5 chosen to have the clothing tested for such. We know that
6 Mr. Cheeks' wound was very painful and that that pain was
7 made even worse whenever the officers attempted to help him,
8 because they didn't realize he had been shot in the stomach.
9 And you can see him on the body cam and you can hear his
10 screams of pain as they try to pull him up and have him sit
11 up so he doesn't asphyxiate. You can hear the officers --
12 or one of the officers and you can't tell who. But from the
13 body cam on the porch you can hear the officer screaming at
14 Mr. Cheeks, "He did it, didn't he? He did it. That one.
15 He did it, didn't it? Didn't he? Didn't he?" Please watch
16 those body cams.

17 You've heard that Mr. Cheeks was not in good shape. He
18 was in pain. He had been shot twice. We've heard that Mr.
19 Cheeks -- and we heard this from Sergeant Sweat. He was
20 responsive, but he wasn't comprehending what we were saying
21 or what was going on. That makes sense.

22 Todd Alexander told you Lieutenant Cheeks decided what
23 to send and what got tested. David Craig picked everything
24 up from SLED. Agent Mears, the latence expert, said the
25 only thing that Lieutenant Cheek asked her to test was the

1 Lorcin. But he didn't send the magazine that was found
2 inside the Lorcin. Now, think about how you put a magazine
3 into a gun. You pick it up with all five of your fingers.
4 You pick it up by putting your fingers on the flat surface
5 and putting it in the gun. If there were going to be
6 fingerprints found that's where they would be. But he
7 didn't want that tested? Why?

8 We know that on Lieutenant Cheeks' direct he testified
9 the only way he could have gotten forensics out there was to
10 call SLED. But on cross-exam he admitted that wasn't true,
11 because Spartanburg deputies were already on the scene and
12 Spartanburg forensics would have been happy to send their
13 forensics unit if he had just asked. He didn't think it was
14 important enough because nobody had died. Well, did he not
15 think it was important enough because nobody had died, or
16 did he not think it was important enough because it was a
17 drug dealer? I don't know. Or did he just not want anybody
18 out there taking prints and DNA. I don't know. But I agree
19 with Mr. Mowry. It would be better to have it and not need
20 it than be here now and need it and not have it. And Ms.
21 Mears told you some things hold prints better than others.
22 Some things like magazines and SUVs.

23 Mr. Mowry got up here and told you gunshot residue was
24 found in this case. Well, number one, who cares, because
25 Mr. Walker was shot, and so you would expect to find gunshot

1 residue on him. And number two, no, gunshot residue was not
2 found in this case. Associated particles were found.
3 Consistent particles were found. But Ms. Stoner admitted
4 that she has a worksheet that has three columns. One says
5 gunshot residue particles, one says associated, one says
6 consistent. And under gunshot residue particles everything
7 said zero. So no, there was not gunshot residue found in
8 this case. She also testified that SLED only tests what
9 local law enforcement asks them to test.

10 What did we learn from Agent James Green, the firearms
11 expert from SLED. Well, we know he wasn't sent a 32
12 automatic to be tested. We don't know much from him. We
13 know those two guns were there and somebody fired them, but
14 we don't know who. We don't know under what circumstances.
15 We don't even know whose bullet is in Mr. Walker. Mr. Mowry
16 told you that.

17 During his direct examination Lieutenant Cheeks said
18 something and a lightbulb just went off in my head. I said,
19 "Oh." He testified -- and I put it in quotes and
20 highlighted it just so I wouldn't misquote. When he was at
21 the scene his main focus, he wanted to protect Ms. Ball.
22 He's the lead investigator. Shouldn't his main focus have
23 been on investigating the crime? They have victim advocates
24 to help out victim families. There were plenty of other
25 deputies on the scene. There was EMT and fire department

1 personnel on the scene, any of which could have helped Ms.
2 Ball. One of them might have been able to give her a shot
3 and calm her down. He didn't want to let Ms. Ball talk to
4 them. He didn't want anybody else taking care of Ms. Ball,
5 because his main focus was to protect Ms. Ball. I can't
6 imagine the main focus of a lead investigator not being on
7 the investigation, but in this case we know where it was.
8 It was on protecting Ms. Ball. Protecting her from what?
9 Protecting her from the other police? Protecting her from
10 the EMTs or from the fire department personnel? Protecting
11 her from what? Well, he didn't protect her from being
12 recorded on the 911 call telling the 911 operator what she
13 actually saw. He didn't want to call SLED to process the
14 scene. He didn't feel like it was necessary.

15 What do we know about Mr. Walker's willingness to help
16 out in this case. Well, we know that as soon as he was
17 asked he consented to a gunshot residue test. He said,
18 "Yeah, test me." Lieutenant Cheek never asked him for a
19 Buccal swab or any kind of DNA sample. I asked Mr. Cheek
20 why he didn't do a gunshot residue test on Ms. Ball.
21 Because she told the police she had not fired a gun, and she
22 had not been shot. So if she had gunshot residue on her
23 hand that night that means she shot somebody. But
24 Lieutenant Cheek didn't feel like that was necessary, so
25 we'll never know.

1 Lieutenant Cheek testified that Mr. Cheeks is the one
2 that gave Lieutenant Crain the information on where to find
3 the Rossi revolver, and that's not true. Please watch the
4 video. What Mr. Cheeks told Lieutenant Crain is that his
5 gun was a 32 and was not a revolver.

6 We've talked about the DNA that was not tested for. We
7 talked about the DNA that was not collected. We've talked
8 about the DNA that was collected but that Lieutenant Cheek
9 didn't want anybody to test to see if it belonged to
10 somebody other than Mr. Walker or Mr. Cheeks. He chose what
11 to send to SLED and he chose not to send to SLED to be
12 tested. Let's go through real quick the items of evidence
13 that he did not send to SLED that he could have sent to
14 SLED. The gold medallion, the cross. A glass bottle of
15 liquor with blood on it. A ball cap. Glasses with blood on
16 them that we don't know who they belonged to. The gold link
17 chain. The white tank top with blood on it. The white tee
18 shirt with blood on it. The magazine. Fingerprint holding
19 magazine. And three rounds of .380 ammunition located on
20 the scene in the Lorcin. Mr. Cheeks' clothing, and two cell
21 phones. This isn't missteps and flaws. This is reasonable
22 doubt. It's not fair to Mr. Walker for the State not to
23 have taken advantage of every forensic tool that it had
24 access to. It's not fair to Mr. Cheeks for the State not to
25 have taken advantage of every forensic tool they had access

1 to to make sure that whoever shot him was prosecuted. But
2 instead of starting with a blank state and collecting all
3 the evidence, because it's better to have it and not need it
4 than need it and not have it, and following the trails that
5 the evidence led him down to the guilty person, instead Mr.
6 Cheek never made or -- Lieutenant never made it off that
7 porch. He got there, he said, "Oh, one old guy shot another
8 old guy. It was a drug dealer. I'm not even going to
9 bother taking fingerprints. I'll just take this Ms. Ball
10 out here to the car and talk to her." This isn't the old
11 west. We're not in Russia. We're in America. We have a
12 pretty good forensics capabilities in our labs. We could
13 have done the testing. And that's the one thing that gives
14 me hope in this case, because he was in charge of preserving
15 the evidence and we have it. And we still have the DNA and
16 it can still be tested. I'm sure they won't bother, because
17 they know they don't have to. I'm asking you to hold them
18 accountable. I'm asking you to make sure that the right
19 people go to jail for this crime, because Mr. Cheeks
20 deserves as good an investigation as any other South
21 Carolinian who is killed. He didn't deserve this. I am
22 confident that you will find David Walker not guilty because
23 Lieutenant Cheek did not do his job. Thank you.

24 THE COURT: Ladies and gentlemen, you have been sitting
25 there for about an hour and 15 minutes by my watch. This is

1 going to take -- we're at the part of the trial where I need
2 to instruct you on the law and this is going to take about
3 15 or 20 minutes. Does anyone need just a brief break
4 before we start this? Okay, I've seen some heads nod.
5 We're going to take a brief break. Don't talk about the
6 case yet, and we'll be back in here in about five or 10
7 minutes. Okay? So when you're in the back, freshen
8 yourself up, and I'll give you the instructions when we
9 return. We're at ease.

10 (Whereupon, the jury exited the courtroom at 12:12
11 p.m.)

12 THE COURT: While the jury is out we'll take a break
13 for ourselves. I did notice something that I changed on the
14 instructions. I just wanted to alert counsel to it and give
15 you an opportunity to speak with me about it before I
16 instructed the jury.

17 On page 13 where the example that I emailed you
18 yesterday. The example I gave was, shall we say, somewhat
19 similar -- it's at the very top of page 13 on what you have.

20 MS. WIYGUL: Yes, sir.

21 THE COURT: It's somewhat similar to the example or the
22 facts in this case and State v. Huey, which is a 2000 South
23 Carolina Supreme Court opinion. It cautions the Court to
24 avoid examples which mirror the facts on trial. I've
25 reworked that, and I'm just going to leave this here, or

1 I'll bring it down there. You all look at what I've come up
2 as a different scenario, or is a different scenario, and we
3 can take it from there when I come back from the restroom.
4 Okay?

5 MR. MOWRY: I'm confident it's going to be fine.

6 THE COURT: Well, take a quick gander at that. If you
7 all have a problem, let me know. But I also need a break.
8 We're at ease.

9 (Whereupon, a recess was held from 12:13 p.m. to 12:24
10 p.m.)

11 THE COURT: We will go back on the record in the State
12 vs. Mr. Walker. All counsel is present. Let's have the
13 jury in, please.

14 (Whereupon, the jury entered the courtroom at 12:24
15 p.m.)

16 THE COURT: Let the record reflect that the jury is
17 back and seated. Ladies and gentlemen of the jury, it now
18 becomes my obligation to instruct you on the law that
19 applies in this particular case. And I want to say at the
20 outset that at this point in time all the evidence is in and
21 the record is closed. Okay? So in terms of any question
22 that you may have about the facts in this case, please
23 understand it's not possible at this point in time to reopen
24 the record and introduce additional evidence. Okay?
25 However, if you have any questions about the law that

1 implies, I can help you with any questions you may have
2 concerning the law. So again, I cannot help you with
3 factual questions. You'll have to judge this case based on
4 the evidence that has been presented thus far. But if you
5 do have any questions concerning the law, simply send me a
6 note and I'll try and clarify for you what it is that you're
7 struggling with legally. Additionally in this case there
8 were some videos that were introduced into the record.
9 There was also, I believe, a recording that was introduced
10 into the record. The 911 tape. If for some reason you
11 should feel the need or the desire to view those body cams
12 again, or hear the 911 tape again, just send me a note and
13 let me know. Odds are I'm going to have to bring you back
14 out here and we'll boot it back up and play it just like we
15 did during the course of the trial, because I don't think we
16 have the capability to actually play those for you back in
17 the jury room. Okay?

18 Now, ladies and gentlemen, the way that the courts have
19 traditionally given instructions to the jury the way that it
20 had been done when I first started practicing law 22 years
21 ago was that the judge would basically just sit up here and
22 would read you 20 pages of the law taken from the books
23 behind me and the jury was supposed to sit there and simply
24 listen and absorb those 20 pages like 12 sponges and then
25 take it back to the back and apply the law to the facts. I

1 always found that a little unfair, because like most people
2 it took me three years to get through law school and I find
3 it a little unreasonable to expect a jury to be able to
4 absorb what I'm now going to tell you concerning the law and
5 not have anything to refer to. What I'm basically saying,
6 ladies and gentlemen, is that I am going to give you a copy
7 of these instructions in written form that you can refer to
8 during your deliberations if you feel the need. Please, you
9 have to consider the instructions as a whole and don't
10 simply follow one section to the detriment of some other
11 section of these instructions. And, of course, when you're
12 done with these deliberations please return these
13 instructions to the court.

14 Now, ladies and gentlemen, I instruct you that the
15 indictments in this case charge the Defendant, Mr. Walker,
16 with the offenses of murder and the possession of a weapon
17 during the commission of a violent crime. I remind you that
18 the fact that Mr. Walker was arrested, charged and indicted
19 in this case is not evidence and cannot be considered by you
20 as evidence of his guilt. Nor does it create any
21 presumption or inference of guilt. These indictments, these
22 documents, are simply the formal written instructions which
23 contain the charges made against the Defendant. They're
24 formal documents by which this case is brought into court.
25 The Defendant in this case has pled not guilty to these

1 charges and that plea puts the burden on the State to prove
2 him guilty. A person charged with criminal offense in this
3 state is never required to prove himself innocent. I charge
4 you that it is an important rule of law that the Defendant
5 in a criminal trial, no matter what the seriousness of the
6 charge may be, will always be presumed to be innocent of the
7 crime for which the indictments were issued unless guilt has
8 been proven by evidence satisfying you of his guilt beyond a
9 reasonable doubt. This presumption of innocence does not
10 end when you begin your deliberations but it accompanies the
11 Defendant throughout the trial until you reach a verdict of
12 guilt based upon evidence satisfying you of that guilt
13 beyond a reasonable doubt. The presumption of innocence is
14 like a robe or righteousness placed about the Defendant's
15 shoulders. It remains with him until it's been stripped
16 from him by evidence satisfying you of his guilt beyond a
17 reasonable doubt. The presumption of innocence, ladies and
18 gentlemen, is not merely a legal theory. It's not just a
19 legal phrase. It's a substantial right to which every
20 Defendant is entitled until you, the jury, are satisfied
21 from the evidence of his guilt beyond a reasonable doubt.

22 Well, what is a reasonable doubt in the law? A
23 reasonable doubt is the kind of doubt that would cause a
24 reasonable person to hesitate to act. The State has the
25 burden of proving the Defendant guilty beyond a reasonable

1 doubt, and some of you may served as jurors in civil cases
2 where you were told that it's only necessary to prove that a
3 fact is more likely than true than not true, such as by the
4 greater weight or a preponderance of the evidence. In
5 criminal cases the State's proof must be more powerful than
6 that. It must be proof beyond a reasonable doubt. Proof
7 beyond a reasonable doubt is proof that leaves you firmly
8 convinced of the Defendant's guilt. Now, there are very few
9 things in this world that we know with absolute certainty,
10 and in criminal cases the law does not require proof that
11 comes -- that overcomes every possible doubt. If, based on
12 your consideration of the evidence, you're firmly convinced
13 that the Defendant is guilty of the crime charged, you must
14 find the Defendant guilty. If on the other hand you think
15 there's a real possibility that the Defendant is not guilty,
16 you must give the Defendant the benefit of the doubt and
17 find him not guilty.

18 Now, ladies and gentlemen, I remind you that during
19 this trial you and I have certain duties to perform. As the
20 trial judge it's my responsibility to preside over the trial
21 of this case, and I also have the duty to rule on the
22 admissibility of evidence offered during the trial. You are
23 to consider only the compete evidence before you. If there
24 was any testimony ordered stricken from the record you must
25 disregard that testimony because you're to consider only the

1 testimony which has been presented from the witness stand as
2 well as any exhibits which have been made a part of the
3 record in this case.

4 The additional duty to charge the law applicable in
5 this case, and as the presiding judge I am the sole judge of
6 the law. It's your duties as jurors to accept and apply the
7 laws I now stated to you. If you already have any idea as
8 to what the law is or what the law ought to be and it
9 disagrees with what I now tell you the law is, you must
10 abandon this idea because you're sworn to accept the law and
11 apply it exactly as I stated to you. In every case tried in
12 this court before a jury, the jury becomes the sole and
13 exclusive judge of the facts in a case. A trial judge
14 cannot intimate, state, comment on or make any statement to
15 a trial jury about the facts in a case. Since you, the
16 jury, are the sole judges of the facts, you're not to infer
17 from what I've said during the progress of this trial in
18 ruling upon the admissibility of evidence or otherwise, or
19 anything that I saw now to you during the course of these
20 instructions that I have any opinion about the facts in this
21 case. Ladies and gentlemen, the law does not permit me to
22 have any opinion about the facts. This is a matter solely
23 for you, the jury, to determine. As jurors it's your duty
24 to determine the effect, value, weight and truth of the
25 evidence offered during the trial.

1 Now, ladies and gentlemen, there are typically two
2 types of evidence which are offered during a trial; direct
3 evidence and circumstantial evidence. Direct evidence
4 directly proves the existence of a fact and does not require
5 deduction. Circumstantial evidence is proof of a chain of
6 facts and circumstances indicating the existence of a fact.
7 I instruct you that crimes may be proven by circumstantial
8 evidence and the law makes no distinction between the weight
9 or value to be given to either direct or circumstantial
10 evidence. However, to the extent the State may rely upon
11 circumstantial evidence, all of the circumstances must be
12 consistent with each other, and when taken together point
13 conclusively to the guilt of the accused beyond a reasonable
14 doubt. If these circumstances merely portray the
15 Defendant's behavior as suspicious, then the proof has
16 failed. The State has the burden of proofing the Defendant
17 guilty beyond a reasonable doubt and this burden rests with
18 the State regardless of whether the State relies upon direct
19 or circumstantial evidence or some combination of the two.

20 Now, necessarily you must determine the credibility of
21 witnesses who have testified in this case, and credibility
22 simply means believability. It becomes your duty as jurors
23 to analyze and to evaluate the evidence and determine which
24 evidence convinces you of its truth. In determining the
25 believability of witnesses who have testified, you may

1 believe one witness over several witnesses or several
2 witnesses over one witness. You may believe a part of the
3 testimony of a witness and reject the remaining part of the
4 testimony of that same witness. You may believe the
5 testimony of a witness in its entirety or reject the
6 testimony of a witness in its entirety. You may consider
7 whether any witness has exhibited to you any interest, bias,
8 prejudice or other motive in this case, and you may also
9 consider the appearance and manner of a witness while on the
10 witness stand.

11 Now, I as I explained yesterday with some of the
12 witnesses, ladies and gentlemen, normally the rules of
13 evidence don't permit the witnesses to testify as to
14 opinions or conclusions. But an exception to this rule
15 exists for witnesses known as expert witnesses. A witness
16 who by education and experience has become an expert in some
17 art, science, professional or calling may state an opinion
18 as to the relevant and material manner in which the witness
19 claims to be an expert and may also state the reasons for
20 their opinion. You should consider any expert opinion
21 received in evidence in this case and, like any other
22 evidence, give it the weight you think it deserves. If you
23 decide that the opinion of an expert witness is not based on
24 sufficient education and experience, or if you conclude that
25 the reasons given in support of the opinion are not sound,

1 or that the opinion is outweighed by other evidence, you may
2 disregard the opinion entirely. An expert witness's
3 testimony is to be given no greater weight than that of
4 other witnesses simply because the witness is an expert.
5 Further, you're not required to accept an experts opinion
6 even though it's not contradicted.

7 Now, ladies and gentlemen, I instruct you that a person
8 who has a past criminal record is competent to testify
9 during a trial. A past record does not affect the ability
10 of that witness to testify. The past record may only be
11 considered by you, if at all, in determining the witness's
12 believability. Remember, you're the sole judges of the
13 facts in this case and of the believability of any and all
14 of the witnesses who have testified.

15 I also instruct you that under the laws of this state a
16 Defendant may be tried even if the Defendant does not attend
17 the trial, but the fact that the Defendant is not present
18 may not be considered against him in any manner whatsoever.

19 I further instruct you and emphasize that the fact that
20 the Defendant did not testify is not a factor to be
21 considered by you in any way in your deliberations and in
22 your consideration on the question of the guilt or the
23 innocence of the Defendant. It must not be considered by
24 you in any manner whatsoever. A Defendant has a
25 constitutional right to remain silent, and the assertion of

1 this right must not be considered by you in your
2 deliberations. I repeat, under your oath you're not to draw
3 -- you are to draw absolutely no conclusion whatsoever from
4 the fact that the Defendant in this case did not testify.
5 The fact that the Defendant did not testify should not even
6 be discussed in the jury room. The burden of proof, as I
7 have stated to you, is on the State. The Defendant is not
8 required to prove himself innocent. The burden of proof
9 remains on the State to prove his guilt beyond a reasonable
10 doubt.

11 Ladies and gentlemen, I instruct you that if a crime is
12 committed by two or more people who are acting together in
13 committing a crime, the act of one is the act of all. A
14 person who joins with another to commit an unlawful act is
15 criminally responsible for everything done by the other
16 person which happens as a probable or natural consequence of
17 the act done in carrying out the common plan and purpose.
18 For example, ladies and gentlemen, two people can be guilty
19 of robbing a business even if only one of the two enter the
20 business to accomplish the robbery while the other remained
21 in the driver's seat of the getaway car outside the
22 business. If two or more people are together, acting
23 together, assisting each other in committing the offense,
24 then the act of one is the act of all, or as it is sometimes
25 said, the hand of one is the hand of all. Prior knowledge

1 that a crime is going to be committed without more is not
2 sufficient to make a person guilty of that crime. Your
3 knowledge that another person is going to commit a crime,
4 even if the Defendant is present when the crime is committed
5 isn't sufficient to convict the Defendant as a principal.
6 Guilt as a principal is shown by actual or constructive
7 presence at the scene as a result of prior arrangement.
8 Therefore, a finding of a prior arranged plan or common
9 scheme is necessary for a finding of guilt as a principal.
10 The State must prove beyond a reasonable doubt by competent
11 evidence the theory of the hand of one is the hand of all.
12 A principal in a crime is one who either actually commits
13 the crime or who is present aiding, abetting or assisting in
14 committing the crime. When a person does and act in the
15 presence of and with the assistance of another, the act is
16 done by both. Whether two or more acting with a common plan
17 or intent are present at the commission of a crime, it
18 doesn't matter who actually commits the crime. All are
19 guilty. The hand of one is the hand of all. Present at the
20 commission of a crime means to be sufficient near to aid and
21 abet and assist in the commission of the crime. However,
22 mere presence at the scene of a crime isn't sufficient to
23 convict one as a principal on the theory of aiding and
24 abetting. Intent is also a necessarily element for their --
25 for there must have been a common design or intent to commit

1 the crime and the crime must have been committed pursuant to
2 the -- pursuant to with the person aiding and abetting by
3 some overt act.

4 Ladies and gentlemen, intent means intending the result
5 which actually occurs, not accident or involuntarily.
6 Intent may be shown by acts and conduct of the Defendant and
7 other circumstances from which you may naturally and
8 reasonable infer intent. The State must prove these
9 elements beyond a reasonable doubt.

10 Now, ladies and gentlemen, as I alluded to, mere
11 presence at the scene isn't sufficient to prove someone
12 guilty of a crime. The Defendant's presence where a crime
13 is being committed, or if mere association with a person who
14 commits a crime, doesn't make a Defendant an accomplice or
15 an aider and abetter of the person committing the crime.
16 The burden is on the State to prove every element of the
17 crime charged. If you find after reviewing all the evidence
18 that the State has proven that the Defendant was only
19 present at the scene of the crime and that they have not
20 proved beyond a reasonable doubt any other participation in
21 the crime, then you should find -- then you must find the
22 Defendant not guilty. The law is that proof of being at the
23 scene of the crime is not sufficient to find someone guilty.
24 Now, ladies and gentlemen, in this case the Defendant
25 is charged with murder, so the State must prove beyond a

1 reasonable doubt that the Defendant killed another person
2 with malice aforethought. Malice is hatred, ill-will or
3 hostility towards another person. It's the intentional
4 doing of a wrongful act without just cause or excuse and
5 with the intent to inflict an injury or under circumstances
6 that the law will infer an evil intent. Malice aforethought
7 does not require that malice exists for any particular time
8 before the act is committed, but malice must exist in the
9 mind of the Defendant just before and at the time of the act
10 -- at the time the act was committed. Therefore, there must
11 be a combination of the previous evil intent in the act.
12 Malice aforethought may be expressed or inferred. These
13 terms, express or inferred, do not mean difference kinds of
14 malice, but merely the manner in which malice may be shown
15 to exist. That is either by direct evidence or by inference
16 from the facts and circumstances which are proved. Express
17 malice is shown when a person speaks words or which
18 expresses hatred or ill-will for another, or when the person
19 prepared beforehand to do the act which was later
20 accomplished. For example, laying in wait for a person or
21 any other acts of preparation going to show that the deed
22 was within the Defendant's mind would be expressed malice.
23 Malice may be inferred from conduct showing a total
24 disregard for human life.

25 Ladies and gentlemen, I instruct you that if one

1 intentionally kills another during the commission of a
2 felony, the inference of malice may arise. If facts are
3 proven beyond a reasonable doubt sufficient to raise an
4 inference of malice to your satisfaction, this inference
5 would simply be an evidentiary fact to be taken into
6 consideration by you along with all other evidence in the
7 case and you may give it the weight that you decide it
8 should receive.

9 Now, ladies and gentlemen, the Defendant is also
10 charged with the intents of possession of a weapon during
11 the commission of or attempting to commit a violent crime.
12 Therefore, the State must prove beyond a reasonable doubt
13 that the Defendant was in possession of a firearm or visibly
14 displayed what appeared to be a firearm during the
15 commission of a violent crime. Firearm means any machine
16 gun, automatic rifle, revolver, pistol or any weapon which
17 will or is designed to or may be readily converted to expel
18 a projectile. In order to find the Defendant guilty of
19 possession of a weapon during the commission of a violent
20 crime, you must first find the Defendant guilty of either
21 committing a violent crime or attempting to commit a violent
22 crime. In this case, ladies and gentlemen, I do instruct
23 you that murder is classified under our laws as a violent
24 crime. The State must prove beyond a reasonable doubt that
25 the person furthered, advanced or helped in the commission

1 of the crime.

2 Now, ladies and gentlemen, there are two possible
3 verdicts which you may find in this particular case; guilty
4 of murder or not guilty of murder, or guilty of possession
5 of a weapon during the commission of a violent crime or not
6 guilty of possession of a weapon during the commission of a
7 violent crime. There's absolutely no significance whatsoever
8 in the order in which I state these possible verdicts to
9 you. It's simply that one has to be stated first.

10 Madam Forelady, I've prepared this verdict form to try
11 and help guide your deliberations. It's pretty self-
12 explanatory but I'm just going to review it with you all
13 briefly. At the top it has the caption of the case. The
14 State of South Carolina vs. David Walker, and the first
15 statement that's made on the verdict form says, "We, the
16 jury in the above-captioned case, on the charge of murder
17 unanimously find David Lee Walker," and then there are two
18 options for you as I've just described; guilty or not
19 guilty. Okay? If you find that the State has met its
20 burden of proving Mr. Walker's guilt beyond a reasonable
21 doubt you would check or initial, Madam Foreperson, next to
22 guilty. Okay. If you find that the State has failed to
23 meet its burden of proving his guilt beyond a reasonable
24 doubt, you would check or initial next to not guilty. If
25 you find Mr. Walker guilty on the first statement you would

1 then proceed to the second statement. It says -- that's
2 where it relates to the charge of possession of a weapon
3 during the commission of a violent crime. Similarly that
4 statement says, "We the jury in the above-captioned case, on
5 the charge of possession of a weapon during the commission
6 of a violent crime, unanimously find David Lee Walker," and
7 then again the same options as before; guilty and not
8 guilty. And again, the State has the burden of proving
9 beyond a reasonable doubt Mr. Walker's guilt on that charge.
10 So you would only proceed to the second statement that you
11 find that the Defendant is guilty on the first one. If you
12 find not guilty on that first one you'd simply sign your
13 name as forelady, knock on the door and let the bailiff know
14 and we'll get you back in here. Okay?

15 Now, ladies and gentlemen, your verdict must be a
16 unanimous one. That means all 12 of you agree. Again,
17 Madam Forelady, when the jury has reached its verdict simply
18 let the bailiff know and we'll reassemble everyone and have
19 you back here in the courtroom as soon as we can.

20 Ladies and gentlemen, I remind you that you have no
21 enemies to punish in this case. You have no friends to
22 reward. You have been selected as fair and impartial jurors
23 who have no interest in the outcome of this case other than
24 to judge the facts of the case and render a true verdict.

25 Now, at some point in time, ladies and gentlemen, you

1 will receive -- probably in the next five or 10 minutes
2 you're going to receive the evidence that has been
3 introduced into the record in this case back into the jury
4 room. The firearms and the ammunition, any live rounds of
5 ammunition, the firearms will go back. The ammunition will
6 stay out here. If you want to look at the ammunition,
7 that's fine. But guess what? We're going to trade the
8 firearms out. We'll bring the firearms out, send the ammo
9 back there. It's a basic rule that the Chief has
10 established. Guns and bullets don't go together at the same
11 time in the jury room. Okay? So if you need to see the
12 ammunition just let the bailiff know and we'll automatically
13 switch those out as need be as you request. Okay?

14 Now, ladies and gentlemen, at this time I'm going to
15 ask that you return to the jury room, but don't start your
16 deliberations yet. You're cue to begin your deliberations
17 will be receipt of the verdict form, these jury
18 instructions, and all the evidence, and my asking our last
19 alternate to step out. Okay. That will be your cue to
20 begin your deliberations.

21 We're getting close to lunchtime. I'm assuming you're
22 getting hungry. So I'm going to ask the clerk of court also
23 to step back there and take any lunch orders that you have.
24 We usually order from the place right across the street from
25 us. The burger place. There'll be a couple options on the

1 menu. If you have any special dietary constraints though,
2 let the clerk know and we will try and work around those.
3 If you tell me that you're allergic to anything but lobster
4 though I'm not going to believe that. So if there is some
5 issue though with what they have on the menu or what they're
6 offering, let the clerk know and we'll try and get you a
7 salad or something specific to whatever your dietary needs
8 are. Okay?

9 With that, adjourn to the back. Don't start talking
10 about the case. You know when you will be able to. Okay?
11 Thank you.

12 (Whereupon, the jury exited the courtroom to begin
13 deliberations at 12:53 p.m.)

14 THE COURT: Exceptions from the State?

15 MR. MOWRY: No exceptions, no objections, Your Honor.

16 THE COURT: Aside from the earlier objections, no
17 additional exceptions?

18 MS. WIYGUL: No additional ones, Your Honor.

19 THE COURT: Very good. If you all can make sure that
20 we have the evidence together and everything is going back,
21 and just ask Mr. -- just ask -- just put the ammunition next
22 to my court reporter, but do separate any live rounds.

23 MR. MOWRY: I think we may have kept the live rounds
24 out, Your Honor.

25 THE COURT: Oh, okay. Okay.

1 MR. MOWRY: I think we just have the shell casings and
2 the firearms themselves.

3 THE COURT: All right. Very good.

4 (Whereupon, a recess was held from 2:38 p.m. to 5:26
5 p.m.)

6 THE COURT: The jury has requested to hear the audio of
7 the 911 call and also view the body cam videos. The
8 attorneys have met with me briefly in the back and everyone
9 is okay with my allowing my law clerk to simply -- or
10 allowing the jury, rather, to use my law clerk's computer.
11 So what I was inclined to do is just to back there. And my
12 law clerk is closing out all the open applications. I'm
13 sure someone back there knows how to run the video and the
14 audio, and that way they can review it and back it up or
15 fast forward it as they want to. So if there's no
16 objection, I'll just go back with my law clerk and tell them
17 they can use her computer, but not to go into any of the
18 other applications on the computer, and that will take care
19 of the problem, if that's okay with the State.

20 MR. MOWRY: Yes, sir. The State is fine with that.

21 THE COURT: You okay with that?

22 MS. WIYGUL: The Defense has no objection to that, Your
23 Honor.

24 THE COURT: Very good. We'll remain at ease. I'm
25 bring the -- my clerk and I will bring the computer to the

1 jury and we will take it from there. Thank you.

2 MR. MOWRY: Thank you, sir.

3 (Whereupon, a recess was held from 2:36 p.m. to
4 p.m.)

5 THE COURT: We're back on the record in State v.
6 Walker. I've received another note from the jury which the
7 Court will mark as a Court's exhibit. They're requesting
8 that we replay the testimony of -- I think they said Travis
9 Moore, but it's actually Toris Moore, and Kelly Ball. I've
10 compared my notes against the Court Reporter's notes. Toris
11 Moore's testimony took approximately 10 minutes. Kelly
12 Ball's testimony took about an hour and 20 minutes. What
13 I'm inclined to do is explain -- they're asking for
14 transcripts and obviously we're not able to provide them
15 with a transcript of the hearing. The court reporter does
16 tell me that she can replay any testimony. It would take a
17 moment to set up, and it would be best to use the audio
18 equipment which is currently back in the jury room. So I
19 intend to bring the jury out and explain to them what the
20 situation is. That we cannot provide them with that
21 transcript. But if there's any particular testimony that
22 they want to hear we can replay it. But I'm going to tell
23 them the times involved, with Ms. Ball's testimony in
24 particular. That's my intention. Any problem with that
25 from the State?

1 MR. MOWRY: No, sir, Your Honor.

2 THE COURT: From the Defense?

3 MS. WIYGUL: No, Your Honor.

4 THE COURT: Let's have the jury in, please.

5 MR. MOWRY: Your Honor, you may want to just tell them
6 the time on both of them.

7 THE COURT: I was going to.

8 (Whereupon, the jury entered the courtroom at 5:27
9 p.m.)

10 THE COURT: Ladies and gentlemen of the jury, I did
11 receive your most recent communication, Madam Forelady, in
12 which you are requesting transcripts of the testimony, I
13 believe, from Toris Moore and Kelly Ball. I think you meant
14 -- it wasn't Toris, but the testimony was from -- you
15 spelled it T-a-u-r-I-s, but it's spelled a different way.

16 I've consulted with the court reporter and it's not
17 possible to give you actual written transcripts of that
18 testimony at this point. It actually takes a while for a
19 transcript to be prepared. It has to be typed and then it
20 has to be reviewed and checked and edited. And so, we don't
21 simply have the capacity to provide you with the transcript
22 of those two witnesses. What the court reporter tells me
23 though is that it is possible to play back their testimony,
24 if you want us to do that. The testimony of the Moore
25 witness took approximately 10 minutes, by my notes. The

1 testimony of Ms. Ball took about one hour and 20 minutes.

2 So that's kind of where we are in terms of what we can
3 give you if you feel like you absolutely most have it. And,
4 of course, if you feel like you've got to have it then we're
5 more than happy to play that back for you, or any portion if
6 there's any specific portions that you're looking for. If
7 you could kind of give us an idea of maybe the timeframe,
8 whether it was on direct or cross-examination. Okay? So
9 that's kind of where we are as far as that's concerned.

10 I also meant to mention this to you when I dismissed
11 you, but I have a running rule. Anytime a case is submitted
12 to a jury we are on your timetable at that point in time.
13 Okay? So if you decide that you want to continue
14 deliberating tonight, that is fine. We will go as late as
15 you all want to go. We are at your disposal at this point.
16 If, on the other hand, you feel like you're getting a little
17 mentally tired or what have you and you want to take a break
18 for the evening and come back tomorrow morning, that's
19 perfectly fine, too. But we need it to be sort of a little
20 group decision that you call come to.

21 So if you need any further assistance as far as what
22 you're requesting in this note, let me know and we'll try to
23 assist you along those lines, but I simply cannot provide
24 you with the transcript. We don't have that capability.
25 Okay.

1 With that, I'll ask that you continue your
2 deliberations. Thank you very much.

3 (Whereupon, the jury exited the courtroom.)

4 THE COURT: We are going back on the record.
5 Apparently the jury wants to take me up on my offer to allow
6 them to break for the evening. They did send me a note
7 saying they wanted to hear the testimony of Toris Moore and
8 Ms. Ball tomorrow. We'd like to break for today. So if we
9 could, let's go ahead and have the jury back in, please.

10 (Whereupon, the jury entered the courtroom at 5:46
11 p.m.)

12 THE COURT: Ladies and gentlemen of the jury, I did
13 receive your message and I do appreciate your all's work on
14 this case today. I do understand how you could probably use
15 a break at this point. So we're going to go ahead and break
16 for the evening. And what we'll do is I'm going to ask you
17 to be back in the jury room, if you would, at 9:30 tomorrow
18 morning. The court reporter will go ahead and, at that
19 point in time, cue up the testimony and we'll just listen to
20 it straight out. It'll take about an hour and a half.
21 Okay? And then we'll let you resume with your
22 deliberations.

23 The same thing goes tonight as for the other nights.
24 Don't discuss the case with anyone while you're on break.
25 With that, I hope you have a very pleasant evening. Just

1 leave those -- yeah, just leave those instructions. Leave
2 all the evidence back there with the Bailiff in case you
3 need to -- Leave all the evidence and everything back there,
4 the computer, when you go back to grab your coats or
5 anything that you brought with you to the courthouse and
6 we'll collect that tonight as well as the computer and audio
7 equipment.

8 Have a great evening. Don't talk about the case. I'll
9 see you all at 9:30.

10 (Whereupon, the jury exited the courtroom at 5:49 p.m.)

11 THE COURT: See you all in the morning. Have a good
12 evening.

13 MR. MOWRY: Thank you, Your Honor.

14 MS. WIYGUL: Thank you, Your Honor.

15 TRIAL DAY 5-02/27/14

16 (Whereupon the jury entered the courtroom at 9:54 a.m.)

17 (Whereupon, testimony of Toris Moore and Kelly Ball
18 were played for the jury)

19 THE COURT: Ladies and gentlemen, we've finished
20 replaying the portion of the testimony that you requested.
21 I think that the exhibits are probably in the jury room
22 already. Have you seen them back there or do we need to get
23 them back there? Have we gotten them back there? If
24 they're not back there we'll get those to you and you can
25 continue your deliberations. Okay? Just let us know when

1 you have a verdict, please.

2 (Whereupon, jury exited the courtroom to resume
3 deliberation at 11:11 a.m.)

4 THE COURT: We'll be off the record.

5 (Whereupon, a recess was held from 11:11 a.m. to 12:14
6 p.m.)

7 THE COURT: If we may, we'll go back on the record in
8 the State vs. Mr. Walker. The Court -- or the record should
9 reflect that the Bailiff has told me that the jury has
10 reached a verdict. The records should also reflect that Mr.
11 Walker is present.

12 I want to -- before I receive the verdict from the jury
13 I want to ask -- ladies and gentlemen, I have no idea what
14 this verdict is. I do not know what the result is. I want
15 to emphasize that it is extremely, extremely important that
16 regardless of what the verdict is everyone here maintain
17 their composure. If for some reason you feel yourself
18 unable to do so, I would ask that you simply quietly stand
19 up and leave the courtroom if you find yourself unable to
20 contain yourself, because I do not want to have to hold
21 anyone in contempt due to any kind of an outburst. Okay?
22 So if there's any issue with you maintaining your composure
23 while the verdict is being received I'll ask that you simply
24 stand up and quietly leave the courtroom. All right.

25 Let's have the jury in, please.

1 (Whereupon, the jury entered the courtroom at 12:14
2 p.m.)

3 THE COURT: Let the record reflect that the jury is
4 back and seated. Madam Forelady, I'm told that the jury has
5 reached a verdict. Is that correct, ma'am.

6 MADAM FORELADY: It is, sir.

7 THE COURT: And all 12 of you agree as to the verdict?

8 MADAM FORELADY: Yes, sir.

9 THE COURT: If you would, hand the verdict form,
10 please, to the Bailiff for me, please. Madam Clerk, if
11 you'll publish, please.

12 CLERK: Your Honor, in the case of the State of South
13 Carolina vs. David Lee Walker, Case Number 2014-GS-30-228
14 and 229, we the jury, in the above-captioned case, on the
15 charge of murder unanimously find David Lee Walker guilty.
16 We the jury, in the above-captioned case, on the charge of
17 possession of a weapon during the commission of a violent
18 crime unanimously find David Lee Walker not guilty.
19 Signed by the Forelady, Cassandra E. Motes, dated February
20 27th, 2015.

21 Ladies and gentlemen, if that be your verdict, please
22 indicate by raising your right hand.

23 (Whereupon Jurors raise their right hand.)

24 THE COURT: Let the record reflect that all 12 jurors
25 did, in fact, raise their right hand. Anything further for

1 the jury before I discharge them from the State?

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

3 THE COURT: Anything from the Defense?

4 MS. WIYGUL: None from the Defense, Your Honor.

5 THE COURT: Ladies and gentlemen of the jury, I want to
6 thank you for your service here these last couple of --
7 these last five days. I will tell you that you do get paid
8 for your jury service. It's not a lot of money, but you'll
9 get a check. If the Clerk doesn't have them ready at this
10 point they will be in the mail probably by this afternoon.
11 Okay? Additionally you will receive a letter from me
12 thanking you for your service these last five days. I will
13 say this much to you. I appreciate your efforts on this
14 case. I know that you had been deliberating all yesterday
15 afternoon, you've been deliberating this morning and you put
16 a great deal of work into this case. I will also tell you
17 that it's been my personal experience, ladies and gentlemen,
18 that very often on simple matters such as maybe I go home
19 and my wife suggests that we go out to eat, the topic then
20 turns to where we go, and often between myself, my wife and
21 my four -- my two kids we have four different opinions on
22 where we should go and eat, and it's hard to reach a
23 consensus on something as simple as where we might have
24 supper one night. When 12 people have to agree it's a lot
25 more difficult to get that kind of a consensus, and so I

1 think that there's that added assurance -- when 12 people
2 can agree on a result there's that added assurance that the
3 result is a good and correct result. So I want to again
4 thank you for your service here this week.

5 If you want to remain, that's perfectly fine. At this
6 point in time what I would do is entertain any post-trial
7 motions from the Defense after we take a brief break. I
8 will then hear anything that the family of the decedent
9 wants to tell me concerning their position on this, and I'll
10 hear anything concerning aggravation or mitigation on
11 sentencing. So certainly you're welcome to remain for those
12 proceedings if you want to remain. I can't have you sitting
13 there though. What I would need for you to do is just
14 perhaps sit on one of those rows over to that side of the
15 courtroom towards the back. Okay? That's just a little
16 security rule that we have in Laurens County.

17 So if you want to stay, I'm going to be taking a few
18 moments to let everybody boot up for the next portion of the
19 hearing. And if you want to stay, that's fine. Just let
20 the Bailiff now and they'll get you all somewhere else.
21 Otherwise, it's been a pleasure working with you. It's been
22 a pleasure serving with you, and I hope you have a great
23 weekend. Take care of yourselves. All right?

24 We will be at ease for a few moments. The jury is
25 excused.

1 Madam Forelady, I need you to sign the actual original
2 indictment. I'm sorry.

3 (Whereupon, the jury was released and exited the
4 courtroom.)

5 THE COURT: The record should reflect that the jury is
6 out. At this point, Ms. Wiygul, I assume you move for a new
7 trial?

8 MS. WIYGUL: I do, Your Honor. I would also renew all
9 motions made and -- just to preserve the record, and renew
10 my motion for a new trial.

11 THE COURT: Very good. The Court does find that your
12 motion for a new trial should be denied. All prior motions
13 have been renewed. The Court will have the same ruling as
14 before.

15 I don't know if any of the jurors intend to stay, but,
16 Solicitor, I know you may want to speak to the family
17 briefly about who's going to talk on their behalf. So we'll
18 be at ease for a few minutes while we --

19 MR. MOWRY: Thank you, Your Honor.

20 THE COURT: -- decide where we go from here. And I'll
21 need a sentencing sheet, Solicitor.

22 MR. MOWRY: Yes, sir. Mr. Neely is preparing one now.

23 THE COURT: Yes, sir. All right. We'll be at ease.

24 And if any jurors do want to stay, I'd suggest perhaps
25 that row that Mr. Able is on in the back. Not to kick you

1 that the Court should take that into account as well as the
2 fact of the series injuries that he suffered that night and
3 the fact that he will have a permanent reminder of that
4 night for the rest of his life. We'd ask that the Court
5 consider a lesser sentence. Something in the range of 15
6 years.

7 THE COURT: I think the minimum is 30, if I'm not
8 mistaken. But yeah, I --

9 MS. WIYGUL: Something in the lower range.

10 THE COURT: Certainly. Mr. Walker, I'm happy to hear
11 anything that you may want to tell me, sir.

12 THE DEFENDANT: I ain't got nothing to say.

13 MS. WIYGUL: And I would ask the Court to consider,
14 with his age, 30 years is pretty much a life sentence.

15 THE COURT: I don't disagree. Mr. Walker, I've taken
16 into account the evidence which has been presented during
17 the course of this trial. I have taken into account your
18 counsel's statements for advocacy for you throughout the
19 trial and, of course, the statements on behalf that she has
20 offered here today. And, of course, I have taken into
21 account the remarks made by Ms. Briggs on behalf of the
22 victim's family. Mr. Walker, your criminal history is, in
23 short, abysmal. And I've had a chance to review this
24 evidence. I've had a chance to sit here for several days
25 hearing the testimony in this case, and I will tell you,

1 sir, that I am totally comfortable with this sentence.

2 It's the sentence of the Court, Mr. Walker, that you be
3 committed to the Department of Corrections for the balance
4 of your natural life. I wish you luck, sir.

5 MR. MOWRY: Thank you, Your Honor.

6 THE COURT: Ms. Wiygul, you need to file notice of
7 intent to appeal within 10 days. Mr. Walker, you have one
8 year after exhaustion of appeals to file actions for post
9 conviction relief. I wish everyone luck.

10 Ladies and gentlemen, we are completed and the record
11 is closed in this case.

12 MR. MOWRY: Thank you, Your Honor.

13 MS. WIYGUL: Thank you, Your Honor.

14 - - - END OF TRANSCRIPT OF RECORD - - -

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STATE OF SOUTH CAROLINA
 COUNTY OF LAURENS
 FEB 17 P 12:10

LAURENS COUNTY
 CLERK OF COURT

**IN THE COURT OF GENERAL SESSIONS
 FOR THE EIGHTH JUDICIAL CIRCUIT**

Warrant Nos: 2013A3010200300,
 2013A3010200301, 2013A3010200302,
 2013A3010101760, 2012A2320200152,
 2012A3020400285, & 2012A2320200016

Charges: Murder, PWDVC, Unl. Poss of F/A,
 AR, Forgery & GL

STATE OF SOUTH CAROLINA

vs.

DAVID LEE WALKER,
 Defendant

ORDER AUTHORIZING FUNDS

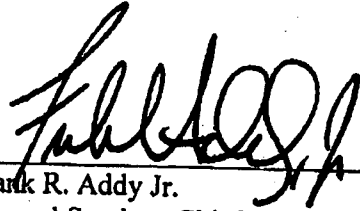
This motion comes before me in an ex-parte proceeding as authorized by South Carolina Code of Laws, § 17-3-50 (1976 as amended). Counsel for the Defendant requests that the Court authorize the expenditure of funds for a qualified gunshot residue expert to assist counsel with the preparation and investigation of Defendant's case.

Defendant was arrested on or about November 2nd, 2014 and charged with Murder along with lesser offenses. Defendant also has lesser pending charges from 2012. Defense counsel states that it is necessary for the effective assistance of counsel that an expert in gunshot residue be approved to investigate, explain and possibly challenge the testing performed in this case.

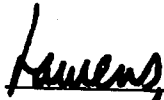
THEREFORE IT IS ORDERED that defense counsel retain the services of a qualified gunshot residue expert, Alex Layton. The cost of these services shall not exceed a total of Two Thousand Five Hundred and no/100 (\$2,500.00) without further order of this Court. It is specifically found that these expenses are reasonably and necessarily incurred in the preparation of this case. These expenses shall be paid by the Defense of Indigents Fund pursuant to South Carolina Code of Laws, § 17-3-50 (1976 as amended).

IT IS FURTHER ORDERED that this Order and Petition shall be sealed with copies provided to defense counsel for the processing of appropriate vouchers.

IT IS SO ORDERED.



Frank R. Addy Jr.
General Sessions Chief Administrative Judge
Eighth Judicial Circuit



, South Carolina

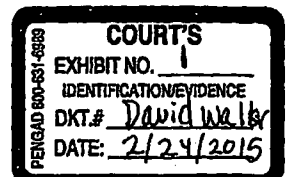
February 17, 2015

David Walker

2/24/15 477

I am not going to court no time soon

David Walker
Witness ~~J. Chappelle~~
Witness ~~C. J.~~ 2/24/15



Do not have a lawyer no court

David Walker 2/25, 15

Sgt. Handy 2-25-15

At Lawson 2-25-2015

Ex. 4

984-6200

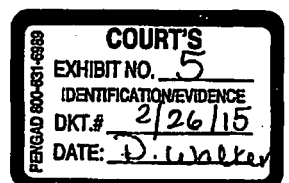
PENGAD 800-631-6389	COURT'S
	EXHIBIT NO. <u>4</u>
	IDENTIFICATION EVIDENCE
	DKT.# <u>D. Walker</u>
	DATE: <u>2/25/15</u>

I do not have a hangover know count

David, Walker 2/26/15

D. H. 2-26-15

h. Sullivan 2-26-15



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2014-GS-30-0228

State of South Carolina

Respondent.

v.

David Lee Walker

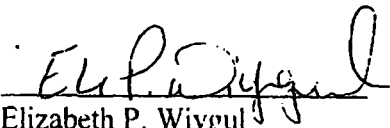
Appellant.

LAURENS COUNTY
CLERK OF COURT
2015 MAR -6 P 3:22
LYNN W. LANCASTER

NOTICE OF APPEAL

Appellant David Lee Walker appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Frank R. Addy, Jr. on February 27, 2015.

March 6, 2015


Elizabeth P. Wiygul
101 Whitsett Street
Greenville, South Carolina 29601
(864) 608-1059
SC Bar No. 70785
Attorney for Appellant

Other Counsel of Record:

Assistant Solicitor Warren Mowry
Regional Circuit Solicitor's Office
100 Hillcrest Drive
Laurens, SC 29360

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2014-GS-30-0228

State of South Carolina

Respondent.

v.

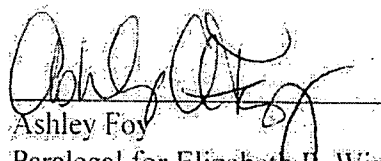
David Lee Walker

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Assistant Solicitor Warren Mowry by hand delivering a copy of same on today's date to the Laurens County Solicitor's Office at 100 Hillcrest Drive, Laurens, SC 29360.

March 6, 2015


Ashley Foy
Paralegal for Elizabeth D. Wiggul
101 Whitsett Street
Greenville, SC 29601
(864) 608-1059

LYNN W. LANCASTER

2015 MAR -6 P 3:22

LAURENS COUNTY
CLERK OF COURT

WITNESSES

Bryant Chcek
Laurens County Sheriff

WARRANT NUMBER

2013A3010200300

True Bill

Kellen L. [Signature]

Foreman of the Grand Jury

Date: 2-21-14

VERDICT

Guilty

Cassandra [Signature]

Foreman

2-27-15

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2014

Indictment # 14GS30- 0228

THE STATE

vs.

David Lee Walker

INDICTMENT FOR

Murder

CDR: 0116

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF LAURENS****Murder**

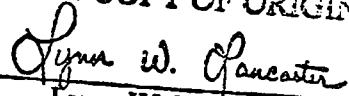
At a Court of General Sessions, convened on the 21st day of February, 2014, the Grand Jurors of Laurens County present upon their oath:

That David Lee Walker, in Laurens County, on or about October 31, 2013 willfully, feloniously, and with malice aforethought kill one Johnny Cheeks by means of shooting him, and that the said Johnny Cheeks did die in Spartanburg County as a proximate result thereof on or about November 1, 2013, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor / Assistant Solicitor

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCCP & GS

484

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
 STATE VS.
David Lee Walker

AKA:

Race: AFRICAN AME Sex: M Age: 47DOB: [REDACTED] SS#: [REDACTED]City, State, Zip: Fountain Inn, SC 29644SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 14GS30-0228A/W#: 2013A3010200300Date of Offense: 10/31/2013S.C. Code §: 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mowry, O. Warren

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of the balance of Mr. Walker's natural life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(1) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCIA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: **ATRUE COPY OF ORIGINAL**Lynn W. Lancaster

Lynn W. Lancaster

Laurens County CCCP & GS

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2159Sentence Date: 2-27-15

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

OCT 27 2016

SC Court of Appeals



John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 27th day of October, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

RECEIVED

Appeal from Laurens County
Honorable Frank R. Addy, Circuit Court Judge

OCT 27 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

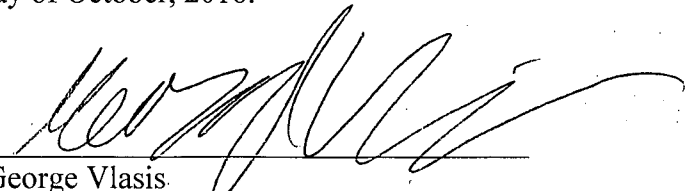
V.

DAVID LEE WALKER,

APPELLANT

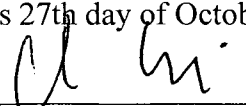
CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon Sherrie Butterbaugh, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of October, 2016.



George Vlasis
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 27th day of October, 2016.



(L.S.)
Notary Public for South Carolina

My Commission Expires 5/12/2025.