

VOLUME ONE OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Appeal from Beaufort County

APR 10 2017

Honorable Roger L. Couch, Circuit Court Judge S.C. SUPREME COURT

LUCIUS SIMUEL,

PETITIONER,

V.

THE STATE,

RESPONDENT

APPELLATE CASE NO 2016-001607

APPENDIX

JOHN H. STROM
Appellate Defender

ALAN WILSON
Attorney General

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

RUSTON W. NEALY
Assistant Attorney General
Columbia, SC

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
APPLICATION FOR POST-CONVICTION RELIEF	986
RETURN	992
POST-CONVICTION RELIEF HEARING TRANSCRIPT	997
ORDER OF DISMISSAL	1075
MOTION TO ALTER OR AMEND JUDGEMENT	1084
ORDER DENYING MOTION TO ALTER OR AMEND JUDGEMENT	1088
INDICTMENTS	1090

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
 COUNTY OF BEAUFORT)

THE STATE OF SOUTH CAROLINA,) 2008-GS-07-1761
) 2008-GS-07-1762
 PLAINTIFF,) 2009-GS-07-1366
) 2009-GS-07-2009

VS.)

LUCIUS SIMUEL,)
)
 DEFENDANT.)

THE STATE OF SOUTH CAROLINA,) 2009-GS-07-0066
) 2009-GS-07-0068
 PLAINTIFF,) 2009-GS-07-0069
) 2009-GS-07-1365

VS.)

DEMETRIUS PRICE,)
)
 DEFENDANT.)

TRANSCRIPT OF RECORD

NOVEMBER 16, 17, 18, 19, 20, 2009
 BEAUFORT, SOUTH CAROLINA

B E F O R E:

THE HONORABLE THOMAS W. COOPER, JR., JUDGE, AND A JURY

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

R. ALEXANDER ROBINSON, ESQUIRE, ASSISTANT SOLICITOR
 ROBERT FERGUSON, ESQUIRE, ASSISTANT SOLICITOR
 ATTORNEYS FOR THE STATE

IAN C. DEYSACH, ESQUIRE
 ATTORNEY FOR DEFENDANT SIMUEL

CHRISTOPHER J. GEIER, ESQUIRE
 ATTORNEY FOR DEFENDANT PRICE

ELIZABETH B. HARRIS, CVR
 CIRCUIT COURT REPORTER

I N D E XWITNESS/DESCRIPTIONPAGE NO.

MONDAY, NOVEMBER 16, 2009

JURY VOIR DIRE	41
JURY SELECTION	100
MOTIONS DEFENSE	116

JACKSON VS. DENNO HEARING

DEJUAN HOLMES

DIRECT EXAMINATION BY MR. ROBINSON	125
CROSS-EXAMINATION BY MR. GEIER	142
CROSS-EXAMINATION BY MR. DEYSACH	145

TUESDAY, NOVEMBER 17, 2009

JACKSON VS. DENNO HEARING CONTINUES

TODD CALHOUN

DIRECT EXAMINATION BY MR. ROBINSON	155
CROSS-EXAMINATION BY MR. GEIER	182
CROSS-EXAMINATION BY MR. DEYSACH	185
REDIRECT EXAMINATION BY MR. ROBINSON	194

OPENING REMARKS BY THE COURT	219
OPENING BY MR. ROBINSON	228
OPENING BY MR. GEIER	233
OPENING BY MR. DEYSACH	239

STATE'S CASE IN CHIEF

JEFF MEYER

DIRECT EXAMINATION BY MR. ROBINSON 245

CROSS-EXAMINATION BY MR. GEIER 259

CROSS-EXAMINATION BY MR. DEYSACH 263

REDIRECT EXAMINATION BY MR. ROBINSON 265

JEFF LAUVER

DIRECT EXAMINATION BY MR. ROBINSON 266

CROSS-EXAMINATION BY MR. DEYSACH 268

CROSS-EXAMINATION BY MR. DEIER 269

NEIL VS. BIGGERS HEARING

TODD CALHOUN

DIRECT EXAMINATION BY MR. ROBINSON 272

CROSS-EXAMINATION BY MR. DEYSACH 292

CROSS-EXAMINATION BY MR. GEIER 298

REDIRECT EXAMINATION BY MR. ROBINSON 298

NEIL VS. BIGGERS HEARING ENDS

DEON CANNICK

DIRECT EXAMINATION BY MR. ROBINSON 311

CROSS-EXAMINATION BY MR. DEYSACH 328

CROSS-EXAMINATION BY MR. GEIER 354

REDIRECT EXAMINATION BY MR. ROBINSON 369

1	DEON CANNICK	
2	RECROSS-EXAMINATION BY MR. DEYSACH	371
3		
4	SHARITA WILLINGHAM	
5	DIRECT EXAMINATION BY MR. ROBINSON	373
6	CROSS-EXAMINATION BY MR. DEYSACH	382
7	CROSS-EXAMINATION BY MR. GEIER	400
8	REDIRECT EXAMINATION BY MR. ROBINSON	403
9		
10	<i>WEDNESDAY, NOVEMBER 18, 2009</i>	
11	TODD CALHOUN	
12	DIRECT EXAMINATION BY MR. ROBINSON	426
13	CROSS-EXAMINATION BY MR. DEYSACH	456
14	CROSS-EXAMINATION BY MR. GEIER	512
15	REDIRECT EXAMINATION BY MR. ROBINSON	518
16		
17	GAGE OCHSNER	
18	VOIR DIRE EXAMINATION BY MR. ROBINSON	521
19	DIRECT EXAMINATION BY MY. ROBINSON	523
20	CROSS-EXAMINATION BY MR. GEIER	536
21		
22	WILLIAM BROMBERG	
23	VOIR DIRE EXAMINATION BY MR. ROBINSON	540
24	DIRECT EXAMINATION BY MY. ROBINSON	543
25	CROSS-EXAMINATION BY MR. DEYSACH	554

1	WILLIAM BROMBERG	
2	REDIRECT EXAMINATION BY MR. ROBINSON	555
3		
4	CHARLIE C. CARLSON, III	
5	DIRECT EXAMINATION BY MR. ROBINSON	556
6	CROSS-EXAMINATION BY MR. DEYSACH	559
7		
8	DEVEROL CANNICK	
9	DIRECT EXAMINATION BY MR. ROBINSON	563
10	CROSS-EXAMINATION BY MR. DEYSACH	580
11	CROSS-EXAMINATION BY MR. GEIER	605
12	REDIRECT EXAMINATION BY MR. ROBINSON	616
13		
14	THURSDAY, NOVEMBER 19, 2009	
15	ANGELA VIENS	
16	DIRECT EXAMINATION BY MR. ROBINSON	622
17	CROSS-EXAMINATION BY MR. DEYSACH	641
18	CROSS-EXAMINATION BY MR. GEIER	646
19	REDIRECT EXAMINATION BY MR. ROBINSON	661
20		
21	DEJUAN HOLMES	
22	DIRECT EXAMINATION BY MR. ROBINSON	663
23	CROSS-EXAMINATION BY MR. GEIER	671
24	CROSS-EXAMINATION BY MR. DEYSACH	677
25	REDIRECT EXAMINATION BY MR. ROBINSON	681

1	DEJUAN HOLMES	
2	RE-CROSS-EXAMINATION BY MR. DEYSACH	682
3	FURTHER EXAMINATION BY MR. ROBINSON	683
4		
5	KEN WHITLER	
6	VOIR DIRE EXAMINATION BY MR. ROBINSON	684
7	VOIR DIRE EXAMINATION BY MR. DEYSACH	686
8	DIRECT EXAMINATION BY MR. ROBINSON	687
9	CROSS-EXAMINATION BY MR. DEYSACH	694
10		
11	JEAN ROBERTS	
12	DIRECT EXAMINATION BY MR. ROBINSON	696
13	EXAMINATION BY THE COURT	700
14	REDIRECT EXAMINATION BY MR. ROBINSON	701
15		
16	RAMONA COOPER	
17	DIRECT EXAMINATION BY MR. ROBINSON	706
18		
19	<i>END OF STATE'S CASE IN CHIEF</i>	
20		
21	MOTIONS BY DEFENSE	708
22	RULINGS OF THE COURT	712
23	DISCUSSION OF RIGHTS	716
24		
25		

CASE BY DEFENDANT SIMUEL

MALIK CAMPBELL

DIRECT EXAMINATION BY MR. DEYSACH 729

CROSS-EXAMINATION BY MR. GEIER 741

CROSS-EXAMINATION BY MR. ROBINSON 745

REDIRECT EXAMINATION BY MR. DEYSACH 746

MARTIN GUZMAN

DIRECT EXAMINATION BY MR. DEYSACH 747

CROSS-EXAMINATION BY MR. GEIER 757

CROSS-EXAMINATION BY MR. ROBINSON 761

REDIRECT EXAMINATION BY MR. DEYSACH 764

RE-CROSS-EXAMINATION BY MR. GEIER 765

TIAH FRAZIER

DIRECT EXAMINATION BY MR. DEYSACH 765

CROSS-EXAMINATION BY MR. GEIER 773

CROSS-EXAMINATION BY MR. ROBINSON 773

CHRIS BATTLE

DIRECT EXAMINATION BY MR. DEYSACH 775

CROSS-EXAMINATION BY MR. ROBINSON 779

TODD CALHOUN

DIRECT EXAMINATION BY MR. DEYSACH 782

1	TODD CALHOUN	
2	CROSS-EXAMINATION BY MR. GEIER	784
3	CROSS-EXAMINATION BY MR. ROBINSON	786
4		
5	DAVID SINGLETERRY	
6	DIRECT EXAMINATION BY MR. DEYSACH	788
7	CROSS-EXAMINATION BY MR. GEIER	791
8	CROSS-EXAMINATION BY MR. ROBINSON	792
9		
10	<i>END OF DEFENDANT SIMUEL'S CASE</i>	
11	<i>END OF DEFENDANT PRICE'S CASE</i>	
12		
13	MOTIONS BY DEFENSE	810
14	RULINGS OF THE COURT	812

FRIDAY, NOVEMBER 20, 2009

1		
2	CLOSING BY MR. GEIER	841
3	CLOSING BY MR. DEYSACH	859
4	CLOSING BY MR. ROBINSON	875
5	JURY CHARGE	898
6	FURTHER JURY CHARGE	935
7	VERDICT	948
8	POLLING OF THE JURY	949
9	MOTIONS BY DEFENSE	954
10	RULING OF THE COURT	955
11	SENTENCE OF THE COURT	983
12	CERTIFICATE PAGE	985
13	BATSON SHEET (TWO PAGES)	

<u>EXHIBITS</u>			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
<i>STATE'S EXHIBITS</i>			
S-1	PHOTOGRAPH	248	250
S-2	PHOTOGRAPH	248	250
S-3	PHOTO LINEUP	279	--
S-4	PHOTO LINEUP	279	--
S-5	PHOTO LINEUP	280	--
S-6	PHOTO LINEUP	280	--
S-7	PHOTO LINEUP	280	--
S-8	JACKET FOR PHOTO LINEUP	307	--
S-9	PHOTOGRAPH	318	319
S-10	PHOTOGRAPH	318	319
S-11	PHOTOGRAPH	318	319
S-12	PHOTOGRAPH	318	319
S-13	PHOTOGRAPH	318	319
S-14	PHOTOGRAPH	318	319
S-15	SURVEILLANCE PHOTOGRAPH	431	432
S-16	SURVEILLANCE PHOTOGRAPH	431	432
S-17	SURVEILLANCE PHOTOGRAPH	431	432
S-18	REDACTED STATEMENT	441	--
S-19	INDICTMENT OF L. SIMUEL	456	--
S-20	INDICTMENT OF L. SIMUEL	456	--
S-21	INDICTMENT OF D. PRICE	456	--
S-22	INDICTMENT OF D. PRICE	456	--

				11
1	NO.	DESCRIPTION	I.D.	EV.
2	S-23	INDICTMENT OF D. PRICE	456	--
3	S-24	DVD OF X-RAYS	524	525
4	S-24-A	DVD OF X-RAYS	--	621
5	S-25	CT SCAN RECONSTRUCTIONS	529	530
6	S-26	FULL BODY SCAN	543	544
7	S-27	CHAIN OF CUSTODY DOCUMENT	557	--
8	S-28	PHOTOGRAPH	571	571
9	S-29	PHOTOGRAPH	627	629
10	S-30	PHOTOGRAPH	627	629
11	S-31	PHOTOGRAPH	627	629
12	S-32	PHOTOGRAPH	627	629
13	S-33	PHOTOGRAPH	627	629
14	S-34	PHOTOGRAPH	627	629
15	S-35	PHOTOGRAPH	627	629
16	S-36	PHOTOGRAPH	632	633
17	S-37	FLOOR PLAN	634	635
18	S-38	COPPER JACKETED PROJECTILE	659	705
19	S-39	PROJECTILE	659	705
20	S-40	.45 SHELL CASINGS	659	705
21	S-41	.40 SHELL CASING	659	705
22	S-42	.45 SHELL CASING	659	705
23	S-43	COPPER JACKET, SLUG	659	706
24	S-44	EVIDENCE LOG	697	--
25	S-45	REQUEST FOR ANALYSIS	703	--

DEFENSE EXHIBITS			
NO.	DESCRIPTION	I.D.	EV.
D-1-SIMUEL	PHOTOGRAPH	477	643
D-2-PRICE	MEDICAL REPORT	538	--
D-3-SIMUEL	PHOTOGRAPH	585	661
D-4-PRICE	PHOTOGRAPH	605	608
D-5-PRICE	PHOTOGRAPH	605	608
D-6-PRICE	PHOTOGRAPH	605	608
D-7-PRICE	PHOTOGRAPH	605	610
D-8-PRICE	PHOTOGRAPH	605	648
D-9-PRICE	PHOTOGRAPH	648	--
D-10-PRICE	PHOTOGRAPH	648	--
D-11-PRICE	TAPE OF 9-1-1 CALLS	656	659

COURT'S EXHIBITS

NO.	DESCRIPTION	EV.
C-1	VOIR DIRE FROM STATE	39
C-2	VOIR DIRE FROM DEFENDANT SIMUEL	39
C-3	VOIR DIRE FROM DEFENDANT PRICE	39
C-4	JURY NOTE	495
C-5	JURY NOTE	621
C-6	JURY NOTE	721
C-7	JURY NOTE	769
C-8	JURY NOTE	841
C-9	JURY NOTE	933
C-10	JURY NOTE	935
C-11	CASE LAW	984

1 MONDAY, NOVEMBER 16, 2009

2 THE COURT: Gentlemen, let me deal, first of all, with
3 the issue of the prior record of the defendants in this
4 case and how it will be dealt with before the jury. As is
5 always the case in trying to analyze the admissibility of
6 evidence, we are required under our rules to conduct a
7 balancing test between the possible prejudicial impact of
8 evidence against its potential probative value. Rule 403,
9 of course, is the salient rule in that regard, and so the
10 question then is how much of the defendant's record needs
11 to be revealed to the jury in order or for the state to
12 carry the burden which it has as to a prior record of a
13 felon, making that felon ineligible to possess a handgun.

14 The law in that regard is clear that a convicted felon
15 may not own or possess a handgun. It is not necessary,
16 however, for a jury, in order to convict a defendant for a
17 violation of that law, to know exactly which felon -- or
18 which felony or felonies a defendant has been convicted of.

19 In this particular case, Mr. Demetrius Price,
20 according to the indictment, has prior convictions for
21 burglary, armed robbery, and aggravated assault. The
22 defendant which is Simuel, according to the indictment, has
23 a prior record of robbery. Now, those offenses are very
24 close in similarity -- in some cases, exactly the same --
25 as the offenses for which the defendants are on trial in

1 this particular case. And so obviously the prejudicial
2 impact of the admissibility of the particular felonies
3 speaks for itself. The jury could well be inclined to say,
4 well, he committed that in the past and, therefore, he must
5 be guilty of it again. But it is not necessary, as I have
6 said, under the law for the jury to know precisely what
7 felonies either of the defendants have been convicted of in
8 order for the state to meet its burden of proof.

9 The jury will be entitled to hear that the defendants
10 in this case have been -- have prior records for conviction
11 of felonies. And upon submission to the court of the
12 certified copies of those records, which I think Mr.
13 Robinson has -- and in any event which the state is
14 entitled, which the defense is willing to stipulate to -- I
15 will advise the jury that the defendants have prior
16 convictions of a felony or felonies. So, then the issue
17 becomes whether or not the defendant or defendants were
18 actually in possession of a handgun in violation of the
19 law.

20 The jury will not be told specifically what felonies
21 because, quite simply, they don't need to know. It makes
22 no difference to a jury, and it makes no difference to the
23 burden of proof. Whether a defendant has been convicted of
24 the most basic class F felony or whether he has been
25 convicted of a class A felony makes no difference at all

1 under the law. So, that's we how we will deal with that.

2 Mr. Robinson, I'll be glad to hear from you with any
3 exceptions to that ruling, if you'd like, or anything
4 further in that regard.

5 MR. ROBINSON: The only thing I wanted to bring to the
6 court's attention is that the statute under which they were
7 indicted, 16-23-30, specifically says that: A person shall
8 not be in possession of a handgun after commission of a
9 crime of violence. And in the case of the defendants,
10 their prior convictions are from out of state. They're
11 from Chatham County, Georgia.

12 THE COURT: Okay.

13 MR. ROBINSON: And not only -- so, this isn't just a
14 situation where they have a prior drug conviction or
15 domestic, you know, or something like that.

16 THE COURT: Right.

17 MR. ROBINSON: Statute does require that it be a crime
18 of violence.

19 THE COURT: Okay.

20 MR. ROBINSON: And that is one of the reasons that
21 they were indicted for these charges, for these weapons
22 charges.

23 And if I -- I've done a fair amount of research into
24 this, Your Honor. And one of the things I wanted to bring
25 to the court's attention about this matter is that the

1 conviction for which that -- the conviction that the
2 defendant Lucius Simuel has is for robbery. That is the
3 same thing as our strong-arm robbery and under *State vs.*
4 *Fernanders*, for which I have a copy, that qualifies as a
5 crime of violence.

6 THE COURT: Right.

7 MR. ROBINSON: For this particular statute.

8 THE COURT: Right.

9 MR. ROBINSON: So, one of the reasons they were
10 indicted for this, this offense is because their prior
11 convictions specifically fit what the state considered to
12 be a specific element of the crime.

13 THE COURT: And that is a crime of violence.

14 MR. ROBINSON: That is a crime of violence.

15 THE COURT: I will instruct the jury that they have
16 prior records for a conviction of a crime of violence.

17 MR. ROBINSON: That will be fine. Thank you, Judge.

18 THE COURT: All right. Good. Thank you.

19 All right, are there any other matters that we need to
20 take up of a preliminary nature from the defense before the
21 jury is brought in?

22 I'm sorry, I didn't mean to leave you, Mr. Robinson.
23 I'll ask you. Are there any other preliminary matters from
24 the state's perspective before the jury is brought in?

25 MR. ROBINSON: Your Honor, if I could approach? I was

1 going to give the court my potential witness list.

2 THE COURT: Good.

3 MR. ROBINSON: And *voir dire*.

4 THE COURT: Good.

5 (A PAUSE.)

6 THE COURT: All right, Mr. Deysach, Mr. Geier,
7 gentlemen, are there any other matters of law that we need
8 to deal with from defense perspective before the jury is
9 brought in?

10 MR. DEYSACH: Yes, Your Honor. Restricting these not
11 to all three trial issues. Obviously, just ones that we
12 need to deal with before we start picking our jury.

13 THE COURT: Right.

14 MR. DEYSACH: As to your ruling that you would read
15 the indictment as -- that the accusation on the indictments
16 is that the -- my client in particular has a prior
17 conviction for a crime of violence, I am going to ask that
18 you do something slightly different.

19 I know that -- I agree with Mr. Robinson that the
20 reason that they're accused or alleged to be prohibited
21 from possessing a handgun is because they are convicted of
22 a crime of violence, not simply a felony, but also a crime
23 of violence.

24 THE COURT: Right.

25 MR. DEYSACH: I would also point out that under that

1 law, there are a number of classes of people besides
2 convicted felons or -- I mean, really I mean to say those
3 convicted of a crime of violence that are prohibited from
4 possessing a handgun. And I would ask you to rely, like
5 you mentioned, on Rule 403 regarding the prejudicial impact
6 and probative value. I'd also like to rely on Rule 404,
7 which asks that inappropriate propensity evidence not be
8 put before the jury, is also something that you might want
9 to rely on in fashioning what you say to the jury. And
10 asking that you tell them that they're accused of
11 possessing a gun while being a part of the prohibited class
12 of people who are not allowed to possess a gun, or
13 something obviously more artful than that. But that we
14 don't have to get into crimes of violence because when
15 we're talking a crime of violence to me sounds worse than a
16 felony. And I believe that ---

17 THE COURT: Right.

18 MR. DEYSACH: --- all those crimes of violence are
19 probably felonies that are, that are named. And so it kind
20 of kicks up the prejudicial impact a notch, as well as kind
21 of triggers, I think, a 404 character evidence problem when
22 we're going to be able to solve that problem simply by
23 saying they are prohibited, like a person adjudged unfit to
24 carry or possess a firearm, something along those -- that's
25 another example of a prohibited class of person prohibited

1 from possessing a firearm.

2 And when we're done with this, I did have another
3 issue that's not on this topic that I thought I wanted to
4 bring up before we brought the jury in. But I wanted --
5 obviously, I'm sure we want to deal with them one at a
6 time.

7 THE COURT: Thank you, Mr. Deysach.

8 MR. GEIER: Your Honor, if I may?

9 THE COURT: Yes, sir, Mr. Geier.

10 MR. GEIER: I'd like to touch on that briefly.
11 Basically, what we're dealing with here is *Old Chief* vs.
12 *United States*, a Supreme Court case that came down in 1997
13 under very similar facts to what we have here. *Old Chief*
14 was found for a number of things, but one of them was
15 possession of a firearm by an unlawful person.

16 THE COURT: Right.

17 MR. GEIER: They attempted to enter into a
18 stipulation, as we have with the state. That case has been
19 discussed in South Carolina a few times, but only in the
20 realm of burglary. The, both the Court of Appeals and
21 Supreme Court have said that *Old Chief* doesn't apply to
22 burglary because that's a specific offense case where if
23 you're going to bring up the first as opposed to the
24 second, you can only be looking at a prior burglary or a
25 house breaking.

1 And one thing that is interesting is -- I'll direct
2 your attention to *State vs. Hamilton*, which I have a copy
3 of, Your Honor, if you'd like to take a look at it.

4 THE COURT: Okay, if you'll hand it up, please. All
5 right. Okay.

6 MR. GEIER: All right, Your Honor, *State vs. Hamilton*
7 was a Court of Appeals case that was -- occurred fairly
8 soon after *Old Chief* came down the pike. Within *Old --*
9 *Hamilton*, they talk a little bit about why it was that
10 gun-specific charges don't warrant the same analysis as a
11 burglary charge. And specifically they said that, the
12 Supreme Court of the United States, the reason that
13 Congress made a plain -- distinctions among generic
14 felonies were irrelevant for the purpose of the crime
15 charged. And the most the jury needed to know was that the
16 admitted conviction fell within the class of crimes that
17 Congress felt should bar a convict from possessing a
18 weapon.

19 So, again we would -- I, I would say, point out the
20 federal statute, which I also have a copy of if you'd like
21 to review it, is substantially similar to our state
22 statute. And I think the analysis is the same.

23 (A PAUSE.)

24 THE COURT: All right, Mr. Robinson, what say you to
25 Mr. Geier's argument on the *State vs. Hamilton* rationale

1 and the *Old Chief* analysis?

2 MR. ROBINSON: Judge, I haven't been furnished with a
3 copy of the case. It does sound like -- may I look at it
4 briefly?

5 THE COURT: Yes, sir, I'm sorry. I'll get it on my
6 computer while you're doing that.

7 MR. ROBINSON: Thanks.

8 MR. ROBINSON: Beg the court's indulgence.

9 THE COURT: Okay.

10 (A PAUSE.)

11 MR. ROBINSON: Your Honor, I think this opinion
12 supports the state's position. It says clearly that if the
13 General Assembly had wished to use the prior convictions
14 merely as a sentence enhancer rather than an element of the
15 crime, it could have done so. In light of the, in light of
16 the decision in the United States Supreme Court in *Old*
17 *Chief*, the General Assembly may well wish to reexamine the
18 issue.

19 I think that I, in that regard, I would agree with,
20 with this opinion that the crime of violence is -- it's an
21 element of the offense for which I'm, I'm responsible to
22 prove beyond a reasonable doubt. And, I, I think that's
23 why -- and Mr. Geier's case, this discusses this, this
24 issue. That's why I can't stipulate. It's an element of
25 the offense I have to prove. And, two, and because they

1 were indicted as such, I don't think that, I don't think
2 that the court can gloss over and just say that they are a
3 prohibited person for trial purposes.

4 Now, for purposes of selecting the jury, if the court
5 wants to read the indictments in such a way that it is
6 limited -- limits itself to the language that they are
7 prohibited persons, the state doesn't have a problem with
8 that. However, for purposes of trial, for purposes of
9 proof beyond a reasonable doubt, I think the jury does need
10 to be told that their prior convictions are for a crime of
11 violence.

12 THE COURT: All right, Mr. Geier, I'll give you the
13 last word in that regard.

14 MR. GEIER: Thank you, Your Honor. I guess I'd
15 respond to Mr. Robinson by going back to the *Old Chief*
16 case itself, which I don't know if you have a copy.

17 MR. ROBINSON: I don't.

18 MR. GEIGER: Your Honor, do you have a copy?

19 THE COURT: I don't. I just got the citations from
20 the *Hamilton* case that I've been reading.

21 (A PAUSE.)

22 MR. GEIGER: And again, by way of background, Your
23 Honor, in *Old Chief*, again the defense tried to stipulate
24 with the prosecution that essentially he was within the
25 class of folks that should not be possessing firearms.

1 Now, if you look and read what the stipulation was and the
2 court's discussion of it, I think even the stipulation was
3 a little prejudicial, to be quite honest. But I'm going to
4 direct you to page 190 -- excuse me, 191.

5 THE COURT: Okay.

6 MR. GEIGER: Okay, see, I am one, two, three, four,
7 ten, ten rows up from the bottom of where it says 191, and
8 I'm going to read. It says:

9 Congress, however, has made it plain that
10 distinctions among generic felonies do not
11 count for this purpose. The fact of the
12 qualifying conviction alone is what matters
13 under the statute. If a defendant falls
14 within the category simply by virtue of a
15 past conviction for any qualifying crime,
16 ranging from the possession of short
17 lobsters to the most aggravated murder, the
18 most the jury needs to know is that the
19 conviction admitted by the defendant falls
20 within the class of crimes that Congress
21 thought should bar a convict from possessing
22 a gun.

23 I'll stop there, Your Honor.

24 THE COURT: Okay, let me go back to the factual issues
25 involved in this.

1 (A PAUSE.)

2 THE COURT: One of the distinctions that seems to
3 arise, Mr. Geier, is the distinction between the statute
4 and *Old Chief*.

5 And, Madame Reporter, that's two words, Old and Chief.

6 In that federal statute and our case, which is
7 16-23030, the *Old Chief* statute makes it unlawful, reading
8 the case: For anyone who has been convicted in any court of
9 a crime punishable by imprisonment for a term exceeding one
10 year to possess any firearm.

11 Now, in the face of that statute, the defense offered
12 a stipulation to prohibit the state from offering into
13 evidence or soliciting any testimony from any witness
14 regarding prior criminal convictions of the defendant
15 except to state that the defendant had been convicted of a
16 crime punishable by imprisonment exceeding one year, in the
17 words of the statute. The prosecution in that regard
18 refused to accept the stipulation, and the trial judge
19 ruled that it did not have to. And so the jury then heard
20 evidence of prior convictions of *Old Chief* which, in fact,
21 did involve possible penalty of more than a year. But the
22 specifics that were read into the record in that regard
23 were that *Old Chief* knowingly and wilfully assaulted Roy
24 Dean Pinner, resulting in serious bodily injury, et cetera,
25 for which he received five years' imprisonment.

1 And so the question in that case was whether a statute
2 which said you can't possess a firearm if you have been
3 convicted of a crime punishable by more than a year in jail
4 required or allowed, more specifically, evidence of the
5 specific crime, the elements of the crime, and the
6 punishments as it was given in that case. And I think that
7 there is a distinction, obviously, between that generic
8 statute that the Supreme Court referred to by words,
9 generic meaning any crime punishable by more than one year
10 in prison, and a statute which specifically says a person
11 who was convicted of a crime of violence in any court of
12 the Unites States.

13 Now, if the statute under which the state seeks to
14 meet its burden in this regard was worded so as the person
15 who has been convicted of a crime that carries a possible
16 penalty of more than a year in jail, then I would agree
17 that *Old Chief* is squarely on point, but that's not what
18 the statute says: A person who has been convicted of a
19 crime of violence in any court in the United States, et
20 cetera. And so the necessary element of the crime of
21 violence I think distinguishes it from *Old Chief* and,
22 frankly, brings it more in line with the *Hamilton* case,
23 which reached a similar decision to the ruling that I have
24 previously made. That there is a specific element beyond
25 the generic penalty by more than a year.

1 And I'm familiar with that distinction. I use it all
2 the time in making an analysis under Rule 608 and 609 about
3 introduction of a record when someone takes the stand. And
4 as we know, the Rule 609 refers to the admissibility a
5 prior criminal record: If the crime was punishable by death
6 or imprisonment in excess of one year under the law. And I
7 quite often allow the jury only to hear that the individual
8 was convicted of a crime punishable by more than a year in
9 jail without the specifics because that is indeed a generic
10 rule. And it has a generic application so that the jury,
11 in order to understand what the rule is designed to
12 prevent, simply has to know that the individual who was
13 convicted of a crime that meets the requirements of that
14 particular rule. That is, imprisonment by more than a
15 year.

16 The requirements of this particular statute are
17 convicted of a crime of violence. I think the jury is
18 entitled to know that under the statute, *Old Chief*
19 notwithstanding. As a matter of fact, I think probably
20 distinguishing *Old Chief* as I have done. I will allow that
21 information to go to the jury.

22 Mr. Deysach, I'm aware of your concern that the jury
23 could run away with what they might think the crime of
24 violence is. And I looked at the statute, but I'm afraid
25 that doesn't give me any relief. If I read what crimes of

1 violence are, there are some things in there which are even
2 worse than the crimes for which your folks are on trial.
3 And I think that that would muddy the water even more, but
4 I will be glad, if you would like for me to, to read that
5 statute because it goes all the way down to assault and
6 intent to commit any offense punishable by imprisonment for
7 more than a year, which is the least onerous of all the
8 crimes defined under that statute.

9 I will not give that specific instruction to a jury,
10 however, unless you all both request it. But I think the
11 jury is entitled to know the specifics in order to meet the
12 requirements of the statute. I'm going to give you back
13 the *Old Chief*.

14 MR. GEIER: Thank you, Judge.

15 MR. DEYSACH: Thank you, Judge.

16 THE COURT: All right.

17 MR. DEYSACH: And I just have a couple other brief
18 things, Your Honor.

19 THE COURT: Okay.

20 THE COURT: I am -- I appreciate your ruling. I think
21 I've said everything I need to say to make my record. The
22 only thing I was going to maybe reiterate, and this could
23 be redundant, is that the class of people prohibited in the
24 statute that they're being prosecuted under covers more
25 than just people who've been convicted of a crime of

1 violence or anything like that. But I think you've already
2 heard that, Your Honor, and I'm not asking you to rule
3 again.

4 THE COURT: And I'm not sure how many of those other
5 provisions apply to these people.

6 MR. DEYSACH: They probably don't.

7 THE COURT: So then it wouldn't be probative as to
8 their particular act. Okay.

9 MR. ROBINSON: I do have my requested *voir dire* and a
10 witness list, Your Honor. I believe I did share it with
11 the state, although I seem to have too many copies maybe to
12 have done that. I did on this copy circle the folks on my
13 witness list who are not on the state's witness list. I
14 don't know if you'd rather have that one so you don't have
15 to read these names twice.

16 THE COURT: That would be helpful so that I won't
17 duplicate those. If you would give that to me, I'd
18 appreciate it.

19 MR. GEIER: Your Honor, I have the same thing. Let me
20 take a look, though, put it all together so then that way
21 we don't have...

22 THE COURT: That would be helpful.

23 (COUNSELORS CONFER.)

24 MR. DEYSACH: I did have one last thing.

25 THE COURT: Okay.

1 MR. DEYSACH: When you're ready.

2 THE COURT: I'm ready.

3 MR. DEYSACH: Okay, the issue that I did preview in a,
4 I guess in a conference that the notice that Mr. Simuel has
5 received and I as his attorney have received, not just for
6 this term of court but for the, for the September 21st term
7 of court as notice of trial date has three indictment
8 numbers on it: 2008-GS-07, 1961, 1858 in 2009. Those
9 indictments are for burglary first, assault and battery
10 with intent to kill, and accessory before the fact of
11 assault and battery with intent to kill, not the, not the
12 possession of a weapon by a prohibited person or possession
13 of a weapon during a crime of violence.

14 The objection that I would have to the state going
15 forward on those cases, the gun charges, are that it's a
16 due-process violation. That my client is entitled to
17 notice as to what it's going to be, which indictments are
18 going to be tried against him.

19 I, I would note, I guess, you know, with all candor,
20 Your Honor, that the possession of a pistol during a crime
21 of violence, the facts I guess that are alleged there also
22 appear to be alleged perhaps in the burglary first
23 indictment. And burglary first indictment does say that --
24 what, what the aggravator is, possession of a weapon. So,
25 there may be, in all candor, Your Honor, an argument that

1 I'm on notice for that.

2 But for possession of a weapon by a person prohibited,
3 convicted of a crime of violence, however you want to put
4 it, that's, that's got a separate element to it, right?
5 And so there's more that we would have to do to develop
6 that.

7 The conviction is from out of state. It's under a, a
8 statute that without it in front of me may or may not match
9 up common-law robbery as we know it in this state. To be
10 honest with you, I don't have it in front of me. I know
11 I've looked at it, but it's -- you know, it was -- it may
12 be in expectation of the last time we were noticed, which
13 is back in September. That it is going -- it is something
14 that would require going above and beyond just defending
15 whether or not he's got a conviction, looking at an
16 indictment or, or a sentencing sheet. That it takes a
17 little bit more preparation than just that.

18 And so that is, I'm saying it's a due process
19 violation to try him on an indictment that he's not noticed
20 for. For that reason, I don't think I have to show
21 prejudice. But if I did have to, I would say that, I would
22 say that I'd have to do all this extra work to figure out
23 whether or not this robbery from another jurisdiction is
24 the same as robbery as we define it in South Carolina. And
25 that the fact that they're trying that case now, it seems

1 to be, now that we've gone through the last motion, is
2 going to result in the jury hearing that he's been
3 convicted of a crime of violence. And so those are the
4 prejudice -- that's the prejudice I want to point out.

5 THE COURT: I understand. Thank you. Just one
6 second.

7 I'll hear from Mr. Geier. You join in that?

8 MR. GEIER: Your Honor, as far as I can tell, those
9 facts don't apply to my case. The indictment listed
10 everything on mine.

11 THE COURT: Okay. Thank you.

12 All right, Mr. Robinson, let me hear from you in
13 response on the issue of notice.

14 MR. ROBINSON: Yes, Judge. I think not listing that
15 specific indictment number -- the other indictments for
16 that defendant were in 2008. That defendant -- that
17 indictment came later. I will, I will like to point out to
18 the court that each although the trial notice did not have
19 the 2009 indictment number on it, the notice of intent to
20 seek life without parole did. These defendants, because of
21 their prior convictions, are facing a mandatory life
22 without parole under the recidivist statute, 17-25-25.

23 THE COURT: Right.

24 MR. ROBINSON: And so the defendant and his public
25 defender was put on notice -- although not in the trial

1 notice -- in the notice to seek life without parole. So,
2 it's not as if there was no notice.

3 The other thing is is the discovery regarding their
4 prior convictions was provided months ago, probably in the
5 late spring, March or April. And furthermore, the
6 possession of a weapon after conviction of a crime of
7 violence is positively part of the *res jecti*. In fact, as
8 Mr. Deysach pointed out, the burg, the aggravating factor
9 in the burglary indictment is that he entered the home of
10 the victim while armed with a gun. And I think that, you
11 know, the totality of the circumstances, considering that
12 the notice of intent to seek life without parole, had the
13 2009 indictment with the weapons charge. And considering
14 that the, all the discovery regarding that charge has, has
15 long been furnished, there won't be any prejudice by trying
16 -- by, by doing those, those cases together. In fact, I
17 think it's the interest of judicial economy to have one
18 trial, one that would include the weapons charge along with
19 the other more serious charges.

20 THE COURT: All right, Mr. Deysach, you are the moving
21 party. You've got the last word.

22 MR. DEYSACH: I appreciate that. I would point out
23 that the -- there's been more than one, I guess, mention
24 from the solicitor's office, a notice to seek life without
25 parole, and it's certainly an issue I'm going to raise

1 again later, whether he truly is eligible. But that's not
2 what we're talking about right now.

3 There is one life without parole notice that includes
4 that, that indictment number, and it was faxed to my office
5 on the 5th of this month. So, I guess what I'm saying is,
6 that if you're trying to figure out what's going to be
7 tried, you look at your trial notice. I don't understand
8 why it's actually required to be on the LWOP notice since
9 conviction of that statute doesn't trigger any type of
10 recidivist statute anyway.

11 But, I mean, just, when you put an indictment number
12 on a document other than notice of trial date, it doesn't
13 give somebody notice of trial. And I would, like I say, I
14 would point out that the notice with intent doesn't have
15 the convicted -- or possession during a crime of violence
16 either.

17 So, standing out, like I said, it's a due-process
18 violation, and I think I've already stated what the
19 prejudice is.

20 THE COURT: Thank you, Mr. Deysach.

21 Insofar as the *res jesti* is concerned, Mr. Robinson,
22 I'm not sure this specific charge -- that is, a crime of
23 violence weapon charge -- is necessary to the *res jesti*.
24 Mr. Deysach has conceded, I think insofar as the burglary
25 and the ABWIK, that there is reference in those to

1 possession of a weapon. And certainly a weapon is clearly
2 a part of the *res jecti* on those two charges. Probably not
3 as clearly, in my view, on the felon in possession of a
4 handgun or weapons charge.

5 However, certainly Mr. Simuel is on notice that that
6 charge is out there. He's aware of it because it occurs on
7 other notices as well. It requires no additional research,
8 in my view, to defend that other than to look at the
9 elements of the particular offense for which he has been
10 convicted to determine that those do meet the requirement
11 of our statute. Those are the only two elements of that
12 particular offense. First of all, that an individual is in
13 possession of a weapon, number one, which is also an
14 element of the possession of a weapon during the commission
15 of a violent crime, which is part of the *res jecti* of the
16 other two charges. So, that -- there is no prejudice in
17 that regard. That has to -- is inherently a part of the
18 other cases.

19 Now, and as to whether he has been convicted of a
20 crime of violence under the law, that simply requires an
21 examination of the facts of the old case and a comparison
22 to the statute in this particular case. It is not a
23 factual distinction so much as a legal distinction that
24 needs to be drawn.

25 And, Mr. Robinson, I'm going to require you to reveal,

1 of course, to Mr. Deysach exactly whatever information you
2 have on the Georgia charges and how they purport to meet
3 the requirement under our statute. And then I'll look at
4 those things myself. And once I determine that the
5 evidence is clear that the Georgia conviction does come
6 within the umbrella of our section 16-23-30(v), then I'll
7 allow that charge to go to a jury over objection of defense
8 counsel. Understand?

9 MR. ROBINSON: I understand, Judge. I'm prepared to
10 furnish those materials whenever you'd like.

11 THE COURT: All right, thank you.

12 All right, gentlemen, have you all had a chance to
13 compare your *voir dire*, your witness list yet so that we
14 won't ---

15 MR. GEIER: Yes, sir.

16 THE COURT: --- duplicate anything? Mr. Geier?

17 MR. GEIER: Your Honor, I did the same thing as Mr.
18 Deysach. I crossed a few names off as well.

19 THE COURT: Okay.

20 MR. GEIER: And then I have the proposed *voir dire*.

21 MR. DEYSACH: Your Honor, the ones I circled are the
22 ones that are the extras on my list, not the duplicates.

23 THE COURT: So, these are the only ones that I need
24 from your list are the circled ones?

25 MR. DEYSACH: Yes, Your Honor.

1 MR. GEIER: And, Your Honor, mine are the same.

2 THE COURT: Very good. Thank you.

3 Gentlemen, any other *voir dire*, proposed *voir dire*
4 from the defense?

5 MR. DEYSACH: You've got it right there, Your Honor;
6 that's it for me, from Deysach for Simuel.

7 THE COURT: Okay.

8 (A PAUSE.)

9 THE COURT: Mr. Deysach, in regards to your proposed
10 *voir dire*, I will give everything except number three.

11 MR. DEYSACH: Number three, okay, about the, whether
12 or not somebody's married or related to anybody employed by
13 the Attorney General or the solicitor's office?

14 THE COURT: Or any other solicitor's office.

15 MR. DEYSACH: Or any other? Just this solicitor's
16 office?

17 THE COURT: I'm going to give you number two.

18 MR. DEYSACH: Okay.

19 THE COURT: Which pertains to this solicitor's office.

20 MR. DEYSACH: Okay, all right.

21 THE COURT: Number three pertains to our Attorney
22 General and any other solicitor's office. Since they're
23 not involved in the prosecution of this case, I'll decline.

24 MR. DEYSACH: Thank you, Your Honor.

25 THE COURT: Mr. Geier, some of yours are duplicative,

1 of course, of Mr. Deysach's. I will decline to give your
2 four or five or seven. The others I think I will include
3 in my, either my general *voir dire* or specific *voir dire* as
4 to this particular case. And your *voir dire* requests,
5 gentlemen, will be made a part of the record of this case
6 to preserve for appellate review.

7 MR. DEYSACH: Thank you, sir.

8 THE COURT: All right, all right, folks, are we ready
9 now for the jury to be brought in? Is the state ready, Mr.
10 Robinson?

11 MR. ROBINSON: State's ready, Your Honor.

12 THE COURT: Is the defense ready, Mr. Deysach, Mr.
13 Geier?

14 MR. GEIER: Defense ready.

15 MR. DEYSACH: Yes, Your Honor.

16 THE COURT: All right, gentlemen, have you all decided
17 from the defense perspective how you wish to exercise your
18 strikes?

19 MR. DEYSACH: Think we're going to do it together with
20 me announcing.

21 THE COURT: That's fine. Put your heads together and
22 you will announce?

23 MR. DEYSACH: Right.

24 THE COURT: The clerk will be very grateful for that.

25 CLERK OF COURT: Pardon?

1 THE COURT: The clerk will be grateful for that; that
2 makes it a lot easier.

3 CLERK OF COURT: Yes, it does.

4 THE COURT: All right, bring us the jury, please.

5 (OFF THE RECORD.)

6 (THE JURY PANEL ENTERS.)

7 (STATE'S REQUEST TO CHARGE MARKED INTO EVIDENCE AS
8 COURT'S EXHIBIT NUMBER 1.)

9 (DEFENDANT SIMUEL'S REQUEST TO CHARGE MARKED INTO
10 EVIDENCE AS COURT'S EXHIBIT NUMBER 2.)

11 (DEFENDANT PRICE'S REQUEST TO CHARGE MARKED INTO
12 EVIDENCE AS COURT'S EXHIBIT NUMBER 3.)

13 (OFF-THE-RECORD BENCH CONFERENCE.)

14 THE COURT: Madame Reporter, if you will note a motion
15 at sidebar made in a case unrelated to this one except for
16 jury selection process, and we'll put that on record out of
17 the presence of these jurors.

18 Good afternoon, ladies and gentlemen. My name is
19 Tommy Cooper. I am a circuit judge from Manning, South
20 Carolina. My status is retired/active. I'm not sure
21 exactly what that means. This week it means active; next
22 week it will mean retired, I suppose. I have served now
23 for seventeen years as a trial judge in the courts of our
24 state. Fifteen of those, I was a full-time active circuit
25 judge. For the past, well, going on three years now, I

1 have been in retired/active status. I still hold court one
2 week a month and do other things in the meantime. Some of
3 you all might enjoy retired status as well. And I can tell
4 you from my perspective if you, if you have a job that will
5 allow you to work one week a month, take it. It's not a
6 bad, not a bad thing to do, have that luxury.

7 I've enjoyed my trial work, and I look forward to
8 coming to Beaufort where I have served many times in the
9 past seventeen years. And I am glad to get a chance to
10 meet with folks like you and to work with the particular
11 court officials in this court again.

12 As you all know this morning from your qualification
13 process with Judge Kinard, you have been asked here this
14 week to serve potentially as jurors in the Court of Common
15 Pleas, which the civil side of the court, and some of you
16 were, perhaps all of you were present for that selection
17 process in a case that Judge Kinard is trying right now
18 down the hall, and also on the General Sessions side of the
19 courtroom. That's the criminal side of the courtroom. And
20 that's what you've been asked to come into this courtroom
21 this afternoon, to present yourself as potential jurors
22 for.

23 We're about to begin the trial of the case, of a
24 criminal case, and we're going to be asking you some
25 questions designed to determine your qualifications to

1 serve as jurors in this particular case.

2 (THE COURT CONFERS WITH CLERK OF COURT.)

3 THE COURT: Your oath that you took earlier this
4 morning still applies. It will apply, frankly, throughout
5 the week.

6 Mr. Solicitor, you can call your case.

7 MR. ROBINSON: State calls *State vs. Lucius Simuel*.
8 State also calls, also calls *State vs. Demetrius Price*.

9 THE COURT: Ladies and gentlemen, the state has called
10 the case of the *State vs. Lucius Simuel, Jr.*, and the *State*
11 *vs. Demetrius Price*. Mr. Simuel and Mr. Price have been
12 indicted by the grand jury of Beaufort County. I will
13 begin with the indictments against Mr. Simuel.

14 Mr. Simuel is indicted in indictment number 2008-1761
15 for the crime of burglary in the first degree. That
16 indictment says that in Beaufort County, South Carolina, on
17 or about July 28, 2008, the defendant, Lucius Simuel, did
18 enter the dwelling of Deon Cannick, C-A-N-N-I-C-K, and
19 Deverol Cannick, same spelling, located at [REDACTED] Fording Isle
20 Road, unit [REDACTED] without the consent of the owner and with
21 the intent to commit a crime there. And that while there
22 the defendant, Mr. Simuel, was armed with a deadly weapon
23 in violation of the law.

24 Mr. Simuel is also charged in indictment 2008 -- no,
25 actually 2009, with assault and battery with intent to

1 kill. That indictment alleges that here in Beaufort
2 County, the same time and place, the defendant with malice
3 aforethought committed an unlawful act of a violent nature
4 about the victim, Deverol Cannick: to wit, the defendant
5 shot the victim with a handgun in violation of the law.

6 Mr. Simuel is next indicted in 2008-1762 with
7 possession of weapon during the commission of a violent.
8 That indictment said that in Beaufort County, also on July
9 the 28th of 2008, the defendant, Mr. Simuel, did possess or
10 visibly display what appeared to be a handgun during the
11 commission or attempted commission of burglary in the first
12 degree, which is a violent crime, in violation of the law.

13 And finally, 2009-1366 accuses Mr. Simuel on July the
14 28th, 2008, with having in his possession a handgun when he
15 is, under the law, among a class of people prohibited from
16 owning or possessing a handgun.

17 Now, ladies and gentlemen, the indictments in regard
18 to Mr. Simuel which I've just read to you are not evidence.
19 Nor are they proof of the charges that they contain. They
20 are simply legal documents that tell you or me or anyone
21 else who reads them what these charges are all about. To
22 the charges contained in those indictments, Mr. Simuel has
23 entered pleas of not guilty and has asked for a jury trial
24 at your hands.

25 Mr. Simuel, will you please stand and face the jury

1 behind you? Thank you. You can be seated.

2 Ladies and gentlemen, are any of you related by blood
3 or connected by marriage to Mr. Lucius, Lucius Simuel, or
4 are you friends of his, or business associates of his,
5 casual acquaintance of his, or people who have any direct
6 or indirect contact with Mr. Simuel? If so, would you
7 please stand?

8 (NO ONE STANDS.)

9 THE COURT: Thank you.

10 Ladies and gentlemen, I next read the indictments
11 relating to the defendant Demetrius Price. Mr. Price is
12 indicted in indictment number 2009-68 with burglary in the
13 first degree. That indictment alleges that Mr. Price did
14 here in Beaufort County on or about July the 28th, 2008,
15 enter the dwelling of Deon and Deverol Cannick at [REDACTED]
16 Fording Island Road, apartment [REDACTED] in Bluffton, without the
17 consent of and with the intent to commit a crime, and in
18 addition while being armed with a weapon in violation of
19 the law.

20 Indictment 2009-66 charges Mr. Price with assault and
21 battery with intent to kill. That indictment says that Mr.
22 Price did in Beaufort County on or about July the 28th,
23 2008, with malice aforethought commit an unlawful act of
24 violent nature upon the victim Deon Cannick. Specifically,
25 he is accused of shooting the victim in violation of the

1 law.

2 Indictment 2009-69 charges Mr. Price with possession
3 of a weapon during the commission of a violent crime. That
4 indictment says that the defendant, Demetrius Price, did
5 possess a knife or visibly display what appeared to be a
6 handgun during the commission or attempted commission of
7 assault and battery with intent to kill, a violent crime in
8 violation of the law.

9 And finally, indictment 2009-1365 charges Mr. Price on
10 July the 28th, 2008, in Beaufort County with having in his
11 possession a handgun, having been declared by law to be a
12 possession -- to be a person, a prohibited person not
13 allowed to have possession of a handgun.

14 Likewise, ladies and gentlemen, the evidence -- the
15 indictments, I should say, against Mr. Price are not
16 evidence. Nor are they proof of the charges contained
17 therein. They are simply documents which tell us what this
18 case is all about.

19 And to the charges contained in these indictments, Mr.
20 Price has entered pleas of not guilty and has asked for a
21 jury trial at your hands. And so I now need to know if any
22 of you all are related by blood or connected by marriage to
23 Mr. Price. That is, are you kin to him? Are you business
24 associates, casual acquaintances, people who have any
25 direct or indirect contact with Mr. Price? If so, please

1 stand.

2 (NO ONE STANDS.)

3 THE COURT: Thank you. Now, ladies and gentlemen, I'm
4 going to read to you now a list of potential witnesses who
5 may testify in the trial of this case. These are potential
6 witnesses. I doubt that all of them will testify, but they
7 are potential witnesses, and I'm going to ask you the same
8 questions about these potential witnesses that I've asked
9 you about the parties themselves. I'm going to want to
10 know if you're kin to them, if you're related to them by
11 blood or by marriage. Or if you have any association with
12 them: business, personal, social, or otherwise. So, please
13 now listen as I read to you the list of potential witnesses
14 who may testify in this trial.

15 Potential witnesses who may testify in this trial are
16 Sharita Willingham; Jesse Reese; Martin Guzman; Malik
17 Campbell; Deon Cannick; Deverol or Devin Cannick; Tiah
18 Frazier; Doug Favor, a firefighter from Bluffton;
19 Lieutenant Jeff Meyer, a firefighter from Bluffton; Staff
20 Sergeant Angela Viens, V-I-E-N-S, from the Beaufort County
21 Sheriff's Office; Master Sergeant Mike Riley from the
22 sheriff's office; Corporal John Adams from the sheriff's
23 office; Investigator Dejuan Holmes from the sheriff's
24 office; Investigator Todd Calhoun from the sheriff's
25 department; Sergeant Jeff Lauver, L-A-U-V-E-R, from the

1 sheriff's office. Ladies and gentlemen, are any of you kin
2 to any of those potential witnesses, or friends or business
3 associates or casual acquaintances, or people who have any
4 direct or indirect contact with any of those potential
5 witnesses? If so, please stand.

6 Yes, ma'am, your name, please, ma'am.

7 JUROR: Joanne Hayward.

8 THE COURT: Would you give us your number, please?

9 JUROR: 98.

10 THE COURT: Ms. Hayward, tell me who the association
11 is with, please, ma'am.

12 JUROR: I think I heard two things of clients. I work
13 for the Department of Social Services.

14 THE COURT: All right. Ms. Hayward, could you share
15 with me those names? Are you allowed to do that? Well ---

16 JUROR: I'm not sure.

17 THE COURT: Well, I think we can probably figure it's
18 not anybody who's on the sheriff's department or
19 firefighters. Is that safe?

20 JUROR: Correct.

21 THE COURT: So, would your relationship with those
22 other potential witnesses make it difficult, whatever it
23 is, and it's a professional relationship or business
24 relationship as I understand it. Is that right?

25 JUROR: Yes.

1 THE COURT: Would that relationship make it difficult
2 for you to serve fairly and impartially as a juror in the
3 trial of this particular case? I note some hesitancy. You
4 think that it might?

5 JUROR: Yes. I, I, I'm not sure what their role is or
6 anything.

7 THE COURT: And I'm not either, Ms. Hayward.

8 JUROR: So, I ---

9 THE COURT: So, I can't help you in that regard. So,
10 can you imagine that, depending on what that role is, that
11 there might circumstances under which it would be difficult
12 for you to be fair and impartial as a juror in this case?

13 JUROR: Yes.

14 THE COURT: All right, we'll stand you aside then, Ms.
15 Hayward, as a juror in this case. Juror number 98 will be
16 stood aside in this case. Don't leave us yet, though, Ms.
17 Hayward. You stay with us.

18 Yes, ma'am, your name and number, please.

19 JUROR: Hansen, 91.

20 THE COURT: Thank you. Ms. Hansen, tell me about the
21 association, who it's with, please, ma'am.

22 JUROR: Angela Viens with the sheriff's department.

23 THE COURT: And is that a business relationship or a
24 personal relationship? How would you describe it?

25 JUROR: [INAUDIBLE].

1 THE COURT: Ma'am?

2 JUROR: She was the detective case on the case that
3 she handled for me when my daughter ran away.

4 THE COURT: All right. Thank you, ma'am. Would that
5 association make it difficult for you be to be fair and
6 impartial as a juror in this trial if you were asked to
7 serve?

8 JUROR: No.

9 THE COURT: Could you set aside that association and
10 decide this case based on the evidence presented the court?

11 JUROR: Yes, I could.

12 THE COURT: And would you do that, please, ma'am?

13 JUROR: Yes.

14 THE COURT: Thank you, Ms. Hansen.

15 Yes, sir, in the center. Your name, please, sir.

16 JUROR: Fernando Powell.

17 THE COURT: And your number, please?

18 JUROR: 192.

19 THE COURT: Thank you. Mr. Powell, tell me about the
20 association, please, sir. Who is it with?

21 JUROR: I work with the detention center.

22 THE COURT: So, you would know some of the officers
23 whose names have been ---

24 JUROR: Yes, sir.

25 THE COURT: Would that association make it difficult

1 for you to be fair and impartial as a juror in the trial of
2 this case if you were asked to serve?

3 JUROR: No, sir.

4 THE COURT: Could you set aside that association and
5 decide this case based on the evidence that you would hear
6 in court?

7 JUROR: Yes, sir.

8 THE COURT: And would you do that, please, sir?

9 JUROR: Yes, sir.

10 THE COURT: Thank you, Mr. Powell.

11 Yes, sir. Your name, please, sir.

12 JUROR: Michael Amagliani, number 4.

13 THE COURT: Okay, Mr. Amagliani, tell me about the
14 association, please, sir.

15 JUROR: Mike Riley with the sheriff's department, a
16 family friend.

17 THE COURT: A family friend. Would that friendship
18 make it difficult for you to serve fairly and impartially
19 in the trial of a case in which he's likely to testify?

20 JUROR: It would not.

21 THE COURT: Could you set aside that association and
22 decide this case based on what you would hear in court
23 without regard to that association?

24 JUROR: Yes.

25 THE COURT: Thank you, sir, and will you do that,

1 please, sir?

2 JUROR: Yes.

3 THE COURT: Thank you, sir.

4 Yes, ma'am, your name, please.

5 JUROR: I'm Tonya Lee, 136. Devin and Deon's
6 stepmother is my aunt.

7 THE COURT: All right, one second.

8 (A PAUSE.)

9 THE COURT: Ms. Lee, is it?

10 JUROR: Yes.

11 THE COURT: And who, said who?

12 JUROR: Devin and Deon's stepmother is my aunt.

13 THE COURT: I see. So, you're related to both, to ---

14 JUROR: To their stepmother.

15 THE COURT: Right. All right, Ms. Lee, would that
16 make it difficult for you to serve fairly and impartially
17 as a juror in this trial? I take it you know something
18 about this case?

19 JUROR: Yes.

20 THE COURT: All right, I'm going to be asking you
21 about that in just a minute, and so I'm going to come back
22 to you in that regard, Ms. Lee, and inquire further about
23 that, okay?

24 JUROR: Okay.

25 THE COURT: Thank you, ma'am.

1 Ladies and gentlemen, other witnesses who may testify
2 in the trial of this case: Lance Corporal Erin Morris from
3 the sheriff's office; Staff Sergeant Joel Calandra,
4 C-A-L-A-N-D-R-A, I take it from the sheriff's office; Eric
5 Calendine from the sheriff's office; Jean, J-E-A-N, Roberts
6 from the sheriff's office; Eileen Rios from the sheriff's
7 office; Ramona Cooper from the sheriff's office; Jovan
8 Murphy; Charlie Carlson from the Savannah Memorial
9 Hospital; Dr. G-A-G-E, Gage Ochsner, medical doctor; Dr.
10 William Bromberg, B-R-O-M-B-E-R-G, medical doctor; Ken
11 Whitler, Whitler from the South Carolina Law Enforcement
12 Division, SLED. I need to know if any of you all are
13 related by blood or connected by marriage to any of those
14 potential witnesses, or if you are friends of theirs,
15 business associates, casual acquaintances, or if you are
16 patients of any of the doctors whose names I've read. If
17 so, will you please stand?

18 All right. Yes, ma'am, your name, please ma'am.

19 JUROR: Townsend, 234. Ramona Cooper.

20 THE COURT: All right, let's see, 234, Ms. Townsend,
21 okay, and tell me about your connection with Ms. Cooper,
22 please, ma'am.

23 JUROR: She's an acquaintance.

24 THE COURT: All right, would you call her a casual
25 acquaintance? Would that be fair, or a close, personal

1 relationship? How would you describe it?

2 JUROR: We go to church together.

3 THE COURT: Ma'am?

4 JUROR: We go to church together.

5 THE COURT: Okay. Would that association make it
6 difficult for you to be fair and impartial as a juror in a
7 trial in which she may testify?

8 JUROR: Yes.

9 THE COURT: Could you set aside that association and
10 decide this case based on the evidence that you would hear
11 in court, and will you do that, please, ma'am?

12 JUROR: Yes.

13 THE COURT: Thank you, Ms. Townsend.

14 Yes. Your name, please, ma'am.

15 JUROR: Lynn Doukas, 52.

16 THE COURT: Ms. Doukas, who is your relationship with,
17 please?

18 JUROR: Eric Calendine. I'm friends with his wife.

19 THE COURT: Okay. Would that association make it
20 difficult for you to serve fairly -- that's okay. I'm not
21 going to let you off quite that easy. Ms. Doukas, would
22 that association make it difficult for you to serve fairly
23 and impartially as a juror on this case if you were asked
24 to serve?

25 JUROR: I don't think so.

1 THE COURT: Could you set aside that association and
2 decide this case based on the evidence without regard to
3 that association?

4 JUROR: Yes.

5 THE COURT: Would you do that, please, ma'am?

6 JUROR: Yes.

7 THE COURT: Thank you, Ms. Doukas.

8 Yes, sir. Your name, please, sir.

9 JUROR: Robert Marotta, number 152.

10 THE COURT: That number again, please, sir?

11 JUROR: 152.

12 THE COURT: Thank you, Mr. Marotta. Tell me about the
13 association, who it's with, please, sir.

14 JUROR: Calendine.

15 THE COURT: And what's the nature of it, please, sir?

16 JUROR: He investigated the case in which I was a
17 defendant.

18 THE COURT: All right, sir. Would that association
19 make it difficult for you to be fair and impartial as a
20 juror in this case?

21 JUROR: No, sir.

22 THE COURT: Could you set aside that association and
23 decide this case based on the evidence?

24 JUROR: Yes.

25 THE COURT: And would you do that, please, sir?

1 JUROR: Yes.

2 THE COURT: Thank you, Mr. Marotta.

3 Ladies and gentlemen, other potential witnesses who
4 may testify in the trial of this case are Harry Chris
5 Battle; PFC Singleterry from the sheriff's office; Corporal
6 Thomas from the Drug Task Force; Ronita Berry, a chemist
7 from the sheriff's office. Are any of you related by blood
8 or connected by marriage to any of those potential
9 witnesses, or friends, casual acquaintances, business
10 associates, or people who have any direct or indirect
11 contact with any of those witnesses? If so, please stand.

12 All right, against the aisle, your name, please,
13 ma'am.

14 JUROR: Eisaman, 64.

15 THE COURT: Ms. Eisaman, tell me who the association
16 is with, please, ma'am.

17 JUROR: Officer Singleterry.

18 THE COURT: And what's the nature of that association?

19 JUROR: I received a traffic ticket from him.

20 THE COURT: I'm sorry?

21 JUROR: Traffic ticket.

22 THE COURT: Okay. Issued you a traffic ticket?

23 JUROR: Yes.

24 THE COURT: You going to hold that against him if he
25 testifies in this case? Would that association make it

1 difficult for you to be fair and impartial as a juror in
2 the trial of this case?

3 JUROR: No.

4 THE COURT: You'd be able to set that aside and decide
5 this case based on the evidence that you would hear?

6 JUROR: Yes, sir.

7 THE COURT: Thank you, Ms. Eisaman. You're a lot more
8 open minded than I am. I believe I'd have held that
9 against him. Thank you.

10 Yes, ma'am, your name, please.

11 JUROR: Ruth Peters, 182.

12 THE COURT: Ms. Peters, who is the association with,
13 please?

14 JUROR: I go to church with the Singleterry family.

15 THE COURT: Your friends of theirs?

16 JUROR: Uh-huh.

17 THE COURT: Would that friendship, Ms. Peters, make it
18 difficult for you to be fair and impartial as a juror in
19 the trial of this case?

20 JUROR: No.

21 THE COURT: Would you set that association aside and
22 decide this case based on the evidence that you will hear?

23 JUROR: Yes.

24 THE COURT: Will you do that, please, ma'am?

25 JUROR: Yes, sir.

1 THE COURT: Thank you, Ms. Peters.

2 Yes, ma'am, your name, please.

3 JUROR: Regina Armistead, number 5, and it's Officer
4 Singleterry, too. Same as Ruth, we go to church with the
5 family.

6 THE COURT: Okay. I know you were quick to say he
7 didn't give you a ticket.

8 JUROR: Just good friends.

9 THE COURT: All right. Ms. Armistead, would that
10 association make it difficult for you to be fair and
11 impartial as a juror in this trial?

12 JUROR: No.

13 THE COURT: Could you set that aside and decide this
14 case based on the evidence that you hear in court?

15 JUROR: Yes, sir.

16 THE COURT: Thank you, ma'am.

17 Ladies and gentlemen, the lawyers who will be involved
18 in the trial of this case are, on behalf of the state, the
19 case will be prosecuted by Assistant Solicitor Alex
20 Robinson of the Fourteenth Judicial Circuit Solicitor's
21 Office. The defendant Mr. Simuel is represent by Mr. Ian
22 Deysach of the public defender's office. Senior moment
23 there, I'm sorry. And Mr. Price is represented by Mr.
24 Chris Geier of the Vaux and who, who else?

25 MR. GEIER: Vaux and Marscher, Your Honor.

1 THE COURT: Vaux and Marscher, a law firm here in
2 Beaufort County. Thank you, gentlemen.

3 Ladies and gentlemen ---

4 MR. ROBINSON: Your Honor.

5 THE COURT: I need to know if any of you all are
6 related by blood or -- yes, sir?

7 MR. ROBINSON: I just wanted to mention that Rob,
8 Robert Ferguson is going to be sitting with me.

9 THE COURT: Sure, I apologize. Mr. Robbie Ferguson,
10 also from the solicitor's office, will be assisting in the
11 prosecution of this case. I'm sorry.

12 Ladies and gentlemen, I need to know about your
13 association now with these lawyers. If you are friends of
14 theirs or business associates of theirs or casual
15 acquaintance of theirs, if you've ever been represented by
16 any of them in the past, or if you've ever been sued by any
17 of them in the past, will you please stand?

18 Okay, yes, sir. Your name again, please sir.

19 JUROR: Amagliani.

20 THE COURT: Mr. Amagliani is juror number 4. Tell me
21 who the association is with, please, sir.

22 JUROR: Vaux and Marscher.

23 THE COURT: And they have represented you in the past?

24 JUROR: No.

25 THE COURT: Have not?

1 JUROR: Sued me.

2 THE COURT: From the other side. Would that
3 association make it difficult for you to be fair and
4 impartial as a juror in the trial of this case in which one
5 of the members of that firm is representing one of the
6 sides?

7 JUROR: No, sir.

8 THE COURT: Could you set aside that matter and decide
9 this case based on the evidence that you hear in court?

10 JUROR: Yes.

11 THE COURT: And you'll do that, please, sir?

12 JUROR: Yes.

13 THE COURT: Thank you.

14 Yes, Ms. Armistead?

15 JUROR: My husband is casual acquaintances with Mr.
16 Vaux. I don't personally know him.

17 THE COURT: Okay. Would that association make it
18 difficult for you to be fair and impartial in the trial of
19 this case?

20 JUROR: Not at all.

21 THE COURT: Thank you, ma'am. You can be seated.

22 Ladies and gentlemen -- oh, I'm sorry. I apologize,
23 Ms. Eisaman.

24 JUROR: Yes, sir.

25 THE COURT: Juror number 64.

1 JUROR: Yes.

2 THE COURT: Who's the association with?

3 JUROR: Vaux and Marscher.

4 THE COURT: All right, and they have represented you,
5 or been on one side or the other?

6 JUROR: No. I didn't know if I needed to stand up.
7 I'm in real estate, and I've handled some closings.

8 THE COURT: Oh, I see. Yes, ma'am, that's fair.
9 Would that make it difficult for you to be fair and
10 impartial as a juror?

11 JUROR: No, sir.

12 THE COURT: Thank you, ma'am.

13 Yes, sir?

14 JUROR: Luella Hansen, 91.

15 THE COURT: Ms. Hansen.

16 JUROR: I'm also in real estate and have done closings
17 with Vaux and Marscher, but I haven't been sued or
18 anything.

19 THE COURT: Okay. Would that impact your ability to
20 be fair and impartial?

21 JUROR: No.

22 THE COURT: Thank you, ma'am.

23 Ladies and gentlemen, I read to you the indictments in
24 this case. As I indicated to you, the indictments are not
25 evidence, nor are they proof of the charges contained in

1 them. They're simply legal documents that tell us what
2 this case is all about. And I read that because I need to
3 know if you know anything about this case. If you have
4 seen or heard or read anything about this case, or if you
5 have any knowledge about this case from any source at all,
6 would you please stand?

7 Ms. Lee is juror number 136, right? Okay, I'm going
8 to get you folks to come down and talk with me individually
9 in just a moment.

10 Yes, ma'am, your name, please, on the aisle?

11 JUROR: Lopanik, and it's 142.

12 THE COURT: 172?

13 JUROR: Uh-huh.

14 THE COURT: Thank you.

15 Yes, ma'am?

16 JUROR: Doukas, 52.

17 THE COURT: Thank you.

18 And I've already excused you, Ms. Hayward, so you
19 don't have to stand any more. Thank you. Thank you,
20 though.

21 All right, Ms. Lee, I'm going to ask you to come
22 forward first, and then, ladies, the other two, if you all
23 will form a line, please, and then I'll bring you down
24 individually.

25 Counsel, you all can approach, please.

1 (THE FOLLOWING CONFERENCES ARE HELD AT SIDEBAR IN THE
2 PRESENCE OF ALL COUNSEL.)

3 THE COURT: Ms. Lee, if you'll come right here,
4 please, ma'am, and stand right here by me and speak so that
5 this lady right here can hear you.

6 You indicated that you are the niece of the stepmother
7 of the two victims in this case?

8 JUROR: Yes, sir.

9 THE COURT: I take it you've heard something about
10 this case from the family.

11 JUROR: Yes, sir.

12 THE COURT: Is that right? Were you present during
13 family discussions involving the victims themselves?

14 JUROR: Yes.

15 THE COURT: Have you talked with the victims
16 themselves ---

17 JUROR: No.

18 THE COURT: --- about this case? You just talked
19 about it with their stepmother?

20 JUROR: Their stepmother, my aunt.

21 THE COURT: Based on your discussions with their
22 stepmother, have you formed in your mind any opinion about
23 whether you think these folks are guilty of these charges?

24 JUROR: No.

25 THE COURT: You haven't?

1 JUROR: Uh-uh.

2 THE COURT: Do you have any opinion as to their guilt
3 or innocence?

4 JUROR: No.

5 THE COURT: What sort of discussions have you had with
6 these folks, with the ---

7 JUROR: Stepmother?

8 THE COURT: Yes, ma'am.

9 JUROR: During the whole time they were in the
10 hospital, she would come over and she was talking about the
11 kids, and talk about how the guys went in the house, and
12 Deon got shot. You know, just the basic details.

13 THE COURT: All right. Did she tell you who she
14 thought shot them?

15 JUROR: Yeah, they mentioned a guy's name, but I
16 didn't remember.

17 THE COURT: Right. Do you think you'd be able to set
18 aside all those conversations and decide this case based on
19 the evidence that you would hear in court?

20 JUROR: Yeah, I should, should be able to do that.

21 THE COURT: You think you could? All right, thank
22 you, ma'am. If you'll go back and have a seat.

23 (JUROR WITHDRAWS.)

24 THE COURT: I'm going to excuse Ms. Lee as a juror in
25 this case.

1 Ms. Lopanik, if you'll stand right there and speak so
2 that she can hear you.

3 JUROR: Okay.

4 THE COURT: Tell me what you've heard about the case.

5 JUROR: I just recognize names from reading newspaper
6 articles.

7 THE COURT: Okay.

8 JUROR: I have no special knowledge.

9 THE COURT: Okay. You read the news articles when
10 this event occurred a couple of years ago?

11 JUROR: Uh-huh. Uh-huh. Uh-huh. I just recognized
12 the names.

13 THE COURT: For the last year?

14 JUROR: Yeah.

15 THE COURT: Right. In your own mind, did you form any
16 opinion as to the guilt or the innocence of these young men
17 on trial here today?

18 JUROR: No.

19 THE COURT: If you were asked to serve as a juror in
20 this case, would you be able to set aside what you read in
21 this case and base your decision on the evidence that you
22 would hear without regard to what you've read?

23 JUROR: Yes.

24 THE COURT: Would you do that, please, ma'am?

25 JUROR: Uh-huh.

1 THE COURT: Thank you, ma'am. You can go back and
2 have a seat.

3 (JUROR WITHDRAWS.)

4 MR. ROBINSON: What's her number?

5 THE COURT: Number 142.

6 Ms. Doukas, number 52, if you will stand right here,
7 please, ma'am, and speak so that she can hear you.

8 JUROR: Okay.

9 THE COURT: Tell me what you've heard about this case.

10 JUROR: I remember reading it in the newspaper,
11 indicating that perhaps it was a drug-related issue, but
12 just that's, that's all.

13 THE COURT: That's about it? At the time that it
14 occurred, you read it?

15 JUROR: Yeah.

16 THE COURT: Okay. Based on what you read at that
17 time, did you form in your own mind or did you express to
18 anybody else any opinion that you might have as to the
19 guilt or the innocence ---

20 JUROR: No.

21 THE COURT: --- of these people?

22 JUROR: No, I did not.

23 THE COURT: If you were asked to serve as a juror in
24 this case, would you be able to set aside what you've read
25 about this case and base your decision on what you hear in

1 this courtroom without regard to ---

2 JUROR: I believe I can.

3 THE COURT: Would you do that?

4 JUROR: Yes.

5 THE COURT: Thank you, Ms. Doukas.

6 JUROR: Okay.

7 (JUROR WITHDRAWS.)

8 THE COURT: Any exceptions to any of those rulings,
9 gentlemen?

10 MR. ROBINSON: None from the state.

11 (END OF CONFERENCES AT SIDEBAR.)

12 THE COURT: Now, ladies and gentlemen, I want you to
13 pay particular attention to this next questions. It has
14 three parts to it. I'm sorry about that, but there's no
15 way I can shorten it.

16 I've just discussed with some of you information that
17 you may have about this particular case, what you've heard
18 about it or read about it in the newspaper, things of that
19 nature.

20 This case involved crimes, allegations of crimes of
21 personal violence. Assault and battery with intent to kill
22 is a crime of personal violence, for example. Crimes of
23 personal violence are crimes against the person: assault
24 and battery, assault and battery of a high and aggravated
25 nature, assault and battery with intent to kill, criminal

1 sexual conduct, criminal domestic violence, murder,
2 manslaughter. All of these are examples, and I offer them
3 only as examples of crimes of personal violence.

4 And I tell you that because I want to know if any of
5 you or any members of your immediate family have ever been
6 involved in a crime of personal violence. So, the question
7 applies not only to you all. It applies to any members of
8 your immediate family. That is, the members of your
9 household. We don't need to know about distant relatives
10 unless that would have some impact on your ability to be
11 fair and impartial. Certainly we would want to know that.
12 But primarily we're concerned about you or members of your
13 household.

14 And the question applies not only to the crimes
15 charged in these indictments -- that assault and battery
16 with intent to kill -- but also other crimes, similar
17 crimes. Burglary is one of the charges in these
18 indictments, for example, and the other crimes of personal
19 violence which I have mentioned to you. So, it involves a
20 wide range of possible involvement in these various crimes.

21 And finally, it applies to whether or not you or a
22 member of your family was a victim of the crime. That is
23 the person against whom the crime was inflicted. Or
24 whether you or a member of your family was a defendant in
25 the crime. That is the person who was charged with the

1 crime. Or whether you or your family member was a witness
2 to the crime.

3 So, those are the three parts. It applies to you and
4 to members of your household, your immediate family. It
5 applies to not only the crimes charged in these indictments
6 -- burglary, and assault and battery with intent to kill --
7 but also those other crimes of personal violence that I
8 mentioned to you. And finally, it applies to a wide range
9 of involvement in those crimes. You or your family member
10 could have been a victim. You or your family member could
11 have been a defendant. You or your family member could
12 have been a witness.

13 Now, if that question applies to you in any of those
14 respects, I want you to stand right now in place right
15 where you are, and we'll get your name and your juror
16 numbers, and we'll bring you forward privately one at the
17 time to talk with you about your situation, okay? If
18 you'll stand right now, we'll try to get your names and
19 your numbers. We'll start on this side, give these folks a
20 chance, a break for the time being.

21 JUROR: Lopanik, 142.

22 THE COURT: All right. Ms. Lopanik, if you'll come
23 around, you can get in line first. You'll be the first
24 person we'll talk about or talk to. Sorry about that.

25 Yes, we'll start with -- yes, sir.

1 JUROR: Stevens, 225.

2 THE COURT: All right, sir, you can be next in line,
3 please.

4 JUROR: Joseph Gaddis, 76.

5 THE COURT: 76. Thank you, sir.

6 Yes, ma'am, are you standing, are you standing in the
7 aisle?

8 JUROR: Standing for him.

9 THE COURT: All right. Thank you, ma'am.
10 Your name, please?

11 JUROR: Anne Meier, 166.

12 THE COURT: 166. Thank you, Ms. Meier. You can get
13 in line.

14 Yes, sir.

15 JUROR: Dyer, 48.

16 THE COURT: 48. Thank you, sir.

17 JUROR: Armistead, 5.

18 THE COURT: Thank you, Ms. Armistead.

19 Yes, ma'am.

20 JUROR: Jill McAden, 155.

21 THE COURT: 155. Thank you.

22 Is that everybody on that side? Yes, ma'am, your
23 name?

24 JUROR: Wanda Vanderwoken 2 -- 236.

25 THE COURT: 236. Thank you, ma'am. I'm just writing

1 down numbers right now. I'll have to look those up so when
2 I get to you, it's quicker this way.

3 Yes, sir. Your name, please, sir.

4 JUROR: Gerard T. O'Hara, 182.

5 THE COURT: Thank you.

6 Yes, ma'am, at the back.

7 JUROR: Tonya Sayers, 206.

8 THE COURT: 206. Thank you, ma'am.

9 Okay, on the aisle here, please. Yes, ma'am, you.

10 JUROR: Nance, 179.

11 THE COURT: 179. Thank you, ma'am.

12 Yes, ma'am, in the stripes.

13 JUROR: Townsend, 234.

14 THE COURT: Okay.

15 Yes, ma'am.

16 JUROR: Lizzie Reed, 195.

17 THE COURT: 195, Thank you.

18 Okay, everyone approach.

19 (THE FOLLOWING CONFERENCES ARE HELD AT SIDEBAR IN THE
20 PRESENCE OF ALL COUNSEL.)

21 THE COURT: All right, Ms. Lopanik. Stand right here
22 and speak.

23 JUROR: Okay.

24 THE COURT: Was it you or a member of your family that
25 was involved?

1 JUROR: I was the victim.

2 THE COURT: All right, and what was the crime?

3 JUROR: It was assault with a dead -- with intent to
4 kill.

5 THE COURT: Okay, and where did that occur and when?

6 JUROR: It was in Beaufort County and it was, oh gosh.

7 THE COURT: About how long ago?

8 JUROR: '80, about '85, 1985, twenty ---

9 THE COURT: Was anybody ever caught and convicted?

10 JUROR: Yes.

11 THE COURT: The solicitor's office at that time
12 prosecuted the case, I take it?

13 JUROR: Well, it was part of a divorce.

14 THE COURT: I see, I see.

15 JUROR: Agreement, whatever.

16 THE COURT: I see. So, a family member was involved
17 in that? Is that what you're telling me?

18 JUROR: Yeah.

19 THE COURT: All right. Okay. Ms. Lopanik, would your
20 experience in that regard as a victim of a crime which is
21 similar to the ones charged in this case make it difficult
22 for you to be fair and impartial as a juror in this trial?

23 JUROR: I think it would.

24 THE COURT: It would, and I can understand why it
25 would. I'm going to ask you to go back and have a seat.

1 Please don't discuss your involvement with anybody else.

2 JUROR: No.

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

4 (JUROR WITHDRAWS.)

5 THE COURT: Juror number 142 will be stood aside in
6 this trial.

7 Mr. Stevens, if you'll stand right there and speak so
8 she can hear you.

9 Mr. Stevens, was it you or a family member who was
10 involved?

11 JUROR: Actually, I have two of them.

12 THE COURT: Okay.

13 JUROR: The first one, I lived in an apartment in
14 Atlanta.

15 THE COURT: Okay.

16 JUROR: The apartment was broken into while I was a
17 resident.

18 THE COURT: Okay. So, that would involve you?

19 JUROR: Yes, sir.

20 THE COURT: As a break-in, and tell me what the other
21 one's about.

22 JUROR: Was my ex-partner.

23 THE COURT: Okay.

24 JUROR: He and I spent the evening in Beaufort
25 emergency room recently.

1 THE COURT: Right.

2 JUROR: After he got beaten up real bad by his
3 boyfriend.

4 THE COURT: Okay. Has anybody been caught and
5 prosecuted as a result of that?

6 JUROR: No. He refused to press charges.

7 THE COURT: Would either of those events or both of
8 them together collectively make it difficult for you to be
9 fair and impartial as a juror in this particular case?

10 JUROR: No, sir.

11 THE COURT: Could you set aside your own experience in
12 those cases and decide this case based on what you would
13 hear in court without regard to those things?

14 JUROR: Yes, sir.

15 THE COURT: And would you do that, please, sir?

16 JUROR: Yes, sir.

17 THE COURT: Thank you, Mr. Stevens. You can go back
18 and have a seat.

19 (JUROR WITHDRAWS.)

20 THE COURT: Mr. Gaddis, Mr. Gaddis, was it you or a
21 family member who was involved?

22 JUROR: Me. I was the victim of assault in high
23 school.

24 THE COURT: Okay, how long ago was that?

25 JUROR: Oh.

1 THE COURT: Tell me how old you are.

2 JUROR: Thirty. Fourteen years.

3 THE COURT: Okay. Was anybody caught and prosecuted
4 with that?

5 JUROR: Yes.

6 THE COURT: All right. Would your experience in that
7 regard, Mr. Gaddis, make it difficult for you to serve
8 fairly and impartially as a juror in this case?

9 JUROR: No.

10 THE COURT: Could you set aside those experiences and
11 decide this case based on what you hear in court?

12 JUROR: Yes.

13 THE COURT: And would you do that?

14 JUROR: Yes.

15 THE COURT: Thank you, Mr. Gaddis.

16 (JUROR WITHDRAWS.)

17 THE COURT: Ms. Meier, if you'll stand there and speak
18 so that she can hear you.

19 Was it you or a family member that was involved?

20 JUROR: My daughter.

21 THE COURT: And what was the situation?

22 JUROR: She was spending the night over at someone's
23 house, and burglars came in and robbed them at gunpoint and
24 tied them up and left them there.

25 THE COURT: Okay. How long ago was that?

1 JUROR: About twenty-five years ago.

2 THE COURT: Did that happen here or somewhere else?

3 JUROR: Up in New York.

4 THE COURT: Okay. Was anybody ever caught and
5 prosecuted as a result of that?

6 JUROR: Yes. They did eventually catch them.

7 THE COURT: Okay, would you -- and your daughter was
8 living at home with you obviously at the time?

9 JUROR: Yes, but she was visiting a friend.

10 THE COURT: I see. Would your experience, obviously
11 through your daughter in that regard, make it difficult for
12 you to be fair and impartial as a juror in this particular
13 case if you were asked to serve?

14 JUROR: No.

15 THE COURT: Could you set that experience aside and
16 decide this case based on what you would hear in court
17 without regard to that, and would you do that, please,
18 ma'am?

19 JUROR: Yes.

20 THE COURT: Thank you, Ms. Meier. You can go back and
21 have a seat.

22 (JUROR WITHDRAWS.)

23 THE COURT: Yes, I've got -- I don't have a right
24 number for you down, I'm afraid. What's your name and
- 25 number again, please, sir?

1 JUROR: Joey Dyer, 48.

2 THE COURT: Okay, Dyer.

3 JUROR: Oh, 58.

4 THE COURT: Oh, okay, that's what's wrong. Mr. Dyer,
5 was it you or a family member that was involved?

6 JUROR: A family member.

7 THE COURT: And what relation was it to you?

8 JUROR: Ex-wife.

9 THE COURT: Okay, and what was the crime involved?

10 JUROR: Domestic violence, criminal domestic violence.

11 THE COURT: Okay. Was she a victim, or was she ---

12 JUROR: A victim.

13 THE COURT: She was a victim. Was anybody caught and
14 prosecuted as a result of that?

15 JUROR: I, I went to jail a couple of times.

16 THE COURT: You did?

17 JUROR: Yes, sir.

18 THE COURT: All right. So, you've been involved both
19 as a defendant and the victim?

20 JUROR: Yes, sir.

21 THE COURT: Was that here in Beaufort County?

22 JUROR: Yes, sir.

23 THE COURT: Were you prosecuted by the solicitor's
24 office here?

25 JUROR: I'm not -- yeah, probably. I don't remember.

1 THE COURT: Was this handled in magistrate's court or
2 was it handled in circuit court?

3 JUROR: Magistrate.

4 THE COURT: Okay. Would your experience in that
5 regard make it difficult for you to be fair and impartial
6 as a juror in this case if you're asked to serve?

7 JUROR: No.

8 THE COURT: Could you set aside that experience and
9 discuss this case based on what you hear in court?

10 JUROR: Yes, sir.

11 THE COURT: Would you do that, please, sir?

12 JUROR: Yes, sir.

13 THE COURT: Thank you, Mr. Dyer.

14 (JUROR WITHDRAWS.)

15 THE COURT: Ms. Armistead, and just stand here and
16 speak so that she can hear you.

17 Was it you or a family member who was involved?

18 JUROR: Family member.

19 THE COURT: And what was the relation to you, please,
20 ma'am?

21 JUROR: He's my husband now. At the time, we were
22 dating.

23 THE COURT: Okay.

24 JUROR: This was many years ago.

25 THE COURT: All right, and what was the crime

1 involved?

2 JUROR: Assault and stolen property outside our
3 apartment, and the guy told him he had a gun. Mike never
4 saw it.

5 THE COURT: I see. Was that here in Beaufort County?

6 JUROR: No, Miami.

7 THE COURT: Was anybody ever caught and prosecuted as
8 a result of that?

9 JUROR: No, they were not.

10 THE COURT: Okay. Things like that cause you to leave
11 Miami?

12 JUROR: Friends just said glad you got it over with.

13 THE COURT: Right.

14 JUROR: Welcome to Miami.

15 THE COURT: You're right. Sort of a rite of passage.

16 JUROR: Yes.

17 THE COURT: Would your experience in that regard or
18 with that of your now husband make it difficult for you to
19 serve fairly and impartially as a juror in this case?

20 JUROR: Not at all.

21 THE COURT: Could you set aside that experience and
22 decide this case based on what you'd hear in court?

23 JUROR: Yes, sir.

24 THE COURT: Would you do that, please?

25 JUROR: I'd be glad to.

1 THE COURT: Thank you, Ms. Armistead. You can go back
2 and have a seat.

3 (JUROR WITHDRAWS.)

4 THE COURT: Yes, ma'am, Ms. McAden?

5 JUROR: McAden.

6 THE COURT: McAden, I'm sorry. I'll put the emphasis
7 right there. Ms. McAden is juror 155.

8 Was it you or a family member that was involved?

9 JUROR: My family, we were burglarized; our home was
10 burglarized.

11 THE COURT: Okay. Was that here in Beaufort County?

12 JUROR: It was not.

13 THE COURT: Before you moved here?

14 JUROR: Yes, sir.

15 THE COURT: How long ago was it?

16 JUROR: Twenty years.

17 THE COURT: Okay. Was anybody ever caught and
18 prosecuted?

19 JUROR: No.

20 THE COURT: Would your experience as victims of a
21 burglary, which is one of the crimes charged in these
22 indictments, make it difficult for you to be fair and
23 impartial as a juror in this case?

24 JUROR: No, it would not.

25 THE COURT: Could you set aside your experiences,

1 decide this case based on what you would hear in court?

2 JUROR: Yes.

3 THE COURT: Would you do that, please, ma'am?

4 JUROR: Yes.

5 THE COURT: Thank you, Ms. McAden.

6 (JUROR WITHDRAWS.)

7 THE COURT: Ms. Vanderwoken, just speak so that she
8 can hear you.

9 Was it you or a family member involved?

10 JUROR: I, I've been arrested for criminal domestic
11 violence.

12 THE COURT: Okay.

13 JUROR: Also, my boyfriend was for us to each other.

14 THE COURT: I understand.

15 JUROR: We went to court, and it was dropped.

16 THE COURT: Okay.

17 JUROR: And I've been a witness to criminal domestic
18 violence to my daughter.

19 THE COURT: I see. All right. Were any of those
20 cases prosecuted by the solicitor's office, or were all of
21 those taken care of in magistrate's court?

22 JUROR: Magistrate's court.

23 THE COURT: Okay. Would your experience on both sides
24 of that issue, Ms. Vanderwoken, make it difficult for you
25 to be fair and impartial as a juror in this case?

1 JUROR: No.

2 THE COURT: Could you set aside your experience and
3 decide this case based on what you would hear in court?

4 JUROR: Yes, sir.

5 THE COURT: Would you do that, please, ma'am?

6 JUROR: Yes, sir.

7 THE COURT: Thank you, ma'am. You can go back and
8 have a seat.

9 (JUROR WITHDRAWS.)

10 THE COURT: Mr. O'Hara, if you'll stand right there
11 and speak so she can hear you, please, sir.

12 Was it you or a family member who was involved?

13 JUROR: It was me. I was a witness for the state of
14 New Jersey in a murder one trial.

15 THE COURT: Okay. Okay, were you the type of witness
16 who was an eyewitness to the crime, or did you have some
17 part in some of the issues involved?

18 JUROR: We were eyewitnesses to the crime, my brother
19 and myself.

20 THE COURT: I see.

21 JUROR: We testified for the state against -- the
22 gentleman's name was Labeda [phonetic].

23 THE COURT: How long ago was that?

24 JUROR: It was in high school.

25 THE COURT: Was he convicted as a result of that?

1 JUROR: No. He was acquitted.

2 THE COURT: He was? Would your experience in that
3 regard make it difficult for you to be fair and impartial
4 as a juror in this case?

5 JUROR: Well, Judge, the problem was -- I have -- is I
6 saw the guy do that crime and he got off.

7 THE COURT: All right.

8 JUROR: And as a young man, that kind of stuck with
9 me.

10 THE COURT: I can imagine. Do you think that may
11 have ---

12 JUROR: I can't say that. I don't know.

13 THE COURT: You can't? All right, sir, and I'm sure
14 you understand that we -- of course, none of us knows what
15 this testimony is going to be in this courtroom.

16 JUROR: Right.

17 THE COURT: At least I don't. You don't, and nobody
18 else except the witnesses, and so I -- it's impossible for
19 us to say whether the type of testimony in this case would
20 bring up to mind some of the similar events that you've
21 experienced in the past. So, I'm going to stand you ---

22 JUROR: That's a long time ago, but...

23 THE COURT: I can see it's still ---

24 JUROR: It's part of my past.

25 THE COURT: It's still with you. I can imagine that

1 it would be, and I can understand how it would be. I'm
2 going to stand you aside as a juror in this case because I
3 can't take a chance on something causing you to relive
4 those past moments that might have some impact on your
5 decision. You understand?

6 JUROR: Yes.

7 THE COURT: Thank you, sir.

8 JUROR: Thank you.

9 (JUROR WITHDRAWS.)

10 THE COURT: Juror number 182 will be stood aside.

11 Ms. Sayers, if you'd stand right there and speak so
12 that she can hear you.

13 Ms. Sayers, was it you or a family member that was
14 involved?

15 JUROR: I was.

16 THE COURT: Okay, and tell me what crime.

17 JUROR: I was -- my apartment was burglarized.

18 THE COURT: Okay. Was anybody caught and convicted as
19 a result of that?

20 JUROR: No.

21 THE COURT: Was it here in Beaufort County?

22 JUROR: No. It was in Virginia.

23 THE COURT: In Virginia. All right, how long ago was
24 that, Ms. Sayers?

25 JUROR: Thirteen years.

1 THE COURT: Okay. Would your experience in that
2 regard make it difficult for you to be fair and impartial
3 as a juror in this case if you're asked to serve?

4 JUROR: No.

5 THE COURT: Could you set aside that experience and
6 decide this case based on what you hear in court?

7 JUROR: Yes.

8 THE COURT: And you'll do that, please, ma'am?

9 JUROR: Yes.

10 THE COURT: Thank you, Ms. Sayers. You can go back
11 and have a seat.

12 (JUROR WITHDRAWS.)

13 THE COURT: Ms. Nance, if you'll stand right there.
14 Speak so that she can hear you.

15 Was it you or a family member that was involved?

16 JUROR: Both.

17 THE COURT: Both? Let's start with you first of all
18 then. What crime? What was your personal involvement in
19 the crime?

20 JUROR: I was a victim of robbery, of burglary.

21 THE COURT: A victim of, was it a burglary or a
22 robbery?

23 JUROR: Burglary.

24 THE COURT: Someone broke in to your house or your
25 apartment?

1 JUROR: Right.

2 THE COURT: Now, how long ago did that happen?

3 JUROR: About five years ago.

4 THE COURT: Was it here in Beaufort County?

5 JUROR: No, it wasn't.

6 THE COURT: Okay. Was anybody ever caught and
7 convicted for that?

8 JUROR: No.

9 THE COURT: All right. Now tell me about the other
10 experience with somebody else. Was it a family member?

11 JUROR: It was my parents.

12 THE COURT: Your parents?

13 JUROR: Uh-huh.

14 THE COURT: And what was their involvement?

15 JUROR: They were victims of it as well.

16 THE COURT: Same type of thing?

17 JUROR: Uh-huh.

18 THE COURT: Was that also somewhere else?

19 JUROR: No. That was here in Beaufort.

20 THE COURT: In Beaufort. How long ago was that?

21 JUROR: About six years ago.

22 THE COURT: Was anybody ever caught and convicted for
23 those crimes?

24 JUROR: Yes.

25 THE COURT: Did the solicitor's office of the

1 Fourteenth Circuit prosecute that case so far as you know?

2 JUROR: Not that I know. I'm not sure.

3 THE COURT: You weren't personally involved in it?

4 JUROR: Right.

5 THE COURT: Okay. Would your experience, either
6 individually as being a victim or your parents, make it
7 difficult for you to be fair and impartial as a juror in
8 this case in which the defendants are charged with
9 burglary, among other things?

10 JUROR: No.

11 THE COURT: Could you set aside your own experience
12 and that of your family and decide this based on the
13 evidence that you would hear in court?

14 JUROR: Yes.

15 THE COURT: And would you do that, please, ma'am?

16 JUROR: Yes, sir.

17 THE COURT: Thank you, ma'am.

18 JUROR: Yes, sir.

19 THE COURT: Go back and have a seat.

20 (JUROR WITHDRAWS.)

21 THE COURT: Ms. Townsend, Ms. Townsend, if you'll
22 stand here and speak so that she can hear you.

23 Was it you or a family fellow member that was
24 involved?

25 JUROR: Well, my husband is a sheriff's deputy.

1 THE COURT: I'm sorry?

2 JUROR: My husband is a sheriff's deputy.

3 THE COURT: Oh, yes?

4 JUROR: And we discuss matters.

5 THE COURT: Okay.

6 JUROR: Dinnertime discussion.

7 THE COURT: I see. Is he a deputy with the Beaufort
8 County Sheriff's Office?

9 JUROR: Yes, sir, but I don't know any of the officers
10 that are involved in this.

11 THE COURT: Okay, and obviously you don't know
12 anything about this case because I've already asked you,
13 and you said you didn't. But would your experience through
14 that of your husband's work, or perhaps your own personal
15 opinions as a result of your husband being a deputy, have
16 any bearing on your ability to be fair and impartial as a
17 juror in this case?

18 JUROR: I think it would.

19 THE COURT: And I can imagine that, and I, and I
20 wouldn't expect it be anything other than that. We can
21 understand that. We're going to stand aside you aside
22 then, Ms. Townsend.

23 JUROR: Okay.

24 THE COURT: For those reasons, and I appreciate your
25 candor in that regard.

1 JUROR: Okay.

2 THE COURT: You can go back and have a seat.

3 (JUROR WITHDRAWS.)

4 THE COURT: 234 will be stood aside.

5 Yes, Ms. Reed is it?

6 JUROR: Yes, sir.

7 THE COURT: Thank you, Ms. Reed. Was it you or a
8 family member that was involved?

9 JUROR: Me.

10 THE COURT: Were you -- okay, and what was the crime
11 and your involvement?

12 JUROR: I was robbed at gunpoint twice.

13 THE COURT: Goodness gracious. Let's take the first
14 instance, the one farthest back in time.

15 JUROR: Okay.

16 THE COURT: Where and when did that happen?

17 JUROR: Hilton Head Island. At that time it was
18 called Shoney's Inn. Actually, it was called Shoney's Inn
19 both incidents. That's when they had the sawed-off shotgun
20 bandit or whatever running around.

21 THE COURT: Holding up a liquor store?

22 JUROR: He worked Main Street basically from what I
23 understood.

24 THE COURT: Okay, that was back in the mid '90?

25 JUROR: Yeah. That's about right.

1 THE COURT: I took his plea in this very courtroom, as
2 a matter of fact. Know a little bit about it. He's the
3 guy who had the sawed-off shotgun, was holding up a liquor
4 store. I remember that, and tell me about the other time.

5 JUROR: It was that situation both times.

6 THE COURT: Both times? He got you twice?

7 JUROR: Uh-huh. We're talking three months apart, six
8 months, something like that.

9 THE COURT: You realize he's doing ninety-nine years
10 in jail?

11 JUROR: I hope so.

12 THE COURT: I would think so, right. All right, well,
13 you obviously have a lot more experience with this,
14 unfortunately, than most people do, Ms. Reed. Would that
15 experience make it difficult for you to be fair and
16 impartial as a juror in this trial if you were asked to
17 serve?

18 JUROR: I would think yes.

19 THE COURT: And I can understand that. If I had been
20 in your shoes, I'd have difficulty setting that aside.

21 JUROR: Yes, sir.

22 THE COURT: I'm going to ask you to go back and have a
23 seat but not to discuss this with anybody obviously until
24 we get a jury empaneled here.

25 JUROR: Okay.

1 THE COURT: Okay? Thank you, Ms. Reed.

2 (JUROR WITHDRAWS.)

3 BAILIFF: Juror number 52.

4 THE COURT: Thank you.

5 Ms. Doukas.

6 JUROR: I didn't stand because I forgot.

7 THE COURT: Okay.

8 JUROR: But it jarred my memory. What I was teaching,
9 the very first year I was teaching, I was assaulted by a
10 student. It was not premeditated. It was something that
11 -- anger.

12 THE COURT: Right.

13 JUROR: You know, just lost control and I got it.

14 THE COURT: You did? How long ago was that?

15 JUROR: Many, many years ago.

16 THE COURT: Okay, and that was out of state somewhere?

17 JUROR: Yes, it was.

18 THE COURT: So, nobody locally was involved?

19 JUROR: No. No.

20 THE COURT: Would that situation make it difficult for
21 you to be fair and impartial as a juror in this case?

22 JUROR: I don't believe so.

23 THE COURT: All right. Thank you, ma'am.

24 JUROR: Okay.

25 (JUROR WITHDRAWS.)

1 BAILIFF: Juror number 228.

2 THE COURT: Ms. Taylor?

3 JUROR: Yes, it is.

4 THE COURT: Ms. Taylor, was it you or a family member
5 that was involved?

6 JUROR: It was me.

7 THE COURT: It was you, and what was your involvement
8 in the crimes, please, ma'am?

9 JUROR: I have a history of domestic violence, but
10 there was no charges pressed.

11 THE COURT: Okay. So, you were a victim of criminal
12 domestic violence. Is that what you are saying?

13 JUROR: Yes.

14 THE COURT: All right, and nobody was prosecuted as a
15 result of that?

16 JUROR: Yeah.

17 THE COURT: Was it a recent thing, or has it happened
18 some time ---

19 JUROR: Nine years ago.

20 THE COURT: Nine years ago, all right. Would your
21 involvement in that regard make it difficult for you to be
22 fair and impartial ---

23 JUROR: No.

24 THE COURT: --- as a juror in this case?

25 JUROR: No, Your Honor.

1 THE COURT: Thank you, ma'am. You can go back and
2 have a seat.

3 (JUROR WITHDRAWS.)

4 THE COURT: All right, gentlemen, any exceptions to
5 any of those rulings?

6 MR. ROBINSON: Nothing from the state.

7 (END OF CONFERENCES AT SIDEBAR.)

8 THE COURT: Ladies and gentlemen, during the trial of
9 this case, it is anticipated that there might be evidence
10 to show that the victims in this case were involved in the
11 sale of illegal drugs. I need to know if there's anything
12 in your own personal belief, in your own personal
13 background, your own history or that of your family, or
14 your own religious beliefs that would make it difficult for
15 you to serve fairly and impartially as a juror in the trial
16 of a case involving allegations, in this case by the
17 victims -- or against the victims, who were selling illegal
18 drugs. If so, would you please stand?

19 Yes, sir. Your name, please, sir.

20 JUROR: McCaffrey, Hugh McCaffrey, 157.

21 THE COURT: Let me get my sheet located again, Mr.
22 McCaffrey.

23 (A PAUSE.)

24 THE COURT: Mr. McCaffrey, without being, without
25 being real specific, I just need a direct answer. Based on

1 your religious beliefs or your personal beliefs or your own
2 family history there, there is something there that would
3 cause you to have difficulty in being fair and impartial in
4 a case involving allegations of the sale of illegal drugs?
5 Is that what...

6 JUROR: No.

7 THE COURT: Okay. Well ---

8 JUROR: But there is something there.

9 THE COURT: No. Okay, well then better get you to
10 come tell me about it.

11 About ten years ago in this very courtroom, I was
12 trying a case. It was a wreck case. Wasn't a criminal
13 case, and I never will forget it. We're were trying to
14 start the trial on a Thursday, and we had just enough
15 jurors left. We had twenty-three, and that's what we
16 needed. We had just enough jurors left to get a jury in
17 that civil case. And I'd gone over the questions just like
18 I have with you folks about the witnesses.

19 And one of the potential jurors was a nurse, a
20 registered nurse, I mean -- yes, a registered nurse, and
21 one of the potential witnesses was a doctor. Not a local
22 doctor I think from -- might have been from Savannah or
23 Hilton Head. I'm not sure where, and I read that name and
24 asked if that would impact anybody's ability to be fair and
25 impartial, and she stood. And so I ask her who it was that

1 she was talking about. She told me this doctor. And so I
2 said would that make it difficult for you to be fair and
3 impartial as a juror in the trial of this case, and I
4 expected her to say either yes or no. It was kind of, you
5 know, an innocuous thing: a doctor who practices what
6 somewhere else, a nurse who knew the doctor.

7 Well, what she said was I wouldn't believe him if he
8 was standing on a stack of bibles. Well, that meant we
9 couldn't try that case that week because everybody in the
10 courtroom had heard what she said. So, that's the reason I
11 would be kind of cautious about what I ask you all to tell
12 me out in front of everybody.

13 (THE FOLLOWING CONFERENCE IS HELD AT SIDEBAR IN THE
14 PRESENCE OF ALL COUNSEL.)

15 THE COURT: Mr. McCaffrey, tell me what your situation
16 is.

17 JUROR: My oldest boy has been involved with drugs.

18 THE COURT: Right.

19 JUROR: With the sale and use of, but through rehab he
20 is fine now.

21 THE COURT: Good. Good. What sort of rehab did he go
22 through?

23 JUROR: What did he do?

24 THE COURT: Yes, sir. Did he go in-patient treatment
25 or something like that?

1 JUROR: Yes. He went -- he's a Lebanon vet, and with
2 problem -- a lot of pain problem. He got on drugs.

3 THE COURT: Right.

4 JUROR: And then he got involved with the wrong
5 people.

6 THE COURT: I see.

7 JUROR: But he went in -- he's in Johnson City,
8 Tennessee, and he's -- went under, he went away under the
9 vet's concern.

10 THE COURT: Right.

11 JUROR: And actually he went twice and it's time. So,
12 he's better now, but you asked, so.

13 THE COURT: That's good. Now, the real question is
14 this. Would your son's involvement, and of course your
15 involvement indirectly through your son, make it difficult
16 for you to be fair and impartial in evaluating a case in
17 which there might be allegations of the use or sale of
18 drugs by anybody in this particular case?

19 JUROR: No.

20 THE COURT: Could you set that matter aside and decide
21 your case based on the evidence irrespective of that point
22 in this regard?

23 JUROR: I believe so.

24 THE COURT: And would you do that, please, sir?

25 JUROR: Yes.

1 THE COURT: Thank you, Mr. McCaffrey.

2 (END OF CONFERENCE AT SIDEBAR.)

3 THE COURT: Ladies and gentlemen, other than the
4 relationship that you have told me about with some of the
5 potential witnesses in this particular trial, I need to
6 know if any of you all have any other close friends or
7 relatives who are involved in any law enforcement agency.
8 If so, please stand.

9 Okay.

10 JUROR: I am.

11 THE COURT: Yes, ma'am. Your name, please.

12 JUROR: Elizabeth Fillmore.

13 THE COURT: Ms. Fillmore, what's your number, please,
14 ma'am?

15 JUROR: 193.

16 THE COURT: 193, and tell me who the person is and the
17 agency, if you would.

18 JUROR: It's one of my close friends is on the
19 Bluffton Police Department.

20 THE COURT: Where is that?

21 JUROR: Bluffton Police Department.

22 THE COURT: Bluffton Police Department, all right.
23 Thank you, ma'am, Ms. Fillmore.

24 Yes, and your name, please?

25 JUROR: Brenda Kendall, and my number is 128. I have

1 a friend who works for SLED.

2 THE COURT: Thank you.

3 Yes, ma'am.

4 JUROR: It's Ashley Palau, 184, and I'm dating a
5 Bluffton police officer.

6 THE COURT: Okay. Thank you.

7 JUROR: Armistead, number 5. Family friend is Bobby
8 Teuton, who's on the county SWAT team.

9 THE COURT: Okay. Thank you, ma'am.

10 Ladies and gentlemen, are any of you all related by
11 blood or connected by marriage or close, personal friends
12 of anybody who works with the Fourteenth Judicial Circuit
13 Solicitor's Office? If so please stand.

14 (NO ONE STANDS.)

15 THE COURT: Are any of you members of, contributors
16 to, or supporters of any organization that has as its
17 primary emphasis the enforcement of law enforcement or
18 victims' rights such as MADD, SADD, CAVE, CADRE, things of
19 that nature? If so, please stand.

20 (NO ONE STANDS.)

21 THE COURT: Ladies and gentlemen, apparently there's
22 going to be some testimony in this trial of this case that
23 has to do with [REDACTED] Apartments in Bluffton. I
24 need to know if any of you all now or in the past have
25 resided in the [REDACTED] Apartments in Bluffton. If

1 so, please stand.

2 Yes, ma'am, your name, please, ma'am, in the back?

3 JUROR: Tonya Sayers, 206.

4 THE COURT: Thank you, and when did you live there,
5 please, ma'am?

6 JUROR: It wasn't called what it is now. 1999.

7 THE COURT: 1999?

8 JUROR: Uh-huh.

9 THE COURT: Thank you.

10 And your name, please, ma'am?

11 JUROR: Ashley Palau, 184. I lived there in 2000.

12 THE COURT: Thank you, ma'am.

13 Now, ladies and gentlemen, I need to know if any of
14 you have formed in your own mind or expressed to anyone
15 else any opinion that you might have, any opinion that you
16 might have as to the guilt or the innocence of the
17 defendants in this case. If you have, would you please
18 stand?

19 (NO ONE STANDS.)

20 THE COURT: Are any of you aware of, that is to say
21 conscious of any bias or prejudice that you might have for
22 or against the state of South Carolina or for or against
23 the defendants in this case? If you are so aware, would
24 you please stand?

25 (NO ONE STANDS.)

1 THE COURT: Finally, then, do any of you know of any
2 reason of any kind whatsoever that would keep you from
3 serving fairly and impartially as a juror in the trial of
4 this case? If you know of any such reason, would you
5 please stand?

6 (NO ONE STANDS.)

7 THE COURT: Thank you.

8 Mr. Robinson, any further questions from the state?

9 MR. ROBINSON: Nothing from the state, Your Honor.

10 THE COURT: Thank you.

11 Mr. Deysach, other than previously noted, any
12 additional questions from the defendant Simuel?

13 MR. DEYSACH: No, Your Honor.

14 THE COURT: Thank you.

15 Mr. Geier, other than previously noted, any additional
16 questions from the defendant Price?

17 MR. GEIER: No, Your Honor.

18 THE COURT: Thank you.

19 All right, Madame Clerk, you can give us a jury. The
20 strikes will be ten for the state, twenty for the
21 defendant. We will select two alternates. As to each
22 alternate, the strike will be one for the state, two for
23 the defense.

24 (A PAUSE.)

25 THE COURT: Ladies and gentlemen, it's going to take a

1 few minutes to put together a strike sheet in this regard.
2 That means they're going to have to do -- take the
3 information that you've given me and plug it all into their
4 process and spit out a piece of paper here. So, we're
5 going to take a brief recess. And you probably need it,
6 and you've been very patient, and I appreciate that.

7 If you will assemble back in the courtroom at 4 of the
8 hour, you to look at the clock over the door when you go
9 out. 4 of the hour is about seventeen minutes. I hope
10 that will give you a chance to refresh yourselves and
11 stretch your legs. We'll start back at quarter to the
12 hour.

13 (OFF THE RECORD.)

14 THE COURT: Mr. Robinson, is the state ready to
15 strike?

16 MR. ROBINSON: The state's ready, Your Honor.

17 THE COURT: Mr. Deysach, is the defendant Simuel
18 ready?

19 MR. DEYSACH: He is. We are, Your Honor.

20 THE COURT: Mr. Geier, Mr. Price ready?

21 MR. GEIER: Yes, Your Honor, we're ready.

22 THE COURT: All right, Mr. Clerk, Madame Clerk.

23 CLERK OF COURT: Thank you, sir.

24 THE COURT: Ladies and gentlemen, give your attention
25 to the clerk, please, if your name is called and follow his

1 instructions.

2 CLERK OF COURT: Thank you.

3 When I call your name, just come forward. Bring your
4 belongings with you in case you're seated as a juror. If
5 not, you can just bring them back to your seat with you.

6 Jury number 195, Lizzie Reed.

7 MR. GEIER: Your Honor, may we, may we approach?

8 THE COURT: Sure.

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 THE COURT: Ms. Reed is excused.

11 CLERK OF COURT: Yes, sir.

12 THE COURT: She's been excused by the court. Ms.
13 Reed, you can have a seat. You've been excused by the
14 court. Thank you.

15 CLERK OF COURT: Juror number 186, Ruth Peters.

16 (WHITE FEMALE COMES FORWARD.)

17 THE COURT: Ms. Peters, after you've done this and
18 everybody will see how to do it from now on. So, you're
19 sort of the beginning. If you'll turn and face the panel,
20 please. Thank you.

21 CLERK OF COURT: What says the state?

22 MR. ROBINSON: Please present Ms. Peters.

23 CLERK OF COURT: What says the defense?

24 MR. DEYSACH: Excuse this juror.

25 CLERK OF COURT: Juror number 131, Pamela Kurtz.

1 (WHITE FEMALE COMES FORWARD.)
2 CLERK OF COURT: What says the state?
3 MR. ROBINSON: Please present Ms. Kurtz.
4 CLERK OF COURT: What says the defense?
5 MR. DEYSACH: Please seat the juror.
6 CLERK OF COURT: Juror number 53, Angela Drake.
7 (WHITE FEMALE COMES FORWARD.)
8 CLERK OF COURT: What says the state?
9 MR. ROBINSON: Please present Ms. Drake.
10 CLERK OF COURT: Was says the defense?
11 MR. DEYSACH: Please seat to the juror.
12 CLERK OF COURT: Juror number 5, Regina Armistead.
13 (WHITE FEMALE COMES FORWARD.)
14 CLERK OF COURT: What says the state?
15 MR. ROBINSON: Please present Ms. Armistead.
16 CLERK OF COURT: What says the defense?
17 MR. DEYSACH: Please excuse the juror.
18 CLERK OF COURT: Juror number 220, Jesse Smith.
19 (WHITE MALE COMES FORWARD.)
20 CLERK OF COURT: What says the state?
21 MR. ROBINSON: Please present Mr. Smith.
22 CLERK OF COURT: What says the defense?
23 MR. DEYSACH: Please excuse the juror.
24 CLERK OF COURT: Juror number 30, Stacey Butler.
25 (WHITE FEMALE COMES FORWARD.)

1 CLERK OF COURT: What says the state?

2 MR. ROBINSON: Please present Ms. Butler.

3 CLERK OF COURT: What says the defense?

4 MR. DEYSACH: Please seat the juror.

5 CLERK OF COURT: Juror number 179, Kendra Nance.

6 (WHITE FEMALE COMES FORWARD.)

7 CLERK OF COURT: What says the state?

8 MR. ROBINSON: Present Ms. Nance.

9 CLERK OF COURT: What says the defense?

10 MR. DEYSACH: Please excuse the juror.

11 CLERK OF COURT: Juror number 84, Julie Grime.

12 (WHITE FEMALE COMES FORWARD.)

13 CLERK OF COURT: What says the state?

14 MR. ROBINSON: Please present Ms. Grime.

15 CLERK OF COURT: What says the defense?

16 MR. DEYSACH: Please excuse the juror.

17 CLERK OF COURT: Juror number 246, Evelyn Williamson.

18 (WHITE FEMALE COMES FORWARD.)

19 CLERK OF COURT: What says the state?

20 MR. ROBINSON: Please present Ms. Williamson.

21 CLERK OF COURT: What says the defense?

22 MR. DEYSACH: Please excuse the juror.

23 CLERK OF COURT: Juror number 194, Starling Ray.

24 (WHITE MALE COMES FORWARD.)

25 CLERK OF COURT: What says that the state?

1 MR. ROBINSON: Please present Mr. Ray.
2 CLERK OF COURT: What says the defense?
3 MR. DEYSACH: Please seat the juror..
4 CLERK OF COURT: Juror number 177, Stellena Mumma.
5 (WHITE FEMALE COMES FORWARD.)
6 CLERK OF COURT: What says the state?
7 MR. ROBINSON: Please seat Ms. Mumma.
8 CLERK OF COURT: What says the defense?
9 MR. DEYSACH: Please excuse the juror.
10 CLERK OF COURT: Juror number 115, Scott Jaccard.
11 (WHITE MALE COMES FORWARD.)
12 CLERK OF COURT: What says the state?
13 MR. ROBINSON: Please present Mr. Jaccard.
14 CLERK OF COURT: What says the defense?
15 MR. DEYSACH: Please excuse the juror.
16 CLERK OF COURT: Juror number 107, Patricia Huckabee.
17 (WHITE FEMALE COMES FORWARD.)
18 CLERK OF COURT: What says the state?
19 MR. ROBINSON: Please present Ms. Huckabee.
20 CLERK OF COURT: What says the defense?
21 MR. DEYSACH: Please excuse the juror.
22 CLERK OF COURT: Juror number 152, Robert Marotta.
23 (WHITE MALE COMES FORWARD.)
24 CLERK OF COURT: What says the state?
25 MR. ROBINSON: Please excuse Mr. Marotta from the

1 trial of this case.

2 CLERK OF COURT: Juror number 185, Bonnita Payne.

3 (WHITE FEMALE COMES FORWARD.)

4 CLERK OF COURT: What says the state?

5 MR. ROBINSON: Please present the juror.

6 CLERK OF COURT: What says the defense?

7 MR. DEYSACH: Please excuse this juror.

8 CLERK OF COURT: Juror number 192, Orlando Powell.

9 (AFRICAN-AMERICAN MALE COMES FORWARD.)

10 CLERK OF COURT: What says the state?

11 MR. ROBINSON: Please excuse Mr. Powell from of the
12 trial of this case.

13 CLERK OF COURT: Juror number 49, Robert Deveer.

14 (WHITE MALE COMES FORWARD.)

15 CLERK OF COURT: What says the state?

16 MR. ROBINSON: Please present Mr. Deveer.

17 CLERK OF COURT: What says the defense?

18 MR. DEYSACH: Please seat the juror.

19 CLERK OF COURT: Juror number 12, Stewart Barrett.

20 (WHITE MALE COMES FORWARD.)

21 CLERK OF COURT: What says the state?

22 MR. ROBINSON: Please present Mr. Barrett.

23 CLERK OF COURT: What says the defense?

24 MR. DEYSACH: Please seat the juror.

25 CLERK OF COURT: Juror number 155, Jill McAden.

1 (WHITE FEMALE COMES FORWARD.)
2 CLERK OF COURT: What says the state?
3 MR. ROBINSON: Present Ms. McAden.
4 CLERK OF COURT: What says the defense?
5 MR. DEYSACH: Please excuse the juror.
6 CLERK OF COURT: Juror number 156, Alora McAlister.
7 (WHITE FEMALE COMES FORWARD.)
8 CLERK OF COURT: What says the state?
9 MR. ROBINSON: Please present Ms. McAlister.
10 CLERK OF COURT: What says the defense?
11 MR. DEYSACH: Please seat the juror.
12 CLERK OF COURT: Juror number 89, Marlene Hamm.
13 (WHITE FEMALE COMES FORWARD.)
14 CLERK OF COURT: What says the state?
15 MR. ROBINSON: Please present Ms. Hamm.
16 CLERK OF COURT: Was says the defendant?
17 MR. DEYSACH: Please excuse the juror.
18 CLERK OF COURT: Juror number 235, Cynthia Vanderberg.
19 (WHITE FEMALE COMES FORWARD.)
20 CLERK OF COURT: What says the state?
21 MR. ROBINSON: Please present Ms. Vanderberg.
22 CLERK OF COURT: Was says the defense?
23 MR. DEYSACH: Please seat the juror.
24 CLERK OF COURT: Juror number 184, Ashley Palau.
25 (WHITE FEMALE COMES FORWARD.)

1 CLERK OF COURT: What says the state?
2 MR. ROBINSON: Please present Ms. Palau.
3 CLERK OF COURT: What says the defense?
4 MR. DEYSACH: Please excuse the juror.
5 CLERK OF COURT: Juror number 103, Mary Houston.
6 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)
7 CLERK OF COURT: What says the state?
8 MR. ROBINSON: Please excuse Ms. Houston from the
9 trial of the case.
10 CLERK OF COURT: Juror number 80, Reulito Gonzales.
11 (HISPANIC MALE COMES FORWARD.)
12 CLERK OF COURT: What says the state?
13 MR. ROBINSON: Please excuse the juror.
14 CLERK OF COURT: Juror number 69, Roberta Evans.
15 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)
16 CLERK OF COURT: What says the state?
17 MR. ROBINSON: Please present the juror.
18 CLERK OF COURT: Says the defense?
19 MR. DEYSACH: Please seat the juror.
20 CLERK OF COURT: Juror number 157, Hugh McCaffrey.
21 (WHITE MALE COMES FORWARD.)
22 CLERK OF COURT: What says the state?
23 MR. ROBINSON: Please present Mr. McCaffrey.
24 CLERK OF COURT: What says the defense?
25 MR. DEYSACH: Please excuse the juror.

1 CLERK OF COURT: Juror number 93, Paula Hart.
2 (WHITE FEMALE COMES FORWARD.)
3 CLERK OF COURT: What says the state?
4 MR. ROBINSON: 92?
5 CLERK OF COURT: 93. What says the state?
6 MR. ROBINSON: Please present Ms. Hart.
7 CLERK OF COURT: What says the defense?
8 MR. DEYSACH: Please excuse the juror.
9 CLERK OF COURT: Juror number 64, Karen Eisaman.
10 (WHITE FEMALE COMES FORWARD.)
11 CLERK OF COURT: What says the state?
12 MR. ROBINSON: Please present Ms. Eisaman.
13 CLERK OF COURT: What says the defense?
14 MR. DEYSACH: Please seat the juror.
15 CLERK OF COURT: Juror number 75, Elsbeth Friedman.
16 (WHITE FEMALE COMES FORWARD.)
17 CLERK OF COURT: What says the state?
18 MR. ROBINSON: Please present Ms. Friedman.
19 CLERK OF COURT: What says the defense?
20 MR. DEYSACH: Please seat the juror.
21 CLERK OF COURT: Juror number 230, Christina Thomas.
22 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)
23 CLERK OF COURT: What says the state?
24 MR. ROBINSON: Please excuse Ms. Thomas from the trial
25 of this case.

1 CLERK OF COURT: Juror number 129, Eileen Kolbe.

2 (WHITE FEMALE COMES FORWARD.)

3 CLERK OF COURT: What says the state?

4 MR. ROBINSON: Please present Ms. Kolbe.

5 CLERK OF COURT: What says the defense?

6 MR. DEYSACH: Please excuse the juror.

7 CLERK OF COURT: Juror number 229, Stephen Taylor.

8 (WHITE MALE COMES FORWARD.)

9 CLERK OF COURT: What says the state?

10 MR. ROBINSON: Please present Mr. Taylor.

11 CLERK OF COURT: What says the defense?

12 MR. DEYSACH: Please seat the juror.

13 THE COURT: Select two alternates, Mr. Clerk. The
14 strikes will be one for the state, two for the defense as
15 to each of the two alternates.

16 CLERK OF COURT: Yes, sir.

17 Juror number 250, Helga Zebro.

18 (WHITE FEMALE COMES FORWARD.)

19 CLERK OF COURT: What says the state?

20 MR. ROBINSON: Please present Ms. Zebro.

21 CLERK OF COURT: What says the defense?

22 MR. DEYSACH: Please excuse the juror.

23 CLERK OF COURT: Juror number 172, Kimberly Moore.

24 (WHITE FEMALE COMES FORWARD.)

25 CLERK OF COURT: What says the state?

1 MR. ROBINSON: Please present Ms. Moore.

2 CLERK OF COURT: What says the defense?

3 MR. DEYSACH: Please seat the juror.

4 CLERK OF COURT: Juror number 33, James Carr.

5 (WHITE MALE COMES FORWARD.)

6 CLERK OF COURT: What says the state?

7 MR. ROBINSON: Please present Mr. Carr.

8 CLERK OF COURT: What says the defense?

9 MR. DEYSACH: Please seat the juror.

10 THE COURT: Mr. Robinson, are there any matters of law
11 regarding the jury selection process from the state?

12 MR. ROBINSON: Nothing from the state, Your Honor.

13 THE COURT: Thank you.

14 Mr. Deysach, any matters of law regarding the jury
15 selection process from Mr. Simuel?

16 MR. DEYSACH: No, Your Honor.

17 THE COURT: Thank you.

18 Mr. Geier for Mr. Price?

19 MR. GEIER: No, Your Honor.

20 THE COURT: Thank you.

21 Ladies and gentlemen, those of you who have not been
22 selected as jurors in the trial of this case, I want to
23 thank you very much for your patience with us throughout
24 this long afternoon. This entire process, as you have
25 figured out by now, is designed to make sure that when we

1 finally get twelve jurors and two alternates in the jury
2 box that we have folks who have no connection with this
3 case, who don't have any preconceived ideas about this
4 case, who are not connected with the witnesses in this
5 case, or with the issues involved in this case. And you've
6 been an important part of that process all afternoon.

7 You've been patient with us as you've come up here and
8 answered questions, some of you personally. And some of
9 you have had to go back in your lives to recall events that
10 were not all that pleasant for you at the time. We
11 apologize for having to put you through that. But we thank
12 you for the good humor in which you have borne up under it
13 all, and I'm going to be able to let you all go.

14 (THE COURT CONFERS WITH THE CLERK OF COURT.)

15 THE COURT: If you will call back at 6:00 tonight or
16 after 6 tonight on the number that you were given earlier
17 today, you will receive instructions about what you need to
18 do tomorrow. Please abide by those instructions and do
19 whatever they say to do.

20 It's been my pleasure working with all of you, if I
21 don't get the chance to see you again, and thank you for
22 coming and working with us today. You all are free to go.

23 Everybody but the jury please remain seated while this
24 jury leaves.

25 (THE JURY PANEL EXITS.)

1 THE COURT: Counsel, will you all approach for just a
2 moment on a scheduling issue?

3 (OFF-THE-RECORD BENCH CONFERENCE.)

4 THE COURT: Sometimes we huddle up with the lawyers
5 over there to the side and we whisper. And I can't tell
6 you what we're whispering about during the trial of the
7 case because we're dealing with issues that have to do with
8 the law. And you're not concerned about that yourselves.
9 I always tell jurors, though, if you're ever real curious
10 about what we were whispering about behind your back over
11 there, if you will come to me after the trial is over and
12 your role as jurors is through and ask me what we were
13 whispering about, and if I can remember what we were
14 whispering about, I'll be glad to tell you.

15 I can tell you what we were whispering about, and that
16 was a scheduling matter. We're trying to find out what we
17 need to do and what time we need to get you back. We still
18 have some matters, some preliminary pretrial matters that
19 we have to deal with this afternoon that we're going to
20 have to get out some of the way before we start presenting
21 this case to you in any fashion at all. And so we're going
22 to let you go right now in just a few moments and ask you
23 to be back tomorrow morning in the jury room at 10:30.

24 And the reason we're starting at 10:30 tomorrow
25 morning is because we've got some matters of law to deal

1 with in the morning. And we can't deal with them until
2 then because some of the folks who are involved in those
3 issues are not going to be here in the courtroom until
4 tomorrow morning. And so rather that get you back here at
5 9:30 and have you wait back there and fume while we keep
6 you waiting while we're dealing with matters back there,
7 I'm going to ask you to come in a little later tomorrow
8 morning.

9 Our normal hours of operation during the course of
10 this trial, we'll start in the morning at 9:30. We'll work
11 through the morning, take a mid-morning break, and stop for
12 lunch some time around 12:30, 1:00, somewhere in that range
13 whenever we get to a good stopping place in the trial of
14 the case. We come back in about an hour and fifteen
15 minutes, whatever time that is, 2, 2:15, 2:30, whenever the
16 hour and fifteen minutes or so is up, and we'll work until
17 around 5 or 5:30 in the afternoon. We start trying to find
18 a good stopping place around 5:00, but we don't cut off a
19 witness in mid-sentence or in mid-testimony. We try to
20 finish that before we break for the day because it would be
21 difficult for you to pick up the flow of that the next day
22 if we stopped it in premature fashion.

23 So, in just a moment I'm going to let you go for the
24 afternoon. And tomorrow morning when you come back at
25 10:30, you will report to the jury room which is right

1 across the hall. You'll follow the bailiff through this
2 door; he'll show you the jury room that you're to report to
3 in the morning.

4 I want to also tell you how to get into that jury room
5 tomorrow. You will not come through the courtroom. In
6 other words, he'll show you a back way, a secret passageway
7 that you'll use during your service as jurors in the trial
8 of this case.

9 And before we start the trial tomorrow morning, I'm
10 going to give you some instructions about things that
11 you're allowed to do and not allowed to do as jurors during
12 the course of this trial. But to keep you from innocently
13 and mistakenly doing some of those things overnight without
14 knowing that you're doing anything wrong, I must tell you
15 at this time very briefly that during the trial of this
16 case, you are not allowed to discuss this case with anyone
17 at all, even among yourselves, until the trial of the case
18 is over.

19 Now, right now you don't know anything about this case
20 because I asked you if you knew anything about it, and you
21 told me that you did not. But you understand what the
22 charges are in this case, and you may also understand what
23 some of the issues might be in this particular case. It's
24 improper for you to discuss those matters with anyone at
25 any time during the trial of this case. When the trial is

1 over and when this case is delivered into your hands for
2 your deliberation and for your decision, you can take all
3 the time you need to discuss it then. But you cannot do it
4 until then for reasons that I'll explain to you in greater
5 detail tomorrow.

6 And by the same token, you can't talk with anybody
7 else about this case or allow them to talk with you outside
8 of this courtroom. And you can't expose yourself to any
9 information about this case or try to find out anything on
10 your own about this case from any source at all outside of
11 this courtroom. All you need to know to render a decision
12 in this case, indeed all you are allowed to know to render
13 a decision in this case you will learn from this courtroom,
14 from this witness chair right here where I'm standing, and
15 from the documents or the items that might be introduced
16 into evidence during the course of this trial.

17 This entire afternoon has been taken to assure, as I
18 told the balance of the panel a few moments ago, that when
19 we finally got fourteen of you all in that jury box, that
20 we were going to have people in that jury box who are
21 untainted about this case from any source at all. No prior
22 knowledge about it, no improper prejudices or biases about
23 this case, or the people who are involved, or the issues
24 that are involved in this trial of this case. But people
25 who can come into that jury box and well and truly try this

1 case and render a true verdict according to the law and the
2 evidence, according to the oath that you will take tomorrow
3 morning, and upon nothing else.

4 And if somebody else talks with you about this case,
5 or if you talk with them about it, or if you try to find
6 out anything on your own about the case, then all that we
7 have done this afternoon will have been wasted, and we'll
8 have to do it all over again. Or even worse, if we do not
9 know about that, and if that, whatever you had done that
10 you were not supposed to do, that slipped by undetected,
11 then this whole process would be tainted, and an unjust
12 result could very well be the outcome.

13 And so I'm certain that you will abide by those
14 instructions that I've given you, and that you will
15 continue to abide by them throughout the trial of this
16 case. And we'll look to see you all tomorrow morning at
17 10:30. If you will follow the bailiff right through here,
18 he will show you the way out and you the way back in.
19 Thank you, folks. Have a safe trip, and I'll see you
20 tomorrow morning at 10:30.

21 (THE JURY EXITS AT 4:28 P.M.)

22 THE COURT: Gentlemen, I understand there are some
23 pretrial matters. There's a *Jackson vs. Denno* hearing and
24 some other matters we need to take care of today pretrial
25 before we can start with the jury tomorrow morning.

1 Mr. Robinson, what order do you want to take these in?

2 MR. ROBINSON: I think if Mr. Geier has some motions
3 that are brief, we can start with what he has.

4 THE COURT: Okay. All right.

5 Mr. Geier?

6 MR. GEIER: Yes, Your Honor. If I may, my client has
7 to use the restroom. Can we have five minutes?

8 THE COURT: Okay.

9 (OFF THE RECORD.)

10 THE COURT: All right, folks, everyone return to
11 order.

12 Mr. Geier.

13 MR. GEIER: Thank you, Your Honor. At the risk of
14 being redundant, Your Honor, I wanted to move for a *State*
15 *vs. Holt* balancing test as far as prior convictions, the
16 admissibility of prior convictions, and also make a motion
17 to exclude prior bad acts under 404(b). Again, if you're
18 ruling earlier addressed those, my apologies.

19 THE COURT: Under 60?

20 MR. GEIER: 609 and 404. I mean, they're essentially
21 going to be the same analysis, I believe.

22 THE COURT: Okay. The 609 analysis I think is an
23 easier analysis for me to make under the discussion we had
24 earlier than the, than the *State vs. Hamilton* analysis.
25 The way that I allowed the testimony of the prior record in

1 is in accord, quite frankly, with the -- what's the Indian
2 chief case?

3 MR. GEIER: I think it's *Old Chief*.

4 THE COURT: *Old Chief*, *Old Chief* case. Because 609 is
5 indeed a generic rule, as I indicated before, and the only
6 thing that triggers it, one -- well, a crime that carries a
7 possible penalty of more than a year in jail, or crimes of
8 moral turpitude regardless of the penalty that's involved.

9 In this particular case, all the records that I've
10 seen -- at least on indictments -- certainly carry more
11 than a year in jail. So, that would trigger Rule 609. And
12 all the jury needs to know is the fact that they have been
13 convicted of crimes that carry a possible penalty of one
14 year in jail. So, that's how it will be introduced. Does
15 that, does that answer that question?

16 MR. GEIER: Yes, Your Honor.

17 THE COURT: Are there other, are there other charges,
18 however, other than those listed on the indictment that you
19 have some concern about? Tell me again under the rule.

20 MR. GEIER: I don't believe so, Your Honor. I believe
21 everything that they've listed is -- are all the charges
22 that are pending.

23 THE COURT: Okay.

24 MR. GEIER: If I find out otherwise, I'll make the
25 appropriate objection.

1 THE COURT: Okay. All right, what else do we have?

2 MR. GEIER: Your Honor, we have a *U.S. vs. Bruton*
3 matter.

4 THE COURT: Okay.

5 MR. GEIER: There are a number of statements that Mr.
6 Price and his co-defendant, Mr. Simuel, made during the
7 course of his custody. I guess maybe we should hold off on
8 this one until we do a *Jackson vs. Denno*.

9 THE COURT: Okay.

10 MR. GEIER: However you would like to do it, Your
11 Honor.

12 THE COURT: We can deal with it right now. I might
13 have to withhold the ruling until I know more about whether
14 the statements are going to come in.

15 MR. GEIER: We're more than happy to go through it
16 right now.

17 THE COURT: Okay.

18 MR. ROBINSON: Judge?

19 THE COURT: Yes.

20 MR. ROBINSON: If I may, I was just going to say that
21 just, just, just to simplify matters for the court, I'd
22 like to have the officers testify about the voluntariness
23 of the statements and the substance of the statements now
24 that we're having an in-camera hearing. And then we can
25 take up the *Bruton* matters. Once, once the substance of

1 the statements is before the court, I'm probably going to
2 be able to stipulate to the matters that are -- that have
3 to be excluded under *Bruton*. But I'd rather get through
4 before the court under a *Jackson vs. Denno* context first.

5 THE COURT: Whatever is more expedient, will cause the
6 less heartburn and time taken up is fine with me, and that
7 will be good. Anything that can be stipulated, obviously
8 that saves the court time.

9 Is that okay with Mr. Geier?

10 MR. GEIER: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. ROBINSON: Your Honor, I also have a motion to
13 sequester witnesses pursuant to South Carolina Rule 11.615.
14 We'd ask that should the law enforcement agent in this case
15 -- well, I see they've got two of them over there. But
16 should the law enforcement agents chosen by the government
17 and counsel to sit at the desk, if they're going to
18 testify, I'd ask that they not go first so as to violate
19 the spirit of 615.

20 THE COURT: All right. Specifically, do you have any
21 particular witnesses that you are currently concerned about
22 in this regard that might be impacted, as you say, by the
23 spirit of Rule 615?

24 MR. GEIER: Your Honor, there's a number of fact
25 witnesses specifically I'm concerned about. And we have

1 the, the two victims. I don't know what's going to happen
2 with the two victims, but.

3 THE COURT: Of course the victims have an absolute
4 right to stay in. They're not subject to sequestration.

5 MR. GEIER: Right.

6 THE COURT: And during the *Jackson vs. Denno*, you
7 wouldn't sequester the witnesses who are involved in the
8 *Jackson vs. Denno* issues they were testifying obviously.

9 MR. GEIER: There were four individuals that were
10 within that house. There were two who were, I guess, in
11 the immediate vicinity that are witnesses, and that, that's
12 essentially the state's fact witnesses.

13 I'm, I'm concerned, looking at some of the statements
14 that have been given to law enforcement over the course of
15 this investigation, that there's been some, oh, I don't
16 know, crossing over of statements.

17 THE COURT: Right.

18 MR. GEIER: So, he and I -- mostly concerned about the
19 fact witnesses.

20 THE COURT: Okay, and you say there are four of them?

21 MR. GEIER: Well, well there's the two victims, so
22 there's four additional ones. They are Malik Campbell,
23 Sharita Willingham, Jesse Reese, and Martin Guzman.

24 MR. ROBINSON: Judge, I'll just go ahead and tell the
25 court. I don't have any problems with Martin Guzman or

1 Jesse Reese or Sharita Willingham being sequestered.

2 THE COURT: All right.

3 MR. ROBINSON: I will say that Malik Campbell is, is
4 the blood brother of the two victims, Devin and Deon. And
5 so I think that he is not covered by the sequestration
6 rule. I think that he is exempted from that and that he
7 can, therefore, sit in court if he wishes during a trial of
8 the case. But I don't have any problem sequestering the
9 witnesses that aren't family.

10 THE COURT: All right, Ms. Guzman. Who else?

11 MR. ROBINSON: Jesse Reese and Sharita Willingham,
12 Your Honor.

13 MR. GEIER: Yes, Your Honor.

14 THE COURT: And Malik, what is Malik's last name?

15 MR. ROBINSON: Campbell, C-A-M-P-B-E-L-L.

16 THE COURT: And you say since he is the brother of one
17 of the victims that 615 does not apply to him?

18 MR. ROBINSON: I believe it's under the Victim's
19 Rights Act that he -- a family member is, is also excluded.

20 THE COURT: All right, in that the Victim's Rights Act
21 does speak to family members, the rule itself does not of
22 course, but certainly it's inherently implied.

23 All right, Guzman, Reese, and Willingham will be
24 sequestered. Mr. Campbell will be allowed to stay in.

25 MR. ROBINSON: Thank you. Thank you, Judge.

1 THE COURT: All right.

2 MR. GEIER: Thank you, Your Honor.

3 THE COURT: All right, Mr. Deysach.

4 MR. DEYSACH: If you're ready, I just wanted to stand
5 and let you know I had something to say. I'm not trying to
6 be a buttinski. But, you know, I guess I'm associating
7 myself with the sequestration motion and, and I've heard
8 your ruling on that. And so I know what it will be.

9 Renewing a discovery motion beginning of a trial, I
10 like to make sure I, I renew that discovery motion, make
11 sure that the solicitor understands that if there's
12 anything that he comes in that he hasn't turned over and
13 needs to, to go ahead and do that or something that comes
14 to him during the course of the trial or something like.
15 That he'll, he still -- the rules of Rule 5 and *Brady* still
16 apply to him. And so I would do that.

17 I have one other thing. I don't know if you need to
18 stop and say anything. I know he knows what to do.

19 THE COURT: I can see him doing soul searching right
20 now.

21 All right, Mr. Robinson, Rule 5 and *Brady* have been
22 complied with and will continue to be complied with
23 throughout the trial of this case. Is that fair, sir?

24 MR. ROBINSON: Yes, Your Honor. I'm well aware of
25 those affirmative duties that I have, whether or not Mr.

1 Deysach makes them or not. And I think I might have an
2 additional piece of material for them when we're done right
3 now. So, I've been providing them things as I got them
4 during the last two to three weeks as preparation was under
5 way. And I will certainly provide them with everything as
6 it arises when the trial's underway.

7 THE COURT: Thank you.

8 Mr. Deysach.

9 MR. DEYSACH: I have one more issue that I wanted to
10 bring up, and it has to do with a witness who was
11 mentioned, Martin Guzman, who I have been attempting to
12 subpoena for the last week and a half, Your Honor.

13 THE COURT: Right.

14 MR. DEYSACH: But that my investigator has spoken to
15 him but has not been able to make physical contact with
16 him. And his, his mom says she doesn't know where he is.
17 I guess at this time, I would, I'd like to inquire as to
18 whether or not the state has him under subpoena and if so,
19 I want to make it so that they can't just excuse him
20 without my investigator getting a chance to subpoena him.
21 If he is under subpoena by them, that would kind of solve
22 the next thing that I was going to say in case he wasn't.

23 (MR. ROBINSON AND MR. DEYSACH BRIEFLY CONFER.)

24 THE COURT: All right, he won't, he won't be released
25 from the subpoena until your investigator talks to him.

1 MR. DEYSACH: Right. Thank you very much. I
2 appreciate that.

3 All right, I think -- and I have a feeling that you
4 already have some words that you say in this situation when
5 two defendants are tried together to the effect that each
6 is to be considered separately and something along those
7 lines.

8 What I -- it is, it's new to me. This is the first
9 time that I've tried a case with a co-defendant, and so I
10 don't know if it's something that you say at the beginning
11 or at the end or both. And at this time, I would ask you
12 to say -- mention something at the beginning as well as at
13 the end.

14 THE COURT: Certainly I do it at the end obviously as
15 part of my general charge in that regard throughout the
16 charge, and as I instruct the jury on the forms of the
17 verdict. And I'll be glad to mention that during my
18 preliminary instructions to them.

19 I'll try to make a note. I do that kind of by memory,
20 but I'll try to include a note to my memory so that when
21 I'm doing that, I won't leave it undone. And if I do, you
22 let me know and I'll correct it.

23 MR. DEYSACH: Thank you very much, Your Honor.

24 THE COURT: All right. All right, does that take care
25 of all the housekeeping matters from the defense

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

125

1 perspective?

2 MR. DEYSACH: I wish I could think of more, but I
3 think we're just ready for the hearings with testimony.

4 THE COURT: Okay, we'll move on.

5 All right, Mr. Robinson, what do you have?

6 MR. ROBINSON: Thank you. This is our *Jackson vs.*
7 *Denno*, Your Honor. The state calls Investigator Dejuan
8 Holmes.

9 THE COURT: Investigator Holmes, come forward and be
10 sworn.

11 MR. ROBINSON: Madame Court Reporter, his name is
12 spelled D-E-J-A-U-N [sic].

13 WITNESS: U-A.

14 THE COURT: I'm sorry, D-E-J-A-U-N [sic].

15 DEJUAN HOLMES, BEING DULY SWORN,

16 TESTIFIES AS FOLLOWS:

17 THE COURT: Mr. Robinson.

18 MR. ROBINSON: May it please the court?

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION BY MR. ROBINSON:

21 Q. Investigator Holmes, did you have occasion to
22 investigate a burglary that occurred on July 28th of last
23 year at the [REDACTED] Apartments in Bluffton?

24 A. Yes, sir.

25 Q. As part of that investigation, did you interview a

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

126

1 suspect named Demetrius Price?

2 A. Yes, sir.

3 Q. Where did you interview him?

4 A. Over at Savannah Metropolitan Police Department,
5 Savannah, Georgia.

6 Q. Why did you interview him at that location?

7 A. That's where his probation officer brought him.

8 Q. How did you learn that he was on probation?

9 A. Through the investigation of the case, in contact with
10 Savannah police.

11 Q. Who arranged the meeting?

12 A. Myself and, myself and Investigator Todd Calhoun went
13 over to Savannah and made contact with the Violent Task
14 Force over there, at which time they assisted in making,
15 making contact with Mr., Mr. Demetrius and -- at his
16 residence.

17 Q. When contact was made with him and the meeting was
18 set, did you already have warrants for his arrest?

19 A. Yes, sir.

20 Q. And describe the room where the interview was
21 conducted at Savannah P.D.

22 A. It was upstairs on the second floor, if I can
23 remember, in a small room which sat three people.

24 Q. Was it -- is it, is it -- could it be characterized as
25 an interrogation room?

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

127

1 A. Yes.

2 Q. Okay. Was the defendant in handcuffs?

3 A. No, he was not.

4 Q. Was he dressed out in prison garb?

5 A. No, he was not.

6 Q. Was anyone else present besides yourself and the
7 defendant?

8 A. Investigator Calhoun. Calhoun was there with me also
9 for a brief moment.

10 Q. Was the defendant advised of his Miranda rights?

11 A. Yes, he was.

12 Q. And who, who, who gave him his Miranda rights?

13 A. I did.

14 Q. How did you do that?

15 A. I read it from the form, standard form at the Beaufort
16 County Sheriff's Office.

17 Q. Did you offer to let him sign a form?

18 A. Yes, I did.

19 Q. Did he do that?

20 A. No. He declined to.

21 Q. During the course of your conversation with him, did
22 you promise him anything to speak with you?

23 A. No, I didn't.

24 Q. Did you threaten him in any way?

25 A. No, I didn't.

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

128

1 Q. Did he agree to speak with you?

2 A. Yes, he did.

3 Q. About Mr. Price himself, do you know how old he is?

4 A. I'm not sure exact age. I want to say he's around
5 thirty, early thirties.

6 Q. Okay. Did he seem sober, alert when you were speaking
7 with him?

8 A. Yes, sir.

9 Q. Did he understand your questions?

10 A. Yes, sir.

11 Q. Seem to understand your questions? How long did the
12 interview last?

13 A. I don't know exactly, exactly how long it last. I
14 want to say about an hour.

15 Q. And what time of day or night did it occur?

16 A. I'd say about mid-day, about twelvish. I'm not sure.

17 Q. Would it refresh your recollection to look at your
18 report?

19 A. Yes, sir.

20 MR. ROBINSON: May I approach the witness?

21 THE COURT: Yes, sir.

22 BY MR. ROBINSON:

23 A. Don't have the exact time of it on here.

24 Q. You mentioned that Investigator Todd Calhoun was there
25 for some of it. Do you know, do you recall at what point

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

129

1 he left?

2 A. It was shortly after I begun the interview. It was
3 after Miranda was given.

4 Q. Other than advising him his rights, before you asked
5 him about the incident, what else, what, if anything, did
6 you say to him?

7 A. Just told, I told him that we had a warrant for his
8 arrest and pretty much it.

9 Q. And what did he tell you?

10 A. May I refer to my report?

11 Q. Please do.

12 A. After I told him that I had a warrant for his arrest,
13 he immediately say -- said that he wasn't involved with an
14 incident. And then he went on to tell me that he had been
15 in Savannah all day, and he had been job hunting. And I
16 asked him where, where did he go job hunting at. He told
17 me he had went over to his girlfriend's house.

18 Q. Did you tell him the date you were curious about?

19 A. Yes, the 29th.

20 Q. Two days earlier?

21 A. Correct.

22 Q. Okay. Go on. What else did he tell you?

23 A. He told me he had gone to his girlfriend's house.
24 Declined to give her name or an address for where she
25 stayed.

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

130

1 Q. Did you ask him for that information?

2 A. Yes, I did.

3 Q. Okay. What else?

4 A. He told me that once again he'd gone to his
5 girlfriend's house, and he called his girlfriend's mother,
6 who works at Sam's in Hull, Georgia, about it, about a job.
7 He declined to give girlfriend's mother's information also.
8 Then he, then he went on to say that he and a friend had
9 gone, gone someplace on Victory Drive to get his car
10 washed.

11 Q. Did he say what time that happened?

12 A. He said, I believe it was about 10:00. He -- 10:00,
13 he'd gone to his girlfriend's house.

14 Q. A.M.? P.M.?

15 A. A.M., correct.

16 Q. What else did he tell you?

17 A. He said he's taken the car to get it washed. He and
18 his friend had gone down the street somewhere to get a bite
19 to eat. Couldn't get where, where he had gone at. He said
20 he recalls returning home at about 3:00. He denied ever
21 being anywhere in, in Beaufort -- in, correction, Bluffton,
22 South Carolina.

23 Q. Did you ask him to give you any more details about his
24 description of those events? Did you ask him the name of
25 his girlfriend?

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

131

1 A. Yes, I did. I asked him where he had gone to look for
2 a job, and which he only could give me that he had gone to
3 Sam's. Or he, he called Sam's to speak with his
4 girlfriend's mother.

5 Q. All right, did he say anything else?

6 A. I put it in my report.

7 (A PAUSE.)

8 A. Basically, denied ever coming to Savannah -- or
9 correction, coming to Bluffton, South Carolina.

10 Q. Did you show him any photographs?

11 A. I did.

12 Q. What did you show him photographs of?

13 A. Showed him a photograph of his vehicle leaving
14 [REDACTED] Apartments in Bluffton.

15 Q. Did you ask him about that?

16 A. Yes. At first he denied that was his vehicle because
17 his vehicle was at -- being, being washed at the car wash.
18 Then I showed him, then, then I showed him a picture of the
19 tags of his vehicle, at which time he said that someone
20 from the car wash had to have had his vehicle over there.

21 Q. Okay. Did you tell him anything else about the, about
22 the incident? Did you tell him about any witnesses
23 identifying him at the scene?

24 A. I believe I did. Yes.

25 Q. And what did he tell you about that?

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

132

1 A. It couldn't have been him because he was not in
2 Bluffton, South Carolina.

3 MR. ROBINSON: Your Honor, this investigator was
4 involved with the interviews of both defendants. Should we
5 allow cross-examination for this defendant, or should we
6 just go on to the next interview, interview?

7 THE COURT: You can go on to the next, but I want the
8 record to reflect exactly what he told him in his Miranda
9 warnings. That's not in the record just yet. He's
10 referred to a form, but the form has not been marked yet.
11 And I need to know with particularity exactly what he was
12 told.

13 MR. ROBINSON: Beg the court's indulgence.

14 THE COURT: Yes, sir.

15 (A PAUSE.)

16 MR. ROBINSON: May I approach the witness?

17 THE COURT: Yes, sir.

18 BY MR. ROBINSON:

19 Q. Do you recognize that?

20 A. Yes, I do. This is the form that I read to ---

21 Q. Now, that's a ---

22 A. --- to the gentleman.

23 Q. Now, that's a photocopy of a form signed by some other
24 -- by another defendant. Isn't that correct?

25 A. By Lucius Simuel.

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

133

1 Q. Right, but isn't that the -- is that the kind of form
2 that you offered to let him sign?

3 A. That's correct.

4 Q. And that's a standard sheriff's office form?

5 A. Yes. I read this form to him, a form that's similar
6 to this to him.

7 Q. And what, what, what does the form say?

8 A. The entire thing?

9 Q. What rights are mentioned, mentioned on it?

10 A. It says that:

11 You have the right to remain silent.
12 Anything you say can and will be used
13 against you in a court of law. You have the
14 right to talk to an attorney for advice
15 before, before you -- before any questions.
16 If you cannot afford an attorney, one will
17 be appointed for you before any questions if
18 you wish. If you decide to answer questions
19 now without an attorney, you will still have
20 the right to stop answering at any time.
21 You also have the right to stop answering at
22 any time until you talk to an attorney.

23 And then there is a waiver of your rights.

24 Q. Did he -- did you observe his demeanor while you,
25 while you read that, read that form to him? Did you see

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

134

1 what he looked like while you read that form to him?

2 A. I can't remember. I can't remember what he looked
3 like at that time.

4 Q. Do you -- did he appear to understand?

5 A. He said he understood. I asked him if he understood.

6 THE COURT: Okay, that -- I just want to make sure
7 that that was in the record. You can move on, if you wish
8 to, to Mr. Simuel.

9 BY MR. ROBINSON:

10 Q. Investigator, did you participate in the interview of
11 Lucius Simuel on August 1st of 2008?

12 A. That's correct.

13 Q. Okay, and where did that occur?

14 A. That one occurred over at the Chatham Savannah
15 Detention Center.

16 Q. So, not the police department? That was at the
17 detention center?

18 A. Yes, sir.

19 Q. And how did you make contact with Lucius Simuel?

20 A. I was assisting Investigator Calhoun in the
21 investigation, and Mr., Mr. Simuel had been arrested, and
22 we went over to interview him.

23 Q. Okay. Who arrested him?

24 A. I believe it was an officer with Chatham County,
25 Savannah Chatham Metro, Metro.

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

135

1 Q. Did he make any effort to contact you, to contact
2 either you or Investigator Calhoun?

3 A. Investigator Calhoun had been in conversation with him
4 throughout the investigation.

5 Q. Isn't it fair to say that you Lucius Simuel turned
6 himself in?

7 A. Yes.

8 Q. To Savannah. Is that correct? What was -- describe
9 again. Where did you -- what, what, what -- where was
10 Lucius Simuel interrogated, questioned?

11 A. In one of the interview rooms there at the detention
12 center.

13 Q. Was he dressed out?

14 A. Yes, he was.

15 Q. He was? Was he in cuffs?

16 A. No, he was not.

17 Q. Who -- was he advised of his Miranda rights?

18 A. He was.

19 Q. Was he shown the same form that you showed Demetrius
20 Price?

21 A. Yes.

22 Q. But he, in fact, signed the form. Is that correct?

23 A. That's correct.

24 Q. And did you read all those same rights that you read
25 to Demetrius Price?

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

136

1 A. That's correct.

2 Q. Do you recall if it was you yourself or Investigator
3 Calhoun who read the rights to him then?

4 A. Not mistaken, I believe it was Investigator Calhoun
5 that read him the rights.

6 Q. Did he, based on your observation of him, did he
7 appear to understand, as you were speaking to him, did he
8 appear to understand those rights?

9 A. Yes, he did.

10 Q. And you observed him sign that form. Is that correct?

11 A. That's correct.

12 Q. Did you promise him anything during your interview
13 with him?

14 A. No, sir, I didn't.

15 Q. Did you threaten him in any way?

16 A. No, sir, I didn't.

17 Q. Did you observe Investigator Calhoun promise or
18 threaten him in any way?

19 A. No, sir, I didn't.

20 Q. Did he agree to make a statement to you at that time?

21 A. Yes. He wanted to talk to us.

22 Q. How do you know he wanted to talk to you?

23 A. He, he appeared to be interested in what was going on
24 as far as the arrest.

25 Q. Okay. Do you know how old he is?

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

137

1 A. Not exactly. I would say he's around thirty-two,
2 thirty also.

3 Q. Okay, and do you recall what time of day or night he
4 was interviewed?

5 A. It's early. 8:30.

6 Q. In the morning?

7 A. Yes, sir.

8 Q. Do you know what date he turned himself in? Do you
9 recall?

10 A. No. No, not exact date.

11 Q. Do you know how long the interview lasted?

12 A. I can't remember.

13 Q. Approximately how long it lasted?

14 A. I would say about an hour.

15 Q. And what did he tell you?

16 A. Can I have my report or Investigator Calhoun's report,
17 sheriff's report?

18 Q. Just a moment.

19 (A PAUSE.)

20 MR. ROBINSON: May I approach the witness, Your Honor?

21 THE COURT: Yes, sir.

22 (A PAUSE.)

23 BY MR. ROBINSON:

24 Q. Did you read the, did you read the -- you already had
25 warrants for him. Is that correct?

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

138

1 A. That's correct.

2 Q. And when you interviewed him, you read those warrants
3 to him. Isn't that right?

4 A. That's correct.

5 Q. And what did he say after you read the warrants to
6 him?

7 A. Pretty much that, that if he would, if he would tell
8 us what was going on, he would be putting somebody on a
9 cross. He didn't, he didn't want to do that.

10 Q. Okay. What else did he tell you?

11 A. He said that he -- that they were being greedy and
12 just wanted some money.

13 Q. Okay. Did he describe the incident?

14 A. Yes.

15 Q. The shooting. Okay, what did he tell you happened?

16 A. He said that he, he was familiar with Deon because
17 Deon was dating, Deon was dating his niece Tiah. And they
18 were -- they had been over to the residence several times.
19 And they had inquired about -- they meaning Deon had been
20 inquiring about some pills or some drugs.

21 Q. And then what?

22 A. That he had, he had picked up his home boy, as he
23 called -- referred him, and they had met over at the Piggly
24 Wiggly's parking lot. And they had gone over to Hilton
25 Head, and he didn't know that it would gone -- he didn't

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

139

1 expect for it to happen the way it happened.

2 Q. Didn't expect what to happen?

3 A. For them, for there to be a shooting at the residence.

4 Q. Did he ever say who home boy was?

5 A. Yes.

6 Q. Who was home boy? Did he ever use any other name for
7 home boy?

8 A. Yes, he did.

9 Q. Well, what name did he use?

10 A. Demetrius Price. Called him Meaty.

11 Q. He called him Meaty?

12 A. Meaty.

13 Q. Did he call him Demetrius Price?

14 A. Referred to him as a Meaty.

15 Q. So, he not call him Demetrius Price?

16 A. Yes. He referred to him as Meaty.

17 Q. Is it -- you had another interview with him a month
18 later. Is that correct?

19 A. That's correct.

20 Q. And where was that held?

21 A. That interview was held over here at the Beaufort
22 County Detention Center.

23 Q. Was he advised of his rights on that occasion?

24 A. Yes, he was.

25 Q. Did y'all -- did he read and sign the Miranda form?

- 1 A. Yes, he did.
- 2 Q. Is it the same form that you just read to the court?
- 3 A. That's correct, and I read it, too.
- 4 Q. You read it to him on that occasion also?
- 5 A. Yes, sir.
- 6 Q. Those same rights?
- 7 A. Yes, sir.
- 8 Q. And who arranged that meeting?
- 9 A. Investigator, Investigator Calhoun had been contacted
10 by Mr. Simuel's wife, and he'd also received a letter
11 requesting, requesting Investigator Calhoun to come over to
12 speak with him.
- 13 Q. Was he in cuffs at that time when you interviewed him
14 on that, on that occasion?
- 15 A. No, he was not.
- 16 Q. Was he dressed up in prison garb?
- 17 A. Yes. He had his suit on from the detention center.
- 18 Q. Do you recall what time of day or night that interview
19 occurred?
- 20 A. I'm not sure what time, what it was. I know it was
21 daytime hours.
- 22 Q. Okay.
- 23 A. Pretty sure about that.
- 24 Q. Do you recall how long it lasted?
- 25 A. Once again, about an hour again.

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

141

1 Q. And what did he tell you on that occasion?

2 A. He told us that he originally lied when he first
3 talked to us. He went back to the day of the incident and
4 said that -- well, prior to the incident, he had been
5 contacted by his niece and his nephew in reference to them
6 wanting -- well, the boyfriend of, the boyfriend of, of
7 Lucius -- correction, the girlfriend of Lucius, Lucius,
8 Lucius. Tiah and her brother had been, had been contact --
9 had contacted them wanting drugs for Deon. And he was
10 arranging for that to happen.

11 On the day of the incident, Lucius had made contact
12 with his -- with, with Demetrius at the Piggly Wiggly. He
13 said that -- he described, described Demetrius as being --
14 having, probably having a long night because of his
15 appearance. He still had been high from that night before.
16 And to calm him down, he had gone to a friend's house at
17 unknown location and went to pick up a gun, at which time
18 he drove his vehicle.

19 Demetrius drove his vehicle to Bluffton, South
20 Carolina, at which time they went over to Deon and
21 Deverol's house to take, to take the drugs over. They made
22 contact with the two there. Let me refer to my report.

23 (A PAUSE.)

24 A. At which time, a conversation was held over drugs.
25 Drugs was pulled out, pills were pulled out and shown to

D. HOLMES - CROSS-EXAMINATION BY MR. GEIER

142

1 the two subjects, at which time they said that they didn't
2 need it. They didn't want any, any pills. Again, they'd
3 already gotten some.

4 At this time, Demetrius pulled out a gun and stuck it
5 to -- stuck -- pointed it at the victim Deon. And a
6 confrontation occurred, at which time Demetrius shot Deon.

7 Q. All right. Did Lucius ever refer to Demetrius by the
8 name Demetrius?

9 A. I believe he did. During my, during my, during my
10 investigation, he did say Demetrius at some point in time.

11 Q. Okay.

12 MR. ROBINSON: I don't have anything more for this
13 witness.

14 THE COURT: All right.

15 MR. ROBINSON: Investigator, please answer these
16 lawyers' questions.

17 THE COURT: Cross-examine, gentlemen, and you take him
18 in the order in which he talked about the individuals.
19 We'll start with Mr. Price.

20 CROSS-EXAMINATION BY MR. GEIER:

21 Q. Good afternoon, Investigator Holmes. How are you?

22 A. Good, sir. How are you?

23 Q. Good. You stated in your testimony that Mr. Price
24 declined to sign this form?

25 A. Yes.

D. HOLMES - CROSS-EXAMINATION BY MR. GEIER

143

1 Q. And again, we're back to Demetrius Price a while back.
2 So, you don't have a form that shows that he agreed to do
3 anything, right?

4 A. No, sir.

5 Q. You didn't fill out a form that says refused to sign
6 or anything like that that you would for DUI or, you know,
7 implied consent?

8 A. No.

9 Q. Is that your common practice?

10 A. If they refused, if they refuse to sign it, they're --
11 you can't make them sign it.

12 Q. Well, right, but you don't, you don't put anything,
13 sort of documentary log saying that they refused or
14 anything like that. You just...

15 A. It just, it just depends. At that time I didn't.

16 Q. Right. Okay. So, sometimes you do, sometimes you
17 don't?

18 A. Yes, sir.

19 Q. Okay, but in this case, you didn't have -- you didn't
20 fill out anything saying he waived his rights, and he just
21 refused to sign?

22 A. No, sir. No. No, sir.

23 Q. And you actually had a form with you that day?

24 A. Yes, sir.

25 Q. You testified that Sergeant Calhoun was there

D. HOLMES - CROSS-EXAMINATION BY MR. GEIER

144

1 initially at the interview, and he left at some point?

2 A. Yes, sir.

3 Q. Do you know why?

4 A. Myself and Demetrius was building rapport together,
5 and he pretty much walked out. He had no part in the
6 interview; he wasn't asking any questions, so he walked
7 out.

8 Q. Did you record this interview?

9 A. No, sir.

10 Q. So, you just took notes?

11 A. Yes, sir.

12 Q. You took notes at the same time you were actually
13 conducting the interview?

14 A. Yes, sir.

15 Q. And when did you put that into a report form?

16 A. I want to say it was in September. I can't -- to be
17 exact, I don't know.

18 Q. So, some time later? Not just the next day, but some
19 time ---

20 A. No, sir.

21 MR. GEIER: Your Honor, have no further questions for
22 this witness.

23 THE COURT: All right. Thank you.

24 Mr. Deysach.

25 MR. DEYSACH: Thank you, Your Honor.

D. HOLMES - CROSS-EXAMINATION BY MR. DEYSACH

145

1 CROSS-EXAMINATION BY MR. DEYSACH:

2 Q. Good afternoon, Investigator.

3 A. How are you doing, Mr. Deysach?

4 Q. I'm, I'm Lucius Simuel's attorney, so I'm going to be
5 focusing on the conversations that you had with him.

6 A. Okay.

7 Q. All right? The first interview that you were present
8 for with Lucius Simuel was on August 1, 2008, correct?

9 A. Sounds about right.

10 Q. And you testified it was at a detention -- Chatham
11 County Detention Center in Savannah?

12 A. Yes, sir. I don't know if that's the exact name, but
13 I believe it's the Chatham County ---

14 Q. Okay.

15 A. --- Detention Center.

16 Q. So, he's in custody, correct?

17 A. Yes, he is.

18 Q. Because of the warrants that are about the case that
19 we're here for today, correct?

20 A. That's ---

21 Q. That's what's holding him?

22 A. That's correct.

23 Q. Did you say that it was your understanding that Mr.
24 Simuel had reached out to Investigator Calhoun some time
25 before this?

1 A. Yes, sir.

2 Q. That Mr. Simuel had indicated to -- at least as far as
3 your understanding -- Investigator Calhoun a desire to
4 speak with him?

5 A. Yes. He want, he wanted to take care of this matter.
6 He was interested in -- as far as what was going on.

7 Q. Okay, and so both you guys go down to the Savannah
8 facility where Mr. Simuel is?

9 A. Yes, sir.

10 Q. And you met with him, not while he was cuffed but
11 while his hands were free?

12 A. Correct.

13 Q. And you had a private room to meet with him in,
14 correct?

15 A. That's correct.

16 Q. Did you say that you were the one who read him his
17 Miranda rights, or that Investigator Calhoun read him his
18 Miranda rights?

19 A. I believe it was me.

20 Q. And did you have a form that you, that you had that
21 indicate that it's from that day that Mr. Simuel signed?

22 A. I believe it's one that we had.

23 Q. The -- and that was from that day?

24 A. That's correct.

25 Q. Did you -- do you read him out his Miranda warnings,

D. HOLMES - CROSS-EXAMINATION BY MR. DEYSACH

147

1 or do you ask them to read the form?

2 A. I've done it both ways.

3 Q. Okay. Do you know how you did it in this case?

4 A. Well, I read it to him..

5 Q. You read it?

6 A. I did.

7 Q. Okay, you remember reading it to him?

8 A. Uh-huh.

9 Q. All right. Now, was there a recording device with you
10 guys when you made this -- when you had this conversation?

11 A. No.

12 Q. Not a voice recorder or anything like that?

13 A. Not sure.

14 Q. Okay.

15 A. Not sure.

16 Q. Did you at any point ask Mr. Simuel to write a
17 statement?

18 A. If, if it's attached to a report, yeah. I'm not, I'm
19 not sure.

20 Q. Okay. You're not sure if -- do, do you remember him
21 refusing to write a statement? I'm basing -- I'm asking if
22 you asked him to write a statement and he didn't do it, or
23 nobody asked him and he didn't do it.

24 A. I'm not sure.

25 Q. Did you take notes of the conversation?

D. HOLMES - CROSS-EXAMINATION BY MR. DEYSACH

148

1 A. Either myself or Investigator Calhoun did.

2 Q. Okay.

3 A. I believe Investigator Calhoun.

4 Q. All right, because the, the -- if -- I guess as we
5 were going through, we realize that the report that
6 contains details of the meeting is actually a report
7 written by Investigator Calhoun.

8 A. Yes.

9 Q. And so you're not the person who, who did the writing
10 of the report for this conversation.

11 A. Investigator Calhoun's the one that typed the report.

12 Q. Okay. All right. The next time you met Mr. Simuel
13 was at the detention center, correct?

14 A. That's correct.

15 Q. Here in Beaufort?

16 A. Yes, sir.

17 Q. You indicated that there was a letter sent to
18 Investigator Calhoun. That was one of the reasons why this
19 meeting was -- why it took place?

20 A. That's correct.

21 Q. The letter requested a meeting, and that letter was
22 from Mr. Simuel?

23 A. Yes, sir.

24 Q. Did you ever see that letter? If you don't remember,
25 just say you don't.

D. HOLMES - CROSS-EXAMINATION BY MR. DEYSACH

149

1 A. I'm not, I'm not sure. I remember seeing an envelope.
2 I don't remember reading the letter.

3 Q. So, it's possible that Investigator Calhoun told you
4 about the letter, but it's also possible that you saw and
5 read the letter. You just can't remember which.

6 A. I'm pretty sure I -- I'm not sure if I read the letter
7 or not.

8 Q. You sure don't remember reading the letter is what I'm
9 hearing.

10 A. I'm not -- I don't remember.

11 Q. Okay.

12 A. I don't recall reading the letter.

13 Q. All right. When you met with Mr. Simuel on that
14 occasion, did you fill out the Miranda form?

15 A. I believe there's one filled out.

16 Q. Did you read him the rights, or did you ask him to
17 read the rights himself?

18 A. Not sure.

19 Q. Not sure. So ---

20 A. More likely he was read those Miranda rights to him.

21 Q. More, more likely?

22 A. Yes.

23 Q. Was there a voice recorder present at that meeting?

24 A. Not sure.

25 Q. Are you aware of any recording of that meeting?

D. HOLMES - CROSS-EXAMINATION BY MR. DEYSACH

150

1 A. I'm not.

2 Q. You're not aware of one? Now, this meeting was
3 detailed in one of your reports, correct?

4 A. That's correct.

5 Q. Did ---

6 A. And I prepared that report.

7 Q. You, you, you prepared the report?

8 A. Yes.

9 Q. Correct. So, in that report, let me ask you. Was a
10 written statement generated from that meeting?

11 A. No, not -- I don't recall.

12 Q. All right, and I have to question last time. Was one
13 requested and refused, or was one not requested? All
14 you're remembering is that there just isn't a written
15 statement from that meeting?

16 A. If I could refer back to my report?

17 Q. You certainly may. Do you have it up there with you?

18 A. No, sir, I don't.

19 Q. An extra copy. I'm going to need it back.

20 MR. DEYSACH: I'm going to approach, Your Honor, if
21 that's okay?

22 THE COURT: Yes, sir.

23 BY MR. DEYSACH:

24 Q. And I guess the portion is right here.

25 (A PAUSE.)

D. HOLMES - CROSS-EXAMINATION BY MR. DEYSACH

151

1 A. He refused to write a statement.

2 Q. So, does it say anywhere that you asked him to write a
3 statement?

4 A. It didn't say he -- did I ask him. But it said that,
5 it said that he refused to write a statement. So,
6 evidently I, I asked him if I put that there.

7 Q. Okay. Did you take, did you take notes from that
8 meeting?

9 A. Yes. Notes were taken.

10 Q. Okay, and you take those notes, and then you, you go
11 back to your office to write up the report, correct?

12 A. That's correct.

13 Q. And -- all right. The report's filed on the 9th of
14 September, correct?

15 A. That's correct.

16 Q. And that's, this is -- the last entry in the report is
17 the interview with Simuel, right?

18 A. That's correct.

19 Q. And the interview occurred on 9/4 or, yes, 9/4/08?

20 A. That's correct.

21 Q. All right. What did you -- now, so you used those
22 notes sometime between September 4th and September 9th to
23 write your report, correct? You used the notes from the
24 meeting to write the report?

25 A. That's correct.

D. HOLMES - CROSS-EXAMINATION BY MR. DEYSACH

152

1 Q. What did you do with those notes?

2 A. Where they are presently?

3 Q. Yeah, where are they?

4 A. They're probably in the trash can or -- I'm, I'm not
5 sure. I can't answer that question.

6 Q. You wouldn't be surprised if you threw them away is
7 what you're saying?

8 A. It could have. It could be, or they, they could be.
9 Investigator Calhoun has the case file.

10 Q. Okay. So, they're either in the case file, but if
11 they're not in the case file, you don't know where they
12 are?

13 A. No, sir.

14 Q. Can I get my report back?

15 MR. DEYSACH: Court's indulgence?

16 THE COURT: Yes, sir.

17 (A PAUSE.)

18 MR. DEYSACH: All right, I don't have anything
19 further.

20 THE COURT: Thank you.

21 Any redirect briefly, Mr. Robinson?

22 MR. ROBINSON: No redirect.

23 THE COURT: Thank you.

24 You can step down, Mr. Holmes.

25 (THE WITNESS EXITS THE STAND.)

1 THE COURT: Folks, we're going to have to bring this
2 to a conclusion now. The 5:30 hour is upon us, and my
3 conference call with seven lawyers is waiting.

4 And you've got one more witness on the *Jackson vs.*
5 *Denno* issue?

6 MR. ROBINSON: I do.

7 THE COURT: We can do him in the morning?

8 MR. ROBINSON: We can talk to him in the morning.

9 THE COURT: Yeah.

10 MR. ROBINSON: That will be fine.

11 THE COURT: Is that okay?

12 MR. ROBINSON: That will be fine.

13 THE COURT: All right, we'll do that -- Investigator
14 Calhoun, that is -- in the morning.

15 MR. ROBINSON: That will be fine, Judge.

16 THE COURT: All right, we'll start at 9:30 tomorrow
17 morning then, gentlemen. The jury will be back at 10:30,
18 okay?

19 We'll be in recess until 9:30 tomorrow morning.

20 MR. DEYSACH: All right. Thank you, Your Honor.

21 MR. ROBINSON: Thank you, Your Honor.

22 THE COURT: Thank you all.

23 (WHEREUPON, THE CASE IS AT EASE.)

24 TUESDAY, NOVEMBER 17, 2009

25 (COURT RESUMES AT 9:42 A.M.)

1 THE COURT: All right, Mr. Robinson, are we ready
2 to continue with the *Jackson vs. Denno* issue from
3 yesterday?

4 MR. ROBINSON: We sure are, Judge.

5 This is *The State vs. Lucius Simuel* and *The State vs.*
6 *Demetrius Price*. The state calls investigator Todd
7 Calhoun.

8 THE COURT: Investigator Calhoun, come forward please,
9 sir, to be sworn.

10 MR. DEYSACH: Your Honor, one real quick issue I
11 wanted to bring up right at the beginning today.

12 THE COURT: Okay.

13 MR. DEYSACH: Yesterday when I was talking with Mr.
14 Holmes, Investigator Holmes on the stand, when I got back
15 to the table, the defendant said that they noticed what
16 looked like some sort of body language from Investigator
17 Calhoun.

18 And I'm sure it was innocuous, and I'm not, I'm
19 not trying to insinuate that anything untoward was going
20 on, but it didn't -- it appeared as though, when there
21 was a question that Mr. Holmes didn't, didn't know the
22 answer to, that Mr. Calhoun was maybe trying to help
23 get him to the right page.

24 And like I said, I would -- the last thing I would
25 ever do is to say that somebody was doing anything that

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

155

1 isn't right and trying to put forth anything that's not
2 true on the stand. And I know that when somebody's
3 struggling, finding the right answer that you want to help
4 them.

5 But I would just ask that you -- they be cognizant of
6 their appearance so that it doesn't look as if that's
7 happened.

8 THE COURT: I, I appreciate it, Mr. Deysach. Thank
9 you, sir.

10 TODD CALHOUN, BEING FIRST DULY
11 SWORN, TESTIFIES AS FOLLOWS:

12 THE COURT: Mr. Robinson.

13 MR. ROBINSON: Beg the court's indulgence.

14 (A PAUSE.)

15 DIRECT EXAMINATION BY MR. ROBINSON:

16 Q. Are you Investigator Todd Calhoun with the sheriff's
17 office?

18 A. Yes, sir.

19 Q. Did you investigate the burglary and shooting that
20 happened on July 28th of 2008 at [REDACTED]
21 Apartments?

22 A. Yes, sir.

23 Q. Did you have an opportunity to be present when the
24 defendant, Demetrius Price, was interviewed in Savannah?

25 A. Momentarily, yes, sir.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

156

1 Q. Okay. Were you there when he was read his Miranda
2 rights?

3 A. Yes, I was.

4 Q. And who read him his Miranda rights?

5 A. Investigator Holmes.

6 Q. Was a form used?

7 A. Yes, sir.

8 Q. Okay. Did the defendant sign the form?

9 A. No, he did not.

10 Q. Was it read to him?

11 A. It was.

12 Q. Did -- and did he appear to understand his rights?

13 A. I believe so.

14 Q. Were you present when the, when the other defendant,
15 Lucius Simuel, was interviewed?

16 A. Yes, sir.

17 Q. Okay. When did you begin looking for Lucius Simuel?

18 A. We began looking for him -- it would have been I
19 believe the 31st of July. I need to refer to my report to
20 be exact.

21 MR. ROBINSON: May I approach the witness?

22 THE COURT: Yes, sir.

23 BY MR. ROBINSON:

24 A. It was the 31st.

25 Q. How did you make contact with him?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

157

1 A. Myself and Investigator Holmes went to Savannah
2 Metropolitan Police Department to meet with their Violent
3 Crime Unit to assist us with locating people that we
4 believed to be the suspects in this incident. And upon
5 meeting with them, they had did some research and realized
6 that Mr. Price was on probation, and they contacted the
7 probation department accordingly, and we basically went
8 around with Savannah's Violent Crime Unit and made contact
9 with various people throughout the search for them.

10 Q. How did you make contact -- okay, I understand that's
11 how you made contact with Price. How did you make contact
12 with Lucius Simuel?

13 A. In the search for Mr. Simuel and the aid of Savannah
14 Police Department, we were able to go to numerous homes.
15 We were able to meet up with Garden City Police Department,
16 who indicated that they believe that Mr. Simuel had worked
17 at a furniture store nearby, furniture business. We made
18 telephone contact with them asking to see if he was there
19 still in employment. And after we were told that he was
20 not there and that he did not work there -- we had rallied
21 at a location nearby, and within minutes of rallying up, I
22 received a phone call from Mr. Simuel.

23 Q. Had you given your contact information to the possible
24 employer?

25 A. I don't recall giving him my phone number or my name,

1 but I believe that Mr. Simuel was able to get that number
2 through their caller I.D. at their work.

3 Q. Okay. So, after you contacted the furniture store,
4 did someone contact you?

5 A. Yes, Mr. Simuel contacted me.

6 Q. And what did, what did he say when he called you?

7 A. He was inquisitive as to our reason for looking for
8 him.

9 Q. Okay, and what did you tell him?

10 A. Just basically that we needed to do an interview with
11 him in reference to an incident that took place in
12 Bluffton.

13 Q. Did you identify yourself as law enforcement?

14 A. Yes, sir.

15 Q. Okay. Was that the only time you talked to him?

16 A. No. I spoke to him later on that day. We had an
17 exchange of telephone calls in reference to ---

18 Q. Who called whom in those telephone calls?

19 A. I believe there was an exchange of both of us calling
20 back and forth to each other. Mr. Simuel was aware that we
21 had warrants for his arrest.

22 Q. And who made -- did you make him aware of those
23 warrants?

24 A. Yes, sir.

25 Q. Okay. When you -- you testified that he -- you

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

159

1 testified that you told him that you wanted to talk to him.

2 Did he -- how did he receive that information? Was he
3 willing to speak with you?

4 A. Yeah, he seemed to be willing to speak to me. He had
5 some, some concerns.

6 Q. What were his concerns?

7 A. That he made mention about needing to talk to family
8 and getting some advice in reference to this whole issue.

9 Q. Did you make contact with him?

10 A. Yes, we did.

11 Q. Okay, and where was that?

12 A. We eventually made face-to-face contact with him a day
13 later in the Chatham County Detention Center.

14 Q. Is that the first place where he wanted to meet you?

15 A. He originally had, during our phone conversations, had
16 talked about turning himself in to the Bluffton Police
17 Department.

18 Q. Did he do that?

19 A. He did not.

20 Q. What did he do?

21 A. After some, after numerous phone calls ---

22 Q. To who?

23 A. To me. He ended up turning himself in to Savannah
24 Metropolitan Police Department.

25 Q. Okay, and is that where you met with him?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

160

1 A. No, we met with him at the Chatham County Detention
2 Center.

3 Q. What day did you meet with him?

4 A. Met with him on August 1st.

5 Q. And what day did you contact the furniture store?

6 A. Would have been the 31st.

7 Q. Okay, and where did you talk to him when you were at
8 the detention center in Savannah? I mean Savannah, yes?

9 A. Their intake facility has what I would describe as
10 visitation rooms, and we met with him in one of those
11 rooms.

12 Q. Was he in handcuffs?

13 A. He was not.

14 Q. Was he dressed out in prison garb?

15 A. I don't recall if he was or not. I believe he was
16 still in civilian clothing.

17 MR. ROBINSON: Okay, beg the court's indulgence.

18 (A PAUSE.)

19 MR. ROBINSON: May I approach the witness?

20 THE COURT: Yes, sir..

21 BY MR. ROBINSON:

22 Q. You recognize that?

23 A. Yes, sir.

24 Q. What is that?

25 A. That is the Beaufort County Sheriff's office statement

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

161

1 of Miranda rights form.

2 Q. And is that an accurate copy of the form that you used
3 on that occasion?

4 A. Yes, sir.

5 Q. Did you, did you read that to him?

6 A. It was either myself or Sergeant Holmes read that to
7 him. We were both present at the time. I signed as a
8 witness to the ---

9 Q. And what does it say?

10 A. It says Beaufort County Sheriff's Office statement of
11 Miranda. Place, Chatham County Detention Center. Date,
12 August 1st, 2008. It lists the assigned case number. It
13 says:

14 Before we ask any questions, you must
15 understand your rights. Number one, you
16 have the right to remain silent. Number
17 two, anything you say can and will be used
18 against you in a court of law. Number
19 three, you have the right to talk to an
20 attorney for advice before we ask you any
21 questions. Number four, if you cannot
22 afford an attorney, one will be appointed
23 for you before any questioning if you wish.
24 Number five, if you decide to answer
25 questions now without an attorney, you would

1 still have the right to stop answering at
2 any time. You also have the right to stop
3 answering at any time so that you can talk
4 to an attorney.

5 And he initialed next to each of those numbers. Also
6 has a waiver of rights. The first line says: I have read
7 this statement of my rights and I understand what my rights
8 are. Again, Mr. Simuel initialed that. The second ---

9 Q. Go ahead.

10 A. The second line reads: I cannot read the statement and
11 -- I cannot read and the statement has read to me
12 sufficiently so that I understand what my rights are. He
13 did not initial that. The third line reads:

14 I am willing to make a statement and answer
15 questions. I do not want an attorney at
16 this time. I understand and know what I am
17 doing. No promises or threats have been
18 made to me, and no pressure or coercion of
19 any kind has been used against me.

20 Again, he has initialed that line and signed below.

21 Q. Is there any information on that form about his level
22 of education?

23 A. Yes. Underneath his signature it says: Amount of
24 education I have completed. And he has written in there
25 GED grade in school.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

163

1 Q. Okay. In addition to reading that form to him, did,
2 did you or Investigator Holmes make any promises to Lucius
3 Simuel?

4 A. No, sir.

5 Q. Did you make any threats?

6 A. No, sir.

7 Q. Did he appear willing to speak with you?

8 A. He did.

9 Q. In addition to reading that form to him, did you read
10 anything else to him?

11 A. No, sir.

12 Q. Did you read the warrants to him?

13 A. Yes, we did advise him of the warrants.

14 Q. And did he agree to speak with you?

15 A. He did.

16 Q. And what did he tell you?

17 A. Then referring to my report, he had made a comment
18 that he knew that his involvement would warrant him being
19 in trouble.

20 Q. Involvement? What? Involvement in what?

21 A. In the charges that we had the warrants that we had
22 read to him.

23 Q. Go on. What else did he tell you?

24 A. He stated that if he had told the whole truth, that he
25 would be putting somebody on the cross.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

164

1 Q. What else did he tell you?

2 A. He said that he went to Deon and Deverol's house.
3 Wasn't expecting for anybody to get shot. He said that he
4 was the one that was being greedy and wanting money. He
5 stated that he was the one that had set the whole thing up,
6 and that he was willing to take the consequences for what
7 had occurred.

8 Q. What else did he tell you?

9 A. He went into greater detail about Mr. Simuel's, I
10 guess, recent history of what's gone on with him, and he
11 indicated that he was living with his sister in Bluffton,
12 as he was trying to get his life straightened out. He
13 stated that his niece, Tiah, which we later identified to
14 be Tiah Frazier, was talking to a boy named Deon. Mr.
15 Simuel had been to Deon's house at one point in time, which
16 he alleged that he had smoked marijuana or a joint with
17 Deon, and had conversation with Deon's brother. He ---

18 Q. I didn't mean to interrupt you. Did he say what his
19 conversation with Deon's brother was about?

20 A. He had asked Deon's brother about getting some pills.

21 Q. Lucius asked Deon about that?

22 A. Deon's brother.

23 Q. About Lucius getting pills?

24 A. Lucius asked Deon's brother about, about him getting
25 some pills.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

165

1 Q. About Lucius getting pills?

2 A. About Deverol or Deon's brother being able to get some
3 pills through Lucius.

4 Q. Okay. Precisely. Thank you. What else did he tell
5 you?

6 A. He had indicated that he had received a phone call the
7 morning of the shooting from his nephew advising him that
8 Deon was looking for some pills.

9 Q. Who is his nephew? Did you know who that was?

10 A. Chris Battle.

11 Q. Did you know who he was -- did you know it was Chris
12 Battle during this interview?

13 A. No, we did not know his name at that point in time.
14 We later discovered that.

15 Q. Go on.

16 A. He had -- once he had gotten the phone call from Deon
17 looking for some pills or, or a call from his nephew
18 looking for some pills for Deon, he had made a phone call
19 to what he had referred to as his home boy in getting some
20 pills. He had made arrangements to meet his home boy at
21 Piggly Wiggly in Savannah. And at that point in time he
22 found out that his, again, his home boy still needed to get
23 the pills. Simuel went to his brother's residence,
24 Simuel's brother's residence in Savannah waiting to hear
25 from his home boy, and then he received a phone call again

1 from his home boy telling him that he would come to pick
2 him up.

3 Q. That who would come, come pick who up?

4 A. That his home boy would come pick Lucius up.

5 Q. Okay.

6 A. They had met and were picked up and Lucius's home boy
7 had made reference, according to Lucius, about if he was
8 certain that that was the right amount of pills, because it
9 was a large amount of pills. They, they went to Deon's
10 house at that point in time, according to Simuel.

11 Q. Did he -- did Lucius go on to describe what happened
12 at the apartment?

13 A. Yes, he did.

14 Q. What did he say?

15 A. He said that as they walked up to the apartment, they
16 noticed a white kid and a Mexican standing outside of
17 Deon's house. He thought that that was very strange as
18 people don't typically hang outside of the, the apartment
19 or the house. He stated that Deon was outside with them
20 and, and Deon was acting strangely. Simuel had stated that
21 he had been introduced as home boy to Deon, and then Deon
22 turned around and went back inside the apartment to get his
23 brother. Deon's brother had come out and started talking
24 to Simuel's home boy. And then a few minutes later, he
25 said that Deon had came out with a gun and asked him

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

167

1 where's it at.

2 Q. Then what happened?

3 A. At that point in time, an altercation had ensued.

4 Q. Is that the way Lucius put it?

5 A. No. What he says is that his home boy started a fight
6 with, with Deon, and that was when the Mexican had pulled
7 out a gun.

8 Q. Okay. What happened after that?

9 A. Simuel said that his home boy, who he refers to now as
10 Meaty, walked up to Deon. And then he heard a gunshot, and
11 then he saw Deon go down, and then Simuel had stated that
12 he had took off running at that point.

13 Q. Okay. Did he tell, tell you anything else?

14 A. He said at that point in time, as he was running away
15 he had heard three other shots, and he stated that he and
16 Meaty then got into the car and went back to Savannah, and
17 that he seemed -- he was very nervous about the -- or very
18 afraid because of the large amount of pills that they had
19 in the car. And then Simuel then stated that he then
20 returned to Savannah, called his niece Tiah, and told her
21 that her boyfriend had set them up.

22 Q. Did, did the conversation end there or did it go on?

23 A. No. He further alluded to the fact -- that we had
24 asked him some, some questions about some things. He ---

25 Q. What did you ask him?

1 A. We asked him what type of a vehicle that they arrived
2 in. Simuel had stated that they came in a gold car that
3 had no hub caps and that belonged to his home boy Meaty.
4 We asked him about the events during that day, being
5 specific about a conversation that we had had with
6 Demetrius Price earlier to ---

7 Q. What did you ask him?

8 A. We asked him if he had, if they had stopped any place,
9 at a car wash earlier that day or they had stopped to get a
10 bite to eat that day. And Simuel had stated that they went
11 directly from Savannah to Bluffton and never, and never
12 made any stops anywhere.

13 Q. What else did he tell you?

14 A. He stated they had returned an hour later after
15 the ---

16 Q. Returned where?

17 A. Returned back to Savannah an hour later after the
18 shooting took place.

19 Q. What did you -- what's the next thing you did in the
20 interview?

21 A. We had showed him a photo lineup that contained the
22 registered owner's photo of, of a vehicle fitting the
23 description that we were given that left the incident
24 location. That photo lineup contained six photos, one of
25 which was Demetrius Price, in an effort to see if he would

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

169

1 identify who we believed to be the suspect and, and he
2 would not.

3 Q. Okay. What happened next?

4 A. We had told him that, that we knew that there were
5 more than one gun involved in the incident, that there were
6 two guns involved in the incident, and that we had evidence
7 to prove that, and at that point in time Mr. Simuel became
8 very emotional. Tears started to well up in his eyes.

9 Q. Did he say anything once you told him, after you told
10 him that?

11 A. He had told us that if, if we had the gun, that we
12 could fingerprint the gun and, and it would show that he
13 didn't shoot anyone.

14 Q. Did Lucius Simuel say anything else at that time?

15 A. No, sir.

16 Q. Okay. Did you have any other contact with Lucius
17 Simuel?

18 A. I did. When we received the -- I had two other
19 occasions to meet with Mr. Simuel. When we received the,
20 the notification from Chatham County Detention Center that
21 he was waiving his extradition rights, I responded to
22 Savannah County Detention Center to transport Mr. Simuel to
23 Beaufort County Detention Center.

24 Q. And did you transport him from Savannah to Beaufort?

25 A. Yes, sir.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

170

1 Q. Was there any, anyone else with you when you
2 transported him?

3 A. No, sir. It was just myself and Mr. Simuel in the
4 vehicle.

5 Q. Were you in a marked car when you made that transport?

6 A. I was, sir.

7 Q. What time of day or night did the trans -- let me ask
8 you -- let me stop there. About this first conversation,
9 what time of day or night did it occur, if you recall?

10 A. I don't recall the exact time. It was, I would say,
11 late morning to mid afternoon. Probably closer to mid
12 afternoon, mid afternoon to early afternoon hours.

13 Q. And about how long did the conversation last?

14 A. An hour.

15 Q. Okay. Moving on to the second conversation, was the
16 -- was Lucius Simuel in cuffs at that time?

17 A. He was. It's part of our policy to have any person
18 that is under arrest transported in appropriate restraint
19 devices.

20 Q. Do you know if his ankles were restrained?

21 A. I believe they were.

22 Q. Is that -- is ankle restraints, is that standard
23 policy for transport?

24 A. When we're transporting from another agency back to
25 our agency, that is common practice.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

171

1 Q. Okay, and what time of day or night did you transport
2 Lucius Simuel on August 6th?

3 A. I believe that it was late morning.

4 Q. Was he in prison garb at this time?

5 A. He was. Actually, actually -- let me correct that.
6 I'm not certain if he was or not. They may have put him
7 back in civilian attire as his garb that he would have been
8 put into while he was in Savannah belongs to Chatham
9 County, and then we issue him new ones when he gets to our
10 detention center.

11 Q. Okay. Did you have another, another conversation with
12 Lucius Simuel in transit to Beaufort?

13 A. We did.

14 Q. Who initiated that conversation?

15 A. We ---

16 Q. Do you remember who spoke first? Do you remember who
17 spoke first?

18 A. Well, when, when Mr. Simuel had gotten in the car, we
19 started our transportation, I, just to be safe, wanted to
20 remind him of his Miranda rights and that he still
21 understood them and, and he had stated that he did.

22 Q. Were you intending to interrogate him? Were you
23 intending to question him at that time?

24 A. I was not intending to interrogate him. I just wanted
25 to make sure, in case any conversation did come up on his

1 behalf, that he was still under his rights.

2 Q. And, Investigator Calhoun, how did you inform him of
3 those rights?

4 A. I had just asked him if he understood his rights, if
5 he recalled the rights that were read to him earlier, and
6 if he still understood them.

7 Q. So, did you read them to him?

8 A. I did not read them back to him.

9 Q. Okay, and when you said that to him, what did he say?

10 A. He said that he understood them.

11 Q. But you did not enumerate them one by one. Is that
12 correct? Is that fair to say?

13 A. That is fair to say. I did not enumerate them.

14 Q. Okay. Did he speak to you -- did you ask him any
15 questions after, after you asked, asked that?

16 A. There was a very long period of silence, and then Mr.
17 Simuel started to ask me about my belief in God.

18 Q. Okay, and what happened from that point in the
19 conversation? What was said?

20 A. We had a brief discussion about God and, and whether
21 or not I believed the God. I believe the discussion went
22 into the matter of forgiveness and things of that nature,
23 of which I had to explain to him that I believe that God is
24 a forgiving God.

25 Q. Did he have any comments on that topic?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

173

1 A. I, I think -- I don't remember his exact comments, but
2 I got the sense that he was relieved that I believed the
3 same that he believed.

4 Q. Okay, and what happened after that?

5 A. Mr. Simuel had stated that he was involved in the
6 incident, incident but that, that he did not have a gun and
7 that he didn't shoot anybody.

8 Q. Did he say anything else?

9 A. Mr. Simuel stated that he was concerned that if he
10 told anymore about the shooting, that it would incriminate
11 himself and that it would incriminate somebody else. He
12 also stated that at the first interview with us, he only
13 told eighty percent of the truth. And that after leading
14 us so far, that we would have to do the rest of the, of the
15 work on the case.

16 Q. Did you ask him any other questions about the
17 incident?

18 A. I do not recall.

19 Q. Did he tell you anything else about the incident?

20 A. No, sir.

21 Q. Is it fair to say that from that point on, he was
22 transported without problems?

23 A. That is correct.

24 Q. When was your next interview with Lucius Simuel, your
25 final interview with Lucius Simuel?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

174

1 A. I had received a phone call from Mr. Simuel's wife,
2 Ms. Williams, and she had called me to advise me that,
3 that, that Lucius had sent me a letter requesting that I
4 meet with him, and that she had indicated that he was
5 anxious to see me and speak with me.

6 Q. And did you receive that letter?

7 A. I did, sir.

8 MR. ROBINSON: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. ROBINSON:

11 Q. Do you recognize that?

12 A. I do. This is a photocopy of the letter and the
13 envelope that I received the letter in.

14 Q. What is the letter dated?

15 A. August 31, 2008.

16 Q. And is that the letter that you received from Lucius
17 Simuel?

18 A. It is, sir.

19 Q. Did he want to speak to you again?

20 A. Yes. Actually in the letter, the very last sentence
21 of the letter it says:

22 I have a lot on my mind. So, come see me
23 when you can. Sincerely written, Lucius
24 Simuel.

25 Q. Do you know about when you received that letter?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

175

1 A. I don't remember the day that I received it.

2 Q. Did you make, after having received it, did you make
3 contact with Lucius Simuel?

4 A. We did.

5 Q. Who do you mean by we?

6 A. Investigator Holmes and I.

7 Q. And when did you do that?

8 A. I would have to refer to his report in reference to
9 that.

10 MR. ROBINSON: Beg the Court's indulgence.

11 THE COURT: All right.

12 (A PAUSE.)

13 MR. ROBINSON: May I approach the witness?

14 THE COURT: All right.

15 BY MR. ROBINSON:

16 A. On October 25th is when I received the call from
17 Charlene Williams. And then on September 4th, which is, I
18 believe, the same day that we received the letter as it's
19 stamped on the envelope, is the day that we met with Mr.
20 Simuel at the Beaufort County Detention Center.

21 Q. You said October 25th?

22 A. I'm sorry. August 25th.

23 Q. And you met with him at the detention center?

24 A. Yes, sir.

25 Q. Was he, was he in cuffs at that time?

1 A. He was not.

2 Q. He was not, and where did you, where did you -- what
3 kind of room did you meet with him?

4 A. He met with him in, in, I believe it's one of three
5 interview rooms at the detention center.

6 Q. Do you recall what time of day or night it was?

7 A. I don't remember. It was during daylight hours.

8 Q. When you went to the room, what's the first thing that
9 was said by anyone?

10 A. We had read Mr. Simuel his statement of Miranda
11 rights.

12 Q. Did you use a form?

13 A. Yes, sir.

14 Q. Okay. That was the first thing that was said?

15 A. That's correct. Minus brief introductions.

16 Q. Did he, did he sign a form?

17 A. He did.

18 Q. And based on his demeanor, did he appear to understand
19 those rights?

20 A. Yes, he did.

21 Q. And what did he say after signing the form?

22 A. After he indicated that he understood his rights and
23 that he was -- understand that he wanted to speak with us
24 without his attorney present, Mr. Simuel had referred to a
25 letter that he had written to me requesting to meet with

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

177

1 me, asking if we had gotten that letter.

2 Q. Did he ask if you got -- so, he asked you if you got
3 his letter?

4 A. Yes, that's correct.

5 Q. And what did you tell him?

6 A. We indicated that we had received his letter.

7 Q. Okay. Was the form that you used to read his rights
8 to him the same form that you used before?

9 A. That is correct.

10 Q. And were all those rights read to him?

11 A. That is correct.

12 Q. Just the same as a month earlier?

13 A. That's correct.

14 Q. Take us to the interview from there forward.

15 A. Mr. Simuel had, again, agreed to speak to us in
16 reference to his pending charges, and he denied ever
17 breaking into anybody's residence. He also denied having a
18 weapon while he was at Deon's residence, and that he had
19 indicated that he originally was -- had lied to us about
20 the incident in order to protect Demetrius.

21 Q. What else did he tell you?

22 A. He had indicated, after Investigator Holmes had asked
23 him how he became involved in the incident, he indicated
24 that he received a phone call from his niece Tiah Frazier
25 and nephew Chris Battle inquiring about some pills for

1 Tiah's boyfriend, Deon. Simuel had indicated that he had
2 contacted his friend Demetrius and met with him at the
3 Piggly Wiggly near his residence in Savannah. He said that
4 when he had met with Demetrius, it appeared that Demetrius
5 was still high from the night before.

6 Q. Let me stop you there and ask you. Did Lucius Simuel
7 refer to Demetrius Price as Demetrius?

8 A. That is correct.

9 Q. Okay, and then what -- well, what else? I'm sorry.

10 A. He had said that, that Demetrius was acting very, very
11 weird, and ---

12 Q. What else did he tell you?

13 A. He had indicated that -- Lucius had indicated that he
14 could not drive because he didn't have any gas in his van,
15 and Demetrius had agreed to drive. And they went to his
16 brother's house to get some weed as they figured that, that
17 -- Lucius figured that that would calm Demetrius down by
18 smoking some marijuana.

19 Q. And then what happened?

20 A. They went to a friend's house in Savannah and got an
21 automatic pistol. After they got the pistol, they drove to
22 Bluffton in Demetrius's car to [REDACTED] As they
23 were walking up to the door, they had seen the Hispanic
24 male and a white male talking to Deon outside of the house.

25 Q. Let me just stop you there. Is that how they

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

179

1 described the people that they saw as a Hispanic male and a
2 white male? Is that how Lucius described them?

3 A. I don't remember his original -- when we were -- the
4 first time we met with him, he referred to him as a white
5 kid and the Mexican kid.

6 Q. Go on. What else did he tell you?

7 A. And he said that with the Hispanic male and the white
8 male outside, that Deon was present as well.

9 Q. What did Demetrius do when he saw those people, those
10 two people?

11 A. Demetrius -- Simuel had stated that Demetrius became
12 agitated and very nervous, and that he was inquisitive as
13 to who those two other individuals were. Simuel had
14 indicated that he had to calm down Demetrius, and that was
15 when the two other, two subjects, two other subjects,
16 referring to the white male and the Hispanic male, had
17 left. And then Simuel and Demetrius had spoke with Deon
18 outside of Deon's apartment.

19 Q. And then what happened?

20 A. Lucius told Demetrius that Deon was the person that he
21 was telling him about, and they went into the house. And
22 Deon then went into the house to get his brother to come to
23 the door.

24 Q. Which brother?

25 A. Deverol.

1 Q. Then what happened?

2 A. He told Demetrius that Deverol was the other person
3 that he was talking about, had previously told Demetrius
4 that Deon and Deverol wanted to buy some ecstasy pills from
5 him. Demetrius then pulled out a bag of pills, and Deverol
6 told him that he already had some.

7 Q. Then what happened?

8 A. When he said that, he began to talk about cocaine.
9 However, he never saw any cocaine present, and this was
10 Demetrius talking about the cocaine. He said Demetrius
11 then pulled out a revolver and stuck it into the side of
12 Deverol's head. Deverol then opened up the door as
13 Demetrius held the gun to his head. As the door opened, he
14 saw Deon standing on the stairway holding a dog. Demetrius
15 then asked if he had any iron, which we, which we believed
16 to be referred to as guns.

17 Q. Okay, Demetrius asked who if they had any iron?

18 A. Referring to Deon and Deverol, if they had any iron in

19 ---

20 Q. And then what happened?

21 A. --- the house and they said that they had guns, and
22 his, and his brothers were upstairs. He said Demetrius
23 then walked up to Deon and immediately shot him from close
24 range. He said Demetrius only shot one. The dog ran back
25 up the stairs. Deverol had done said to him you shot my

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

181

1 brother, Simuel. Simuel said that he had never entered the
2 house while this was going on. However, he said he did see
3 a female at the top of the stairs.

4 Q. Okay. Then what else did he say?

5 A. He said that Simuel used his shirt and closed the door
6 from inside, referring to using the shirt to cover up the
7 door handle as to not leave fingerprints.

8 Q. Okay. Then what happened?

9 A. They walked away and began to ask Demetrius why he
10 shot Little Dude and Demetrius going to tell him that he
11 was being set up to be robbed. Suddenly that's when
12 Deverol came, came out of the residence and Demetrius shot
13 him two or three times after Deverol had pled with him not
14 to shoot him.

15 Q. And then what happened?

16 A. Again, Simuel denied ever having a gun and that he had
17 -- he didn't shoot anyone. He said that the only person
18 that was with the gun was Demetrius. He also refused,
19 refused to write a statement.

20 Q. Did he say anything else?

21 A. No, sir.

22 Q. And he would not write a statement?

23 A. That's correct.

24 Q. And about how long did this conversation last?

25 A. I would say probably an hour, hour and fifteen

1 minutes.

2 Q. Okay, and who was asking most of the questions during
3 this interview?

4 A. Investigator Holmes.

5 Q. Okay.

6 A. At -- there are times during our interviews where I
7 may pipe up through the interview and ask him a question or
8 two.

9 Q. And when was this report written up?

10 A. This report was written on September 9, 2008.

11 MR. ROBINSON: Your Honor, I believe that's all I have
12 of this witness.

13 THE COURT: All right.

14 MR. ROBINSON: Investigator, please answer these
15 lawyers questions.

16 WITNESS: Thank you.

17 THE COURT: Thank you. Who's first, gentlemen?

18 MR. GEIER: Your Honor, I'll start first.

19 THE COURT: All right.

20 CROSS-EXAMINATION BY MR. GEIER:

21 Q. Good morning, Investigator Holmes.

22 A. Calhoun.

23 Q. Sorry.

24 A. How are you, Mr. Geier? It's fine.

25 Q. I'm doing just fine. Obviously not as good as I

T. CALHOUN - CROSS-EXAMINATION BY MR. GEIER

183

1 should be. You testified earlier regarding your interview
2 with Demetrius Price, and you were only there briefly?

3 A. Yes.

4 Q. And so after a short time, you took off and left?

5 A. Left the interview room.

6 Q. Okay. What did you do after that?

7 A. Just stand in the office next door and, and wait for
8 Mr. Holmes to finish.

9 Q. Okay. Did you take notes during this interview?

10 A. I, I believe initially I took a couple notes, but I
11 had decided that the rapport between Mr. Holmes and Mr.
12 Price was greater than mine. And I, I thought that me and
13 my presence would be a hindrance in the conversation and
14 left the interview.

15 Q. So, did you keep those notes?

16 A. I don't recall if I had those specific notes because
17 it was an interview that I didn't stay in, and at that
18 point in time had no personal vested interest in, in that.

19 Q. I understand, and you didn't write a report regarding
20 this particular interview?

21 A. Not regarding that interview.

22 Q. Investigator Calhoun, how many cases have you
23 investigated in the last eighteen months?

24 A. In the last eighteen months? Close to a hundred.

25 Q. And in that time, how many, how many times have you

1 interviewed a suspect?

2 A. Numerous.

3 Q. Numerous. Probably a hundred times?

4 A. Give or take a few.

5 Q. And you attended this briefly?

6 A. Yes, sir.

7 Q. Now, you stated that the, the Miranda warnings were
8 given. Given all of those interviews that you've had with
9 subjects during the course of eighteen months, are you
10 testifying that you have an independent recollection of
11 this particular interview?

12 A. I have -- in reference to the interview with Demetrius
13 Price?

14 Q. Yes.

15 A. I do recollect portions of the interview, yes. I
16 believe he was wearing a striped shirt the day that the
17 interview took place.

18 Q. So, again, out of a hundred, you remember the one you
19 attended briefly in Savannah in 2008?

20 A. Yes, sir, I do.

21 MR. DEIER: Thank you. I don't have any more
22 questions.

23 THE COURT: Thank you.

24 Mr. Deysach.

25 MR. DEYSACH: Thank you.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

185

1 CROSS-EXAMINATION BY MR. DEYSACH:

2 Q. Good morning.

3 A. Good morning. How are you?

4 Q. Okay. Obviously I'm Lucius Simuel's attorney, so I'm
5 going to be talking about the interviews that you had with
6 him. The first interview took place on August 1st of
7 2008, correct?

8 A. Yes, sir.

9 Q. And that's at the Chatham County Detention Center,
10 correct?

11 A. Yes, sir.

12 Q. And you said that you initially had telephonic contact
13 with Mr. Simuel the day before, correct?

14 A. Yes. That is correct.

15 Q. And that he turned himself in the same day that you
16 met with him?

17 A. That's correct.

18 Q. And that that's when you had your talk was, was at the
19 Savannah Chatham County Detention Center?

20 A. Yes, sir.

21 Q. All right. You, you said that you witnessed the
22 signature on the Miranda form. Couldn't remember if you
23 were the reader of the rights or just listened to Mr.
24 Holmes deliver the rights. Is that correct?

25 A. That's correct.

1 Q. And you kind of went through in detail what was said
2 during that, during that meeting?

3 A. Correct.

4 Q. Now, it is -- the next time you meet with, with Mr.
5 Simuel is when you transport him from Savannah to Beaufort,
6 correct?

7 A. That's correct.

8 Q. And this is -- this meeting really takes place in your
9 squad car?

10 A. Right.

11 Q. Let me back up to that first meeting. Was that
12 meeting recorded, the one at the jail?

13 A. It, it was not.

14 Q. Was there a recording device there?

15 A. There was.

16 Q. Okay. So, the recording device did not capture the,
17 the, the words?

18 A. Correct.

19 Q. So, the whole time that Mr. Simuel is talking to you,
20 he thinks that he's being recorded, correct?

21 A. He may have. I can't speak to what he's thinking.

22 Q. You did. You thought you were being recorded.

23 A. I did. You're right.

24 Q. Okay, and so your intention was to record?

25 A. That's correct.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

187

1 Q. And you failed to do so?

2 A. There was operator error in using the recording
3 device.

4 Q. Right. It was a mistake, right?

5 A. Yeah. I, I didn't realize you had to have -- pull the
6 whole button down in order for the record button to work
7 and ---

8 Q. And so what you're saying is that it is that meeting
9 where the recording device failed, not the second meeting
10 that you had on September 4th. Is that correct?

11 A. We didn't use the recording device in the second
12 meeting.

13 Q. Okay. Now, let me ask you. For the first meeting,
14 did you request a written statement?

15 A. I don't recall requesting a written statement. Mr.
16 Simuel seemed to be very emotional at that point in time.

17 Q. Okay. Was the reason you didn't really request a
18 written statement is because you thought you had everything
19 on tape?

20 A. I don't recall that being my frame of thought.

21 Q. Okay. Could have been, might, but you're not saying
22 it was? You're not saying it wasn't?

23 A. That's correct.

24 Q. Did you take notes from that meeting?

25 A. Yes, sir.

1 Q. All right. What did you do with those notes?

2 A. Transposed them on to the report.

3 Q. You did what now?

4 A. Transposed them into report form.

5 Q. Okay, and then when you're finished with the notes,
6 what do you do?

7 A. Keep them in my case file.

8 Q. Okay, and so they're still there?

9 A. I would believe so.

10 Q. All right. I'd already started talking about the ride
11 from Beaufort to -- or from Savannah to Beaufort, so I'm
12 going to pick back up there. You memorialized that
13 conversation in report form, correct?

14 A. Yes.

15 Q. Okay. Now, did you, did you record that conversation?

16 A. Yes, sir.

17 Q. Does your car have the ability to record what is said
18 inside the car?

19 A. It's -- just to clarify, it's not my car. It's a
20 shift vehicle and I'm not certain to the operation or the
21 current ability of the in-car camera system. They do have
22 those.

23 Q. Is it a marked or a ---

24 A. It is a marked car.

25 Q. Okay, and you're saying you didn't record that?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

189

1 A. That's correct.

2 Q. All right. Did -- all right. Now, you, you
3 memorialized it, like I said, in your report. Now, you,
4 you referred to that as an interview of Lucius Simuel,
5 correct?

6 A. It's a conversation between the two individuals and
7 any -- that's usually how I refer to it.

8 Q. In your report you called it an interview, though,
9 right?

10 A. Yeah.

11 Q. Okay. So, he's in custody, right?

12 A. That's correct.

13 Q. And it is an interview, right?

14 A. That's correct.

15 Q. Okay. All right, but you said that you declined to go
16 through the step of reading each or telling him what each
17 one of his rights were?

18 A. The purpose for our meeting was not to do an
19 interview. The purpose for our meeting was to transport
20 him to the detention center. But to protect Mr. Simuel, I
21 wanted to make sure that he was aware of his rights and
22 still understood what his rights were, and that was the
23 reason for me asking him that.

24 Q. All right. I mean, I think I understand. You're
25 reminding him that he's got rights, but you don't enumerate

1 each one. I think that's -- I don't want to beat a dead
2 horse. I, I believe that's what you testified when Mr.
3 Robinson was asking you questions, right?

4 A. About the ---

5 Q. That, that ---

6 A. --- beat a dead horse? I ---

7 Q. I'm, I'm beating the dead horse.

8 A. Oh, okay. Okay. Okay. I'm sorry.

9 Q. But that -- what, what the testimony is that you
10 reminded him, you asked him if he understood his rights,
11 but that you never read each Miranda rights to him?

12 A. That's correct. That's correct.

13 Q. And did -- it wasn't possible for you to take notes
14 while you're driving, was it?

15 A. I'm good. I'm not that good.

16 Q. Okay, and so do you remember what point you, you
17 turned your memory into a report?

18 A. I believe it would have been, you know, a week or so
19 later.

20 Q. Okay.

21 A. Again, it was a brief conversation that we had.

22 Q. Sure. Okay. Now, the next thing that happened is --
23 well, the next time you meet with Mr. Simuel is at the
24 Beaufort Detention Center. This time, again, with Mr.
25 Holmes, correct, Investigator Holmes, correct?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

191

1 A. Yes, sir.

2 Q. All right, and was it you that received the call from
3 his wife or was it Investigator Holmes?

4 A. It was me.

5 Q. And there was also some testimony of a letter. Did
6 you receive that letter ---

7 A. Yes, sir.

8 Q. --- before you went to meet him?

9 A. It's -- that envelope for the letter is marked
10 received September 4, 2008.

11 Q. Did you, did you read it before you went back down
12 there, or did you just go back down there because of what
13 Charlene Williams had said?

14 A. I believe it was because of both, what Ms. Williams
15 had said and what the letter had said.

16 Q. So, you're telling us you remember reading the letter
17 before the meeting?

18 A. I believe so.

19 Q. Not sure, I guess you're saying? Kind of hedging? I
20 believe so?

21 A. I don't remember the exact verbiage of the letter that
22 took place, that we received that day. I remember reading
23 it.

24 Q. Okay, and so I guess the letter you said was received
25 on August 31st. Is that what you said or was it ---

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

192

1 A. No, the date of the letter is August 31st. The
2 received mark is September 4th.

3 Q. September 4th?

4 A. That's correct.

5 Q. All right. Now, isn't it true that on September 3rd
6 you had a meeting with Mr. Robinson at the solicitor's
7 office?

8 A. Possibility.

9 Q. Okay. I have a -- would it refresh your memory if I
10 let you look at one of your reports?

11 A. Sure.

12 MR. DEIER: May I approach and give it to him?

13 A. We met with him on September 3rd.

14 Q. And that was you and Investigator Holmes met with the
15 solicitor, Mr. Robinson, the day before you went down to
16 talk to Mr. Simuel, correct?

17 A. Yes, sir.

18 Q. Okay. I don't have any more questions about that, the
19 report, so I'm going to grab it back.

20 A. Sure.

21 Q. Thank you. Now, when, when you went to meet with Mr.
22 Simuel on the 4th, you advised him of his rights, correct?

23 A. That's correct.

24 Q. Either you or Mr. Holmes?

25 A. That's correct.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

193

1 Q. Did y'all get the signed waiver?

2 A. Yes, sir.

3 Q. And he, he said that he would meet with you without
4 the presence of his attorney?

5 A. Correct.

6 Q. Correct, and you knew at that point that he had an
7 attorney, correct?

8 A. I don't recall.---

9 Q. You'd been ---

10 A. --- knowing one way or the other.

11 Q. You transported him in -- you transported him on the
12 6th of August, correct?

13 A. Yes.

14 Q. And this interview takes place, takes place on the 4th
15 of September?

16 A. Right.

17 Q. Correct, and he'd been to a bond hearing. Had you
18 been at that bond hearing?

19 A. Yeah, I believe I was at his bond hearing.

20 Q. So, if he would have requested the public defender at
21 that bond hearing, you would have heard him, correct?

22 A. They take applications for public defender. I don't
23 know if he exercises the actual request at that point in
24 time.

25 Q. He had -- did he, did he have a bond hearing in

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

194

1 General Sessions Court?

2 A. I don't remember there being a General Sessions.

3 There's a bond hearing at the detention center.

4 Q. Was there not a bond hearing for burglary first in
5 General Sessions Court?

6 A. There may have been, but I was not present.

7 Q. And you don't know what day that occurred?

8 A. I do not.

9 MR. DEYSACH: Thank you.

10 THE COURT: Mr. Robinson, redirect?

11 MR. ROBINSON: Briefly. May I approach?

12 THE COURT: Yes, sir.

13 REDIRECT EXAMINATION BY MR. ROBINSON:

14 Q. Investigator Calhoun, who is Lucius Simuel's letter
15 addressed to?

16 A. It's, the actual address is Detective T. with a
17 scribble mark and then Calhoun to P.O. Box [REDACTED], Hilton
18 Head Island, South Carolina, 29925.

19 Q. It's addressed to you, isn't it?

20 A. It is.

21 Q. He wrote you a letter?

22 A. That's correct.

23 MR. ROBINSON: I have nothing further.

24 THE COURT: All right. Thank you. You can step down,
25 investigator.

1 WITNESS: Thank you, sir.

2 (THE WITNESS EXITS THE STAND.)

3 THE COURT: Mr. Robinson, anything further?

4 MR. ROBINSON: Only argument, Your Honor.

5 THE COURT: Okay. Very well. We might not be through
6 with the testimony yet. So, we'll, we'll do that in a
7 moment. Very well.

8 All right, Mr. Geier, does Mr. Price wish to offer any
9 evidence or testimony in regard to the *Jackson vs. Denno*
10 issue?

11 MR. DEIER: No, Your Honor.

12 THE COURT: Thank you.

13 Mr. Deysach, does Mr. Simuel wish to offer any
14 evidence or testimony in regard to the *Jackson vs. Denno*
15 issue?

16 MR. DEYSACH: No, Your Honor.

17 THE COURT: Okay. All right. All right.

18 Mr. Robinson, now argument.

19 MR. ROBINSON: Thank you, Your Honor. Briefly,
20 beginning with Demetrius Price, I don't think there's any
21 question that this defendant was in, was in custody. He'd
22 been taken into custody by his parole officer and brought
23 to what was clearly a custodial setting. Although he was
24 clearly advised of his Miranda rights, according to both
25 investigators, the form was read to him, although he

1 declined to sign it.

2 It's clear that there was no, there was no evidence
3 before the court that he was either promised anything,
4 threatened in any way, or physically mistreated. He was
5 dressed in his own clothes. He was not handcuffed -- or he
6 was handcuffed. It was -- even if he was handcuffed, it
7 was during daylight hours. There wasn't any sleep
8 depravation, food depravation. None -- nothing of that
9 sort and, and he agreed to make a statement during which he
10 denied any involvement.

11 Secondly, with the other defendant, Lucius Simuel, as
12 the court heard, he made three statements and his -- I
13 think the question of voluntariness with this defendant is
14 even clearer with Demetrius Price.

15 First of all, I would draw the court's attention to
16 the fact that he played, he voluntarily played phone tag
17 with the investigator when the investigator was looking for
18 him and had warrants with him. They called one another.
19 They spoke on the phone with one another. First he
20 volunteered, he -- strike that. He offered to turn himself
21 in in Bluffton. Then he made arrangements to turn himself
22 in in Savannah.

23 Next they went and spoke to him. Not only was he
24 informed of his rights by reading, just the same as the
25 previous defendant, he signed the form, and, again, the

1 circumstances were much the same. Although he was not the
2 police department, he was clearly in a custodial setting at
3 the Savannah Detention Center. Although in his plain
4 clothes, it was during daylight hours, there's not threats,
5 no evidence of threats, promises, sleep deprivation, food
6 deprivation, anything like that, any form of coercion, and
7 he also made a statement.

8 The transit comment is, is a little muddier in the
9 sense that there was no form, form read to him. But that
10 also is custodial. However, the investigator, it's clear
11 from his testimony, that although not all his rights were
12 read to him as though it were specifically an
13 interrogation, it is clear that, as a prophylactic measure,
14 he reminded the defendant of the rights that he had read to
15 him four days earlier and said do you remember those rights
16 I read to you. Those still apply.

17 Although it certainly may not have been as thorough as
18 reading the entire form and having him sign it, it clearly
19 was not a interrogation setting. And it seems that having
20 been prophylactically reminded of his rights, I think the
21 defendant just decided to comment on their previous
22 conversation and embellish what he had already said.

23 Finally, the third conversation/interrogation made
24 with the defendant, Lucius Simuel, is the clearest of all.
25 In that instance, the court has heard the defendant wrote

1 the investigator a letter: I want to meet with you. Before
2 writing him the letter, he had his wife contact the
3 investigator and say Lucius wants to meet with you. Even
4 having done that, the investigators both showed up, read
5 him the form again, which he signed, initialed, indicated
6 his education level. Although it clearly was custodial
7 because he was in the detention center and dressed out, et
8 cetera, again, voluntariness there is the clearest of all.
9 He made an even more elaborate statement.

10 And I think, based on the tactics that were used in
11 all four conversations, it's very clear that these
12 defendants spoke voluntarily. They were clearly apprized
13 of their rights and, and all their statements were made
14 voluntarily. And I think that, having said that, I think
15 that once the court rules on the voluntariness issue, we
16 can take up the *Bruton* matters in the defendant Simuel's
17 statements.

18 THE COURT: All right, Mr. Geier.

19 MR. DEIER: Thank you, Your Honor. The state could
20 have very easily shown that at the time of the interview of
21 Demetrius Price, that he was given an opportunity to sign
22 this form and he refused it. And the way they could have
23 done that is exactly how they do that in driving under the
24 influence cases where the form was filled out, it's dated,
25 and the officer writes refused to sign. And then there

1 would be no question whether or not those rights were read.

2 Now, Investigator Holmes said that he interviewed, and
3 it's in his report. He interviewed Mr. Price on 7/31/08.
4 He said that he took notes. Again, we don't have copies of
5 those notes. The report wasn't written until -- the date
6 of the report that I have was September 9, 2008, a month
7 and some change later. We've had Sergeant Calhoun come up
8 and testify that out of the hundred or so cases that he
9 dealt with and the hundred or so interviews that he's
10 conducted, he's able to remember the one that he attended
11 briefly in Savannah and went so far as to identify my
12 client's shirt.

13 Your Honor, I would submit that these type of
14 recollections are borne more out of what the usual
15 procedure is rather than any sort of independent
16 recollection. Again, they could have easily shown that the
17 rights were afforded my client by simply filling out that
18 form and saying here's where you sign. They didn't do it
19 and our position that those rights weren't read. Thank
20 you, Your Honor.

21 THE COURT: Thank you.

22 Mr. Deysach?

23 MR. DEYSACH: Thank you very much, Your Honor, on
24 behalf of, of Mr. Simuel. Three separate statements, plus
25 a letter which I don't think is the letter that's under the

1 purview of what we're talking about right now, the first
2 statement in custody, result of questioning, takes place
3 with a, with tape -- a recording device present, but not
4 turned on. And I think the, the tactic of pretending like
5 something is or not pretending, but at least making it
6 appear as though something is being recorded for when
7 somebody's talking and then not reporting it rendered that
8 involuntary. I'm not going to say -- I mean, he did turn
9 himself in, and the testimony about the Miranda form is
10 there.

11 All right, the second conversation on the way back
12 from jail is -- the rights aren't, the rights aren't
13 enumerated. You know, I say that, but I -- you know, to be
14 honest with you, that statement isn't, you know, any more
15 incriminating than the statement that he'd already given.
16 So, I -- whether or not I'm seeking to suppress it right
17 now, you know, to be honest with you, it's hard for me to
18 say I want it suppressed when what it says is that I didn't
19 shoot anybody and I didn't have a gun.

20 Now, the, the statement at the detention center is,
21 is, to me, a little bit muddier and troubling. Not for
22 lack of reading of the Miranda form, not for the lack of
23 this letter, which is the result of the relationship, it
24 appears to me, the relationship, the rapport that was built
25 between Investigator Calhoun and Mr. Simuel during not only

1 the conversation in the jail, but that ride in which the
2 conversation takes place without any, without any rights
3 being read to him. But that it occurs after he has an
4 attorney, after his bond has been set, after he's been in
5 the jail more than ten days is when, which is when they get
6 appointed to an attorney at the public defender's office
7 possibly after a bond hearing in front of a General
8 Sessions judge at which I would see, although I do not have
9 the form, but I know that the clerk's office would have it
10 and could tell us whether or not that hearing was held
11 before or, or after the 4th. So, I don't think it's,
12 there's really any question that he had an attorney at the
13 time.

14 Now, I understand the rule to be that if he had, he
15 wants to waive that right to counsel, he has to be the one
16 to reach out to the police. And so, that is why they have
17 provided you that letter. But I'll tell you what the
18 problem is, as I see it, with that conversation is that it
19 comes one day after the investigators have met with the
20 solicitor's office. And I think it's clear that the
21 sheriff's department and the solicitor's office collaborate
22 in the prosecution of this case. That's why the chief
23 investigator is allowed to be sitting next to the solicitor
24 during the trial and not have to be sequestered like every,
25 every other witness, and that the solicitor's office can't

1 send an investigator to go talk to one of my clients
2 without asking me any more than I can tell one of my
3 investigators to go down and talk to say Chris Geier's
4 client without asking him.

5 And so we have a very basic rule of ethics that is
6 come into play. And I know that I wouldn't be able to send
7 my investigator, like I said, down to, to talk to a
8 represented client about the matter for which they're which
9 represented. And given that meeting that takes place
10 between the solicitor's office and both the investigators
11 that visit my client, it appears as though that is what
12 happened. And for that reason, I would ask that you
13 suppress that final, that, that September 4, 2008,
14 conversation at the Beaufort County Detention Center.

15 THE COURT: All right. Mr. Deysach, what was the date
16 of your appointment?

17 MR. DEYSACH: I do not have it in my file, but I know
18 that I can -- I mean I, the file, I broke it down in order
19 to make my notebook, and that paperwork is going to be on
20 our computer, which is probably just right there in the,
21 the back room.

22 (A PAUSE.)

23 MR. DEYSACH: All right, the --- I really don't have
24 any doubt that I was appointed by the 4th, though.

25 THE COURT: Okay. All right.

1 Mr. Robinson, you're the moving party. You've got the
2 last word.

3 MR. ROBINSON: Thank you, Your Honor. I just want to
4 get some dates correct with the court first. The bond
5 setting in General Sessions for Lucius Simuel was on August
6 11th before Judge Buckner. I'm sure that Mr. Deysach was
7 present for that or, if not, another member of the public
8 defender's office was.

9 Second of all, I want to go to the, the standard for
10 -- the legal question before the court is voluntariness,
11 and Mr. Geier's comments about, well, how can we be certain
12 that they were given their rights. I think that's a,
13 that's a procedural question that doesn't go to the
14 substance, which is voluntariness. Yes, it is, it is
15 likely that the court could know with certainty were there
16 documentation regarding, or were there more accurate
17 documents.

18 But the whole purpose of a *Jackson vs. Denno* hearing
19 is that the court decide these things based on testimony.
20 And these are not conversations, and the evidence before
21 the court is that these officers advised both defendants of
22 their rights.

23 As far as a recording is concerned, the only evidence
24 before the court is that Investigator Calhoun tried to turn
25 the recorder on, but didn't push the button hard enough.

1 So, it's clear that that wasn't any sort of ruse to try and
2 get the defendant to speak. It was simply careless error.

3 As far as the third conversation goes, again, there's
4 no indication from the testimony that anything about the
5 statements was lacking in voluntariness. I would like --
6 but since Mr. Deysach has breached the subject of ethics
7 and whether or not I sent these investigators to go speak
8 with his client, I want the court to be crystal clear that
9 on September 3rd, I met with these investigators to go to
10 the hospital to meet with the victims. I did not send them
11 to the detention center to speak with represented
12 defendants. I didn't -- I'm not even sure if I knew about
13 the letter.

14 Well, I'll consider it received the next day.
15 September 4th was the day it was received ---

16 THE COURT: So ---

17 MR. ROBINSON: Or stamped on it. I just want to make
18 that clear to the court, that I did not send these
19 investigators to go speak to a represented party. That is,
20 you know, that is not something that would happen in our
21 meeting. This -- that was a meeting with the victims.

22 And, so, I just want to make clear that I think that
23 all four of these statements were clearly custodial,
24 custodial based on the evidence before the court. It is
25 clear that they were voluntarily made, and there's nothing

1 to suggest otherwise, that they were not voluntarily made.

2 Thank you.

3 THE COURT: Thank you. In regard to these statements
4 that were made, the law requires, of course, that before
5 any statement or alleged confession can be admitted,
6 evidence must be presented before this court, as the
7 gatekeeper, before the jury can consider the evidence that
8 the defendant was fully advised of his rights under the
9 Fifth and Sixth Amendments to the Constitution, and the
10 constitutional safeguards provided by *Miranda vs. Arizona*.

11 And those rights are that the defendant must be
12 advised prior to questioning that he has the right to
13 remain silent. He must also be advised that if he waived
14 his right to remain silent and made a statement, that
15 statement could be used against him in court. Must also be
16 advised before questioning that he has a right to get an
17 attorney to represent him. If he could not afford one, one
18 would be appointed to represent him free of cost. He had
19 the right to have the attorney with him during questioning,
20 and he was also -- must be advised that he had the right to
21 consult with an attorney, if he had one before questioning.
22 That he had the right to cut off and terminate the
23 interrogation at any time during the interrogation. He
24 must also be told that if, during the interrogation, it
25 developed that he wanted a lawyer, he could stop it at that

1 point in time and consult with a lawyer prior to further
2 questions being asked, and then the question must be
3 whether or not he knowingly and intelligently waived those
4 rights and decided to make the statement.

5 The threshold burden that the state has to meet at
6 this juncture is proof beyond -- excuse me, proof by the
7 greater weight or the preponderance of the evidence. But
8 the evidence before the jury, if the statement is admitted,
9 must be proof beyond a reasonable doubt that each of these
10 safeguards was provided and observed, and that the waiver
11 was made, and that the statement was freely and voluntarily
12 made.

13 Insofar as Mr. Price is concerned, the testimony of
14 both of the witnesses is unequivocal and that is that the
15 statements were read to him -- excuse me, that the warnings
16 were read to him. He chose not to sign a waiver. No
17 evidence was made of that at the time and was not required
18 to be made under the circumstances. The only, the only
19 evidence, evidence would have been negative evidence. He
20 didn't make a statement. Surely they could have had some
21 form initialed at that point in time by themselves. He
22 wasn't going to sign it, but it's not required.

23 The only evidence before this court in regard to Mr.
24 Geier is that -- excuse me, Mr. Geier's client, Mr. Price,
25 was that he was given the appropriate warnings and he was

1 advised of his rights at that particular time.

2 Insofar as Mr. Simuel is concerned, the warnings were
3 given and signed. The waiver was signed. The fact that
4 the tape was not turned on really doesn't make a whole lot
5 of different frankly. Most of the times it works the other
6 way. Most of time somebody's complaining, well, we didn't
7 know he was being taped, slipped that one in on us, and the
8 tape didn't -- we didn't know about it. Well, this time,
9 in this case apparently everybody thought he was being
10 taped, but he was not. There's no prejudice in that.
11 There's nothing improper about that, and certainly no one
12 could claim to have been deceived to their detriment as a
13 result of this.

14 At that point in time, he has been Mirandized. He has
15 signed the waiver. He has agreed to make a statement.
16 Under our law, once a voluntary and intelligent waiver of
17 Miranda rights is made, that waiver continues until such
18 time that it is -- indicates that he wants to revoke it and
19 no longer wishes to make statements, that he now wants to
20 remain silent. *State vs. Rochester*, 391 S.E.2d 344, *State*
21 *vs. Ballington*, B-A-L-L-I-N-G-T-O-N, 551 S.E.2d 280, are
22 cases which stand for that proposition.

23 There's no evidence in this record that at any time
24 during the process of this whole interview procedure, which
25 included three statements, that he ever indicated that he

1 wished to revoke his wavier, that he now wanted to stop
2 making statements, and no longer cooperate if that's the
3 right word to use. As a matter of fact, the evidence is
4 just the contrary.

5 The evidence is that a telephone call from his wife
6 was made to the, to the sheriff's department, that a letter
7 followed up, received on September the 4th, which was the
8 date of the interview. *Edwards vs. Arizona*, United States
9 Supreme Court case, 101 Supreme Court 1880, *State vs.*
10 *Kennedy*, a South Carolina case, 510 S.E.2d 714, both stand
11 for the proposition, which doesn't really require a legal
12 finding, that the police have a right to speak with the
13 suspect and initiate communication even after he has
14 revoked or even after he has invoked his right to remain
15 silent.

16 Well, again, the police have the right to speak with a
17 suspect to initiate a conversation after he has invoked his
18 right to remain silent. And surely that right to speak to
19 the defendant is even stronger than one who has never
20 invoked his right to remain silent, and has, to the
21 contrary, indicated affirmatively that he wishes to talk.

22 I find that the standard required under the law under
23 *Jackson v. Denno* and the Fifth and Sixth Amendments of the
24 Constitution have been met by the greater weight or
25 preponderance of the evidence, and the jury is entitled to

1 consider the statement.

2 Now we must deal with the issue of redaction. We must
3 also deal with the issue that the fact that the jury, upon
4 representation that this hearing was going to last an hour
5 and now we're into an hour and a half, and we haven't even
6 gotten to *Neil vs. Biggers* for redaction -- I haven't tried
7 a lot of case with you folks in the past, and perhaps I
8 should have warned you. The only thing that I get upset
9 about, the only thing I get upset about other than just
10 ineptitude, which doesn't exist in this particular case, I
11 can hide that, I can mask that when I get upset about that,
12 is keeping a jury waiting because I didn't know how long to
13 tell them it was going to take. So, I have to rely on what
14 you all tell me, and in all candor, I should know better.

15 I've been doing this for seventeen years. And even
16 lawyers like yourselves whom I, who I trust implicitly and
17 would never intentionally mislead the court, good lawyers
18 been my friends and law partners over the years, and
19 lawyers who appeared before me repeatedly over the years,
20 when they tell me it's going to take an hour, I know it's
21 going to take two. That's my fault. But the jury's in
22 there waiting, and it's -- they been waiting thirty
23 minutes, and we've got the issue of redaction, which I
24 think you all might be able to put your heads together and
25 work with, Mr. Robinson. I'll let you do that in a minute.

1 MR. ROBINSON: That's correct, Your Honor.

2 THE COURT: We've also got *Neil versus Biggers*, and
3 the question, the reason for this rant of mine is when is
4 the identification testimony going to come in, and do we
5 have time to get started with opening statements and things
6 of that nature?

7 I know you all want to tell this jury what the proof
8 is going to be and the evidence is going to be, and
9 identification is one of those issues. But how long is it
10 going to take to do that? And when is that evidence and
11 testimony going to come in, Mr. Robinson, through your
12 presentation?

13 MR. ROBINSON: Your Honor, I think the identification
14 testimony is going to come in with the three eyewitnesses
15 that I intend to call.

16 THE COURT: Right.

17 MR. ROBINSON: And I expect I would be calling them --
18 they'll probably -- I'll probably begin with those
19 witnesses either second or third.

20 THE COURT: Okay.

21 MR. ROBINSON: But I'm going to start with some of
22 the first responders. So, if it's noon now, giving --
23 given that we have openings and then maybe one or two
24 witnesses ---

25 THE COURT: Right.

1 MR. ROBINSON: --- it would probably be after lunch.

2 THE COURT: Okay.

3 MR. ROBINSON: We'll be doing the identification
4 testimony.

5 THE COURT: Well, we can work around that if I'm -- I
6 mean that's, that's what I hoped might be the case, and we
7 can deal with the *Neil vs. Biggers* issues during the
8 lunchtime.

9 What about the redaction? Obviously that won't come
10 in for some time until the investigators talk. Is that
11 right?

12 MR. ROBINSON: That's correct. The, the issue about
13 the redaction, that, that will come in with these two
14 investigators, and I'm going to call them probably after I
15 call the victims. And so, that could be late this
16 afternoon or tomorrow morning.

17 THE COURT: Okay, so we can -- so, we have a little
18 luxury to deal with that as well as far as time.

19 MR. ROBINSON: We do, Your Honor.

20 THE COURT: All right. Then, gentlemen, what I would
21 propose to do, unless I hear a well founded objection, is
22 to bring the jury in, and I will bow and scrape before them
23 and tell them it's my fault we're thirty minutes late
24 getting things started and blame it on me. I won't blame
25 it on you all or your client. And go through the opening

1 and the introduction, a couple of witnesses' testimony.
2 Then we'll break for lunch and deal with the redaction
3 issues and the *Neil vs. Biggers* issues.

4 Mr. Geier, what says the defendant Price to that?

5 MR. DEIER: Your Honor, my only concern is that the
6 state may, without having the *Bruton* issue dealt with, may
7 address some things that as we sit here right now are
8 presumably admissible. I guess I'd just ask the court to
9 instruct the solicitor's office not to broach the subject
10 until it's been decided.

11 THE COURT: I doubt that Mr. Robinson is, is going to
12 forget *Bruton* when he stands before that jury and says that
13 Mr. Simuel made a statement implicating Mr. Price.

14 So ---

15 MR. ROBINSON: That's, that's exactly correct, judge.
16 I mean, if we have a *Bruton*, a *Bruton* issue undecided by
17 the court, I'm certainly not going to bring it up in my
18 opening. That's -- the court is correct on that.

19 THE COURT: Mr. Deysach?

20 MR. DEYSACH: Well, then I won't either.

21 THE COURT: Okay.

22 MR. DEYSACH: So, I don't have a, I don't have a
23 problem with that. I know that, that -- I mean, at this
24 point, though, I think that a couple things I want to say
25 right before we get started, not on the I.D. or the *Bruton*

1 issue, is that there was some talk of, of some notes that
2 were taken during the interviews that haven't been turned
3 over. If those are in the custody of the state, I would
4 ask that they be turned over at this time as part of their,
5 their discovery obligation. That's something I consider
6 they're -- it was a little bit nebulous where they may be
7 sitting right now. But if they exist, I think we're
8 entitled to them.

9 THE COURT: All right.

10 MR. DEYSACH: And I did make that objection to Mr.
11 Simuel's final statement, and it was sort of outside the
12 purview of a true *Jackson vs. Denno*. And I think I
13 understood what your ruling was, but I did want to make
14 sure that that was your ruling. And that, that grounds
15 that I brought up about the meetings with Mr. Robinson that
16 takes place the day before the meeting with Mr. Simuel,
17 that that, that sort of ethics argument that I made was
18 something that you decided was not something that would
19 result in the, the suppression of that statement.

20 THE COURT: Well, I just didn't have any evidence
21 before me that indicated some ethical violation had
22 occurred. The only evidence was Mr. Robinson's statement,
23 and, of course, the officers didn't testify about what they
24 talked about the day before. But it's related to this.

25 So, clearly some evidence comes up in, you know, the

1 course of things that indicates something to the contrary,
2 I'll be glad to consider it at that point in time.

3 MR. DEYSACH: Thank you.

4 THE COURT: All right, and you're right. If they have
5 notes regarding those statements, at the very, at the very
6 latest, before you have to cross-examine the officers on
7 the statements, you should have those notes in your
8 possession.

9 MR. ROBINSON: And I'll, I'll see that that happens,
10 Judge. I'll make copies.

11 THE COURT: Okay.

12 MR. DEYSACH: And I, I would -- those -- they may
13 exist as to other witnesses as well. And so, I mean, I
14 think if those exist, we're, we're ---

15 THE COURT: Okay. All right.

16 MR. ROBINSON: Judge, just want to mention one thing.
17 I need to hook my computer up to this larger screen because
18 my first witnesses are going to need to use the screen.
19 So, could I have -- you can add to your apology to the jury
20 an apology on my behalf. I just need maybe three minutes.

21 THE COURT: All right, let's take ten minutes. We'll
22 start back at fifteen after the hour. If you can let the
23 jury know we're going to start in ten minutes, please.
24 Thank you.

25 (OFF THE RECORD.)

1 THE COURT: All right, gentleman, are both sides ready
2 for the jury?

3 MR. DEYSACH: I am, Your Honor.

4 THE COURT: Mr. Robinson?

5 MR. ROBINSON: State's ready.

6 THE COURT: Gentlemen, I'm trying to figure out the
7 order of cross-examination and the order of presentation.
8 Do you all agree on an order, or do you want me to
9 establish an order based on the dates of these indictments
10 who will cross-examine first and who will argue first?

11 MR. DEYSACH: I think we were -- we kind of talked to
12 each other about -- is it all right for us to decide, or do
13 you want to make sure that we do it same each time or ---

14 THE COURT: No. You, you -- I just want, I just want
15 to know who to recognize. It doesn't matter to me. I
16 mean, you can go back and forth.

17 MR. DEYSACH: All right. Well, I know, for, for
18 opening, Mr. Geier was going to go ahead of me. I know
19 that for -- I think we were thinking for the ABWIK, you
20 know, he would want to go last for the ABWIK, and the other
21 victim I would want to go last. And so we kind of have it
22 nailed down for each witness.

23 THE COURT: Well, if you all can't agree, then I can
24 establish a protocol. But at least we'll start with
25 opening and, Mr. Geier, you'll go first and, Mr. Deysach,

1 you'll go second, okay?

2 MR. DEYSACH: Thank you, Your Honor.

3 THE COURT: All right, bring us a jury.

4 (THE JURY ENTERS AT 11:19 A.M.)

5 THE COURT: Would you sit in this first chair right
6 here?

7 JUROR: Yes, sir.

8 THE COURT: Thank you, sir.

9 BAILIFF: The jury is seated, Your Honor.

10 THE COURT: Thank you, sir.

11 Folks, I guess you've been spending the last forty-
12 five minutes in that jury room taking up a collection to
13 buy me a new watch. I asked you to be here at 10:30, and
14 you were here at 10:30, and it's a little bit past 11:15,
15 and we're bringing you into the courtroom.

16 I have spent a good bit of my time in the last
17 seventeen years on my knees before jurors like yourselves
18 asking forgiveness for having wasted your time. I am very
19 cognizant of the fact that for most of you -- I hope for
20 all of you -- your only contact with the judicial system
21 and the system of justice which we enjoy in our county and
22 in your county and in your nation will be your service this
23 week as jurors. And so we're mindful of that, and I try to
24 do all that I can, recognizing that if you get the
25 impression that we're not efficient and that we don't do

1 things in a timely manner, that you're going to think that
2 that's the way the justice system works, and that would be
3 wrong.

4 Justice sometimes takes time to unfold. It is not the
5 fault of the system, in other words. In this case, it is
6 my fault for not estimating the length of time that it was
7 going to take us to deal with the matters of law that we
8 had to deal with this morning. And as a matter of fact, we
9 got here at 9:30 this morning. We worked until 5:30
10 yesterday afternoon. We got here at 9:30 this morning
11 trying to deal with those matters, and we still have not
12 completed them. But we've gotten ourselves to a point
13 where we can put those matters off and deal with them
14 during our lunch hour rather than keep you back there
15 waiting any longer.

16 And, so, I apologize for that. But I can always say
17 that I really rarely have to make this apology to a single
18 jury more than once because after I've done it once, then
19 I'm pretty mindful of, of how long it's going to take to do
20 things. And I will try my best not to, not to have to make
21 this speech before you again, asking for any further
22 forgiveness. But I'm not going to waste any of your, more
23 of your time right now. We're going to get started.

24 Mr. Deveer, I've asked you to occupy that chair, sir,
25 because I want you to serve as a foreman of the jury, and

1 all that means is you'll be the jury spokesperson here in
2 court. And when the trial is over, you'll be responsible
3 for writing the verdict of the jury. But I'll tell you
4 more about that before you have to do it. You don't need
5 to concern yourself about that right now. You just need to
6 know you got a reserved chair, and it's that chair right
7 now.

8 Ms. Moore, Mr. Carr, you all are the alternate jurors,
9 and you'll occupy those two chairs throughout the trial of
10 this case unless some time during the trial I ask you to
11 sit somewhere else.

12 Okay, the rest of you folks don't have reserve seats.
13 You got to do the best you can when you come in. All of
14 them look the same to me, and I suppose that they're always
15 comfortable as, as the other one. It's always a good idea
16 to do what you just did, and that is to move all the way
17 down before you sit because if you don't, somebody's going
18 to have to stumble across you to get to an open chair
19 beyond you.

20 Ladies and gentlemen, you're going to be sworn in now
21 as jurors, and I want you to pay particular attention to
22 the oath that you're about to take. It is a time honored
23 -- it is an artfully worded oath, and it explains to you
24 very completely, but at the same time very concisely, what
25 your responsibilities are as jurors in this case. And I'm

1 going to be reminding you during this trial and after this
2 trial as to exactly what you've sworn to do as jurors.
3 So, please listen to the clerk now as the oath is
4 administered.

5 (THE JURY IS SWORN.)

6 THE COURT: Ladies and gentlemen, let me take just a
7 few moments to tell you what the procedure will be that we
8 will follow throughout the trial of this case, and tell you
9 what your role as jurors will be in this particular trial.

10 When I finish talking to you in just a moment, the
11 first thing that's going to occur is that Mr. Robinson, on
12 behalf of the state, is going to appear before you and make
13 a brief opening statement. And in that opening statement,
14 he is going to outline for you in something of a review
15 fashion what this case is all about from the state's point
16 of view. He may also indicate to you some of what he
17 intends to offer as evidence by way of proof in support of
18 the charges which are brought in these indictments.

19 And after he has finished making his opening statement
20 on behalf of the state, then Mr. Geier on behalf of Mr.
21 Price, Mr. Deysach on behalf of Mr. Simuel, each have the
22 right to make opening statements, but they are under no
23 obligation to do so for reasons that I will tell you in
24 just a moment. And after the opening statements have been
25 made, that you will actually begin to see and hear the

1 presentation of evidence.

2 Evidence for the most part will take the form of
3 testimony of witnesses who will take an oath and sit right
4 here in this chair between you and me and will answer
5 questions that the lawyers from both sides will put to
6 them. Evidence can also take the form of photographs or
7 diagrams or documents or things of this nature that may be
8 offered into evidence. I do not know what the evidence is
9 going to be in this case. I haven't seen it, but that's
10 normally the sort of things that would come into evidence
11 in a case of this sort.

12 Now, after the state has presented its evidence first,
13 then the defendants have the right to offer evidence and
14 testimony if they choose to do so. But they don't have to,
15 and I'll tell you once again in just a moment why.

16 But after all the evidence and testimony has been
17 offered from whatever source it might come, then the
18 lawyers will come back before you and present their final
19 arguments, their closing statements they're sometimes
20 called. And after that has been done, then I will instruct
21 you or charge you as to what the law is. And after that
22 has been done, then you will have this case in your hands
23 for your work to really begin. Then and only then may you
24 begin to discuss this case among yourselves.

25 I remind you again for reasons that I told you

1 yesterday you're not allowed to discuss this case among
2 yourselves at any time during the trial, or with anybody
3 else, or to find out anything on your own about this case,
4 or to let anybody talk with you about it.

5 You might hear some testimony out here, and we take a
6 break, and it might seem like you need to talk about it
7 then while it's still fresh in your mind because the
8 testimony may have raised certain questions, but you can't
9 do it. You can't do it then, and the reason that you can't
10 do it then is you have to keep an open mind throughout this
11 entire process. And if you start talking about this case
12 before you've heard it all, you're not going to be able to
13 keep an open mind.

14 It could well happen that later in the trial of the
15 case, you might hear some evidence that is different from
16 that that you've already heard and started to talk about.
17 But if you've already started to talk about that earlier
18 evidence, you will have started to make up your mind based
19 on your discussions. And you're not as likely to receive
20 that later evidence and testimony, even though it might be
21 different, with an open mind.

22 So, please keep an open mind throughout this entire
23 process, and remember not to discuss this case among
24 yourselves or with anybody else. I'll remind you of that
25 every time before you leave the courtroom because it's very

1 important.

2 Now, ladies and gentlemen, on the matter of evidence,
3 it's real important that you understand the distinction
4 between what is evidence and what is not evidence. I've
5 already told you that the evidence is testimony from this
6 witness stand, and the documents that will be offered by
7 the parties in this case. And so that means that the
8 opening statements that the lawyers make are not evidence,
9 and the closing statements that they make are not evidence,
10 and the questions that they ask are not evidence because
11 the evidence is not the question.

12 The evidence is the answer because the answer comes
13 from someone under oath who is purporting to tell you
14 something that that person knows about, and that testimony
15 is subject to cross-examination by the opposing attorney.
16 And so it is that evidence, that testimony that meets the
17 test of strict proof that must support your verdict, as
18 well as the documents and the items that are offered into
19 evidence in addition.

20 And the reason that it's real important that you
21 understand the distinction between what is evidence and
22 what is not evidence is this. When it comes to the matter
23 of evidence, you twelve principal and two alternate jurors,
24 you fourteen are actually the judges. You're the judges of
25 the evidence. I can't get see those labels that you're

1 wearing from here, but they probably have juror written on
2 them somehow, and if they don't, they could. But when it
3 comes to the matter of the evidence, that label could just
4 as accurately say judge because you judge the evidence.

5 Now, I'm the judge of the law, and I've got the easy
6 job. All I have to do is to decide as a matter of law
7 whether you can hear somebody tell you something from this
8 witness stand, or whether you can look at an item of
9 evidence that might be introduced during the course of this
10 trial.

11 Once I decide that you can hear the testimony or look
12 at the evidence, from that point on what you do with it is
13 entirely up to you. You've got the right to believe it or
14 not to believe it. You've got the right and the
15 obligation, in fact, if you believe it to assign weight to
16 it or value to it according to your view of the evidence.

17 And you're all qualified to do that, whether you've
18 ever been inside a courtroom before yesterday or not.
19 You're just as qualified as anybody to do that because what
20 we ask you to do as jurors in this case is to bring the
21 same abilities and the same attributes to this courtroom to
22 use in connection with this trial that you have used every
23 day of your life since you were able to think on your own
24 and make decisions for yourself outside of this courtroom.

25 In other words, what we expect you to do is to use

1 your good common sense, your sense of logic and reason,
2 your experiences in life. And you bring those things that
3 each of you possess uniquely because of who you are and
4 what you've been through in your life until this point to
5 bear on what you hear in this court. And you'll be able to
6 decide what the truth of this case is if you do that.

7 And once you have decided what the truth of this case
8 is, you will take the law that I will give to you and apply
9 it to the truth that you find, and those two things will
10 come together to result in a verdict which will speak the
11 truth of this case.

12 I told you a few moments ago that the defendants in
13 this case don't have to make opening statements, and they
14 don't have to offer evidence and testimony if they choose
15 not to because as I told you yesterday, they have pled not
16 guilty to the charges contained in these indictments. And
17 under the law, when someone pleads not guilty to a charge
18 in a criminal case, that person is presumed in law to be
19 innocent of the charges in those indictments.

20 When we say that someone is presumed to be innocent,
21 it means that that person does not have to prove his
22 innocence. He does not have to take the stand and try to
23 convince you that he did not do the things he is accused of
24 doing. He does not have to bring in a parade of witnesses
25 to try to make you believe that he did not do the things

1 that he is accused of doing. He is presumed not to have
2 done those things. And so the burden of proof is on the
3 state, not just in this case, but in every criminal case
4 brought in our courts to prove the guilt of the defendants
5 beyond a reasonable doubt to your satisfaction before you
6 can find a defendant guilty and convict him.

7 Now, there are two defendants in this case, and you
8 will consider your evidence as to each defendant separate
9 and independent of any evidence as to the other. Either or
10 both defendants can be convicted or acquitted on any or all
11 of the charges contained in these indictments. And so it
12 is up to you to listen to the evidence and to evaluate it
13 differently, or separately I should say, not differently
14 but separately. Whether you evaluate it differently is a
15 matter for you determine. But you must evaluate it
16 separately as to each defendant and as to each charge,
17 keeping in mind the obligation of the state to satisfy you
18 with proof beyond a reasonable doubt as to the guilt of any
19 defendant on any charge before you can convict that
20 defendant of that particular charge.

21 When the trial is over and when I'm instructing you
22 about the case, I'll tell you a little bit more about what
23 we mean by proof beyond a reasonable doubt. But for our
24 purposes right now today at this preliminary juncture, let
25 me tell you that proof beyond a reasonable doubt is proof

1 that leaves you firmly convinced of the defendant's guilt.

2 Now, if the state is able to present evidence to you
3 that leaves you firmly convinced of the defendant's guilt,
4 then the state has met its burden of proof and would be
5 entitled to a verdict of guilty at your hands. On the
6 other hand, after listening to all of the evidence, if
7 there's a real possibility that a defendant is not guilty
8 of a particular charge or all charges, then the state has
9 not met its burden of proof. That defendant is entitled to
10 a verdict of not guilty in that regard.

11 Some of you have asked or sent word to me about
12 whether or not you can take notes. This trial will not be
13 a lengthy trial, we don't think. It'll probably last a
14 couple of days, but I'll tell you that if you wish, you can
15 take notes if it will help you remember what the witnesses
16 have said. But there are certain specific requirements
17 that have to be followed if you choose to take notes.

18 First of all, if you take notes, you'll keep them to
19 yourself, for yourself. They're your notes; you cannot
20 share them. You're not allowed to share them. They are
21 your notes, and they represent your reflection. And
22 secondly, you may use them only to refresh your memory
23 during the deliberation.

24 If you take notes, your notes should be of the
25 witnesses' testimony only, not of the opening statements,

1 not of the closing statements because that's not evidence,
2 but only of the answers that are given from the witness
3 stand themselves. When you leave at night, you will leave
4 your notes in the jury room if you choose notes.

5 And so those are the instructions I would give you if
6 you choose to take notes. And I recognize that some of
7 you, perhaps like me, I have to take notes, and you might
8 be like that as well. And so I do not prohibit note
9 taking, especially in the case that could last a couple of
10 days. I simply admonish you to follow those instructions
11 very closely if you choose to take notes.

12 Now, ladies and gentlemen, in just a moment you're
13 going to hear the opening statements presented. And when
14 the trial of this case is over finally, you'll go back into
15 the jury room, and you'll begin deliberating in this
16 particular case, and you will reach a verdict as to each of
17 the charges against each of these defendants on each of
18 these various indictments, and you will write a verdict as
19 to each of those charges and as each defendant on those
20 various indictments. And when you write that verdict, you
21 will express your opinion as to whether or not the state
22 has met its burden of proof against these defendants on
23 these individual charges by writing a verdict of we find
24 the defendant or defendants guilty, or we find the
25 defendant or defendants not guilty according to your view

1 of the evidence in this case.

2 Ladies and gentlemen thank you very much for your
3 attention to these remarks. Now please listen to the
4 lawyers as they make their opening statements.

5 Mr. Robinson.

6 MR. ROBINSON: Thank you, Your Honor. May it please
7 the court?

8 THE COURT: Yes, sir.

9 MR. ROBINSON: Ladies and gentlemen, let me tell you
10 what this case is about. This case is about two burglars
11 who decided to shoot their victims, who decided to shoot
12 them instead of rob them. Those two burglars are these
13 defendants, Demetrius Price on your left and Lucius Simuel,
14 Jr., on your right.

15 This happened on July 28, 2008, down in Bluffton,
16 [REDACTED] Apartments, and let me tell you about who
17 they shot. They shot two young brothers, Deverol Cannick
18 and Deon Cannick. I expect the evidence will show that
19 Deverol's about twenty -- he was twenty-four when this
20 happened. Deon was about sixteen. And what you're going
21 to see and the evidence is going to show is that because of
22 this shooting, Deon is never going to walk again. He was
23 shot just below his neck. The bullet shattered his spine;
24 he is now paralyzed for the rest of his life.

25 The evidence is also going to show that Devin was shot

1 twice. He shot once on the left side of his abdomen and
2 once in the hand. The bullet went through Deverol and
3 nearly killed him.

4 What the evidence is going to show is that these two
5 defendants broke into their apartment and then shot them
6 successfully. What I expect the evidence to show is that
7 Deon and Deverol were living in Bluffton at [REDACTED]
8 [REDACTED] Apartments, apartment number [REDACTED] and Lucius Simuel
9 was known to them.

10 I expect the evidence to show that Lucius -- that
11 Deon, the sixteen-year-old brother, went out with a girl.
12 He had a girlfriend whose name was Tiah Frazier, and Lucius
13 Simuel was Tiah Frazier's uncle. Now, Lucius had been to
14 their apartment before, and what happened is Lucius learned
15 that Deon and Deverol were involved in drugs. He'd been to
16 their house. What happened is Lucius and Demetrius decided
17 to rob them. Decided to go to their house and under the
18 auspices of offering to sell them drugs, instead forced
19 their way inside and shot the brothers.

20 I expect the evidence to show that the apartment they
21 were living in was an upstairs apartment. When you open
22 the front door, there's a stairwell that goes right
23 upstairs. Deverol is at the front door. Lucius and
24 Demetrius pushed their way inside and when they did, Deon
25 came down the steps. When they did, Demetrius went up the

1 stairs, fired once at Deon, shot him in the neck. Lucius
2 and Demetrius went outside.

3 Deverol saw his brother get shot, saw his brother fall
4 to the ground, and went outside to see where they went.
5 Unfortunately, Deverol was wrong that Demetrius and Lucius
6 had fled. They were standing right outside in the parking
7 lot. And I expect the evidence to show that when Deverol
8 saw them, he turned away from them, and then he himself was
9 shot twice.

10 What the evidence is also going to show is that there
11 were two different kinds of guns used. You're going to
12 hear forensic evidence that demonstrates that Deon was shot
13 with a revolver once. And you're going to hear forensic
14 evidence that demonstrates that Deverol was shot with an
15 automatic, an automatic pistol because the evidence is
16 going to show that inside -- that outside the apartment,
17 there were three shell casings found because when you fire
18 an automatic, the shell casings are discharged from the
19 weapon, whereas with a revolver, when the round rotates,
20 there's no discharge of a casing. It's one shot, but the
21 projectile was recovered. The projectile was recovered at
22 the base of the stairs.

23 You're going to hear from a number of witnesses.
24 You're going to hear from the first responders. You're
25 going to hear from members of law enforcement. You're

1 going to hear from Deon, the sixteen-year-old and Deverol,
2 the twenty-four year old. And you're going to hear from
3 the two people who were living in the apartment with them,
4 Deverol's girlfriend Sharita, Sharita Willingham, as well
5 as from their oldest brother Malik, Malik Campbell. They
6 were inside the apartment at the top of the stairs,
7 upstairs where this happened. And they saw the break-in,
8 parts of the break-in from the top of the stairs. You're
9 also going to hear from a member or members of the
10 sheriff's office who responded, who investigated the scene
11 after the victims had left the scene to be taken to the
12 hospital. And you're going to hear from the -- some
13 doctors who operated on and treated the victims. They're
14 going to explain to you what the injuries did to them
15 better.

16 And you're also going to hear that not only did these
17 two defendants force their way inside of this apartment.
18 You're also going to hear evidence that demonstrates that
19 both Demetrius Price and Lucius Simuel were not allowed to
20 be in possession of a gun in the first place because of
21 their history.

22 I'm also going to tell you when you were qualified
23 yesterday, the judge asked you can you be fair and
24 impartial to people that were involved in selling illegal
25 drugs. There's not going to be any dispute about that. At

1 the top of the stairs in their apartment, when the
2 sheriff's office responded to search the scene of the
3 shooting, they found drugs. They also found some guns.
4 But what you're going to see is that downstairs where the
5 shooting happened, no drugs. The drugs were upstairs in
6 the living quarters. And also the evidence is going to
7 show that the guns that were found in the apartment were
8 not used to do the shooting.

9 These two boys were not holding or armed, holding
10 guns, nor were they armed when they got shot. Otherwise,
11 they probably wouldn't have gotten shot. What you're going
12 to hear is how these two defendants forced their way inside
13 and decided shoot these two boys instead of steal from
14 them. And that afterwards when they did, they drove away
15 in a car registered to Demetrius Price.

16 You're going to hear from a number of witnesses. I
17 expect the evidence to take all of today, probably a good
18 bit of tomorrow. Y'all have got more eyes and ears than I
19 do, and just like the judge said, you're the judge of the
20 facts. I just ask that you pay attention to the witnesses,
21 pay attention to all the exhibits. And I want you to
22 understand. This is very clear. This is a burglary turned
23 into a shooting. This is not a drug transaction. This is
24 a burglary that turned into a shooting and as a result, two
25 young boys are lucky to be alive, very lucky, and one of

1 them is never going to walk again. And it's all because of
2 the decisions that were made by these two defendants on
3 July 28th down at the [REDACTED] Apartments.

4 I thank you for your time and for your service.

5 THE COURT: Thank you, Mr. Robinson.

6 Mr. Geier.

7 MR. GEIER: May it please the court?

8 THE COURT: Yes, sir.

9 MR. GEIER: Your Honor, members of the jury, counsel,
10 my name is Christopher Geier. I was introduced to you
11 yesterday, and it's my pleasure to represent Demetrius
12 Price in this case.

13 The judge told you earlier you have a difficult job.
14 The state has a difficult job, too. We'll talk about that
15 in a minute.

16 Demetrius has an easy job. He has no burden, and when
17 this case is over, you will be unable to find him guilty
18 beyond a reasonable doubt. Why? Because he's not guilty.
19 He is not guilty of any of the charges that the judge read
20 to you yesterday.

21 Now, you're probably wondering, well, then why am I
22 here. If he didn't do anything, why am I here? Why did
23 Mr. Robinson just say that Demetrius Price did all these
24 things? Why did the police arrest him? Why is he here,
25 sitting looking at you accused?

1 Again, to that I'd say it's your duty, as the judge
2 just instructed you, to consider Demetrius Price to be
3 innocent, innocent as anybody in this room, innocent as a
4 child, and that's really the way you have to look at it.
5 And only after the state can produce competent and relevant
6 evidence on each and every charge that has been levied
7 against Demetrius Price can you find him guilty.

8 Now, the judge talked briefly about proof beyond a
9 reasonable doubt, and he's right. They have to prove
10 beyond a reasonable doubt, and you've probably watched TV
11 and movies, and you've seen proof beyond a reasonable
12 doubt, and you might have some concept in your mind. And
13 I'm sure what the judge just said assisted you in
14 understanding what that proof is.

15 But there's another maxim out there that talks about
16 what is proof beyond a reasonable doubt, and I anticipate
17 at the end of the trial when the judge gives you his
18 instructions he's going to touch on this. And that is
19 proof beyond a reasonable doubt is the sort of doubt that a
20 reasonable person would feel before making an important
21 decision that would cause them to hesitate to act, hesitate
22 to act. Not not act. But when you're thinking about that
23 important decision, you say is this the right thing? Could
24 it have happened this way? Should I do this instead of
25 that? If you hesitate, if you pause, that's enough to find

1 Demetrius Price not guilty of whatever charge you're
2 considering at that time.

3 Now, usually when lawyers get up here and they give
4 opening statements, you're instructed in law school and
5 you're told by members of the bar you should avoid pithy
6 little sayings, things that we've all heard before. But
7 when I was looking at this case, I couldn't escape one of
8 them, and so I'm going to give it to you right now. It's
9 the devil is in the details.

10 The details of what the state, I expect them to
11 produce, are going to be muddy. They're going to be muddy
12 for a number reasons. When there is something that just
13 doesn't make sense, I want you to look at it and wonder
14 why. Why? Why are there details in this case that just
15 don't make sense? And it's Mr. Robinson's job, again, to
16 put up before you piece by piece, exhibit by exhibit,
17 witness by witness competent and credible evidence that
18 convinces you that Mr. Price isn't as innocent as anybody
19 in this room.

20 Now, my job is different than Demetrius's job. Again,
21 Demetrius has no job. He can sit there and say nothing,
22 and it's his legal right to do so. And if he chooses to do
23 that, as the judge will instruct you when this is over and
24 he already instructed, you can't hold that against him.
25 The law does not allow it.

1 But I have a job, and my job is to challenge the
2 state's evidence. And oddly enough, that's also your job
3 is to challenge the state's evidence. And my job is to
4 find bits of truth in the state's evidence. They're going
5 to have a number of people come up here, and I'll be asking
6 them questions.

7 You're going to find when these folks get up here and
8 testify before you that they haven't always been completely
9 forthcoming. And as Mr. Robinson stated earlier, there was
10 a ton of drugs and guns found in this place. You're going
11 to find that the only people who have been charged on
12 anything related to what happened that day are those two
13 gentlemen over there.

14 Now, I expect that Mr. Robinson is going to put on
15 evidence like he said. He's going to say that, from my
16 perspective, that Demetrius Price went to the apartment of
17 Deon and Deverol Cannick. And I might say Deverol and
18 Devin is the same person. It might be a little confusing;
19 there's multiple references to them by each name. But that
20 Demetrius Price went to this apartment, and within this
21 apartment resided Deon Cannick, Deverol Cannick, Sharita
22 Willingham, and Malik Campbell. And once there, they
23 pulled out guns, forced their way inside and for no reason,
24 no justification, no purpose Demetrius Price shot Deon
25 Cannick.

1 When this testimony is going on, ask yourself why.
2 For what reason? Why would he do such a thing? Ladies and
3 gentlemen, I don't think they're going to be able to give
4 you an adequate reason why as you're listening to the
5 testimony.

6 Again, my duty to my client is to bring some truth,
7 and I'll attempt to do that, but I won't be able to bring
8 out all of the truth. Why is that? Because I don't get to
9 decide what these folks testify about. It's sort of like
10 there's a door over here and the door is locked, and inside
11 that door is the truth. And they may say Mr. Geier, in
12 your defense of Demetrius Price, open the door. And I'd
13 say go ahead. You've got the witnesses. You've got the
14 key. You can bring the truth to the jury. You can tell
15 them what really happened. You have people who were there,
16 and you have the burden of proof.

17 Ladies and gentlemen, when this case is over, you're
18 going to find that that door will still be locked. And
19 when you go back into your deliberation chambers, there's
20 going to be just one conclusion that you'll be able to
21 reach, and that's we don't know. We don't know what
22 happened that day. We don't know because we don't believe
23 some of the things that were said. I firmly believe you'll
24 say that. And because we don't know, we have only one
25 verdict we can hand down, and that's a verdict of not

1 guilty. And when this trial is over, I'll be asking you to
2 return that verdict.

3 Now, the last thing I'd say is the judge also said to
4 you that you have a difficult job. He's got the easy job
5 and you've got the difficult job, and he's right. And so I
6 say again how can you sitting here today consider Demetrius
7 Price not guilty in light of all these charges? It's your
8 duty to do that, your sworn duty, and it won't be easy. It
9 won't be easy.

10 So, how can you possibly do this? Well, I'd suggest
11 to you that there's other parts of our government, another
12 group of people who take an oath. That's members of the
13 military. Once you join the military, you have to take an
14 oath, and that is you will defend our country, our
15 constitution against all enemies foreign and domestic. And
16 once you take that oath and you put that uniform on, you
17 are able to make decisions that most people can't make.
18 You can make life and death decisions. You can make
19 sacrifices that you can't believe you could make.

20 Members of the jury, it's not that different. See,
21 when you're in the military, you are defending our freedom
22 and our way of life. By serving as members of the jury and
23 holding the state to their burden, you are also defending
24 our freedom and our way of life.

25 And I again, ladies and gentlemen, when this over,

1 I'll be asking for a verdict of not guilty. And I believe
2 firmly that that's the only one you'll be able to make.
3 Thank you.

4 THE COURT: Thank you, Mr. Geier.
5 Mr. Deysach.

6 MR. DEYSACH: Thank you very much, Your Honor. May it
7 please the court?

8 THE COURT: Yes, sir.

9 MR. DEYSACH: My name is Ian Deysach. I represent
10 Lucius Simuel. I've been sitting over there waiting to
11 communicate with you since you were selected, and so
12 sometimes the first thing I want to do is run up to you and
13 start telling you everything that I want you to know right
14 now. But I also know that it is not the person who talks
15 the longest or the loudest that is going to communicate
16 with you the best during this case. And when I'm
17 communicating with you during the case, it will be when
18 these witnesses are testifying, when evidence is coming in,
19 and that's where the real work comes in.

20 I have a few things I want to say to you before we get
21 started, but I don't want to waste your time by saying
22 things that have already been covered. The big point that
23 I want to make, the first thing that I want to say to you
24 since these indictments were read out is that Lucius Simuel
25 is not guilty. And I don't mean this in a he's not guilty

1 because they just haven't proved him guilty kind of way. I
2 mean that he did not burglarize an apartment, a house. He
3 did not have a gun, and he did not shoot anybody. That's
4 what I'll be attempting to communicate to you throughout
5 the course of this trial.

6 And so I think Mr. Geier touched on it. I just want
7 to kind of be brief about it, that you get evidence, and
8 you draw inferences. I mean, you're going to hear one
9 person that gives you evidence, and you draw an inference
10 one way. And another person gives evidence, and you draw
11 the inference another way. And so part of what you have to
12 do is decide, okay, here are my facts. This is the most
13 logical way that things occurred. And I think that what
14 Mr. Geier was touching on is if you -- as you listen to the
15 evidence and you hear the state's version of events, it's
16 the type of thing that makes you scratch your head and say
17 wait a second. And guys who are dealing drugs aren't
18 dealing drugs is kind of what he's trying to tell you.
19 This is -- they're taking a break from dealing drugs. And
20 you have to kind of wonder wait a second. Are we going to
21 trust the drug dealers to tell us that we're not dealing
22 drugs just right this second? And so those are the types
23 of things, when you talk about motive of people acting,
24 things that we want you to look out for.

25 But what I'm saying isn't evidence. What Mr. Robinson

1 said isn't evidence. It's frustrating to sit there and
2 hear him say Lucius Simuel did that and Lucius Simuel did
3 this, and I want to come up here and say no, he didn't.
4 But Mr. Robinson and I can argue about it all day long, but
5 we're going to be looking at what's coming from that
6 witness stand. And so I just wanted a preview from -- for
7 you that it's not an open and shut thing the way the
8 solicitor makes it sound. And really, my intent is to
9 communicate to you what really happened. That's what I'm
10 going to be trying to do.

11 First concern I have in this case -- that's what I've
12 written down is things I'm concerned about the judge
13 touched on -- is that normally more often than not you
14 don't have two people on trial at the same time. And I
15 guess what that means is that you guys have twice the work.
16 You have to listen to twice the defense attorneys, and I
17 want to be respectful of that. That, again, talking
18 longest and loudest isn't what you need to be exposed to.

19 But that the concern that any defense attorney would
20 have, or anybody who was on trial for something like this,
21 is just that the brush is going to be painted across both
22 defendants. That each one is going to be considered
23 separately. That the decision that you might make is
24 either they did it, or they didn't do it. And that you
25 wouldn't see these two folks as individual people, which

1 they are. That's why they don't have, they don't have the
2 same attorney. They've got -- they're different people who
3 are involved in this in different ways.

4 And it really doubles the work on you because you,
5 instead of delivering verdicts on one person, have to
6 deliver verdicts on two people. But that's the type of
7 work that I'm asking you to do. And I ask because you take
8 the oath and you're supposed to do it, but I want to make
9 sure that it's something that you take seriously. And
10 that's something that I'm asking and Mr. Simuel wants me to
11 ask of you.

12 Any criminal case is that -- I'm afraid that just
13 because my client, Mr. Simuel, he's sitting all the way
14 across the room from you guys, has been accused by the
15 solicitor's office and the police of doing something, and
16 it's something bad. You know, part of the opening
17 statement that Mr. Robinson delivered had to do with the
18 consequence of what happened, and so we know that he's
19 accused of doing something that is not good. That you
20 automatically assume that because he's accused, because he
21 sits next to me at the defense table, that he must have
22 done something wrong, and that it chips away at that burden
23 of proof beyond a reasonable doubt that the judge talked
24 about and that Mr. Geier talked about.

25 And I guess what I wanted to say about reasonable

1 doubt is not what reasonable doubt is but why reasonable
2 doubt is. People just explain what it is, and it doesn't
3 make that much sense until you understand that reasonable
4 doubt is how our courts keep people from being convicted of
5 crimes that they didn't commit. That only when verdicts
6 are based on proof beyond a reasonable doubt can there be
7 certainty that an innocent person doesn't get convicted
8 because this isn't about the car wreck on 278 that that
9 civil case was picked about. This is about a criminal
10 case, and I don't think I have to explain to anybody in the
11 jury how serious the consequences of getting convicted of
12 these types of offenses would be to a person. And so the
13 last thing that anybody in this courtroom I think wants to
14 have happen is somebody get convicted of those types of
15 offenses and then not having had -- be innocent.

16 And in this case, the innocent person is Lucius
17 Simuel. I'm not commenting on the other defendant here. I
18 just, to be honest with you, I don't, I don't really care.
19 I mean, that's not my thing that -- I don't really care as
20 much what happens to him. What I care about is my client,
21 and that's what I'll be trying to explain to you.

22 Final concern that I wanted to go over was that you
23 would hold it against Lucius that he's at the drug dealer's
24 house. That because he is somewhere where he shouldn't be,
25 that you would be less likely to follow that reasonable

1 doubt instruction to -- that, that it somehow chips away
2 that because he's somewhere he shouldn't be. That it's
3 wrong to be there. That it will be easier to say, well,
4 we'll just convict him or something along those lines. And
5 so what I'm asking you to do is taking his -- is to not
6 hold that against him. Not because it's okay to be at a
7 drug dealers' house, but for purposes of what we're doing
8 here, for what this court is all about, that's not
9 appropriate, okay? And so we're not trying to decide
10 whether or not Mr. Simuel shouldn't be at the drug dealers'
11 house. We're trying to decide whether he's a burglar, a
12 gun possessor, a person who does -- who shot, I guess,
13 Deverol Cannick is what he's accused of doing, all right?

14 So, I'm ending up here. I'm closing. I'm going to
15 finish up. You do have a tough job. You've got to
16 separate the two defendants in your minds. You've got to
17 put aside your feelings about how appropriate it is to be
18 at the drug dealers' house. And you have to accept -- not
19 just accept or note that it's there, but really honor and
20 embrace and adhere to the state's burden beyond a
21 reasonable doubt. And I'm telling you this because I know
22 that if you do those things that I have asked, that no
23 matter what the outcome is, and I'll tell you what outcome
24 I'm going to be asking for and what, what the state -- what
25 we're saying is appropriate, and that's not guilty on these

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

245

1 charges.

2 But I know that if you follow those instructions and
3 do what the judge says and those things that I've asked
4 you, that you'll be able to have confidence in what you've
5 done. And that you won't have to second-guess yourself if
6 you do those things that I've asked.

7 So, I am going to be asking for a verdict of not
8 guilty. And I'm going to do it after I've attempted to
9 communicate to you, through the evidence and another chance
10 to talk to you, what really happened. Thank you.

11 THE COURT: Thank you, Mr. Deysach.

12 Mr. Robinson.

13 MR. ROBINSON: Thank you, Your Honor. The state calls
14 Lieutenant Jeff Meyer.

15 THE COURT: Lieutenant Meyer, come forward please.

16 Ladies and gentlemen, the witnesses are being
17 sequestered. That means that some of the witnesses are
18 being kept out of this courtroom so as not to hear the
19 testimony of other witnesses. That's the usual procedure
20 in cases of this sort. So, that's the reason for a slight
21 delay between the time they call the witnesses.

22 JEFF MEYER, BEING DULY SWORN,
23 TESTIFIES AS FOLLOWS:

24 DIRECT EXAMINATION BY MR. ROBINSON:

25 Q. Are you Lieutenant, Lieutenant Jeff Meyer?

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

246

1 A. Yes, sir.

2 Q. And where do you work?

3 A. I'm a lieutenant with Bluffton Township Fire District.

4 Q. And which fire department is that?

5 A. Clear Station, station 35 at 357 Port Island Road,
6 Bluffton.

7 Q. Is that on Highway 278?

8 A. Yes, sir.

9 Q. Were you on duty on July 28th of 2008?

10 A. That's correct.

11 Q. Did you get called to [REDACTED] Apartments?

12 A. Actually, there was a neighboring fire district. It
13 was Engine 320. We responded to a multiple shooting call
14 at [REDACTED] Apartments to back up.

15 Q. Is that location in your fire district?

16 A. It is a neighboring district.

17 Q. So, if it's a neighboring district, why did you, why
18 did you respond?

19 A. We heard the call go out as multiple victims. So,
20 it's routine for us to go back up an engine for assistance.

21 Q. And how did you get there?

22 A. We took the fire apparatus.

23 Q. Okay. That'd be the fire engine, correct?

24 A. Yes, sir.

25 Q. And what time did you get the call?

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

247

1 A. It's approximately 1:30. Early in the afternoon.

2 MR. ROBINSON: May I approach the witness?

3 THE COURT: Yes, sir.

4 BY MR. ROBINSON:

5 Q. Do you recognize this?

6 A. Yes, sir.

7 Q. What is that?

8 A. This is a patient care form, DHEC, South Carolina.

9 It's a form that we fill out on all patients that we
10 treat.

11 Q. Will you review that, please?

12 A. Yes, sir, this was for Deon Cannick.

13 Q. To yourself, please.

14 (A PAUSE.)

15 A. Okay. I'm familiar with it.

16 Q. Did you fill out that form?

17 A. Yes, sir.

18 Q. What is your -- what is, what is the call to -- what
19 was the call time?

20 A. 1345. 1:45.

21 Q. Okay. I'm, I'm talking about the bottom left corner
22 when the, when the call was received.

23 A. Okay. The call was received at 1333.

24 Q. And that would be 1:33 in military time?

25 A. Yes, sir.

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

248

1 Q. And what time did you arrive at the location?

2 A. We arrived at the scene at 1342.

3 Q. About how far apart is your fire station from
4 [REDACTED] Apartments?

5 A. Approximately four miles.

6 Q. Why the ten minute delay?

7 A. It was routine for any type of violence situation that
8 the fire department does not respond until the sheriff's
9 department or other law enforcement agencies has the scene
10 secured as a safety precaution to myself and my responders.

11 Q. Where did you wait to get the word that the scene was
12 clear?

13 A. We actually sat at the gate to [REDACTED]
14 Apartments. Just a little bit to the west of the gate.

15 MR. ROBINSON: May I approach the witness, Your Honor?

16 THE COURT: Yes, sir.

17 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 1 FOR
18 IDENTIFICATION.)

19 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 2 FOR
20 IDENTIFICATION.)

21 BY MR. ROBINSON:

22 Q. I want to show you two things. I'm going to show you
23 what's been marked as State's Exhibit Number 1 and Number
24 2. Do you recognize that?

25 A. Yes, sir.

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

249

1 Q. What are those?

2 A. It is the main entrance and exits to [REDACTED]
3 Apartments.

4 Q. Is that a fair and accurate representation of what the
5 entrance to those apartments looks like?

6 A. Yes, sir, it is.

7 Q. Is that about what they looked like on the day that
8 you were there?

9 A. Yes, sir.

10 Q. But that is not a photograph of the actual scene on
11 July 28th, is it?

12 A. No, sir, it's not.

13 MR. ROBINSON: Your Honor, may I publish these images
14 to the jury?

15 THE COURT: Any objection, gentlemen?

16 MR. DEIER: Your Honor, we'd like to see what they
17 are.

18 THE COURT: All right.

19 (A PAUSE.)

20 MR. DEIER: Your Honor, we've never been produced
21 these photos. I don't, however, have an objection it to.

22 THE COURT: Okay.

23 MR. DEYSACH: I don't -- I think he should put them
24 into evidence before he publishes them to the jury.

25 THE COURT: They'll be in evidence and that's why I'm

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

250

1 asking you all if you have any objection.

2 MR. DEYSACH: I don't have any objection. I think he
3 asked to publish them to the jury. I think he -- I don't
4 have an objection to him putting them into evidence.

5 THE COURT: Okay. I'm, I'm aware of the order in
6 which things have to be done. That's the reason I have
7 inquired of the -- first of all, were there objections.
8 So, if there's no objections they're in evidence.

9 MR. DEYSACH: No.

10 THE COURT: That's what we do. State's 1 and 2 in
11 evidence without objection. Thank you.

12 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
13 NUMBER 1.)

14 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
15 NUMBER 2.)

16 BY MR. ROBINSON:

17 Q. Of these two photographs, 1 and 2, which is a, which
18 is a better angle for you to describe where you were
19 located when you arrived at the scene?

20 A. This one showing -- would be there.

21 MR. ROBINSON: Okay, at this time, may I publish
22 Exhibit Number 2 to the jury, Your Honor?

23 THE COURT: They're in evidence. Yes, sir.

24 MR. ROBINSON: Thank you.

25 BY MR. ROBINSON:

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

251

1 Q. Lieutenant Meyer, will you, would you come down
2 and ---

3 A. Yes, sir.

4 Q. There's a microphone over here if necessary. Now,
5 where did you park?

6 A. We were stationed approximately right here where this
7 road curves.

8 THE COURT: Lieutenant, I'm going to ask you to do
9 this for me, please, if you would.

10 MR. ROBINSON: Speak into the microphone.

11 THE COURT: Well, even better than that. If you'll
12 stand on the other side over there, please, sir, and facing
13 this direction and then that -- you'll be facing directly
14 to the court reporter, and she'll be able to understand
15 you.

16 WITNESS: Yes, sir.

17 BY MR. ROBINSON:

18 A. We were staged approximately right here, which I
19 believe is the Belle Fair Oaks Boulevard, and this being
20 the exit to [REDACTED] Apartments, and the part here
21 being the entrance. The interstate was facing eastbound.
22 The first arriving ambulance was facing head on to us
23 facing westbound approximately their side of the entrance
24 gate.

25 Q. And what did you do see when you got there?

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

252

1 A. When we got there, there was a, a vehicle parked with
2 the back bumper approximately where the gate closes
3 pointing out. Both driver's side doors were opened and we
4 had one patient lying on the ground approximately here on
5 the other side of the car.

6 Q. What did you, what did you know about this situation
7 when you arrived?

8 A. Obviously, the scene was secured. We had one
9 confirmed patient, and that was about it.

10 Q. Okay, and in addition to the car door stopped right
11 there, what else did you see?

12 A. Again, we had one patient on the ground. I tried to -
13 - it was -- we weren't quite sure if the incident had
14 happened right there due to the victim laying on the ground
15 and the car doors being opened. But that was about all we
16 had.

17 Q. And what did you do when you got there?

18 A. We started patient care, the gentleman who had a
19 gunshot wound into the neck. At this point we didn't find
20 an exit wound. We starting assessing the patient to get
21 vitals, his ABC's, his airway, breathing, and circulation,
22 and we started some -- so, we were going to stabilize the
23 patient. The patient -- at this point, I was joined by a
24 medics from Beaufort County EMS. I had a medic on the
25 engine with me as well. So, we started patient care

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

253

1 looking for wounds, exit wounds, started an IV.

2 Q. Was he breathing?

3 A. He was breathing.

4 Q. Was he conscious?

5 A. He was conscious, yes.

6 Q. What happened next?

7 A. We had log rolled the patient, which is a procedure
8 where we, we protect C-spine, put a collar on him. We load
9 the patient. We put him on a back board to secure any
10 cervical injuries, at which point we found the exit wound
11 in the back.

12 Q. So, is it fair to say that he was lying on his back
13 and ---

14 A. He was lying on his back, yes.

15 Q. --- you moved him over on his stomach?

16 A. Well, we rolled him over on his side to put a
17 backboard underneath him and then back on the board.

18 Q. Okay. When you rolled him over onto his stomach, what
19 did you see?

20 A. He had an exit wound in the mid-center of the back.
21 We knew it was significant because we could see that he had
22 some spinal cord intrusion from the exit wound.

23 Q. So, you could see his spinal cord?

24 A. Yes, sir.

25 Q. Okay. What did you do after that?

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

254

1 A. The patient was secured to a backboard, at which point
2 myself and Firefighter Favor, another paramedic on the
3 engine, were called to assist with another patient that was
4 in the ambulance prior to our arrival with the patient.

5 Q. Okay. So, when you say you -- so, when would you roll
6 him back over?

7 A. Yes, sir, he was rolled back on the backboard and
8 secured.

9 Q. And at that time, you went to deal with this other
10 patient?

11 A. Yes, sir.

12 Q. Okay, and where was he?

13 A. He was in the ambulance, which was parked -- again,
14 our engine was here. It was more towards the center of the
15 road. It had arrived a little after us, and the
16 intermediate on that ambulance had come over and stated she
17 had a patient who self-loaded and she wasn't sure he was
18 breathing.

19 Q. What does self-loaded mean?

20 A. He got into ambulance himself. Basically the door was
21 opened, he climbed in, and laid down on the gurney.

22 Q. All right. You can have a seat on the stand. And
23 just for background, do you recall what day of the week
24 this was?

25 A. I believe it was a Saturday.

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

255

1 Q. A Saturday afternoon?

2 A. Yes, sir.

3 Q. What happened when you got in the ambulance?

4 A. We got into the ambulance. Myself and Firefight Favor
5 again assessed our patient. He was breathing. He was
6 conscious. He was alert. We had an intermediate from
7 Beaufort County EMS assisting us.

8 Q. What's an intermediate?

9 A. She is in-between EMT basic and EMT paramedic.

10 Q. Okay.

11 A. She basically assisted us. The medic that was riding
12 with her was tending to our first patient with another
13 paramedic. We assessed the patient. He had what appeared
14 to be a gunshot wound to the abdomen with a large mass, not
15 an exit wound, near his left arm -- his right arm, excuse
16 me. I can give you a little more detail if we had the
17 patient information sheet.

18 Q. Go from your recollection, please.

19 A. We put an occlusive dressing on the gunshot wound
20 because it appeared to be bubbling, which would indicate
21 possible damage to the lung, and basically attend vitals
22 and decided we were going to transport him to Hilton Head
23 Hospital as a priority.

24 Q. Okay. What's a priority mean?

25 A. He is a high-risk patient. He has some significant

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

256

1 injuries and he needs to get to a facility to be
2 stabilized.

3 Q. Was he conscious?

4 A. Yes, he was.

5 Q. Okay. When he was in the ambulance, when you were
6 interacting with him, what position was he in?

7 A. He was lying on his back.

8 Q. Was he on a stretcher?

9 A. He was on a stretcher.

10 Q. And what happened next?

11 A. In the process of our, our general assessment we asked
12 him name, person, person, place, and time of event, what
13 happened. He was able to answer, answer the questions. He
14 was of decent mental status, and we just decided to head
15 him out to the hospital.

16 Q. Okay, and about what time did you get underway toward
17 the hospital?

18 A. No more than five, six minutes after initial, initial
19 arrival on scene.

20 Q. So, approximately how long between the arrival, the
21 call coming out at 1:33 and -- how much time elapsed
22 between the original call at 1:33 and your departure to the
23 hospital?

24 A. No more than ten, fifteen minutes if I had, if I had
25 to guess.

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

257

1 Q. Okay. En route to the hospital, what happened?

2 A. En route to the hospital, part of his initial
3 assessment, we had to ask if the patient recalls what
4 happened. He stated he was shot.

5 MR. DEYSACH: I would, I would object to the hearsay,
6 Your Honor.

7 THE COURT: How do you avoid the hearsay objection?

8 MR. ROBINSON: Your Honor, the witness has testified
9 this is between fifteen and twenty minutes between the
10 initial call. I believe that this is, this defendant has
11 -- he's also testified that this is a gunshot victim and
12 this is going to be, this is going to fall under the
13 exception of an excited utterance.

14 THE COURT: Well, he hadn't talked about the excited
15 just yet. He's talked about the time and the temporal
16 nature of those things. He has not talked about the state
17 of mind of the, of the -- you need to develop that.

18 MR. ROBINSON: I will, Your Honor.

19 BY MR. ROBINSON:

20 Q. What was his complexion?

21 A. He got a little pale, very concerned looking. Eyes
22 were sunken and sullen.

23 Q. How would you -- how did -- among the EMT's, how do
24 y'all describe the look that came over him?

25 A. He was scared. He got the fear in him.

J. MEYER - DIRECT EXAMINATION BY MR. ROBINSON

258

1 Q. And what does the fear look like?

2 A. Pale complexion, sunken eyes, almost a desperate look
3 to their face.

4 THE COURT: All right. I'm allow him to testify over
5 objection of defense counsel under 803(2), the excited
6 utterance reasons.

7 MR. ROBINSON: Thank you, Your Honor.

8 BY MR. ROBINSON:

9 Q. And what did he tell you?

10 A. At that point he motioned to me. The patient was
11 stabilized. We basically had done everything we could for
12 him en route to the hospital. He had motioned to me to
13 lean closer. As I leaned into him, he started rattling off
14 a phone number, at which point I tried writing the number
15 down on my glove. But I had, I had some blood on my
16 protective gear and I couldn't get it written down, and I
17 asked him, I said, is this somebody you want me to call.
18 At which point he stated girlfriend's uncle. I said you
19 want me to call your girlfriend's uncle, at which point he
20 said no. That's who shot me. So, while this was going on,
21 my partner was able to write down the phone number and get
22 a little information down on a piece of paper about that.

23 Q. Did, did you ask him about who that was?

24 A. No, sir. As I said, at first I thought it was
25 somebody that he wanted me to call because very often you

J. MEYER - CROSS-EXAMINATION BY MR. GEIER

259

1 get people, can you call my mom, can you call my dad, which
2 is ---

3 Q. Did he say it was his girlfriend?

4 A. He -- all I remember is it was girlfriend's uncle. At
5 that time, Firefighter Favors has asked again your
6 girlfriend's uncle shot you, and he said brother's
7 girlfriend's uncle.

8 Q. Did he say anything else?

9 A. That's about it. He was, he was concerned at that
10 point. He had -- like again, he had that solemn look at
11 which point he actually -- I wound up holding his hand the
12 rest of the way to the hospital.

13 MR. ROBINSON: State will pass the witness.

14 Lieutenant, please answer these lawyers' questions.

15 THE COURT: Mr. Geier.

16 MR. DEIER: Thank you, Your Honor.

17 CROSS-EXAMINATION BY MR. GEIER:

18 Q. Afternoon, Lieutenant Meyer.

19 A. Good afternoon.

20 Q. Good seeing you again.

21 A. You too, sir.

22 Q. You stated that when you arrived at the scene that
23 Deon Cannick.

24 A. Yes, sir. Yes, sir.

25 Q. Deon Cannick was out of the car?

1 A. Yes.

2 Q. Did you ever find out how he got out of the car?

3 A. Not until much later, later in the day.

4 Q. What did you learn?

5 A. Again, we were -- in the initial impression,
6 impression it looked like the shooting had occurred at the
7 gate of [REDACTED] We later found out that he was
8 loaded into a vehicle and brought to the scene where we
9 found him. Not quite sure how he got out of the car where
10 we found him.

11 Q. And you testified that he had a chest wound or a neck
12 wound?

13 A. He had an entrance wound to the neck, and upon loading
14 the patient for transport, log rolling him we found an exit
15 wound in the center of the back.

16 Q. Did you physically see both those wounds?

17 A. Yes, sir.

18 Q. Okay. Could you stand up real quick and, and show the
19 jury where about his body you saw the entry wound?

20 A. The one wound appeared somewhere between the ear and
21 the collar bone in about this area, and the exit wound was
22 larger ---

23 Q. Hold on here real quick, Lieutenant Meyer.

24 A. Okay.

25 Q. I'm going to create a record. So, you're pointing at

J. MEYER - CROSS-EXAMINATION BY MR. GEIER

261

1 your left neck around the jugular. Is that fair?

2 A. That's fair to say, yes, sir.

3 Q. And then on the back ---

4 MR. DEIER: If I might stand up here, Your Honor?

5 THE COURT: Sure. All right. He'll use you.

6 BY MR. DEIER:

7 A. The exit wound was right in, right in the middle of
8 the spine right about here, at which point we had a, we had
9 actual spinal cord and a piece of a vertebra out of the
10 exit wound.

11 Q. Okay. So, again, let the record reflect he pointed
12 about midway between that clavicles?

13 A. Yeah, mid, mid clavicle, clavicle.

14 Q. Okay. You can have a seat again. Lieutenant Meyer,
15 have you responded to other serious injuries in the course
16 of your time with the EMS and fire department?

17 A. Obviously, yes.

18 Q. When you go to a scene where there's a serious injury,
19 what sort of examination do you conduct when you're
20 presented, and let's say in this case a gunshot wound. You
21 see the guy laying there, what did you do?

22 A. At first off we start -- we form our own impression,
23 what we have, what type of injury, method of his injury,
24 does the patient look like he's feeling well in general.

25 And then we move on to an assessment where ABC's,

J. MEYER - CROSS-EXAMINATION BY MR. GEIER

262

1 breathing, circulation, obtained vitals, and in the case of
2 a gunshot wound with trauma, we kind of -- we, we see what
3 we have. It's usually very self-explanatory.

4 Q. So, it's fair to say then you focus on the, the big
5 injury?

6 A. Yes, sir.

7 Q. Do you look for any secondary injuries?

8 A. He would -- basically, we followed our trauma
9 protocol. So, we kind of do a quick rapid trauma
10 assessment, a real quick head to toe. But in this case we
11 did a focused assessment because we saw what injury we had,
12 and our mechanism of injury was pretty clear.

13 Q. And, so, did you notice any other secondary injuries?

14 A. On Deon, not -- again, it was, it was pretty quick.
15 We, we worked pretty thorough and fast, and the point we
16 had -- we transferred, transferred care of Deon over to the
17 medic, it was -- what we found was as far as we got.

18 Q. So, it's fair to say that was the only injury you
19 observed.

20 A. It's the most significant at the time.

21 MR. GEIER: I have no further questions, Your Honor.

22 Thank you.

23 THE COURT: Thank you.

24 Mr. Deysach.

25 MR. DEYSACH: Thank you very much, Your Honor.

J. MEYER - CROSS-EXAMINATION BY MR. DEYSACH

263

1 CROSS-EXAMINATION BY MR. DEYSACH:

2 Q. Good afternoon and just briefly. The, the two folks
3 that you treated that day, did they get transported in the
4 same ambulance?

5 A. No, sir.

6 Q. And so you said that you were in the ambulance with
7 Mr. Deverol Cannick?

8 A. Yes, sir, the gentleman who had the abdomen wound.

9 Q. And you testified that he was, he was, he was getting
10 you a phone number to write down?

11 A. Yes, sir.

12 Q. And he was able to clearly give you that phone number?

13 A. Yes, sir, he was -- his, his -- it took a little bit.
14 He was a little, little -- someone who was nervous trying
15 to get information out. But, yes, he got the phone number
16 out on his own.

17 Q. He was having trouble giving the information out, one,
18 because he was nervous, right?

19 A. Yes, sir.

20 Q. And, two, because of the injuries?

21 A. Possible.

22 Q. But he was telling you that the number he was giving
23 you, the phone number he was giving you was to the
24 brother's girlfriend's uncle?

25 A. Yes, sir.

1 Q. Correct?

2 A. Yes, sir.

3 Q. He did not give you the name of this person?

4 A. No, sir. All we got was girlfriend's brother's uncle.

5 Q. The girlfriend's ---

6 A. I'm sorry. Brother's girlfriend's uncle. My bad.

7 Q. Okay. So, did you -- I know that you, you record all
8 the impression that you have on, on injuries. Did you
9 record that statement somehow?

10 A. It was not put on any of our patient care forms, and
11 unfortunately it wasn't added to our incident report
12 because it was not our report to write. It wasn't our
13 first to call.

14 Q. All right.

15 A. So, it would have been had -- it would have had been
16 put in the first two engines' report, which it was not.

17 Q. So, your, your -- and this is back in, in July of '08,
18 correct?

19 A. Yes, sir.

20 Q. So, you're sure it's brother's girlfriend's uncle or
21 is it girlfriend's brother's uncle?

22 A. It was brother's girlfriend -- I'm sorry. It was
23 brother's girlfriend's uncle.

24 Q. Okay, and so -- but -- and you've, and you've got --
25 you don't know what the number was?

J. MEYER - REDIRECT EXAMINATION BY MR. ROBINSON

265

1 A. No, sir, it was written down on a piece of paper by
2 Firefighter Favor at which point, when we arrived at the
3 ER, there was a Beaufort County Sheriff's Office deputy
4 there, and we had handed it right over to him.

5 Q. Do you remember that deputy's name?

6 A. He's sitting right there.

7 Q. Which one is he?

8 A. The gentleman on the left.)

9 Q. Your left or my left?

10 A. On my left.

11 Q. So, that is the white guy or the black guy?

12 A. It would be the black guy.

13 MR. DEYSACH: All right, I guess I'll reflect that
14 that's Investigator Holmes. Let the record reflect that.

15 Nothing else, Your Honor.

16 THE COURT: Redirect?

17 MR. ROBINSON: Briefly.

18 REDIRECT EXAMINATION BY MR. ROBINSON:

19 Q. You just told one of the defense lawyers that when
20 you got to the hospital, you told him about that
21 conversation. Did you tell the investigator what Deverol
22 Cannick told you ---

23 A. Yes, sir.

24 Q. --- about who shot him?

25 A. Yes, sir.

J. LAUVER - DIRECT EXAMINATION BY MR. ROBINSON

266

1 MR. ROBINSON: I have nothing further of this witness,
2 Your Honor.

3 THE COURT: Thank you. You can step down.

4 (THE WITNESS EXITS THE STAND.)

5 MR. ROBINSON: May he be, he be excused, Your Honor?

6 THE COURT: Without objection, I'll allow you to be
7 excused.

8 WITNESS: Thank you, sir.

9 THE COURT: Mr. Robinson.

10 MR. ROBINSON: State calls Sergeant Jeff Lauver.

11 THE COURT: Sergeant Lauver, come forward, please,
12 sir, to be sworn.

13 JEFF LAUVER, BEING FIRST DULY
14 SWORN, TESTIFIES AS FOLLOWS:

15 DIRECT EXAMINATION BY MR. ROBINSON:

16 Q. Are you Sergeant Jeff Lauver with the Beaufort County
17 Sheriff's Office?

18 A. Yes, sir.

19 Q. Were you on duty on July 28, 2008, on the south end of
20 the Broad River?

21 A. Yes, sir.

22 Q. Okay. Did you respond to apartment [REDACTED]
23 [REDACTED] Apartments, at about 1:30 in the afternoon?

24 A. Yes, sir.

25 Q. Why did you go there?

J. LAUVER - DIRECT EXAMINATION BY MR. ROBINSON

267

1 A. Originally I was going there because of the actual
2 incident that occurred possibly being a dog track or
3 something. Once, I guess, further information was gained,
4 it wasn't needed. I wasn't needed to do a dog track, but
5 they had me clear the apartment.

6 Q. What does it mean to clear the apartment?

7 A. Just basically check the apartment, make sure there
8 were no more victim, suspects, anything, any persons
9 inside.

10 Q. Was anybody else with you?

11 A. There was a couple other deputies.

12 Q. Okay, and was the scene clear?

13 A. There was no other persons inside of that apartment.

14 Q. Was the scene safe after you cleared it?

15 A. Yes.

16 Q. Did you secure the scene after you cleared it?

17 A. As far as make sure nobody else went in and out,
18 anything like that, I believe detectives had somebody
19 standby to make sure there was nobody going in or out of
20 the apartment.

21 Q. Okay, but you were not there to investigate the scene,
22 were you?

23 A. No.

24 MR. ROBINSON: The state passes the witness. Please
25 answer these lawyers' questions.

J. LAUVER - CROSS-EXAMINATION BY MR. DEYSACH

268

1 WITNESS: Okay.

2 THE COURT: Mr. Geier? Mr. Deysach?

3 MR. DEYSACH: Thank you very much, Your Honor.

4 CROSS-EXAMINATION BY MR. DEYSACH:

5 Q. Just briefly. Good afternoon.

6 A. How you doing?

7 Q. Corporal Lauver?

8 A. Sergeant Lauver.

9 Q. Sergeant Lauver, sorry. Your role that we're here to
10 talk about today on July 28th is helping to secure the
11 scene, correct?

12 A. To make sure it was safe.

13 Q. Right.

14 A. No victims or anything were inside.

15 Q. No victims were inside and to make sure that people
16 besides police weren't coming in and out of the apartment,
17 correct?

18 A. That particularly wasn't my job. My job just strictly
19 was to go inside and make sure there wasn't another
20 suspect, there was nobody hurt inside.

21 Q. All right.

22 A. No other persons inside and then ---

23 Q. Okay. I understand you're, you're worried about
24 safety, not keeping people out of the, the apartment. I
25 understand.

J. LAUVER - CROSS-EXAMINATION BY MR. GEIER

269

1 A. That wasn't -- no, that wasn't my duty.

2 Q. Did you see any dogs in the apartment?

3 A. I don't remember seeing a dog there.

4 Q. Did you ever generate a report as part of this, what
5 you did?

6 A. No.

7 MR. DEYSACH: I don't have anything else.

8 CROSS-EXAMINATION BY MR. GEIER:

9 Q. Good afternoon, Sergeant Lauver.

10 A. How you doing?

11 Q. Again, you didn't prepare a report?

12 A. No.

13 Q. Did you take any notes?

14 A. No.

15 Q. You weren't the first person on the scene, were you?

16 A. Not.

17 Q. Not the first sheriff's deputy?

18 A. No.

19 Q. Do you recall if there was a bicycle parked next to
20 the front door of the apartment?

21 A. I believe so. I can't say positive, but I do remember
22 something about a bicycle, I believe.

23 MR. DEIER: All right. I have no further questions,

24 Your Honor. Thank you.

25 THE COURT: Thank you.

1 MR. ROBINSON: Nothing more of this witness, Your
2 Honor. May he be excused?

3 THE COURT: Thank you, Sergeant Lauver. You can step
4 down and be excused. Thank you very much.

5 WITNESS: Thank you.

6 (THE WITNESS EXITS THE STAND.)

7 MR. ROBINSON: Your Honor, the state calls Deon
8 Cannick.

9 THE COURT: Is Mr. Cannick one of the victims in this
10 case?

11 MR. ROBINSON: He is.

12 THE COURT: Okay, we're going to take his testimony
13 after lunch. I'm take it's going to last a lot longer than
14 thirty minutes. Is that fair to say?

15 MR. ROBINSON: Yes, Your Honor.

16 THE COURT: Okay, it's probably not a good time to
17 start into another witness. We'll do that after lunch.
18 Can y'all approach on the other issues that we have to deal
19 with, schedule, and find out when we can come back?

20 (OFF-THE-RECORD BENCH CONFERENCE.)

21 THE COURT: Just doing some quick math, ladies and
22 gentlemen, the best I could to try the figure out. I
23 inquired of the lawyers about how long they think it will
24 take for us to deal with the remaining issues of law that
25 we have to deal with during the lunch hour, and it will

1 take probably an hour, hour and a half to accomplish that.
2 And then, unfortunately, you know, lawyers and judges and
3 court reporters have to eat lunch, too. I wish there was
4 some way to avoid that, but we'll take a short lunch hour.

5 The up shot of it all is it's going to take us at
6 least two hours to get a brief lunch hour for ourselves and
7 to deal with the matters of law which we have to deal with.
8 So, I need you all back in the jury room, please, at 2:30
9 this afternoon. That's two hours. That longer than we
10 like to normally give. But, nonetheless, we've got some
11 other things we've got to do. Thank you. 2:30, ladies and
12 gentlemen. Remember not to talk about the case among
13 yourselves.

14 (THE JURY EXITS AT 12:35 P.M.)

15 THE COURT: All right, folks, let's proceed to the
16 *Neil v. Biggers* issues, first of all, and get as deeply
17 into that as we can. We may have to stop and take a brief
18 lunch break ourselves because we need to at least get some,
19 probably get some crackers in that regard. Do you have
20 those witnesses here, Mr. Robinson?

21 MR. ROBINSON: I do.

22 THE COURT: Okay. All right, sir. If you'd call your
23 first witness.

24 MR. ROBINSON: The state calls Todd Calhoun.

25 THE COURT: Investigator Calhoun, if you'd resume the

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

272

1 stand, please, sir. You're still under oath.

2 TODD CALHOUN, HAVING BEEN

3 PREVIOUSLY SWORN, TESTIFIES AS FOLLOWS:

4 THE COURT: Mr. Robinson.

5 MR. ROBINSON: Thank you, Your Honor. Beg the court's
6 indulgence?

7 THE COURT: Yes, sir.

8 (A PAUSE.)

9 DIRECT EXAMINATION BY MR. ROBINSON:

10 Q. Investigator, did you -- you responded to the scene in
11 this case, did, did you not?

12 A. Yes, sir.

13 Q. And as a result, and the same day as the incident, you
14 spoke to the victims -- I'm sorry, you spoke to several of
15 the eyewitnesses at Savannah Memorial Hospital. Is that
16 correct?

17 A. Yes, sir.

18 Q. And based on your investigation, you were able to
19 develop two suspects. Is that right?

20 A. Yes, sir.

21 Q. Did you develop a series of photo lineups to give to
22 those witnesses?

23 A. Yes, we did.

24 Q. Okay. Do you remember -- do you recall when you
25 showed -- who, who did you show lineups to?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

273

1 A. Showed lineups to, I believe, Marcus Campbell, Malik
2 Campbell, Sharita Willingham, and, and Deverol Cannick.

3 Q. Did you mention Malik Cannick?

4 A. Malik Campbell.

5 Q. Malik Campbell, I'm sorry. When did you show the
6 lineups to Sharita and Malik?

7 A. I'd have to refer to the photo lineups in order to...

8 MR. ROBINSON: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. ROBINSON:

11 Q. Do you recognize those?

12 A. Yes, sir.

13 Q. What are those?

14 A. These are the photo lineup jackets that contain the
15 photo lineups shown to Marcus Campbell, Malik Campbell,
16 Sharita Willingham, and Deverol Cannick.

17 Q. Are those the actual photo lineups? Are those the
18 originals?

19 A. Yes, they are.

20 Q. Okay. How is it denoted on the photo lineups which
21 lineup was shown to which witness on what day? How is it
22 recorded?

23 A. On each photo lineup, we have them indicate the date
24 and the time and their initials.

25 Q. Have who indicate that?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

274

1 A. The individuals that we're showing them to.

2 Q. Okay.

3 A. We have them do that above or on the -- or indicate in
4 the perimeter of the picture to the person that they
5 believed to be ---

6 Q. And are you with the witnesses when they make those
7 identifications?

8 A. Yes, sir.

9 Q. Let's just start with Malik Campbell. Where were you
10 when you showed that lineup to him?

11 A. We were at Savannah Memorial Hospital in the Neuro ICU
12 waiting room, which has a side conference room off of it.

13 Q. And who is -- when you say we ---

14 A. Myself and Investigator Holmes.

15 Q. Okay. Was any -- was anyone else present when you
16 showed that lineup to Malik?

17 A. No, sir.

18 Q. And now let's back up before we discuss the actual
19 identification. You interviewed Malik, is that, isn't that
20 right, the day of the shooting?

21 A. Yes, sir.

22 Q. Did he have an opportunity to observe the crime?

23 A. Yes, sir, he was inside the residence.

24 Q. Was he able to give a description of the suspect based
25 on his observation?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

275

1 A. I'd have to refer to my report.

2 MR. ROBINSON: . May I approach the witness?

3 THE COURT: Yes, sir.

4 BY MR. ROBINSON:

5 A. Yes, he was able to give a description.

6 Q. And how did he describe the, the, the individual?

7 A. He, he described seeing two individuals, and he
8 indicated that he saw a dark-skinned black male shoot Deon
9 in the neck. So, he took cover with his brothers.

10 Q. Okay. Was he able to describe anyone else?

11 A. If I can elaborate back on your previous question in
12 reference to his description? He indicates that the
13 shooter was a dark-skinned black male with hair on his chin
14 and that he had a black colored pistol. Said that the
15 shooter was wearing a white t-shirt, looked to be in his
16 thirties, and was shorter than the other suspect. He
17 indicated that the other suspect was a lighter skinned
18 black male wearing a brown or black Polo shirt and was
19 holding a gun.

20 Q. So, he was able to describe -- he was able to -- is it
21 fair to say he was able to observe the crime?

22 A. Yes, sir.

23 Q. And where was he when he observed the crime based on
24 your interview with him?

25 A. At the top of the stairs.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

276

1 Q. And would you -- and on what, on what day did you go
2 to show him the lineup?

3 A. On the 29th of July.

4 Q. So, the day after the incident?

5 A. That's correct.

6 Q. Other than giving you a description of the
7 perpetrators, did he make any other identification? Did he
8 say who it was?

9 A. No, sir.

10 Q. You participated in the search of the, of the
11 apartment and the scene of the crime where this occurred.
12 Is that correct?

13 A. Yes, sir.

14 Q. And you have been to the stairwell where it occurred,
15 have you not?

16 A. Yes, sir.

17 Q. And you went to that location the day this occurred,
18 did you not?

19 A. Yes, sir.

20 Q. And is it well lit?

21 A. Yes.

22 Q. And it happened during the daylight hours. Is that
23 right?

24 A. That's correct.

25 Q. And how did you determine who to put in, into the

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

277

1 photographs in the lineup that you showed Malik Campbell?

2 A. We furnished the name of the person that we believed

3 to be a suspect and ---

4 Q. Furnished it to whom?

5 A. In this case, we furnish it to, I believe it was a

6 Sergeant Tillman from Savannah Chatham Police Department

7 or ---

8 Q. What name did you give him?

9 A. --- sheriff's department. Pardon?

10 Q. What name did you give him?

11 A. That of Lucius Simuel.

12 Q. Okay, and then what happened?

13 A. And then they provide a six-person photo lineup which

14 would include the suspect that we had provided them with

15 five other individuals that have similar physical

16 characteristics.

17 Q. And in the photo lineup that you showed to Malik

18 Campbell, are there, are there, in fact, six individuals?

19 A. Yes, there are.

20 Q. And are they all black males?

21 A. Yes, sir.

22 Q. And do they have the same similar facial features?

23 A. Yes, sir.

24 Q. And, and was -- the lineup was generated not by you

25 but by the Savannah Police Department. Isn't that correct?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

278

1 A. That's correct.

2 THE COURT: You said the Chatham County, did you not?

3 MR. ROBINSON: Chatham County.

4 WITNESS: It's, it's Savannah Chatham County.

5 MR. ROBINSON: Metropolitan Police Department.

6 BY MR. ROBINSON:

7 A. No, this was done through the sheriff's office.

8 Q. Through the sheriff's office, okay. Was Malik able to
9 pick anyone out of the lineup?

10 A. He was.

11 Q. And who did, whom did he pick out?

12 A. He picked out the defendant, Lucius Simuel.

13 Q. Did he sign and date it?

14 A. He did.

15 Q. And, in fact, he wrote down the time of day, did he
16 not?

17 A. That's correct.

18 Q. And what time is that?

19 A. On the photo is 3:42.

20 Q. Was he shown two lineups of Lucius Simuel?

21 A. He was shown a, a single photo lineup of Lucius
22 Simuel.

23 Q. Okay. How certain was he about the identification?

24 A. He was one hundred percent certain.

25 Q. And how did he indicate that to you?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

279

1 A. By stating that he was one hundred percent certain
2 that this was the individual.

3 Q. Was there any hesitation?

4 A. No, sir.

5 Q. Looked right at it?

6 A. That's correct.

7 Q. And is that the only suspect whose, whose photograph
8 you showed him?

9 A. I believe this is the only photo lineup that we showed
10 him.

11 Q. You didn't show him one of Demetrius Price?

12 A. I don't recall showing him one of them.

13 Q. Okay, let's move on to the next witness.

14 THE COURT: Hold on. Could we, could we get each one
15 of these photo lineups marked, please, for state's
16 identification so that we'll -- so that the record will
17 know what we're looking at? We have to obviously analyze
18 each one separately.

19 MR. ROBINSON: Yes, Judge.

20 THE COURT: So, let's get them all, all marked as
21 State's Exhibit for identification whatever the number
22 happens to be.

23 MR. ROBINSON: Thank you.

24 (PHOTO LINEUP MARKED AS STATE'S EXHIBIT NUMBER 3 FOR
25 IDENTIFICATION.)

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

280

1 (PHOTO LINEUP MARKED AS STATE'S EXHIBIT NUMBER 4 FOR
2 IDENTIFICATION.)

3 (PHOTO LINEUP MARKED AS STATE'S EXHIBIT NUMBER 5 FOR
4 IDENTIFICATION.)

5 MR. ROBINSON: Let me also ---

6 THE COURT: Which one is the Malik ---

7 MR. ROBINSON: That would be State's Exhibit Number 3.

8 THE COURT: Three for I.D., okay.

9 (PHOTO LINEUP MARKED AS STATE'S EXHIBIT NUMBER 6 FOR
10 IDENTIFICATION.)

11 Q. Okay, look at State's Exhibit Number...

12 MR. ROBINSON: This will be Number 7, I guess, I.D.

13 (PHOTO LINEUP MARKED AS STATE'S EXHIBIT NUMBER 7 FOR
14 IDENTIFICATION.)

15 BY MR. ROBINSON:

16 Q. Is that another photo lineup?

17 A. It is.

18 Q. Whose initials are on that one?

19 A. Marcus Campbell.

20 Q. Okay. That's Marcus Campbell?

21 A. Yes.

22 Q. Okay. Now, let's move to Sharita Willingham. This is
23 Exhibit Number 4. Did you interview that witness?

24 A. Yes, sir.

25 Q. When did you interview her? The first time you ever

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

281

1 interviewed her.

2 A. We initially interviewed her the day of the incident.
3 or the evening of the incident at Savannah Memorial
4 Hospital.

5 Q. Okay. Was she able to -- did she have an opportunity
6 to observe the crime, based on your conversation with her?

7 A. Yes, sir.

8 Q. Where was she when she observed it?

9 A. She as well had been able to peer over the top of the
10 stairs.

11 Q. Okay. Is the -- was she able to describe the suspect?

12 A. She did. She stated that there was a dark-skinned
13 black male in his late twenties to early thirties with a
14 white t-shirt with brown lettering, and the other was a
15 light-skinned, skinned black male who was heavier.

16 Q. Okay, and on what date did you show her the photo
17 lineup?

18 A. And that would be July 29th.

19 Q. So, the day after the crime?

20 A. Yes, sir.

21 Q. And where did you -- where were you when you showed it
22 to her?

23 A. Savannah Memorial Hospital.

24 Q. Okay. Was this also in that conference room outside
25 of the neurological department?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

282

1 A. Yes, sir.

2 Q. Was there anyone else present with you with her when
3 you showed her the lineup?

4 A. It was myself, Sergeant or Investigator Holmes, and
5 Sharita Willingham.

6 Q. Okay. Was she able to identify a suspect?

7 A. She was.

8 Q. And did you use the same photo lineup that you used
9 for Malik Campbell?

10 A. We used a, a new copy of the same.

11 Q. So, in other words, was the copy that you showed her,
12 did it have Malik's initials on it?

13 A. Did not.

14 Q. So, it was blank?

15 A. That's correct.

16 Q. Other than the photographs?

17 A. That's correct.

18 Q. And did she -- was she able to identify anyone?

19 A. She was.

20 Q. Who did -- whom did she identify?

21 A. She identified the defendant, Lucius Simuel.

22 Q. Okay. Did she sign, did she initial it and date it?

23 A. Yes, sir.

24 Q. And, in fact, she put a -- wrote down the time. Is
25 that right?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

283

1 A. That's correct.

2 Q. What time was it?

3 A. 3:41.

4 Q. So, a little over twenty-four hours after the
5 incident. Is that right?

6 A. Yes, sir.

7 Q. To your knowledge, had she never identified the
8 suspect to you or to anyone else other than giving you a
9 description of the perpetrator?

10 A. No, sir.

11 Q. Finally, let's discuss the lineups that were shown to
12 Deverol Cannick. When did you first interview Deverol?

13 A. July 30th.

14 Q. So, two days after the incident?

15 A. That's correct.

16 Q. And where was he when you interviewed, interviewed
17 him?

18 A. He was at the Savannah Memorial Hospital.

19 Q. Was he still a patient at that time?

20 A. Yes, he was.

21 Q. Was he willing to speak to you?

22 A. Yes, he was.

23 Q. Was he awake and alert and all those things?

24 A. He was awake and alert. His throat was a little
25 raspy, but he seemed ---

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

284

1 Q. Okay. Do you remember about what time of day or night
2 that you spoke to Deverol?

3 A. It would have been at about 6:45 in the evening.

4 Q. Okay. Did he have an opportunity to observe the
5 crime?

6 A. He did.

7 Q. And where was he when the crime occurred?

8 A. He was down at the bottom of the stairs at the
9 residence.

10 Q. And, in fact, he is the -- is it fair to say that he's
11 the principal victim, that he was the person who was at the
12 door when it was forced open?

13 A. That's correct.

14 Q. And he -- did he observe his brother shot?

15 A. He did.

16 Q. And afterwards he went outside and was himself shot.
17 Is that correct?

18 A. That is correct.

19 Q. And you were, again, you were at the scene location to
20 help with the execution of the search warrant of the crime
21 scene. Is that correct?

22 A. Yes, sir.

23 Q. And was it daylight ---

24 A. It was.

25 Q. --- outside?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

285

1 A. Yes, sir.

2 Q. So, the out -- the exterior of the apartment was well
3 lit also?

4 A. Yes, sir.

5 Q. And was it well lit where these shell casings were
6 found outside?

7 A. Yes, sir.

8 Q. Was Deverol able to describe the perpetrators?

9 A. Yes, he was.

10 Q. Okay. Which, which lineup did you show him first?

11 A. We showed him the lineup which contained the
12 photograph of the defendant, Lucius Simuel.

13 Q. And was he -- again, was this is a fresh lineup that
14 wasn't initialed in any way?

15 A. That's correct. It was clean.

16 Q. But it's the same six pack, as it were. Isn't that
17 right?

18 A. That's correct.

19 Q. And was he able to identify any suspects ---

20 A. He was.

21 Q. --- in that lineup?

22 A. He identified the defendant, Lucius Simuel.

23 Q. And did he initial and date the lineup?

24 A. He did.

25 Q. And what is -- in fact, he wrote down the time as

1 well, did he not?

2 A. He did. 6:45 in the evening.

3 Q. Okay, and moving on to Demetrius Price, was he, was he
4 also able to -- let me ask you to back up. Where did you
5 get that six pack from, those six photographs?

6 A. The one from Lucius Simuel or the one from Demetrius
7 Price?

8 Q. Demetrius Price.

9 A. Our intelligence division.

10 Q. Okay. How did they generate it?

11 A. We gave him the name of ---

12 Q. Gave who a name?

13 A. We gave our intelligence division the name of
14 Demetrius Price as a suspect. And they as well placed his
15 photograph in the photo lineup, along with five other
16 individuals of like description.

17 Q. And are there six individuals that, in that lineup,
18 that resemble Demetrius Price?

19 A. There are five that resembled Demetrius Price and one
20 of Demetrius Price.

21 Q. Was he able to make an identification?

22 A. He was.

23 Q. Okay, and did he initial and date that identification?

24 A. He did.

25 Q. And did he write down the time?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

287

1 A. 6:49 in the evening.

2 Q. Was any besides you, yourself and Investigator Holmes,
3 was there anyone else present besides Deverol Cannick when
4 he made those identifications?

5 A. No, sir.

6 Q. So, you were alone with him in his hospital room?

7 A. That's correct.

8 Q. All right.

9 THE COURT: Before we leave that, could you give me
10 the exhibit number of the Lucius Simuel photo lineup,
11 please, sir?

12 WITNESS: For Deverol?

13 THE COURT: Yes, sir, the one that you just referred
14 to.

15 WITNESS: The Lucius Simuel is Exhibit Number 5, and
16 then the one that we're just talking about was in reference
17 to Demetrius Price, and that's Number 6.

18 THE COURT: Okay. Thank you.

19 BY MR. ROBINSON:

20 Q. Now, let's -- let me discuss something preliminary to
21 the -- to, to showing the lineups to each, each witness
22 beginning with Malik Campbell. What did you tell, what did
23 you or Investigator Holmes tell Malik Campbell before you
24 showed them the lineups about looking at a lineup?

25 A. We actually read to them a disclosure per se that we

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

288

1 have present and, and I'll read it, if you will.

2 Q. Where is that written?

3 A. It's written on a photo lineup jacket.

4 Q. So, are the lineups in that jacket?

5 A. We take them out because the way that they format the
6 pictures doesn't match up with the windows on the jacket.

7 Q. Okay. So, in other words -- but the jacket's like an
8 envelope?

9 A. Correct.

10 Q. So, you read the back of the envelope ---

11 A. That's correct.

12 Q. --- to the witness?

13 A. That's correct.

14 Q. And what does that say?

15 A. It says:

16 You will be asked to look at a group of
17 photographs. The fact that the photographs
18 are shown to you should not influence your
19 judgment. You should not include or guess
20 that the photographs contain the pictures of
21 the person who committed the crime. You are
22 not obligated to identify anyone.

23 It is just as important to free innocent persons from
24 suspicion as to identify guilty parties.

25 Please do, please do not discuss the case

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

289

1 with other witnesses nor indicate in anyway
2 that you have identified someone.

3 Q. In addition -- and did you read that to Malik
4 Campbell?

5 A. Yes, sir.

6 Q. And did you read that to Sharita Willingham?

7 A. Yes, sir.

8 Q. And did you read that to Deverol Cannick?

9 A. Yes, sir.

10 Q. And just so we're clear, did you actually do it or did
11 Investigator Holmes, or do you recall?

12 A. I don't recall who actually read that to them, but
13 that's our protocol.

14 Q. One of you did?

15 A. Yes, sir.

16 Q. In addition to that, in addition to reading the
17 jacket, did you say anything else?

18 A. We elaborate on that by letting them know what, that
19 we would rather let a guilty man go free than to put an
20 innocent man in jail, and that they needed to be certain
21 about the individual that they identified.

22 Q. Did you say that to each witness?

23 A. Yes.

24 Q. Okay, and in spite of those, in, in spite of those
25 instructions, all three witnesses made the identifications

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

290

1 that they did. Is that correct?

2 A. That's correct.

3 Q. When you gave each of those three witnesses those
4 instructions, did they appear to understand them?

5 A. Yes, sir.

6 Q. Okay. How did they acknowledge that they understood
7 them?

8 A. They, they basically acknowledged by an okay or a head
9 nod.

10 Q. Okay. All right.

11 MR. ROBINSON: Beg the court's indulgence.

12 THE COURT: Yes, sir.

13 BY MR. ROBINSON:

14 Q. Let me ask you about Sharita. When Sharita identified
15 Lucius Simuel, did she say whether or not she was certain?

16 A. She did.

17 Q. What did -- how sure was she?

18 A. She was one hundred percent certain.

19 Q. How long did it take her to identify him?

20 A. Brief moments.

21 Q. What about Deverol Cannick and his identification of
22 Lucius Simuel?

23 A. He, as well, was one hundred percent certain.

24 Q. How long, how long did it take him to identify him?

25 A. Not even seconds.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

291

1 Q. Okay. What about Deverol? What about Demetrius,
2 Deverol's identification of Demetrius?

3 A. He was one hundred percent certain, and it just took a
4 matter of seconds.

5 Q. And Deverol identified them on the 31st. Is that
6 right?

7 A. So indicated by his initials.

8 MR. ROBINSON: Your Honor, I will pass the witness.

9 Investigator, please answer these lawyers' questions.

10 THE COURT: Before you, before you leave that, there's
11 no testimony offered in regards to State's Exhibits 6, 7
12 for I.D. on Marcus Campbell.

13 MR. ROBINSON: Your Honor, that witness was not an
14 eyewitness, and I believe that his identification was
15 simply because he knew him. He is not an eyewitness to the
16 crime.

17 THE COURT: Okay.

18 MR. ROBINSON: And I did not put him on my witness
19 list.

20 THE COURT: I understand. Okay. All right. Thank
21 you.

22 Mr. Deysach.

23 MR. DEYSACH: Thank you, Your Honor. Let me grab this
24 exhibit.

25 CROSS-EXAMINATION BY MR. DEYSACH:

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

292

1 Q. The testimony is that you, you, you showed Sharita,
2 Sharita and Malik these photo lineups, Exhibit 3 for Malik,
3 and Exhibit 4 for Sharita. You did that procedure with the
4 photo lineups at the hospital?

5 A. Correct.

6 Q. And you did them on the same day, correct?

7 A. Correct.

8 Q. And you did them in the presence of Investigator
9 Holmes?

10 A. Correct.

11 Q. And you were the one who read that stuff off the case
12 jacket about the, we'd rather let a innocent man go free
13 than a guilty person go to jail, or was it Investigator
14 Holmes?

15 A. One of us read the jacket and, and I usually throw out
16 the, the adage about letting an innocent or letting a
17 guilty man go free than putting an innocent man in jail.

18 Q. I misunderstood. That's not on the jacket?

19 A. That, that phrase itself is just, just to clarify
20 things with them.

21 Q. All right. When you came to -- and you also --
22 there's -- that's not really the subject of this hearing,
23 but you also showed Marcus Campbell a photo lineup,
24 correct?

25 A. Uh-huh.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

293

1 Q. And it was the same -- it may have been a different
2 piece of paper, but it was the same six photos, correct?

3 A. That's correct.

4 Q. And they're in the same order, correct?

5 A. That's correct.

6 Q. And he did pick out and initial a name, right?

7 A. Uh-huh.

8 Q. And he identified that as somebody he knew, not as
9 somebody he saw at the apartment?

10 A. That's correct.

11 Q. He, he looked at his photo lineup at about 3:01?

12 A. 3:07.

13 Q. 3:07?

14 A. Correct.

15 Q. And he was also at the hospital?

16 A. He was.

17 Q. So, you have a, a separate room at the hospital---

18 A. That is correct.

19 Q. --- to show these lineups?

20 A. Yes.

21 Q. And so, you, you showed Marcus one first, correct, and
22 it's just you three and answer, answer verbally.

23 A. Yes, sir.

24 Q. And he leaves the room and then the next person to
25 come in is, I guess it's Sharita, correct?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

294

1 A. I'd have to look at the ---

2 Q. I'm sorry.

3 A. --- to get the times correct. We showed Sharita the
4 photo lineup at 3:41 and Malik at 3:42.

5 Q. So, even though they're just one minute apart, are you
6 saying that Sharita and Malik were not in the room at the
7 same time?

8 A. That's correct.

9 Q. Okay. So, okay, but that there's a little bit of a
10 gap between Marcus and Malik?

11 A. Yes, sir.

12 Q. And so, these were the only -- you didn't come with
13 more than one six-pack photo array of photos to show these
14 folks, did you?

15 A. I'm sorry. We came with, we came with multiple copies
16 of this same photo lineup.

17 Q. Okay, and so there wasn't ---

18 A. Is that what you were asking?

19 Q. Right. Correct.

20 A. All right.

21 Q. So, I guess, hypothetically, if somebody looked at a
22 photo lineup and says I'm not sure if he's on there, you
23 don't have another photo lineup to show them?

24 A. Yeah. No, no, no.

25 Q. All right, and I think you testified that they

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

295

1 demonstrated a high level of certainty?

2 A. Yes, sir.

3 Q. And that they -- and you asked them to date the, the
4 lineups, correct?

5 A. Yes, sir.

6 Q. And you told them to date them for the day that
7 they're looking at them, right?

8 A. Well, yeah. I would assume that they would understand
9 to date that ---

10 Q. Put today's date?

11 A. They were told to date it and time it.

12 Q. Right, and they all put July 29th, correct?

13 A. Yes.

14 Q. I mean, I've got them in my hand. All right. Okay.

15 A. Yes. They're the ones that wrote that date on there.
16 That's correct.

17 Q. And finally, how did you know to put Lucius Simuel in
18 the photo lineup?

19 A. We were able to gather, through the investigation,
20 that the reference made to Tiah Frazier's uncle in this
21 incident was Lucius Simuel.

22 Q. But you knew she had more than one uncle, right?

23 A. Yes.

24 Q. So, how did you know to put this uncle in?

25 A. Because witnesses that were at the scene mentioned the

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH .

296

1 name of -- they said either Louis or Lucas.

2 Q. Okay. Are you referring to Jesse or Martin?

3 A. Yes, sir.

4 Q. And of all the names of Tiah, Tiah's uncles, Lucius
5 was the only one that was close?

6 A. That's correct.

7 MR. DEYSACH: Court's indulgence.

8 THE COURT: All right.

9 (A PAUSE.)

10 BY MR. DEYSACH:

11 Q. And briefly, it is on the 31st that you go and speak
12 to Deverol, correct?

13 A. That's the date that he dates his photo lineup,
14 correct.

15 Q. And is that not the date that you showed it him?

16 A. Let me refer to my report.

17 Q. I think you can check page 9.

18 A. Yeah, I believe it was the 30th. He may have dated it
19 incorrectly.

20 Q. Is it possible that you put the wrong date in your
21 report?

22 A. Not typically because we get tandem warrants the very
23 next morning.

24 Q. Okay. So, you think it was on the 30th, but the date
25 on the lineup says the 31st?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

297

1 A. That's correct.

2 Q. And it is the, the same? Different piece of paper,
3 but the same array that you've shown Marcus, Malik, and
4 Sharita, correct?

5 A. Yeah, that's correct. They're, they're the same exact
6 photo lineups. They're just clean copies ---

7 Q. Right.

8 A. --- of those photo lineups.

9 Q. Right. Nobody's initials on them, but Lucius Simuel
10 appears in the same position in each one of those?

11 A. That's correct.

12 Q. And the lineup is shown to Deverol at the hospital as
13 well?

14 A. That's correct.

15 Q. Same hospital as all the other ---

16 A. Yeah, just different location in the hospital.

17 Q. Because the other family members are at the hospital
18 because that's -- because they're there for the victims in
19 the case?

20 A. Sure.

21 MR. DEYSACH: I don't have anything further.

22 THE COURT: Thank you.

23 Mr. Geier?

24 MR. GEIER: Your Honor, just briefly.

25 CROSS-EXAMINATION BY MR. GEIER:

T. CALHOUN - CROSS-EXAMINATION BY MR. DEIER

298

1 Q. Sergeant Calhoun, how did you know to include
2 Demetrius Price in these photo lineups that you showed
3 Deverol Cannick on either 7/30 or 7/31?

4 A. Well, we were able to, based on the identification of
5 the vehicle that was leaving [REDACTED] we had --
6 were able to capture a still image of the license plate.
7 We were able to get the registered owner's information.
8 Through doing some background checks, we were able to
9 obtain his information.

10 Q. And again, you didn't pick out these photos, correct?

11 A. No, I don't, yeah.

12 MR. DEIER: Nothing further, Your Honor.

13 THE COURT: Thank you.

14 Redirect, Mr. Robinson?

15 MR. ROBINSON: Just finally.

16 REDIRECT EXAMINATION BY MR. ROBINSON:

17 Q. You didn't point out -- you didn't tell these
18 witnesses who to point -- pick out, did you?

19 A. No, sir.

20 Q. None of them, did you?

21 A. None of them.

22 MR. ROBINSON: I have nothing further for this
23 witness, Your Honor.

24 THE COURT: Thank you. Investigator, you can step
25 down. Thank you, sir.

1 WITNESS: Thank you, sir.

2 (THE WITNESS EXITS THE STAND.)

3 MR. ROBINSON: Your Honor, I -- that's all the law
4 enforcement I'm going to call. My colleague has just
5 informed me that my victims have gone to lunch and are not
6 here. However, if the court is prepared to adequately rule
7 on this issue, that would be fine with me. But, however,
8 if the court feels there's sufficient testimony necessary,
9 I'll be happy to call them in fifteen or twenty minutes.

10 THE COURT: I can, what I can do, certainly I can, I
11 can look at the photographs themselves and make sure
12 they're representative and not suggestive. I can take the
13 testimony of Investigator Calhoun on those same issues into
14 account. The individualized identification of these
15 individuals, they're going to take the stand and testify in
16 their own regard I take it, right?

17 MR. ROBINSON: They are and that, that can be
18 developed if we need to.

19 THE COURT: I'm prepared to rule on the, on the
20 admissibility of the procedure. That is the of
21 identification, and I can do that without the witnesses
22 themselves testifying.

23 MR. ROBINSON: That's fine. In fact, I'll -- Judge,
24 I'll, along those lines, I wanted to add, I am not seeking
25 to introduce the lineups themselves.

1 THE COURT: Right.

2 MR. ROBINSON: Just, just that the identifications
3 were made. So, I'm prepared for the court's ruling.

4 THE COURT: All right. Let me hear from, from Mr.
5 Deysach and Mr. Geier in regard to these, the procedure
6 itself.

7 MR. DEYSACH: Thank you very much, Your Honor. I
8 think that the, what the -- the things that are suggestive
9 about this identification procedure that the folk who knows
10 who the suspect is are the ones who are showing the lineups
11 and getting the, the identification.

12 I think that most agree that a, a lineup is more
13 reliable when it is blind, meaning that the person who's
14 administering it does not know who the suspect is so that
15 they may not, even subconsciously or unconsciously, suggest
16 who the, who the, the subject is, and that, of course,
17 wasn't done in this case.

18 What the real problem is, though, is that they show
19 the same, basically the same lineup. They may be
20 photocopies, but the same lineup to Marcus, to Malik, to
21 Sharita, and they're all coming in and out of the room.
22 And I know that the, the -- Sharita and Malik, the Sharita
23 and Malik procedures seems to be boom boom because the,
24 the, the minute is consecutive. But there is about a half
25 hour gap where there is Marcus, Malik, and Sharita, none of

1 whom are -- testified to in the room, but, but possibly
2 talking -- the bleed over is what I'm concerned about.

3 I think that's obviously where I'm going with this,
4 and I know that we don't have Marcus here and Malik here
5 and Sharita to say that Marcus pointed the person out. But
6 I still think that giving -- not even switching around the
7 pictures for the separate procedures when they're happening
8 in the -- with the procedure that they're, they're doing
9 one then the next, then the next while they're all at the
10 hospital and the person being about a half an hour before
11 the second one. I think it allows for that first person to
12 say Lucius is number two. Obviously he knows Lucius
13 because he wasn't at the scene of the crime, yet is still
14 able to pick him out of the lineup. And so, that's the,
15 the suggestibility.

16 I think if, I think if you rule that that would be
17 unduly suggestive, then at that point I can go into the
18 factors. But I don't know if there is a point of doing
19 that if you don't -- if your ruling is that I haven't
20 crossed that threshold.

21 THE COURT: All right.

22 MR. DEYSACH: So, I can argue if you want to -- if you
23 think I have.

24 THE COURT: Okay. I'll come back to you on that. Let
25 me hear from Mr. Geier. I'll lump those together.

1 MR. GEIER: Thank you, Your Honor. Just briefly, I
2 believe that Mr. Deysach brought this up in his argument.
3 If not, he did bring it up with certain witnesses on the
4 stand.

5 There is no sort of test case as far as here's a bunch
6 of people who aren't involved, and then look through it and
7 say yep, that's none of these guys. And then suddenly here
8 we have one that has one of the defendants on it.

9 I would also ask Your Honor to take a look at what
10 appears to be Deverol Cannick's of Mr. Price, and I would
11 submit that of the six people, there's only one who bears
12 any similarities to my client who is the person who is
13 immediately below him, and that persons is a good bit
14 younger. Anyway, I would object to the format of this and
15 the make up of this, this whole lineup.

16 THE COURT: All right. Okay. Thank you. The test
17 which is been established over the years by our Supreme
18 Court and the United States Supreme Court, *U.S. vs.*
19 *Telfaire*, T-E-L-F-A-I-R-E, *Kirby vs. Illinois*, another
20 United States Supreme Court case, *U.S. vs. Russell*, a Third
21 Circuit District Court case, and our own other *State vs.*
22 *Hoyte*, H-O-Y-T-E, our case which is a one man show-up which
23 is not directly factually on point, but, nonetheless,
24 points out the principles of law that are involved. The,
25 the totality of the circumstances that have to be taken

1 into account -- this is specifically from *Neil vs. Biggers*,
2 N-E-I-L vs. Biggers, B-I-G-G-E-R-S, 409 United States 188
3 -- in evaluating the likelihood of, of misidentification,
4 we have to take into account the opportunity of the witness
5 to view the criminal, whoever it was, at the scene of the
6 crime.

7 These two individuals, one of them was shot by one of
8 the defendants. The others were in the stairway looking
9 down on the crime itself. The witnesses' degree of
10 attention, I would imagine under the circumstances, the
11 degree of attention would be right finally attuned. The
12 accuracy of any prior description of the criminal. That
13 is, the complexion and things of that nature. The level of
14 certainty demonstrated by the witness at the confrontation.
15 That is when the lineup was shown.

16 Investigator Calhoun has testified that they were one
17 hundred percent certain. Length of time between the crime
18 itself and the viewing of the pictures was relatively
19 brief. In certain cases, within a matter of days.

20 So, the question then must be whether the, whether the
21 process itself was so suggestive as to lead to an
22 irreparable mistake in identification in this particular
23 case. First of all, let me talk about the first point, Mr.
24 Deysach, that you raised, and that is the folks who know
25 the suspect are the ones doing the, the presentation.

1 Of course, down my way where we have small sheriff's
2 department and police departments. It's, it's kind of hard
3 to divide these things up. Now, obviously, Beaufort County
4 has more resources than my own. But the law does not
5 require a Chinese wall of the nature of separating the
6 investigating officer of a crime from presenting the lineup
7 to the witnesses.

8 The officer has testified that he read the disclaimer,
9 which is on, on the jacket. And, frankly, we need to mark
10 one of these jackets as an identification, for
11 identification as well to get that into the record. It
12 speaks for itself, and it includes in there a point that
13 Mr. Geier raised in his, in his presentation.

14 You should not conclude or guess that the photographs
15 contain the picture of a person who committed the crime.
16 You're not obligated to identify anyone. It is just as
17 important to free an innocent person from suspicion as to
18 identify guilty parties, et cetera. So, there is expressed
19 in those instructions to each witness that this might not
20 contain the actual perpetrator in this particular case.

21 It is not necessary to try to confuse a witness,
22 frankly, by showing them a dummy exhibit which would not
23 contain the, the perpetrator. As long as they are told
24 that you don't have to identify anybody on this particular
25 page, that is sufficient.

1 Now, let me deal with similarities specifically, you
2 know, in regard to Mr. Price. I'm looking at, in this
3 case, State's Exhibit Number 6 for I.D. This was the photo
4 that was shown up to Mr. Deverol Cannick. They all show
5 light-skinned African-Americans with no facial hair. They
6 all show the approximately same haircut, which is the --
7 they're different ages. It is difficult to tell the ages
8 of some of these individuals. Some of them appear to be
9 young. Some of them appear to be older and, of course, I
10 would take it that Mr. Price is probably the oldest one on
11 here. But that description, in and of itself, is not so
12 unduly suggestive to render this, this particular show up
13 invalid.

14 On the same issue as State's Exhibit Number 5, which
15 is the Lucius Simuel I.D., here once again somewhat darker
16 skinned African-American. It might be because of the
17 photograph and the way it's done. It shows -- it appears
18 to be -- they're the same complexion for the most part.
19 All of them have some degree of facial hair except one.
20 All of them practically the same age with approximately the
21 same haircut. I don't know how you could do any better
22 unless you just tried to get one with -- doubles for these
23 folks into the, into the process, and, and certainly that's
24 not required. And so, the, the photographs themselves are
25 not unduly suggestive as to point to any one individual

1 over another.

2 And, finally, the factor as to all of the folks being
3 shown the same lineup on each of these individuals. As, as
4 a matter of fact, I think the better argument could be made
5 that's the way it should, should be done. If they're shown
6 different photographs, different arrays of people, then it
7 is impossible to compare one to the other. As a matter of
8 fact, you could make a pretty good argument in that
9 particular case that that process is tainted by the fact
10 that they were shown different lineups of somewhat
11 different people, and that the only similarity was, of
12 course, the fact that the person identified was the same on
13 all of them.

14 I don't find that any of those things taint the, taint
15 the process. I find that the process itself, as it has
16 been described, is, is not constitutionally flawed nor
17 flawed under the law, and the individuals can be -- I'm
18 trying to think aloud as we work through this, quite
19 frankly, as to whether or not the officer is going to be
20 allowed to testify about the identifications with any
21 particularity before the witnesses themselves testify, and
22 I don't think that should be done. I think that raises
23 some confrontation questions, quite frankly.

24 He can testify about these exhibits. He can testify
25 that these individuals did pick out the number person they

1 picked out. But until the witnesses themselves testify, it
2 seems like to me there's a confrontation issue if the
3 officer says witness so and so picked out defendant number
4 one, and, and that witness has not been cross-examined on
5 that either, and I put the examination at issue. That's
6 the first problem.

7 MR. ROBINSON: Your Honor, the state agrees. We're
8 going to call the identification witness before the
9 investigator.

10 THE COURT: That's right. All right, and then that
11 testimony, of course, will have to stand on its own by
12 cross-examination by lawyers. Very well.

13 Okay, the only thing I want to add is if we could get
14 one of these jackets marked as a Court's Exhibit, as a
15 State's Exhibit for identification just to preserve that
16 written...

17 (JACKET FOR PHOTO LINEUP MARKED AS STATE'S EXHIBIT
18 NUMBER 8 FOR IDENTIFICATION.)

19 THE COURT: All right, folks, I think we've done all
20 we can do on that issue without the individuals themselves
21 here to testify. There are still the matter of the
22 redactions, which I'd like for you all to try to discuss
23 among yourselves the time that we have. And if you can
24 reach some resolution of it, fine. And if you can't, I'm
25 going to be in chambers. I don't think I'm going to leave

1 during the lunch hour. So, you all can come back there and
2 we'll talk about it and then we'll put it on, put the
3 discussion on the record after that's over. Is that okay?

4 MR. ROBINSON: That will be fine, Your Honor.

5 THE COURT: All right. Anything further from the
6 state before we break, Mr. Robinson?

7 MR. ROBINSON: Nothing from the state.

8 THE COURT: Mr. Geier? Mr. Deysach?

9 MR. DEYSACH: No, Your Honor.

10 THE COURT: Thank you. All right, we'll start back at
11 2:30.

12 MR. ROBINSON: There is another firefighter here. May
13 he be excused? I'm not, I'm not going to call him.

14 THE COURT: Unless these gentlemen want to call him.

15 MR. DEYSACH: We will not call him. He may, he may be
16 excused as far as Simuel and Deysach are concerned.

17 THE COURT: Thank you.

18 Mr. Geier?

19 THE COURT: Thank you, cut him loose.

20 (OFF THE RECORD.)

21 MR. ROBINSON: I've discussed the *Bruton* matters with
22 defense counsel, and I think we, probably with the
23 exception of one or two sentences, have completed our
24 stipulations. And what we're going to do, Your Honor, just
25 to make the testimony go smoothly for the court is tonight

1 we're going to transcribe the sentences that we have
2 stipulated that the officer can testify to.

3 THE COURT: Okay.

4 MR. ROBINSON: And we're going to include the one,
5 maybe two sentences that we're -- want the court to rule
6 on.

7 THE COURT: All right.

8 MR. ROBINSON: And then tomorrow we will just present
9 that document to the court. And if the court agrees,
10 however the court rules on the one or two sentences that
11 we're leaving in the court's discretion, we'll either leave
12 it there, strike it, and then what we'll do is when the
13 investigator is going to testify as to those statements or
14 redacted stipulated to redacted statements takes the stand,
15 he will have it in front of him only what we have
16 stipulated to.

17 THE COURT: I understand.

18 MR. ROBINSON: So as to streamline the whole -- so
19 there's no question about him looking at his report,
20 wondering which statements he can read and which ones he
21 can't.

22 THE COURT: All right. That sounds like a plan,
23 gentlemen. Thank you all for working that out, and I'll be
24 ready to deal with the, with the questions of sentences
25 accordingly.

1 All right, is the state ready to proceed with the
2 trial?

3 MR. ROBINSON: Your Honor, if I could have one moment?
4 I have some photographs I need to put my hand on.

5 THE COURT: Okay. All right.

6 Mr. Geier, is the defense ready?

7 MR. DEIER: Yes, Your Honor.

8 THE COURT: Mr. Deysach?

9 MR. DEYSACH: Yes, Your Honor.

10 THE COURT: Thank you. Bring us a jury, please.

11 (THE JURY ENTERS AT 2:36 P.M.)

12 THE COURT: Thank you, ladies and gentlemen, for your
13 prompt return from lunch. We're now ready to resume the
14 trial of this case, and the state is continuing to offer
15 evidence and testimony.

16 Mr. Robinson.

17 MR. ROBINSON: Thank you, Your Honor. State calls
18 Deon Cannick.

19 THE COURT: Mr. Cannick, come forward, please, and be
20 sworn.

21 DEON CANNICK, BEING FIRST DULY
22 SWORN, TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: State your full name and spell your
24 last name.

25 WITNESS: My name, my name is Deon Cannick,

DEON CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

311

1 C-A-N-N-I-C-K.

2 DIRECT EXAMINATION BY MR. ROBINSON:

3 Q. Deon, how old are, how old are you?

4 A. I'm nineteen. I'm fixing to turn twenty.

5 Q. How old were you on July 28th of last year?

6 A. I had just turned eighteen.

7 Q. And where were you living?

8 A. [REDACTED]

9 Q. Is that in Bluffton?

10 A. Yes, sir.

11 Q. Is that in Beaufort County?

12 A. Yes, sir.

13 Q. And who was living there with you?

14 A. My, my little brother and my two older brothers and
15 his girlfriend.

16 Q. And what are their names?

17 A. Devin Cannick, Malik Campbell, Terrell Willingham, and
18 Marcus Campbell.

19 Q. And how old is, how old is Deverol?

20 A. Deverol, I believe he's twenty-four. I can't
21 remember. I think he's...

22 Q. What, what were you doing on July 28, 2008?

23 A. I was sitting down playing my Xbox 360 on the couch
24 with my brothers.

25 Q. And who else with -- who else was there with you?

1 A. My brother Malik was sitting next to me and my brother
2 Devin and Sharita.

3 Q. And do you remember what game you were playing?

4 A. Halo.

5 Q. And what happened while you were playing that game?

6 A. I, I got a phone call from my friend Martin.

7 Q. And what did you do when -- after you got that phone
8 call?

9 A. I went into the room and grabbed some marijuana.

10 Q. What happened next?

11 A. I went downstairs to talk with my friend Martin and
12 said I wanted a five bag of marijuana.

13 Q. What's a five bag?

14 A. It's just a little small baggy.

15 Q. What does the five mean?

16 A. It's just \$5.

17 Q. Was anybody else down there with Martin?

18 A. Jesse, Jesse was down there with him.

19 Q. How do you know Martin?

20 A. Martin, he went to school with me in the beginning of
21 the year when I went to school. But shortly after, he left
22 school.

23 Q. And do you know where Martin lived?

24 A. He stayed in Simmons Cay.

25 Q. Were y'all friends?

DEON CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

313

1 A. Yeah, we were, we were friends from school.

2 Q. What happened while you were at the front door?

3 A. I was talking to Martin, and he told me two guys were
4 looking for me and I was, like, who and ---

5 MR. DEYSACH: I object to the hearsay.

6 THE COURT: I don't think it's being offered for the,
7 for the truth of the matter asserted. Just to show his,
8 his reaction to it. I'll allow that as long as it doesn't
9 get to the truth of the matter.

10 BY MR. ROBINSON:

11 Q. And what, what did -- you said who -- what happened
12 next?

13 A. He told me some guy ---

14 THE COURT: No. Can't go anymore with that, of what
15 the guy told him.

16 BY MR. ROBINSON:

17 Q. Okay, how did your conversation with Martin end?

18 A. After he told me who was looking for me, I looked and
19 two guys was walking up.

20 Q. Did -- how long did you and Martin talk?

21 A. We talked for about probably thirty seconds briefly.

22 Q. Okay, and then what did Martin and Jesse do?

23 A. They were, they were still standing outside next to
24 the guys when I went back in the house.

25 Q. Okay. Did the guys -- what did the guys do?

1 A. They were asking me some questions when they first
2 walked up, and they were trying to tell me to get my
3 brother. Basically, they just asked me if I wanted some
4 drugs and I was, like, no. And he asked me go get my
5 brother.

6 Q. Were, were Martin and Jesse standing there -- where
7 were they when you were having a conversation with the two
8 guys?

9 A. They were standing probably, like, right across from
10 them.

11 Q. Did they stay there while you talked to them, or did
12 Martin---

13 A. No.

14 Q. --- and Jesse leave?

15 A. Yes, sir.

16 Q. Okay. Did you recognize either of the two guys?

17 A. I recognized one person, Lucius Simuel.

18 Q. How did you know who he was?

19 A. He was the uncle of my ex-girlfriend, Tiah Frazier.

20 Q. You said ex-girlfriend. When did y'all break up?

21 A. We broke up three days or probably about -- three days
22 or a week before the incident happened where I got shot.

23 Q. Okay. How long did you speak to Lucius and the other
24 guy?

25 A. Briefly for a few seconds. They were asking me a

DEON CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

315

1 couple questions, and I turned around and went in the
2 house. They wanted me to get my brother.

3 Q. Did -- were you expecting them to come that day?

4 A. No, not at all.

5 Q. And did you go get your brother?

6 A. Yes, sir, I went upstairs to get him.

7 Q. Which brother did you go get?

8 A. Deverol Cannick.

9 Q. Did they, did they, did they ask for him?

10 A. Yes, sir.

11 Q. How did they ask for him?

12 A. When they were asking me if I wanted some drugs and I
13 told them no, they said well, what's up with your brother.

14 Does your brother want some drugs? I was, like, I don't
15 know. He was, like, can you go see? And I went upstairs.

16 Q. Okay. When you went upstairs, did you close the door
17 behind you?

18 A. Yes, sir, I closed it and locked it behind me.

19 Q. Okay, and what happened when you went upstairs?

20 A. I went upstairs and I told my brother, I was, like,
21 Tiah's uncle is down there looking for you. He wants me to
22 get you and he was, like, what does he want and I was,
23 like, I really don't know.

24 Q. Okay. All right, and what did Deverol do?

25 A. He, he asked me what did they want, and then he kind

1 of had a funny look on his face, and he went downstairs to
2 go see what it was that they wanted.

3 Q. And what did you do?

4 A. I sat back down on the couch and started playing Halo
5 again.

6 Q. Okay, and what happened next?

7 A. When I was down on the couch playing Halo, my
8 sister-in-law, Sharita Willingham, she let one of my dogs
9 out of the room, and it was at the moment when my brother
10 was walking downstairs. And the dog started running
11 downstairs, and I ran behind the dog to go stop it because
12 I, I heard something, but I couldn't quite make out what it
13 was because the dog shot out of the room so fast. And I
14 was concerned about trying to stop the dog because I know
15 she could have potentially bit someone.

16 Q. Let me ask you a background piece of information. Had
17 Lucius ever been to your apartment?

18 A. Yes. He, he came to my apartment for about fifteen
19 minutes and we smoked marijuana.

20 Q. And how long, how long, how long before July 28th was
21 that?

22 A. That was probably about a month or a month and a half.

23 Q. Okay. Now, let's go back to what you were describing
24 earlier. What kind of dog do you have?

25 A. I have a pit bull.

DEON CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

317

1 Q. What's her name?

2 A. Nina.

3 Q. And how long had you had her?

4 A. I raised her all my life.

5 Q. Okay. So, was she eighteen?

6 A. She, she's probably about three years old.

7 Q. Three years old. Okay, and what happened after you
8 went after Nina?

9 A. I went downstairs and I stopped her, and I grabbed her
10 by her harness and told her to stop because she's trained
11 by voice command. And you can tell her just to stop and
12 she'll stop.

13 Q. Okay.

14 A. And right after I grabbed her by her harness, I looked
15 up and I saw two guys with guns. One guy had a gun pointed
16 at me, and ---

17 Q. Of the, of the two guys, who was pointing the gun --
18 did you know the person who was pointing the gun at you?

19 A. I didn't know him. I never saw him before. That was
20 the first time I saw him. But I knew one of the, the other
21 guys with the gun.

22 Q. Okay. Was he the same guy that was with -- at the
23 front door with Lucius earlier?

24 A. Yes, sir.

25 Q. Okay.

DEON CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

318

1 MR. ROBINSON: Beg the Court's indulgence.

2 (A PAUSE.)

3 MR. ROBINSON: May I approach the witness?

4 THE COURT: Yes. Yes, sir.

5 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS

6 9, 10, 11, 12, 13, 14 FOR IDENTIFICATION.)

7 BY MR. ROBINSON:

8 Q. I'm going to show you State's Exhibits 9 through 14,
9 Deon. What are those?

10 A. This is outside of my apartment in [REDACTED]

11 Q. And you're pointing to Number 9?

12 A. Uh-huh.

13 Q. What's Number 10?

14 A. Which -- where are the numbers?

15 Q. The number's on the back.

16 A. Number 10 is the stairs, the stairs leading into my
17 apartment.

18 Q. Okay. What's Number 11?

19 A. The stairs leading into my apartment at an angle where
20 if you were standing inside the apartment and looking down
21 the stairs towards my front door.

22 Q. Okay. What's number -- what's the next one?

23 A. The stairs and blood and the shoe that was on the
24 stairs.

25 Q. Whose shoe was that?

DEON CANNICK - DIRECT EXAMINATION BY MR. ROBINSON.

319

1 A. It's my shoe that I wore when I got shot.

2 Q. What's the next one?

3 A. It's the blood on the wall and it's the blood on the
4 floor with, with the shoe and the bottom floor where I was
5 laying.

6 Q. Okay. What's the next one?

7 A. This is the front of [REDACTED] outside of the
8 apartment.

9 Q. Are those fair and accurate representations of the
10 front door and the stairwell where this happened?

11 A. Yes, sir.

12 MR. ROBINSON: Your Honor, I move State's
13 Exhibits 9 through 14 be admitted into evidence.

14 THE COURT: Mr. Geier?

15 MR. DEIER: No objection, Your Honor.

16 THE COURT: Thank you.

17 Mr. Deysach?

18 MR. DEYSACH: No objection.

19 THE COURT: Without objection, 9 through 14 are now in
20 evidence.

21 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
22 STATE'S EXHIBITS 9, 10, 11, 12, 13, 14.)

23 MR. ROBINSON: Your Honor, may I publish these to the
24 jury?

25 THE COURT: You can.

1 (A PAUSE.)

2 BY MR. ROBINSON:

3 Q. All right, Deon, is it possible for you to come over
4 here?

5 A. Yes, sir.

6 Q. And get on the far side of the screen if you would,
7 please. You can come over here on this side so the court
8 reporter can hear you.

9 A. Okay.

10 Q. This is State's Exhibit Number 9. What is that?

11 A. Where the arrow pointed?

12 Q. Where is your front door?

13 A. This is my front door right here, Number [REDACTED] where
14 the bike is.

15 Q. Okay. This is State's Number 10. What is this?

16 A. That's the stairs where that leads into my house in
17 [REDACTED] and going up the stairs and get in the
18 apartment.

19 Q. Okay. Whose shoe is this?

20 A. That's the shoe I was, that I was wearing that, that's
21 the shoe I was wearing. That's my shoe.

22 Q. Now, while this picture is up, will you describe what
23 happened to you when you came down the stairs?

24 A. Essentially where the shoe is, the dog started coming
25 down the stairs, and I caught her right where the shoe is

DEON CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

321

1 by the harness, and when I looked up I saw the guys with
2 the pistols.

3 Q. And what happened next?

4 A. I looked behind me and I thought to run off, but I
5 realized that I ran too far downstairs, and I might get
6 shot in the back. So, I just put my hands if the air and I
7 said please don't shoot me. You can have anything you
8 want.

9 Q. Did they say anything to you?

10 A. They was, like, come here. You come here, and I put
11 my hands in the air and started walking towards them.

12 Q. And what happened next?

13 A. He waived the gun to the left side of my neck and he
14 shot me.

15 Q. And on your -- where, where did, where did, where did
16 you get shot?

17 A. I got shot right here on the left side of my neck.

18 Q. Okay. What happened next?

19 A. Right after the gun shot me and I just rolled down the
20 stairs, and I was just, just remember being at the bottom
21 of the stairs bleeding.

22 Q. Let me show you State's Exhibit Number 11. So, what
23 is, what, what angle is that?

24 A. That's the angle that I was looking from when I first
25 grabbed the dog by the harness looking down the stairs.

1 Q. And who was at the bottom of the stairs when you were
2 coming down?

3 A. Mr. Simuel was at the bottom of the stairs and
4 Demetrius Price, he was right in here on the stairs.

5 Q. Now, you didn't know who was with Lucius, did you?

6 A. I didn't know him.

7 Q. Where was your brother?

8 A. My brother, he was, he was right there where -- like,
9 right in front of the door where Lucius, Lucius was.
10 Lucius was standing right across from him.

11 Q. Did you ever give them permission to come in your
12 house?

13 A. Not at all.

14 Q. State's Exhibit 12, what is this?

15 A. That's the blood that ---

16 Q. Whose shoe was that?

17 A. That's my shoe and that's where my head was laying. I
18 was bleeding.

19 Q. Okay, and this is State's Number 13. What is this?

20 A. That's the blood on the wall when I was trying to
21 reach out and grab something and pull myself up off the
22 ground.

23 Q. So, if you come in the front door, that is which side
24 of you?

25 A. That is right in the left side.

DEON CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

323

1 Q. Okay. All right. You can just come back up over
2 here, Deon. Deon, while this happened, did you ever give
3 anything to the people that came into your house?

4 A. No, sir.

5 Q. Didn't give them any money? Did you give them any
6 marijuana?

7 A. No, sir.

8 Q. To your knowledge, did they take anything from you?

9 A. No, sir.

10 Q. Do you recall what kind of gun or what the gun looked
11 like that the person had that shot you?

12 A. It was a chrome colored revolver. Silver or some
13 sort.

14 Q. Okay. Did you have a gun on your person when this
15 happened?

16 A. No, sir.

17 Q. Do you have any guns -- did you have any guns at the
18 time?

19 A. No, sir, I didn't own a weapon.

20 Q. Do you know whether your brothers had guns?

21 A. I knew that my brother Devin had a gun. Well,
22 actually had two guns, but I wasn't sure if my brother
23 Malik had any guns because he had just got in the house.

24 Q. Okay. In terms of background, how long had you been
25 selling marijuana?

1 A. Not that long. Between six to eight months.

2 Q. Had you ever sold any other kind of drug?

3 A. No, sir.

4 Q. On the day of the shooting, did you ever contact
5 Lucius?

6 A. No, sir.

7 Q. At any time in the week or so prior, did you ever
8 invite him to your house?

9 A. No, sir.

10 . MR. ROBINSON: Beg the Court's indulgence.

11 THE COURT: Okay.

12 (A PAUSE.)

13 BY MR. ROBINSON:

14 Q. When you came down the stairs, do you know whether
15 Lucius was armed?

16 A. I saw him holding something in his hand, and it was
17 aimed towards my brother in the chest.

18 Q. Okay. What happened after you got shot?

19 A. After I got shot, I rolled down the stairs and I was
20 laying there for a second. And I heard my brother say oh,
21 my God, you shot my brother.

22 Q. What -- do you know what happened next?

23 A. Lucius and Demetrius proceeded to saying where's the
24 iron at, where's the iron at, where's the iron at.

25 Q. What did you take that to mean?

DEON CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

325

1 A. I thought they were talking about guns.

2 Q. What happened after they said that?

3 A. They, they were moving around frantically like they
4 was, like, frustrated. Like we were being too loud or
5 something, like, when my brother saying you shot my brother
6 and they, they were, like, where's the iron at. They just
7 wanted him to be quiet.

8 Q. After they said that, where did they go?

9 A. They, they made like they wanted to go upstairs, but
10 the dog was on the stairs still. So, after that, they
11 turned around and they ran.

12 Q. Did the dog make any noise?

13 A. The dog didn't. The dog was probably about just as
14 shocked as I was.

15 Q. Okay. So, they never went to the top of the stairs?

16 A. No, sir.

17 Q. Where did they go?

18 A. They made it probably about to mid level of the
19 stairs. Well, Demetrius Price, he made it to probably
20 about the mid level of the stairs, and Price, he was still
21 at the bottom of the stairs. And after they shot me, they
22 turned around and ran outside.

23 Q. When you got shot, do you know whether the front door
24 was opened or closed?

25 A. When I got shot, I know it was closed.

1 Q. So, after Demetrius went part of the way up the
2 stairs, where did they all go?

3 A. He stood on the stairs and when I got shot, I fell
4 down the stairs. And right after, he turned around and,
5 and ran.

6 Q. Ran where?

7 A. Ran right outside the door.

8 Q. They went out the front door?

9 A. Right outside.

10 Q. As stunned as you were, how long do you think they
11 were in the house?

12 A. For probably about thirty or forty-five seconds, but,
13 no -- well, it was actually longer, but after they shot,
14 they, they stayed there about forty-five seconds.

15 Q. Okay. After they went outside, do you know what
16 happened after that?

17 A. After they went outside, I, I heard -- it sounded like
18 some, somebody was outside talking.

19 Q. And, and what did you hear after that?

20 A. My brother, he ran outside and then I heard a pow,
21 pow, pow.

22 Q. Was the door open or closed?

23 A. Well, the door was partially opened because he had
24 just ran outside.

25 Q. After you heard the three pows, do you remember what

DEON CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

327

1 happened next?

2 A. My brother, he, he ran back inside bleeding.

3 Q. Do you remember anything after that?

4 A. I just remember my brother running up and down the
5 stairs frantically because he was in shock that he had just
6 got shot, and he was...

7 Q. Do you remember, do you remember going to the
8 hospital?

9 A. I remember talking to my brother and telling him that
10 I might not make it, call the ambulance. And so, he came
11 downstairs and picked me up, and we got into the back of
12 the Caliber, and we drove to the head of the neighborhood,
13 and that's when the ambulance came in.

14 Q. Okay. Do you see Lucius in court today?

15 A. Yes, sir.

16 Q. Where is he?

17 A. Lucius is right there.

18 Q. What's he wearing?

19 A. He's wearing a baby blue collared shirt with the blue
20 tie.

21 . MR. ROBINSON: For the record, record reflect that the
22 victim has pointed to defendant, Lucius Simuel. Your
23 Honor, the state will pass the witness.

24 Deon, please answer these lawyers' questions.

25 THE COURT: Mr. Deysach..

1 MR. DEYSACH: Thank you very much, Your Honor.

2 CROSS-EXAMINATION BY MR. DEYSACH:

3 Q. Hello.

4 A. Hello.

5 Q. My name is Ian Deysach, and I'm the attorney for
6 Lucius Simuel.

7 A. Hello, Ian Deysach.

8 Q. All right. So, we're here about what happened on July
9 28th of 2008, and so that's what my questions are going to
10 be about.

11 On that day, you knew who Lucius Simuel was, correct?

12 A. Yes, sir.

13 Q. Because you had already met him?

14 A. Yes, sir.

15 Q. And you knew him because he was the uncle of your
16 girlfriend or ex-girlfriend at the time, correct?

17 A. Yes.

18 Q. And that girlfriend's name, ex-girlfriend's name is
19 Tiah Frazier, correct?

20 A. Yes, sir.

21 Q. Is that how it's pronounced, Tiah?

22 A. Yes, sir.

23 Q. And so you had met Lucius before, correct?

24 A. Yes, sir.

25 Q. You knew his name already, correct?

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

329

1 A. Yes, sir.

2 Q. You had had him over to the house, correct, or at your
3 apartment, correct?

4 A. Yes, sir.

5 Q. How many times?

6 A. Once.

7 Q. Just one time. Okay, and on that one time that he was
8 at your house, you smoked marijuana with him?

9 A. Yes, sir.

10 Q. And you also talked with him on the, on the phone on
11 occasion, correct?

12 A. Yes, sir.

13 Q. So, your relationship with Lucius Simuel was one in
14 which you had met him one time?

15 A. Uh-huh.

16 Q. You'd only met him one time is what you're telling us,
17 correct, in person, correct?

18 A. In person.

19 Q. Okay, but that you had a few telephone conversations
20 with him also?

21 A. Yes, sir.

22 Q. How many?

23 A. Probably about three or four.

24 Q. In fact, you knew you -- you knew what his telephone
25 number was? No? And you said that he was over at your

1 house how long before July 28th?

2 A. Probably about a month, month and a half.

3 Q. And at that time your brother Deverol was there,
4 correct?

5 A. Uh-huh.

6 Q. Your brother Malik was there?

7 A. No, my brother Malik, he, he hadn't arrived in town.

8 Q. He had not moved in with you yet? Your brother Marcus
9 was there?

10 A. Yes.

11 Q. And Sharita was there?

12 A. Sharita wasn't there. She was at work.

13 Q. Sharita was at work when Lucius was at your apartment?

14 A. Yes, sir.

15 Q. And we're talking about [REDACTED] correct?

16 A. Yes, sir.

17 Q. So, it is -- it's true that the telephone
18 conversations that you had with Lucius were all after he
19 came over to your house, correct?

20 A. After -- no, not, not exactly. I had a few
21 conversations, probably about two conversation with him
22 before.

23 Q. So, you have conversations with Mr. Simuel before
24 you've even met him in person?

25 A. Yes.

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

331

1 Q. All right. You -- I mean I'm, I'm going to say it a
2 little bit differently, but you told the solicitor a few
3 minutes ago that you're a marijuana dealer. You were, at
4 the time, a marijuana dealer.

5 A. Yes, sir.

6 Q. Did you have any other job?

7 A. No, sir. I had briefly worked at Kroger before that,
8 but I stopped working there.

9 Q. So that your only job was marijuana dealing at the
10 time?

11 A. Yes, sir.

12 Q. And I guess the point was that they wanted -- are you
13 trying to tell the jury that the only kind of drugs you
14 sell is marijuana or at the time?

15 A. Only type of drugs I sold.

16 Q. Okay.

17 A. Only type of drugs I sold was marijuana.

18 Q. All right, and I'm not asking you to say hey, now, I'm
19 still a drug dealer unless you want to tell us you are, you
20 are a drug dealer.

21 A. No.

22 Q. I don't, I don't expect you to.

23 MR. ROBINSON: Judge, I object to that question.

24 THE COURT: I'll sustain the objection.

25 MR. DEYSACH: I'm just, I'm just trying to be clear.

1 I, I don't mean to ask him about his current status.

2 THE COURT: Okay.

3 MR. DEYSACH: I just -- sometimes I say are and I
4 mean, I mean back on July 28th.

5 BY MR. DEYSACH:

6 Q. That at that time, you were a drug dealer, but only a
7 marijuana dealer?

8 A. Uh-huh.

9 Q. That you never sold cocaine?

10 A. No, sir.

11 Q. That you never sold hydrocodone?

12 A. No, sir.

13 Q. And that you never sold any ecstasy?

14 A. No, sir.

15 Q. Or crack?

16 A. No, sir.

17 Q. And that at the time you knew that your brother Devin
18 also sold drugs?

19 A. Yes, sir.

20 Q. Are you going to tell the jury that the only kind of
21 drugs he ever sold was marijuana?

22 A. No, sir.

23 Q. Okay. He sold other drugs besides marijuana?

24 A. Yes, sir.

25 Q. He sold cocaine?

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

333

1 A. Yes, sir.

2 Q. And he sold hydrocodone pills?

3 A. Yes, sir.

4 Q. And he sold ecstasy?

5 A. Yes, sir.

6 Q. Okay. So, I'm going to focus at this time more on the
7 day in question. Okay, I guess what you testified about
8 began with a phone call from Martin to buy marijuana?

9 A. Yes, sir.

10 Q. And then you sold the marijuana to Martin?

11 A. Yes, sir.

12 Q. Correct? And he was with Jesse ---

13 A. Yes, sir.

14 Q. --- Reese, correct? And they told you that two guys
15 were looking for you?

16 A. Yes, sir.

17 Q. And they gave you a name of one of the guys, correct?

18 A. Yes, sir.

19 Q. And the guy that they were giving you the name of was
20 the guy you've identified as Tiah's uncle, right?

21 A. Yes, sir.

22 Q. Lucius Simuel?

23 A. Yes, sir.

24 Q. And then before Martin and Jesse even leave, you see
25 Lucius?

1 A. Yes, sir.

2 Q. And he approaches you, correct?

3 A. Yes, sir.

4 Q. And you knew who he was, correct?

5 A. Yes, sir.

6 Q. And there were ---

7 COURT REPORTER: Excuse me, Judge. I need the witness
8 to speak up a little, please.

9 THE COURT: Yes, thank you. Mr. Cannick, if you can,
10 if you can raise your voice please, sir, or speak directly
11 into microphone.

12 WITNESS: Yes, sir.

13 THE COURT: The court reporter can't hear you.

14 BY MR. DEYSACH:

15 Q. All right. So -- and Lucius wasn't alone, correct?

16 A. Yes, sir.

17 Q. Correct, he wasn't alone. He was with somebody else?

18 A. Yes.

19 Q. Now, the period of time that you speak to -- you, you
20 testified that you spoke with Mr. Simuel and then you went
21 inside, correct?

22 A. Yes.

23 Q. I want to know whether or not, by the time you went
24 inside, had Martin and Jesse already left?

25 A. No, sir. They were still outside because I was going

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

335

1 to go to their house to play some games.

2 Q. Okay. So, you were -- okay. So, Martin and Jesse are
3 still standing outside your front door?

4 A. Uh-huh.

5 Q. Or are they ---

6 A. They're still standing outside my front door.

7 Q. Okay. Out near your front door?

8 A. Yes, sir.

9 Q. All right. All right, and you went inside, you said,
10 closing the door?

11 A. Yes, sir.

12 Q. Locking the door?

13 A. Yes, sir.

14 Q. Correct. You go upstairs, correct?

15 A. Yes, sir.

16 Q. And you met with Deverol?

17 A. Yes, sir.

18 Q. And then Deverol comes down to the door?

19 A. Yes, sir.

20 Q. And you stay in the living room?

21 A. Yes, sir.

22 Q. And at that point, you don't see or hear what's going
23 on with Deverol?

24 A. No.

25 Q. At this point, you did not suspect that anything was

1 going wrong?

2 A. No.

3 Q. So, what were you doing while Deverol -- when --
4 what, what were you doing when Deverol went down to, to
5 the door?

6 A. I had sat down and I started playing Halo because he
7 had started to play the game and he was cheating.

8 Q. Okay. Okay. So, you've got Martin and Jesse waiting
9 outside, correct?

10 A. Yes.

11 Q. Because you're going to go over to their house and
12 play video games, correct?

13 A. Uh-huh.

14 Q. Instead what you do is you go upstairs and you start
15 playing your own video game, correct?

16 A. Yes.

17 Q. And you're just leaving Martin and Jesse outside for
18 however long?

19 A. Yes.

20 Q. Did you tell Martin and Jesse you were going to finish
21 your game?

22 A. No. I actually told them to hold on because we were
23 going to go get a game and come back to the house, but ---

24 Q. Play it at your house?

25 A. Uh-huh.

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

337

1 Q. Now, so, when you're outside with Martin and Jesse,
2 was it -- you said that the two guys asked you if you
3 wanted to buy some drugs?

4 A. Yes, sir.

5 Q. Did both of them ask you that, or did just one of them
6 ask you that?

7 A. Just one guy.

8 Q. Did you hear any of them say this is the guy I was
9 telling you about?

10 A. Lucius Simuel said that.

11 Q. And he was saying that to you, correct?

12 A. Yes.

13 Q. And you said they asked you if you wanted to buy
14 drugs, but they didn't tell you what kind of drugs they
15 were trying to sell you?

16 A. They first asked me if I wanted to buy some marijuana
17 and I said no.

18 Q. Okay, but now you had just broken up with Tiah, right?

19 A. Yes, sir.

20 Q. But they didn't already know that you were a marijuana
21 seller?

22 A. They knew because Tiah came and got weed from me or
23 marijuana.

24 Q. All right. So, isn't it true that you had talked to
25 Lucius Simuel on the phone about buying pills in the past?

1 A. In the past he wanted to talk to my brother about it,
2 and it just so happened that I was on the phone with Tiah.
3 And basically he just asked to talk to me and then he, he
4 wanted me to talk to my brother.

5 Q. Did you ever tell the police that you talked to Lucius
6 about getting some pills?

7 A. Yes. He, he asked me to ask my brother that.

8 Q. Is that what you told the police, or did you tell the
9 police that he talked about getting some pills so you could
10 make some extra money, but that was weeks before the
11 shooting?

12 A. No. See, my brother, he was going to get the pills.

13 Q. Okay. So, your brother Deverol had asked about buying
14 pills from Lucius Simuel?

15 A. Yes.

16 Q. Not you?

17 A. Not me. He asked me to ask him.

18 Q. Okay. Your brother asked you to ask Lucius?

19 A. Yes, because I was on the phone with Tiah.

20 Q. And your brother had met Lucius when he was over at
21 your house that time before?

22 A. Yes, sir.

23 Q. So, you had asked Lucius for pills, but on behalf of
24 your brother?

25 A. Yes.

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

339

1 Q. And you knew that the pills that you're asking for
2 were ecstasy pills, correct?

3 A. Yes.

4 Q. But when he came to your door, you say that they asked
5 you if you wanted to buy drugs, and that drug was
6 marijuana?

7 A. Not only marijuana. He asked me if I wanted to buy
8 some marijuana, some beans. Then he asked me about a bag
9 of cocaine.

10 Q. He asked you about cocaine. You said marijuana. Was
11 there a middle drug that I didn't quite hear?

12 A. They called them beans, but they're ecstasy pills.

13 Q. Beans, all right. So, at that point they asked you to
14 go get your brother?

15 A. Yes, sir.

16 Q. So, you go up and you meet with Deverol, correct?

17 A. Yes.

18 Q. And did you tell Deverol I don't know what they want,
19 correct?

20 A. I told him I didn't know what they want.

21 Q. Okay, but they had just offered to sell you three
22 different types of drugs, correct?

23 A. Yes.

24 Q. But you didn't tell Deverol that?

25 A. Yes.

1 Q. You did?

2 A. I didn't tell him that they had asked me that.

3 Q. Okay. You told Deverol the two guys are downstairs,
4 and I don't know what they want?

5 A. I told them I didn't know what they wanted.

6 Q. Okay, but they had already told you what they, what
7 they were there for. Okay, answer verbally because the
8 reporter, you ---

9 A. I asked him -- well, he asked me what they wanted. I
10 didn't know what they wanted.

11 Q. Okay.

12 A. What they wanted.

13 Q. Okay. So, at this point you had known that Deverol
14 had asked you to ask Lucius for ecstasy pills, correct?

15 A. Yes.

16 Q. Lucius was downstairs or somebody who he was --
17 somebody was downstairs offering to sell beans, correct?

18 A. Yes, sir.

19 Q. But you go up and tell Deverol I have no idea what
20 they want?

21 A. I told him I had no idea what they wanted.

22 Q. All right. Okay. So, you testified that you do not
23 own a gun, or you did not at the time own a gun, correct?
24 Speak up.

25 A. Yes, sir.

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

341

1 Q. But that at that time, you knew that Deverol owned two
2 guns?

3 A. Yes, sir.

4 Q. And at that time, you did not know whether or not
5 Malik owned a gun, correct?

6 A. Yes, sir.

7 Q. And that your brother Marcus, while he lived there --
8 he was not there at the time, correct?

9 A. No, sir, he wasn't.

10 Q. And I don't think you said whether or not you knew if
11 he owned guns?

12 A. I didn't because he stayed, he stayed in between
13 staying with me and my mother. He staying with us
14 sometimes.

15 Q. Right.

16 A. And other times he stayed with us.

17 Q. Okay. I understand that he is not as permanent at the
18 apartment as you and Deverol.

19 A. Uh-huh.

20 Q. And whether or not he had a gun, you don't know. So,
21 as far as you knew, there was only two guns in the
22 apartment?

23 A. Two.

24 Q. If there were any more, you didn't know about them,
25 correct?

1 A. Yes.

2 Q. And you're telling the jury that you told Deverol that
3 there are two men outside, correct?

4 A. Uh-huh.

5 Q. One of whom you didn't know, correct?

6 A. Uh-huh.

7 Q. Asking to sell drugs, correct?

8 A. Uh-huh.

9 Q. You didn't tell Deverol that?

10 A. I didn't tell him.

11 Q. Okay.

12 A. I -- he had asked me what they wanted with me, and I
13 told them I didn't know what they wanted.

14 Q. Okay, and you testified that Deverol is a drug dealer,
15 correct?

16 A. Yes.

17 Q. Or was a drug dealer. I'm sorry, was, and that he
18 goes to that door without a gun?

19 A. Yes, sir.

20 Q. Do you know he didn't have a gun, or you just didn't
21 see a gun?

22 A. I know he didn't have a gun.

23 Q. Do -- you know where Deverol keeps his guns, don't
24 you?

25 A. Yes, sir.

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

343

1 Q. And you know where he keeps his bullets, don't you?

2 A. I didn't know where he kept the bullets. I just know
3 where he kept the gun.

4 Q. All right. Let me ask you a little bit about Nina,
5 the -- your pit bull. She had four puppies?

6 A. Yes, sir.

7 Q. So, the number of dogs who are in the apartment are
8 Nina and her four puppies, correct?

9 A. Yes, sir.

10 Q. Are there any other dogs in the apartment besides Nina
11 and her four puppies?

12 A. There was Lyssa.

13 Q. Lyssa?

14 A. Lyssa.

15 Q. Lyssa?

16 A. Uh-huh.

17 Q. Is that an adult dog?

18 A. Yes, sir.

19 Q. Is that a pit bull?

20 A. Yes.

21 Q. It, it sounds like a girl's name.

22 A. Yes.

23 Q. Okay, so she is a girl? Okay, whose dog is Lyssa?

24 A. Lyssa was my brother Devin's dog.

25 Q. Devin's dog. So, you're in the living room playing

1 Xbox, and the first thing that you notice that's out of the
2 ordinary is Nina running towards the stairs, correct?

3 A. Not only that, but I heard some sounds like -- I could
4 here my brother talking, but I couldn't make out what he
5 was saying because I was so into stopping the dog.

6 Q. Okay. The sounds you're describing are human voices
7 is what you're saying?

8 A. Yes.

9 Q. Okay.

10 A. And scuffling. Like shoes rubbing on the floor.

11 Q. Okay, and the first thing that you turned your
12 attention to is stopping Nina from running into that mix?

13 A. Yes, sir.

14 Q. Because you testified that you know she might bite
15 somebody?

16 A. I knew that in her state of mind she might because she
17 was a pregnant dog, and pregnant dogs are very physical.

18 Q. Are those four puppies her puppies?

19 A. Yes, sir.

20 Q. Okay. So, she's got the four puppies and she's
21 pregnant, correct?

22 A. Well, no, but -- she wasn't pregnant. She just had
23 the puppies.

24 Q. Okay.

25 A. So, she was very defensive.

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

345

1 Q. I got you. All right. Was she also defensive of you,
2 correct?

3 A. Yes.

4 Q. Because you had raised her since she was a puppy?

5 A. Yes.

6 Q. And so you testified that you -- all right. I'll back
7 up. Nina is very fast, correct?

8 A. Uh-huh.

9 Q. But you caught up to her, correct?

10 A. Yes.

11 Q. And you caught up to her in the middle of the stairs?

12 A. Yes.

13 Q. Correct? And that she has not just a regular collar,
14 collar, but a harness, correct?

15 A. Yes.

16 Q. And you need that on a dog that's particularly strong,
17 right?

18 A. Yes.

19 Q. Because the collar just won't hold her, correct?

20 A. Yes.

21 Q. Okay. So, Nina's got the harness, and you grab that
22 harness halfway down the stairs, correct?

23 A. Yes, sir.

24 Q. And you testified that you looked down the stairs and
25 you said that you'd seen both -- two guys that weren't your

1 brother, correct?

2 A. Yes.

3 Q. And your brother, correct?

4 A. Yes, sir.

5 Q. And the door is closed to your apartment?

6 A. Yes, sir.

7 Q. All the way closed, correct?

8 A. All the way.

9 Q. And the door of your apartment -- I'm going to grab
10 these exhibits real quick.

11 MR. DEYSACH: I am -- do you mind, Your Honor, if I
12 approach the witness?

13 THE COURT: Sure. That's fine. Just refer to the
14 number.

15 MR. DEYSACH: I am.

16 BY MR. DEYSACH:

17 Q. Oh, this isn't one that's been admitted yet. I'm
18 sorry. I'm going to refer to State's Exhibit 9, which is
19 the exterior photo of [REDACTED] and if you want
20 to use the pointer it might be helpful. But, if you could,
21 point to the door, correct?

22 A. Right here.

23 Q. All right, and so that door opens inwardly to the
24 house?

25 A. Uh-huh.

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

347

1 Q. Correct. All right. So, if you are, if you -- if
2 somebody's entering the house, this side would be your
3 house. That side is outside. You have to enter like this?

4 A. Yes, sir.

5 Q. And so by the time you see anybody in your house, the
6 door has been opened and then shut again?

7 A. Yes.

8 Q. Okay, and at that time, that is when you saw the
9 person who was not Tiah's uncle point a gun at you?

10 A. Yes, sir.

11 Q. And you're holding Nina, correct?

12 A. Yes, sir.

13 Q. And so your testimony was that he walked up to you --
14 no, it's not? Okay. He remained at the bottom of the
15 stairs?

16 A. Yes, sir.

17 Q. Okay, and when you were shot in the neck ---

18 A. Yes, sir.

19 Q. --- he was still at the bottom of the stairs?

20 A. Yes.

21 Q. And you're midway up the stairs?

22 A. Yes, I was standing midway up the stairs. He was
23 standing on the first two steps.

24 Q. And -- okay. So, when you first saw him, he was
25 already on the first two steps?

1 A. Yes, sir.

2 Q. And at that point when he's pointing the gun at you,
3 you continue to hold on to Nina, correct?

4 A. Yes, sir.

5 Q. Knowing that she'd be defensive, defensive of you,
6 correct?

7 A. Yes. Well, after he told me to, to come towards him,
8 I put my hands in the air and I let her go.

9 Q. Okay.

10 A. And she just stood there.

11 Q. Okay. So, he sees you holding a pit bull that's come
12 running down the stairs, correct?

13 A. Uh-huh. Yes.

14 Q. And he tells you -- and you're restraining that pit
15 bull at the time, correct?

16 A. Yes.

17 Q. And he tells you to put your hands in the air,
18 correct?

19 A. Yes, sir.

20 Q. And so you had to let go of the pit bull, correct?

21 A. Yes, sir.

22 Q. So, you're saying you were ordered to let go of a
23 defensive pit bull in this situation?

24 A. Yes, sir.

25 Q. And the pit bull, instead of being defensive, just

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

349

1 stayed, just stayed there?

2 A. Stayed there on the stairs.

3 Q. And the -- Lyssa remained upstairs?

4 A. Lyssa was in the room.

5 Q. Okay. So, she was behind the door?

6 A. She was in my room with the door shut.

7 Q. Okay. That's what I'm trying to understand. Now,
8 when you were hit, you immediately dropped to the floor?

9 A. Yes, sir.

10 Q. And you slid down the steps?

11 A. I fell down the stairs tumbling.

12 Q. Tumbled, and I guess -- and you ended up at the bottom
13 of the stairs?

14 A. Yes, sir.

15 Q. Now, you've testified, I believe, that you did not
16 lose -- you're still awake at that time?

17 A. Yes, sir.

18 Q. That you, that you heard the guys say any more iron,
19 any more iron up there?

20 A. He didn't say any more iron. He said where the iron
21 at, where the iron at.

22 Q. Do you remember talking to Detective Calhoun at
23 Savannah Memorial Hospital?

24 A. Yes, sir.

25 Q. Do you remember doing that on August 22nd, 2008?

1 A. Yes, sir.

2 Q. Okay. All right. Do you remember telling him that
3 you heard the two of them say -- that Deon stated he's,
4 he's heard the two of them say any more iron, any more iron
5 up there?

6 A. Yes, sir.

7 Q. Okay. So, you do remember saying that?

8 A. Yes, sir.

9 Q. But now you're changing from what you said then. That
10 it's not any more. It's just where's the iron?

11 A. He said where's the iron at, where's the iron at,
12 where's the iron at.

13 Q. Okay, and you said -- I asked -- the first question I
14 asked was did they say any more iron, and you said no, they
15 didn't say it like that, right?

16 MR. ROBINSON: Objection. Asked and answered.

17 THE COURT: It has been.

18 MR. DEYSACH: Okay.

19 BY MR. DEYSACH:

20 Q. And you said that the, the two guys remained inside
21 the doorway or inside your apartment for forty-five seconds
22 after the gun went off?

23 A. Yes, sir.

24 Q. Correct? And that one of them may of gone part way up
25 the stairs?

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

351

1 A. He was standing on the first two stairs.

2 Q. Okay, and never got past that?

3 A. No, sir.

4 Q. Okay, and so for forty-five seconds while you're
5 there, nobody leaves?

6 A. Yes, sir.

7 Q. And that includes Devin, correct?

8 A. Yes, sir.

9 Q. All right, and then after forty seconds they do leave,
10 correct?

11 A. Yes, sir.

12 Q. And they open the door and walk out?

13 A. Yes, sir.

14 Q. Correct? All right, and at some point Deverol leaves,
15 correct?

16 A. When -- he came back upstairs first and said call the
17 police.

18 Q. Okay. So, he runs up to tell either Malik or Sharita
19 to call probably 9-1-1?

20 A. Uh-huh.

21 Q. And then?

22 A. He took running downstairs and runs right past me.

23 Q. Runs right past you and then out the door?

24 A. Yes, sir.

25 Q. And how long you think it took him to run upstairs and

1 run back down?

2 A. Probably about ten seconds because he ran up there
3 briefly and say that I was shot and that he was going to go
4 get the license plate.

5 Q. Okay. So, you heard him say all that?

6 A. Yes.

7 Q. Okay, and he, he leaves and you hear gunshots at that
8 point?

9 A. Yes, sir.

10 Q. And that was about ten seconds after the, the two guys
11 had walked out the door?

12 A. Ten seconds or probably less.

13 Q. Okay. You're aware that your brother Deverol is in a
14 gang?

15 A. Yes.

16 Q. And you're aware of the name of that gang?

17 A. Yes.

18 Q. What is the name of that gang?

19 MR. ROBINSON: Judge, objection. Relevance.

20 THE COURT: What is the relevance of it, Mr. Deysach?

21 MR. DEYSACH: Well, under Rule 404, the character of a
22 victim -- this is -- I believe it's character evidence of
23 the victim, and I believe that's under Rule 404 that a
24 pertinent trait to prove actually behavior and conformity
25 therewith is actually allowed. And so I think the rule

DEON CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

353

1 reads that you cannot introduce character evidence of a, of
2 a witness except -- no, to prove character and conformity
3 therewith except, and it spells out victim or character of
4 a victim, a pertinent trait. And, so, I would say that the
5 gang membership is a trait of aggressiveness that would be
6 pertinent in a situation like this where we're trying to
7 figure out who's the aggressor.

8 THE COURT: If that's a part of your defense strategy,
9 then obviously you'd be entitled to, to develop that.
10 You're not going to be able to do much more with this, with
11 this witness about that other than indicate he was in a
12 gang. I'll allow it for a limited purpose.

13 MR. DEYSACH: I think -- we did -- we indicated in the
14 gang. I think the objection was to the name of the gang.
15 And so I guess I want to make sure that I ask that, that I
16 haven't violated your ruling.

17 THE COURT: You haven't.

18 BY MR. DEYSACH:

19 Q. Okay, what's the name of the gang?

20 A. Gangsta Disciple.

21 MR. DEYSACH: Begging the court's indulgence.

22 THE COURT: Okay.

23 (A PAUSE.)

24 MR. DEYSACH: All right, I don't have anything
25 further.

1 THE COURT: Thank you.

2 Mr. Geier.

3 MR. DEIER: Thank you, Your Honor.

4 CROSS-EXAMINATION BY MR. GEIER:

5 Q. Good afternoon, Mr. Cannick.

6 A. Good afternoon.

7 Q. Were you smoking marijuana that day?

8 A. Yes, sir.

9 Q. You smoke it fairly regularly?

10 A. Yes, sir. Back then I smoked fairly regularly.

11 Q. I want to go back and touch on again what Mr. Deysach
12 briefly touched on, your prior statements to law
13 enforcement regarding this case. Now, did you -- you spoke
14 to Investigator Holmes at the hospital on the day of the
15 shooting. Is that correct?

16 A. Not on the day of the shooting.

17 Q. What?

18 A. I was in a coma.

19 Q. So, you don't recall anything about that?

20 A. No.

21 Q. And then on August 22nd he came in and -- actually,
22 I'm sorry. You met with Sergeant Calhoun, correct?

23 A. Yes.

24 Q. Is that ---

25 A. I actually met with both of them. Both of them came

DEON CANNICK - CROSS-EXAMINATION BY MR. GEIER

355

1 on the 22nd, I believe.

2 Q. Okay, and he asked to speak to you about this
3 incident. Isn't that right?

4 A. Yes, sir.

5 Q. And you understood that this was a criminal
6 investigation?

7 A. Yes, sir.

8 Q. And you wanted to make sure you told them everything
9 you knew. Is that right?

10 A. Yes, sir.

11 Q. You wanted the right people to get arrested, right?

12 A. Yes, sir.

13 Q. Was the officer taking notes when you talked to him?

14 A. He was -- he had a tape recorder, I believe.

15 Q. All right. So, on the 22nd of August, you stated that
16 the day before this happened you'd broken up with Tiah
17 Frazier?

18 A. Yes, I broke up with her. Well, not that day before,
19 but within three to four days.

20 Q. All right. I think you said three days to a week
21 prior?

22 A. Monday.

23 Q. So, that, that wasn't correct anyway. It wasn't the
24 day before. You mentioned that when Martin and Guzman
25 first came to the door, it was your understanding that

1 somebody was looking for you?

2 A. Martin and Jesse.

3 Q. Right, Martin and Jesse, right. It was your
4 understanding that somebody was asking about you?

5 A. No, because they -- well, I knew that when -- you
6 talking about when they came to the door did I know that
7 someone was looking for me?

8 Q. Yes.

9 A. When they came to the door, they had already called,
10 and I went down there and talked to them. I had left, but
11 I didn't know that he was looking for me until after I came
12 back.

13 Q. Okay. So, you didn't -- again, when you were speaking
14 with Guzman and Reese, the two ---

15 A. Martin and Jesse?

16 Q. Right, Martin and Jesse. You were under the
17 impression that somebody was looking for you when you spoke
18 to them?

19 A. Not in the beginning. They just -- I just talked to
20 them, and they told me that they was looking for some
21 marijuana.

22 Q. So, you don't recall speaking again to Sergeant
23 Calhoun and Sergeant Holmes here and saying that some
24 people were looking -- they told you that some people were
25 looking for you?

DEON CANNICK - CROSS-EXAMINATION BY MR. GEIER

357

1 A. Yeah, they told me that after I had came back and
2 brought the marijuana to them. They told me that someone
3 had came up and they was looking for me.

4 Q. Okay. So, I guess I didn't understand how this whole
5 thing worked out. You went down and answered the door, and
6 it was Martin and Jesse?

7 A. Right, uh-huh.

8 Q. And they were looking for marijuana?

9 A. Uh-huh.

10 Q. So, then you went back upstairs and got the marijuana
11 and then came back down again?

12 A. Yes, sir.

13 Q. Gave them the marijuana. They said hey, somebody was
14 looking for you?

15 A. Yes, sir.

16 Q. Now, do you recall telling the police that when you
17 were interviewed on the 22nd?

18 A. Telling them what I just told you?

19 Q. Yes.

20 A. Yeah.

21 Q. You did tell them that?

22 A. That, yeah.

23 Q. Now, which bedroom is yours in the house?

24 A. The first bedroom when you get to the top of the
25 stairs. You just turn to the right, and that's my bedroom.

DEON CANNICK - CROSS-EXAMINATION BY MR. GEIER

358

1 Q. Upstairs to the right. Were you aware that a .22
2 caliber revolver was located in a pocket of a jacket in
3 that bedroom?

4 A. I believe the detective told me.

5 Q. So, that -- so, you don't dispute what was found
6 there?

7 A. I, I think that they said that there was a -- what was
8 the -- what, what is the type of weapon you said?

9 Q. Let's see, there was a .22 caliber revolver located --
10 a Burga .22 caliber revolver.

11 A. Yeah, the detective told me there was a .22 caliber
12 revolver.

13 Q. And -- but that wasn't yours?

14 A. No, sir.

15 Q. Anybody else use that bedroom?

16 A. My little brother and my older brother.

17 Q. So, y'all all just slept in there?

18 A. Yeah.

19 Q. Which little brother?

20 A. My little brother, Marcus Campbell.

21 Q. And then?

22 A. My older brother, Malik Campbell.

23 Q. And you were the one who usually lived there as you
24 testified earlier?

25 A. Yes, sir.

DEON CANNICK - CROSS-EXAMINATION BY MR. GEIER

359

1 Q. Now, there was also a suitcase in that same bedroom
2 with a Rossi .38 special.

3 A. I believe they said that.

4 Q. And that wasn't yours either?

5 A. No, sir.

6 Q. And, and, again, earlier you testified that Devin was
7 in this gang and you were in the gang, too, weren't you?

8 A. Yes, sir.

9 MR. ROBINSON: Judge, I object to that.

10 THE COURT: Yes, sir.

11 MR. ROBINSON: The rule permitting evidence of this is
12 limited in homicide cases, in a homicide case.

13 THE COURT: Which rule are you referring to?

14 MR. ROBINSON: 404(a)(2).

15 THE COURT: All right, I'm looking at it. That's the
16 end of the rule. It says:

17 Evidence of a pertinent trait of character
18 of a victim of a crime offered by an accused
19 or by the prosecution to rebut the same, or
20 evidence of a character trait of
21 peacefulness of the victim offered by the
22 prosecution in a homicide case to rebut
23 evidence that the victim was a first
24 aggressor.

25 That's the second part of the rule. The first part

1 before the comma is, is, in my view, the, the part that
2 they're offering this under. I think that the -- I'll,
3 I'll note your objection, but I'll respectfully overrule
4 it. He can ask him if he's a member of a gang, but that's
5 as far as it's going to go.

6 I, I take it that there's going to be more to this
7 issue than that. I will take it that the defense is not
8 going to raise the issue that, that being a member of a
9 gang somehow or another denies a person his right not to be
10 shot by somebody else. So, I'm assuming there's going to
11 be more to it than just that.

12 MR. GEIER: No, Your Honor.

13 THE COURT: All right. Thank you.

14 BY MR. DEIER:

15 Q. Okay, going back to your interview with Sergeant
16 Calhoun, defense counsel, Mr. Simuel's counsel asked you
17 about the statement any more iron, any more iron.

18 A. Yes, sir.

19 Q. So, did, did you say that, or did you say where's the
20 iron?

21 A. I said where's the iron.

22 Q. And, again, you understood that they were conducting
23 an investigation here? You understood this would have been
24 important, right?

25 A. Right.

DEON CANNICK - CROSS-EXAMINATION BY MR. GEIER

361

1 Q. Isn't the fact that the reason why they asked you any
2 more iron, any more iron is because when they came in the
3 door, you had a gun?

4 A. They never asked me is there any more iron. They
5 asked me where's the iron.

6 Q. So, is it your position that they made a mistake?

7 A. Made a mistake?

8 Q. Made a mistake when they made this, this statement in
9 here.

10 A. They might have made a mistake. They might be written
11 wrong or something.

12 Q. And again, later on you were interviewed and you said
13 where's the iron, where's the iron, that's what you said
14 today, right?

15 A. Yes, sir.

16 Q. And when you gave this first statement, you were less
17 than a month from the incident. Is that right?

18 A. Yes, sir.

19 Q. And, and, again, I'm a little confused with your
20 testimony regarding what happened after you'd been shot.
21 Initially you said they ran out, but then you said they
22 hung around for forty-five seconds?

23 A. Yes, sir.

24 Q. So, they hung around. That's, that's where we're
25 going.

1 A. Yes.

2 Q. You said your dog is trained?

3 A. Trained, was trained by my brother. Not trained
4 professionally.

5 Q. Okay. So, what about the other dog? Is the other dog
6 trained, too?

7 A. No.

8 Q. Trained to do what?

9 A. Trained to not use the bathroom in the house
10 basically.

11 Q. But when you said it was trained, though, you said
12 that you could use voice commands ---

13 A. To stop.

14 Q. --- to stop?

15 A. Yep.

16 Q. So, it wasn't like your brother trained him to do
17 tricks or anything like that, roll around in the carpet?

18 A. No, just trained not to use the bathroom in the
19 carpet.

20 Q. Now, when you gave your second statement to Detective
21 Calhoun, this was a joint interview with your brother,
22 right?

23 A. Yes, sir.

24 Q. And again, you told them everything you remembered
25 about the incident. Is that right?

DEON CANNICK - CROSS-EXAMINATION BY MR. GEIER

363

1 A. Yes, sir.

2 Q. And he, he take notes during this one that was
3 recorded?

4 A. I believe it was recorded, or he might have written
5 notes. I'm not really sure.

6 Q. And you said the last one he recorded?

7 A. The first one recorded.

8 Q. You stated when you saw the two defendants coming up
9 towards you, during that interview you stated that you got
10 a crazy feeling when you saw them approach.

11 A. I didn't say crazy. I said weird.

12 Q. Weird feeling?

13 A. Weird feeling.

14 Q. And you said you'd been smoking marijuana that day,
15 right?

16 A. Yes, sir.

17 Q. And you didn't know who, at the time, who Demetrius
18 Price was, did you?

19 A. Yes, sir.

20 Q. What color did you say the revolver was?

21 A. It was a chrome or silver revolver.

22 Q. And you said it was gray when you were interviewed
23 last time, correct?

24 A. Silver, gray.

25 MR. GEIER: Your Honor, may I approach the witness,

1 please?

2 THE COURT: Yes, sir.

3 BY MR. DEIER:

4 Q. Now, I'm handing you what's been previously marked as
5 State's Exhibit I guess for identification 10. Okay,
6 State's Exhibit 10, which is a picture of the stairwell,
7 but with a shoe about halfway up. Can you look at that
8 again?

9 A. Yes, sir.

10 Q. All right. So, you said that you were standing about
11 where that shoe is?

12 A. Yes, sir.

13 Q. Were you -- are you sure?

14 A. Yes, sir.

15 Q. Okay. So, from here we've got one, two, three, four,
16 at least four steps, right?

17 A. Yes, sir.

18 Q. Now, in this picture which is State's Exhibit 11, it's
19 kind of the continuation, only looking from the opposite
20 way. We see there's a stain right there, a blood stain.

21 A. Uh-huh.

22 Q. Now, would you agree that we can't see this stain that
23 is in Number 11 and Number 10?

24 A. No, you can't see it.

25 Q. Okay. So, we have again, one, two, three, four, and

DEON CANNICK - CROSS-EXAMINATION BY MR. GEIER

365

1 at least five, six, seven, eight, and then the floor.

2 Nine, nine steps?

3 A. Uh-huh.

4 Q. And so after you were hit, you fell down all those
5 stairs? You tumbled down the stairs?

6 A. Yes, sir, but he, he called me. I walked down two or
7 three steps towards him.

8 Q. With the dog still in your hand?

9 A. No. I had let go of the dog because he had said hey
10 you, come here. He had a gun pointed towards me, and I had
11 put my hands in the air.

12 Q. Okay. So, now, after you put your hands in the air,
13 you took a few steps down?

14 A. Yes, sir.

15 Q. All right, and he didn't come up towards you?

16 A. No, sir, but his hands rose towards my neck. I
17 thought he was going to grab my shoulder or something, but
18 he shot me.

19 Q. Okay, and you said -- I'm now holding on to State's
20 Exhibit 14. You said you ended up on this sort of bottom
21 stair?

22 A. Yes, sir.

23 Q. And your arm reached out over there, and that created
24 that blood stain?

25 A. Yes, sir.

1 Q. When you gave -- going back to your first statement,
2 you gave that statement, you said that Tiah's uncle was
3 trying to get a hold of you that morning?

4 A. Well, I didn't know if that was her uncle because it
5 was the -- her brother's cell phone, and it kept calling my
6 phone at lunch, and I just kept sending it to voice mail.

7 Q. Okay. So, it wasn't Lucius Simuel's cell phone
8 number. It was Tiah's brother's?

9 A. Yes, sir.

10 Q. But again, you said when you were interviewed that you
11 believed it was actually Lucius.

12 A. Yes, sir.

13 Q. Why did you believe that?

14 A. Because when the number was calling all those times
15 that I kept sending it to voice mail, when he popped up, I
16 figured that that's who was calling me.

17 Q. You mean you listened to the voice mail?

18 A. No, I didn't say -- I didn't listen to the voice mail.
19 I just sent on to voice mail. But when they popped up, I
20 figured that's who it was because that's the only person I
21 know that number that could have possibly called me and it
22 shown up.

23 Q. So, you didn't think it was Tiah's brother calling you
24 on his cell phone?

25 A. I mean, he was calling me. I thought it was and I

DEON CANNICK - CROSS-EXAMINATION BY MR. GEIER

367

1 sent it to voice mail because I had just broken up with his
2 sister. So, I didn't want to talk to him.

3 Q. Okay, but when you spoke to the police that day, you
4 said you thought it was Tiah's uncle. Is that correct?

5 And just so that I'm clear, and I, I hate to repeat
6 some of the questions that co-counsel asked, but after
7 going down and speaking briefly with the defendants, you
8 went up and you met with Devin?

9 A. Yes, sir.

10 Q. And then it's your testimony that you just went back
11 and started playing Halo?

12 A. Yeah. I sat down on the couch for a brief second
13 because he was cheating.

14 Q. So, again, I think you admit you knew anyway that the
15 place you were living at had drugs?

16 A. Yes.

17 Q. Guns?

18 A. Yes.

19 Q. But as we sit here today, have you ever been charged
20 with any, anything out of this?

21 A. No, sir.

22 Q. Have you discussed whether or not there's some sort of
23 deal with the solicitor's office?

24 MR. ROBINSON: Judge, I object.

25 THE COURT: Do you have any basis for that?

DEON CANNICK - CROSS-EXAMINATION BY MR. GEIER

368

1 MR. GEIER: I, I have no basis, Your Honor. As far as
2 I know there's no deal, but ---

3 THE COURT: Okay, then there's no basis for the
4 question. I'll sustain the objection.

5 MR. GEIER: So, again, Your Honor I don't want to step
6 on any toes.

7 BY MR. DEIER:

8 Q. There's no deals as far as you know?

9 MR. ROBINSON: Judge, I object. It's the same object
10 -- he's still asking about the deal.

11 THE COURT: What sort of deal are you talking about,
12 Mr. Geier?

13 MR. DEIER: Your Honor, may we approach for a moment?

14 THE COURT: Sure.

15 (OFF-THE-RECORD BENCH CONFERENCE.)

16 BY MR. DEIER:

17 Q. All right, sir, so you haven't been arrested?

18 A. Yes, I have.

19 Q. You've been arrested for this?

20 A. Oh, not for -- I thought you were asking me if I have
21 been arrested before in my life.

22 Q. As far as anything that was found there, you haven't
23 been arrested?

24 A. No, sir.

25 Q. And it's been what, sixteen, seventeen months?

DEON CANNICK - REDIRECT EXAMINATION BY MR. ROBINSON

369

1 A. Yeah, just about. No, it's been, probably been about
2 a year and three or four months now.

3 MR. GEIER: Okay. One moment, Your Honor.

4 THE COURT: Yes, sir.

5 (A PAUSE.)

6 BY MR. DEIER:

7 Q. We're almost done, Mr. Cannick. Isn't it true you
8 called Lucius Simuel that day, the day of the shooting,
9 regarding drugs?

10 A. No, sir.

11 MR. GEIER: I have no further questions.

12 THE COURT: Thank you.

13 Redirect, Mr. Robinson?

14 REDIRECT-EXAMINATION BY MR. ROBINSON:

15 Q. Deon, you got asked by the first defense lawyer about
16 a previous conversation that you had with Tiah where,
17 during that telephone conversation, your brother asked you
18 to ask Lucius about some pills. Isn't that correct?

19 A. Yes, sir.

20 Q. Now -- and that was how long before you got shot?

21 A. I think it was about a month to a month and a half.

22 Q. Month, month and a half. When you went to the door
23 that day and you saw Lucius, did you think that Lucius was
24 at, at the door because of that previous conversation?

25 A. No. I, I actually thought it was awkward because I

DEON CANNICK - REDIRECT EXAMINATION BY MR. ROBINSON

370

1 had just dumped his niece. So, I didn't think he wanted to
2 actually see me.

3 Q. Next, the question about the iron, you understood that
4 question to mean -- to be asking you whether or not you
5 were armed, didn't you? And, in fact, you were not armed,
6 were you?

7 A. No, sir.

8 Q. In fact, you'd never shot any of the guns in the
9 apartment, had you?

10 A. No, sir.

11 Q. Do you know whether or not your brothers had shot any
12 of those guns?

13 A. No, sir.

14 Q. Meaning you don't know or they had not?

15 A. They had not shot them. I haven't held any of them.
16 Never even touched them.

17 MR. ROBINSON: I beg the court's indulgence.

18 (A PAUSE.)

19 BY MR. ROBINSON:

20 Q. To the best of your knowledge, isn't it possible you
21 could still get charged with possession of those drugs?

22 A. I, I really don't know.

23 MR. ROBINSON: I have nothing further for this
24 witness, Your Honor.

25 THE COURT: Thank you.

DEON CANNICK - RECROSS-EXAMINATION BY MR. DEYSACH

371

1 Mr. Deysach, any follow up?

2 MR. DEYSACH: Just brief, I promise.

3 THE COURT: Okay. Promise the jury. You don't have
4 to promise me.

5 MR. DEYSACH: I promise it's brief.

6 THE COURT: Thank you.

7 RECROSS-EXAMINATION BY MR. DEYSACH:

8 Q. You just brought back up I think the -- you told the
9 solicitor that you were not in any way expecting Lucius
10 Simuel to be showing up at your house that day, correct?

11 A. Yes, sir.

12 Q. And you also testified that you'd been getting calls
13 that you thought might be from Lucius Simuel that day,
14 correct?

15 A. I thought that the calls were actually coming from
16 Chris Battle.

17 Q. Okay. Now, Chris Battle is Tiah's brother, correct?

18 A. Yes, sir.

19 Q. And that is -- that's the phone number that you're
20 saying you recognized?

21 A. Chris Battle's number.

22 Q. Chris Battle's phone number?

23 A. Correct.

24 Q. And isn't it true that you had called Chris Battle
25 looking for Lucius, correct?

1 A. No.

2 Q. And that he had put you in touch with Lucius that day,
3 correct?

4 A. No.

5 Q. That you had told Chris Battle that you were looking
6 for the pills that day, correct?

7 A. No, sir.

8 MR. DEYSACH: That's all I have, Your Honor.

9 THE COURT: Thank you.

10 Mr. Geier?

11 MR. GEIER: Nothing further, Your Honor.

12 THE COURT: Thank you, Mr. Geier.

13 Mr. Robinson, any follow up?

14 MR. ROBINSON: Nothing further for this witness.

15 THE COURT: Thank you. You can stand down.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: Ladies and gentlemen, this is a good place
18 for us to stop for the afternoon break. We've gone a
19 little bit longer in the afternoon than we normally go to
20 keep from having to interrupt the testimony of this witness
21 midstream, and I appreciate your patience as we worked.

22 We're going to take the afternoon break now. We'll be
23 out for at least fifteen minutes, probably twenty at the
24 very most. We'll start back no later than 4:30.

25 Please remember not to discuss this case among

S. WILLINGHAM - DIRECT EXAMINATION BY MR. ROBINSON

373

1 yourselves while you're in the jury room. Thank you.

2 (THE JURY EXITS AT 4:07 P.M.)

3 THE COURT: All right, folks, we'll be in recess
4 until -- let's try to get back right at 4:30. Thank
5 you.

6 (OFF THE RECORD.)

7 THE COURT: Your next witness is going to be, Mr.
8 Robinson?

9 MR. ROBINSON: It's going to be Sharita Willingham.

10 THE COURT: Bring in the jury, please. You can call
11 her on in if you'd like to so she can be in place when the
12 jury gets in here.

13 (THE JURY ENTERS AT 4:31 P.M.)

14 THE COURT: Mr. Solicitor, you can call your next
15 witness.

16 MR. ROBINSON: The state calls Sharita Willingham.

17 THE COURT: Ms. Willingham, come forward please,
18 ma'am, to be sworn.

19 SHARITA WILLINGHAM, BEING FIRST
20 DULY SWORN, TESTIFIES AS FOLLOWS:

21 CLERK OF COURT: State your full name for us and spell
22 your last name.

23 WITNESS: Sharita Willingham. W-I-L-L-I-N-G-H-A-M.

24 DIRECT EXAMINATION BY MR. ROBINSON:

25 Q. Sharita, where were you living on July 28th of last

1 year?

2 A. I was living in [REDACTED] in apartment [REDACTED]

3 Q. And who was living there with you?

4 A. It was Deverol Cannick, Deon Cannick, and Malik
5 Campbell.

6 Q. What is your relationship to each one of those people?

7 A. Deverol and me are boyfriend and girlfriend, and I'm
8 friends with his brothers, Malik and Deon.

9 Q. And how did y'all meet?

10 A. I met them when I was working at Kroger.

11 Q. And that's the Kroger immediately next door just, just
12 west of where the apartments are?

13 A. Yes, sir.

14 Q. Were you working there on, on July 28th?

15 A. No, sir.

16 Q. Okay. What happened that afternoon?

17 A. On, on July 28th we were all sitting down in the
18 living room and Deon, Malik, and Devin were playing the
19 Xbox 360. They were playing Halo Three, and I was playing
20 with the puppies. And we, all of a sudden we heard a knock
21 at the door. So, everyone was, like, who is that. So,
22 Deon and Devin went downstairs, said they were -- to see
23 who it was. I went to the room because my dog was in the
24 room. She was whining. She wanted to come out and ---

25 Q. What's your dog's name?

S. WILLINGHAM - DIRECT EXAMINATION BY MR. ROBINSON

375

1 A. My dog's name is Nina.

2 Q. Nia?

3 A. Nina.

4 Q. Nina. Okay.

5 A. Yes, sir.

6 Q. Okay, and then what happened?

7 A. I let Nina out of the room and she ran to the puppies,
8 and I ran over there with her and the puppies, and we were
9 playing. And all of sudden Nina just stopped, and she ran
10 downstairs.

11 Q. And what did you do?

12 A. And I looked over the banister at about -- over the
13 balcony downstairs to the door where Deon and Devin were.
14 And I saw Devin straddling, trying to push the door closed
15 saying please don't do this, man, please don't do this, and
16 I saw Lucius.

17 Q. Okay. Okay.

18 MR. ROBINSON: May I approach the witness?

19 THE COURT: Yes, sir.

20 BY MR. ROBINSON:

21 Q. I'm going to show you what's previously been admitted
22 as State's Exhibit Number 11, and I want you to come down
23 and point something out to us. Come down to this far side,
24 Sharita. Be sure and speak up.

25 This is the exhibit I was talking about. Now, is it

S. WILLINGHAM - DIRECT EXAMINATION BY MR. ROBINSON

376

1 fair to say that when you looked down the steps, that was
2 your view of the front door?

3 A. Yes, sir.

4 Q. And you were living there at that time, were you not?

5 A. Yes, sir.

6 Q. And just kind of point out where Devin was.

7 A. Devin was right here. He was trying to push the door
8 -- pull the door shut and push them out of the door.

9 Q. Okay, and was Deon down there with him at that time?

10 A. Yes, sir, Deon was on the staircase.

11 Q. Okay, and what happened next?

12 A. I saw Lucius Simuel.

13 Q. Had you ever met Lucius before?

14 A. Never. I had never met Lucius.

15 Q. Did you know his name?

16 A. No, I did not know his name.

17 Q. So, you learned it subsequently?

18 A. Yes, sir, I learned it.

19 Q. Okay. We'll get to that. And what happened, what
20 happened after that?

21 A. I saw him force, force the door open, and I saw him,
22 and he had a long gun and ---

23 Q. What color was it?

24 A. It was chrome I believe it was.

25 Q. Okay, and then what happened?

S. WILLINGHAM - DIRECT EXAMINATION BY MR. ROBINSON

377

1 A. He pushed the door open, and that's when I saw him
2 come in, and I screamed oh God.

3 Q. And what did you do after that?

4 A. I immediately ran to the room because, because I was
5 trying to find my cell phone to call 9-1-1.

6 Q. Okay, and what happened after that?

7 A. After that, while I was looking for my phone, I heard
8 a gun fire and I froze. And after that, I heard two more
9 gun fires.

10 Q. I tell you what. While you're, while you're talking,
11 let's turn around and face the jury so we're ---

12 COURT REPORTER: Excuse me. I need her to face toward
13 me so I can still hear.

14 MR. ROBINSON: Okay.

15 COURT REPORTER: Thank you.

16 BY MR. ROBINSON:

17 Q. So, what room were you in when you -- where you, when
18 you heard the gunfire?

19 A. I was in my master bedroom.

20 Q. And what did you do after that?

21 A. I immediately ran back into the living room, and I
22 just went crazy. I started screaming and ---

23 Q. Did you look down ---

24 A. --- and crying.

25 Q. Did you look down the stairs again?

S. WILLINGHAM - DIRECT EXAMINATION BY MR. ROBINSON 378

1 A. I, I didn't look down the stairs. I -- Devin was on
2 the floor bleeding.

3 Q. Okay, just have a seat up on the witness stand.

4 MR. ROBINSON: Beg the court's indulgence.

5 THE COURT: Yes, sir.

6 (A PAUSE.)

7 BY MR. ROBINSON:

8 Q. How many people were at the front door other than
9 Devin?

10 A. It was two people and Deon was on the staircase.

11 Q. Okay. After you heard the one gunshot, what happened
12 next?

13 A. After I heard the one gunshot?

14 Q. Uh-huh.

15 A. I froze and I, I start -- I was, I was about to go out
16 the room, and then I heard two more gunshots. And that's
17 when I ran out of the room and I started screaming, and
18 that's when I saw Devin -- well, Devin came back up, and I
19 saw him laying on the ground bleeding.

20 Q. Where was he bleeding from?

21 A. He, he was mostly bleeding from his hand.

22 Q. Did you look down the stairs after you saw Devin
23 bleeding?

24 A. Yes, because Devin -- Deon called out to me, and I
25 went downstairs to him and I asked him who did this.

S. WILLINGHAM - DIRECT EXAMINATION BY MR. ROBINSON

379

1 Q. And how long had it been since you heard the first
2 gunshot that you went down the stairs?

3 A. It was probably about ---

4 Q. Seconds, minutes?

5 A. Minutes, minutes. It was, it was minutes.

6 Q. And when you went downstairs, what did Deon look like?

7 A. He was, he just -- he was, he was limp. He was just
8 laying there. He couldn't ---

9 Q. What was his emotional state?

10 A. He was, he was actually quite calm. He, he was
11 holding his neck and he was telling me, trying to tell me
12 to ---

13 Q. Did he just seem scared?

14 A. Yes, he, he did seem scared.

15 Q. What did his, what did his complexion look like? Was
16 he pale? Did he look normal?

17 A. Yeah, he, he looked pretty pale. He had lost a lot of
18 blood.

19 Q. And what did you ask him?

20 A. I asked him who did this.

21 Q. All right. Later that day, did you speak with police?

22 A. Yes, sir.

23 Q. And you wrote a statement for them that day?

24 A. Yes, sir.

25 Q. And did you see them again a day or two later?

S. WILLINGHAM - DIRECT EXAMINATION BY MR. ROBINSON

380

1 A. Yes, sir.

2 Q. And did they show you a photo lineup?

3 A. Yes, sir.

4 Q. And were you able to pick someone out of that lineup?

5 A. Yes, sir.

6 Q. And did you know the identity of the person that you
7 picked them out?

8 A. No, sir.

9 Q. If you didn't know their identity, how did you pick
10 them out?

11 A. I remember him being a black male and I remember his,
12 his eyebrows, the way his eyebrows looked and his eyes.

13 Q. So, you looked -- so, you picked him out based on his
14 appearance?

15 A. Yes, sir.

16 Q. And do you see that person in court today?

17 A. Yes, sir.

18 Q. And where is he?

19 A. He's right there.

20 MR. DEYSACH: Renewing my objection from the prior
21 objection, Your Honor.

22 THE COURT: I understand that and I'll renew my ruling
23 earlier. Subject to objection over defense counsel, you
24 can answer that question, Ms. Willingham.

25 BY MR. ROBINSON:

S. WILLINGHAM - DIRECT EXAMINATION BY MR. ROBINSON

381

1 Q. Go ahead. Point him out.

2 A. He's right there.

3 Q. And what's he wearing?

4 A. He's wearing a blue shirt and a blue tie.

5 Q. And is that the person that pushed the door open?

6 A. Yes, sir.

7 Q. But you did not see Deon get shot, did you?

8 A. No, sir.

9 MR. ROBINSON: Beg the court's indulgence.

10 (A PAUSE.)

11 BY MR. ROBINSON:

12 Q. How long had you been living there, Sharita?

13 A. I was living there since March.

14 Q. Is that when y'all moved into the apartment?

15 A. Yes, sir.

16 Q. And did you use any illegal drugs while you were
17 living there?

18 A. No, sir.

19 Q. Did you know whether or not there was any cocaine in
20 that apartment?

21 A. No, sir.

22 Q. You did not know?

23 A. No, sir.

24 Q. Did you know whether there were any guns in the
25 apartment?

S. WILLINGHAM - CROSS-EXAMINATION BY MR. DEYSACH

382

1 A. No, sir.

2 Q. Did Deverol ever discuss cocaine or guns with you?

3 A. No, sir.

4 Q. How long had y'all been going out?

5 A. We were -- we had been going out since August of 2008.

6 Q. Well, this happened July ---

7 A. I'm sorry. 2007.

8 Q. 2007?

9 A. Yes, sir.

10 Q. So, almost a year?

11 A. Yes, sir.

12 MR. ROBINSON: Sharita, I don't have any further
13 questions. The state will pass the witness.

14 Please answer these lawyers' questions.

15 THE COURT: Thank you.

16 Mr. Deysach?

17 MR. DEYSACH: Thank you, Your Honor.

18 CROSS-EXAMINATION BY MR. DEYSACH:

19 Q. Hello, Ms. Willingham. My name is Ian Deysach and I
20 represent Lucius Simuel.

21 A. Hello.

22 Q. You were at -- I think you already said you're, you're
23 Deverol Cannick's girlfriend?

24 A. Yes, sir.

25 Q. Right. You live at [REDACTED] Apartments on

S. WILLINGHAM - CROSS-EXAMINATION BY MR. DEYSACH

383

1 July 28th of 2008, correct?

2 A. Yes, sir.

3 Q. And you were home on that afternoon?

4 A. Yes, sir.

5 Q. You said that you and your boyfriend, Deverol, occupy
6 the master bedroom in that apartment?

7 A. Yes, sir.

8 Q. And you said that, although that is your bedroom,
9 you're unaware of any drugs or guns that may have been in
10 that room?

11 A. Yes, sir.

12 Q. Were you aware that, that Deon was selling marijuana?

13 A. No, sir.

14 Q. So, that afternoon you -- I guess you began your
15 testimony that afternoon by saying that you were playing
16 with your dog?

17 A. The four puppies.

18 Q. You're playing with the four puppies?

19 A. Yes, sir.

20 Q. Correct, and those are Nina's four puppies?

21 A. Yes, sir.

22 Q. And those four puppies are kept on the balcony,
23 correct?

24 A. No, sir.

25 Q. Where are the four puppies kept?

S. WILLINGHAM - CROSS-EXAMINATION BY MR. DEYSACH

384

1 A. The four puppies were kept inside our apartment.

2 Q. Which room in the apartment?

3 A. They were kept -- sometimes they were kept in the
4 master bedroom, and sometimes we will keep them in the
5 living room.

6 Q. Okay. So, when you were playing with the four
7 puppies, you're playing with them in the master bedroom?

8 A. No, sir. I was in the living room.

9 Q. Okay. So, you're in the living room.

10 A. Yes.

11 Q. With the four puppies?

12 A. Yes, sir.

13 Q. And Nina was in the living room also?

14 A. No, sir. Nina was in the master bedroom.

15 Q. With the door closed?

16 A. Yes, sir.

17 Q. Where is Lyssa?

18 A. Lyssa?

19 Q. Yes.

20 A. Lyssa was in another room.

21 Q. Okay. What room?

22 A. She was in Deon's room.

23 Q. Okay. So -- all right. There's two bedrooms in the
24 apartment?

25 A. Yes, sir.

S. WILLINGHAM - CROSS-EXAMINATION BY MR. DEYSACH

385

1 Q. All right, and, and when you're talking about having
2 the dogs in, in the bedrooms, those are the bedrooms with
3 the door closed, correct?

4 A. Yes, sir.

5 Q. And so, are you -- when you're in the, in the living
6 room playing with the puppies, you hear Deon's phone
7 ringing, don't you?

8 A. Yes, sir.

9 Q. And you're there when he picks up the phone, correct?

10 A. No, sir.

11 Q. So, you never saw him pick up the phone?

12 A. No, sir.

13 Q. When, when there was a knock on the door, you were in
14 the living room playing with the puppies, correct?

15 A. Yes, sir.

16 Q. And you'd been in the living room for some time?

17 A. Yes, sir.

18 Q. About how long?

19 A. About ten or fifteen minutes.

20 Q. And during that time, Deon never spoke to anybody on
21 the phone?

22 A. No, sir.

23 Q. So, when the -- when you hear the knock on the door,
24 you said that both Deon and Deverol go downstairs, correct?

25 A. Yes, sir.

1 Q. So, they both go down together?

2 A. Yes, sir.

3 Q. But it's not that Deon goes down first and then comes
4 back up and gets Deverol?

5 A. No, sir.

6 Q. That's not what happened?

7 A. No, sir.

8 Q. Okay. Is, is Devin's nickname Reese?

9 A. Yes. Yes, sir.

10 Q. So, Deon is playing Xbox with -- while you're playing
11 with the puppies, right?

12 A. Yes, sir.

13 Q. Malik is playing Xbox with -- while you're playing
14 with the puppies?

15 A. Yes, sir.

16 Q. And Devin is playing Xbox while you're playing with
17 the puppies?

18 A. Yes, sir.

19 Q. And when the knock comes at the door, Malik is the
20 only one who stays upstairs?

21 A. Yes, sir.

22 Q. Now, after this all happened, you said you called
23 9-1-1?

24 A. No, sir.

25 Q. You did not call 9-1-1?

S. WILLINGHAM - CROSS-EXAMINATION BY MR. DEYSACH

387

1 A. No, sir.

2 Q. Did somebody call 9-1-1?

3 A. Yes, sir.

4 Q. Do you know who?

5 A. I'm not sure; I'm not sure who called 9-1-1.

6 Q. Did Malik call 9-1-1?

7 A. I, I believe so. I think it was Malik and ---

8 Q. Okay. Now, instead of waiting for an ambulance to
9 come to your house, you decided to try to take Deon and
10 Devin to the, to the hospital?

11 A. Yes, sir.

12 Q. Correct? All right, and the reason that you did that
13 wasn't because of the illegal stuff in the apartment, was
14 it?

15 A. No, sir.

16 Q. Because you didn't even know that was there.

17 A. No, sir, I didn't.

18 Q. You thought that it would be a better idea to take the
19 two brothers to the hospital in your Dodge Caliber than for
20 them to get a ride by the ambulance?

21 A. It wasn't that I thought it would be better. It was
22 that they were losing so much blood, and they were saying
23 they were weak and they were about to pass out, and they
24 were dying, and it took so long. So, we decided to take
25 them.

S. WILLINGHAM - CROSS-EXAMINATION BY MR. DEYSACH

388

1 Q. So, it took too long for the ambulance to get there.

2 Is that the problem?

3 A. Yes, sir.

4 Q. All right. So, but you guys, before you leave the
5 apartment complex, you see that EMS personnel are already
6 there, correct?

7 A. Yes, sir.

8 Q. So, you don't drive to the hospital, right?

9 A. No, sir.

10 Q. You stop where the EMS helpers are?

11 A. Yes, sir.

12 Q. And it was -- and then they're able to take the two
13 brothers to the hospital from there?

14 A. Yes, sir.

15 Q. And at that point you stay behind, correct?

16 A. Yes, sir.

17 Q. And the puppies are removed from the house, correct?

18 A. Yes, sir.

19 Q. And Nina is removed from the house, correct?

20 A. Yes, sir.

21 Q. And Lyssa is removed from the house?

22 A. Yes, sir.

23 Q. And they go to somebody's else house?

24 A. Yes, sir.

25 Q. And the name of that person is what?

S. WILLINGHAM - CROSS-EXAMINATION BY MR. DEYSACH

389

1 A. Corey Garner.

2 Q. Corey Garner. So, you did not remove those puppies
3 from the house, correct?

4 A. No, sir.

5 Q. Some are dogs, but the dogs from the house?

6 A. No, sir.

7 Q. Okay. Were the dogs removed from the house before you
8 left in the Caliber?

9 A. No, sir.

10 Q. So, when you left the -- was Malik still there?

11 A. No, sir.

12 Q. So, when you left, it's just the dogs are the only
13 creatures that are there?

14 A. Yes, sir.

15 Q. There's not, there's not a person who's looking after
16 the dogs is my point. Okay, and Corey Garner had the key
17 to the house?

18 A. No, sir.

19 Q. The house was left unlocked?

20 A. Yes, sir.

21 Q. Was it left unlock with the purpose of Corey coming to
22 get the, the puppies, the dogs?

23 A. It was, it was just so chaotic at the time.

24 Q. It was -- neglect is the reason that the door wasn't
25 locked?

1 A. No, it wasn't neglect.

2 Q. No. I don't mean to say it in a negative way. But
3 the reason that it wasn't locked is because it was low on
4 the priority list at the time, correct?

5 A. No.

6 Q. The most important thing was to get the brothers to
7 the hospital?

8 A. Yes, sir.

9 Q. More important than locking the door, and so you
10 called Corey to come get the dogs?

11 A. I didn't call Corey. I saw him. He came out there,
12 and I saw him, and I asked him to go in the house and get
13 the dogs.

14 Q. He's the neighbor?

15 A. No, he, he had -- I had called his mother and he came
16 out there with his mother, and I saw him and I told him to
17 go in the house and get the dogs.

18 Q. So, you called him for the purpose of getting the
19 dogs? You called his mother for the purpose of getting the
20 dogs?

21 A. No. I called her to let her know what happened to the
22 boys.

23 Q. Okay. So, Corey Garner is the boys' friend?

24 A. That's, that's their brother.

25 Q. Corey Garner is another brother to Deon and Deverol?

S. WILLINGHAM - CROSS-EXAMINATION BY MR. DEYSACH

391

1 A. Yes, sir.

2 Q. And Corey's mother is the, the brother's mother?

3 A. Yes, sir.

4 Q. Okay. So, the -- Deon and Deverol are taken to the
5 hospital and you stay behind at the apartment complex?

6 A. Yes, sir.

7 Q. And that is where the police are, correct?

8 A. Yes, sir.

9 Q. And the police talk to you, correct?

10 A. Yes, sir.

11 Q. And at this time it's just been -- a major, a major
12 event has just occurred?

13 A. Yes, sir.

14 Q. Correct? And you want to make sure that you can tell
15 the police everything it is that you can to help them with
16 their investigation, correct?

17 A. Yes, sir.

18 Q. Okay, because you know what, what you say is what
19 they're going to go on in their investigation, right?

20 A. Yes, sir.

21 Q. So, if you told them something that wasn't true, it
22 might send the investigation in the wrong direction.

23 A. Yes, sir.

24 Q. And you wouldn't want that to happen.

25 A. No, sir.

1 Q. Okay. Now, when you talked to, you talked -- do you
2 remember talking to Angela Viens from the sheriff's
3 department on the day of the incident?

4 A. I don't remember.

5 Q. Do you not remember her name or do ---

6 A. I don't remember her name. I remember talking to a
7 female.

8 Q. Okay, with the sheriff's department?

9 A. Yes, sir.

10 Q. Okay. You told her that, that their dog, that -- you
11 stated that your dog, a pit bull, sensed the commotion and
12 ran down the stairs, correct?

13 A. Yes, sir.

14 Q. You said that both Deon and Deverol were trying to
15 hold the downstairs door shut, correct?

16 A. I -- Devin was trying to hold the door shut.

17 Q. What you're saying is that Devin was the -- Deon was
18 not trying to hold the door shut, right?

19 A. Correct.

20 Q. And what I'm asking you is did you tell the police at
21 the time that Deon was helping Deverol hold the door shut?
22 Did you say that or not?

23 A. No, sir.

24 Q. Okay. Did you tell Ms. Viens that the subject that
25 you saw with the large gun was outside?

S. WILLINGHAM - CROSS-EXAMINATION BY MR. DEYSACH

393

1 A. No, sir. I told her that he was trying to push the
2 door open.

3 Q. All right. Now, after you talked to the police, they
4 asked you to write a statement, correct?

5 A. Yes. Yes, sir.

6 Q. And you did that, right?

7 A. Yes, sir.

8 Q. Because you thought it would be helpful, correct?

9 A. Yes, sir.

10 Q. And again, you wanted to make sure what you put in
11 that statement was truthful, correct?

12 A. Yes, sir.

13 Q. So that it didn't send the police in the wrong
14 direction?

15 A. Yes, sir.

16 Q. You told -- you wrote in that statement that Deverol
17 and Deon went downstairs to answer the door, and that's
18 when I looked over the balcony, correct?

19 A. Yes, sir.

20 Q. Now, I'm going to ---

21 MR. ROBINSON: If I might approach her, Your Honor?

22 Yes, sir.

23 BY MR. DEYSACH:

24 Q. This is State's Exhibit Number 9. Do you recognize
25 this as the outside to [REDACTED] Apartments?

1 A. Yes, sir.

2 Q. All right, and the windows that you see on the ground
3 floor are not part of [REDACTED] Apartments, are
4 they?

5 A. No, sir.

6 Q. Okay. They are part of 612?

7 A. Yes, sir.

8 Q. Okay, and so this right here is the balcony to [REDACTED]
9 [REDACTED] Apartments, correct?

10 A. Yes, sir.

11 Q. Okay. We don't have the star board, but -- all right.
12 And so, when you told, when you wrote that you looked over
13 the balcony, that's the balcony you were talking about?

14 A. No, sir.

15 Q. Okay. So, you have a balcony in your apartment,
16 correct?

17 A. Yes, sir.

18 Q. And you have the statement that you're trying to give
19 to the police, correct?

20 A. Yes, sir.

21 Q. And you tell them that you're at a balcony in your
22 apartment, but it's not that, correct?

23 A. Yes, sir, I meant banister. That's what I meant.

24 Q. So, what you're saying is that you mistakenly put
25 balcony when you meant to put banister?

1 A. Banister, yes, sir.

2 Q. Now, isn't it normal when somebody knocks at the door
3 at ■ for somebody who's in the apartment to come out on
4 the balcony and see who it was?

5 A. No, sir.

6 Q. Never happens?

7 A. No, sir.

8 Q. And, in fact, when the, the knock came at the door
9 that day, nobody went on to the balcony to see who it was,
10 did they?

11 A. No, sir.

12 Q. Devin did not go out on the balcony to see who it was,
13 did they?

14 A. No, sir.

15 Q. All right. You told the police, in that written
16 statement, that when you looked over the balcony, there
17 were two black males at the door, correct?

18 A. Yes, sir.

19 Q. Okay. So, what you're saying right now is that you
20 didn't mean at the door. You meant inside the door?

21 A. I meant they were at the door forcing their way in.

22 Q. You, you wrote in your statement, okay, that Nina
23 tried to bite the guy at the door, didn't you?

24 A. Yes, sir.

25 Q. That didn't happen, did it?

S. WILLINGHAM - CROSS-EXAMINATION BY MR. DEYSACH

396

1 A. No, sir.

2 Q. So, what you put in your statement wasn't true?

3 A. No. I mean, she -- it didn't happen that -- she
4 didn't, she didn't bite him.

5 Q. But did she try to bite the man at the door?

6 A. Yes, sir.

7 Q. Okay, and the man at the door still came in even
8 though Nina was trying to bite him?

9 A. Yes, sir.

10 Q. Okay. Outpowered Nina?

11 A. No, sir.

12 Q. Okay. Nina backed up and let the person in the door?

13 A. No, sir. Deon grabbed her collar.

14 Q. So, Deon prevented Nina from biting the person who was
15 trying to force their way into the door?

16 A. Yes, sir.

17 Q. Okay. You, you wrote in your statement that the guy
18 outpowered Deverol and they began to argue, correct?

19 A. Yes, sir.

20 Q. And there were two guys at the door, correct?

21 A. Yes, sir.

22 Q. But it was only one guy that outpowered Deverol and
23 began to argue with him?

24 A. Yes, sir.

25 Q. And that was the guy with the silver revolver, right?

S. WILLINGHAM - CROSS-EXAMINATION BY MR. DEYSACH

397

1 A. Yes, sir.

2 Q. And, in fact, you said you saw two guys at the door,
3 right?

4 A. Yes, sir.

5 Q. But you only saw one person with a gun?

6 A. I saw -- I could, I could only see the guy that was in
7 the front door of the door pushing and I saw his gun. He
8 had his gun drawn.

9 Q. Okay, and you have not identified that person as
10 Lucius Simuel, have you?

11 A. Yes, sir, I have.

12 Q. But that one was Lucius Simuel.

13 A. Yes, sir.

14 Q. Okay, and so Lucius has what appears to you to be a
15 revolver?

16 A. Yes, sir.

17 Q. And you were not in a position to be able to see other
18 person, right? Is that what you're saying?

19 A. No, sir.

20 Q. Did you ever see the other person come into the
21 apartment?

22 A. Yes, sir, when the door was pushed open.

23 Q. The door is pushed open. Does it remain open?

24 A. I don't know. After I saw the guys come in, I ran to
25 grab my phone.

1 Q. Okay. You ran to grab your phone?

2 A. Yes, sir.

3 Q. Did you grab your, grab your phone?

4 A. I couldn't find it.

5 Q. Okay. You couldn't find any phone, correct?

6 A. No, sir.

7 Q. Malik didn't have a phone he could use?

8 A. I mean, I don't know if he had a phone or not.

9 Q. So, what you're saying is at this point you don't call
10 9-1-1, right?

11 A. No, sir.

12 Q. And you're saying this because you couldn't, right?

13 A. I couldn't find my phone, yes, sir.

14 Q. When you run from the banister -- let me ask you this.
15 You're saying that the banister at the top of the stairs is
16 such that you could look over and see down the stairs,
17 correct?

18 A. Yes, sir.

19 Q. You would do that without having to get to the top of
20 the stairs, correct?

21 A. Yes, sir.

22 Q. When you went to see what the commotion was, did you
23 run to the top of the stairs, or did you just look over the
24 banister?

25 A. I just looked over the banister.

S. WILLINGHAM - CROSS-EXAMINATION BY MR. DEYSACH

399

1 Q. And when you ran, you ran to a bedroom that did not
2 require you to run across the front of the stairs, correct?

3 A. Yes, sir.

4 Q. You did?

5 A. I ran to a room that didn't require me to.

6 Q. Okay. Sorry. Yes, because that room that's to the
7 top right of the stairs is Malik, Deon's, and Marcus's,
8 correct?

9 A. Yes, sir.

10 Q. Was. You're testifying that Nina was the dog that was
11 in the mix?

12 A. Yes, sir.

13 Q. And that was the dog that was closed in your bedroom?

14 A. Yes, sir.

15 MR. DEYSACH: Beg the court's indulgence.

16 THE COURT: Yes, sir.

17 MR. DEYSACH: Briefly.

18 (A PAUSE.)

19 BY MR. DEYSACH:

20 Q. When the person -- you see the person enter the door,
21 or you do not see the person succeed in entering?

22 A. Yes, sir, I saw him overpower Devin and come in.

23 Q. You said -- and Deon was not part of any of that
24 pushing, correct?

25 A. No, sir.

S. WILLINGHAM - CROSS-EXAMINATION BY MR. GEIER

400

1 Q. You said that Deon is halfway down the stairs when
2 that happened?

3 A. Yes, sir.

4 Q. And, and Nina is also at the door?

5 A. Yes, sir, Deon is holding Nina.

6 MR. DEYSACH: I don't have anything further, Your
7 Honor.

8 THE COURT: Thank you.

9 Mr. Geier.

10 MR. GEIER: Thank you, Your Honor.

11 CROSS-EXAMINATION BY MR. GEIER:

12 Q. Good evening, Ms. Willingham.

13 A. Good evening.

14 Q. My name is Chris Geier, and I represent Demetrius
15 Price today. I tell you what, I want to discuss something
16 with you really quickly about your prior statements, and my
17 suspicion is that you probably don't remember the names of
18 each officer you spoke to?

19 A. No, sir.

20 Q. But immediately following the accident, you were
21 interviewed by a couple different officers. Is that
22 correct?

23 A. Yes, sir.

24 Q. And as Mr. Deysach said earlier, you understood that
25 this was important to get accurate information at the time?

S. WILLINGHAM - CROSS-EXAMINATION BY MR. GEIER

401

1 A. Yes, sir.

2 Q. Now, again, you, you spoke to Officer Viens or Viens
3 at some point?

4 A. Yes, sir.

5 Q. And when you spoke to him, you made the statement --
6 pardon me. I lost my place. It believe it was Officer
7 Adams. Okay. It was Officer Adams. Officer Adams,
8 another officer spoke to you, do you recall? Officer Adams
9 or just another officer?

10 A. I remember the officers.

11 Q. Okay. You stated that Deon had been shot in the neck
12 while standing just inside the front door?

13 A. He was on the staircase.

14 Q. Okay. So, he wasn't just inside the front door?

15 A. He was on the staircase when he got shot.

16 Q. Okay. Now, you didn't see that, did you?

17 A. No, I didn't see it.

18 Q. And you said that again to Officer Adams, that he
19 dropped straight to the ground half on the linoleum and
20 half on the stairway?

21 A. Yes, sir.

22 Q. So, you don't know if he really dropped straight on
23 the ground?

24 A. Well, I know from what he told me, yes, sir.

25 Q. Now, let me ask you this, after this whole thing

1 happens and everybody's running around trying to figure out
2 what's going on, what does Devin do?

3 A. What does Devin do?

4 Q. Yeah.

5 A. He was laying down on the ground and he was, at first
6 he was trying to run around and I made him lay down. He
7 laid down and he, he really wasn't doing anything. He was
8 just bleeding.

9 Q. So, do you remember -- I mean, did he go in specific
10 rooms? Where did he go?

11 A. He went -- he ran around the house. He ran into the
12 master -- well, he ran halfway to the master bedroom and
13 back out and around the living room and he laid down.

14 Q. Did he go into the master bathroom?

15 A. No, sir, I don't recall him going to the master
16 bathroom.

17 Q. Were you primarily with him?

18 A. The whole time?

19 Q. Well, yeah.

20 A. Yes, sir, I was trying to follow him around.

21 Q. Now, when you gave your statement, you mentioned,
22 after you started to scream, you heard three gunshots?

23 A. Before I started screaming I heard three gunshots.

24 Q. Okay. So, were they all in succession?

25 A. It was one gunshot and there was a pause and then it

S. WILLINGHAM - CROSS-EXAMINATION / REDIRECTION EXAMINATION 403

1 was two more gunshots.

2 Q. So, a total of three? Do you know -- I think Mr.
3 Deysach asked you about drugs, but did you know there were
4 guns in the residence?

5 A. No, sir.

6 Q. So, you don't know if Deon or Devin had any guns with
7 them?

8 A. They didn't have any guns with them.

9 MR. GEIER: Just a moment, Your Honor.

10 THE COURT: All right, sir.

11 (A PAUSE.)

12 MR. GEIER: Thank you, Your Honor. I have nothing
13 further of this witness.

14 THE COURT: Mr. Robinson, redirect?

15 MR. ROBINSON: Briefly, Judge.

16 REDIRECT EXAMINATION BY MR. ROBINSON:

17 Q. Sharita, you just testified that you didn't see Deon
18 fall to the ground, did you?

19 A. No, sir.

20 Q. But when you went downstairs and talked to him, he was
21 in the same position, wasn't he?

22 A. Yes, sir.

23 Q. So, you saw him lying partly on the steps and partly
24 on the linoleum. Isn't that right?

25 A. Yes, sir.

1 MR. ROBINSON: I have nothing further of this witness.

2 THE COURT: Thank you.

3 Ms. Williamson -- Ms. Willingham, you may step down.

4 Thank you.

5 MR. ROBINSON: Can she be excused, Your Honor?

6 THE COURT: Without objection, gentlemen?

7 MR. DEYSACH: No objection, Your Honor.

8 THE COURT: You can be excused. Thank you, ma'am.

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: Ladies and gentlemen, this is a good place
11 for us to stop for the afternoon. The hour is upon us and,
12 and the status of the case is such that makes it a
13 fortuitous time to stop.

14 We'll get back on a regular schedule tomorrow. That
15 is, we'll start back in the morning at 9:30 and resume the
16 trial of this case. Please be back in the jury room at
17 9:30 tomorrow.

18 And remember, as always, do not discuss this case
19 among yourselves when you get back there tomorrow, nor with
20 anybody else overnight, or don't let them talk to you
21 either. Have a safe trip back home. I'll see you all
22 tomorrow at the 9:30. Thank you.

23 (THE JURY EXITS AT 5:15 P.M.)

24 THE COURT: Mr. Robinson, anything further from the
25 state before we break for the day?

1 MR. ROBINSON: Just one brief matter, Judge. That are
2 two witnesses that I subpoenaed, Martin Guzman and Tiah
3 Frazier. I will not be calling those witnesses. I'd like
4 the court to excuse them.

5 MR. DEYSACH: I have -- I'm not sure if I've actually
6 served Martin. I don't want Martin excused. In fact, my
7 investigator is getting the opportunity to, to give him a
8 ride possibly tomorrow if we have to call him.

9 Tiah is under one of my subpoenas also, Ms. Frazier.
10 And so if she's excused from his subpoena, she's still
11 being held by my subpoena. So, that would be, that would
12 be fine.

13 Martin, I'm not sure we've been in the same room with
14 him to serve him. So, I'd ask that he not be excused yet.

15 THE COURT: All right. So, you want to, you want to
16 try to get him served?

17 MR. DEYSACH: Yes, and I know that my investigator's
18 in telephone contact with him, and that if we need him to
19 testify we're going to have to give him a ride.

20 THE COURT: Okay.

21 MR. DEYSACH: So ---

22 THE COURT: All right. Mr. Robinson, so long as --
23 what's Tiah's name?

24 MR. ROBINSON: Frazier.

25 THE COURT: Frazier, Tiah Frazier. As long as she

1 understands that she's still under subpoena of Mr. Deysach,
2 you can certainly lift yours.

3 MR. ROBINSON: That's fine.

4 THE COURT: Gentlemen, make sure she doesn't get the
5 mistaken impression that she's free to go. She's not. And
6 insofar as Mr. Guzman is concerned, until such time as he's
7 served with Mr. Deysach's subpoena, I'm going to keep him
8 under yours as well.

9 MR. ROBINSON: Very well, Your Honor.

10 THE COURT: Thank you.

11 (A PAUSE.)

12 All right, Mr. Geier, anything further from you or
13 your client before we break for the day?

14 MR. DEIER: No, Your Honor.

15 THE COURT: Mr. Deysach?

16 Mr. Deysach: No, Your Honor.

17 THE COURT: All right. Thank you, gentlemen.
18 We'll start back at 9:30 in the morning.

19 MR. ROBINSON: Thank you, Judge.

20 (WHEREUPON, THE CASE IS AT EASE.)

21 WEDNESDAY, NOVEMBER 18, 2009

22 (COURT RESUMES AT 9:47 A.M.)

23 THE COURT: Good morning.

24 Is the state ready to proceed?

25 MR. ROBINSON: We are, Your Honor.

1 THE COURT: Mr. Geier, Mr. Deysach, the defense ready
2 to proceed?

3 MR. GEIER: Yes, Your Honor.

4 MR. DEYSACH: I have an issue, Your Honor. That's why
5 I was standing when I, when I was supposed to be seated,
6 and just briefly.

7 Yesterday, we were provided with those notes that we
8 requested.

9 THE COURT: Right.

10 MR. DEYSACH: And as I look through them, I see that
11 notes from the final interview with Mr. Simuel are not
12 included.

13 I think the testimony during pretrial was that Mr.
14 Holmes had taken those notes. And going off of memory, the
15 -- they were either in the, in the case jacket or thrown
16 away in the trash.

17 THE COURT: Right.

18 MR. DEYSACH: And so I guess if I don't get them, that
19 means they're not in the case jacket. Ergo, must be thrown
20 in the trash. And my position is that, that that is a
21 destruction of discoverable evidence that we would be
22 entitled to that the state, the government was in
23 possession of and then destroyed. And once it's destroyed,
24 we have no way of telling whether it was inculpatory or
25 exculpatory in nature. Whether it matched up with what's

1 in Mr. Holmes's report or didn't.

2 And so because there is a discovery violation, I would
3 say that's tantamount to a due process violation under the
4 state and federal constitutions. And so I think that the
5 remedy that I would have to ask for would be a mistrial and
6 dismissal with, with prejudice against Mr. Simuel. So,
7 that, that's the basis.

8 THE COURT: All right, sir.

9 Mr. Robinson, do you want to address, first of all,
10 the missing notes, and were you able to determine anything
11 about those? Where they were, were they destroyed, in
12 fact, which seemed to be the testimony yesterday.

13 MR. ROBINSON: Your Honor, what I can tell you is that
14 all the notes that were saved in these investigators' case
15 file were turned over.

16 I think that the testimony was that the notes were
17 used to draft their reports, which were produced to defense
18 counsel. And anything that wasn't produced to a report --
19 anything that wasn't in the case file was destroyed.

20 I think to respond to the substance of defense
21 counsel's argument, the substance of everything that was
22 gleaned in the interviews and was reduced to the reports,
23 and I think the notes were just their handwritten materials
24 that were taken while they were in the presence of the
25 defendant. And I don't think this is any intentional

1 destruction of discoverable evidence.

2 THE COURT: Right.

3 MR. ROBINSON: It's just rather once the notes had
4 been memorialized in a, in a formal report, there was no
5 need to maintain his, his, his -- the investigator's little
6 cheat sheet, as it were.

7 THE COURT: Right.

8 MR. ROBINSON: His little chicken scratch.

9 THE COURT: Right.

10 MR. ROBINSON: So, my understanding is is that
11 anything that was not in the case files was destroyed not
12 because -- or was discarded, rather -- strike destroyed --
13 was discarded simply because it had been preserved
14 elsewhere. And I think that that's the state's position,
15 that the defendant has not been prejudiced.

16 THE COURT: Okay. The salient rule is Rule 5(a)(1)(a)
17 of the South Carolina Rules of Criminal Procedure:

18 Upon request by a defendant, the prosecution
19 shall permit the defendant to inspect and
20 copy or photograph any written or recorded
21 statements made by the defendant, or copies
22 thereof within the possession, custody, or
23 control of the prosecution, the existence of
24 which is known or should have been known.

25 Et cetera. And reference, of course, is to written or

1 recorded statements made by the defendant. The rule goes
2 on as far as information not subject to disclosure except
3 as provided elsewhere in the rule:

4 The rule does not authorize the discovery or
5 inspection of reports, memoranda, or other
6 internal prosecution documents made by the
7 attorney for the prosecution or other
8 prosecution agent in connection with the
9 investigation for prosecution of the case.

10 Investigative notes, notes of conversations themselves
11 are not discoverable unless clearly they apply under *Brady*
12 or some other rule that would indicate that they were
13 impeachable evidence or exculpatory evidence in that
14 regard.

15 In this particular case, the notes or the substance of
16 the notes, whatever they were, have been reduced to summary
17 fashion and have been disclosed. I can't find that there
18 has been any intentional or wilful disclosure.

19 I would direct you all to the case of *State vs. Felix*
20 *Cheeseboro*, which is a pretty good case dealing with the
21 destruction of evidence, and it will tell you what some of
22 the requirements are in order for one to be entitled to
23 even an instruction on inferences to be drawn from the
24 destruction of evidence, or the failure to produce evidence
25 in such a case. I don't find that those standards have

1 been met in this case. I note your exception, of course,
2 and the record will be preserved in that regard, but we
3 will go forward, all right?

4 MR. GEIER: Your Honor.

5 THE COURT: Yes, sir.

6 MR. GEIER: If I may? I'd also like to lodge a
7 similar objection. That I understand your ruling, but just
8 for the record, there were several interviews of Deon
9 Cannick, and we don't have the notes we need. So, again
10 echo my co-counsel's objection, but I already understand
11 your ruling.

12 THE COURT: Okay. All right, thank you. Are we ready
13 for the jury now, gentlemen?

14 MR. ROBINSON: One thing quickly, Your Honor, pursuant
15 to our stipulation and to -- as I presented to the court
16 yesterday.

17 THE COURT: Right.

18 MR. ROBINSON: I sat down with defense counsel for
19 Demetrius Price and redacted the three interviews with
20 Lucius Simuel for the purposes of satisfying Bruton. Two
21 of the statements we, we typed up the parts that we believe
22 satisfy Bruton. And the third statement, defense counsel
23 had a clean copy, and we have simply highlighted the
24 unreadable portions to -- for the jury. And so having done
25 that, I wanted to put that on the record because I believe

1 -- well, I am going to begin this morning with the witness,
2 the investigator who is going to be testifying to his
3 interview with Lucius Simuel. And since we have already
4 made those stipulations, and the entire substance of what
5 he is -- of, of the conversations that he is going to
6 present, we have simply reduced to a written document.

7 And so I wanted to bring that to the court's attention
8 before I called him to the witness stand because he's
9 essentially going to be reading the redacted version of the
10 statements so that his independent recollection -- or were
11 he just to testify from his independent recollection. I
12 wouldn't want to risk any kind of *Bruton* violations.

13 THE COURT: Right.

14 MR. ROBINSON: And I wanted to present that to the
15 court in the presence of the defendants so it was clear
16 that when this investigator is reading this version of the
17 confession, this is not hearsay. This is pursuant to a
18 stipulation to satisfy *Bruton*.

19 THE COURT: All right, and the part that will be read
20 has been reviewed by Mr. Deysach and Mr. Geier, as the case
21 might be, and they agree that that is the redacted portion
22 that should go to the jury? Is that right?

23 MR. ROBINSON: That's correct. I, I provided them
24 with copies. The court can inquire as to, as to whether
25 they've been satisfactorily reviewed by themselves.

1 THE COURT: All right, gentlemen, Mr. Geier, what say
2 you? Is this -- whose statement is this that we're talking
3 about specifically?

4 MR. ROBINSON: These are the three statements by
5 Simuel.

6 THE COURT: Mr. Simuel?

7 MR. ROBINSON: Lucius Simuel.

8 THE COURT: All right, Mr. Geier, Mr. Geier, your
9 argument would be more likely void in this case, I suppose,
10 if there's a violation.

11 MR. GEIER: Thank you, Your Honor. There was only, I
12 believe, one statement that we included in the redacted
13 statement that I wanted to take issue with and, and bring
14 before Your Honor, and I guess...

15 THE COURT: Okay, so this was not worked out
16 yesterday?

17 MR. GEIER: Right. There was just one.

18 THE COURT: Can y'all present those to me so that I'll
19 know what I'm looking at? I don't have anything in front
20 of me.

21 MR. ROBINSON: I have a copy, Your Honor.

22 THE COURT: Thank you.

23 MR. ROBINSON: If I could approach?

24 THE COURT: Yes, sir.

25 (A PAUSE.)

1 THE COURT: All right, Mr. Geier, I'm looking at it.

2 MR. GEIER: Your Honor, it's the second paragraph.
3 It's only a single sentence from the bottom on the first
4 page.

5 THE COURT: Okay.

6 MR. GEIER: It's, it reads: Simuel stated that as he
7 was running, he heard another three gunshots.

8 I believe that that statement is exculpatory in
9 nature. We only have two defendants on trial here. And so
10 I think the implication is, is that my client was the
11 trigger man. Incidentally, I have a bit of a problem with
12 the sentence just prior, but.

13 THE COURT: I'm sorry, is it first page or second
14 page?

15 MR. GEIER: First, first page, Your Honor, second
16 paragraph from the top. Again, it's just a single line.
17 It's from the bottom, I'm sorry.

18 THE COURT: Third paragraph from the bottom. Oh,
19 yeah. Simuel stated when he was running, he heard another
20 three gunshots. Right.

21 Okay, what says the state to that?

22 MR. ROBINSON: Your Honor, if I could just draw your
23 attention to the previous paragraph? I'm going to read
24 these out so the ---

25 THE COURT: Okay.

1 MR. ROBINSON: And preface my argument:

2 Deon then went inside to get his brother.

3 Deon's brother then came out. A few minutes
4 later, Deon came out with a gun and stated
5 where's it at. Then the Mexican pulled out
6 a gun. Then he heard ---

7 He, meaning Lucius.

8 Then he heard a gunshot and saw Deon go
9 down, and then Simuel took off running.
10 Simuel stated that as he was running, he
11 heard another three gunshots.

12 THE COURT: Okay. All right.

13 MR. ROBINSON: State's position is that this has been
14 carefully redacted. There is no mention whatsoever of Mr.
15 Geier's client.

16 THE COURT: Right.

17 MR. ROBINSON: And, most importantly, the previous
18 paragraph makes clear that in his statement, Lucius Simuel
19 saw two people pull out guns. And then in a statement that
20 is -- to which the objection is being made, as he runs
21 away, he hears three more gunshots.

22 THE COURT: right.

23 MR. ROBINSON: So, that, that permits the inference
24 that the gunshots came from the two people whom he saw with
25 guns.

1 THE COURT: Yes, neither of whom was ---

2 MR. ROBINSON: Does not suggest that it was Demetrius
3 Price.

4 THE COURT: I understand.

5 MR. ROBINSON: Therefore, the state believes that this
6 satisfies *Bruton*.

7 THE COURT: Mr. Geier, I agree with that. The
8 redaction, of course as we all know, is designed to keep a
9 finger being pointed indirectly at the non-testifying
10 defendant or the defendant who was not giving the
11 statement, as the case might be.

12 The jury, as a matter of fact from this, taking the
13 statement on its face, would be dealing only with the
14 conclusion that Mr. -- that Deon or the Mexican must have
15 done the shooting because there's no reference in here to
16 anyone else. Certainly none to your client at all, and
17 certainly no reference to the fact that he had, that he had
18 a gun.

19 And the law is pretty clear. As long as the statement
20 itself is redacted and is clear, and is clear, then the
21 standards have been met. If there is some other evidence
22 that would tend to tie your client to events in the
23 statement, then that's not necessarily a *Bruton* violation.

24 And I think it's a clean statement as it is, and I
25 don't think the jury is led to the ineluctable conclusion

1 -- to use one of Judge Anderson's words, whatever it means
2 -- the ineluctable conclusion that it must have been your
3 guy.

4 MR. GEIER: Thank you.

5 THE COURT: I'll note your objection, and we'll go
6 forward subject to that.

7 MR. DEYSACH: Thank you, Your Honor. I recognize I'm
8 not *Bruton* in this situation, don't have standing to assert
9 the same rights that Mr. Price would in this situation.

10 THE COURT: Well, please don't let that stop you.

11 MR. DEYSACH: Okay, but it is. I mean, but the
12 problem I have is that some of these statements have been,
13 in the redaction process, have been not just -- things
14 haven't just been deleted, but they've been subtly changed.

15 And I have two, two statements, and that's all I'm
16 really pointing at, and they are in the third paragraph
17 from the top, and they are the final two sentences in that
18 paragraph:

19 Simuel then went to Savannah. Simuel then
20 went to Deon's house.

21 Okay, the, the sentences that they've been redacted
22 from are:

23 Simuel then called -- Simuel and his homeboy
24 met at the Piggly Wiggly in Savannah where
25 he found out that his homeboy had to go get

1 the pills.

2 That is, that is the sentence that corresponds with:
3 Simuel then went to Savannah. And so we've really changed
4 that, the meaning of that sentence, the verb from "met" to
5 "went," and they've erased out the, the, you know, Piggly
6 Wiggly. I mean, it's too much of a change.

7 THE COURT: Well, they had to take out "met" because
8 who was going to be meeting him?

9 MR. DEYSACH: Right.

10 THE COURT: Not your client -- I mean, if not the
11 other client. So, they had to take that word out; they had
12 to substitute that verb with something.

13 MR. DEYSACH: And then they put in a word that wasn't
14 stated, which was "went."

15 THE COURT: Right. Had to do it. I mean, they
16 couldn't leave "met" in, right?

17 MR. DEYSACH: Well, we can leave the whole sentence
18 out I guess would be what I'm going to be asking to do.

19 THE COURT: Right.

20 MR. DEYSACH: Because I think he -- what I guess I'm
21 relying on is the rule of completeness. And I known that
22 the whole statement is subject to other rules that keep it
23 from coming in.

24 THE COURT: Right.

25 MR. DEYSACH: But I think as to a single, single

1 sentence.

2 THE COURT: Right.

3 MR. DEYSACH: That if they're going to change the
4 sentence, that it, that it violates, you know, the rule of
5 completeness for me not to be able to point out that, hey,
6 wait. They're trying to make it seem -- you know, there's
7 kind of a dispute in our heads anyway that is he already in
8 Savannah, or does he go to Savannah. And it just -- I
9 don't think it reflects the reality of what was really
10 said. And so, therefore, would also be somewhat misleading
11 as to that sentence. I think it's too much of a, of a
12 change in what was actually said to put it in front of the
13 jury and say that's what was said.

14 THE COURT: Right. Well, and of course the nature of
15 redaction is just that. It's not what he said, and it has
16 to be done that way. Therefore, what we're trying to do by
17 the redaction is, first of all, keep from pointing a finger
18 at Mr. Price. But at the same time giving -- not giving an
19 inaccurate picture of what actually happened. And so they
20 left out the Piggly Wiggly because that's where he went to
21 meet. And I suppose they could have said he went to the
22 Piggly Wiggly, and then he went to Deon's house.

23 But while those are significant semantic changes, they
24 are there for the purpose of complying with *Bruton*, and I
25 don't think that they give an inaccurate representation of

1 what your client did. He went to Savannah, and from
2 Savannah he went to -- or he went to Deon's house. I think
3 the jury's entitled to know that, and I don't think it
4 misstates anything. Does it misstate anything, Mr.
5 Deysach? That's what I'm trying to see.

6 MR. DEYSACH: Well, you know, the -- our position is
7 he's already in Savannah. He didn't go to Savannah. The,
8 the way this statement is recorded, it makes it sound like
9 he's living at his sister's house at the time. Really,
10 that was something that he -- that's how, that's how he was
11 describing how he met Deon. But really on the day in
12 question, what he tells me meant to say was that he, he
13 lived in Savannah, not he, he went from Bluffton to
14 Savannah.

15 Now, I mean, it's -- you know, we're getting a little
16 off the mark of, you know, what are the main issues are
17 here. But that's, that's why I bring it up.

18 THE COURT: Right.

19 MR. DEYSACH: Because I do feel it's misleading in
20 that way.

21 THE COURT: All right, Mr. Robinson, what say you?
22 You've seen the whole statement, and Mr. Deysach has read
23 parts of it to me. How does it...

24 MR. ROBINSON: Thank you, Your Honor. Well, with all
25 due respect for defense counsel's argument about what his

1 client meant, I think the nature of a retraction is about
2 being true to the letter of the statement.

3 THE COURT: Or to the spirit of it in any event
4 because you can't ---

5 MR. ROBINSON: Yeah, and, and, and without violating
6 the spirit of it. And the nature of the statement is that
7 he said prior to the redaction, it said he was living with
8 his sister in Bluffton. And then he said:

9 Simuel stated that Deon's brother asked him
10 about getting some pills in Savannah. Then
11 Simuel then received a phone call the
12 morning of the shooting from his nephew
13 advising him that he was looking for some
14 pills. And then he told them, and so then I
15 went to meet Demetrius Price at the Piggly
16 Wiggly in Savannah..

17 Clearly the letter and the spirit of that statement is
18 that I went to the -- he said: I went to the Piggly Wiggly
19 in Savannah. Clear import on those language -- of that
20 language is that he was not already in Savannah.

21 THE COURT: Well, not necessarily. He could have been
22 in Savannah and just said he was going to the Piggly Wiggly
23 in Savannah, right?

24 MR. ROBINSON: I think that's possible.

25 THE COURT: Like I'd say I'm in Beaufort, but I think

1 I'm going to Super Wal-Mart out there on -- in Beaufort.

2 MR. ROBINSON: But if he was already in Savannah, why
3 would he have said I'm going to go to the Piggly Wiggly in
4 Savannah rather than saying, so, I was living with my
5 sister in Bluffton, and then I went to the Piggly Wiggly?

6 THE COURT: I don't know. I don't know why he would
7 have said it, but why don't we just put he went to the
8 Piggly Wiggly in Savannah?

9 MR. ROBINSON: That'd be fine.

10 MR. DEYSACH: Okay, and then we add the Piggly
11 Wiggly, and I -- the only items that -- I was kind of
12 popping up and down over here, Your Honor. I hope I'm not
13 annoying you.

14 THE COURT: Oh, no.

15 MR. DEYSACH: But I just want to point out this
16 operative verb in the sentence that I -- that is original
17 isn't "went" or I'm, I'm going. It was "met," not "went."
18 But I think if we say went to the Piggly Wiggly in
19 Savannah, I think that solves the problem.

20 THE COURT: Okay.

21 MR. DEYSACH: To be honest with you.

22 The next sentence, Simuel then went to Deon's house,
23 is actually Simuel's: Simuel stated that they went to
24 Deon's house. And so it leads the jury to believe that
25 Simuel goes by himself, and that's not what he said. And

1 so I'm going to be sitting here in a position of trying to
2 argue that Simuel didn't go by himself at the time, but
3 that he's with somebody else.

4 And it's like tantamount to deletion of a name in some
5 of those *Bruton* cases, and I know I'm not *Bruton*.

6 THE COURT: Right.

7 MR. DEYSACH: But I'm just pointing out that I think
8 the, under the rule of completeness, that it's fair for me,
9 if that sentence comes in, to say that Simuel was with
10 somebody else when he went.

11 THE COURT: Well, you're going to have to have some
12 evidence to support that outside of his statement.

13 MR. DEYSACH: That, evidence that he's not by
14 himself?

15 THE COURT: That's right.

16 MR. DEYSACH: I, I think it's already been testified
17 that it's Demetrius's car.

18 THE COURT: Right.

19 MR. DEYSACH: And that two people show up.

20 THE COURT: Okay.

21 MR. DEYSACH: So, I think that's there.

22 THE COURT: Right. All right, but the concern that
23 you have that the statement says that he was by himself, or
24 it would lead one to believe that, doesn't necessarily
25 state that is the quintessential *Bruton* dilemma. The state

1 could not put Simuel and somebody else went to Deon's
2 house, or Simuel and his homeboy, or Simuel and another
3 guy. That is the, that is the, the, as I say, the
4 quintessential violation of *Bruton*. Have to leave that
5 out, and so they've done all they can do with that.

6 And if there's some other evidence in the record from
7 which you could argue to a jury he was not by himself,
8 that's fine. It would have to come outside of the
9 statement, though, obviously. It's a statement that we're
10 trying to clean up right now. Okay, and that has to stay
11 like it is insofar as the statement is concerned.

12 The sentence below that will read:

13 Simuel then went to the Piggly Wiggly in
14 Savannah. Simuel then went to Deon's house.

15 Okay?

16 MR. DEYSACH: Thank you, Judge.

17 THE COURT: All right, anything else?

18 MR. ROBINSON: If I could have a brief moment? I
19 think I've had some witnesses trying to contact me, Judge.
20 I'm just going to take one moment and see.

21 THE COURT: Okay. I'm going to let -- who wants to
22 apologize to the jury today now when they come in? I
23 apologized to them yesterday. I'm not going to do it
24 again.

25 MR. ROBINSON: I'll apologize.

1 THE COURT: Okay.

2 MR. ROBINSON: It's my witness that's being late.

3 THE COURT: All right, good enough. Thank you. Go
4 ahead and check your witnesses.

5 (OFF THE RECORD.)

6 (THE JURY ENTERS AT 10:14 A.M.)

7 THE COURT: Good morning, ladies and gentlemen. Thank
8 you very much for your prompt return this morning. I told
9 you all yesterday that I would make it a point not to have
10 to apologize to you again for bringing you into the
11 courtroom late, and I'm going to abide by that. Mr.
12 Robinson has a statement that he would like to make to the
13 jury at this time.

14 Mr. Robinson.

15 MR. ROBINSON: Ladies and gentlemen, it's my fault
16 that you have been kept waiting this morning. I instructed
17 my witnesses to be here at 9:30 this morning. They didn't
18 do that, and that is entirely my fault that you've been
19 kept waiting. I apologize.

20 THE COURT: In any event, ladies and gentlemen, we are
21 now ready to resume the trial of the case. We'll pick up
22 where we left off yesterday. The state is continuing to
23 offer evidence and testimony in this case.

24 Mr. Robinson.

25 MR. ROBINSON: Thank you, your Honor. May it please

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

426

1 the court?

2 THE COURT: Yes, sir.

3 MR. ROBINSON: The state calls Investigator Todd
4 Calhoun.

5 THE COURT: Investigator Calhoun, come forward,
6 please, and be sworn.

7 TODD CALHOUN, BEING FIRST DULY SWORN,
8 TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: State your full name and spell your
10 last name.

11 WITNESS: Todd Calhoun, C-A-L-H-O-U-N.

12 DIRECT EXAMINATION BY MR. ROBINSON:

13 Q. Investigator, how long have you been with the
14 sheriff's office?

15 A. Coming up on six years.

16 Q. Did you investigate a shooting and a burglary that
17 happened on July 28th of last year at [REDACTED]
18 Apartments in Bluffton?

19 A. Yes, sir.

20 Q. What was the first thing that you did when you got the
21 call that that occurred?

22 A. I initially responded to the scene to assist in the
23 investigation.

24 Q. What happened next?

25 A. I was given instructions by one of my supervisors,

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

427

1 Master Sergeant Riley, to prepare a search warrant for the
2 residence and meet with the judge in order to obtain that.

3 Q. Had you been to the residence before you went to do
4 that?

5 A. Yes, sir.

6 Q. Was it safe to go inside?

7 A. It was at the time.

8 Q. If it was safe to go inside the residence, why did you
9 need a search warrant?

10 A. Just to preserve the integrity of the scene and to
11 make sure that the -- there was reasoning for being there.

12 Q. What did you do after you got the search warrant?

13 A. I returned to the scene and provided that information
14 to my supervisor and assisted in the search of the
15 residence.

16 Q. How long did it take to get the search warrant?

17 A. I would say probably about an hour, hour and a half.

18 Q. And you had to type up documents in order to do that?

19 A. That's correct.

20 Q. And you have to swear on an affidavit before a judge
21 to do that. Is that correct?

22 A. That is correct.

23 Q. And did you participate in the search of the crime
24 scene?

25 A. Yes, sir.

1 Q. And how long did that take?

2 A. It took several hours.

3 Q. And what did you do after you searched the scene?

4 A. Once we had completed a search of the scene and the
5 residence was secured, myself and my partner, Investigator
6 Holmes, responded to Savannah Memorial Hospital.

7 Q. Why did you go to Savannah Memorial Hospital?

8 A. To interview probable -- possible witnesses and
9 possible victims in the crime.

10 Q. Who did you make contact with at the hospital?

11 A. Several people, more particularly Sharita Willingham,
12 Malik Campbell, Marcus Campbell.

13 Q. And were you able to interview them about the events
14 that happened that day?

15 A. Yes, sir.

16 Q. And what happened after you interviewed them?

17 A. Upon completion of the meeting with them, we had
18 briefly spoke with the family to encourage them, let them
19 know that we would be investigating this issue and do our
20 best.

21 Q. After you spoke with them at Savannah Memorial
22 Hospital, what's the next thing that happened?

23 A. We continued to investigate the incidents and events
24 that were divulged to us.

25 Q. Who, if anyone, did you talk to?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

429

1 A. I would have to refer to my report, sir.

2 MR. ROBINSON: May I approach the witness, Your Honor?

3 THE COURT: Yes, sir.

4 A. Thank you. We had also met with an individual by the
5 name of Martin Guzman. We interviewed an individual by the
6 name of Jesse Reese, and we were also able to interview ---

7 Q. Let me stop you there. Based on your investigation,
8 what did Martin Guzman and Jesse Reese have to do with this
9 incident?

10 A. Martin Guzman and Jesse Reese were together present at
11 the incident location just prior to the incident taking
12 place.

13 Q. Based on your investigation, did they see the
14 shooting?

15 A. Did not see the actual shooting.

16 Q. Who did you speak with after you spoke to them?

17 A. We had spoken to one of the victims, Mr. Deverol
18 Cannick.

19 Q. Was that after you left the hospital?

20 A. Yes. We had -- the night of the incident, we went to
21 the hospital. The next day, we were able to meet with Mr.
22 Guzman and Mr. Reese.

23 Q. And did they agree to speak to you?

24 A. They did, and then the following day we had returned
25 to the hospital in order to meet with Deverol Cannick.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

430

1 Q. And did Deverol Cannick agree to speak with you?

2 A. Yes, sir.

3 Q. When did you, when did you develop suspects in the
4 case?

5 A. We had been given, based on evidence that we recovered
6 from the incident location, video surveillance that was
7 captured at -- just prior to the incident and just after
8 the incident. We were able to obtain a Georgia vehicle
9 registration tag, a license plate if you will. We gathered
10 that information of the registered owner, and in talking
11 to ---

12 Q. Let me stop you right there. You talked about
13 surveillance. What do you mean by that? Was that police
14 surveillance?

15 A. No. [REDACTED] Apartments is a gated facility,
16 and they have video surveillance at their gate of vehicles
17 entering and vehicles exiting. They actually have a
18 surveillance system that photographs the vehicle license
19 plate upon exiting.

20 Q. Are the vehicles that come into the apartment complex,
21 are they photographed as well?

22 A. They are videoed as they come in, yes.

23 Q. And that's set up by the property? That's not set up
24 by law enforcement?

25 A. The property or the security company. Law enforcement

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

431

1 has nothing to do with that.

2 MR. ROBINSON: Beg the court's indulgence?

3 THE COURT: Yes, sir.

4 MR. ROBINSON: May I approach the witness?

5 THE COURT: Yes, sir.

6 (SURVEILLANCE PHOTOGRAPH MARKED AS STATE'S EXHIBIT
7 NUMBER 15 FOR IDENTIFICATION.)

8 (SURVEILLANCE PHOTOGRAPH MARKED AS STATE'S EXHIBIT
9 NUMBER 16 FOR IDENTIFICATION.)

10 (SURVEILLANCE PHOTOGRAPH MARKED AS STATE'S EXHIBIT
11 NUMBER 17 FOR IDENTIFICATION.)

12 BY MR. ROBINSON:

13 Q. I'm going to show you what's been marked as State's
14 Exhibits 15, 16, and 17. What are those?

15 A. These are still images of the video surveillance of
16 the gate. Number 15 is a still photograph of an Oldsmobile
17 sedan-type vehicle with what appears to be no rims.

18 Q. Are those fair and accurate representations of the
19 still frames of the video maintained by [REDACTED]
20 Apartments?

21 A. Yes, sir, they are.

22 Q. And were those obtained by the sheriff's office on the
23 day of the shooting?

24 A. They were viewed on the day of the shooting, and they
25 were actually obtained, I believe, the day after the

1 shooting.

2 Q. And how did you obtain them?

3 A. We met with the security company for the [REDACTED]
4 [REDACTED] Apartments, and they downloaded these onto...

5 Q. Are they time stamped?

6 A. I believe they are.

7 MR. ROBINSON: Your Honor, I'd move that State's
8 Exhibits 15, 16, and 17 be entered into evidence.

9 THE COURT: Mr. Deier, any objection?

10 MR. DEIER: No, sir.

11 THE COURT: Mr. Deysach?

12 MR. DEYSACH: No, Your Honor.

13 THE COURT: Thank you. 15, 16, and 17 in evidence
14 without objection.

15 (SURVEILLANCE PHOTOGRAPH MARKED INTO EVIDENCE AS
16 STATE'S EXHIBIT NUMBER 15.)

17 (SURVEILLANCE PHOTOGRAPH MARKED INTO EVIDENCE AS
18 STATE'S EXHIBIT NUMBER 16.)

19 (SURVEILLANCE PHOTOGRAPH MARKED INTO EVIDENCE AS
20 STATE'S EXHIBIT NUMBER 17.)

21 BY MR. ROBINSON:

22 Q. In addition to these camera photographs, did any of
23 the witnesses describe -- did Martin and Jesse Reese
24 describe the car that they saw before or after the
25 shooting?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

433

1 A. Yes, they did.

2 Q. What color was it?

3 MR. DEIER: I would -- I think that's hearsay. I
4 think he's asking what color did Martin and Jesse describe.

5 THE COURT: Is it? Is that what you're asking?

6 MR. ROBINSON: I'll withdraw the question.

7 THE COURT: Thank you.

8 MR. ROBINSON: Your Honor, may I publish these
9 photographs to the jury?

10 THE COURT: Yes, you can.

11 BY MR. ROBINSON:

12 Q. Before I do that, let me ask you one question,
13 Investigator. What is the time stamp on the photographs of
14 the car when it is arriving?

15 A. As it's entering through the gate, it is July 28,
16 2008, at 1:27:01 p.m.

17 Q. And what is the time stamp on the still frame when the
18 car is departing?

19 A. It is July 28, 2008, at 1:35:21 p.m.

20 Q. And is there a photograph of the license plate of that
21 car?

22 A. There is.

23 Q. Do you have a way of determining who that license
24 plate belongs to?

25 A. Yes. We ran that, the license plate through DMV

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

434

1 records and obtained the registered owner's information.

2 Q. Who was the registered owner of that vehicle?

3 A. Demetrius Price.

4 MR. ROBINSON: May I publish to the jury at this time?

5 THE COURT: Yes, sir.

6 BY MR. ROBINSON:

7 Q. In discussion of your investigation, when did you
8 develop suspects in this case?

9 A. We had developed final identity of the suspects on the
10 29th, we do believe to be the suspects.

11 Q. What did you do on the 29th?

12 A. On the 29th we were able to meet with Marcus Campbell,
13 Sharita Willingham, and Malik Campbell.

14 Q. When did you begin looking at the suspects?

15 A. We began looking, actually looking for the suspects
16 after we received identification from witnesses.

17 Q. And did you get identification from the witnesses?

18 A. On the 29th.

19 Q. And did you show lineups?

20 A. Yes, we did.

21 Q. To lots of other witnesses?

22 A. Yes, sir.

23 Q. And what witnesses did you show lineups?

24 A. We showed lineups to Sharita Willingham, Malik
25 Campbell and Marcus Campbell.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

435

1 Q. But Marcus Campbell was not present for the shooting,
2 was he?

3 A. No, he wasn't. We showed him a photo lineup for
4 identity purposes.

5 Q. When did you show a lineup -- you did show a lineup to
6 Deverol Cannick?

7 A. We did. We did show him lineups the following day.

8 Q. And that would be July 30th?

9 A. That would be July 30th in the evening.

10 Q. Did you make contact with the suspects?

11 A. We did.

12 Q. How did you make contact with Lucius Simuel?

13 A. Myself and Investigator Holmes responded to Savannah
14 Metropolitan Police Department to meet with their Violent
15 Crimes Unit, who offered their assistance in locating the
16 suspects. And in their research, they had realized that
17 one of the suspects, Demetrius Price ---

18 MR. DEIER: Your Honor ---

19 THE COURT: I'll sustain that objection.

20 Q. (After your conversation ---

21 MR. ROBINSON: Could we have a bench conference real
22 quick, Your Honor?

23 THE COURT: Sure. I've already sustained the
24 objection. Do you want me to reverse that ruling?

25 MR. ROBINSON: No, Your Honor. As to what the remedy.

1 THE COURT: Okay.

2 (OFF-THE-RECORD BENCH CONFERENCE.)

3 THE COURT: The sidebar conference we'll memorialize
4 out of the presence of the jury later. Thank you.

5 BY MR. ROBINSON:

6 Q. Investigator, were you able to determine a place of
7 employment for Lucius Simuel?

8 A. We were. We received information from a neighboring
9 law enforcement agency to Savannah that they had previous
10 knowledge that Mr. Simuel had worked at a furniture company
11 in the area.

12 Q. Did you contact that furniture company?

13 A. We did. I made a telephone call to them to see if Mr.
14 Simuel was currently there or currently under the
15 employment of that.

16 Q. Did you locate Lucius Simuel after you made that phone
17 call?

18 A. We did not touch base eye to eye in person. Shortly
19 after making that phone call and meeting up with fellow law
20 enforcement officers to determine our next course of
21 action, I received a telephone call from Mr. Simuel.

22 Q. And what did you say to Mr. Simuel when he called you?

23 A. I had advised him we were conducting an investigation
24 in reference to an incident that had taken place on July
25 28th, and that I needed to meet with him as we had warrants

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

437

1 for his arrest.

2 Q. Did you tell him what the incident was about?

3 A. I did.

4 Q. And was he interested in meeting with you?

5 A. He seemed to be interested to meet with us. However,
6 he had made reference to the fact that he needed to speak
7 to family and get some advice.

8 Q. Did you talk to him again?

9 A. We did. We exchanged telephone calls throughout that
10 evening as he had made reference to desiring to turn
11 himself in to the Bluffton Police Department, which is in
12 the county of Beaufort.

13 Q. Did he turn himself in?

14 A. He did not, sir.

15 Q. When did you talk to him again?

16 A. The following morning. He had -- we had another
17 exchange of phone calls, and we had again asked him to meet
18 with us, and he eventually had turned himself in to
19 Savannah Police Department.

20 Q. Did you meet with him at that time?

21 A. At that point in time, he was taken by Savannah Police
22 Department to Chatham County Detention Center, and they
23 were aware that we had warrants for him.

24 Q. Did you ever meet with him in person?

25 A. We did. Myself and Investigator Holmes met with him

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

438

1 at the Chatham County Detention Center and met with him in
2 a visitation room there.

3 Q. And what was the date when you actually met with him?

4 A. August 1st.

5 Q. And so that would be two days after you first got a
6 telephone call from him. Is that correct?

7 A. It was a day or two later, yes.

8 Q. What was he wearing when you met with him?

9 A. I believe he was still in his civilian attire. He had
10 just been brought into the intake and had not been placed
11 in a cell yet.

12 Q. Do you know if he was handcuffed?

13 A. He was not.

14 Q. Did you advise him of his Miranda rights?

15 A. Yes, sir, we did.

16 Q. And how did you go about doing that?

17 A. We have a standardized Beaufort County Sheriff's
18 Office statement of Miranda rights form that we read to
19 suspects.

20 MR. ROBINSON: May I approach the witness, Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. ROBINSON:

23 Q. Do you recognize that?

24 A. Yes, sir. This is a copy of the form that we used on
25 that day.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

439

1 Q. Are the Miranda rights all listed there?

2 A. They are.

3 Q. Did you read that to him?

4 A. Investigator Holmes read that to him, and I signed as
5 witness.

6 Q. Did he initial each right?

7 A. He did.

8 Q. Did he sign it?

9 A. He did.

10 Q. And is there a place on the form where the person who
11 looks at that form can say what their level of education
12 they've obtained is?

13 A. Yes, it does. It states on there below his first
14 signature that his level of education I have completed, and
15 he has written in there GED grade in school.

16 Q. Do you recall what time of day or night it was that
17 you talked to him?

18 A. I believe it was early afternoon that day.

19 Q. And at the bottom of the form, did he sign it?

20 A. He did.

21 Q. And did he indicate he was willing to speak to you
22 without the presence of a lawyer?

23 A. He did.

24 Q. Did you ask him any questions at all before he had
25 read and signed that form?

1 A. No, sir.

2 Q. Did you make any promises to him for any sort of
3 leniency or any sort of -- or anything like that before you
4 asked any questions?

5 A. No, sir.

6 Q. Did you or Investigator Holmes threaten him in any way
7 before you asked him any questions?

8 A. No, sir.

9 Q. When you read that form to him, did he appear to
10 understand it?

11 A. Yes, sir.

12 Q. Did he appear to be alert and comprehending what you
13 were saying?

14 A. Yes, sir.

15 Q. And is the form dated?

16 A. It is dated August 1, 2008.

17 Q. And you watched him fill it out?

18 A. That is correct.

19 Q. And did he agree to speak with you?

20 A. He did.

21 Q. Did you read the warrants to him at that time?

22 A. We did read the warrants to him, correct.

23 MR. ROBINSON: Your Honor, at this time may I approach
24 the witness?

25 THE COURT: Yes, sir.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

441

1 BY MR. ROBINSON:

2 Q. I now hand you what's going to be marked as State's
3 Exhibit Number ---

4 COURT REPORTER: 18 for ID.

5 (REDACTED STATEMENT MARKED AS STATE'S EXHIBIT NUMBER
6 18 FOR IDENTIFICATION.)

7 Q. Strictly for identification.

8 MR. ROBINSON: Your Honor, at this time, pursuant to
9 stipulations, I'm going to question this witness about
10 statements made by defendant Lucius Simuel.

11 THE COURT: All right. You referring to State's 19
12 for identification?

13 MR. ROBINSON: I am.

14 COURT REPORTER: 18.

15 THE COURT: 18.

16 MR. DEYSACH: I renew our prior objection.

17 THE COURT: This will go in subject to prior
18 objections. Thank you.

19 BY MR. ROBINSON:

20 Q. Investigator Calhoun, before we describe this
21 statement, there were two subsequent statements. Is that
22 right?

23 A. Correct.

24 Q. Made by this defendant to you, correct?

25 A. That is correct.

1 Q. Will you just tell us what Lucius Simuel told you
2 using what I've given to you, the first statement?

3 A. This occurred on August 1st, 2008, and Mr. Simuel
4 stated that he had went to Deon and Deverol's house and
5 that he wasn't expecting for anybody to get shot. During
6 the whole thing, Simuel was just being greedy and wanted
7 money. Simuel stated that he was the one that had set this
8 whole thing up and got himself into that, and that he would
9 have to deal with the consequences.

10 Simuel stated that he was living with his sister in
11 Bluffton because he was trying to get his life straightened
12 out. Simuel stated that his niece, Tiah, Tiah Frazier,
13 was talking with a boy named Deon, who we were also able
14 to identify to be the victim, Deon Cannick. Simuel
15 had ---

16 THE COURT: Are you sticking to the statement that I'm
17 reading?

18 WITNESS: I was paraphrasing, sir.

19 THE COURT: All right. If you'll just stick with the
20 statement.

21 WITNESS: Yes, sir.

22 THE COURT: Thank you.

23 BY MR. ROBINSON:

24 A. Simuel had been to Deon's house at one point
25 smoking a joint with Deon and having a

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

443

1 conversation with his brother. Simuel said
2 that Deon's brother asked him about getting
3 some pills in Savannah. Simuel then
4 received a phone call the morning of the
5 shooting from his nephew advising him that
6 he was looking for some pills. Simuel then
7 went to the Piggly Wiggly in Savannah, and
8 then Simuel went to Deon's house. Simuel
9 stated that when he walked out, he saw a
10 white kid and a Mexican standing outside of
11 Deon's house and thought that this was
12 strange as no one ever is just hanging out
13 in front of their house. Simuel stated that
14 Deon was outside with them and that Deon was
15 acting strangely. Deon then went inside to
16 get his brother. Deon's brother then came
17 out, and a few minutes later Deon came out
18 with a gun stating where is it at. Then the
19 Mexican pulled out a gun. Then he heard a
20 gunshot and saw Deon go down, and then
21 Simuel took off running. Simuel stated that
22 as he was running, he heard another three
23 gunshots. Simuel stated that he then went
24 back to Savannah. Simuel stated that he was
25 afraid because of the large amount of pills

1 in the car. Simuel stated that -- Simuel
2 stated that's when he returned to Savannah
3 that -- called his niece, Tiah, and told her
4 that her boyfriend tried to set him up. I
5 asked Simuel what kind of car he arrived in.
6 Simuel replied by stating that he came in a
7 gold-colored car that had no hubcaps.
8 Simuel stated that he went directly from
9 Savannah to Bluffton and then returned and
10 never made any stops anywhere. Simuel was
11 not sure what time he returned but said that
12 it was about an hour from the time of the
13 shooting. I advised Simuel that we were
14 advised that he had a gun during the
15 incident, to which he responded by stating
16 that we could fingerprint the gun and that
17 he did not shoot anyone.

18 That was the conversation that was had August 1st.

19 Q. And about how long did the conversation last?

20 A. An hour, hour and fifteen minutes.

21 Q. After your conversation with Lucius Simuel, did you
22 meet with him again?

23 A. We did. Once we received word from Chatham County
24 Detention Center that Mr. Simuel had waived his extradition
25 rights, I responded to Chatham County Detention Center to

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

445

1 pick him up and transport him to the Beaufort County
2 Detention Center.

3 Q. What day did that happen?

4 A. That happened on August 6, 2008.

5 Q. Were you in a marked car?

6 A. Yes, sir.

7 Q. What was Lucius Simuel wearing at that time?

8 A. I believe they had him in civilian attire again as he
9 was being transported to a county facility here.

10 Q. Did he -- was he cuffed?

11 A. He was.

12 Q. Is that standard procedure for transporting an
13 individual?

14 A. It is, sir.

15 Q. And were you in a marked car?

16 A. Yes, sir.

17 Q. Did Simuel speak to you in transit from Savannah to
18 Bluffton on that day?

19 A. Yes, he did.

20 Q. Did you advise him of his Miranda rights at that time?

21 A. I had advised him of his Miranda rights and -- just to
22 make sure he still understood what his rights were.

23 Q. And that was because he was in custody. Is that
24 correct?

25 A. That is correct.

1 Q. When you went to pick up Lucius Simuel, did you have
2 any intention of questioning him or interrogating him
3 during the transit?

4 A. No, sir.

5 Q. Who initiated the conversation?

6 A. After I had warned him of his -- or reminded him of
7 his Miranda warnings, there was a good period of silence
8 after that. And Mr. Simuel started to ask me about my
9 belief in God.

10 Q. And what did you tell him?

11 A. I told him that I believed in God. Mr. Simuel had
12 raised the question whether or not I believed that God was
13 a forgiving God, and I told him I believed he was.

14 Q. Turning to the second page of that statement, I
15 believe it is, will you describe, using that document, what
16 Lucius Simuel told you from that time on?

17 A. While in transit, Simuel discussed the
18 incident with me after acknowledging that he
19 understood his rights. I asked Simuel if he
20 understood his rights, to which he replied
21 that he did. Simuel stated that he was
22 involved in the incident but that he did not
23 have a gun and that he did not shoot anyone.
24 Simuel stated that he was concerned that if
25 he told any more about the shooting, that it

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

447

1 would incriminate himself. Simuel stated
2 that in his first interview, he told us
3 eighty percent of the truth and that after
4 leading us so far, we would have to do the
5 rest of the work.

6 Q. Did you ask him any other questions?

7 A. No, sir.

8 Q. Did you make any further contact with Lucius Simuel?

9 A. We did.

10 Q. When did that occur?

11 A. I received a phone call from Mr. Simuel's wife
12 advising me that Mr. Simuel had wanted to speak to us. I
13 also received a letter from Mr. Simuel requesting to see
14 me.

15 Q. When did you get a phone call from his wife?

16 A. I believe it was the morning of September 4th.

17 Q. And when did you get a letter from him?

18 A. That same day.

19 Q. Was it addressed to you?

20 A. It was, sir.

21 Q. And did you meet with him?

22 A. Yes, sir.

23 Q. Where did you meet with him?

24 A. At the Beaufort County Detention Center.

25 Q. Was anyone else there?

1 A. Investigator Holmes was with me.

2 Q. Do you recall what time of day or night it was that
3 you met with him?

4 A. I don't, other than it was during daylight hours.

5 Q. About how long did the interview last at that time?

6 A. I would say roughly an hour, hour and a half,
7 someplace in that ballpark.

8 Q. And when you met with him, did you inform him of his
9 Miranda rights?

10 A. We did.

11 Q. How did you do that?

12 A. We again used the standardized Beaufort County
13 Sheriff's Office Miranda warning form.

14 Q. The same type of -- the identical form you used before
15 that you signed?

16 A. The identical format of that form, correct.

17 Q. And did he sign and initial the second form that you
18 showed him?

19 A. He did.

20 Q. And at that time, did you ask him any questions before
21 he had been advised of his rights?

22 A. No, sir.

23 Q. Did you make any promises or threats to him at all?

24 A. No, sir.

25 Q. Did Investigator Holmes make any promises or threats?

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

449

1 A. No, sir.

2 MR. ROBINSON: May I approach the witness?

3 THE COURT: Yes, sir.

4 BY MR. ROBINSON:

5 Q. Do you recognize this?

6 A. Yes. This is the statement of Miranda rights that we
7 read to him on that day.

8 Q. And, in fact, at the bottom there's a place to write
9 down the time. What time was it?

10 A. It was 8:33.

11 Q. And would that be a.m. or p.m.?

12 A. A.m.

13 Q. And did he initial each right?

14 A. This copy of the form does not have his initials next
15 to the right. However, it does have initials by the waiver
16 of rights and two signatures of his.

17 Q. Did you read all of those rights to him?

18 A. Yes, sir.

19 Q. And?

20 A. Let me correct -- Sergeant Holmes read the rights to
21 him. I signed as witness.

22 Q. And based on his demeanor, did he appear to understand
23 those rights?

24 A. Yes, sir.

25 Q. And he did sign the bottom of the form?

1 A. That is correct.

2 Q. And what does it say just above the signature?

3 A. It says: Amount of education I have completed, a GED
4 grade in school.

5 Q. Above that, the sentence where he signs his name, what
6 is he agreeing to do in that sentence?

7 A. It says:

8 I am willing to make a statement and answer
9 questions. I do not want an attorney at
10 this time. I understand and know what I am
11 doing. No promises or threats have been
12 made to me, and no pressure or coercion of
13 any kind has been used against me.

14 And his initials were to the left of that statement.

15 Q. And all the rights above that, just briefly go through
16 each one of the rights just so the jury is clear. What are
17 each one of the rights that are explained on the form?

18 A. Number one, you have the right to remain
19 silent. Number two, anything you say can
20 and will be used against you in a court of
21 law. Number three, you have the right to
22 talk to an attorney for advice before we ask
23 any questions. Number four, if you cannot
24 afford an attorney, one will be appointed
25 for you before any questioning if you wish.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

451

1 Number five, if you decide to answer
2 questions now without an attorney, you will
3 still have the right to stop answering at
4 any time; you also have the right to stop
5 answering at any time until you can talk to
6 an attorney.

7 Q. And he was -- that was read to him and he signed. Is
8 that correct?

9 A. That is correct.

10 Q. And can you, using -- let me see the statement you
11 have. Please begin where I've marked. Can you read what
12 he said to you?

13 A. Signed September 4, 2008:

14 Myself and Investigator Holmes met with
15 Simuel at the detention center. Upon making
16 contact with Simuel in the interview room,
17 he said, so, you guys got my letter.

18 Referring to the letter that I had received that
19 morning.

20 I then read Mr. Simuel the statements of his
21 Miranda rights. He had -- he indicated that
22 he understood what his rights were and
23 wanted to speak to us without the presence
24 of an attorney. Simuel completed the form,
25 waiving the rights to have counsel present.

1 Simuel said that he wrote a letter to myself
2 requesting to meet with me and instructed
3 his wife to have me meet with him. Simuel
4 stated that he wanted to meet with us to
5 speak about the pending charges. Simuel had
6 denied breaking into anyone's residence. He
7 also denied having a weapon while at Deon's
8 residence. Simuel said he originally lied
9 about the incident. Simuel was then asked
10 how he became involved, and he said that he
11 had received a call from his niece, Tiah
12 Frazier, and nephew, Chris Battle, about
13 pills for her boyfriend, Deon.

14 MR. DEYSACH: Your Honor, I have an objection that I
15 should have raised before we brought the jury out, but I'd
16 like to approach, if I could.

17 THE COURT: All right.

18 (OFF-THE-RECORD BENCH CONFERENCE.)

19 THE COURT: Once again, ladies and gentlemen, I renew
20 my offer to tell you what we were bickering about after
21 this trial is over if you want to know. I'll probably
22 remember this time.

23 BY MR. ROBINSON:

24 Q. Investigator.

25 A. Yes.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

453

1 THE COURT: I'm sorry, for interrupting. You can pick
2 up where you left off.

3 BY MR. ROBINSON:

4 A. One question about this.

5 Q. Okay.

6 THE COURT: Do you want to ask me?

7 WITNESS: Yeah.

8 THE COURT: I can't answer that question.

9 Mr. Solicitor, can you point out for him, please, on
10 the second page?

11 (COUNSELOR AND WITNESS CONFER.)

12 THE COURT: Ladies and gentlemen, I told you earlier I
13 am the judge of the law, and I have to decide whether you
14 can hear something or not. There are parts of this report
15 which I have ruled as a matter of law cannot be put into
16 evidence, and you don't need to concern yourself about
17 that. I just made those rulings, so you're not concerned
18 about it. And, obviously, if you don't hear something, you
19 can't consider it.

20 So, we've had to make some changes in order to comply
21 with our rules. When I say changes, we had to make certain
22 deletions in the form to comply with our rules, and that's
23 all we're doing here. I wanted to make sure he wasn't
24 going to read something he's not supposed to read.

25 Go ahead.

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

454

1 BY MR. ROBINSON:

2 Q. Investigator, despite our pause, do you know where you
3 left off?

4 A. Yes, sir.

5 Q. Please resume.

6 A. Simuel had said that he had never had a gun,
7 nor did he shoot anyone. He also repeatedly
8 said that he was never inside Deon's
9 apartment on the day of the shooting.

10 Simuel had refused to write a statement.

11 Q. And he spoke to you voluntarily. Is that correct?

12 A. That is correct.

13 MR. ROBINSON: Beg the court's indulgence.

14 THE COURT: Yes, sir.

15 (A PAUSE.)

16 MR. ROBINSON: May we approach, Your Honor?

17 THE COURT: Yes, sir.

18 (OFF-THE-RECORD BENCH CONFERENCE.)

19 BY MR. ROBINSON:

20 Q. Investigator, I have just one final question. Do
21 Lucius Simuel and Demetrius Price, the suspects that you
22 charged in this case, do they have prior convictions for
23 crimes of violence?

24 THE COURT: Ladies and gentlemen, this question goes
25 forward subject to objection, and over objections of

T. CALHOUN - DIRECT EXAMINATION BY MR. ROBINSON

455

1 defense counsel for both defendants in this case. Thank
2 you.

3 You can answer the question.

4 BY MR. ROBINSON:

5 Q. Do Lucius Simuel and Demetrius Price have prior
6 criminal convictions for crimes of violence?

7 A. Yes, sir. They do.

8 THE COURT: Ladies and gentlemen, that question goes
9 to one of the indictments and one of the charges in this
10 particular case. Both defendants are charged in the
11 respective indictments of having in their possession a
12 handgun after having been convicted of a crime of violence.
13 The purpose of that question and that answer is for you to
14 consider it only if you believe it to be true in the first
15 place. And, secondly, only as to the element of that
16 particular charge. That is, whether or not they had in
17 their possession a handgun, and whether or not they had
18 been convicted previously of a crime of violence. You may
19 consider that statement or that evidence only for that
20 particular purpose.

21 You are not allowed to consider that as evidence of
22 the fact that they're guilty of any of the other charges in
23 this particular case. Thank you.

24 MR. ROBINSON: Your Honor, at this time the state
25 would move for admission of certified copies of the

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

456

1 aforementioned convictions.

2 THE COURT: Those will be marked -- we'll mark them
3 for state's identification, state's exhibit for
4 identification only to preserve the record. I thought I
5 might do them as court's exhibit, but state's exhibit for
6 ID. Thank you.

7 (INDICTMENT OF L. SIMUEL MARKED AS STATE'S EXHIBIT
8 NUMBER 19 FOR IDENTIFICATION.)

9 (INDICTMENT OF L. SIMUEL MARKED AS STATE'S EXHIBIT
10 NUMBER 20 FOR IDENTIFICATION.)

11 (INDICTMENT OF D. PRICE MARKED AS STATE'S EXHIBIT
12 NUMBER 21 FOR IDENTIFICATION.)

13 (INDICTMENT OF D. PRICE MARKED AS STATE'S EXHIBIT
14 NUMBER 22 FOR IDENTIFICATION.)

15 (INDICTMENT OF D. PRICE MARKED AS STATE'S EXHIBIT
16 NUMBER 23 FOR IDENTIFICATION.)

17 MR. ROBINSON: The state has no other questions,
18 Investigator. Please answer the lawyers' questions.

19 WITNESS: Yes, sir.

20 THE COURT: Mr. Deysach?

21 CROSS-EXAMINATION BY MR. DEYSACH:

22 Q. I'm going to set up right here, if it's okay, simply
23 because I have a few more papers. Good morning,
24 Investigator Calhoun.

25 A. Good Morning, Mr. Deysach.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

457

1 Q. You identified yourself as the lead investigator on
2 this incident. Is that correct?

3 A. The lead? Co.

4 Q. Co-lead possibly?

5 A. Yeah.

6 Q. So, you partnered up is what you're saying?

7 A. Yeah. It's my team's investigation.

8 Q. Your team is -- and you're on some sort of a rotation
9 system so when an incident occurs and you're the next
10 person up, then you get assigned to the next case?

11 A. So to speak.

12 Q. It's more complicated than all that?

13 A. It is.

14 Q. Okay. As a lead -- you don't just join the police
15 force and become an investigator, do you?

16 A. Not typically.

17 Q. You have to have experience as a law enforcement
18 officer before you can achieve that status?

19 A. Yes, sir.

20 Q. And you have that experience, correct?

21 A. I believe so.

22 Q. And how much experience do you have?

23 A. I been in law enforcement since 1996.

24 Q. Not all is here in Beaufort County, but other places?

25 A. That's correct.

1 Q. Okay. How many other places?

2 A. Two other places in upstate New York.

3 Q. And how long have you been with Beaufort County?

4 A. Coming up on six years.

5 Q. And how long have you been an investigator there?

6 A. Would be a year and four months.

7 Q. From today or from when this happened?

8 A. This happened a week after I started investigation
9 with Beaufort County.

10 Q. Okay. So, this is one of the first investigations
11 that you were assigned to?

12 A. This is my first large-scale investigation, correct.

13 Q. So, I can imagine -- correct me if I'm wrong, but you
14 approached this investigation with, I would think, some
15 excitement and some vigor. Is that correct?

16 A. I would tend to believe that I usually do most of my
17 work that way.

18 Q. You would have done that anyway, first investigation
19 or not, is what you're saying?

20 A. Certainly.

21 Q. But this was, this was definitely -- this assignment
22 wasn't the result of a promotion, correct?

23 A. It's not a promotion. Actually, for me it would have
24 been a lateral.

25 Q. Sounds like more responsibility but no more pay.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

459

1 A. It's different responsibility as I was previously
2 supervisor on the road, which carries a completely
3 different set of responsibilities.

4 Q. Okay, and it also requires a different set of skills,
5 correct, to be an investigator than to be a road
6 supervisor?

7 A. Yeah. There's some correlations.

8 Q. I mean, if somebody would be calling you a detective,
9 they would be right, wouldn't they?

10 A. Yes, sir.

11 Q. Okay, and I guess what I'm getting at, to be a
12 detective, you need to have some analytical skills,
13 correct?

14 A. One could perceive that, yes.

15 Q. And you wouldn't have had that job -- you wouldn't
16 have gotten that job unless you had those, correct?

17 A. I believe so.

18 Q. I mean, you're not going to hire yourself, I guess.

19 A. You're correct.

20 Q. So, what you have to do as the lead investigator is to
21 gather information, correct?

22 A. Yes.

23 Q. Gather evidence, correct?

24 A. Yes.

25 Q. And coordinate, anyway, that evidence, correct?

1 A. Yes.

2 Q. And you have to take all the information that you
3 learn through witness interviews and physical evidence and
4 come up with a conclusion, don't you?

5 A. That's correct.

6 Q. Because you're the one who actually goes to a
7 magistrate and swears out a warrant against a given
8 defendant.

9 A. That's correct.

10 Q. And so that's the result of you taking the information
11 and analyzing it?

12 A. Yes, sir.

13 Q. So you have, I guess -- tools at your disposal are
14 vast?

15 A. Yeah, yes.

16 Q. You have -- I mean, I think Lauver came in here
17 earlier and talked about how he has a drug dog -- not a
18 drug dog, a sniffing dog?

19 A. I believe it would be tracking.

20 Q. Tracking dog, and you can make -- so, you have access
21 to that?

22 A. Certainly.

23 Q. You have access to SLED, you can make requests to SLED
24 labs ---

25 A. Yes, sir.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

461

1 Q. --- for analyses. You have a metal detector, correct?

2 A. Yes, we do.

3 Q. You guys can collect, I guess, evidence of blood and
4 submit it for DNA analysis if you thought it was
5 appropriate?

6 A. Yes, sir.

7 Q. And there's even more things that I haven't even
8 thought of that are at your disposal, correct?

9 A. Yes, sir.

10 Q. And it's your job to figure out which of those
11 requests needs to be made, right?

12 A. It's part of my job to do that. As a team, we work
13 together. Investigator Holmes, who is my team partner, may
14 feel that there may be something that he believes needs to
15 be done that I may not necessarily have seen what he sees.

16 Q. Right, and he's got the authority to make those
17 requests himself?

18 A. That's correct.

19 Q. He doesn't have to go through you, right?

20 A. No.

21 Q. And you also have supervisors, correct?

22 A. That is correct.

23 Q. And so do they look over your shoulder?

24 A. Are they there with us all the time, you know, picking
25 what we're doing apart?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

462

1 Q. I guess the question is you have -- I know you have
2 access to them if you have a question.

3 A. Yes. That's correct.

4 Q. Do they look at your cases without you asking and make
5 suggestions?

6 A. Master Sergeant Riley, who is the, at that point in
7 time, the southern division supervisor for investigations,
8 he reviews our case file when we close it out.

9 Q. Okay, and if there needs to be suggestions made, he'll
10 make them?

11 A. Correct.

12 Q. And if not, then he won't?

13 A. Correct.

14 Q. And so I talked about the different kind of evidence
15 requests you can make and different tools you have at your
16 disposal.

17 A. Uh-huh.

18 Q. I know that we talked about witness interviews and
19 also interviews of suspects are something that you talked
20 about with Mr. Robinson on your direct. Those are other
21 tools, right?

22 A. Correct.

23 Q. And one of the things that you do when you bring all
24 the evidence that you have together is write up a report or
25 a series of reports, correct?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

463

1 A. Correct.

2 Q. Report writing is a big part of what you do, correct?

3 A. That's correct.

4 Q. And that's from when you were a road officer,
5 supervisor, really way back in 1996. It's always been a
6 big part of police work, correct?

7 A. We've killed a few trees.

8 Q. Yes, and, of course, whenever you're writing a report
9 you have to write it in triplicate probably?

10 A. And beyond.

11 Q. Right, because you know that a lot of the people are
12 reading this report.

13 A. Correct.

14 Q. And you know that a lot of people are going to be
15 relying on the report, correct?

16 A. Yes.

17 Q. You know you're going to be relying on the report?

18 A. Yes, sir.

19 Q. Because even though this is your first assignment as a
20 lead or co-lead investigator ---

21 A. It's actually not. It's my first large assignment,
22 but I have investigated other crimes.

23 Q. Okay. All right, but I'm just making -- just because
24 this was a step up in what your responsibilities were
25 doesn't mean that you're just going to remember everything

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

464

1 that you find out over the course of the investigation is
2 what I'm saying.

3 A. I guess I don't understand what you're saying.

4 Q. My point is that I kind of got the impression that
5 this was kind of a -- you'd broken through a barrier of
6 sorts at the police department, at the sheriff's office and
7 were now investigating more serious offenses, right?

8 MR. ROBINSON: Judge, I object to the form of the
9 question, defense counsel saying what his impressions are.

10 THE COURT: Well, it is cross-examination. He's
11 entitled to develop those impressions if he wishes.

12 BY MR. DEYSACH:

13 Q. And I don't want to get bogged down. If this was just
14 another investigation, let's let the jury know that this is
15 just another investigation. If this was something that you
16 identified as something newer and larger than what you've
17 done in the past, let's let the jury know, whichever one it
18 is.

19 A. No, I think what we talked about briefly before about
20 I look at everything that I do in law enforcement as to be
21 very important.

22 Q. Okay.

23 A. I don't treat -- I treat the basics of the job as far
24 as writing a traffic ticket just as important as
25 investigating a large crime.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

465

1 Q. Okay. I think that's fair, and I'll move on. But I
2 guess my -- all I was trying to get out, you know, you need
3 to write a report because your memory is not perfect,
4 right?

5 A. Correct.

6 Q. And that's why when you write a report you do it
7 shortly after whatever the information is that you're
8 reporting, right?

9 A. That's correct.

10 Q. Because as time passes, memories fade, correct?

11 A. Sure.

12 Q. And, I mean, you do police work, right?

13 A. Yes, sir.

14 Q. And so it's not like just because what you're learning
15 about and remembering about is a cops-and-robbers-type
16 scenario doesn't make it any more memorable to you, does
17 it, correct?

18 A. I guess I don't understand your question.

19 Q. It was a bad question. But, I mean -- I'll move on.
20 I'm just pointing out, you know, how important it is to
21 write these things in reports and to refresh your memory,
22 right?

23 A. Yes, sir.

24 Q. And because other people are relying on it, correct?

25 A. Yes, sir.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

466

1 Q. And that defense attorneys rely on it?

2 A. Certainly.

3 Q. Correct? And that at least really the resolution of
4 the case relies on what you may have written in a report or
5 not written, correct?

6 A. I'm -- sure.

7 Q. And it's important to put everything in the report
8 that is important, correct?

9 A. Yes.

10 Q. And you don't want to leave out stuff that's
11 important, correct?

12 A. No.

13 Q. And you don't want to put anything in the report
14 that's wrong?

15 A. That's correct.

16 Q. All right. So, the first thing that you do when you
17 realize that there's been an incident that you're going to
18 be investigating, to go to the place where it happened?

19 A. That's correct.

20 Q. And that is July 28th, correct?

21 A. Yes, sir.

22 Q. And the place is [REDACTED] Apartments?

23 A. That's correct.

24 Q. And the apartment number is [REDACTED]

25 A. That is correct.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

467

1 Q. When you arrived there, Corporal Lauver has already
2 done his protective sweep. Is that correct?

3 A. I believe so. I wasn't there for that portion of it.

4 Q. But when you got there, the -- were you aware that
5 there were no victims in the unit, in the apartment unit?

6 A. That's correct. I believe that everybody had been
7 cleared out at that point in time.

8 Q. Somebody had to do it, whether it was Lauver or not.
9 You weren't there to know.

10 A. That's correct. I didn't take part in that process.

11 Q. Okay, and when you get there, your supervisor is
12 already there, Master Sergeant Riley?

13 A. That is correct.

14 Q. And as well as Investigator Calendine, Investigator
15 Adams, Sergeant Viens are all there?

16 A. That's correct.

17 Q. And when you get there, Master Sergeant Riley tells
18 you that you need to get a search warrant in order to start
19 looking through the unit, correct?

20 A. He instructs me to go get a search warrant, and that
21 was basically the conversation.

22 Q. And you do that before you go inside number [REDACTED]
23 right?

24 A. Yes, sir.

25 Q. And so the reason that you got the search warrant was

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

468

1 because of the seriousness of the case?

2 A. Yes, sir.

3 Q. Was the -- the reason was not that during the
4 protective sweep, possible illegal items were seen and that
5 was the reason why a search warrant would be needed,
6 correct?

7 A. I don't recall that knowledge at that time.

8 Q. And if that was Master Sergeant Riley's reason, he
9 didn't tell you?

10 A. No. It was a very basic order for me to just, to
11 go get a search warrant based on the incident that took
12 place.

13 Q. If he tells you what to do, he doesn't tell you why to
14 do it at this point?

15 A. He's my boss.

16 Q. Right, and I would say is it normal procedure for you
17 to get the search warrant?

18 A. It's -- well.

19 Q. In a situation like that?

20 A. In a situation like this, somebody from the
21 investigations team would have gone and gotten a search
22 warrant.

23 Q. That is unless somebody who lived at the place would
24 have given you the consent to look in, right?

25 A. No. We've actually had situations where even though

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

469

1 upon verbal consent, we have still felt it to be safer to
2 get a search warrant.

3 Q. In -- the search warrant really is -- I mean, I guess
4 it's obvious to us that the reason you get a search warrant
5 is so as to avoid violating the rights of the people who
6 live in the apartment, right?

7 A. That's correct.

8 Q. And so the people whose rights you're trying to
9 protect at that point were the people who lived at [REDACTED]
10 correct?

11 A. That's correct. They have a right of privacy there.

12 Q. Right, and it doesn't have anything to do with dotting
13 your I's and crossing your T's against possible
14 perpetrators, does it?

15 A. No. It has to do with crime scene integrity and the
16 protection of the privacy that the homeowners are entitled
17 to.

18 Q. And I guess one of the side effects is that if you do
19 find something illegal in the unit, that, hey, you've got
20 this search warrant that gave you the right to be there in
21 the first place, correct?

22 A. Correct.

23 Q. And that if you find something illegal and you don't
24 have that search warrant, that might be a problem, correct?

25 A. That's correct.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

470

1 Q. So, you apply for the search warrant, okay, and you
2 show up at the scene with the search warrant, correct?

3 A. Yes, sir.

4 Q. And then you help in the execution of the search
5 warrant?

6 A. That's correct.

7 Q. Do you coordinate the execution of the search warrant?

8 A. Sometimes lead investigators do coordinate the search
9 warrant. Sometimes we take just a role as everybody else
10 in assisting in searching.

11 Q. What happened this time?

12 A. I obtained the search warrant, and Sergeant Viens was
13 tasked with being responsible for the evidence, and we
14 processed the house for evidence.

15 Q. So -- and was Investigator Adams in charge of taking
16 the pictures?

17 A. I believe he was.

18 Q. You didn't take the pictures, did you?

19 A. No, sir.

20 Q. All right, and so on every search warrant, there is
21 something called a return, right?

22 A. There is.

23 Q. And that's when you execute the search warrant, you
24 write a list of the things that you're going to take with
25 you, right?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

471

1 A. That's correct.

2 Q. If you see something and you're not going to take it
3 with you, you don't have to put it on the return, do you?

4 A. No, sir.

5 Q. And so it was Sergeant Viens who filled out that
6 return, or was it you? If you want to see ---

7 A. I'd have to see the return. She filled out the
8 documentation of what was seized from the residence.

9 Q. Is that the return?

10 A. That is a portion of the return.

11 Q. Okay.

12 MR. DEYSACH: May I approach the witness?

13 THE COURT: Yes, sir.

14 BY MR. DEYSACH:

15 Q. Is that the search warrant?

16 A. It is a copy of the search warrant.

17 Q. Is the return on the back, towards the back?

18 A. This statement of items removed from the residence is
19 attached to it on the back. That is correct.

20 Q. And is that ---

21 A. That's a portion.

22 Q. Because the list was a little bit longer than what the
23 space allows on the form?

24 A. That's correct.

25 Q. And she -- did you fill that out I guess is what I'm

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

472

1 asking.

2 A. The list of items that was removed from the residence
3 I did not fill out. She filled that out.

4 Q. That's not your handwriting?

5 A. That is not my handwriting. That's way too neat.

6 Q. All right. I will -- just hold on to that.

7 A. Okay.

8 Q. When she fills that out, what does she do with it?
9 Does she give it to you is the question.

10 A. She gives a copy to me. That is correct.

11 Q. What does she do with the original? Input it
12 somewhere in the case jacket?

13 A. I believe the original goes with -- would have went
14 with her report.

15 Q. Okay, and so in order to figure out what she needs to
16 do next -- let me ask you this. When you leave the
17 incident location -- I think you said the next place you
18 went was the hospital?

19 A. Yes, sir. I believe that was true.

20 Q. Have you been provided with the return on the search
21 warrant before you leave?

22 A. No, sir.

23 Q. Do you know everything -- do you know what's been
24 found in the apartment before you go to the hospital?

25 A. I do know portions of what was found. I don't know

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

473

1 the totality of what was found.

2 Q. You know the stuff that you found?

3 A. Yes, sir.

4 Q. So, I guess the only stuff that's left would be the
5 stuff that other people found?

6 A. Correct.

7 Q. In order for you to know that it was there, they'd
8 either have to show it to you, right?

9 A. Right.

10 Q. Or they'd have to tell you that they found it, right?

11 A. Correct.

12 Q. Did you find -- I guess -- let me ask you. What rooms
13 did you search?

14 A. I believe I participated in a search of what would be
15 identified as the master bedroom.

16 Q. The master bedroom, all right. Is that the only place
17 that you searched?

18 A. We also -- and I'm just merely guessing that you're
19 also talking about collection of other evidence beyond the
20 searching?

21 Q. I was just going to let you tell me where you
22 searched, and then I was going to ask you the things on the
23 return, you know, about things that were found in the area
24 where you searched. So, the master bedroom, and I'm
25 wondering. Were there any other areas of the apartment

1 that you searched?

2 A. There was a closet at the bottom of the stairs, a very
3 small closet that I searched. And I processed the
4 stairwell and the various other locations in the residence
5 for blood DNA.

6 Q. Okay. All right. So, you -- did you collect blood?
7 I guess you don't collect blood DNA, but did you collect
8 that?

9 A. Collect the blood evidence and secured it for DNA
10 testing.

11 Q. Did you submit it for DNA testing?

12 A. Again, Sergeant Viens was tasked with being
13 responsible for the evidence, so that would have been
14 something that she would have done.

15 Q. To your knowledge, has any blood from the scene been
16 tested for DNA?

17 A. I do not know.

18 Q. If it had been tested, you don't know about it?

19 A. That's correct. I'm not aware of that.

20 Q. You're not saying it hasn't been tested, but you don't
21 know of any blood that's been tested?

22 A. That's correct.

23 Q. All right. Okay. Did you find the bundles of
24 hydrocodone in the master closet?

25 A. I don't recall exactly what I recovered as I was not

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

475

1 the only investigator assisting in the search of that
2 location.

3 Q. Did you see somebody who recovered the bundles of the
4 hydrocodone?

5 A. I recall seeing the bundles of hydrocodone.

6 Q. Do you recall seeing the bags with suspected cocaine
7 that were in the leather jacket pocket in the master
8 bedroom?

9 A. I don't recall seeing that.

10 Q. Okay. Did you see the Davis Industries .32 automatic
11 that was in the master bedroom closet in a jeans pocket?

12 A. Yes, I remember seeing that.

13 Q. Do you remember seeing the .45 caliber ANT in the
14 master closet between -- master closet shelf between the
15 clothes?

16 A. Yes, sir. I remember seeing that.

17 Q. Do you remember seeing a ziplock bag in the Rubbermaid
18 container on the floor of the master bedroom?

19 A. Yes. I remember seeing that.

20 Q. Do you remember seeing \$1,416 in the pants pocket
21 found in the master bedroom?

22 A. I remember seeing that.

23 Q. You do remember seeing that?

24 A. Yes.

25 Q. And the other stuff, if -- okay, and so was it you who

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

476

1 requested the testing of those, of the drugs that were
2 found?

3 A. No. That, anything to do with drug-related incident
4 would have been turned over to investigators from the Drug
5 Task Force to pursue.

6 Q. All right, because there is a certain unit in the
7 police department that focuses on those types of offenses?

8 A. Yes, the Drug Task Force.

9 Q. And, in fact, they responded to help with the
10 execution of the search warrant, didn't they?

11 A. Yes, sir.

12 Q. Okay. That Corporal Martin Thomas came to the scene
13 to help with the execution?

14 A. Yes, I believe he was.

15 Q. And he's a member of the Drug Task Force?

16 A. At that point in time he was. That's correct.

17 Q. Did he take into his possession the things that were
18 -- that the Drug Task Force might be interested in?

19 A. I believe he did.

20 Q. So, I guess you said you never asked for that to be
21 tested?

22 A. Not me personally.

23 Q. When -- all right. You told me that Investigator
24 Adams took the pictures there, right?

25 A. That's correct.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

477

1 Q. And so he takes those pictures, and then he turns them
2 over to you, doesn't he?

3 A. He would have done one of two things. He would have
4 either turned them over to me at a later time, or he would
5 have turned them in to evidence.

6 Q. And when something is turned in to evidence on this
7 case, isn't that something that you would, you would
8 review?

9 A. I would have had some sort of knowledge of it and
10 typically photographs I review.

11 Q. Okay. Did you review the photographs in this case?

12 A. Yes, sir.

13 (PHOTOGRAPH MARKED AS DEFENDANT-SIMUEL'S EXHIBIT
14 NUMBER 1 FOR IDENTIFICATION.)

15 BY MR. DEYSACH:

16 Q. I'm showing you what's been marked as Defense Simuel
17 Number 1. Do you recognize that picture?

18 A. I don't recognize it.

19 Q. Did you review that picture as part of your
20 investigation?

21 A. As I said, I don't recall seeing this picture.

22 Q. Do you remember finding that object during your search
23 warrant?

24 A. I vaguely remember finding an object; I just don't
25 recognize the picture.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

478

1 Q. You say you remember the object?

2 A. I remember there being some type of a mask.

3 Q. Is that a picture of the mask that you found at that
4 -- at the execution of that search warrant?

5 A. Again, I don't recall this particular image.

6 Q. I'm not asking about the picture now. I'm asking
7 about the object.

8 A. I remember a mask being there at the scene.

9 Q. So, what you're saying is you're not sure if that's
10 it?

11 A. I ---

12 MR. ROBINSON: I object. Asked and answered. He
13 doesn't recognize it.

14 THE COURT: It has been. It has been.

15 BY MR. DEYSACH:

16 Q. So, the next thing that you do after the search
17 warrant is you go on to the hospital?

18 A. Yes, sir.

19 Q. And you speak with, you speak with a Marcus Campbell,
20 correct?

21 A. Yes, sir.

22 Q. And when you spoke to him, you did not -- you were not
23 under the impression that he was there when the incident
24 occurred, were you?

25 A. Correct. We were under the impression that he was a

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

479

1 resident of that apartment, but he wasn't there at the time
2 of the incident.

3 Q. And when you spoke to him, however, you did show him a
4 photo lineup, correct?

5 A. We showed him a photo lineup the day after we spoke to
6 him initially.

7 Q. All right. So, what you're saying -- and where did
8 that photo lineup presentation occur?

9 A. At Savannah Memorial Hospital.

10 Q. So, I guess what you're saying is that you spoke to
11 Marcus, you spoke to Malik Campbell, correct? And you
12 spoke to Sharita Willingham at the hospital on the 28th?

13 A. That's correct.

14 Q. And then the day after, you go back to the hospital
15 and show them photo lineups, correct?

16 A. That's correct.

17 Q. And do you have a copy of your report?

18 A. No, not with me presently.

19 Q. I know you've -- all right.

20 MR. DEYSACH: May I approach the witness?

21 THE COURT: Yes, sir.

22 BY MR. DEYSACH:

23 Q. Do you recognize that?

24 A. I do.

25 Q. Is that your report?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

480

1 A. This is a portion of my report, correct.

2 Q. It says on the top: 1 of 15 pages. Right?

3 A. This particular portion, correct.

4 Q. But you had other supplemental reports that you filed?

5 A. Yeah. Yes.

6 Q. That's not the only report that you filed, right?

7 A. That's correct.

8 Q. All right. On that report, you memorialized your
9 conversations with Marcus Campbell, correct?

10 A. Yes, sir.

11 Q. With Malik Campbell, correct?

12 A. Yes, sir.

13 Q. And Sharita Willingham, correct?

14 A. That's correct.

15 Q. And you reported that you participated in those
16 interviews of July 28th, correct?

17 A. That's correct.

18 Q. Right, and that's the day of the incident, and that's
19 after you're at the scene and you go to the hospital?

20 A. That's correct.

21 Q. And you -- further on down in that page, you have an
22 entry that says: Officers actions on July 29, 2008. Right?
23 And I guess on the next page, further down, you got:
24 Officers actions on July 30th. Right? Correct?

25 A. That's correct.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

481

1 Q. Nowhere in the area reserved for officers actions on
2 July 29th do you mention going to the hospital and showing
3 those photo lineups, do you?

4 A. That's correct.

5 Q. And -- but you're saying that that's something that
6 you did but didn't report?

7 A. That's correct.

8 Q. Was that an oversight?

9 A. The entry would have only read to be that we showed
10 these three people photo lineups that identified this
11 individual.

12 Q. I guess I want to make sure that you're not confused
13 that you showed those -- you showed those lineups on the
14 28th and not the 29th?

15 A. We did not show them on the 28th.

16 Q. All right. I said that you showed Marcus Campbell a
17 lineup even though you knew that he wasn't there at the
18 time?

19 A. That's correct.

20 Q. And the purpose of that was to see if he might -- to
21 see if he might know Lucius Simuel, right?

22 A. Not to see if he knew him because it had been made
23 mention to us that he had seen him on a previous occasion,
24 but to identify indeed who Lucius Simuel was.

25 Q. All right, and so you wouldn't have shown that photo

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

482

1 lineup unless you thought Marcus knew Lucius?

2 A. Correct, or recognized -- or if he was at the scene as
3 a witness, we would have shown it to him.

4 Q. Right, but he wasn't at the scene?

5 A. No. That's correct.

6 Q. Okay. After you talked to witnesses on July 31st, you
7 applied for warrants in this case, correct?

8 A. That's correct.

9 Q. And the application for a warrant is the formal
10 beginning to somebody being charged with a crime?

11 A. Yes, sir.

12 Q. In order to apply for a warrant, you have to appear
13 before the magistrate, correct?

14 A. That's correct.

15 Q. And you have to take an oath in front of the
16 magistrate, right?

17 A. That's correct.

18 Q. And I guess an oath promising to tell the truth?

19 A. Yes, sir.

20 Q. And so what you're telling him is to the best of your
21 knowledge?

22 A. That's correct.

23 Q. And so you applied for warrants against -- on the
24 31st, warrants for Lucius Simuel as well as Demetrius
25 Price, correct?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

483

1 A. That's correct.

2 Q. And the warrants that you applied for, do you have
3 copies of those?

4 A. No, not unless you furnished me with them.

5 Q. I will do so.

6 MR. DEYSACH: Approaching again, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. DEYSACH:

9 Q. You applied for warrant number J336917, didn't you?

10 A. Yes, sir.

11 Q. And in the affidavit for that warrant, you allege
12 that:

13 Demetrius Price did intentionally commit
14 assault and battery with intent to kill, and
15 that Demetrius Price did shoot the victim,
16 Deon Cannick, with use of a handgun.

17 That's part of your affidavit, right?

18 A. That is correct.

19 Q. And the warrant was issued?

20 A. That is correct.

21 MR. ROBINSON: Your Honor, I object to these
22 statements in the warrants coming in as hearsay. They're
23 being offered for the truth. They are hearsay.

24 THE COURT: If he's going to go into, I'll deal with
25 that objection. Right now he stopped short of that, and

1 I'll take it ---

2 DO you intend to go any further with that?

3 MR. DEYSACH: Not on this warrant. I was going to do
4 the same thing for another warrant.

5 THE COURT: Just ask him.

6 MR. DEYSACH: Did he...

7 THE COURT: The same thing you asked him with regard
8 to that.

9 BY MR. DEYSACH:

10 Q. All right, I believe the question is, and I guess
11 we'll wait for the question. Don't blurt the answer. Part
12 of the affidavit that you swore to -- all right, there's
13 another warrant, J336918?

14 A. Yes, sir.

15 Q. That is a warrant that you applied for in front of the
16 magistrate, and part of your affidavit you did, you, you
17 swore -- part of your affidavit says that: Demetrius Price
18 did shoot the ---

19 MR. ROBINSON: Your Honor, I object.

20 THE COURT: All right.

21 MR. ROBINSON: The question is that -- this is an
22 affidavit he's sworn to.

23 THE COURT: Right.

24 MR. ROBINSON: And it's being offered for the truth of
25 what's in the affidavit, but it is hearsay.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

485

1 THE COURT: It is, and it is. Obviously, the officer
2 has to necessarily base this on hearsay, not being there.
3 The information is based on -- the warrant is based on his
4 information and belief. That is -- while that is
5 sufficient to give rise to a criminal charge under oath, as
6 it were, it does not meet the test of proof to come in, the
7 direct knowledge of this particular witness. It would be
8 hearsay, and I sustain the objection.

9 BY MR. DEYSACH:

10 Q. Okay. There are -- you did apply for two assault and
11 battery with intent to kill warrants against Demetrius
12 Price, correct?

13 A. That is correct.

14 Q. Okay, and you applied for zero assault and battery
15 with intent to kill warrants against Lucius Simuel,
16 correct? I mean, I didn't give you those ---

17 A. No, you did not.

18 Q. Okay. I'll give you the ---

19 A. I obtained a warrant for ---

20 Q. I'm not asking what you obtained the warrants for, but
21 I'm asking whether you obtained assault and battery with
22 intent to kill warrants.

23 A. No, I did not obtain a warrant.

24 Q. And you applied for the Demetrius Price warrants and
25 the Lucius Simuel warrants on the same day?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

486

1 A. That is correct.

2 Q. And that was after you had already undergone your
3 identification procedure with Deverol Cannick, correct?

4 A. That is correct.

5 Q. I'll take this back.

6 A. Sure.

7 Q. All right. You testified that you made contact with
8 Lucius Simuel on July 31st, correct?

9 A. That is correct.

10 Q. And he turned himself in in Savannah on August 1st?

11 A. That is correct.

12 Q. And the very day that he turns himself in, you went to
13 go meet with him?

14 A. That is correct, myself and Investigator Holmes.

15 Q. And I guess you already testified to what he said but
16 that -- do you have the statement in front of you?

17 A. I do not.

18 Q. I was looking for an extra copy.

19 MR. DEYSACH: Thank you, Your Honor.

20 BY MR. DEYSACH:

21 Q. He did tell you he wasn't expecting anybody to get
22 shot?

23 A. That's correct.

24 Q. He told you that he did receive a phone call. He said
25 -- he told you that he received a phone call the morning of

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

487

1 the shooting from his nephew advising him that he was
2 looking for pills?

3 A. That's correct.

4 Q. He told you he did not shoot anyone?

5 A. That's correct.

6 Q. He -- you advised Simuel he had a gun during the
7 incident, to which his response was saying you could
8 fingerprint the guns, correct?

9 A. That's correct.

10 Q. And you took that as a denial that he had a gun,
11 correct?

12 A. That's correct.

13 Q. And then you spoke with him again on the ride?

14 A. Yes, sir.

15 Q. And that was about six days later, correct?

16 A. Five days.

17 Q. Five days, you're right, and you said that you found
18 out that he had waived extradition?

19 A. Yes, sir.

20 Q. And you pick him up, and you don't plan on having an
21 interview, correct?

22 A. Correct.

23 Q. But a conversation develops?

24 A. That's correct.

25 Q. So, you remind him of his rights?

1 A. I remind him of his rights when we place him into the
2 car just to make sure -- in case he makes any comments.

3 Q. I guess I'm going to scoot back real quick to a thing
4 I forgot about, the first statement. You attempted to and
5 failed to record that conversation, correct?

6 A. Yes, sir. That's correct.

7 Q. You had a voice recorder there that you thought play
8 had been hit on, correct? Or record has been hit on?

9 A. Well, I had hit the record button but didn't realize
10 the procedure for actually getting it to engage -- and it
11 never engaged.

12 Q. So the real mistake, the conversation is not recorded?

13 A. It's not audio recorded, correct.

14 Q. It's -- you take notes?

15 A. Yes, sir. I believe so.

16 Q. And so -- because it's those notes that you have to
17 rely on when you memorialize the ---

18 A. Notes and my memory.

19 Q. Okay. All right. If the recording existed, it would
20 capture your questions, wouldn't it?

21 A. Yes, sir.

22 Q. And Mr. Holmes was there, too, right?

23 A. That's correct.

24 Q. And would have recorded his questions, too, right?

25 A. That's correct.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

489

1 Q. But now that you testified, you haven't told us what
2 you said during that meeting, correct?

3 A. That's correct.

4 Q. I mean, maybe one or two things?

5 A. Yeah.

6 Q. But as far as what your questions were, that's kind of
7 left out of the report of the statement, right?

8 A. That's correct.

9 Q. Because, I mean -- and the last thing I want to talk
10 to you -- this is on the seventh -- I'm sorry, the 25th.
11 And Simuel is then asked how he became involved. And he
12 said he received a call from his niece, Tiah Frazier, and
13 nephew, Chris Battle, correct?

14 A. I'm sorry, I'm not catching the 25th.

15 Q. It is -- let me have this page.

16 A. That's actually ---

17 Q. Last paragraph.

18 A. Yeah. That's actually September 4th.

19 Q. You're right, September 4th. I misread it. That at
20 that meeting Simuel, is then asked how he became involved,
21 correct?

22 A. You're going to have to point out to me where you're
23 at.

24 Q. Second paragraph starting with ---

25 A. Yes, sir.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

490

1 Q. And it doesn't say either you or Investigator Holmes
2 asked him that, correct?

3 A. That's correct.

4 Q. He said he received a call from his niece, Tiah
5 Frazier, and nephew, Chris Battle, inquiring about pills
6 for her boyfriend Deon, correct?

7 A. That is correct.

8 Q. He goes on to tell you that he never had a gun,
9 correct? And at the end of the interview, he tells you he
10 never had a gun?

11 A. That's correct.

12 Q. Nor did he shoot anyone?

13 A. That's correct.

14 Q. He also repeatedly said that he was never inside
15 Deon's apartment on the day of the shooting?

16 A. That's correct.

17 Q. Now, did you, for that final interview, did you have
18 -- do you have the recording device there?

19 A. It -- I have a leather binder that I have my note pad,
20 business cards, and different forms in. And I usually have
21 it sitting in either one of the pockets or -- because at
22 that point in time it was so bulky, it would sit in the,
23 excuse the term, the crotch of the binder.

24 Q. Okay. So, it was there or not there during that
25 interview?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

491

1 A. It may have been there. I don't recall.

2 Q. Okay, but you did not record it?

3 A. No.

4 Q. Okay.

5 A. Because we didn't start out with his interview as
6 recorded.

7 Q. Okay. So, what you're saying is you attended the
8 interview with the voice recorder ---

9 A. Uh-huh.

10 Q. --- but did not record the interview?

11 A. Right, because his first interview that we did with
12 him, we didn't end up recording.

13 Q. So, you're -- I guess the point you're making is that
14 if I don't record one interview, you can't record any
15 interviews?

16 A. Well, at that point in time, sort of stick to the
17 process that we have been following.

18 Q. Okay. The ride back from the -- from Savannah to
19 Beaufort that you talked about, that was in a police car,
20 right?

21 A. A marked police car, correct.

22 Q. And was that outfitted with recording equipment?

23 A. I believe it was.

24 Q. Did you use it?

25 A. No, sir.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

492

1 Q. You did interview -- I mean, you interviewed a lot of
2 people, I mean, a number of people in connection with this
3 case?

4 A. Yes, sir.

5 Q. You talked about Martin and Jesse?

6 A. Uh-huh.

7 Q. And you also interviewed Tiah Frazier?

8 A. Yes, sir.

9 Q. And did you interview Chris Battle?

10 A. Yes, sir.

11 Q. Because they were the people who were -- who Lucius
12 Simuel had named as intermediaries between him and Deon,
13 correct?

14 A. Yes, establishing a relationship between all the
15 parties.

16 Q. And you asked them to create written statements,
17 correct?

18 A. Yes, sir.

19 Q. And you made them part of your case file?

20 A. That is correct.

21 Q. Tiah did give you Mr. Simuel's phone number, didn't
22 she?

23 A. I believe that she did.

24 Q. Were you aware that four cell phones were found during
25 the execution of your search warrant?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

493

1 A. I don't remember the number of cell phones. I do
2 remember that there were cell phones that were recovered.

3 Q. Did you ever -- did you collect those cell phones?

4 A. Yes, sir, I believe we did collect them.

5 Q. Did you ever look in those cell phones to see whether
6 or not that phone number was either a miscall or a dialed
7 number or a received call in any of those cell phones?

8 A. I don't recall doing that.

9 Q. Did you ever memorialize doing anything like that in
10 your report?

11 A. I don't remember.

12 Q. Okay. Do you need me to give you copies of all your
13 reports in order to see whether or not you memorialized
14 anything like that?

15 A. Sure.

16 Q. Do you have any of them up there right now?

17 A. I have the fifteen-page report that was submitted on
18 the 8th of September.

19 Q. All right.

20 THE COURT: Ladies and gentlemen, rather than have you
21 all sit there and watch Investigator Calhoun read about
22 thirty pages and reports to try to find something, I'm
23 going to send you to the jury room now for our morning
24 break. Normally we try to get through the testimony of a
25 witness, but this is obviously somewhat lengthy because of

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

494

1 a direct and lengthy cross and more redirect and more
2 recross to get through. And you don't need to sit there
3 during this period of time. So, we'll just take a break
4 and make the best use of everybody's time.

5 Remember, as always, not to discuss this case while
6 you're in the jury room. Thank you.

7 (THE JURY EXITS AT 11:52 A.M.)

8 THE COURT: You can step down, Investigator Calhoun,
9 while you review those reports, but don't talk to anybody
10 while you're on the stand.

11 Okay, we'll start back at fifteen after the hour.

12 (OFF THE RECORD.)

13 THE COURT: Investigator Calhoun, you can resume the
14 stand.

15 Before the jury comes back in, during the interim we
16 received a note from the jury foreperson. It came, I
17 think, probably while Investigator Calhoun was going over
18 the statements:

19 The jury would request a copy of Lucius
20 Simuel's statements of August 29, to
21 September 4th when the case is turned over
22 to us.

23 Of course, that's a matter that I will discuss with
24 you all on the record in depth. I wanted you to know about
25 it right now so that you could let me know what your

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

495

1 positions are in that regard as to whether or not they will
2 enter into the jury room. That's what the request is.

3 All right, Mr. Deysach, you ready to proceed?

4 MR. DEYSACH: I am. I wanted to make sure that -- I
5 hope we used our time wisely -- that the witness was able
6 to look at his report and we'll be able to pick up right
7 where we were.

8 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
9 NUMBER 4.)

10 (THE JURY ENTERS AT 12:25 P.M.)

11 THE COURT: Mr. Foreman, I've gone over your request
12 with the lawyers, and we will discuss that when we have
13 another break, and I will respond to that.

14 We'll now pick up where we left off before the break,
15 Mr. Deysach.

16 MR. DEYSACH: Thank you very much, Your Honor. May it
17 please the court?

18 THE COURT: Yes, sir.

19 BY MR. DEYSACH:

20 Q. Investigator Calhoun, before the break I had asked you
21 whether or not you had ever matched up the phone number for
22 Lucius Simuel that you got from Tiah Frazier with any of
23 the cell phones that were found as part of the search
24 warrant execution. Do you remember that? Do you remember
25 me asking that?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

496

1 A. Yes, sir, I do.

2 Q. I ask you now. You never did that, did you?

3 A. That's correct. Never did that.

4 Q. And let me ask you this. When you applied for the
5 warrants on July 31st, we had a brief discussion about that
6 before, remember, on the stand?

7 A. Okay.

8 Q. Okay. At that time, did you ever apply for any
9 warrants for attempted robbery?

10 A. Against these two folks? No, sir.

11 Q. And the reason that you didn't do that is because
12 there wasn't any evidence to support that, was there?

13 A. The reason I didn't do that is because I obtained
14 warrants for what I believe to be the violations.

15 Q. You didn't want to?

16 A. Okay.

17 Q. So if there's a violation of law, you charged it,
18 correct?

19 A. As I saw it, yes, sir.

20 Q. Okay. Now I'm jumping around a little bit.

21 A. That's fine.

22 Q. But you were the -- you interviewed a number of
23 witnesses to the case?

24 A. Yes, sir.

25 Q. We talked about the -- correct? Deon Cannick?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

497

1 A. Yes, sir.

2 Q. Deon Cannick?

3 A. Yes, sir.

4 Q. Martin Guzman and Jesse Reese?

5 A. Yes, sir.

6 Q. I want to ask you a little bit about what Martin told
7 you and -- not Martin, Deon. I want to talk about Deon's
8 conversation with you, that -- did you record your
9 conversations with Deon?

10 A. No, sir.

11 Q. And the reason was because you were maintaining
12 consistency across the case?

13 A. That, and relying on my God-given ability to remember
14 things.

15 Q. And take notes?

16 A. And take notes of cases.

17 Q. And so, I mean, you, you have a conversation, you take
18 the notes, and then you put the conversations in your
19 report?

20 A. That's correct.

21 Q. And the first time that you talked to Deon Cannick is
22 on the 22nd of August?

23 A. I would have to refer to that report to know the
24 specific date.

25 Q. I will give you a copy of it.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

498

1 MR. DEYSACH: I'm approaching again, Your Honor.

2 Q. I have ---

3 A. Yeah.

4 Q. --- flipped it to the page.

5 A. Thank you.

6 Q. So, I pointed out to you an interview that you had
7 with Deon Cannick that's held in your report dated August
8 22, 2008, correct?

9 A. That's correct.

10 Q. Is that the first time you spoke to Deon Cannick?

11 A. That is correct.

12 Q. During that conversation, Deon described to you his
13 version of the events. Is that correct?

14 A. That is correct.

15 Q. And towards the end of the conversation, Deon told you
16 that he had heard the two of them say: Any more iron, any
17 more iron up there. Correct?

18 A. That is correct.

19 MR. ROBINSON: Your Honor, I object to this question.
20 He's asking this officer to testify about what another
21 witness told him. He's asking to verify what is a hearsay
22 statement.

23 THE COURT: If he's talking about any of the
24 statements of these individuals, that's one thing. The
25 statements that he took, of course, that's one thing. If

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

499

1 he's asking about statements that are not in the record, of
2 course, that's another thing.

3 Mr. Deysach, how would you avoid the hearsay
4 exception?

5 MR. DEYSACH: It is a prior inconsistent statement,
6 Your Honor. When Deon was testifying, I asked him who was
7 the conversation about, is there any iron versus any more
8 iron. I believe he denied in his conversation with Officer
9 Calhoun having said: Any more iron. And so I'm trying to
10 impeach him on that prior inconsistent statement.

11 THE COURT: Go ahead.

12 BY MR. DEYSACH:

13 Q. So, the question was Deon said that what the two of
14 them said was: Any more iron, any more iron up there?

15 MR. ROBINSON: Judge, I'm going to object because I
16 think -- if he wants to cross-examine the witness that made
17 the statement about the prior inconsistency, that's one
18 thing. But this witness is not the witness that made the
19 statement.

20 THE COURT: I think what he has to determine, first of
21 all, whether it was an inconsistent statement in the
22 report. And until this witness testifies, there's no
23 evidence of an inconsistent statement.

24 BY MR. DEYSACH:

25 Q. I'm going to ask it one more time. But what Deon

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

500

1 stated to you, he heard the two of them say: Any more iron,
2 any more iron up there. Correct?

3 A. That's correct.

4 Q. Now, I mentioned Martin and Jesse, Martin Guzman and
5 Jesse Reese, correct?

6 A. Yes, sir.

7 Q. You're given Martin's name as a possible -- as
8 possibly being present at the time or near the time of the
9 incident, correct?

10 A. Yes, sir.

11 Q. And so you scheduled an interview with him on -- you
12 interviewed him on the 29th, correct?

13 A. Yes, sir.

14 Q. And you interviewed Jesse Reese on the same day?

15 A. Yes, sir.

16 Q. And then you had to -- on August 4th, interviewed both
17 of them again?

18 A. Yes, sir.

19 Q. Because what they had told you -- and what they told
20 you the second time was different than what they told you
21 the first time?

22 MR. ROBINSON: Judge, I object. There's no testimony
23 about an inconsistent statement from this witness. If he
24 wants to talk about the inconsistencies of non-testifying
25 witnesses, this is not the way to do it. This is hearsay.