

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
The Honorable Carmen T. Mullen Circuit Court Judge

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SC Court of Appeals

THE STATE,

APPELLANT,

V.

CHARLES THOMAS RILEY,

RESPONDENT,

Appellate Case No. 2016-002123

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2016-GS-38-0731

State of South Carolina,
Plaintiff,
v.
Charles Riley,
Defendant.

September 19-20, 2016
Orangeburg, South Carolina

B E F O R E:

The Honorable Carmen Tevis Mullen

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

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Attorneys for the State

Brad Hutto, Esquire
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Hilda M. Jordan, CVR-M
Circuit Court Reporter

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1 THE COURT: Solicitor, do you have anything else
2 before we go ahead and begin your stand your ground hearing?

3 MS. CORNWELL: No, Your Honor.

4 THE COURT: Okay.

5 MS. CORNWELL: At this time, the State would call
6 the case of Charlie Riley. I believe this is defense's
7 motion for immunity from prosecution under the person's and
8 property act. I've left a copy of the indictment. It has
9 not been before the grand jury at this time.

10 THE COURT: Okay.

11 MS. CORNWELL: And that is on your desk if you
12 need it.

13 THE COURT: Okay. All right. I've got it. Thank
14 you.

15 MS. CORNWELL: And at this time with the burden
16 being on defendant, I'll have them take it over.

17 THE COURT: Okay.

18 Yes, sir.

19 MR. HUTTO: Your Honor, I've passed up and given
20 the Solicitor a copy of a written motion that outlines our
21 legal arguments, unless you want me to actually state the
22 basis for the motion, I'd go right into just presenting some
23 evidence.

24 THE COURT: Let's put some testimony in, yes, sir.

25 MR. HUTTO: Okay.

1 THE COURT: Sure.

2 MR. HUTTO: We would call Jeffrey Smith.

3 (WHEREUPON, Jeffrey Smith was
4 sworn to tell the truth.)

5 JEFFREY SMITH - DIRECT EXAMINATION

6 BY MR. HUTTO:

7 Q State your name, please?

8 A Jeffrey Smith.

9 Q All right. Mr. Smith, we don't have a jury here today
10 so the Judge is who needs to hear you. So make sure -- if
11 you need to turn your head a little bit toward me so she can
12 hear. That's who's got to hear you; okay?

13 A (Nods head in the affirmative)

14 Q And you need to verbalize your answers; all right?

15 A Okay.

16 THE COURT: So you need to say yes or no, okay?

17 THE WITNESS: Yes.

18 THE COURT: Thank you, sir.

19 BY MR. HUTTO:

20 Q How old are you?

21 A Fifty-five.

22 Q And where do you live?

23 A Cordova, South Carolina.

24 Q Is that in Orangeburg County?

25 A Orangeburg County.

1 Q Have you lived in Orangeburg County most of your life?

2 A Yes.

3 Q And your background is -- could you tell us where you
4 went to school and kind of what you did after you got out of
5 school and what you're doing now?

6 A I went to school at Edisto High School.

7 THE COURT: I'm sorry, what high school?

8 THE WITNESS: Edisto High School.

9 THE COURT: Edisto. Okay.

10 A And I entered the service, stayed in there for six
11 years, the Army. And practically was doing off and on work
12 throughout.

13 BY MR. HUTTO:

14 Q Okay. You were in the Army six years. Approximately
15 what time period, what years were those six?

16 A '79 to '84.

17 Q All right. And since that time after you were
18 discharged from the Army and were back here working off and
19 on, that's been in Orangeburg County?

20 A Right. Yeah.

21 Q Okay. Now, I want to call your attention to earlier
22 this year, January. And particularly we'll start on the
23 Friday, January the 29th, of 2016. There was something
24 going on involving a truck and Mr. Green. And can you just
25 tell the Judge what was happening on that Friday?

1 A That Friday we went out until -- I owed Donnie Green
2 three hundred dollars --

3 THE COURT: Sir, when you say we, who is we?

4 THE WITNESS: Me, Donnie and Keitt.

5 THE COURT: So you, Donnie, Donnie Green and
6 Keitt.

7 THE WITNESS: Keitt.

8 THE COURT: Okay.

9 A And we proceeded on getting a title loan for my truck
10 so I can give him the three hundred dollars. But it didn't
11 work out like we'd planned because they deny it. So I give
12 him the title to my truck until I get his money up.

13 BY MR. HUTTO:

14 Q All right. So let me stop you right there. You, Mr.
15 Green and Mr. Keitt, all went to the title company?

16 A Right. Yeah.

17 Q Who was driving?

18 A Donnie.

19 Q Okay. So Mr. Green was driving and you and Keitt --

20 A And I was driving my truck.

21 Q Oh, and you was driving your --

22 A Right.

23 Q So y'all went in two vehicles?

24 A Right.

25 Q Okay. But Mr. Keitt was with Mr. Green?

1 A Right.

2 Q And after you talked to the people at the title
3 company, you were unsuccessful in getting a loan against
4 your truck; is that correct?

5 A Yes, sir.

6 Q All right. You had the title to your truck?

7 A Yes, sir.

8 Q And what did you do with it?

9 A Took it down to the DMV and got the title transfer in
10 my name only because I bought it from one of Charles'
11 cousins.

12 Q Did Mr. Green and Mr. Keitt go with you to the highway
13 department?

14 A Yes, he did.

15 Q After you got the truck titled only in your name, you
16 got the piece of paper that's the title?

17 A Right. Yeah.

18 Q What did you do with that?

19 A We took it back down to the title loan people.

20 Q Oh, so you went to the DMV first?

21 A I went to the title loan first and then she told me I
22 had to have it transferred in my name only.

23 Q Okay. In order to qualify, you had to get it solely in
24 your name?

25 A Right.

1 Q So all of you went to the DMV --

2 A DMV.

3 Q -- and you got that done and went back to the title
4 company?

5 A Back to the title company.

6 Q Were you able to get a title on it at that point in
7 time?

8 A No, because they denied me because I didn't have no
9 unemployment coming in. So they said they couldn't do it.

10 Q All right. And so as a result of not being able to get
11 the money that you owed Mr. Green from the title company,
12 what arrangement did you make with Mr. Green?

13 A I let him hold my title until I can come up with a job
14 and get him his money.

15 Q Okay. No doubt you owed him three hundred dollars?

16 A Right.

17 Q You weren't disputing that?

18 A No.

19 Q Okay. And you gave him -- the title that you'd gotten
20 from the DMV --

21 A Right.

22 Q -- you gave that to Mr. Green Friday afternoon?

23 A Right. That Friday afternoon.

24 Q And when y'all parted ways on Friday, were you driving
25 your truck?

1 A I was driving my truck. They followed me over to my
2 niece house.

3 Q All right. Mr. Green and Mr. Keitt followed you over
4 to your niece's house?

5 A Right.

6 Q What's her name?

7 A Lisa Scott.

8 Q Okay. When you got to Lisa Scott's house, what did you
9 do?

10 A I parked my truck there because I didn't have no gas in
11 it.

12 Q All right. And when you left Lisa Scott's house, did
13 you ride away with Green and Keitt or did you walk away?

14 A No, I ride away.

15 Q All right. So they went with you to park your truck
16 over at Lisa Scott's house?

17 A Right.

18 Q And then they carried you on back home?

19 A Right.

20 Q All right. Now, that was Friday?

21 A That was Friday.

22 Q All right. Saturday morning when you got up, as far as
23 you knew your truck was parked over at Lisa's?

24 A Lisa Scott.

25 Q Okay. And what did you do then?

1 A I went over to Charles and asked him could he give me a
2 ride over there to pick up my truck.

3 Q When you say Charles, you mean Charles Riley who's
4 sitting right here?

5 A Yeah.

6 Q And so you went over to Charles Riley's house to see if
7 he could give you a ride to go where?

8 A To pick up my truck and also lend me some money for to
9 put gas in it.

10 Q And did he agree to do that?

11 A Yeah.

12 Q Did y'all go to get gas?

13 A Yeah.

14 Q Tell me what happened?

15 A We went and got the gas, then we went over to my niece
16 house to pick up my truck and my truck was gone. So I went
17 upstairs and knock on their door. And my niece came to the
18 door and say that Donnie Green and Keitt already done pick
19 up my truck.

20 Q All right. So let's stop for a second.

21 THE COURT: I'm sorry. Mr. Hutto, I apologize.
22 Can you just go right back, one question back there. I
23 didn't understand who Charles was.

24 MR. HUTTO: Charles, is Charles Riley, the
25 Defendant.

1 THE WITNESS: Right.

2 THE COURT: Okay. I apologize.

3 MR. HUTTO: That's okay.

4 THE COURT: Now I understand. Go ahead.

5 MR. HUTTO: I know that we've got a lot of first
6 names and last names. We'll try to go by the last names as
7 much as we can.

8 THE COURT: Okay.

9 BY MR. HUTTO:

10 Q But Mr. Riley agreed to carry you to the gas station;
11 correct?

12 A Right.

13 Q And then Mr. Riley, after y'all went to the gas
14 station, he carried you over to Lisa Scott's house where you
15 had left the truck the day before?

16 A Yes, sir.

17 Q When you got to Lisa Scott's house, the truck was gone?

18 A It was gone.

19 Q Based on what Lisa Scott told you, you believed that
20 Mr. Green and Mr. Keitt had picked it up?

21 A Yes.

22 Q Okay. So then what did you do?

23 A So I asked Charles could he take me over there to where
24 Donnie Green was staying to. He say he'll drop me off near
25 as he could. And he dropped me off two streets where I

1 could see where my truck was in the yard.

2 Q All right. So when you got out of Charles Riley's
3 vehicle, you were near Donnie Green's house or where he was
4 staying?

5 A Like two streets down.

6 Q Okay. And was your truck there?

7 A It was sitting in the back yard.

8 Q Did you have the keys to your vehicle?

9 A I had a extra set.

10 Q All right. So how did Mr. -- if you know, how did Mr.
11 Green have a set of keys to be able to move it out of your
12 niece's yard?

13 A Because when I got out of the truck, once he let me
14 out, I left it in the truck by mistake.

15 Q When y'all left the truck at your niece's house and he
16 was driving you home, you left a set of keys in his car?

17 A Right.

18 Q That was on Friday?

19 A Right.

20 Q Okay. So after you went into the yard -- well, did you
21 carry gas?

22 A Yeah. I carried gas.

23 Q All right. And you put gas in the truck?

24 A Yes.

25 Q And at that time the truck was in the back of the place

1 that Mr. Green was staying?

2 A Right.

3 Q And when you left then, where did you go?

4 A I went by my house when I got my truck. And then I
5 went on over to Charles house.

6 Q All right. Charles Riley's house?

7 A Right.

8 Q All right. And so you were at Charles Riley's house on
9 a Saturday morning?

10 A Right.

11 Q With your truck?

12 A Right.

13 Q Well, do you know whether or not Ms. Riley was home?

14 A Yes, she was.

15 Q Okay. Now, did you later see Mr. Green again, later
16 that Saturday morning? Or I guess you hadn't seen Mr. Green
17 at all at that point on Saturday morning?

18 A Not Saturday.

19 Q Okay. Did you see Mr. Green on Saturday morning?

20 A Yes. I was at Charles' house and I was standing on the
21 outside and that's when he speeded in, in a high speed. And
22 both Mr. Green and Keitt jump out of the car and --

23 Q All right. Let me stop you for a second. Between the
24 time that you got your truck and got over to Mr. Riley's
25 house -- well, no, let's do it this way. Between the time

1 you got to Mr. Riley's house and the time that Keitt and
2 Green arrived at Riley's house, how long was that?

3 A Maybe about forty-five minutes.

4 Q Okay. And you described it as they speeded into the
5 yard. Who was driving?

6 A Keitt.

7 Q And where was Mr. Green?

8 A On the passenger's side.

9 Q All right.

10 THE COURT: Mr. Hutto, may I ask a question. How
11 would Mr. Green know -- I'm sorry. How would Mr. Green know
12 that Smith and his truck were at Riley's.

13 MR. HUTTO: I think you're going to hear from Mr.
14 Keitt is that they were riding around looking for it and
15 just going through the neighborhood when they saw him out in
16 the front yard.

17 THE COURT: Okay. And that's what I was wondering
18 if they all lived in somewhat in the same neighborhood or
19 not.

20 MR. HUTTO: Not exactly. Miles apart. Not like
21 within blocks but miles.

22 THE COURT: Right. Okay.

23 MR. HUTTO: But, yes, in the general Cordova --

24 THE WITNESS: Yeah.

25 MR. HUTTO: -- western part, they're not down in

1 Eutawville or anything. So within a four or five mile
2 radius of each other but not immediately.

3 THE COURT: Okay.

4 BY MR. HUTTO:

5 Q So Mr. Keitt drove his car with Mr. Green as the
6 passenger into Mr. Riley's yard?

7 A Yes.

8 Q And when they pulled that up, where did he stop it?

9 A Right close to the house.

10 Q Okay.

11 A Right close to it. About six foot.

12 Q Okay. All right.

13 MR. HUTTO: Your Honor, we've generally agreed on
14 things that we've agreed are going to be marked. And so if
15 you don't mind we'd --

16 THE COURT: Certainly.

17 MR. HUTTO: Okay.

18 BY MR. HUTTO:

19 Q I'm just going to show you a picture of an exhibit
20 that's marked State's 1 and ask you if you can identify
21 that?

22 A That's Charles Riley house.

23 Q That's Charles Riley's house? All right. Is the place
24 where the car got parked, is it visible inside this picture?

25 A Yeah. Yeah.

1 Q Where did he park it?

2 A Approximately about right up in there.

3 Q Okay. So in the driveway area here?

4 A Close to it about right there.

5 Q Okay. All right. So off the front --

6 THE COURT: Where?

7 MR. HUTTO: He says right in here, I think.

8 BY MR. HUTTO:

9 Q Didn't you say right in here?

10 A Right in there.

11 Q Okay. So sort of by the edge of that front of the
12 house?

13 A Right.

14 Q Okay.

15 THE COURT: Is it all dirt in front of the house
16 or is there a driveway?

17 THE WITNESS: Dirt.

18 MR. HUTTO: There's a horseshoe driveway.

19 THE COURT: I just can't tell from that picture.

20 MR. HUTTO: I think it goes around.

21 THE COURT: Okay.

22 BY MR. HUTTO:

23 Q Okay. So near the corner of the house?

24 A Near the corner of the house; right.

25 Q Where were you at that time when the car came in the

1 yard?

2 A I was just close to the front steps, the front step.

3 Q All right. Well, I know we can't tell exactly, but
4 it's --

5 A Right close, right up in there.

6 Q Yeah. I understand that. But that's probably -- would
7 you say the distance between there is a car length or two
8 car lengths or something like that?

9 A Maybe a little more than a car length.

10 Q From the steps to where the car --

11 A From the steps to where the car was.

12 Q Okay. The car comes to a stop; correct?

13 A Right.

14 Q Did either or both of them get out of the car?

15 A Both of them got out.

16 Q Okay. At any point in time was Mr. Keitt involved in
17 any kind of words between you and Green or between Riley and
18 Green?

19 A Well, basically Keitt and Green was talking to me. And
20 Donnie proceeded at -- coming at me, swinging at me.

21 Q Swinging at you?

22 A Yes, sir.

23 Q All right. When you say swinging at you, was he using
24 his fist or his hands?

25 A Yeah.

1 Q Okay. And was he saying anything when he was swinging
2 at you?

3 A He say he was going to get my truck. And I told him
4 he's not going to get my truck. I say you can hold the
5 title until I pay you your money.

6 Q Okay. So was he -- can you describe the tone or the
7 language that he was using?

8 A It was like he was going to demand me of getting my
9 truck.

10 Q Okay. And where or at what point in time did Mr. Riley
11 enter into what was going on?

12 A Maybe about three, two minutes he came out the house
13 and heard the commotion.

14 Q Okay. So I know nobody had a stopwatch on, but -- so
15 there was some small period of time passed before Mr. Riley
16 came outside of his house?

17 A Right. Small, yeah.

18 Q Okay. And when Mr. Riley came out of his house, did he
19 have anything in his hands?

20 A At that time, no.

21 Q Okay. What did he say?

22 A He said now y'all don't supposed to be here. Y'all got
23 to leave. Y'all leave, you know.

24 Q All right. Y'all are not supposed to be here?

25 A Yeah.

1 Q All right. Who did he say that to?

2 A Donnie and -- well, he just basically telling Donnie,
3 but Keitt was driving.

4 Q Okay. And when he told Mr. Green and Mr. Keitt that,
5 did they get in their car and leave?

6 A No.

7 Q What did they do?

8 A They proceed in arguing with Charles.

9 Q In arguing with him?

10 A With Charles.

11 Q All right. And when you say they, was most of the
12 argument coming from Mr. Green or Mr. Keitt?

13 A Mr. Green.

14 Q Mr. Green. Okay. As far as you know, Mr. Keitt and
15 Mr. Riley weren't really arguing?

16 A Not really.

17 Q Okay. Well, I mean, I want you to tell it if it is
18 but, I mean, it was mostly Mr. Green; right?

19 A No, not really. It was Mr. Green.

20 Q All right. What was Mr. Green saying to Mr. Riley?

21 A When Charles was telling him about, you know, y'all
22 aren't supposed to be in my yard. You've got to leave.
23 You've got to leave. You've got to leave. And he proceeded
24 on telling Charles say, you know -- you know I don't like
25 you anyhow, you know. And they was just saying back in

1 word. And then Charles went back in the house.

2 Q All right. Charles left the yard and walked back into
3 his house?

4 A Well, he was on the step.

5 Q Okay. At any point in time did Ms. Riley, Angela
6 Riley, come outside?

7 A Yes. Yeah.

8 Q When she came outside what, if anything, did she do?

9 A She said the same thing over and over to Donnie on the
10 porch and telling Donnie y'all know y'all don't supposed to
11 be here. You need to leave the yard and, you know.

12 Q If you know, are Angela Riley and Lee Edward or Donnie
13 Green, are they related?

14 A They're related.

15 Q They're cousins?

16 A Cousin.

17 Q All right. So when Angela told him that he needed to
18 leave, she was on the porch?

19 A She was on the porch.

20 Q Okay. And when she told them to leave, did they get in
21 the car and leave?

22 A No, because I kept telling Donnie, I said Donnie, y'all
23 need to leave, man. You don't supposed to be in the man
24 yard. Y'all need to leave. Y'all need to leave. And
25 that's when Charles came out with the gun and --

1 Q All right. Hang on a second. So Charles had already
2 told them to leave and then went in the house and got the
3 gun?

4 A Right. Right.

5 Q All right. And when he came out -- well, tell me, what
6 kind of gun was it?

7 A A shotgun.

8 Q A shotgun? And when he came out, where was the
9 shotgun?

10 A You just seen it hanging and just, you know, telling
11 them that y'all got to leave my yard. Leave my yard. Leave
12 my yard. And that's when him and Donnie got into it and
13 Donnie went like he was going to get something out of the
14 car. And that's when I was telling Angie about call the
15 police. Call the police, you know. And I turn around and
16 tell Angie to --

17 THE COURT: Who said call the police?

18 THE WITNESS: I did.

19 BY MR. HUTTO:

20 Q Who did you tell that to?

21 A Charles' wife.

22 THE COURT: Okay.

23 BY MR. HUTTO:

24 Q To Angie. Who was --

25 A On the porch. And I told him, you know, go ahead and

1 call the police. Go ahead and call the police. And by that
2 time, when I turn back around, the gun went off.

3 Q The gun went off?

4 A Yeah.

5 Q All right. So while you were looking back saying call
6 the police, the gun when off?

7 A The gun went off.

8 Q All right. Now, let's go back a minute. You said that
9 Charles came out with the gun but they did not get in the
10 car and leave?

11 A No, no.

12 Q And did you see Mr. Green reaching for anything?

13 A I seen him reach back in the back, but really I didn't
14 see nothing -- nothing what he got out of the back. But
15 that's when I was telling Angie about calling the police.

16 Q And right after that's when the gun went off?

17 A The gun went off.

18 Q Okay. Did Mr. Green make any threats to Mr. Riley?

19 A Yes, he did.

20 Q What did he say?

21 A You know, I been with you. I been with you. I did
22 this before, you know, and that was just words, you know.

23 Q When he said something to the effect of I did this
24 before, did you know anything about any past history between
25 the two of them?

- 1 A Yes.
- 2 Q What do you know about that?
- 3 A I knew that they jump on Charles before.
- 4 Q Mr. Green had been involved in jumping on Mr. Riley on
- 5 a prior occasion?
- 6 A Yes.
- 7 Q Okay. At any point in time, did you see Mr. Green and
- 8 Mr. Riley close enough that one of the other one had pushed,
- 9 shoved or touched one of the other?
- 10 A Well, I know he pushed me and was fingered at me. But
- 11 then him and Charles got involved. There was some pushing
- 12 and, you know --
- 13 Q Okay. And is that when he went in to get that gun?
- 14 A Yeah.
- 15 Q All right. And as he came out of the gun, he came down
- 16 the front steps?
- 17 A Correct.
- 18 Q Off the porch?
- 19 A Correct.
- 20 Q And back toward the car?
- 21 A Correct.
- 22 Q I think you've said this, but tell me -- you were
- 23 looking back at the house when the gunshot went off. Is
- 24 that --
- 25 A Yeah. I was telling Angie to call the police. I knew

1 by then -- I thought they might have shot in the air. I

2 heard saying Donnie saying that you shot me. You shot me.

3 Q And then did you see Donnie, Mr. Green, after he got
4 shot?

5 A Yeah. Because I told Sambo to go ahead and take him to
6 the hospital. To take him to the hospital.

7 Q All right. When you say Sambo, you mean Mr. Keitt?

8 A Mr. Kitt.

9 Q Okay. And could you tell where Mr. Green got shot,
10 what part of his body?

11 A I thought it was the shoulder.

12 Q Okay. Was he holding onto that?

13 A Yeah. He was holding onto that. You know, he was
14 saying that I got shot. You shot me. You shot me.

15 Q All right. So did Mr. Keitt cranked up the car and
16 they pulled out?

17 A Yeah. Yeah.

18 Q And you thought they were going to the hospital?

19 A That's where I thought they were going.

20 Q Okay. Did you remain at Mr. Riley's house until the
21 police arrived?

22 A Yes.

23 Q Were you there when Mr. Riley called 9-1-1 and reported
24 the fact that --

25 A Yes.

1 Q Okay. And you didn't go anywhere until the police got
2 there?

3 A Yeah.

4 Q And did you give the police a statement there at Mr.
5 Riley's house?

6 A At the house. And then also went to --

7 Q The police station?

8 A The police station.

9 Q And gave a second statement?

10 A Yeah. Yeah.

11 Q So you wrote down one statement there at the house and
12 then you went to the police station where they video
13 recorded you, and you actually wrote out a second statement?

14 A Right. I didn't wrote it out because I've had three
15 operation on my hand. I just said what happened. They
16 wrote it down.

17 Q I apologize. It does say that the officer was writing
18 it for you.

19 A Right.

20 Q But the words on there is what you were telling them.

21 THE COURT: Mr. Smith, may I ask you a question.
22 Where was Mr. Green when he got shot?

23 THE WITNESS: Standing by the door.

24 THE COURT: Standing by the door of the car?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Was the car door open or shut?

2 THE WITNESS: Open.

3 THE COURT: And was he behind the car door or in
4 front of it?

5 THE WITNESS: As far as I can remember, in front
6 of it.

7 THE COURT: In front of it. Okay. But he was
8 standing up?

9 THE WITNESS: Standing up.

10 THE COURT: Okay.

11 BY MR. HUTTO:

12 Q Do you remember whether or not the window to the
13 passenger side of the car was rolled up or rolled down?

14 A I'm not sure about that.

15 Q Okay. All right. But after Mr. Green got shot, did he
16 fall to the ground?

17 A When I see him, he was just holding his shoulder like I
18 thought he shot him in the shoulder. And then he was saying
19 you shot me. You shot me. And I ain't thought it was as
20 serious as it was.

21 Q Did he get into the car?

22 A He got into the car.

23 Q Passenger's seat?

24 A Passenger's seat.

25 Q When Mr. Riley had gone into the house and gotten the

1 shotgun and was coming back out into the yard, was he
2 continuing to ask them to leave?

3 A Yeah. Yes.

4 Q Was Mr. Green backing down and leaving?

5 A No, there was steady argument among each other.

6 Q All right. And you saw him reach into the backseat,
7 looked like he was getting something?

8 A Backseat. He was going -- I thought he was getting in
9 but I through he ended up coming back out of it. And then
10 they start arguing again and that's when the gun went off.

11 Q Okay. All right.

12 MR. HUTTO: Excuse me one second.

13 BY MR. HUTTO:

14 Q Now, Mr. Smith, it's probably -- I didn't have a watch
15 on and so I don't know. But it's probably taken you at
16 least ten or fifteen minutes to explain all this to me.

17 A Right.

18 Q But when this was happening, it was all happening a lot
19 faster; was it not?

20 A A lot faster. A lot faster..

21 Q Okay. And so as you were -- as it takes you time to
22 tell these things, the interaction between all five of the
23 people that were there, things were moving a lot quicker
24 than you were able to say them; is that fair to say?

25 A Yeah. Right.

1 Q Okay. Do you have an idea that the whole thing was
2 just a minute or two or three? That the whole thing --

3 A I would say a minute or two.

4 Q Okay. I mean, to the time they had kind of came up in
5 the car fast --

6 A Uh-huh. (Affirmative response)

7 Q -- the arguments?

8 A Right.

9 Q To get out my yard. To go in and get the gun, come
10 back out, to the shot, all of that just didn't last --

11 A Like two or three minutes.

12 Q Okay. All right.

13 MR. HUTTO: That's all I have for Mr. Smith.

14 BY MR. HUTTO:

15 Q Now, the prosecution -- the Solicitor's going to ask
16 you some questions.

17 JEFFREY SMITH - CROSS-EXAMINATION

18 BY MS. CORNWELL:

19 Q Mr. Smith, how are you doing?

20 A All right.

21 Q Good. You and I have met before; correct?

22 A Yes, ma'am.

23 Q All right. And you've told me how what you remember
24 happening that day we met. I guess, was it last week?

25 A Last week.

1 Q Okay. But before you met with me I think you stated
2 that you gave a statement at Mr. Riley's house --

3 A Yes.

4 Q -- and then you went to the police. And then you went
5 to the police station and gave another statement?

6 A Right.

7 Q And then you've given me a statement?

8 A Right.

9 Q So you've given at least three statements in this case
10 prior to your testimony today; correct?

11 A Right.

12 Q Let's go back just kind of to the beginning a little
13 bit. You owed Donnie Green three hundred dollars?

14 A Right.

15 Q And on that Friday when Donnie and Mr. Keitt and you
16 went to try to get a title loan so you could pay him back --

17 A Right.

18 Q -- you couldn't go straight to the title loan place;
19 correct?

20 A I went --

21 Q You went to the DMV first to get the title in your
22 name?

23 A No, I went to the title loan place first and I didn't
24 know what the procedure is on doing it. And that's when
25 they told me, when I show them the title. They said I had

1 to go to the DMV and have it transferred in my name to only
2 instead of who I bought it from and my name.

3 Q So at that point you then left the title loan place and
4 the three of y'all all went to the DMV?

5 A Right.

6 Q When you got to the DMV was there a charge to change
7 the title into your name?

8 A Yes.

9 Q And who gave you the money to pay for that?

10 A Donnie Green.

11 Q Okay. So on top of what you already owed him, he lent
12 you even more money so you could get that situation --

13 A Well, that was just about -- that was adding up to
14 that.

15 Q Okay. And in total it was about three hundred dollars?

16 A Right. Right.

17 Q But he was continuing to give you money even up until
18 that day to help you out?

19 A Yeah. Because he thought the title loan was going to
20 go through.

21 Q And then y'all went back to the title loan company and
22 found out you still couldn't get the loan?

23 A Still couldn't get it.

24 Q And at that point when you couldn't get the loan,
25 that's when you told Donnie that you would give him the

1 title and he could hold onto your truck until you paid him
2 back; correct?

3 A Correct. Right.

4 Q And y'all went -- started to drive, realize you didn't
5 have enough gas in the truck and that's why you had to stop
6 at Lisa's house?

7 A Right.

8 Q And when you got to Lisa's house you left the truck
9 there. And the reality is, the way that Mr. Green had the
10 keys to the truck is you gave him the keys with the title;
11 didn't you?

12 A No, I had give him the title, but I'd left the keys in
13 the truck.

14 Q But with the understanding that you were giving Mr.
15 Green the truck to hold on to until you paid him back?

16 A No, no, no. I was just going to give him the title and
17 let him hold onto the title until I could get the money up
18 for the truck.

19 Q But that's not what Mr. Green understood it to be; is
20 it?

21 A I don't know.

22 Q Because the next morning didn't Mr. Green call you and
23 tell you hey, I went and got the truck. I've got it parked
24 in my yard and I'll keep it here until you can get me that
25 money back?

1 A No. No. I didn't even know the truck was gone.

2 Q Okay. All right. But regardless, you figured out that
3 the truck was in Donnie's yard, in Mr. Green's yard. Did
4 you ask Mr. Green or tell Mr. Green that you were taking the
5 truck out of his yard?

6 A No, I didn't ask him because I didn't have to reason to
7 because he ain't had no reason to take the truck from my
8 niece house.

9 Q But the reality is -- you had given him the title and
10 he had the set of car keys. You just happened to have an
11 extra set of car keys and that's how you were able to get
12 them?

13 A No. I give him the title and I left the keys in the
14 truck and that's how he got the truck.

15 Q Well, did you mean to leave the keys in the truck?

16 A No.

17 Q So you didn't realize you had left the keys in the
18 truck. How did you already have the extra pair of keys on
19 you to go get it from Donnie's house?

20 A Because I was looking for that in my pocket and I
21 didn't had it. And then I got my other set of keys.

22 Q And after you went and got the truck from Mr. Green's
23 house, you said you eventually ended up back over at Mr.
24 Riley's house; correct?

25 A Yeah. A little while later.

1 Q Okay. And while you were at Mr. Riley's house, Ms.
2 Riley was at the house?

3 A Yeah.

4 Q And you and Mr. Riley were out on the steps talking?

5 A Yeah.

6 Q Okay. And at that point you said a car drove up at a
7 high speed into the driveway; correct?

8 A Correct. Yes.

9 Q But Mr. Green wasn't driving that car; was he?

10 A No.

11 Q So it's not like he drove in at a high speed. He was
12 just riding in the car?

13 A Well, my thing is why would you drive up in the yard if
14 you wasn't -- I knew they were coming to fight me.

15 Q Okay. All right.

16 A The way they came up in the yard.

17 Q So they got up. But you didn't have any beef with Mr.
18 Keitt; did you?

19 A No.

20 Q Didn't owe Mr. Keitt any money?

21 A No.

22 Q So there was really no reason for Mr. Keitt to drive up
23 all fast in the yard; was there?

24 A Right.

25 Q No reason for Mr. Keitt to want to fight you; was

1 there?

2 A Well, not him.

3 Q Okay. But you claim that they were both going to get
4 out of the car and fight you?

5 A The way how they approached me, that's how it looked.

6 Q And you walked over directly to Mr. Green's side?

7 A No, he came at me.

8 Q He came at you?

9 A He got out and came at me.

10 Q Okay. And then I think you said that Mr. Green pushed
11 you first?

12 A Yeah. And start swinging at me.

13 Q And you swung back; correct? You took a swing at him?

14 A I didn't really want to fight him because one, you
15 know, like I told him I said, you know, just hold onto my
16 title until I get your money. I'm going to give you your
17 money. I didn't really want to fight him.

18 Q And the reason that he was so upset with you is because
19 you kind of went back on your word to him; right?

20 A No.

21 Q I mean, he had let you borrow money. You couldn't pay
22 him back so you had told him he could hold onto your truck
23 until you paid him back?

24 A No. I told him he could hold onto my title to my
25 truck.

1 Q What does the title do if he doesn't have the truck. I
2 mean, it's not in his name and it's just a piece of paper.
3 So how would that make any difference to him if he had --
4 the reality was he wanted the truck; right until --

5 A No.

6 Q -- you could pay him back and he would give you the
7 truck back?

8 A No, I was going to just let him hold the title until I
9 get the money up to give it to him.

10 Q So you say he came in and he stopped close to the
11 house, you said about six feet away and parked at the edge
12 of the front of the house?

13 A The edge of the front of the house.

14 Q So right around here?

15 A Somewhere in that area.

16 Q Okay. And pulled straight in; right? Parked right
17 here.

18 A There's a little curve where you come into his driveway
19 like --

20 Q And then they would have had to back out to it;
21 correct?

22 A Right.

23 Q All right.

24 A Or you could go on around through the other driveway.

25 Q Okay. So the passenger side would have been on this

1 side and the driver's side would have been on this side?

2 A Right. Right.

3 Q All right. So you come out of these porch steps. You
4 would have had to walk down. You would have had to cross
5 the front of the car and go all the way around the
6 passenger's side to get over to Mr. Green; correct?

7 A No. He came to me.

8 Q Okay. So when he came out, he came out in front of the
9 car to you?

10 A Right. Right.

11 Q And then he pushed you, you swung, and at that point he
12 kind of ran around to the back of the car away from you;
13 didn't he?

14 A No. Then we just started arguing and that's when
15 Charles came out.

16 Q All right. All right. So Charles comes out and tells
17 them y'all aren't supposed to be here. Y'all leave?

18 A Right.

19 Q And then according to you in your statement today, Mr.
20 Green and Mr. Keitt started arguing with Charles at that
21 time?

22 A Well, I know Mr. Green did.

23 Q All right.

24 THE COURT: Let me ask you a question. How old is
25 Mr. Green?

1 MS. CORNWELL: Mr. Green's date of birth was in
2 1973. So he would have been --

3 THE COURT: Forty-three.

4 MS. CORNWELL: Forty-four.

5 THE COURT: Forty-three or forty-four.

6 MS. CORNWELL: Okay.

7 BY MS. CORNWELL:

8 Q And this is where you stated they got into an argument.
9 They were fussing with each other. And at that point, Mr.
10 Riley goes back into the house and gets his gun?

11 A Correct.

12 Q When Mr. Riley walked away from Mr. Green to go back in
13 the house, did Mr. Green follow him?

14 A Right after, he started back arguing with me.

15 Q Okay.

16 A And that's when Angie came out and that's when Charles
17 came back out.

18 Q Mr. Green never chased after Mr. Riley, never tried to
19 go up the steps, never tried to go in the house; did he?

20 A They had words. They was screaming words.

21 Q Okay. But that's not my question. Mr. Green never
22 chased after Mr. Riley, never went up the steps, never tried
23 to go in the house, never tried to follow Mr. Riley; did he?

24 A From what I see they started pushing each other.

25 Q And my question -- and I'm not trying to be

1 argumentative with you, but it's a simple yes or no. Did
2 Mr. Green chase after Mr. Riley, follow after him, try to go
3 up the steps or go into his house?

4 A He ain't tried to go into the house but they was nose
5 to nose to each other.

6 Q Okay. So when they're nose to nose, they're arguing?

7 A Right.

8 Q At some point Mr. Riley turns his back on Mr. Green and
9 walks back into the house; correct?

10 A Right. That's when me and Donnie Green was -- we were
11 really in the yard just about to fight. Wasn't about to
12 fight. He was swinging at me.

13 THE COURT: Mr. Smith, I'm sorry to interrupt.
14 Mr. Smith, when Mr. Riley and Mr. Green were pushing each
15 other --

16 THE WITNESS: Right.

17 THE COURT: -- where were they? Were they closer
18 to the car? Were they closer to the house or the front
19 steps of the house?

20 THE WITNESS: In between the car and the house.

21 THE COURT: Between the car and the house?

22 THE WITNESS: Right.

23 THE COURT: About even distance or closer to the
24 house, closer to the car?

25 THE WITNESS: Closer to the car.

1 THE COURT: Okay.

2 BY MS. CORNWELL:

3 Q And when they were arguing, isn't it true that Mr.
4 Green was simply telling Mr. Riley I'm not here for you, my
5 beef is with Mr. Smith?

6 A I didn't heard that part. I just heard them arguing.

7 Q Okay. But regardless, Charles turns his back on Mr.
8 Green and walks away from him. And at no time when Mr.
9 Riley's back is turned, did Mr. Green push him, jump on him,
10 get him from behind --

11 A No.

12 Q -- follow him up the steps?

13 A No.

14 Q Didn't chase him at all; did he?

15 A That's when he started, proceed back after me again
16 when Charles went in the house.

17 Q Okay. All right. And you said Mr. Riley comes back
18 out of the house with the gun, walks over to where Mr. Green
19 is again. And, according to your statement today, is when
20 they started arguing again and you said Mr. Green came
21 towards Mr. Riley --

22 A As far as I knew he came on the porch at first and
23 telling them get out my yard. Get out my yard. You don't
24 supposed to be here. You don't supposed to be here. And
25 that's when Donnie was saying that he had something for him.

1 And that's when them two got back into it.

2 THE COURT: You're saying he was talking to him
3 saying these things. Mr. Riley was saying get out of the
4 yard. Get out of the yard --

5 THE WITNESS: Yeah.

6 THE COURT: -- while Mr. Riley was on his porch;
7 is that correct?

8 THE WITNESS: Correct. At first. The second time
9 he came off the porch and that's when Angie came out further
10 telling them said y'all need to leave because y'all don't
11 supposed to be here. You know you aren't supposed to be
12 here.

13 BY MS. CORNWELL:

14 Q And Ms. Riley was also trying to stop Charles from
15 coming out with a gun, wasn't she? She didn't want him to
16 come out with a gun?

17 A Not really.

18 Q Okay. And your statement today is that Mr. Green was
19 standing outside of the car with the car door open. He was
20 standing in front of the car door. And at that point went
21 around the car door to reach into the back of the car?

22 A Yes, ma'am.

23 Q That's your statement today?

24 A Right.

25 Q Okay. But you remember giving a statement -- and you

1 also give all of the statements today that you heard all
2 this arguing going on. You heard Mr. Green saying you know
3 I don't like you and saying things like, you know, I been
4 wanting you. I did this to you before?

5 A It's been a bunch of words passed.

6 Q Okay.

7 A Not word for word, I don't remember everything that was
8 said.

9 Q But you admit the statement that you would have given
10 right after this happened at the house, at the police
11 station, is probably going to be a more accurate statement
12 because it was pretty fresh on your mind right then;
13 correct?

14 A Well, this was happened so fast and, you know, I was
15 like in a state of shock.

16 Q Okay. And in the first statement you gave at about one
17 o'clock, this would have been on Joe Paul Drive in Cordova.
18 So this would have been at Mr. Riley's house.

19 A Not Joe Paul. That's where I stay to.

20 Q I'm sorry. That is your address. But you gave this
21 statement at Mr. Riley's house?

22 A Yeah. Right.

23 Q Okay. And in that statement you stated that Mr. Riley
24 came out and said you aren't supposed to be there and told
25 them to leave. And that's when Donnie got back into the car

1 and said I got something from you.

2 A Right.

3 Q That Donnie then came from the back seat.

4 A When they say -- when they read that to me, I told them
5 that he reached back into the back of the car, not got into
6 the back of the car.

7 Q Okay. And then you gave another statement at the
8 police station at about a little after two o'clock; correct?

9 A Correct.

10 Q So about an hour later?

11 A Right.

12 Q And again, you said that Donnie was in the passenger's
13 seat, that when Donnie got in the car -- so you said that
14 Donnie got in the car. And he told Charles I got something
15 for you?

16 A That's when -- that's what the detective wrote then.

17 Q And that's what you said; correct?

18 A No, I told him I said I seen Donnie reach into the car.

19 Q Okay. And you know that your interview at the police
20 station was recorded; right? On audio and video?

21 A No, I didn't know that.

22 Q All right. But they told you that when they brought
23 you in the room?

24 A I didn't know what it was all about.

25 Q Okay. All right. And you admit in neither one of your

1 written statements did you mention any threats, other than
2 this alleged statement of I've got something for you;
3 correct?

4 A Correct.

5 Q So you never mention anything about them saying you
6 know I don't like you. I've been wanting to do this to you.
7 None of that was mentioned in either statement; correct?

8 A Well, to me it was just an argument going forth between
9 both of them.

10 Q And in your interview you said that Donnie had gotten
11 back in the car. You said that Donnie didn't have a weapon?

12 A No, I said -- they asked me did I see a weapon. I said
13 no, I did not see a weapon.

14 Q Okay.

15 A I said that's when I turned around to tell Angie to go
16 ahead and call the police.

17 Q And Donnie --

18 A And that's when the gun went off.

19 Q Okay. So --

20 A Then they got in the car.

21 Q So you never saw a weapon?

22 A I never saw a weapon until --

23 Q And Mr. Green never threatened you with a weapon; did
24 he?

25 A No, he was just swinging at me.

1 Q Okay. And you told officers in your words, Donnie was
2 inside the car when Charles shot him?

3 A That's what he put down. I said Donnie --

4 Q This isn't even what's written. This is your interview
5 was recorded on audio and video. There's a video of you
6 giving your statement?

7 A Yeah. It was a bunch of -- to me it was a bunch of him
8 telling -- him taking my words, forcing words for me to say.
9 you know, it wasn't just like you asking me. You basically
10 telling me about what you want down there.

11 Q And you told officers that Donnie was inside the car
12 when Charles shot him.

13 A I said Donnie got back into the car.

14 Q You also said that he tip of the gun went through the
15 window when Charles shot Donnie?

16 A I didn't -- because I didn't see that part. You know,
17 because I was telling Angie about call the police and that's
18 when the gun went off.

19 Q So your statement then was that Donnie was in the car
20 when he got shot. And your statement today is that he was
21 outside the car when he got shot?

22 A I said Donnie got back into the car.

23 Q So Donnie got out of the car, was arguing with you.
24 When Mr. Riley went to go in the house to get the gun,
25 Donnie got back in the car?

1 A Donnie was already out the car when he first pulled up
2 in there. He ain't never got back into the car.

3 Q But that's not what you told police soon after this
4 happened. You told police he got back in the car.

5 A It might be a error or whatever. Because I didn't, you
6 know, I didn't recall of him getting back in the car. I
7 said he reached in the car.

8 Q And now you're saying that you didn't see Mr. Riley
9 actually shoot Mr. Green?

10 A No, because I was telling Angie his wife about calling
11 the police, trying to avoid that. That's when the gun when
12 off. And I didn't know Donnie was shot until I heard him
13 saying that you shot me.

14 Q Did Donnie sound surprised that he had gotten shot?

15 A I guess. I believe so.

16 Q You just shot me.

17 A Yep.

18 Q Like what in the world. Because Donnie didn't expect
19 to get shot; did he?

20 A I can't answer that.

21 Q Because Donnie kept telling Mr. Riley, I'm not here for
22 you. The only reason Donnie came to that house was to talk
23 to you about that truck?

24 A Donnie started, proceeded on me. And then him and
25 Charles start arguing. I ain't here to fight with you,

1 wasn't here for this or whatever.

2 Q No question that at some point Mr. Riley went back into
3 his house and Donnie, Mr. Green, didn't follow him, didn't
4 threaten him, didn't chase after him or anything like that.
5 He went and talked to you after Mr. Riley left?

6 A No not -- he start back arguing with me.

7 Q Okay. So, again, you and Mr. Riley [sic] are standing
8 there arguing. Mr. Keitt's not really arguing; correct?
9 He's just kind of standing back watching at this point;
10 correct?

11 A Well, my intention was I thought him and Donnie was
12 going to jump me --

13 Q Okay.

14 A -- because both of them standing in front of the car
15 when they pulled up in there.

16 Q And that was when they first pulled up?

17 A When they first pulled up.

18 Q But by the time Mr. Riley came out and came down the
19 steps, you said they were -- that Mr. Riley and Mr. Green
20 were nose to nose arguing; correct?

21 A Arguing.

22 Q And you were standing there next to them?

23 A I was standing close to the house, of the side of the
24 house.

25 Q Okay. So you got the house here, the car here.

1 A Right.

2 Q You've got --

3 THE COURT: Excuse me for a minute. Sir, on the
4 far left, stop shaking your head.

5 BY MS. CORNWELL:

6 Q So you've got the house here, the car here. You're
7 between the house and the car closer to the house?

8 A Right.

9 Q And then Mr. Riley and Mr. Green would have been
10 between you and the car; correct?

11 A That's just about close to me.

12 Q Okay. So while Mr. Green was arguing with you, Mr.
13 Riley would have to come walk around you to get into Mr.
14 Green's face?

15 A No, because the steps come straight down and goes
16 straight to the car because I was standing off to the side,
17 right next to the house.

18 Q So you indicated that the car was about right here?

19 A Somewhere in that area.

20 Q All right. So you were standing about here between the
21 car and the house?

22 A On the corner of the house.

23 MS. CORNWELL: I'm sorry, Your Honor.

24 BY MS. CORNWELL:

25 Q So you indicate that the car was right here?

1 A Somewhere in that area.

2 Q And you were standing kind of between the car and the
3 house?

4 A Right there at the pointy side of the house.

5 Q On the side of the house?

6 A On the corner of the house.

7 Q So Mr. Riley was fussing at him to get out?

8 A Right.

9 Q Then he came down the steps, would have walked around
10 you, to go confront --

11 A Well, walk in front of me.

12 Q Walked in front of you?

13 A Right.

14 Q So if you and Mr. Green were arguing, Mr. Riley
15 inserted himself between you and Mr. Green and that's when
16 they started arguing; correct?

17 A They started arguing.

18 Q And while that was happening, where was Mr. Keitt?

19 A Still standing in front of the vehicle.

20 Q Okay. So he was on his driver's side, sort of in front
21 of the vehicle?

22 A Correct.

23 Q And then you were between the car and the house, kind
24 of over where Mr. Keitt was?

25 A Correct.

1 Q And then Mr. Riley and Mr. Green were kind of on the
2 other side near the passenger's side?

3 A Well, I was right there by the house.

4 Q So after Mr. Riley turned around -- so basically it
5 could have been -- it was you and Mr. Riley over there. And
6 that's who Mr. Green was arguing with, you and Mr. Riley?

7 A Right, right.

8 Q So when Mr. Riley turned and left, he started arguing
9 with you again?

10 A Correct.

11 Q Because you're the real reason he was over there?

12 A Apparently so.

13 Q He wasn't over there for Mr. Riley. He didn't come
14 over there looking for Mr. Riley, did he?

15 A No. He came over there for me.

16 Q Okay. So when Mr. Riley turned around and left, Mr.
17 Green still didn't have a beef with Mr. Riley. He was
18 arguing with you because you took the truck?

19 A Right. And then that's when Mr. Riley came back out
20 and telling them about leave, leave, you aren't supposed to
21 be here.

22 Q But Mr. Green never followed Mr. Riley, never tried to
23 jump him while his back was turned... Because if Mr. Green
24 wanted to get Mr. Riley, when his back was turned was the
25 perfect opportunity for him to jump on Mr. Riley; isn't it?

1 A Yeah.

2 Q And he never did that; did he?

3 A I didn't see nothing.

4 Q Okay. You didn't see it because it didn't happen; did
5 it?

6 A No.

7 Q Okay. And then he walked all -- he walked all the way
8 around the front of the car, behind where you were, up the
9 steps and inside his house. And Mr. Green never followed
10 him, never pushed him, never attacked him, never jumped on
11 him from behind; did he?

12 A When you say around, it's a straight shot from his car
13 to the steps.

14 Q But he still had to go fully past the car and then go
15 up the steps; correct? Because you said he was on the
16 passenger's side?

17 A He was on the passenger's side in front of the
18 passenger door.

19 Q Okay. All right. No question that Mr. Green never
20 followed Mr. Riley up to his house, into his house, or
21 attacked him from behind when his back was turned?

22 A No, because it was steady arguing.

23 Q And absolutely -- absolutely --

24 A That's when Angie came out and telling them about y'all
25 got to leave. Y'all got to leave. And I just kept telling

1 her to call the police.

2 Q And absolutely no doubt that when Mr. Green rode up in
3 the passenger's seat of the car to Mr. Riley's house, he
4 wasn't coming looking for Mr. Riley. He didn't have any
5 problem with Mr. Riley at that moment; did he?

6 A No, his intention was at me.

7 Q Okay. And even when Mr. Riley turned around walked
8 away from him at that point, still didn't follow him because
9 his intention wasn't with Mr. Riley. His argument was with
10 you?

11 A His argument was with me.

12 Q In his argument with you, he never pulled a weapon on
13 you?

14 A No. No.

15 Q You never saw him with a weapon?

16 A Never -- I didn't see him with no weapon. I did see
17 him like reach back there and I didn't know what they were
18 doing.

19 Q Okay. But you never saw him with a weapon; right?

20 A I never seen any weapon visible.

21 Q Thank you, Mr. Smith.

22 MR. HUTTO: I'm going to try and clarify something
23 at least for me, maybe for everybody. I'm not sure.

24 JEFFREY SMITH - REDIRECT EXAMINATION

25 BY MR. HUTTO:

1 Q The car came into the driveway toward the house. And
2 it could be one of two ways --

3 A Yes, sir.

4 Q Let me just ask me, sir. And you can tell me which it
5 is. Either the car pulled straight in so that the head of
6 the car was kind of like the Solicitor's described it. The
7 head of the car is straight in. And when she says walk
8 around the front, she's saying that. Or the car was like
9 this --

10 A Like that.

11 Q Like this?

12 A Yeah.

13 Q All right. So in other words, the passenger's side
14 door was facing the front of the house, not the head of the
15 car facing the front of the house?

16 A No, no.

17 Q All right. So when the question about walking around
18 the front, you wouldn't have to walk around the front if the
19 car was turned this way?

20 A No, just walk straight to it.

21 Q Walk straight to it. Okay. That's what I wanted you
22 to clarify in my mind. Now, in your very first statement
23 that was given at Mr. Riley's house where you told Sergeant
24 Thompson to write it for you?

25 A Right.

1 Q Okay. You said Donnie Green jumped out of the -- and
2 the reason I'm going to read this is because she left out a
3 part.

4 A Right. Right.

5 Q I'm not saying she intentionally did it, but I want to
6 make the whole thing -- go through it, so --

7 A Right.

8 Q Donnie Green jumped out of the car and was swinging at
9 me. That's when I told Donnie I will pay you your money but
10 you not going to keep my truck. Charles Riley came out and
11 said you are not supposed to be here and told him to leave
12 three times.

13 A Right.

14 Q That's when Donnie went to the back seat saying I got
15 something for you. Charles went back in and got his shotgun
16 and then told them to leave again. Donnie then came from
17 the back seat saying I got something for you and raised his
18 hand?

19 A Right.

20 Q Okay. That's what -- before anybody else had started
21 asking a lot of questions, when the very first officer said
22 tell me what happened. That's what you told him?

23 A Right.

24 Q Then, and your second statement was written at the
25 police headquarters. Donnie got out of the passenger's side

1 of the car and started to swing at me with his fist. I kept
2 telling Donnie I'm not going to let Donnie have my truck.
3 Charles told Donnie he was not supposed to be there and that
4 he needed to leave. That's when Charles went in the house
5 and came back outside with a gun. Charles kept telling
6 Donnie to leave. And that's when Donnie got in the car.
7 When Donnie got in the car, he told Charles I got something
8 for you. That's when he was shot. So he was reaching back
9 in the car --

10 A Right.

11 Q -- in both of your statements; is that fair to say?

12 A Right.

13 Q Okay. And finally, in your recorded statement in
14 several occasions while you might not have said the words of
15 the threat, you kept saying in the recorded statement that
16 Mr. Green was threatening Mr. Riley?

17 A Right.

18 Q But you told us today what actually those words were?

19 A Right.

20 MR. HUTTO: Thank you.

21 THE COURT: All right. Anything further from this
22 witness?

23 MS. CORNWELL: No, Your Honor.

24 THE COURT: You may step down, Mr. Smith.

25 Call your next witness.

1 MR. HUTTO: Yes. We would call Angela Riley.

2 THE COURT: All right. Come on forward, Ms.
3 Riley, and be sworn. If you would place your left hand on
4 the Bible and raise your right hand.

5 (WHEREUPON, Angela Riley was sworn
6 to tell the truth.)

7 ANGELA RILEY - DIRECT EXAMINATION

8 BY MR. HUTTO:

9 Q Ms. Riley, Charles Riley is your husband?

10 A Yes.

11 Q How long have y'all been married?

12 A About twenty-six years.

13 Q Okay. And where do you live?

14 A 154 Parker Street.

15 Q And is that in Cordova?

16 A Cordova.

17 Q Is that in Orangeburg County?

18 A South Carolina. Yeah, Orangeburg County.

19 Q And where does your husband work?

20 A Zeus.

21 Q And has he worked there for many years?

22 A Uh-huh. (Affirmative response) Yes.

23 Q All right. And do you work?

24 A Yes.

25 Q Where do you work?

1 A Methodist Oaks.

2 Q What do you do at the Methodist Oaks?

3 A I'm a sitter. Care --

4 Q A care sitter?

5 A Yeah.

6 Q Methodist Oaks is a facility where older people go and
7 live?

8 A Right.

9 Q How long have you been working at the Methodist Oaks?

10 A Ten years.

11 Q Ten years. All right. I want to get your attention
12 now to -- January the 30th was a Saturday?

13 A Uh-huh. (Affirmative response)

14 Q What's the address of the house that you live at?

15 A 154 Parker Street.

16 Q And that 154 Parker Street is a house that you and Mr.
17 Riley own?

18 A Right.

19 Q And y'all live there?

20 A Right.

21 Q And y'all have lived at that house how long?

22 A Twenty-six years. The whole --

23 Q The whole time?

24 A The whole time.

25 Q All right. So there's no doubt that this incident

1 occurred at your home?

2 A No doubt.

3 Q In your yard?

4 A In my yard.

5 Q All right. What's the first thing that came to your
6 attention that morning that you realized that some commotion
7 was happening in your yard?

8 A Well, I heard the voices.

9 Q Okay. Were you in the house when you heard it?

10 A I was in the house.

11 Q All right. And did you get up to see what that was?

12 A Yes.

13 Q And did you walk outside?

14 A I walked to the -- yeah. Outside to the door.

15 Q To the porch?

16 A To the porch.

17 Q Let me show you what's been marked as State's No. 1.
18 Is what you're calling the porch this area right up here in
19 front of the -- I guess the front window that's got some
20 chairs and things on it?

21 A Uh-huh. (Affirmative response)

22 THE COURT: Is that a yes? For the record?

23 THE WITNESS: Yes. Yes.

24 THE COURT: Thank you.

25 BY MR. HUTTO:

1 Q All right. And so when you walked out of the front
2 door and onto the front porch, was there a vehicle in your
3 yard?

4 A Yes.

5 Q All right. And where was it parked?

6 A About like in the front step like here. Yeah.

7 Q Okay. Was the front of the vehicle towards your house
8 or the driver's side of the vehicle pointed to your house or
9 the passenger side of the vehicle?

10 A The passenger side.

11 Q The passenger side.

12 A (Inaudible)

13 Q Okay. Is the driveway in your yard one of those where
14 you can come in on one side and drive out and go out on the
15 other?

16 A Yes.

17 Q Kind of like a horseshoe in front of your house?

18 A Uh-huh. (Affirmative response) Yes.

19 Q So had that car come up in your driveway?

20 A Yeah.

21 Q And it came as part of the turn of the horseshoe and
22 was sort of like that?

23 A Yeah.

24 Q Did you know the people that were in the car?

25 A Yes, I did.

- 1 Q Who were they?
- 2 A My two cousins, Thomas Keitt and Donnie.
- 3 Q Okay. Donnie Green?
- 4 A Donnie Green.
- 5 Q All right. So Thomas Keitt is your cousin?
- 6 A Yes.
- 7 Q And Donnie -- sometimes they call him Lee Edward, but
- 8 most people call him Donnie Green was also your cousin?
- 9 A Yes.
- 10 Q Okay. And so would it be fair to say you've been
- 11 knowing them pretty much all your life?
- 12 A Yes, sir.
- 13 Q Now, let me step back a second. Had there been some
- 14 time a couple of years ago when Mr. Green beat up your
- 15 husband, Mr. Riley?
- 16 A Yes.
- 17 Q All right. And your husband had to get some medical
- 18 attention?
- 19 A Yes, he did.
- 20 Q He stayed out of work for a while?
- 21 A Yes, he did.
- 22 Q Okay. So that had happened though about four years
- 23 ago?
- 24 A Yeah, about four years.
- 25 Q Now, coming back to the Saturday morning. You heard a

1 commotion. You went out on your porch. You saw the car
2 parked in your yard. You recognized that your cousins were
3 in the car; correct?

4 A Right.

5 Q Tell the Judge what you saw?

6 A Well, I saw them on outside, standing up arguing. So
7 then that's when I asked them -- you know, I told them they
8 had to leave because I didn't know what was going on. And -

9 --

10 Q Now, when you say you saw them standing outside
11 arguing, tell me who them is?

12 A Donnie and -- Donnie standing up talking to Jeff. He
13 was standing outside. And Thomas was too, on the outside of
14 the car.

15 Q Thomas was -- but he wasn't doing the arguing; is that
16 fair to say?

17 A He was saying something, but I didn't understand what
18 he was saying.

19 Q All right. Do you know what Mr. Green was saying?

20 A Well, he told Charles something like, you know, he
21 didn't come here for him. You know, made some kind of
22 little other accusation, but I don't know what all that was
23 said.

24 Q Okay. And did you tell Mr. Keitt and Mr. Green to
25 leave?

- 1 A Yes, I did.
- 2 Q Did they leave?
- 3 A No.
- 4 Q All right. And so did you hear Charles tell them to
- 5 leave?
- 6 A Yes.
- 7 Q Did they leave?
- 8 A No.
- 9 Q At some point in time did Charles come back into the
- 10 house?
- 11 A Yes.
- 12 Q Did you also go back in the house?
- 13 A Yes, I did.
- 14 Q And when you saw Charles inside the house, what did he
- 15 do?
- 16 A Yeah, he, you know, got the gun.
- 17 Q And is it like a shotgun?
- 18 A Uh-huh. (Affirmative response)
- 19 Q And just tell us what you saw him do with that shotgun?
- 20 A Well, he went to tell them again and told them to
- 21 leave. He went back outside. And, you know, at that point,
- 22 I'd done walked back in the house.
- 23 Q At some point in time you heard a gunshot?
- 24 A Yes.
- 25 Q Did you go back outside?

1 A I walked to the door and saw them, you know, that it
2 had done went off. And I saw him saying he was shot.

3 Q You saw Mr. Green saying he was shot?

4 A Yes.

5 Q All right. And did you see Mr. Green and Mr. Keitt
6 leave in the car they came in?

7 A No.

8 Q You went back in then?

9 A I'd done went back in the house.

10 Q All right. And 9-1-1 got called right after that?

11 A Yeah.

12 Q So when the gunshot went off -- I'm not trying to put
13 words in your mouth but tell me, did you actually see the
14 gun go off or you didn't see the gun?

15 A I didn't.

16 Q You did not? Okay. But you heard it?

17 A I heard it.

18 Q And when you heard it, you went back and looked?

19 A Uh-huh. (Affirmative response)

20 Q Yes?

21 A Yes.

22 THE COURT: Say yes for the record.

23 THE WITNESS: Yes.

24 THE COURT: Thank you.

25 BY MR. HUTTO:

1 Q And at that point in time was Mr. Green saying
2 something about being shot?

3 A Yes.

4 Q And did Mr. Riley, what did he do with the gun then?

5 A Came back up on the porch and sit it down and came in
6 and called 9-1-1.

7 Q And did he leave the gun there until the police got
8 there?

9 A Yes, he did.

10 Q Did you give a statement to the police?

11 A Yes, I did.

12 Q And then when they asked you to come to the police, you
13 also gave a statement?

14 A Yes, I did.

15 Q Okay. Tell me, when you were on the porch, what you
16 told Mr. Green?

17 A I told them to leave, that they wasn't supposed to be
18 there.

19 Q Why did you tell them they weren't supposed to be
20 there?

21 A Because I didn't know, you know, they had a
22 confrontation with him and I didn't, you know, want no more
23 trouble out of them there.

24 Q Okay. Was there a time between the time that your
25 husband walked in the house to get the gun and came back out

1 for them to have cranked up the car and left?

2 A Yes, it was.

3 Q Did they do that?

4 A No.

5 MR. HUTTO: Just one second.

6 BY MR. HUTTO:

7 Q Answer any questions that the Solicitor might have.

8 ANGELA RILEY - CROSS-EXAMINATION

9 BY MS. CORNWELL:

10 Q Ms. Riley?

11 A Hello.

12 Q I appreciate your being here. I know this can't be
13 easy for you. Mr. Riley's obviously your husband.

14 A Yes.

15 Q And Mr. Green and Mr. Keitt are both your first
16 cousins; correct?

17 A Yes.

18 Q And when this incident happened, you gave a statement
19 to police that day; correct?

20 A Correct.

21 Q And that was at the police station?

22 A Right.

23 Q You gave both a written statement and then they told
24 you that they were audio and video recording you --

25 A Right.

1 Q -- in the interview room; correct?

2 A Uh-huh. (Affirmative response)

3 THE COURT: That's a yes for the record?

4 THE WITNESS: Yes. Yes.

5 BY MS. CORNWELL:

6 Q And I first want to talk about the four years prior
7 when the victim and the defendant got into a fight?

8 A Right.

9 Q You weren't there when they got in that fight were you?

10 A Yes, I was.

11 Q You were there?

12 A Yes.

13 Q Do you know what that fight was about?

14 A No.

15 Q But when that fight occurred, it wasn't just the victim
16 that got into a fight with your husband; was it?

17 A No, it wasn't.

18 Q Okay. It was -- there was three people; correct?

19 A Correct.

20 Q It as the victim, Mr. Green?

21 A Uh-huh. (Affirmative response)

22 Q It was your Husband's nephew, John Riley?

23 A Yeah.

24 Q And it was another gentleman named Mark Stroman;
25 correct?

1 A Correct.

2 Q And in that fight, Mr. Green wasn't really the one
3 fighting Mr. Riley. It was Mr. Stroman that had to be
4 pulled off of your husband with a beer bottle; correct?

5 A I don't know because it was dark.

6 Q But you were there and you saw the fight?

7 A I was there. I was in the car.

8 Q And his nephew was also beating and kicking him;
9 correct?

10 A If that's what -- yes, correct?

11 Q And you admit that your husband's got a bit of a
12 temper; doesn't he?

13 A No, not really.

14 Q You haven't told -- you don't remember telling police
15 that he had a temper?

16 A Well, he told me like, you know, say he had -- I said,
17 yes. But he really don't.

18 Q But Mr. Riley's been known to assault you before too;
19 hasn't he?

20 A Yes.

21 Q And, in fact, that shotgun that he has, he's pointed it
22 at you before; hasn't he?

23 A No, he haven't.

24 Q You didn't go to your aunts house scared saying --

25 A I went there saying, yeah --

1 Q -- saying that he pointed a gun at you?

2 A -- but me telling he pointed the gun at me, no, I
3 didn't.

4 Q And you've never really called the police on him for
5 assaulting you; have you?

6 A No, a long time ago but not now.

7 Q And that's because you used to always tell your family
8 you couldn't call the police on him because you didn't want
9 him to lose his job?

10 A No, I didn't say that. No, I didn't.

11 Q Okay. And that fight four years prior, the reason for
12 that fight was because your husband was running his mouth
13 about beating you. And your cousins didn't like that; did
14 they?

15 A No, that's not so.

16 Q Okay. But you would understand if family thought that
17 one of their family members was being attacked, that they
18 would want to protect their family; correct?

19 A That's correct.

20 Q And that happened four years ago; correct? So that
21 wasn't recently; was it?

22 A No.

23 Q And since that time it happened, your husband and your
24 cousin had hung out since then and gotten along okay; right?

25 A I don't know. I don't know anything about that.

1 Q Okay. The day that this happened, you said that you
2 had just gotten off work?

3 A I did.

4 Q That you had gotten home. Charles had come in the
5 house and told you that he was going to take Jeffrey to go
6 get his car; correct?

7 A Right.

8 Q And that after he took Jeffery to go get his car, he
9 came straight back to the house?

10 A That's right.

11 Q He'd sat in the house for a while. And he told you I
12 hope those boys don't come to this house?

13 A He told me -- he know -- he was letting me -- he told
14 me he thinks somebody might would -- was coming. But he
15 didn't say that, no.

16 Q You didn't tell police that Charles came in the house
17 and said I hope those boys don't come to the house?

18 A That's how they told me -- asked me the question that,
19 you know, I hope they're not coming. But I did say that to
20 -- yeah.

21 Q Okay. And you said that -- you told Charles to leave
22 that alone, just leave it alone.

23 A I didn't know who was out there and that's when I got
24 up and went behind him to see what was going on.

25 Q And so when Charles came back in the house and you said

1 don't go back out there, leave it alone, his response to you
2 was well, they're threatened me?

3 A Yes

4 Q Okay. And you asked him what kind of threat?

5 A I don't remember saying that.

6 Q But you would admit if that's what you told police that
7 that would have been what was said?

8 A Well --

9 Q Okay. And in your statement you said that you saw
10 Thomas and Donnie outside arguing with Jeffrey?

11 A That's right.

12 Q And when Charles came out, Donnie told Charles I didn't
13 come here for you. I came here for him?

14 A Yes, he did say that.

15 Q And that's when both of y'all asked him to leave?

16 A I asked him, yeah. Both of us.

17 Q And at that point, Charles turned around from the yard
18 and you never saw Mr. Green push your husband, shove your
19 husband or assault your husband?

20 A I had already done walked back into the house. I left.

21 Q Okay. So the answer is no. You never saw that?

22 A No. No.

23 Q You never heard Mr. Green --

24 A Yes, I saw someone outside of the car but anything
25 after that, no. I went in the house after that.

1 Q So you never saw any physical assault occur?

2 A No.

3 Q And you never heard Mr. Green ever threaten Mr. Riley;
4 did you?

5 A I heard them making some commotion out there. But I
6 don't know what all was said, like I stated.

7 Q You said you heard him say I didn't come here for you.
8 I came here for him?

9 A I heard that. That's when I was standing right there
10 in the door.

11 Q Okay. And then when you walked in the house, Mr. Riley
12 came in right after you; right?

13 A Right. Right. Right.

14 Q And when Mr. Riley came in the house, you didn't see
15 Mr. Green following him?

16 A No, I didn't.

17 Q You didn't see Mr. Green try to come in the house after
18 him or anything like that?

19 A No, I didn't.

20 Q In fact, your understanding, based on what he said was
21 he wasn't there for Mr. Riley; was he?

22 A That's what -- I guess that's what he was saying.

23 Q And you said --

24 A They were kind of angry. I don't know what, you know,
25 what all was going on.

1 Q Sure. And you said that Mr. Riley came back outside
2 the house and said I'm tired of them coming and starting
3 threatening?

4 A Yeah. Yeah, I remember him saying they was making some
5 accusations out there. And he said he had asked them to
6 leave and so have I.

7 Q And at that point, Mr. Riley was angry; wasn't he?

8 A No, he wasn't -- well, he was -- he'd had enough. Put
9 it that way. Because he'd done asked them to leave.

10 Q And so at that point, Mr. Riley goes in the house and
11 gets the gun and came out of the house waving the gun at
12 them; correct?

13 A He told them -- he told them again to leave.

14 Q Okay. And you said at that point both Thomas and
15 Donnie said we didn't come here for you. We just want to
16 talk to Jeffrey.

17 A Well, they said they didn't come there for him. They
18 didn't make no accusation as to coming to talk to Jeffrey.

19 Q Okay.

20 A They was arguing with both of them at the time. Put it
21 that way.

22 Q And Charles was on the porch with the gun and Jeffrey
23 was standing in the yard?

24 A Right.

25 Q And Mr. Keitt was standing by the door, you said with

1 the car door open; correct?

2 A Right.

3 Q And then your statement to police was and then Thomas
4 and Donnie both got back into the car?

5 A Right.

6 Q And it wasn't until they both got back into the car
7 that Charles came off the porch with the gun in his hand?

8 A I don't recall that. I don't remember.

9 Q All right. And you said -- you even told police that
10 you didn't think that they were going to leave, but they
11 were both sitting in the car?

12 A I didn't know it. They wasn't going to leave because
13 we'd tell them several times and they did not leave.

14 Q But they were both sitting in the car at that point?

15 A They was standing -- standing outside.

16 Q Okay. But you told police that at the time that
17 Charles came off the porch, that Donnie and Thomas were both
18 sitting inside the car?

19 A No, they wasn't. They was standing on the outside.
20 That's what they saying I said. But I didn't say that.
21 They really wouldn't let me talk too much.

22 Q Okay. So if the video shows you saying -- so you're
23 denying that you ever said that they were sitting inside the
24 car?

25 A I don't know if they was sitting or not, because like I

1 say it happen so quick. I don't remember.

2 Q Well, if you didn't know, why would you tell police
3 that they were sitting inside the car?

4 A (No response)

5 Q And you also told police that you don't now why Charles
6 went to the car. That he should have never gone to the car.

7 A That's what they told me to say.

8 Q Okay. And you said while Donnie was inside the car he
9 said again to Charles, I didn't come here for you. I came
10 here for him. And he said it while he was inside the car?

11 A I don't remember that.

12 Q You said at that point you turned around and went back
13 inside and you heard a gunshot.

14 A Yeah. Right.

15 Q But before all of that occurred, you kept trying to get
16 Mr. Riley not to go back outside with the gun; right?

17 A Yeah. I told him --

18 Q You kept telling him, leave it alone. Don't go out
19 there. That's between them and Jeff. Don't get yourself
20 involved?

21 A No, I didn't say that. No, I didn't. Because he asked
22 them to leave. I didn't tell him to didn't get involved
23 with that because me and him -- neither one of us knew what
24 was going on. We just didn't want anything to occur, you
25 know, like whatever was -- whatever they had going on, we

1 didn't know.

2 Q Okay. But you were trying to tell him not to go back
3 outside. You didn't want him to go outside with the gun;
4 did you?

5 A No, because I didn't -- you know.

6 Q Once he came inside the house, he had other options
7 than going outside the house with a gun; didn't he?

8 A (No response)

9 Q He could have called the police but he didn't; did he?

10 A We didn't have time. We wasn't thinking about that.
11 Everything happened so fast.

12 Q But that's not -- my question is when he came inside
13 the house, he could have gone back in the bedroom and got a
14 gun or he could have walked to the phone and called the
15 police; couldn't he?

16 A Yeah.

17 Q He could have called the police. And, in fact, you
18 asked him not to go back outside; didn't you?

19 A But I tried to tell him no, don't -- you know.

20 Q And all while this is happening, Mr. Green's not trying
21 to come in the house; is he?

22 A I don't know because I was in the back end.

23 Q Okay.

24 A I really don't know.

25 Q But you never saw Mr. Green trying to come in the

1 house?

2 A No.

3 Q Never saw Mr. Green coming up the steps?

4 A No.

5 Q And you never saw Mr. Green physically attack your
6 husband; did you?

7 A No, because I was in the house.

8 Q And you never saw Mr. Green with a weapon; did you?

9 A I saw when they -- when I came out that door, it looked
10 like they was out there arguing. That's all I can tell you
11 that I saw them arguing. It look like he did reach for
12 something but I do not know what, because I had done stepped
13 back inside. I was, you know, trying to, you know, see if I
14 could get them to stop arguing.

15 Q You never saw Mr. Green with a weapon?

16 A No.

17 Q And once you were inside the house and you heard the
18 gunshot, you went back to the door and you said you heard
19 Donnie say, man, you shot me. What the hell did you shoot
20 me for?

21 A Yeah.

22 Q So Mr. Green was surprised that Mr. Riley shot him;
23 correct?

24 A I guess. I don't know.

25 Q Because he wasn't there for Mr. Riley. He'd told Mr.

1 Riley several times I'm not here for you; correct?

2 A Correct.

3 Q And then you also told police that you were scared
4 because you thought that -- you said you thought Donnie and
5 Thomas were going to beat Charles?

6 A I sure did. Yes.

7 Q But the whole time the only thing you ever heard
8 anybody say to your husband was I'm not here for you?

9 A That's what I heard. But I didn't hear anything else
10 because I walked back inside.

11 Q And you also told police that Charles was never in any
12 real danger?

13 A No, I didn't.

14 Q Okay.

15 A I never -- I didn't.

16 Q You told police that Thomas and Donnie got back into
17 the car when Charles came on the porch with the gun?

18 A I have no idea.

19 Q You also said that when Charles came home after
20 dropping Jeffrey off, that he came in the house and told you
21 he knew that they were going to come after that truck?

22 A No, I didn't.

23 Q Okay. But no matter what regardless of what you've
24 testified here or there, no doubt that you never saw Thomas
25 or Donnie with a gun. You never saw anything in their

1 hands. You never head them threaten Charles. You only
2 heard them tell them we're not here for you?

3 A That's correct.

4 Q And no doubt you tried to keep Charles from going back
5 outside that house with the gun?

6 A Well, at that point, yes, I did try to tell him.

7 Q Because you didn't think he needed to go back outside
8 with all of that?

9 A Well, that --

10 Q There was no need for him to go back outside; was
11 there?

12 A Yes, there was.

13 Q What was the need for him to go back outside?

14 A Well, he already ask them to leave and they didn't
15 leave.

16 Q Okay. But they'd already told him that it wasn't
17 involving him, so there was no need for him to go back
18 outside was there? He could have just called the police and
19 had the police handle it. He didn't have to get himself
20 involved; did it?

21 A Well, I guess --

22 Q They weren't destroying his property; were they?

23 A No.

24 Q Nope. They weren't trying to come into his house; were
25 they?

1 A No.

2 Q They weren't trying to physically assault or fight him;
3 were they?

4 A Yes, they was.

5 Q Because they told him we're not here for you. They
6 just wanted to talk to Jeffrey?

7 A They had a confrontation with him, some words that was
8 said. But I don't know what all was said. So --

9 Q Thank you, Ms. Riley.

10 A You welcome.

11 ANGELA RILEY - REDIRECT EXAMINATION

12 BY MR. HUTTO:

13 Q Just a couple of things, Ms. Riley. When you went out
14 on the porch the first time, did you ask them to leave?

15 A Yes, I did.

16 Q Did they leave?

17 A No.

18 Q Were they making any effort to leave?

19 A No.

20 Q Okay. When you gave the different statements, in every
21 one of them you talk about either that you heard a pow or
22 you heard a shot, and that's when you went running back. Or
23 I heard a pow and I went running back. You were in the
24 house when it happened?

25 A I were in the house when it happened.

1 Q So as far as where everybody was standing actually when
2 the gun went off, you didn't see it?

3 A I didn't see it.

4 Q In all your statements you've said that when you heard
5 the pow is when you went back to --

6 A That when I went back.

7 Q All right. But you had been out earlier and that's
8 when you asked them to leave?

9 A That's right.

10 Q And you heard Charles ask them to leave?

11 A Right.

12 Q And they did not leave?

13 A They did not leave..

14 Q Okay. Thank you.

15 THE COURT: Anything more?

16 ANGELA RILEY - RECROSS-EXAMINATION

17 BY MS. CORNWELL:

18 Q I mean, we just went through this a little bit of what
19 you heard and didn't hear. But no doubt, you told police
20 that when Charles came in the porch or came inside on the
21 porch, Thomas and Donnie were inside the car, seated in
22 their car when he came back off the porch; correct?

23 A I don't remember that.

24 Q All right.

25 THE COURT: All right. Ma'am, you can step down.

1 Unless you wanted to ask her another question, Mr. Hutto?

2 MR. HUTTO: No, ma'am.

3 THE COURT: All right. Y'all, we're going to take
4 just a quick, about an eight, ten-minute break if we could.
5 We'll be right back out and keep going; okay?

6 (Court in recess for short break)

7 (Court in session after short

8 break)

9 THE COURT: Thank you. Please be seated.

10 MR. HUTTO: Your Honor, we've agreed with the
11 State on authentication and that kind of thing on autopsy
12 reports and hospital records and we're not going to require
13 each other to do that. So at this time I have marked these
14 Exhibits Defendant's 1 and Defendant's 2.

15 (Defendant's Exhibit No. 1, medical
16 records Mr. Riley, was marked for ID.)

17 (Defendant's Exhibit No. 2,
18 toxicology screen of Lee Edward Green, was marked for ID.)

19 MR. HUTTO: And Defendant's 1 is the medical
20 records from Mr. Riley's treatment from the four-year-ago
21 incident where the doctor says that he has the possible
22 concussion, contusions, the black eyes. The x-rays for his
23 eye bones from the beating that happened four years ago.
24 That's Exhibit 1.

25 Exhibit 2 is the chemistry test, the toxicology screen

1 done at The Regional Medical Center here in Orangeburg on
2 Lee Edward Green showing that on January the 30th, which was
3 the day of this incident, if you looked at, it's got a
4 series of things. But the benzodiazepine positive, cocaine
5 positive and opiates positive.

6 I want to put those two into evidence.

7 (Defendant's Exhibit No. 1, medical
8 records Mr. Riley, was marked and entered.)

9 (Defendant's Exhibit No. 2,
10 toxicology screen of Lee Edward Green, was marked and
11 entered.)

12 MR. HUTTO: At this time I would call Charles
13 Riley?

14 (WHEREUPON, Charles Riley was sworn
15 to tell the truth.)

16 CHARLES RILEY - DIRECT EXAMINATION

17 BY MR. HUTTO:

18 Q Mr. Riley, how old are you?

19 A I'm forty-nine years old.

20 Q If you want to get your -- either that, or get your
21 seat closer so mic.

22 A (Witness complies)

23 Q All right. Are you married?

24 A Yes, sir. I am.

25 Q And what's your wife's name?

1 A Angela Riley.

2 Q And what is the street address at the house?

3 A 154 Parker Street, Cordova, South Carolina.

4 Q Do you and Ms. Riley own that house?

5 A Yes, we do.

6 Q And how long have you lived there?

7 A Probably twenty-eight years or better.

8 Q And do you work?

9 A Yes, I do.

10 Q Where do you work?

11 A I work for a company here in Orangeburg by the name of
12 Zeus Industrial Products.

13 Q What kind of a product does Zeus manufacture?

14 A A lot of medical grade stuff for the military, Teflon
15 tubing.

16 Q Tubing and plastics?

17 A Yes, sir.

18 Q And what is your job there?

19 A I'm a secondary inspector.

20 Q How long have you worked at Zeus?

21 A Twenty-six years.

22 Q And have any time as far as your work's concerned ever
23 been suspended or had any difficulties at work or have you
24 always had a good work record?

25 A I always had a good work record until like I say four

1 years ago I was assaulted at night to be out of work for
2 that particular reason, other than that.

3 Q Other than that, that's only time you missed work?

4 A Or vacation.

5 Q Okay. And let's go ahead and talk about that for a
6 second. What happened four years ago?

7 A Four years ago I was assaulted by this guy.

8 Q Mr. Green?

9 A Yes, sir. I was.

10 Q There were some other people involved.

11 A Yes, there were three other people which their name
12 Marcus Stroman, he's the one that hold me. Donnie Green was
13 the one beating me kicked me in the stomach and John
14 (inaudible) I was sure about -- it happened so quick.

15 Q And as a result of that you had to go to the doctor?

16 A Yes, I did.

17 Q Who's your doctor?

18 A Dr. Padgett.

19 Q And last week did you go over to Dr. Padgett's office?

20 A Yes, I did.

21 Q And is that what we marked and put into the record?

22 A Yes, it is.

23 Q You went and got those from your own doctor?

24 A Yes, sir.

25 Q And did they have to do any x-rays?

1 A Yes, they did.

2 Q What were they concerned about?

3 A I had bruises on my eyes. They did a MRI on me. My
4 body was bruised.

5 Q Did you have any difficulty with your vision following
6 this assault?

7 A Yes, I do. And sometime I still do.

8 Q Okay. Blurry vision?

9 A I have blurry vision.

10 Q All right. But that happened four years ago?

11 A Yes, sir.

12 Q And since that time you and Mr. Green, y'all stay away
13 from each other or you got back together?

14 A I never had any involvement. I seen him around but
15 never got involved with him.

16 Q Okay. So let's go then to the day when this happened.
17 First, I'm going to ask you about the Friday before. Were
18 you involved in any of the discussions and all about the
19 title company or going to -- were you in on any of that?

20 A No, I didn't see any of those guys on that Friday.

21 Q Okay. So when you got up on Saturday morning, you woke
22 up in bed, you were at your house?

23 A Yes, sir.

24 Q And your wife was there?

25 A Yes, sir.

1 Q And at some point in time you encountered Mr. Smith?

2 A Yes, sir.

3 Q How did you come to encounter him that day?

4 A He came to my house and asked me would I take him to
5 his niece house to get his vehicle and he wanted to borrow
6 some money to get gas.

7 Q Okay. So did he walk up to your house?

8 A Yes, he did.

9 Q Does he live near you?

10 A Yes, he does.

11 Q All right. So when he asked to borrow some money for
12 gas, did you agree to that?

13 A Yes, sir.

14 Q Did you carry him to the gas station?

15 A Yes, sir.

16 Q And y'all had, what, a container or something to put
17 gas in?

18 A Yes, sir.

19 Q And after you left the gas station, where did you go?

20 A I took him over to his niece house.

21 Q All right. And when he told you he wanted to go to his
22 niece's house, why did he tell you he wanted to go there?

23 A He said his truck was there.

24 Q When you got to his niece's house, did you see his
25 truck?

1 A No, sir.

2 Q All right. Did you see him go up to the door and talk
3 to his niece?

4 A Yes, sir.

5 Q And after he came back, as a result of whatever she
6 told him, did he ask you to carry him somewhere else?

7 A Yes, he did.

8 Q All right. Where was that?

9 A He told me he wanted -- he thought the vehicle was over
10 at -- with Donnie over at Mr. Green house.

11 Q Okay. And so what did -- did you agree to carry him
12 over there?

13 A Yes. I agreed to carry him not directly there. I told
14 him I take you near there, but because, no, I'm not going to
15 go over there in their yard.

16 Q You were not going to go in Mr. Green's yard?

17 A Right.

18 Q And did you drop Mr. Smith off a couple of blocks away?

19 A Yes, about two streets away.

20 Q Okay. And then where did you go?

21 A I went back to the house.

22 Q So you're back home. Is your wife home?

23 A Yes, sir.

24 Q All right. So you and Ms. Riley are at home on
25 Saturday morning. You've already carried Jeffrey and

1 dropped him off and nobody else is at your house at that
2 point in time?

3 A No, sir.

4 Q Who is the next person that comes into your yard?

5 A Donnie and Sambo.

6 Q All right. Did Mr. Smith come back first?

7 A Oh, yeah. Mr. Smith came back first.

8 Q All right. Let me talk about that. So you dropped Mr.
9 Smith off to get the truck. And then you don't see him for
10 -- how long is it before he shows back up into your yard?

11 A Forty, forty-five minutes.

12 Q And then he's there for how long or what period of time
13 before Mr. Green and Mr. Keitt show up?

14 A Maybe twenty minutes, something like that.

15 Q All right. So there's some period of time between the
16 time you drop Smith off and he comes back. And there's
17 another period of time between the time you and Smith are
18 there, and then Green and Keitt come; is that right?

19 A Correct.

20 Q When Smith and -- excuse me. When Keitt and Green come
21 into your yard, where were you?

22 A I came out. I was in the house and I came outside. I
23 heard all the commotion going on.

24 Q All right. So you didn't actually see the car come
25 into your yard?

1 A No.

2 Q Jeffrey was out in the yard?

3 A Jeffrey was out there.

4 Q And you said commotion. This picture No. 1 here, is
5 this a picture of your house?

6 A Yes, it is.

7 Q Okay. When you came out, did you come out this front
8 door?

9 A Yes, I did.

10 Q And when you came out the front door, was there a car
11 in the yard?

12 A Yes, sir. It was.

13 Q And about where was it parked?

14 A About a half a car back from the steps.

15 Q Oh, okay. Which way?

16 A This way.

17 Q All right. Right where you're pointing on here?

18 A Right.

19 Q Which part of the car was facing toward the house?

20 A The passenger side.

21 Q So the car was parked like this, not right in the front
22 of the steps, that way is -- it's sort of off to the corner?

23 A Right.

24 Q Okay. All right. Who was in the car or who was out of
25 the car?

1 A When I came out Donnie Green and Sambo were out of the
2 car.

3 Q Sambo's name is Thomas Keitt?

4 A Yes, it is.

5 Q And where was Mr. Smith?

6 A He was over there in that area.

7 Q Where the car was parked?

8 A Where the car was parked.

9 Q And what was happening?

10 A They was over there arguing, shoving, pushing.

11 Q Okay. And what was your response to walking out seeing
12 this?

13 A I came out and I told them several times leave my yard.
14 You know you're not supposed to here. Leave my yard.
15 Refusing even though -- leave my yard. Then he started
16 confronting with me.

17 Q Yeah. He, who is he?

18 A Donnie Green.

19 Q When he confronted you, what did he say or do?

20 A He was making threats. I got something coming for you
21 later.

22 Q And then was it just once or more than once that you
23 asked him to leave?

24 A It was more than once. It was several times.

25 Q Okay. Did he leave?

1 A No, sir. He didn't.

2 Q At some point in time, did your wife come out?

3 A Yes, sir.

4 Q What happened when she came out?

5 A She came out again and asked him repeatedly to leave.

6 Q Did he leave?

7 A No, sir. He didn't.

8 Q Okay. All right. Now, at some point in time did he
9 make an aggressive move toward you?

10 A Yes, he did. I felt fearful. He kept pushing me,
11 making threats to me and telling me I got something for you
12 later. Yes, he did.

13 Q Okay. And after he did that, what did you do?

14 A I walked back into the house.

15 Q And when you went in the house did you get something?

16 A Yes, I did.

17 Q What did you get?

18 A I got my shotgun.

19 Q And your shotgun is what type of gauge?

20 A It's a .28.

21 Q All right. And how many shots will it shoot?

22 A One. It's a single-shot.

23 Q A single-shot. And do you know what type of a shot was
24 in your --

25 A It was bird shot.

1 Q Bird shot. Okay. And you had the gun in your hand?

2 A Correct.

3 Q And what did you do?

4 A I came back outside with it. I asked him again to
5 leave. I saw him reach back, grabbed something that looked
6 like a weapon to me and I fired. Like I said, I was scared.
7 I was in fear for my life. I own a CP, concealed weapon
8 permit, you know, and that's what I took the class for.
9 Like I say, I felt fearful. This guy was threatening me.
10 Had beat me before, assaulted me. You know, I was fearing
11 for my life.

12 Q All right. Let me back up and ask you something else
13 you said. You have a concealed weapons permit?

14 A Yes, I do.

15 Q So you've taken some classes related to weapons?

16 A Yes, I did.

17 Q And you actually own a handgun?

18 A I own a brand new gun.

19 Q Okay. So a gun that's designed to shoot people --

20 A Yes, sir.

21 Q -- as opposed to a shotgun that's got bird shot?

22 A Yes, sir.

23 Q So you did not grab your pistol and go back outside?

24 A No, sir.

25 Q You grabbed your shotgun and walked out?

1 A Yes, sir.

2 Q Did you display it so that they could see you had a
3 gun?

4 A They seen it.

5 Q Okay. And what, if anything, did you say while you
6 walked out with your gun?

7 A I actually, I said I told you to leave. And like I
8 say, that's when he reached back.

9 Q Okay. Let's stop right there. When you say he reached
10 back, is that Mr. Green?

11 A That's Mr. Green.

12 Q Where was he standing or sitting when he reached back?

13 A He wasn't sitting. He was still on the outside of the
14 car and reached back.

15 Q All right. And you thought he had something?

16 A I thought he had a weapon.

17 Q And your reaction was to fire?

18 A Right. Fire.

19 Q And the shot that you shot, do you know about how far
20 away you were from him when you shot?

21 A I wasn't that far, maybe a little bit passed where
22 you're at, like three or four feet, something in that
23 neighborhood.

24 Q All right. And so the --

25 MR. HUTTO: Can we take that out?

1 THE COURT: Yes, sir.

2 (Shotgun and shell were unpacked)

3 BY MR. HUTTO:

4 Q I'm holding this shell and this gun, do you recognize
5 these?

6 A Yes, sir.

7 Q This shell was the shell that was collected by the
8 police?

9 A Yes, sir.

10 Q Okay. And this is the gun that was collected?

11 A Right.

12 Q I'm going to do it like that so that we know it's not
13 loaded. So I'm just trying -- you tell me where. About
14 this far back from --

15 A Yeah. About this far, yeah.

16 Q All right. And that's when you shot him?

17 A That's when I shot him.

18 Q When you first -- you heard commotion, you went out and
19 saw what was going on and asked them to leave. Did they
20 leave?

21 A No, sir.

22 Q Did Mr. Green turn his attention to you at that point
23 in time?

24 A Yes, he did. That's when he started making threats
25 towards me.

1 Q Okay. And specific as you can, the nature of the
2 threats towards you was what?

3 A It was fearful. It was aggressive.

4 Q Okay. But as far as the words, do you remember what he
5 -- as close as you can remember to the words he told you?

6 A Yeah. He said I got something for you. I got
7 something coming for you. I'm going to F you up.

8 Q And when hearing that, did you go back into your house?

9 A Right.

10 Q You got the weapon we just saw, put a bird shot in it?

11 A Right.

12 Q You came back onto your porch?

13 A Yes, sir.

14 Q Let me stop you right there. Between that time your
15 wife came out and asked them to leave?

16 A Correct.

17 Q Did they leave?

18 A No, sir.

19 Q You went back in and got your gun and you came back out
20 and you asked them again to leave?

21 A Yes, I did.

22 Q At any point in time did they crank the car up and
23 start moving away?

24 A No, sir.

25 Q All right. How much do you weigh?

1 A One seventy.

2 Q How big a guy in relation to you, bigger or littler,
3 how big a guy is Mr. Green?

4 A I would say maybe two forty, two fifty.

5 Q Okay. But he's substantially a bigger guy than you
6 are?

7 A Yes, he is.

8 Q You gave statements at your house?

9 A Yes, sir.

10 Q And at the police station?

11 A Yes, sir.

12 Q Right after the gun went off and they left to go to the
13 hospital, what did you do?

14 A I called 9-1-1.

15 Q Did you tell 9-1-1 that you'd shot somebody?

16 A Yes, I did.

17 Q Did you tell them where you were?

18 A Yes, sir.

19 Q When they got there, did you show them the gun?

20 A Yes, sir.

21 Q Did you ever try and hide anything?

22 A No, sir.

23 Q Before they started talking to you, did you ask for a
24 lawyer?

25 A No, sir.

1 Q Did you tell them you'd be glad to tell them what
2 happened?

3 A Yes, sir.

4 Q And you told them what happened?

5 A Yes, sir.

6 Q All right. And when they asked you to come down to the
7 police station and tell them again, you did that?

8 A Yes, sir.

9 Q Okay. Now at one point in time, there's one officer
10 who's asking some questions -- and you might not have been
11 in there. But when they're getting ready to ask you
12 questions, he said that he knows you from somewhere. Do you
13 have some connection to law enforcement?

14 A Yes, sir, I do. I work with the search team here, the
15 emergency service, Orangeburg County for ten years and we
16 had a lot of searches together.

17 Q Okay. So if somebody's missing, a child's missing or
18 somebody's reported missing and y'all sort of go out and fan
19 out to search an area, you're part of that team?

20 A Yes, sir.

21 Q And because that one officer and you had had some work
22 together, they got a different officer to come in and ask
23 you questions?

24 A Yes, sir.

25 Q Okay. I just wanted to clarify, clarify that. When

1 you saw Mr. Green reaching into the car, what did you think
2 he was doing?

3 A Reaching for a weapon.

4 Q And did you think he had something in his hand?

5 A Yes, I do.

6 Q And what did you think it was?

7 A I thought it was a hand gun.

8 Q And that's when you fired?

9 A That's when I fired.

10 MR. HUTTO: Just give me one second.

11 BY MR. HUTTO:

12 Q I marked an exhibit earlier that suggested that a
13 hospital report showed that Mr. Green had drugs in his
14 system. Did you know him as a person who had used drugs in
15 the past?

16 A Yes, I heard he did.

17 Q Okay. And he'd been arrested for that?

18 A Oh, yeah.

19 Q Now, we're sort of in a setting here where we've got
20 all the time in the world to ask questions. This event that
21 happened that Saturday morning at your house, it didn't
22 happen this calmly, over this long a period of time; did it?

23 A No, it didn't.

24 Q All right. How long did the whole -- from the time you
25 heard commotion, confronted them, heard your wife ask them

1 to leave, went back in the house, got the gun, came out told
2 them to leave again and then shot, saw him -- look like he
3 was reaching in the car and then shot, all of those things
4 you've testified about. About how long did it all last?

5 A I wouldn't say over five minutes. I mean, it happened
6 so quick.

7 Q All right. So it happened much shorter than the time
8 you and I've been talking here today?

9 A Yes, sir.

10 Q And your -- how did you feel when they refused to leave
11 after the first time you said leave?

12 A I would say I was fearful. I was scared for my life
13 because I didn't want what they done to me in the past
14 happened again. I repeatedly asked them to leave. I felt
15 fearful.

16 Q And I want to clarify the they. Actually Mr. Keitt,
17 Sambo, Thomas Keitt and you were not having words; is that
18 fair to say?

19 A No, we didn't.

20 Q You didn't. So when you say they, it was really Mr.
21 Green?

22 A Mr. Green.

23 Q He rode with Mr. Keitt. But Mr. Keitt was not the
24 instigator in this?

25 A No.

1 Q Mr. Green was?

2 A Mr. Green was.

3 Q All right. Answer any questions that the Solicitor
4 might want to ask you.

5 CHARLES RILEY - CROSS-EXAMINATION

6 BY MS. CORNWELL:

7 Q Hello, Mr. Riley?

8 A Okay.

9 Q I just want to talk to you for a few minutes today.
10 Get some things straightened out. You talked about this
11 incident that happened four years ago?

12 A Correct.

13 Q And you had mentioned that you didn't know if your
14 nephew was involved or not. You knew it was Mark Stroman
15 and Mr. Green?

16 A That's right.

17 Q You weren't sure about others. But actually in the
18 incident report that you filed you actually told them that
19 while Donnie grabbed you out the car and threw you on the
20 ground, it was Mr. Riley that hit me in the head with the
21 beer bottle and while you were on the ground, that's when
22 everybody was kicking and stomping you?

23 A No, that's not what I told them.

24 Q So if that's what's in the incident report of that
25 incident date, you're saying that that's not true?

1 A That's not true.

2 Q So law enforcement has gotten this statement you gave
3 them wrong and in this incident?

4 A Correct, if they say it that way.

5 Q So you did not tell them that John Riley was a part of
6 that?

7 A No.

8 Q Okay. Do you know how they would have gotten John
9 Riley's name if you didn't tell them that John Riley was
10 part of it?

11 A I didn't tell them.

12 Q And John Riley is your nephew; correct?

13 A Correct.

14 Q And the reason that they fought you that night is
15 because they were upset that you had been beating up on
16 Angie; isn't it?

17 A I don't know anything about that.

18 Q And you'd be the first to admit that you've got a
19 little bit of temper; correct?

20 A I wouldn't think so.

21 Q No? All right. You've never been arrested. You've
22 never had a prior record, but you've had law enforcement
23 come out and talk to you and file reports with you; correct?

24 A No, sir.

25 Q No. Your mother didn't have to call the police because

1 she was afraid of you because you wouldn't let her leave the
2 house or you were upset with her about the baby?

3 A My mother doesn't live with me.

4 Q She doesn't. She lives at -- looks like 2466 -- I'm
5 sorry. That's Stacy Riley. That was your ex-wife that
6 called the police on you?

7 A I am only married once.

8 Q Ms. Stacy Hughes Riley?

9 A You tell me?

10 Q Okay. So you didn't have a domestic dispute with Stacy
11 Hughes Riley where you --

12 A I just told you I don't know Stacy.

13 Q Okay. Your mother is Betty. Is that her first name?

14 A No, it's not.

15 Q What's her first name?

16 A Connie.

17 Q Connie. You didn't have an occasion with her where she
18 had to call the police on you?

19 A Not that I can recall.

20 Q Okay. And do you recall the time when you pulled that
21 shotgun on Angie?

22 A No, I did not.

23 Q So if she told family members that that's what
24 happened, that would not be true?

25 A I guess. I wasn't there.

1 Q But you're saying now that you never pulled that
2 shotgun on Angie?

3 A That's what I said the first time.

4 Q All right. And that incident where multiple people
5 assaulted you and the police have the incident report wrong,
6 that happened four years ago?

7 A Correct. I'm not sure how long ago it was.

8 Q 2012.

9 A Okay.

10 Q Would you agree with me? Does that sound right?

11 A Well, if that's the date on the report, I mean, I guess
12 it was.

13 Q I'm not sure because you said the report is wrong. So
14 I just wanted to make sure that I got at least the date
15 right. It was several years ago?

16 A Well, yeah. Correct.

17 Q Okay. So there's a good amount of time that's passed
18 between that incident and this incident?

19 A Yes.

20 Q And in those four or so years, you never had any more
21 problems with Mr. Green; did you?

22 A No.

23 Q You never had him try to fight you or anything like
24 that since then?

25 A No.

1 Q Okay. And let's talk about the incident, this day
2 occurred. Actually, let me ask you something. How long
3 have you and Mr. Smith been friends?

4 A Ten years.

5 Q You and Mr. Smith ever had -- a beef and you didn't
6 want him on your property?

7 A We had some words one time before.

8 Q Okay. So you had called law enforcement on Mr. Smith
9 before about being on the property?

10 A Yes, I did.

11 Q But you had never had to call law enforcement about Mr.
12 Green being on your property because Mr. Green had never
13 come to your property --

14 A No.

15 Q -- tried to attack you, tried to --

16 A No, ma'am. Not until that day.

17 Q And even on that day you would admit that Mr. Green
18 didn't on the property for you. He came on the property
19 because he was upset with Mr. Smith; right?

20 A Well, he was making threats towards me. I felt
21 fearful. I said I have grounds. I told him to leave.
22 That's my property.

23 Q But that was -- my question is just simply when Mr.
24 Green came on the property, he was upset with Mr. Smith;
25 right? He didn't knock on the door. He didn't yell for you

1 to come out or anything. He was just having an argument
2 with Mr. Smith; correct?

3 A When I first came out.

4 Q Okay. So it had nothing to do with you. He wasn't
5 standing in the yard hollering for you?

6 A Yes, it did have something to do with me because he
7 started with me when I came out.

8 Q But you actually had to come out of the house to
9 confront that situation. He never tried to come to your
10 house and confront you in your house or anything. He stayed
11 outside and was arguing with Mr. Smith; correct?

12 A Correct.

13 Q So you came outside and inserted yourself in the
14 situation; is that correct?

15 A Correct.

16 Q And so you came outside and your testimony is once you
17 came outside and asked them to leave, that Mr. Green started
18 making threats toward you?

19 A Correct.

20 Q Isn't it true that what Mr. Green told you was I'm not
21 here for you. I just want to talk to Mr. Smith about my
22 truck?

23 A Yes, he said that at one point.

24 Q Okay. So he even told you, I'm not here for you. It
25 had nothing to do with you; right? He told you that.

1 A He did say that.

2 Q Okay. And at some point you stated that he was making
3 threats to you, that he's got something for you later. That
4 he was going F you up?

5 A Correct.

6 Q Okay. And at that point you turned around and walked
7 back inside your house?

8 A Correct.

9 Q And when you turned around, Mr. Green didn't jump on
10 you, didn't grab you, didn't assault you in any way; did he?

11 A No. He's just making threats.

12 Q Okay. But he hadn't physically assaulted you at that
13 point?

14 A Not at that point.

15 Q Not at any point?

16 A Oh, yes. He pushed me.

17 Q When did he push you?

18 A When I first came outside he started pushing and
19 shoving me.

20 Q Yeah. Once you inserted yourself in between --

21 A Right.

22 Q -- his argument with Mr. Smith?

23 A Right.

24 Q Okay. So you come out of the house hollering at Mr.
25 Smith and at Mr. Keitt and at Mr. Green about the argument?

1 A Right.

2 Q And you came and inserted yourself in that?

3 A Yes. I came outside and told Donnie Green to leave.

4 Q All right. So you were kind of the aggressor that
5 inserted yourself into their argument; correct? Telling
6 them to leave?

7 A Yes, I told them to leave.

8 Q And then you turned around to walk back inside?

9 A Correct.

10 Q And after you turned around to walk back inside, nobody
11 touched you at that point; right?

12 A No, never touched me at that point.

13 Q Didn't push you from behind, didn't jump you from
14 behind?

15 A No.

16 Q Didn't hit you from behind?

17 A No.

18 Q Didn't follow you up the steps?

19 A No.

20 Q Didn't go inside the house.

21 A No.

22 Q Wouldn't it make sense if he was going to F you up that
23 that was the perfect opportunity to do it? When your back
24 was turned, when you couldn't fight back.

25 A I'm not sure.

1 Q Okay. But logically, that would make sense; right?

2 A I'm not sure.

3 Q Okay. Regardless, he didn't do any of that?

4 A Correct.

5 Q Okay. So you go inside and you go get your gun and you
6 told your wife I'm tired of him?

7 A Correct.

8 Q Okay. And she got worried about what you were going to
9 do so she runs outside and tells them to leave to --

10 A Right.

11 Q -- because she's afraid of what's about to happen, what
12 you're going to do?

13 A Right.

14 Q When she sees you start to come outside with a gun and
15 she's telling you don't go back out there. Don't take the
16 gun out there; correct?

17 A Correct.

18 Q And you ignored her. You went out there anyway because
19 you were angry at this point; weren't you?

20 A I don't think I was angry. I was fearful.

21 Q You were angry too. You were tired of them not
22 listening to you. You were angry and you were going to
23 prove your point to get them out of your yard? Yes?

24 A Yes.

25 Q Okay. So you go outside and you're waving your shotgun

1 and you're telling them to get out?

2 A Correct.

3 Q And then you come down your steps because they're still
4 arguing with Jeffrey. They're not listening to you?

5 A Correct.

6 Q And your testimony is that you saw Mr. Green come from
7 the trunk of the car with something in his hand?

8 A Correct.

9 Q Was the trunk open or closed?

10 A I was open. All I saw him coming back from the trunk.

11 Q So you don't know if the trunk was open or closed?

12 A All I know I saw him coming from the back with
13 something in his hand.

14 Q But if you saw him coming from around the trunk and I
15 mean if the trunk door was open, that's going to obstruct
16 your view some as opposed to when it's closed. So was it
17 open or closed?

18 A I said I couldn't see around there. I don't know if it
19 was open or closed. All I saw was --

20 Q That's because he wasn't actually at the trunk, was he?
21 He was actually sitting in the passenger's seat?

22 A No, he was outside.

23 Q And when you walked around you said you were
24 approximately three feet away when you shot him?

25 A Correct.

1 Q And you thought you saw something in his hand?

2 A Correct.

3 Q What did you see in his hand?

4 A A handgun.

5 Q What did the handgun look like?

6 A Like a regular handgun.

7 Q What color was it?

8 A I'm not sure what color it was.

9 Q Was it a revolver? Was it a semi-automatic?

10 A I couldn't tell you that.

11 Q You were three feet away from him. So you were from me
12 to here away from him. And you see something in his hand
13 but you can't tell what color it is. You went to CWP so you
14 were familiar with handguns?

15 A Right.

16 Q You've got -- you had a handgun yourself?

17 A I've still got my handgun.

18 Q And so three or four feet away, I'm holding something
19 in my hand and you can't tell me the color, the type, the
20 shape, anything about it?

21 A I mean, it looked like a gun to me. It was black.

22 Q It was black. And your testimony here is that he was
23 standing outside the car?

24 A Correct.

25 Q How far away from the car was he standing?

1 A From the back it wasn't far from the car. Like I said,
2 the door was open.

3 Q The passenger door was open?

4 A The passenger door was open.

5 Q Was the window down?

6 A Yes, the window was down.

7 Q And your testimony is that he was not inside the car,
8 sitting inside the car. That he was outside coming from the
9 trunk area?

10 A He was coming outside.

11 Q Not reaching in the back seat, coming from the trunk?

12 A Coming from the back.

13 Q And you shot him from about three or four feet away?

14 A Yes, ma'am. Three or four feet.

15 Q So when you stand here with this gun. And you had said
16 that he was standing about where I was at the podium;
17 correct?

18 A Right. He was back further.

19 Q So if we hold this shotgun now, because I don't want to
20 point it at you -- but the barrel of that gun would have
21 been about two feet away from Mr. Green; correct?

22 A Correct.

23 Q And you said it was bird shot that was in your gun?

24 A Yes, it was.

25 Q Are you familiar with bird shot?

1 A Yes.

2 Q And when you shoot that bird shot with the shotgun
3 shell that comes with it, there are pellets in this shell;
4 correct?

5 A Correct.

6 Q And so once the firing pin hits the shell, the pellets
7 burst out and it'll disburse; correct?

8 A Correct.

9 Q So the farther away your target is with the gun, the
10 more the pellets will disburse; correct?

11 A Yes.

12 Q So if you're pretty close, the pellets would hit -- the
13 thing that you were shooting would take all of the pellets;
14 correct?

15 A Yes.

16 Q So when you shot Mr. Green, he pretty much took the
17 full blast of that shotgun shell?

18 A Yes, he did.

19 Q And I would imagine a shotgun shell has some pretty
20 hard impact. When you shot him, what happened to Mr. Green?
21 What did he do? Did he fall to the ground?

22 A No.

23 Q So you shot him standing this far away with a .20 gauge
24 shotgun and he just stood and took it?

25 A Yes, ma'am.

1 Q Did he stumble backwards? Did he fall against the car?

2 A I didn't see none of that. That's when I came back
3 inside and called 9-1-1. I didn't see any of that.

4 Q Immediately when you shot him, what happened then?

5 A He was still there. He was still there.

6 Q Was he bleeding?

7 A I didn't see it. Like I say, it happened so quick, I
8 ran in the house and called 9-1-1.

9 Q Logic would tel you if you shot somebody at point blank
10 range with a .20 gauge shotgun, the injury would bleed;
11 correct?

12 A I guess it would.

13 Q But you didn't get any blood on you, didn't you?

14 A No.

15 Q And there wasn't any blood in your yard or anything was
16 there?

17 A I'm not sure.

18 Q When you walked -- and when you shot him, Mr. Green was
19 surprised; wasn't he. He said why did you shoot me;
20 correct?

21 A All he said you shot me and that's when I went back in
22 the house.

23 Q So he was surprised; right? You just shot me. Was
24 that a fair assessment?

25 A Yeah.

1 Q Okay. Because he didn't have any beef with you at that
2 time; did he? He wasn't there for you so he couldn't
3 understand why you shot him; correct?

4 A Like I said he just kept making threats to me and I
5 feared for my life when he reached back and came back toward
6 me.

7 Q And the threats that you're talking about is when he
8 was telling you man, I'm not here for you. I'm here for
9 Jeffrey and the truck.

10 A And the pushing and shoving.

11 Q And when you went back inside your house to get the
12 gun, there was a phone inside your house; correct?

13 A Yes, there was.

14 Q So you had a choice when you went back inside your
15 house. You said that you were fearful of this man, that you
16 had known about the incident a few years prior. So at that
17 point -- and you've done search teams everything -- you
18 could have gone inside and called the police. The beef
19 wasn't with you. He hadn't assaulted you or anything back
20 in the house. They weren't trying to get back in the house.
21 So you had plenty of time to call 9-1-1; didn't you?

22 A That's what I'm saying. He kept making threats to me,
23 telling me he had something for me. He was aggressive. I
24 was fearful, and so I came back --

25 Q Let's talk about that. You were fearful. You were

1 scared. So at that point when you're outside without your
2 weapon and you didn't see Donnie with a weapon at that time
3 either; did you?

4 A Not at that --

5 Q And you never saw Donnie threaten Mr. Smith with a
6 weapon; did you?

7 A No.

8 Q So you're outside. And you go back inside because
9 you're fearful at that time. If you're so fearful, why are
10 you coming back outside and reinserting yourself in that.
11 Why not stay inside where you're safe and call the police?

12 A Because this is my property. He made threats to me.
13 He said he got something coming for me. He's going to F me
14 up. That's why I came back out.

15 Q And that's what I want to talk about. You were angry
16 when you came back outside. You weren't scared, were you?
17 You were angry.

18 A I was scared, fearful.

19 Q But the fear would have kept you inside. The fear
20 would have said I can't, you know, I'm going to call the
21 police. Anger took you outside; didn't it?

22 A No, I was fearful.

23 Q And you went inside and you grabbed the gun and your
24 wife begged you not to go back out there. And you went out
25 there anyway because you were tired of the threats. And you

1 wanted to go out and take care of it, and you didn't
2 approach Mr. Keitt. Mr. Keitt was the one that drove the
3 car. He had the car keys. He's the one that was able to
4 come and go. You didn't go to him. You didn't say --
5 because you said that Mr. Keitt wasn't involved. He wasn't
6 being aggressive; right?

7 A No.

8 Q So you could have, as a reasonable person, gone to Mr.
9 Keitt and said man, get your friend out of here, can't you,
10 you know, but you didn't even approach Mr. Keitt; did you?
11 Your issue was with Mr. Green; correct?

12 A Mr. Keitt was there when I was telling, y'all -- they
13 had all option to leave.

14 Q But you didn't threaten Mr. Keitt with the gun; did
15 you?

16 A I had no reason. Mr. Keitt hadn't said anything to me.

17 Q And what Mr. Green was telling you was I'm not here for
18 you. I'm trying to handle this with Mr. Smith?

19 A That's right.

20 Q Okay. And you never saw Mr. Green with a weapon before
21 you pulled the gun; did you?

22 A No.

23 Q So while you were standing outside Mr. Green never went
24 to the car, while you were standing outside the first time,
25 to get any weapon?

1 A No.

2 Q He never reached in his pockets or anything? Never
3 tried to, really, do you any harm at that point with any
4 type of weapon; did he?

5 A No.

6 Q And after you shot him, this object that you saw in his
7 hand that you couldn't really describe but you're now saying
8 was a black gun, what did he do with that?

9 A I'm not sure. I went back in the house and called 9-1-
10 1.

11 Q So whatever this was in his hand, he never raised it at
12 you, never tried to stop you with it. He never did
13 anything. You just claim that you saw something in his hand
14 and took a shot?

15 A Yeah.

16 Q And you don't know what happened to whatever was in his
17 hand afterwards?

18 A No, I told the cops about it. I mean --

19 Q Were you inside or outside the house when Mr. Keitt and
20 Mr. Green drove up?

21 A I was inside the house.

22 Q When you were inside the house, you were able to look
23 outside and saw them coming in your yard. And you had
24 already told your wife before, before they even got there,
25 you hoped those boys didn't come up in your yard?

1 A No, ma'am. I didn't.

2 Q You didn't tell that to your wife?

3 A No.

4 Q And when they pulled up into your yard and you heard a
5 commotion, you decided to go out there and see what was
6 going on?

7 A Right.

8 Q You could see from inside your house who was out in
9 your yard before you went outside; didn't you?

10 A No, ma'am. I didn't because I came back out on the
11 outside. I wasn't peeking out the window. I came back on
12 the outside and told them to leave several times.

13 Q Okay. But what I'm asking is when you and Angie were
14 inside, Ms. Riley testified that y'all saw a car come up the
15 road and you said I hope those boys aren't coming in the
16 yard?

17 A I didn't see no car coming up the road because I was
18 inside of the house. I had no idea those guys were coming
19 to the house.

20 Q So when you heard a commotion in the yard, you couldn't
21 see out the window and see who it was?

22 A No. I walked outside.

23 Q And that's when you walked outside and you saw that it
24 was Mr. Green and Mr. Keitt and they were arguing with Mr.
25 Smith?

1 A Correct.

2 Q And even at that point you had a choice because you
3 knew in your prior confrontation with Mr. Green to call
4 police. But instead, you walked down the stairs and
5 inserted yourself in between Mr. Smith and Mr. Green;
6 correct? That's what you testified to?

7 A I think because they know they not supposed to be
8 there.

9 Q And nobody presented a weapon to you at that time or
10 anything like that. You decided to turn around, go back
11 inside and get your gun; correct?

12 A Yeah. After the threats were made and the pushing and
13 shoving.

14 Q All right. But no weapon's ever pulled. No one hit
15 you. You didn't have any injuries; correct?

16 A Well, I was hit. I was pushed and shoved by Donnie
17 Green before I went back in the house.

18 Q But your wife didn't see that?

19 A No, she didn't see that.

20 Q Okay. And when you went back inside, you got your gun;
21 you had a choice again not to go back outside. You went
22 back outside anyway; correct?

23 A Correct. And that's when I saw him coming from the
24 back with a weapon.

25 Q So if he's coming from the back with what you thought

1 was a weapon, clearly that wasn't for you because you
2 weren't even out there at the time.

3 A He told me he had --

4 Q So clearly that threat wasn't --

5 A -- he told me had something coming for me. Before that
6 even happened, he was going to F me up. What I suppose to
7 think, you know.

8 Q And to say --

9 A I'm not going to take any chances.

10 THE COURT: Don't talk over each other.

11 MS. CORNWELL: I'm sorry.

12 A You know, this guy done assault me, third degree
13 assault and the law officers did nothing about it. I wasn't
14 going to take a chance and be harmed in my yard. Like I
15 say, I was scared and feared for my life.

16 BY MS. CORNWELL:

17 Q And even though you were feared for your life, you
18 thought it was in your best interest to come back outside
19 and reinsert yourself in that situation?

20 A Correct.

21 Q Thank you, Mr. Riley.

22 A Thank you.

23 MR. HUTTO: You can step down. Thank you.

24 Your Honor, I'm not sure how many witnesses there are
25 altogether tomorrow. I have, I think just one more

1 tomorrow. Mr. Keitt is here today, but I think if they want
2 to call him in order -- they can call him tomorrow.

3 THE COURT: Okay.

4 MR. HUTTO: So if it's okay with you, I would
5 propose we break now and be back at 9:30.

6 THE COURT: That's fine. Is that all right with
7 everybody? 9:30 start in the morning.

8 MS. CORNWELL: Sure.

9 (Off record discussion with counsel
10 and the Court)

11 THE COURT: Okay. Well, we'll break until
12 tomorrow morning at 9:30.

13 (Court in recess September 19, 2016
14 at 4:49 p.m.)

2016 at 9:30 a.m.)

ready to go?

MR. HUTTO: Yes, ma'am.

the videos, so thank you, y'all.

Court's Exhibit.

MR. HUTTO: Oh, yeah.

just need to get it to Hilda.

were marked.)

THE COURT: All right.

MR. HUTTO: We would call Hailey Ann Quam.

THE COURT: Okay.

MR. HUTTO: Q-U-A-M. I hope I said that right.

THE COURT: Come on forward, Ms. Quam.

to tell the truth.)

HAILEY QUAM - DIRECT EXAMINATION

BY MR. HUTTO:

Q And your title is?

1 A Special Agent with the South Carolina State Law
2 Enforcement Division, commonly known as SLED.

3 Q Okay. And Agent Quam, how long have you been with
4 SLED?

5 A Approximately four years.

6 Q And what's your educational background?

7 A I have a bachelor of science degree in forensic and
8 investigative science from West Virginia University. And I
9 also have a bachelor of arts in criminology and
10 investigations from West Virginia University.

11 Q Okay. Prior to your employment at SLED were you
12 employed by any other law enforcement agencies?

13 A No, I was not.

14 Q All right. And I'm not sure if I'm going to ask the
15 right question or not, but are you a certified a law
16 enforcement agent; is that right?

17 A Yes, sir.

18 Q Okay. And calling your attention then to the case that
19 we're here about today, what was your involvement in the
20 investigation of the shooting that happened on Parker Street
21 in Cordova back in January of this year?

22 A I was requested to respond as a crime scene request.
23 So I was initially requested to respond to the Regional
24 Medical Center to process a vehicle.

25 Q Okay. And in order to respond, were you coming from

1 Columbia?

2 A Yes, sir.

3 Q Okay. So fair to say you arrived about an hour or so
4 after you got the call?

5 A That'd be correct.

6 Q Okay. And you responded to the Regional Medical
7 Center, which is our hospital that's located near the
8 interstate?

9 A Yes, sir.

10 Q And when you got there, what did you find?

11 A When I got there I met with Deputy Chestnut with the
12 Orangeburg County Sheriff's Office and she showed me where
13 the vehicle was at. And she had advised that the vehicle
14 had been moved. When she initially responded, it was
15 located in the sally port in the emergency room area. And
16 the driver's door and passenger's door front were both open
17 and there was blood on the ground. But they had moved it
18 prior to our arrival and the blood had been cleaned by
19 hospital staff. So it was moved into a parking space and
20 there was yellow crime scene tape around it.

21 Q Okay. So to be clear, when Officer Chestnut first saw
22 the vehicle, the vehicle was in the sally port right
23 adjacent to the emergency room where you drop off somebody?

24 A Correct.

25 Q Okay. And at the time she saw it, she reported to you

1 that two doors were open?

2 A Yes, sir.

3 Q And that there was some blood on the concrete?

4 A Yes, sir.

5 Q But when you got there, the car had been moved into a
6 parking place. The doors were closed, tape was around it?

7 A Yes, sir.

8 Q And when you looked at the sally port, that there was
9 no blood left. That had been cleaned up?

10 A No, there was not.

11 Q Okay. So from your getting there and making that
12 observation of the car, what did you do next?

13 A Initially, we photograph the vehicle as is. So I
14 photographed it with the crime scene barrier tape around it.
15 And Sergeant Stokes with the Orangeburg County Sheriff's
16 Office was the lead investigator so he met us there with the
17 search warrant. And so after we photograph the vehicle,
18 we'll start to do a search of the vehicle. We'll visually
19 examine it and get some more information regarding the scene
20 as well.

21 Q Did your investigation include an interview with the
22 driver of the vehicle?

23 A No, it did not.

24 Q And so was your interaction at the hospital with the
25 car only with law enforcement?

1 A Yes, sir.

2 Q Okay. Approximately how long were you there?

3 A May I refer to my notes?

4 Q Sure.

5 THE COURT: Sure.

6 A Well, we arrived in Orangeburg at approximately 4:15
7 p.m. And processing the vehicle up until 6:31 p.m. And
8 from then on, we went to the initial incident address.

9 BY MR. HUTTO:

10 Q To what is the Parker Street address?

11 A Yes.

12 Q Okay. So let's just stick with the hospital for right
13 now. When you use the term processing the vehicle, you
14 describe the photographing. The processing involves what
15 else besides photographing?

16 A In this case, we were looking for GSR, gunshot residue.
17 So we collected GSR from the passenger's side. The
18 information that we had received was witnesses from the
19 scene had reported that the victim was located in the front
20 passenger's seat, but there's conflicting stories. And the
21 suspect had stated that the victim was outside of the
22 vehicle, near the trunk. So we collected gunshot residue
23 from areas in the front passenger's areas and then also
24 around the trunk.

25 Q In order to collect gunshot residue, you swab those

1 areas?

2 A They are sticky tabs so they're a plastic container and
3 you take it out and you can tab it approximately a hundred
4 and fifty times in an area. So you'll just do that on the
5 surface and dab it.

6 Q So you were the person that did that?

7 A Yes, sir.

8 Q So you checked the trunk. You checked the passenger's
9 side of the vehicle. You checked the interior of the
10 vehicle, I guess like the dash, the seat?

11 A Yes, sir. We'll go through and we'll search the
12 interior of the vehicle. There was blood in the front
13 passenger's area. It was on the exterior of the passenger's
14 door, on the seat, in the floorboard of the passengers, the
15 dashboard. There was also some blood on the front driver's
16 seat, on the actual seat. And then there was blood on the
17 exterior rear driver's window. There was like four small
18 circular stains. So we had -- we also had suspected blood,
19 which was scaled. And scaled, I mean that we put tape down
20 to reference the size. And marked that and photographed
21 that as well.

22 Q Okay. Were there other SLED agents present with you?

23 A Yes, we respond in twos. So Special Agent Todd Schenk
24 came to the scene with me as well.

25 Q Between the two of you, do either one of you have any

1 specialities as it relates to crime scenes?

2 A My speciality is blood stain pattern analysis and
3 crime scene reconstruction and his will be advanced digital
4 photography.

5 Q Okay. All right. So you collected the gunshot
6 residue?

7 A Yes, sir.

8 Q And what else did you do?

9 A We searched the vehicle. The trunk was locked.
10 Sergeant Stokes -- and the key was not with the vehicle. So
11 Sergeant Stokes contacted a family member of the victim, who
12 was still located -- they were still located at the hospital
13 and they brought the keys down. So we searched the trunk.
14 There was miscellaneous items. It was quite full. There
15 was a plastic bag in the trunk that had suspected blood on
16 it and it appeared wet. So we took a swab from that. And
17 then the glove compartment was locked as well so we had to
18 unlock that, but we didn't find anything of value in the
19 glove compartment.

20 Q When you use the term swab, is that something you use
21 to test the blood?

22 A Yes, sir.

23 Q Okay. And so you check for gunshot residue and you
24 checked for blood on and in the vehicle?

25 A Yes, sir.

1 Q Were you informed that this involved a shotgun?

2 A Yes, I was.

3 Q And are you trained in the way that shotguns would emit
4 pellets?

5 A Yes.

6 Q Or shot?

7 A Yes.

8 Q Did you look for evidence of that?

9 A We did. We did not find anything of that. We also had
10 been informed that the victim's wound was not an exit. But
11 we did not see any defects within in the vehicle that would
12 resemble a pellet. If we did find that, we would have
13 scaled and collected pellets if we found them.

14 Q If there had actually been pellets on the seat or
15 floorboard or something, you would have collected those as
16 well?

17 A Yes, sir.

18 Q You did not find any?

19 A We did not.

20 Q You did look for them?

21 A Yes.

22 Q Okay. Do you or somebody within your agency do blood
23 spatter analysis?

24 A I do.

25 Q Okay. Was there anything to be analyzed in this case

1 as relates to spatter?

2 A In terms of spatter, most of the stains that were in
3 the vehicle were consistent with contact transfer scene,
4 which would mean that something had blood on it and it came
5 into contact. There was very few liftable stains, which
6 would indicate blood traveling in there with impact or with
7 some type of force. But there wasn't anything, I guess --

8 Q Okay. And so when you're saying that most of the blood
9 is consistent with transfer, one of the descriptions that
10 have been introduced or (inaudible) is that the victim had
11 (inaudible) this area at some point in time. And could --
12 the point I'm making, I guess, is his hand print. Did it
13 look like some of the contact was made with a hand putting -
14 - their hand on the areas of the car where you saw the
15 blood?

16 A Yes. There were some areas on the vehicle that
17 appeared to be from hands that are on the passenger's
18 headrest. There was -- it appeared fingers and that it was
19 also -- it was movement though, so there wasn't any ridge
20 detail really present. On the exterior side of the
21 passenger's door, there was also a transfer stain that
22 resembled fingers and there was light ridge detail present.

23 Q Did you make any fingerprint analysis from the car?

24 A No. Within our training we can determine whether or
25 not it would be suitable for collection, which we further

1 sent to our latent print department to be analyzed. And I
2 deemed this not suitable for collection. It was still
3 documented with photographs but it wasn't sent for further
4 processing.

5 Q Okay. So you could see finger marks but nothing that
6 you thought could be collected to determine the identity of
7 whose finger it was?

8 A Correct.

9 Q All right. So, again, the gunshot residue. You looked
10 at the blood. There wasn't enough there to do a blood
11 spatter analysis. And then you looked for shot and you
12 didn't find any. You looked for evidence of not only shot,
13 but if a shot had hit in the interior of the car, you looked
14 at that as well?

15 A Correct.

16 Q Okay. Did not see any?

17 A Did not.

18 Q Okay. Is there anything else about your crime scene
19 investigation that you performed on the car?

20 A No, there was not.

21 Q Okay. Were you able to make any determination based on
22 your analysis of the car, anything about what had happened
23 or not happened?

24 A No, I was not.

25 Q Okay. If that's everything -- is that everything about

1 the car as far as your processing of the car? Have we
2 touched all of the various aspects of your analysis of the
3 car?

4 A Correct.

5 Q Okay. So next I guess let's move on to -- did you go
6 directly from the hospital site to the site where the
7 shooting took place?

8 A Yes, we did.

9 Q Did you go there with Orangeburg County?

10 A Yes, we did. And the scene still had remained secured.
11 There was an Orangeburg County Deputy still at the scene
12 when we arrived as well.

13 Q All right. So when you use the term had been secured,
14 I take that to mean that since the time that law enforcement
15 arrived, somebody continued to stay there to make sure that
16 nobody tampered with the scene until your arrival?

17 A Correct.

18 Q All right. And other than the photographer or the
19 agent that has a specialty in photography, did any other
20 SLED agents join you at the Parker Street address?

21 A No, they did not.

22 Q Okay. I know some other agents were involved in this
23 case, but would it be fair to say that their job was related
24 to analysis done inside your lab based on the things you
25 collected?

1 A Correct. Once we collect all the evidence from the
2 scene, I'll take it back to the lab, log it in and send it
3 to the respective departments for further analysis.

4 Q Okay. So you can refer to your notes obviously. What
5 time did you arrive at the Parker Street address and about
6 how long did you stay there?

7 A We arrived at the Parker Street address at
8 approximately 6:51 p.m. And we cleared, we were there until
9 7:20 p.m.

10 Q Okay. And I'm sorry. Before I forget, I want to -- at
11 the hospital did you interview any of the medical personnel
12 or doctors, nurses, anybody at the hospital related to your
13 treatment of the victim?

14 A No. In terms of interviewing, we usually leave that up
15 to the investigators in this case --

16 Q The sheriff?

17 A Yeah. -- Orangeburg County Sheriff's Office. But we
18 were told that the victim was undergoing surgery. As far as
19 his condition we were uncertain of where he was at, but he
20 was in surgery.

21 Q To be clear, as far as the location of the wound or the
22 nature of the wound and the size of the wound or any of
23 those type of details, you didn't go in and talk to the
24 doctors or anybody about that?

25 A No.

1 Q Back to the Parker Street address. Did you process
2 that scene?

3 A Yes. We were requested to photograph the exterior of
4 the residence. The interior wasn't really in question. So
5 we photographed and then we searched for blood on the
6 ground. And also the shotgun that had been involved in the
7 incident was located on the front porch.

8 Q And was it your information that shotgun did remain
9 there since the time that it had been shot?

10 A Correct.

11 Q And did you collect it?

12 A Yes, we did.

13 Q And did you -- in collecting it, were you able to also
14 collect the spent shell casing related to the shot?

15 A Yes, I did. When I went to render the shotgun safe, it
16 was a one-shot shotgun. And when I opened the barrel the
17 shotgun shell ejected out.

18 Q I'm not going to ask you to handle it.

19 A Okay.

20 Q Is this it?

21 A Yes, sir.

22 Q And is this the shell?

23 A Yes, it is.

24 Q And you would have been the agent that collected these
25 two items and began the process that put them into a chain

1 of custody that gets them to the courtroom today?

2 A Correct.

3 Q Anything -- are you trained in making any conclusions
4 about the nature of the gun or the shell or anything else?

5 A No, I'm not.

6 Q You just collect it?

7 A Correct.

8 Q So the vehicle was at the hospital. So the only thing
9 really at the scene was the actual physical ground and
10 layout of the -- where the event occurred; is that correct?

11 A That is correct.

12 Q All right. And really, since it wasn't inside the only
13 thing we're really talking about is a grassy yard with a
14 driveway running through it?

15 A Correct.

16 Q I'm going to show you what's been marked as State's
17 Exhibit No. 1. Does this appear to be the residence?

18 A Yes, it does.

19 Q Okay. And so it would be fair to say that the area you
20 looked in was in the area of the yard?

21 A Yes, sir.

22 Q Okay. And so what you were looking for, if I
23 understand it is you were looking to see if there was any
24 blood on the ground?

25 A Correct.

1 Q Okay.

2 A And there were some tire impressions that appeared to
3 be deeper. And that was the area that was reportedly where
4 the vehicle was located at, but we still searched the entire
5 yard.

6 Q All right. Anything else that you did at the Parker
7 Street address?

8 A No.

9 Q Were you able to find anything at the Parker Street
10 address that lead you to be able to form any conclusions
11 about anything?

12 A No, I did not.

13 Q So the hospital, Parker Street address, did you process
14 anything else in connection with this case?

15 A I did not process anything else. I did attend the
16 autopsy.

17 Q You did attend the autopsy?

18 A Yes, sir.

19 Q And what was your role there, just attendance or did
20 you have some participatory role?

21 A Per policy when we have a victim who succumbs to their
22 injuries or if we had a victim deceased on scene, we collect
23 postmortem major case prints so that their whole prints. So
24 that was one of the reasons that we had to go to autopsy.
25 And, also, I would have gotten the toxicology and the

1 firearms evidence to bring back to the lab to be sent for
2 further analysis.

3 Q Firearms evidence meaning that at the autopsy they
4 extracted some of the bird shot, pellets or shots from him
5 and you collected those?

6 A Yeah. Well, they were transferred to me from Dr. Ross.

7 Q Okay. So other than getting his prints and collecting
8 the shots that were removed from him at the time of autopsy,
9 did you collect anything else from the autopsy?

10 A No, I did not.

11 Q Okay. From the autopsy, did you draw any conclusions,
12 other than what the autopsy report itself shows?

13 A No.

14 Q And I just want to be clear. It sounds like you did
15 your job in processing the areas that you were asked to
16 process and seemed to be relevant to the case. But as far
17 as drawing any -- being able to draw any conclusions from
18 what you obtained to be able to say that they made more or
19 less what happened, other than the shooting, you don't have
20 any conclusions you've drawn from any of that; is that
21 correct?

22 A That's correct.

23 Q Oh, I think you told me the trunk was locked?

24 A Yes, sir.

25 Q But you also told me there was a bag in the trunk;

1 correct?

2 A Correct.

3 Q And that bag had blood on it?

4 A Correct.

5 Q And were you able to determine that that blood belonged
6 to anybody that was relevant to this case?

7 A I would have sent it to DNA. And as far as I know, the
8 DNA is still open.

9 Q Okay. And the bag that was in the -- you had like five
10 hundred photographs; didn't you?

11 A Yes.

12 Q Okay.

13 A We take a lot of photographs.

14 (Off record discussion with counsel
15 and the Court)

16 BY MR. HUTTO:

17 Q I'm going to show you a picture of -- and I represent
18 to you that we printed it off from one of the many
19 photographs that you provided to us. But does that look
20 like the bag?

21 A Yes, sir.

22 Q And so it says on it -- it looks like it says on there
23 it's an Autozone bag? A car Autozone bag?

24 A Correct.

25 Q And it does, just as you've stated, it shows some blood

1 on it.

2 A Yes.

3 THE COURT: You said the character of the blood
4 was wet?

5 THE WITNESS: Yes. But that was the only thing
6 that we found in the trunk though, too, that had blood on
7 it.

8 THE COURT: Okay. Sorry.

9 BY MR. HUTTO:

10 Q And the trunk was locked?

11 A Correct.

12 Q And blood would logically mean that somebody would have
13 had to put that bag in the -- if that bag is related -- if
14 that blood is related and that bag is related, somebody
15 would have had to have put that in the trunk after the
16 shooting, would be one conclusion?

17 A Correct.

18 Q Or somebody had cut themselves doing something else and
19 the blood got on it that way?

20 A Correct. Yes.

21 THE COURT: On the same day, right? Because it
22 was wet blood?

23 THE WITNESS: Yes. And we had been advised that
24 the driver of the vehicle had blood on him as well, which we
25 would assume would be the victim's since there wasn't any

1 question about anybody else bleeding.

2 BY MR. HUTTO:

3 Q And that remind me. I want to go back to collection of
4 evidence at the hospital. My information is that the
5 victim's shirt that he would have been wearing at the time
6 he was shot, in theory, the gunshot went into his clothing,
7 would have had some relevance to this case, was not
8 collected. Do you know anything about it?

9 A I do not. We weren't requested to collect it. And
10 typically with cases that are kept with the local agency,
11 they will take the evidence and keep it at the sheriff's
12 office in this case unless there's analysis that they want
13 done on the clothing.

14 Q Okay. Well, what the sheriff's -- the box at the
15 sheriff's office shows is some shoes, some underwear and
16 some pants but no shirt. But I take it you didn't collect
17 those items?

18 A I did not.

19 Q Okay. And if the shirt were removed at the time that
20 he entered the emergency room, that would have happened --
21 definitely would have happened before you would have got
22 there?

23 A Correct.

24 Q Okay. But as you stated earlier you didn't go into the
25 hospital to actually interact with any of the personnel, to

1 talk with them or collect anything?

2 A Correct.

3 Q All right. And finally, I think -- I say finally. I
4 hope I'm finally. One of the things that the report in the
5 hospital documents is that at the hospital -- and in
6 addition to what happened at the autopsy, at the hospital
7 they also removed some shots from the wound area. Did you
8 collect those?

9 A No, I did not. I wasn't advised of that.

10 Q Okay. So anything related to the gunshot that might
11 have been with the victim inside the hospital, his shirt,
12 shots, or anything else, that was not within the parameter
13 of what you were requested to do?

14 A Correct.

15 Q Okay. Thank you. And answer any questions that the
16 State has.

17 A Okay.

18 HAILEY QUAM - CROSS-EXAMINATION

19 BY MS. CORNWELL:

20 Q I just wanted to go over a few things with you. Mr.
21 Hutto covered most everything. But when you were called out
22 to the scene, you immediately responded to TRMC?

23 A That is correct.

24 Q And I believe you stated that part of your duties in
25 responding is to collect photographs, evidence, and things

1 of that nature; correct?

2 A That is correct.

3 Q And did you take all the photographs with Agent Schenk?

4 A Yes, I did.

5 Q I want to show you what's been marked as State's
6 Exhibits 19 through 36. Do you mind looking through those
7 real quick and making sure that those are true and accurate
8 depictions of the vehicle that day when you photographed it?

9 A (Reviews photographs)

10 MR. HUTTO: Could you give me those numbers again?
11 19 through 36?

12 MS. CORNWELL: Yes.

13 BY MS. CORNWELL:

14 Q Okay. Are those true and accurate depictions of the
15 car as you photographed it that day?

16 A They are.

17 Q Any changes, alterations, modifications?

18 A No.

19 MS. CORNWELL: I don't believe there's any --

20 MR. HUTTO: Yeah. I'm assuming that everything
21 we're marking is just going into evidence unless --

22 THE COURT: Okay.

23 MS. CORNWELL: And Your Honor at this time the
24 State would move 19 through 36 into evidence.

25 THE COURT: Okay.

1 (State's Exhibit No. 19,
2 photograph, was marked and entered.)
3 (State's Exhibit No. 20,
4 photograph, was marked and entered.)
5 (State's Exhibit No. 21,
6 photograph, was marked and entered.)
7 (State's Exhibit No. 22,
8 photograph, was marked and entered.)
9 (State's Exhibit No. 23,
10 photograph, was marked and entered.)
11 (State's Exhibit No. 24,
12 photograph, was marked and entered.)
13 (State's Exhibit No. 25,
14 photograph, was marked and entered.)
15 (State's Exhibit No. 26,
16 photograph, was marked and entered.)
17 (State's Exhibit No. 27,
18 photograph, was marked and entered.)
19 (State's Exhibit No. 28,
20 photograph, was marked and entered.)
21 (State's Exhibit No. 29,
22 photograph, was marked and entered.)
23 (State's Exhibit No. 30,
24 photograph, was marked and entered.)
25 (State's Exhibit No. 31,

1 photograph, was marked and entered.)

2 (State's Exhibit No. 32,
3 photograph, was marked and entered.)

4 (State's Exhibit No. 33,
5 photograph, was marked and entered.)

6 (State's Exhibit No. 34,
7 photograph, was marked and entered.)

8 (State's Exhibit No. 35,
9 photograph, was marked and entered.)

10 (State's Exhibit No. 36,
11 photograph, was marked and entered.)

12 MS. CORNWELL: And Your Honor, instead of kind of
13 going through the dog and pony show that I would go through
14 with a jury, if you don't mind, Your Honor, I'll just give
15 those to you.

16 THE COURT: Thank you.

17 BY MS. CORNWELL:

18 Q In those photographs I believe that you stated that you
19 basically photographed all areas of the car?

20 A That is correct.

21 Q And in collecting those photographs and going through
22 the car, you saw no evidence of any shotgun pellets or any
23 indentations or anything that would indicate that any
24 pellets hit the outside of that car; correct?

25 A That's correct.

1 Q And also in search inside the vehicle, you didn't see
2 any indentations or any markings, puncture marks, holes or
3 anything that would indicate that any of those pellets hit
4 inside the vehicle; is that correct?

5 A That is correct.

6 Q And didn't find any actual pellets; is that correct?

7 A I did not.

8 Q In reference to the blood, I think you indicated that
9 there was blood mainly in the passenger area and the center
10 console. You saw some on the outside of the passenger car
11 as well as on the outside of the driver door?

12 A That is correct.

13 Q And your understanding is that not only was the victim
14 covered in blood, but the driver was also covered in blood
15 on his way to the scene?

16 A Correct.

17 Q And that would have been transfer blood from where he's
18 trying to help hold the victim and getting blood from the
19 victim on him?

20 A Yes. It's possible.

21 Q So the blood that you saw on the outside of the
22 driver's side, it's possible that that blood came from the
23 driver and not from the victim? As far as it's the victim's
24 blood coming from the driver?

25 A Correct.

1 Q And the same with the trunk; is that correct?

2 A On the inside of the trunk?

3 Q On the outside of the trunk?

4 A There was not any blood on the outside of the trunk.

5 Q Okay. Thank you. And then on the outside of the
6 passenger's side of the vehicle?

7 A Correct.

8 Q That could have come from either the victim or it could
9 be the victim's blood that transferred off the driver; is
10 that correct?

11 A That's correct.

12 Q And once you viewed inside the car was there -- would
13 you even say a large amount of blood inside the car?

14 A I mean, there was a substantial amount. It was heavier
15 concentration within the passenger's seat.

16 Q Okay. And you stated that there wasn't a lot of, what
17 I would classify as like arterial spray or anything like
18 that that's coming out?

19 A Correct. There was none of that.

20 Q Okay. But could that be consistent with somebody
21 actually holding their injury?

22 A Yes.

23 Q And the blood coming out that way?

24 A Yes.

25 Q So just because you didn't see any spray or arterial or

1 anything like that doesn't give any indication as to whether
2 or not a victim was shot in the car or outside the car; does
3 it?

4 A No, it does not.

5 Q And, again, we went over the fingerprints. They were
6 not suitable for collection. You said because you -- I
7 guess when you look at fingerprints you look for certain
8 ridge details?

9 A Yeah. We look for ridge flow and ridge
10 characteristics.

11 Q And if you don't see those in the stain or in analysis,
12 what is that telling you?

13 A If it's the shape of a finger, it could be that it
14 smeared. In this case, the blood, it was smeared. So that
15 would hinder any kind of fingerprint comparison possibility.

16 Q And I know you're not a fingerprint expert. I'm not
17 asking you for any of that, but as far as the ridge detail,
18 there's usually a certain number of points that have to be
19 matched to match fingerprints; is that correct?

20 A Yes. That's correct.

21 Q And when you're in the field trying to figure out if
22 something's suitable for ridge detail, if you don't see that
23 ridge detail, y'all are trained to say that okay, we aren't
24 going to be able to get a fingerprint off of this?

25 A We're trained not to -- it would be not suitable for

1 collection in terms of the -- it would still be documented
2 but it wouldn't be sent to the latent print department for
3 analysis.

4 Q All right. And we talked about this shirt that was not
5 collected. I think that Mr. Hutto indicated to you that the
6 sheriff's office did collect the victim's shoes, his pants,
7 his underwear, and the shirt was not there. And he
8 indicated that it may have been suitable for some sort of
9 analysis. Isn't it true with things such as gunshot residue
10 and all of that, trace does not analyze victims' clothing
11 when they're victims of a gunshot wound because there's
12 automatically going to be gunshot residue on those clothing?

13 A I believe so. But that would be trace question.

14 Q Thank you. And after you photographed the vehicle, you
15 said you did not draw any conclusions. But was the blood,
16 the lack of indentations, and pellets and everything, was
17 that consistent with statements that the victim was shot at
18 close range inside the vehicle?

19 A Yes, I would believe so.

20 Q And then after you left the hospital, you went to the
21 crime scene location?

22 A Correct.

23 Q And at location you also took several photographs;
24 correct?

25 A Yes.

1 Q And looking at State's 1 through 18, would you look
2 through those and make sure that those are all photographs
3 that were taken in your presence and that they're true and
4 accurate depictions?

5 A Yeah.

6 MS. CORNWELL: And Your Honor at this time the
7 State would move State's 1 through 18 into evidence.

8 (State's Exhibit No. 1, photograph,
9 was marked and entered.)

10 (State's Exhibit No. 2, photograph,
11 was marked and entered.)

12 (State's Exhibit No. 3, photograph,
13 was marked and entered.)

14 (State's Exhibit No. 4, photograph,
15 was marked and entered.)

16 (State's Exhibit No. 5, photograph,
17 was marked and entered.)

18 (State's Exhibit No. 6, photograph,
19 was marked and entered.)

20 (State's Exhibit No. 7, photograph,
21 was marked and entered.)

22 (State's Exhibit No. 8, photograph,
23 was marked and entered.)

24 (State's Exhibit No. 9, photograph,
25 was marked and entered.)

1 (State's Exhibit No. 10,
2 photograph, was marked and entered.)

3 (State's Exhibit No. 11,
4 photograph, was marked and entered.)

5 (State's Exhibit No. 12,
6 photograph, was marked and entered.)

7 (State's Exhibit No. 13,
8 photograph, was marked and entered.)

9 (State's Exhibit No. 14,
10 photograph, was marked and entered.)

11 (State's Exhibit No. 15,
12 photograph, was marked and entered.)

13 (State's Exhibit No. 16,
14 photograph, was marked and entered.)

15 (State's Exhibit No. 17,
16 photograph, was marked and entered.)

17 (State's Exhibit No. 18,
18 photograph, was marked and entered.)

19 BY MS. CORNWELL:

20 Q And I believe in answering Mr. Hutto's questions you
21 indicated that when you went to the scene you photographed
22 just the outside. There was no indication that any
23 altercation had occurred in the house; correct?

24 A Correct.

25 Q And there were no signs of any sort of forcible entry

1 or anybody trying to make any sort forcible entry into the
2 house; correct?

3 A Correct.

4 Q No damage to the property whatsoever?

5 A Not that we saw.

6 Q And when you were -- I believe you said that you were
7 there to photograph the scene, to collect evidence, also to
8 search for any evidence of blood at the scene or any
9 evidence of the shotgun pellets and things that nature; is
10 that correct?

11 A That's correct.

12 Q And in looking in the crime scene area, were you able
13 to find any blood on the scene?

14 A We were not.

15 Q And as somebody that does crime scene reproduction,
16 crime scene analysis, if somebody's shot outside,
17 particularly at close range with a firearm such as shotgun,
18 would you expect to find some blood on the outside?

19 A It's a possibility. It's hard to say. Every single
20 wound is different. It depends on the person as well.

21 Q Okay. But there was no blood outside on the ground
22 anywhere near where the incident allegedly occurred?

23 A We did not find any.

24 Q And you also did not find any shotgun pellets?

25 A We did not.

1 Q And in collecting the firearm you said that obviously
2 you automatically clear it to make sure that it's safe. And
3 when you cleared it, the shotgun shell exited at that point?

4 A Correct.

5 Q Or ejected, I should say, at that point?

6 A Yes.

7 Q Did you collect any more ammunition from the house on
8 that day?

9 A We did not.

10 Q And I believe that you also stated that you took
11 photographs of some tire impressions where you believed,
12 where it was alleged that the vehicle was on the scene
13 before leaving?

14 A Yes.

15 Q And in those tire impressions -- looking at State's 8,
16 would those be the tire impressions that you indicated?

17 A I know they're some of them. There was multiple
18 impressions. There was an area that appeared to be deeper.
19 And those appear more fresh than the other ones.

20 Q And what was the purpose of collecting those tire
21 impressions?

22 A We were just photographing the presence of them. We
23 didn't take examination quality photographs because, again,
24 there wasn't any dispute about the vehicle being at the
25 location.

1 Q And while you did not draw any conclusions at the scene
2 again, given the fact there was no blood, no shotgun
3 pellets, no damage to the house or any property damage,
4 would that be consistent with the victim being shot at close
5 range inside the vehicle?

6 A I can't say that.

7 Q You also stated that you attended the autopsy?

8 A That's correct.

9 Q And when you attended the autopsy y'all collect various
10 items of evidence including fingerprints, blood standards,
11 things like that to submit?

12 A That's correct.

13 Q And that was done here?

14 A Yes, it was.

15 Q And were photographs also taken at autopsy?

16 A Dr. Ross and the staff at Newberry Pathology Associates
17 takes photographs.

18 Q Okay. So you did not take any photographs from SLED?

19 A Correct.

20 Q If we can have the -- and this is the firearm that you
21 did collect?

22 A That is correct.

23 Q As well as the shotgun shell you collected from the
24 ejection of the firearm?

25 A That's correct.

1 MS. CORNWELL: Your Honor, at this time the State
2 would just have these marked and ask they be moved into
3 evidence.

4 THE COURT: Okay. Without objection.

5 COURT REPORTER: And that would be State's 19 and
6 20.

7 MS. CORNWELL: Actually, I think that -- I'm
8 sorry. I've got a couple of photographs that have already
9 -- I think we had 1 through 18 as photographs of the house.

10 COURT REPORTER: And then 19 through 36.

11 MS. CORNWELL: And then 19 through 36 as
12 photographs of the car. And I've got State's 37 through 42
13 as some photographs as well.

14 COURT REPORTER: Okay.

15 MS. CORNWELL: I'm sorry. I was trying to help
16 you out. Those are from the autopsy.

17 COURT REPORTER: So this would be 43 and 44.

18 (State's Exhibit No. 43, gun, was
19 marked for ID.)

20 (State's Exhibit No. 44, shell, was
21 marked for ID.)

22 (Off record discussion)

23 MS. CORNWELL: So, Your Honor, at this time --
24 we're not going to make Dr. Ross come down here for purposes
25 of this hearing.

1 THE COURT: Okay.

2 MS. CORNWELL: We've agreed and stipulate that her
3 photographs are true and authentic and her autopsy report is
4 ???.

5 THE COURT: Okay.

6 MS. CORNWELL: So if we can go ahead and move
7 State's 37 through 42 into evidence as well.

8 THE COURT: Okay.

9 COURT REPORTER: And 43 for the gun and 44 for the
10 shell.

11 (State's Exhibit No. 37,
12 photograph, was marked and entered.)

13 (State's Exhibit No. 38,
14 photograph, was marked and entered.)

15 (State's Exhibit No. 39,
16 photograph, was marked and entered.)

17 (State's Exhibit No. 40,
18 photograph, was marked and entered.)

19 (State's Exhibit No. 41,
20 photograph, was marked and entered.)

21 (State's Exhibit No. 42,
22 photograph, was marked and entered.)

23 (State's Exhibit No. 43, gun, was
24 marked and entered.)

25 (State's Exhibit No. 44, shell, was

1 marked and entered.

2 Q Thank you Agent Quam.

3 MS. CORNWELL: I just want to make sure I got all
4 of the evidence moved in properly.

5 HAILEY QUAM - REDIRECT EXAMINATION

6 BY MR. HUTTO:

7 Q Just to clarify a few things. Multiple tire
8 impressions in the yard, but you didn't do any analysis to
9 match them up to the vehicle?

10 A Correct.

11 Q The fact that no actual fingerprints were collected to
12 do any analysis, because there's really not any mystery
13 about who was in the car. I mean, we're not looking for any
14 -- tie to anybody, other than the driver and the passenger;
15 is that right?

16 A That's correct.

17 Q And you indicated that there was a -- it was reported
18 that the driver had blood on him. But it was not reported
19 that he was wounded. Just that he had -- well, I guess,
20 transfer blood on him?

21 A Correct.

22 Q As far as the -- looking for shot and we'll talk about
23 in the car and out of the car. In the car, did you vacuum
24 the car to look for it or you just visually looked for it?

25 A We would have just done a visual examination.

1 Q Okay. And then in the yard area, if you were looking
2 for shot amongst grass, I mean, it's highly unlikely that
3 you would be able to see that; isn't it?

4 A That would be like looking for a needle in a haystack.
5 But, yes, we did do a visual examination.

6 Q Okay. So the fact that you looked in the yard and did
7 not see a shot doesn't mean it wasn't any shots in the yard?

8 A That's correct.

9 Q And so if -- and I know that two scenarios were
10 reported to you. But the being shot in the car and you
11 didn't find any shots in the car. The other one being shot
12 actually outside the car in the yard. And you didn't find
13 any shots there either. But the odds of you finding any
14 shots in the yard would be virtually like you say a needle
15 in a haystack?

16 A Yes.

17 Q Thank you.

18 THE COURT: Anything further?

19 MS. CORNWELL: No, ma'am.

20 THE COURT: Any objection to the agent being
21 excused?

22 MR. HUTTO: No.

23 THE COURT: You are excused. Thank you.

24 THE WITNESS: Thank you.

25 MR. HUTTO: Is Agent Schenk here? Is he coming?

1 MS. CORNWELL: I subpoenaed him and was not
2 intending to call him. I believe that he did everything
3 that Agent Quam did.

4 THE COURT: Okay.

5 MR. HUTTO: We're going to call Chad Smith.

6 (WHEREUPON, Chad Smith was sworn to
7 tell the truth.)

8 CHAD SMITH - DIRECT EXAMINATION

9 BY MR. HUTTO:

10 Q And your title?

11 A I'm a firearms examiner. I'm a forensic scientist at
12 SLED Forensic Services Laboratory.

13 Q How long have you been employed there?

14 A It'll be eight years in November.

15 Q Always in that capacity?

16 A Yes, sir.

17 Q Prior law enforcement or educational training that lead
18 up to your employment by SLED?

19 A No. No further in firearms identification. I have a
20 biology degree from Clemson University.

21 Q Good. Your role in connection with this case involved
22 the analysis of what?

23 A I received a shotgun for examination as well as a fired
24 shot shell and a number of shot pellets.

25 Q I'm going to hold up and show you, I think, what's been

1 marked as 43 and then 44. These appear to be the shotgun

2 and the shell that you examined?

3 A Just in a visual examination, they do.

4 Q Okay. What kind of analysis did you perform? Let's go
5 with the gun first?

6 A What I would do with the shotgun is just to make sure
7 that it's in proper working order, there's no obvious
8 defects or anything with that, which I found none. I would
9 also test fire the shotgun to make sure it worked with
10 ammunition. And also to attain test fires so I could
11 compare with the fired shot shell.

12 Q And in order to do the test fire, you use the
13 ammunition that you would have had available to you at SLED
14 rather than ammunition collected at the scene?

15 A Right. Our first priority is to use ammunition that we
16 have in our collection. If the same type is not available
17 and some is submitted to us, as a last resort we do use
18 submitted ammunition.

19 Q So basically, you just used generic, just .20 gauge
20 shotgun shells?

21 A Of the same type that we did have.

22 Q It was #8 bird shot?

23 A It was specifically -- yes. Winchester #8 bird shot.
24 It was one ounce compared to the seven-eights ounce, which
25 is marked on the shot shell that was submitted.

1 Q Okay. Any significance to the fact that you used one
2 ounce versus the seven-eighths ounce?

3 A Not in my testing, no. What I would have to do is just
4 to test fire it to make sure I have test-fired shot shells
5 to compare with the fired shot shell for examination.

6 Q And the purpose of your test fire was to determine the
7 gun was in good working order?

8 A That too. And to get test fires to do microscopic
9 comparison with the fired shot shell that was submitted to
10 determine conclusively that the fired shot shell was fired
11 by the particular firearm.

12 Q And were you able to make that determination?

13 A Yes. I was able to conclude that it was fired by that
14 shotgun.

15 Q Okay. As far as test firing for the purpose of
16 establishing that gun's whatever range or pattern or
17 distribution of shot or anything of that nature, did you
18 perform any analysis in that regard?

19 A No, sir.

20 Q All right. So the purpose of your test shot was just
21 really to determine that: one, it was in working order; and,
22 and two, to give you some samples to compare to the shell
23 that was submitted to be able to use to concluded whether or
24 not the shell that was submitted was related to the gun, had
25 been fired from the gun?

1 A That's correct.

2 Q Did you do any other analysis related to the gun?

3 A No, sir.

4 Q Did you do any other analysis related to the shell?

5 A No, sir.

6 Q Did you do any other analysis related to anything
7 involved in this case?

8 A The shot pellets that were submitted, I was able to --

9 Q These are from autopsy?

10 A Yes. They were marked or described as being from the
11 left shoulder.

12 Q Okay. So they were delivered to you as shots that were
13 retrieved from the left shoulder of the victim?

14 A Yes, sir.

15 Q Do you know whether they were retrieved at the time he
16 was in the hospital or at the time he was in autopsy and
17 does that matter?

18 A For my purpose, it doesn't matter. And I can look at
19 some photographs of the actual packaging to see. It looks
20 like it was from autopsy.

21 Q And what kind of tests did you perform on them?

22 A To try to determine what size they were based on their
23 diameter and their nominal weight. I was able to determine
24 that they were #8 lead bird shot pellets.

25 Q Okay. So the shell -- the shots that you were given to

1 analyze were consistent with shots that would have been in
2 the shell that you had already analyzed?

3 A Right. As it was marked. Yes, sir.

4 Q And the -- just to be clear, I don't know how many
5 shots you actually -- do you know how many shots you had to
6 analyze?

7 A There were thirty-nine pellets that I counted that were
8 submitted.

9 Q My question is there's significantly more than that
10 that would be inside of a shell that size?

11 A Yes, sir.

12 Q Okay. You're thinking as much as ten or fifteen times
13 more?

14 A I've got a chart from my research that determined that
15 one ounce in weight of #8 bird shot contains anywhere from
16 four hundred and four to four hundred and twenty-one
17 pellets. So that shot shell was marked seven-eighths of an
18 ounce. So that would be anywhere from three hundred and
19 fifty-four to three hundred and sixty-eight should have been
20 in that shot shell.

21 Q It's almost ten times as many as were collected?

22 A Yes, sir.

23 Q Okay. All right. You've told us about the gun.
24 You've told us about the shell. You've told us about the
25 shots. Did you do any other analysis as it relates to this

1 case that we haven't gone through yet?

2 A No, sir.

3 MR. HUTTO: That's all the questions I have, Your
4 Honor.

5 THE COURT: Okay.

6 CHAD SMITH - CROSS-EXAMINATION

7 BY MS. CORNWELL:

8 Q I'm sorry. I was distracted actually looking for the
9 pellets. Can you tell me again approximately how many
10 pellets would have been in that seven-eighths ounce?

11 A Anywhere between three hundred and fifty-four to three
12 and sixty-eight.

13 Q And you had mentioned in your test fire -- you test
14 fired on one ounce pellets or a one ounce shell as opposed
15 to a seven-eighths ounce shell?

16 A Yes, ma'am.

17 Q The difference in those weights would be the number of
18 pellets that's inside?

19 A Right. Right.

20 Q And in your physical analysis of the gun, it test fired
21 properly?

22 A Yes, ma'am.

23 Q And can you explain a little bit the difference -- I
24 grew up hunting and stuff so I'm a little familiar with this
25 but between bird shot and buck shot and how that shotgun

1 shell and the ammunition differs from each other?

2 A Bird shot is typically a much smaller pellet made for
3 fowl hunting and other things like that, skeet shooting and
4 other sports. But buck shot is a much larger pellet made
5 for hunting larger animals such as deer. The way that the
6 shot shell is contained you've got the shot in there.

7 You've got wads, which act as a filler material and also as
8 a buffered kind of thing for the shot shell and the shot
9 itself. So when the firearm discharges the shot shell, all
10 the materials of the shot shell come out of the barrel and
11 disperse. Depending on what sort of barrel is on the gun --
12 there's things called chokes, which is a constriction of the
13 barrel itself, that can basically control that dispersion.

14 Q Okay. And was there a choke or anything like that on
15 this particular firearm?

16 A Yes, ma'am. The barrel was marked modified which is a
17 constriction of the actual barrel.

18 Q Okay. And so with that choke does it effect, I guess,
19 how quickly the shot disperses or --

20 A Right. It would be a little tighter than just having
21 no choke at all.

22 Q Okay. And so you talk about the wadding, the filler
23 that was in it, as well as the pellets. With that wadding,
24 approximately how far does that go? I mean, is that
25 something that goes farther than the pellets? Do the

1 pellets tend to go farther than the wadding? How does --

2 A I think it depends on probably what sort of wad you've
3 got. There are many different types. Some wads travel
4 farther if they're made out of plastic and what sort of
5 material it's made out of. But they can travel quite a long
6 distance.

7 Q Okay. And do you know what type of wadding was used in
8 this particular shell? Was it plastic?

9 A I do not know.

10 Q All right. Is it something that's common and you would
11 be able to look that up and see if the manufacturer uses
12 plastic wadding or cotton wadding or whatever it may be?

13 A Well, it can differ too because they typically change.
14 They can change the type of materials and the type of wad
15 throughout time.

16 Q And discussing the disbursement of the shells [sic],
17 with bird shot you said that they're smaller, they're
18 lighter weight. But they still eject from the firearm at
19 fairly high speed; correct?

20 A Yes, ma'am.

21 Q So if they were to be fired in close range to say a
22 vehicle, you would expect that if those pellets hits the
23 vehicle, they would have left some sort of indentation
24 marking on the vehicle to indicate that they hit the
25 vehicle; correct?

1 A Right. And it's going to depend on how far away from
2 the vehicle it was.

3 Q If we have testimony that the firearm was fired
4 approximately three feet from something, would you expect to
5 see indentations or markings on a vehicle that close?

6 A Probably not. That's such a fairly short range and at
7 that distance everything would be still a pretty tight
8 group.

9 Q Okay. So at approximately three feet away you would
10 expect that whatever was aimed at would take the full impact
11 of the entire pellet or the entire shell?

12 A Yes, ma'am.

13 Q So all of those pellets would have hit the target that
14 it was aiming for and would not have had time to disperse to
15 other places?

16 A Right.

17 Q And in looking at -- I'm going to show you -- you said
18 that you were given thirty-nine pellets that were collected
19 from autopsy?

20 A Yes, ma'am.

21 Q Autopsy also, I believe, did an x-ray. And looking at
22 State's 41 and 42 -- I think I emailed these to you?

23 A Yeah.

24 Q Have you had a chance to look over those?

25 A I did.

1 Q And does that also concur with your conclusion that if
2 that would have been fired, pellets would not have had a
3 chance to disperse from that distance given the number of
4 pellets that you see in the autopsy?

5 A Probably so. There is an effect called the billiard-
6 ball effect when pellets hit tissue, they can hit each other
7 and knock each out a little bit. And it seems to me that
8 that's probably what happened here, they may have hit each
9 other and dispersed more into the tissue. But there are
10 quite a number of pellets present in these photographs.

11 Q Okay. And I'm not sure if you were here, but we also
12 heard some testimony that there were also pellets removed at
13 the hospital, which would also support your conclusion; is
14 that correct?

15 A Yes, ma'am.

16 MS. CORNWELL: I apologize, Your Honor.

17 THE COURT: No, that's okay

18 BY MS. CORNWELL:

19 Q I'm going to show you what's been marked as Defense
20 Exhibit 21. I believe this was actually an x-ray take at
21 the hospital. Would those pellets -- does that also support
22 your conclusions that it would have hit the target?

23 A Yes, ma'am. Yeah, again, there's quite a number of
24 pellets in more of a constricted area.

25 Q And you've indicated those pellets are pretty small or

1 pretty microscopic, small?

2 A They were very small. Yes, ma'am.

3 Q So just because you can't sit there and count three
4 fifty, with the way that that x-ray is done, some of those
5 pellets could be right on top of each other and you wouldn't
6 be able to distinguish --

7 A That's correct.

8 Q -- exactly three hundred fifty-four, three hundred and
9 sixty-eight pellets; correct?

10 A Right.

11 Q But based on your experience in firearms, looking at
12 both of those x-rays, it's your opinion that that is a
13 majority of the pellets from that shotgun shell?

14 A Correct..

15 Q I believe that's all the questions I have. Thank you,
16 Mr. Smith.

17 CHAD SMITH - REDIRECT EXAMINATION

18 BY MR. HUTTO:

19 Q But to be clear, you haven't accounted for every pullet
20 in the gun, pellet by pellet?

21 A No, ma'am. No, sir. I'm sorry.

22 Q So if some pellets were captured in his clothing
23 material or if other pellets, as the crime scene
24 investigator testified, had fallen into the car or onto the
25 ground, it's possible. You don't know?

1 A Right.

2 Q Wadding, you said, can be made of various materials.

3 Is another name for wadding Power Piston?

4 A That's a brand of Remington specific wad.

5 Q Okay. But the wad, it's inside of the shell casing,
6 along with the gunpowder and the shots?

7 A Correct.

8 Q But when the shotgun is fired, the wadding is ejected
9 from the --

10 A Right. It comes out with the shot pellets.

11 Q It travels some distance but not as far as the shot?

12 A Typically. I've test fired some shotguns with, you
13 know, different types of ammunition. Some of the wads can
14 travel a hundred yards or so.

15 Q Okay. I mean, when you're shooting up in the -- well,
16 at a target up in the air. A shotgun shooting a hundred
17 yards is a pretty powerful shotgun?

18 A Yes, sir.

19 Q Okay. But you didn't do any kind of distance analysis
20 on this gun?

21 A No, sir.

22 Q And no pattern analysis as to whether the shells coming
23 out of this gun stay together in what grouping at four feet,
24 five feet, six feet and at what point it spreads. You
25 didn't do any testing like that?

1 A No, sir.

2 Q In order to do a test for that, I understand and I
3 think is that you probably needed the actual companion
4 shells from the same ammunition box to have an accurate
5 analysis?

6 A That's correct. We would need a substantial quantity
7 of submitted ammunition because we'd have to do multiple
8 shots per distance. And we'd also have to have a suitable
9 pattern to compare it to, a suitable measurable pattern.

10 Q Thank you.

11 THE COURT: Anything further?

12 MS. CORNWELL: No, Your Honor.

13 THE COURT: Any objection to Agent Smith being
14 excused?

15 MS. CORNWELL: No, Your Honor.

16 THE COURT: You are excused, sir. Thank you.

17 THE WITNESS: Thank you.

18 MR. HUTTO: Jennifer Nates.

19 (WHEREUPON, Jennifer Nates. was
20 sworn to tell the truth.)

21 JENNIFER NATES - DIRECT EXAMINATION

22 BY MR. HUTTO:

23 Q What's your title, please?

24 A I'm a lieutenant with the trace evidence section at
25 SLED.

1 Q How long have you been there?

2 A Almost nineteen years.

3 Q And what is your educational background or other law
4 enforcement experience before you got to SLED?

5 A I have a bachelor of science degree in chemistry I
6 obtained in 1977. And once I was hired at SLED I went
7 through the police academy and became a Class I officer. In
8 2006, they decided to drop the lab employees down to a Class
9 III officer so we didn't have to perform all the law
10 enforcement duties. So at this time I'm a Class III law
11 enforcement officer employed by the laboratory.

12 Q All right. And in connection with the investigation
13 here in Orangeburg County from a shooting that took place in
14 January -- on January the 30th of 2016, what was your role?
15 What were you asked to do?

16 A I received a GSR kit collected from a vehicle for
17 analysis.

18 Q And for the record GSR stands for?

19 A Gunshot residue.

20 Q All right. And the kits would have been collected by
21 another SLED person or another law enforcement agent at the
22 scene?

23 A Yes, that is normally how we receive the gunshot
24 residue kits.

25 Q It comes in the container?

1 A It comes in a -- it's an envelope. And within that
2 envelope is the collection kit.

3 Q All right. And it's the standard collection kit that
4 SLED generally uses?

5 A We have a standard collection kit that a company in
6 North Carolina manufactures that we provide to agencies
7 throughout the state.

8 Q Was that what was used in this case?

9 A It was.

10 Q Okay. And did your records show who -- which person
11 made the collection?

12 A Yes. There were two sheets filled out for this kit
13 because of the number of samples. Each collection kit has
14 four sampling particle lifts, so two kits were used in this
15 case. And it was collected by Special Agent Hailey Quam.

16 Q Okay. And when you received the collection kits in
17 this case from Agent Quam, what did you do with them?

18 A When I received the kits we document whether the
19 evidence sealed, initialed. We open the outer envelope. We
20 look at the information on the outside of the kit. Open the
21 kit after we've made sure it is sealed and initialed and
22 compare the information sheets with what is on the outside
23 of the kit and what is said to have been logged in.

24 Q Everything check out to your satisfaction when you made
25 that comparison?

1 A It did.

2 Q What was your next step?

3 A After that, we look at the particle lifts, make sure
4 they are maintained correctly. We then write the laboratory
5 number, which is the unique number that is given to each
6 case that is submitted to SLED. We write the lab number,
7 the item number and our initials on each separate sample.

8 Q Okay. And your next step would be?

9 A Once we do that, we fill out the paperwork and we set
10 the samples up on what is a scanning electron microscope, we
11 refer to as an SEM.

12 Q In this case you had a total of eight samples?

13 A I did.

14 Q All right. And so I assume you perform analysis on
15 them one at a time?

16 A It does perform analysis one at a time. You load a
17 sample tray with each sample, and then you set up the
18 parameters for how you want the instrument to perform, and
19 which areas to analyze. Because sometimes those particle
20 lifts won't be exactly the same size so you have to set the
21 parameters on each particle lift for the scan.

22 Q Okay. Did you do that in this case?

23 A I did.

24 Q As far as the testing procedure and the operation and
25 the equipment, was there anything unusual that happened or

1 was this a normal testing process?

2 A It was a normal testing process.

3 Q And were you able to get a result from your testing

4 A I was.

5 Q And you got eight results; is that right?

6 A Yes.

7 Q Okay. Well, in whichever order you'd like and maybe in
8 the order that you have them on your report, how about
9 telling the Court what each of the eight samples showed?

10 A Is it all right for me to explain what will be in the
11 results first?

12 Q Absolutely.

13 THE COURT: Sure.

14 A Okay. What we're looking for with a gunshot residue
15 test is we're looking for particles of gunshot residue,
16 which are three component particles that contain barium,
17 antimony and lead.

18 BY MR. HUTTO:

19 Q If you could say that -- barium?

20 A Barium, antimony and lead. These are the main
21 particles that we look for to classify a particle as gunshot
22 residue. In addition to that, we look for particles that
23 are considered characteristic of gunshot residue or
24 consistent with gunshot residue. These particles only
25 contain two of those three elements. They potentially could

1 have an environmental or recreational source. It's highly
2 unlikely, but the potential is there. So, therefore, they
3 are classified as consistent.

4 Q So if they're three, they're classified as --

5 A Gunshot residue.

6 Q And if two, consistent --

7 A Consistent.

8 Q -- with gunshot residue?

9 A Right. And if we find -- normally our associated
10 particles are single-component round lead particles, which
11 in the environment, we are removing lead from the
12 environment so we don't find it that often, but it is a
13 possibility. So, therefore, it is considered an associated
14 particle, which may have come from gunshot residue but could
15 have had another source.

16 Q All right. So something we know is gunshot residue to
17 something that's consistent with gunshot residue to
18 something that's associated with gunshot residue?

19 A Yes.

20 Q You did the -- in the testing procedure of these eight
21 things, you were looking for any of those three categories?

22 A Yes.

23 Q All right. And how does gunshot residue -- if you
24 know. How does gunshot residue end up on a surface?

25 A Normally, gunshot residue will end up on a surface from

1 the discharge of a firearm. When the firearm is discharged,
2 the bullet exits the chamber and the gunshot residue exits
3 along with the bullet. It will deposit on anything in close
4 proximity to weapon when it's fired. You can also have
5 gunshot residue deposit on a surface if I fire a weapon and
6 set it down here. There's the potential for it to transfer
7 to the counter top from the recently fired weapon.

8 Q And if my hand is on the weapon and I put my hand on
9 something, it can transfer it that way as well?

10 A You can transfer it that way but normally you transfer
11 less and less each time you transfer?

12 Q Each time it's touched?

13 A Yes.

14 Q All right. Can you tell from an analysis of gunshot
15 residue -- can you associate the gunshot residue to a
16 weapon?

17 A No. In some cases if it's military grade ammunition,
18 with a very specific unique primer that we don't normally
19 look for, in those cases we can say it's more consistent
20 with this type of primer. But I have not had a case like
21 that in all my years there because normally we see the
22 common ammunition that contains barium, antimony and lead.

23 Q And between a handgun, a rifle and a shotgun, all of
24 those types of weapons would emit gunshot residue?

25 A They all do.

1 Q Okay. And so if you see gunshot residue, not only can
2 you not associate it with a particular weapon, you can't
3 even associate it with a class of weapons?

4 A We do not. It is just associated with the discharge of
5 a firearm.

6 Q All right. Do you need to tell us anything about
7 gunshot residue in general before we go to the actual eight
8 analysis?

9 A Normally when a weapon is fired, the majority of the
10 residue will come out of the end of the gun where the bullet
11 exits. Some of it can come out of the trigger guard or if
12 it's a revolver, out of the cylinder gap. Any area of the
13 gun where air can come out when it's fired, gunshot residue
14 will come out. But the majority comes out of the front end
15 of the weapon.

16 Q Is it transmitted through the gasses in the release of
17 the explosion?

18 A That's exactly where it is transmitted from.

19 Q Okay. All right. But you don't test for those gasses.
20 It's just the residue and what those gasses would have
21 transported out and carried?

22 A Yes. We are looking for the metallic residue.

23 Q And are you able to do an analysis of the distance at
24 which gunshot residue can travel from the end of a muzzle or
25 end of the gun?

1 A We do not. When you ask about distance, there are two
2 different test that are done. One is called a distance
3 determination, which is a muzzle to target test. We do not
4 perform that test.

5 Q Okay.

6 A We used to perform it with -- we would do handguns.
7 Basically, that was testing a victim's clothes around the
8 area where they were shot to determine if there was a
9 pattern present. We would then test fire the weapon to see
10 if we could reproduce the pattern to given approximate
11 distance. That test is no longer performed by SLED. With
12 gunshot residue, of course, higher caliber weapons are going
13 to produce more gunshot residue. Testing that has been done
14 in the field is -- generalities, you can expect if she fires
15 a gun next to you --

16 Q Right.

17 A -- you will probably have gunshot residue on you from
18 that discharge. It can deposit on the sides, usually up to
19 about three feet from a person. It has been found up to
20 eighteen feet in front of a person.

21 Q Okay. So in the direction of the barrel of the gun
22 sort of eighteen feet away to the peripheral sides of the
23 circumference of the barrel, maybe three feet away.

24 A Right. But the eighteen foot away in that testing, it
25 was one particle was found that traveled with the bullet.

1 Q Well, obviously, the farther away the less you --

2 A Expect to find.

3 Q -- expect to find. Okay. Thank you. All right. If
4 we're ready now, let's go to item 1. You can tell me where
5 it was collected and what you did with it and what you
6 found?

7 A Okay. Item 1 was collected from a 2001 Oldsmobile
8 Alero. The first particle lift was sub-item, that's item
9 1.1. And it was collected from the rear driver's side
10 quarter panel near the trunk. On this sample, I found one
11 round particle associated with gunshot residue.

12 Q Associated with is the lesser of the categories?

13 A Right.

14 Q Okay. All right. Item --

15 A Would you like me to read the disclaimer?

16 Q Yes. Since you took time to put it in there, I guess
17 the Court should know about it?

18 A Particles associated with gunshot residue are known to
19 come from a variety of environment, occupational, and
20 recreational sources; however, these particles may also be
21 associated with the residue produced by a firearm when it is
22 discharged. No information can be provided as to the time
23 frame in which this particle was deposited.

24 Q Okay. And I don't know if you were in for this or know
25 that but nobody says that gunshot happened on the driver's

1 side of the car. So the fact that you only found one thing
2 that might have been associated. That wouldn't be unusual
3 if nobody's claiming the gun was on that side of the car?

4 A No. That is not unusual.

5 Q Okay. All right. The next item, however you number
6 them.

7 A The next item it was sub-item 1.2.

8 Q Okay.

9 A It was a particle lift collected from the top of the
10 trunk.

11 Q Okay.

12 A In this particle lift I found one particle of gunshot
13 residue. I found particles consistent with gunshot residue
14 and particles associated with gunshot residue. And the
15 disclaimer for this is gunshot residue can come from being
16 in the vicinity to the discharged of a firearm or coming
17 into contact with a surface that has gunshot residue on it.
18 However, no information can be provided as to the time frame
19 in which these particles were deposited.

20 Q Well, that's true of all of this. There's no way in
21 your analysis of gunshot residue from a surface, you're not
22 going to be able to know whether the gunshot residue was
23 deposited there one day before, one hour before, three days
24 before?

25 A With inanimate objects, that is true. With a particle

1 that's collected from a person's hands, we can timestamp it.

2 Q Okay. But assuming all of your collections were done
3 from an inanimate automobile, you can't associated any time
4 with it?

5 A I cannot.

6 Q But just to -- so to clarify it, on the trunk of the
7 car you find actually -- you actually found gunshot residue
8 consistent with gunshot residue and associated with gunshot
9 residue?

10 A Uh-huh. (Affirmative response)

11 Q Okay. The next item?

12 A It was item 1.3. This was a particle lift collected
13 from the rear passenger's side quarter panel near the trunk.

14 Q All right. So just to be clear that you and I have the
15 same concept of what a rear quarter panel is, that's the
16 area near or over the rear wheel on the passenger's side of
17 the car, that would be between the rear door and the
18 taillight of the car on the passenger's side?

19 A That is my understanding of what a rear quarter panel
20 is.

21 Q All right. That's what was reported to you as where it
22 was collected from.

23 A Yes.

24 Q All right. And what did you find?

25 A On that sample, I found particles of gunshot residue,

1 one particle consistent with gunshot residue and particles
2 associated with gunshot residue.

3 Q Okay. I notice that so far you've said in one case, on
4 some times you've quantified one. And then you've said more
5 than one. Is that the quantities you use? It's either one
6 or more than one?

7 A It's either one or more than one.

8 Q Okay. So on the rear quarter panel then, you found
9 multiple particles, meaning more than one, of gunshot
10 residue; one particle consistent with it; and then multiple
11 particles associated with it?

12 A That is correct.

13 Q Okay. Next item.

14 A The next item was a sub-item, that's item 1.4. It was
15 a particle lift collected from the lip of the trunk and the
16 top of the bumper.

17 Q Okay.

18 A In this case, I did not perform an analysis on it and
19 the reason was I had talked to the Solicitor concerning
20 this. With gunshot residue you run an automated analysis.
21 And it can take -- if you have a very dirty particle lift,
22 it can take days. And in this case, this one probably would
23 have taken two weeks to analyze because it was so dirty due
24 to the area of collection. What I'm assuming is from dirt
25 from the road had deposited on it. Since I had already

1 found it in the vicinity on the trunk, it was decided I did
2 not have to look at this.

3 Q Okay. So since you found it on the top of the trunk,
4 you weren't going to look behind the trunk and down in the
5 bumper?

6 A Correct.

7 Q Okay. Got you. All right. Next item?

8 A This was item 2. It was a GSR kit collected from a
9 2001 Alero Oldsmobile.

10 Q So to clarify items 1.1, 1.2, 1.3, and 1.4 came from
11 the first kit. And then items 2.1, 2.2, 2.3, and 2.4 and
12 coming from the second kit?

13 A Yes.

14 Q Okay. All right. So 2.1?

15 A 2.1 was a particle lift collected from the front
16 passenger headrest. And the results were particles of
17 gunshot residue and particles consistent with gunshot
18 residue were found.

19 Q Okay. And 2.2?

20 A 2.2 was a particle lift collected from the dash in
21 front of the passenger's seat. The results were particles
22 of gunshot residue were found. And do you want the
23 disclaimer read as well?

24 Q Yes, ma'am?

25 A Gunshot residue can come from being in the vicinity to

1 the discharge of a firearm or coming into contact with a
2 surface that has gunshot residue on it. However, now
3 information can be provided as to the time frame in which
4 these particles were deposited.

5 Q Okay. So if a person is shot, you would expect some
6 gunshot residue to be on the person?

7 A Definitely.

8 Q Okay. And so if we have had testimony that a person
9 grabs the area of the wound and then you know from the other
10 folks that there are fingerprints and blood and whatnot on
11 the dash, if you grabbed the wound and then put your hand
12 down on the dash, you could transfer it that way?

13 A You potentially could transfer some, yes.

14 Q Okay.

15 A But you said -- if blood was present, normally, they
16 stay away from blood because blood will dissolve particles
17 of gunshot residue.

18 Q Right. Well, I understand that. If blood was present
19 in one part then that would be one way to transfer it. Not
20 with the blood, but with the hand?

21 A Right. But if the hands are bloody, it would cause it
22 to be blood on the area where the transfer took place.

23 Q Right. So if one hand was bloody and one hand wasn't,
24 you could do it that way?

25 A You could.

1 Q Or it could just be totally unrelated?

2 A Excuse me?

3 Q Or it just could be totally unrelated. As you said in
4 your disclaimer there. You can't say that each one of the
5 eight that you tested are necessarily temporally related?
6 That all of these gunshot residue came onto this car at the
7 same point in time?

8 A I can't say anything about the time frame.

9 Q All right. I think that's 2.2 so let's say 2.3?

10 A 2.3 was a particle lift collected from the interior of
11 the front passenger door, near the window.

12 Q Interior of the front passenger door, near the window.
13 Okay.

14 A The results are particles of gunshot residue, particles
15 consistent with gunshot residue and one particle associated
16 with gunshot residue were found.

17 Q Okay.

18 A Gunshot residue can come from being in the vicinity to
19 the discharge of a firearm or coming into contact with a
20 surface that has gunshot residue on it. However, no
21 information can be provided as to the time frame in which
22 these particles were deposited.

23 Q Okay. And the final 2.4?

24 A 2.4 was a particle lift collected from the center
25 console area. And the results were particles of gunshot

1 residue and one particle consistent with gunshot residue
2 were found. Gunshot residue can come from being in the
3 vicinity to the discharge of a firearm or coming into
4 contact with a surface that has gunshot residue on it.
5 However, no information can be provided as to the time frame
6 in which these particles were deposited.

7 Q Okay. Other than the analysis on these different eight
8 items that were contained in those two kits, did you make
9 any other analysis related to this case?

10 A I did not.

11 Q Other than what you've told the Court, do you have any
12 other conclusions that you can draw from what's been
13 reported?

14 A I have data in my case file that is -- we don't report
15 quantity, but there is some quantization made in my case
16 file.

17 Q Okay. I understand that you have measurements you
18 could report. But as far as any conclusions to what this
19 means, because we don't know the time frame in which the
20 various samples were deposited or where the actors were at
21 the time of the shot, you can't -- you don't have an opinion
22 as to any of that?

23 A I can have an opinion if a weapon was fired from within
24 the vehicle or near the vehicle, based on my results.

25 Q Well, clearly, you wouldn't have found it all over the

1 vehicle if it weren't fired near the vehicle; right?

2 A Normally, with vehicles, a lot of times they will
3 collect if someone, say, from the backseat fires a weapon
4 into the front seat. You will find gunshot residue
5 everywhere within that vehicle. If someone fires a weapon
6 out the window of a vehicle, you're not going to find nearly
7 as much inside the vehicle. If someone fires a gun close to
8 or within that vehicle, you will find a lot of gunshot
9 residue in the vehicle.

10 Q A lot of would be found in the vehicle if it's fired in
11 the vehicle?

12 A As opposed to just normal firing outside of the
13 vehicle.

14 Q If it's fired outside the vehicle within the vehicle,
15 it could be inside and outside the vehicle as well?

16 A If you fired --

17 Q If you're outside -- you're near the vehicle but
18 outside the vehicle and you fire and even if the door is
19 open or the window is down, you could find -- well,
20 obviously you could find it outside but you could also find
21 it inside?

22 A You would expect to find it inside, yes.

23 Q Thank you.

24 JENNIFER NATES - CROSS-EXAMINATION

25 BY MS. CORNWELL:

1 Q Agent Nates, how are you doing?

2 A Good, how are you?

3 Q I actually recently attended a seminar that you did and
4 found out how much more stuff I can actually have analyzed
5 by trace. So I appreciate that. I'm going to harass you a
6 lot more. But going into some of the things that you do
7 with trace, a large majority of that is gunshot residue
8 analysis; correct?

9 A It is.

10 Q And before I get too much into your analysis on this,
11 one thing that we've discussed is the victim's shirt and
12 that that was not collected or sent for analysis. As a
13 trace analyst with a victim of a gunshot wound, do you
14 normally test clothing? I think you've already indicated
15 that you don't do that anymore?

16 A We do not normally test victim clothing for the
17 presence of gunshot residue. The test we don't do anymore
18 was a different type of test.

19 Q Okay.

20 A That was a distance determination test in which we did
21 test the victim's clothing. But to test the victim's
22 clothing for the presence of gunshot residue is a test we do
23 not normally perform unless it's very unique circumstances.

24 Q Okay. And in this case if you had testimony that a
25 victim was shot from about a three-foot range with a

1 shotgun, would you have tested that shirt for gunshot
2 residue or anything of that nature?

3 A No.

4 Q And, in fact, South Carolina actually tests a lot more
5 trace-wise than a lot of states; is that correct?

6 A Yes.

7 Q I learned that too.

8 A We're trying to stop that.

9 Q And when you analyzed the GSR kits from this vehicle,
10 you indicated that a standard kit was provided and that two
11 kits were collected. And basically, my understanding is the
12 way that the kits were collected, one kit was collected from
13 kind of outside the vehicle. And the second kit was
14 collected from inside the vehicle?

15 A Yes.

16 Q And you discussed kind of GSR and associated and
17 consistent. If somebody is shot sitting in the passenger's
18 side of the vehicle, and there is a person sitting also in
19 the driver's side of the vehicle, would you expect that
20 gunshot residue to also get on the driver?

21 A I would, depending on where the weapon was fired from.

22 Q And we talk about transferring. You indicated, you
23 know, if you were to fire a gun and then sit it down, that
24 GSR could transfer onto the surface; correct?

25 A That's correct.

1 Q If it's on a person, on somebody's clothing and things
2 like that and they rub up against something, can that GSR
3 also transfer to that part of --

4 A Yes.

5 Q So in this instance hypothetically, if GSR has gotten
6 on the driver and he jumps out of the car, rubs up against
7 his driver's side door and he possibly runs around and runs
8 up against the trunk, he could deposit particles consistent
9 with or associated with GSR on those places?

10 A That's possible.

11 Q All right. And you had indicated that the GSR can
12 travel from the sides up to about three feet and from the
13 front up to as much as -- you had a particle of eighteen
14 feet?

15 A That was a single particle; yes.

16 Q So, in looking at State's 43, obviously the majority of
17 the gunshot residue is going to come from the barrel of this
18 shotgun; correct?

19 A Yes.

20 Q This isn't a revolver. There's no -- when you shut it,
21 there's not a lot of air places. There's a little bit here
22 that --

23 A Some could come out.

24 Q -- some could possibly come out. But the majority is
25 going to come from the barrel?

1 A Yes.

2 Q And this, after it comes from the barrel, it can go up
3 to three feet --

4 A To the side.

5 Q -- either left to right?

6 A Yes.

7 Q And then --

8 A And that's just generalities with testing with gunshot
9 residue.

10 Q Okay. So if somebody were to fire within three feet of
11 a passenger door, three feet away, it could hit where that
12 rear quarter panel is and all of that. And that's where you
13 could get some positive GSR; is that correct?

14 A Yes.

15 Q And what you found on the -- from the driver's side,
16 it's one particle associated. It's a very little of any GSR
17 that would indicate any sort of activity on the driver's
18 side; correct?

19 A Right. On the driver's side.

20 Q And on the top of the trunk, you had a GSR consistent
21 and associated. But, again, the car is not that long. So
22 that could have been within that three feet range to the
23 side; is that correct?

24 A It could have been.

25 Q And the same with the quarter panel. And then looking

1 at the GSR that you did inside the vehicle, or that you
2 analyzed from inside the vehicle, I believe in our
3 conversations you told me that that was a large amount of
4 gunshot residue that was found inside the vehicle?

5 A It was.

6 Q And based on your experience, I believe you told me
7 that that would be consistent with a gun being fired from
8 outside the vehicle at a very close range into the vehicle;
9 is that correct?

10 A Yes. Or from a gun being discharged within the
11 vehicle.

12 Q Okay. But it is unlikely that you would have gotten
13 that much GSR, that concentrated GSR inside the vehicle if
14 the gun was shot, say, at a distance from the vehicle?

15 A I would not expect to if this GSR is associated with
16 that incident.

17 Q Okay. And assuming that this GSR is associated with
18 this incident -- I believe you just testified that it's your
19 conclusion that a firearm was fired inside the vehicle or
20 pointing inside the vehicle at close range?

21 A Yes. And a lot of the -- the testing that I did, we
22 have parameters that we set up for our GSR testing. Once it
23 finds a hundred particles of gunshot residue, it stops
24 testing. So in several of the ones on the inside of the
25 vehicle, it ceased testing. In one, I think it still did

1 run thirty percent. One did run twenty percent of it

2 because it had hit a hundred particles and stopped.

3 Q Okay. And was that also true on the outside of the
4 vehicle?

5 A No.

6 MS. CORNWELL: That's all the questions I have,
7 Your Honor.

8 JENNIFER NATES - REDIRECT EXAMINATION

9 BY MR. HUTTO:

10 Q None of that's in your report; correct?

11 A We do not put that in our report. It is in our notes
12 and in our instrument analysis data sheets.

13 Q And if somebody' outside the vehicle, they're very near
14 the vehicle, they're a foot or two away from the vehicle,
15 aiming toward the vehicle, it could still be inside the
16 vehicle; right?

17 A Yes.

18 Q And so whether a person is standing up in the open door
19 of a vehicle or by the open window of a vehicle or sitting
20 in a car, the gunshot residue could get inside the car if
21 the gun's outside the car?

22 A If it's close to the opening, yes.

23 Q Okay. Thank you.

24 THE COURT: Anything further?

25 MS. CORNWELL: No, Your Honor.

1 THE COURT: All right. Any objection to the
2 lieutenant being excused?

3 MS. CORNWELL: No, Your Honor.

4 THE COURT: You're excuse, ma'am. Thank you.

5 THE WITNESS: Thank you.

6 THE COURT: I'm going to take a quick break, just
7 real fast, just five minutes. Is that okay? Do you have
8 more people from Columbia that you need to get out of here
9 that all came together?

10 MR. HUTTO: I don't have any more SLED agents.

11 MS. CORNWELL: I do not have any more.

12 MR. HUTTO: That's all the SLED agents.

13 THE COURT: Perfect. I just want to make sure
14 they can leave if we're done with them.

15 MR. HUTTO: Yes, Your Honor.

16 THE COURT: Okay. Thank you.

17 (Court in recess for short break)

18 (Court in session after short
19 break)

20 MR. HUTTO: Your Honor?

21 THE COURT: Yes.

22 MR. HUTTO: We're ready to call another witness.

23 THE COURT: Okay.

24 MR. HUTTO: Robert Tressel. T-r-e-s-s-e-l.

25 (WHEREUPON, Robert Tressel was

1 sworn to tell the truth.)

2 ROBERT TRESSEL - DIRECT EXAMINATION

3 BY MR. HUTTO:

4 Q Mr. Tressel, where do you live?

5 A I live in Hiram, Georgia. It's a little small town
6 just to the west of Atlanta, going out I-24 to Birmingham.

7 Q All right. And who do you work for?

8 A Currently, I'm employed as the chief investigator of
9 Cobb County District Attorney's Office, Marietta, Georgia.
10 Cobb County is northwest of the city of Atlanta, just across
11 the Chattahoochee River from the city.

12 Q And how long have you worked for the DA's office in
13 Cobb County?

14 A I've been with the DA's office now for six years.

15 Q And tell us, if you would -- I don't know if you want
16 to go backwards in time or come forwards in time, but how
17 about give the Court your educational background and your
18 work history?

19 A Okay. My education, basically, I've had some college
20 through Kennesaw State University now. When I was there, it
21 was a junior college. I go back that far. I was employed
22 with Cobb County Police Department in July of 1973 as a
23 uniformed police officer. I spent a year and a half, a year
24 and seven months in uniform and was transferred to the
25 robbery homicide division as an investigator. I stayed in

1 the robbery homicide division for the remainder of my career
2 at Cobb PD, making the rank of sergeant, was evening watch
3 supervisor during that time. I stayed with Cobb County for
4 thirteen years. I left and resigned my police position and
5 took a position as a medical legal death investigator with
6 the Cobb County Medical Examiner's Office. A medical legal
7 death investigator is simply the eyes and ears of the
8 medical examiner and we cross-train on injuries, how
9 injuries occur within certain occupational hazards, car
10 accidents, stabbings, gunshot wounds, things of that nature.
11 I stayed with the medical examiner for fifteen years,
12 leaving in 1999.

13 Q Okay. Hang on right there a second. In connection
14 with your role there, did you attend autopsies?

15 A Oh, not only attended but performed autopsies. We were
16 permitted to -- under Georgia law -- to perform autopsies at
17 the discretion of the medical examiner. We did not do
18 autopsies on homicide cases or critical cases but what we
19 call the run-of-the-mill autopsies we were allowed to go
20 ahead and start the autopsy and get it ready for the medical
21 examiner. I received advanced training in homicide
22 investigation, crime scene processing, crime scene analysis,
23 evidence collection. I've attended two different training
24 sessions on blood spatter interpretation and analysis. As a
25 medical examiner officer I received training at the

1 University of Miami School of Medicine and the University of
2 St. Louis School of Medical in medical legal death
3 investigation.

4 Q Upon leaving the medical examiner's officer, where did
5 you go?

6 A I went for approximately twelve years and did private
7 consulting in injury causation, dealing with homicide
8 investigations, how injuries occur, what injuries do occur.
9 Also doing automobile accidents and product liability cases.
10 How injuries occur and how an occupant moves with inside the
11 vehicle during the course of a collision, how they get
12 certain injuries or what injuries are associated with
13 certain issues in each and every -- the vehicle that's
14 manufactured.

15 Q Okay. And after being, I guess running consulting
16 work, you did that for how long?

17 A I did that for thirteen years.

18 Q And then what did you do?

19 A Or excuse me. Twelve years. Twelve years. And then
20 the current district attorney asked me to be his chief
21 investigator if he ever ran for district attorney. He
22 decided to run for district attorney. It was at a slow-down
23 in the private sector, during the financial crunch, so I
24 took the job as the chief investigator with the district
25 attorney's office. I manage sixteen investigators and four

1 ancillary employees.

2 Q Okay. And now that you're back employed with the DA's
3 office in Georgia, you can consult outside the state but not
4 inside the State?

5 A That is correct. I can do consulting outside of the
6 state. Ninety percent of my work is appellate work,
7 primarily in death penalty cases. But I do consult with
8 ongoing investigations always outside the state of Georgia.

9 Q Have you been qualified to testify as an expert witness
10 before?

11 A Yes. I've been qualified in the state courts and was
12 trying to count. I think it's now right at eleven different
13 states, in the federal courts. And I have testified in
14 South Carolina as an expert in two different courts.

15 Q I think once in Richland County and once in Berkeley
16 County?

17 A Yeah. Berkeley's the one I never can remember the name
18 of it, Moncks Corner and then Richland County I have
19 testified as an expert as well.

20 Q And my understanding is that you have been qualified as
21 an expert crime scene investigator, homicide investigator
22 and/or medical legal death investigator?

23 A That is correct.

24 Q All of those have some overlap items?

25 A They bounce off each other. Constantly homicide is

1 looking at the medical aspect, medical is looking at the
2 legal aspect. Crime scene, again, is looking at what can
3 the crime scene tell us about how these injuries occurred or
4 what can the injuries tell us about what we should be
5 looking for at the crime scene, things of that nature.

6 Q Okay. The Solicitor may have some questions. At the
7 point in time that either she does or doesn't, I'm going to
8 move to qualify you as an expert in crime scene
9 investigation, homicide investigation and medical legal
10 death investigation.

11 MS. CORNWELL: No objection, Your Honor.

12 THE COURT: Okay.

13 THE WITNESS: Thank you, ma'am.

14 BY MR. HUTTO:

15 Q All right. So, Mr. Tressel, I contacted you about this
16 case a while back?

17 A Yeah. Very early in September.

18 Q After we knew when it was going to be scheduled?

19 A Yes, sir.

20 Q And provided you with some documentation and
21 information; is that correct?

22 A That is correct; yes, sir.

23 Q And you've had a chance to review that?

24 A I have.

25 Q Also, when you came in yesterday afternoon, you had a

1 chance to actually go to the scene?

2 A I went to the scene yesterday afternoon. We took some
3 photographs and did some measurements. Yes, sir.

4 Q I'm going to just clarify, I think it's pretty obvious
5 that these pictures -- but I show you what's been marked as
6 Exhibits, Defendant's Exhibits 3 through 19 and ask you if
7 you were present at or actually in these photographs?

8 A I'm actually in these. These are the ones we were
9 looking at this morning.

10 Q Okay. And so --

11 MR. HUTTO: Your Honor, we'd move.

12 MS. CORNWELL: Without objection, Your Honor.

13 THE COURT: Thank you.

14 (Defendant's Exhibit No. 3,
15 photograph, was marked and entered.)

16 (Defendant's Exhibit No. 4,
17 photograph, was marked and entered.)

18 (Defendant's Exhibit No. 5,
19 photograph, was marked and entered.)

20 (Defendant's Exhibit No. 6,
21 photograph, was marked and entered.)

22 (Defendant's Exhibit No. 7,
23 photograph, was marked and entered.)

24 (Defendant's Exhibit No. 8,
25 photograph, was marked and entered.)

1 (Defendant's Exhibit No. 9,
2 photograph, was marked and entered.)
3 (Defendant's Exhibit No. 10,
4 photograph, was marked and entered.)
5 (Defendant's Exhibit No. 11,
6 photograph, was marked and entered.)
7 (Defendant's Exhibit No. 12,
8 photograph, was marked and entered.)
9 (Defendant's Exhibit No. 13,
10 photograph, was marked and entered.)
11 (Defendant's Exhibit No. 14,
12 photograph, was marked and entered.)
13 (Defendant's Exhibit No. 15,
14 photograph, was marked and entered.)
15 (Defendant's Exhibit No. 16,
16 photograph, was marked and entered.)
17 (Defendant's Exhibit No. 17,
18 photograph, was marked and entered.)
19 (Defendant's Exhibit No. 18,
20 photograph, was marked and entered.)
21 (Defendant's Exhibit No. 19,
22 photograph, was marked and entered.)

23 BY MR. HUTTO:

24 Q Okay. Let's go ahead and cover all of this now. This
25 is No. 20. Tell us what No. 20 is?

1 A It's just a diagram of a .20 gauge shotgun shell from
2 the manufacturer. In this case, I think it's Winchester.

3 Q Just showing what the interior --

4 A What the interior looks like and how it's --

5 THE COURT: Let me see that just a second.

6 BY MR. HUTTO:

7 Q And if you would, this is --

8 A That's gunpowder.

9 Q Gunpowder. This right here?

10 A Wadding or Power Piston or shot shell, whatever
11 description some people want to give it, but it's what's
12 called the wadding.

13 Q Okay. Can be made of plastic or cotton?

14 A It's fibers. It can be plastic. In this case, it is
15 plastic.

16 Q And this is the --

17 A Those are the pellets.

18 Q The pellets. So you've got the gun powder, then the
19 wadding, then the pellets?

20 A Pellets, yes.

21 Q Okay. And then --

22 MR. HUTTO: Well, I see 20 then it jumps to 22.

23 THE COURT: I think I've got that.

24 MS. CORNWELL: Is 22 the x-ray?

25 MR. HUTTO: Oh, that we took that after the

1 photographs

2 THE COURT: 21 is the x-ray.

3 BY MR. HUTTO:

4 Q 21 is an x-ray?

5 A Yes, I've seen that.

6 Q And then 22 and 23 are autopsy photo?

7 A Yes, sir.

8 MR. HUTTO: Madam Court reporter, did I go any
9 higher than 24?

10 COURT REPORTER: Yes, sir. The bag.

11 MR. HUTTO: Oh, the bag.

12 A Photograph of a plastic bag; yes, sir.

13 BY MR. HUTTO:

14 Q Okay. So you've seen everything that's been marked,
15 you've seen and provided to you to look at?

16 A Yes, sir, I have.

17 MR. HUTTO: I think we agreed I move all of those
18 into evidence.

19 (Defendant's Exhibit No. 20,
20 diagram shotgun shell, was marked and entered.)

21 (Defendant's Exhibit No. 21, x-ray,
22 was marked and entered.)

23 (Defendant's Exhibit No. 22,
24 autopsy photo, was marked and entered.)

25 (Defendant's Exhibit No. 23,

1 autopsy photo, was marked and entered.)

2 (Defendant's Exhibit No. 24, photo
3 of bag, was marked and entered.)

4 BY MR. HUTTO:

5 Q So now, tell me how you went about -- what type of
6 analysis you were able to perform from what you've been
7 provided and how you went about doing that.

8 A Well, the first thing I looked at were SLED incident
9 reports. What they did with the vehicle at the hospital.
10 What they did at the residence afterwards. What information
11 was given to them that they were relying on from local law
12 enforcement. The sheriff's department responded to the
13 scene. I don't have their complete reports but just basic
14 information that was given to them. I then looked at the
15 autopsy report of Mr. Green to get an idea of what the
16 medical examiner found, even though this death occurred
17 several weeks after the original gunshot wound. I then --
18 the last part of my analysis was looking at the medical
19 records from RMC, which I think is Regional Medical Center,
20 to try to get an idea of what did the patient present with
21 when he arrived at the emergency room. And looked at what
22 injuries were described in the medical records. Again,
23 looking at the x-X-ray that was taken at the time. In
24 looking at the physical examination that was done when he
25 arrived at the emergency room.

1 Q All right.. Let me first focus you on the collection of
2 the evidence.

3 A Uh-huh. (Affirmative response)

4 Q And just for you we spoke -- I'm just go directly to --
5 to the focus here. The shirt was not collected. Could that
6 have provided important information?

7 A In my analysis, it's a vital piece of evidence. The
8 shirt, not only will show the entry gunshot wound, but it
9 also may show other defects that are in the shirt, that may
10 be associated with the significant injury that Mr. Green
11 sustained.

12 Q Okay. And so not only do you not have the benefit of
13 that, nobody has the benefit of that?

14 A Nobody has located it. For some reason, it wasn't
15 collected.

16 Q Okay. You have heard the SLED agents description of
17 the collection of the gunshot residue in places that gunshot
18 residue was collected from?

19 A From the vehicle; yes, sir.

20 Q All right. If a vehicle is driven from the scene of
21 where a gunshot happens ten or fifteen miles away to a
22 hospital, presumably in a rush because somebody's injured
23 inside, is it -- does all gunshot residue stay where it's
24 initially located or can it be moved around in the movement
25 of the surface that contains it?

1 A Well, the exterior surface of the vehicle is
2 essentially a smooth paint. So anything that's adhering to
3 it can come off. So moving the vehicle, depending on speed
4 and conditions, weather conditions, that GSR can -- some of
5 it can come off the car. It's kind of like we say washing
6 your hands after you fire a handgun. Well, you've just
7 washed away the GSR. In this case, we've got a vehicle
8 that's moving and there could have been additional GSR found
9 on the exterior of the vehicle if it'd been left at the
10 scene initially.

11 Q Okay. Any other thing about the evidence that was
12 collected? Well, you heard that there were other shells in
13 the house, sister shells to the -- whatever, that might have
14 matched, none of those were collected, would that have made
15 any difference? Is that important?

16 A Only if we were trying to do -- I call it muzzle the
17 target -- but I'm not talking about GSR muzzle the target.
18 I'm talking about wounded. What size wound did we have as
19 entry wound on Mr. Green. You would like to use the same
20 ammunition to try to determine exactly how far that barrel
21 had to be away to create the injury that we see.

22 Q Okay. Anything else about the collection of evidence
23 that you have been able to analyze?

24 A The only other thing that my suggestion would have been
25 when there was initially conflict between was he in the car?

1 Was he out of the car? My recommendation would have been to
2 have vacuumed the vehicle. That's something -- vacuuming
3 has been done for thirty years.

4 Q Right. Those shot pellets are pretty small?

5 A They're very small. They're smaller than a BB.

6 Q Okay. Now, moving on to your analysis or review of the
7 medical records, tell us what you were able to determine
8 from reviewing the records?

9 A In reviewing the -- initially the autopsy report talks
10 about a gunshot wound that entered in the right upper chest
11 and just below the clavicle area. It's described as being
12 point nine inches, which is rather small and pretty compact.
13 There's no satellite scalloping. Scalloping is when pellets
14 begin to spread out. There's no satellite pellets. So that
15 tells me that the pellets have all pretty much maintained
16 and entered straight into that point nine entry wound.

17 Q Okay. So it appears that from the medical records that
18 as far as there being some spread, the pellets had not
19 spread. They actually had maintained a compactness enough
20 that they were going to enter into that point nine, one-inch
21 wound?

22 A That's correct.

23 Q And I guess we'll go on to the next thing you reviewed?

24 A Well, the next thing that caught my attention is they
25 describe in the medical record -- a nurse's note describes

1 an approximately three-inch diameter avulsion injury to the
2 center of the chest.

3 Q All right. Tell us what an avulsion injury is?

4 A An avulsion injury is nothing more than a flap of skin
5 that's come up. Now it can -- depending on the thickness,
6 it can have underlying tissue attached to it. We most often
7 see avulsion injuries when you cut your finger on something
8 and you have that flap of skin that comes up. Well, this is
9 an avulsion injury in the center of the chest. The doctor's
10 notation on it indicates that the left lung is visible
11 underneath the wound.

12 Q Okay. So if there's a point nine of an inch means
13 nine-tenths of an inch; correct?

14 A That's the way the medical examiner put it in the
15 report.

16 Q Can you tell the direction of the pellets and the x-
17 rays, which direction the gunshot was moving?

18 A Yeah. The gunshot wound is moving from the victim's
19 left to the victim's right.

20 Q All right. And I know the Judge is over here. Would
21 you point at the clavicle. Can you just show us about where
22 it --

23 A Yeah. It enters approximately right here. The
24 avulsion injury is almost center of the chest. It does
25 extend somewhat over into the right side, according to the

1 doctor's note. But when you pull the flap of skin and
2 tissue back, his left lung was visible.

3 Q Okay. I'm holding up Exhibit No. 22 from the autopsy.
4 Can you point out there where the approximately nine-tenths
5 of an inch gunshot entry wound is?

6 A It's right here.

7 Q All right.

8 THE COURT: Okay.

9 BY MR. HUTTO:

10 Q And then the flap of skin, avulsion was --

11 A It's right here. It's been enlarged surgically so they
12 can go in and repair the lung. But this is the edges of the
13 original wound, which would have been over in here
14 originally, at the time. And this is pulled up in the
15 emergency room, and they can see the top of his left lung.

16 Q Okay. All right. Now, I'm going to hold up
17 Defendant's 21. And this shows what?

18 A This is what I call the snowflake effect. The shotgun
19 pellets coming across the chest. They maintain, pretty much
20 a straight line coming across. So they're pretty much going
21 level. There's no significant upward or downward motion to
22 the pellets, except when you get over into this area. And I
23 think the gentleman from SLED said it best, billiard ball
24 effect. We always have to remember, the front pellets that
25 are closest to the top of the shotgun shell are moving

1 slower than the ones that are near the explosion. So as
2 they're coming out and being forced out, they're not moving
3 as fast the ones behind it. So they're getting billiard-
4 balled. They're being bounced. They maintain their
5 position until they start to continue their spread once they
6 get inside the tissue. The tissue will hold it together
7 somewhat, but you've even got some that are way down here.
8 So those are what we call billiard balls. They bounced off
9 the ones coming behind it and forced it into a different
10 direction.

11 THE COURT: Let me ask you a question really
12 quick, Mr. Tressel. I haven't seen the autopsy yet. What
13 was the cause of death in this case?

14 THE WITNESS: Sepsis.

15 THE COURT: Okay. Because I understood that he,
16 you know, deceased two or three weeks after this occurred,
17 at that point?

18 THE WITNESS: He developed renal failure and went
19 into sepsis, multi organ failure.

20 THE COURT: Okay.

21 THE WITNESS: Of course, in the medical examiner's
22 world we always say he never got back to the health he was
23 at before the gunshot wound. So, therefore, the gunshot
24 wound is the proximate cause of death.

25 THE COURT: Okay.

1 Q Okay. But he actually died from complications?

2 A Complications of the gunshot wound and the surgery that
3 he had.

4 Q But just to be clear, the bulk of the shots flow
5 directly across from where the entry wound is?

6 A From where the entry wound is; yes.

7 Q And then -- but as they get farther in they possibly
8 hit tissues or bone or whatever there?

9 A They start bouncing, going into all sorts of different
10 directions.

11 Q Okay. So just to be clear, when you see this pattern
12 of shot here, that's not because the shot had dispersed like
13 that?

14 A No.

15 Q It's that it went in in fairly a small range. And as
16 it got inside, billiard-balled and hit things and spread out
17 within the --

18 A In the body tissue. You have to think of it --

19 Q Okay.

20 A Hand me that Styrofoam cup. And, of course, this is a
21 lot bigger around. This is a lot bigger around than the
22 shotgun. But the shotgun pellets come out just like this
23 cone. They're going up down, left, right. They spreading
24 in all directions. Now, that's where the wadding or the
25 Power Piston or whatever you want to call it comes into

1 play. It tries to hold everything together for distance
2 before it starts to make it's spread. Otherwise, #8 shot
3 wouldn't travel forty feet. You know, because you're --

4 Q #8 is generally used to shoot birds?

5 A Birds. Yes, sir.

6 Q If you're trying to shoot a bird that's flying, if it
7 just immediately came out of the barrel and spread
8 everywhere, the odds are it's not --

9 A It's not going to get there.

10 Q So it's that wadding that kind of holds it together?

11 A It holds everything together until it follows the
12 distance. And that brings us back to going the medical
13 records. The wadding was found inside the gunshot wound.

14 Q All right.

15 MR. HUTTO: I'm going to mark this as an exhibit.
16 It consist of two pages but I just put them together.

17 COURT REPORTER: It's 25. Defendant's 25, Judge.
18 (Defendant's Exhibit No. 25, 2 page
19 document, was marked for ID)

20 BY MR. HUTTO:

21 Q I ask you to look at 25. Is that what you're referring
22 to?

23 A Yes, sir. That's the one I have right here.

24 Q And in here, point me out to where it talks about the
25 wadding?

1 A Under diagnosis number two, it says wadding from
2 shotgun shells, synthetic material consistent with portions
3 of wadding.

4 Q All right. And that is something that was taken from
5 his body and then analyzed in pathology?

6 A Correct. It's a surgical specimen. It was removed at
7 surgery.

8 Q Okay.

9 A And it's further described on the second page as being
10 irregularly shaped clear plastic fragments. So it is a
11 plastic wadding.

12 Q A plastic wadding. Sometimes called Power Piston?

13 A Well, Power Piston is a brand name.

14 Q Like Kleenex, the tissue?

15 A Exactly.

16 Q But it's plastic. In this case instead of being
17 cotton, it was a plastic?

18 A It's plastic and it's designed to hold the shell kind
19 of together until it is able to disperse.

20 Q You heard the Agent's testimony about approximately how
21 many shots are in a .20 gauge shell. Do you have anything
22 to --

23 A I'd agree with what he said. Some of my research said
24 three fifty to four-fifty. And he came up with three
25 hundred fifty-four to three hundred and sixty-nine or

1 something along, I would not disagree with that at all.

2 Q Okay. All right. So from your review of the medical
3 records, were some of those pellets or shots removed at the
4 hospital?

5 A Some were removed surgically at the hospital and some
6 were removed at autopsy.

7 Q Okay. Now, let's go back to the nature of the wound
8 itself, the avulsion --

9 A The avulsion injury.

10 Q Okay. At one point in time the doctor even says gaping
11 to the point that you can see the lung?

12 A Correct.

13 Q All right. How does -- if you'd tell us in a medical
14 legal sense, how would that work if a small diameter of
15 shots go in, what causes the avulsion injury that is seen by
16 medical professionals?

17 A Well, just like we use with the cut, these pellets are
18 wanting to go in all directions. This wound enters at an
19 angle. It's not perfectly straight in, making a round hole.
20 So these pellets are wanting to come out. In my opinion,
21 because it is fired from approximately two feet away, based
22 on everything that I see, I agree with two feet. Not much
23 of that gas from the barrel is going to go into the wound.
24 So it's got to be the shot shell -- or excuse me -- the
25 pellets that are coming out in a cone towards the front, the

1 point of least resistance, they come out and they create the
2 flap of skin.

3 Q All right. So the shots go in and one dynamic, the
4 billiard-ball effect that they start pressing out they pop
5 the skin?

6 A They pop the skin out. And that's why the shirt
7 becomes so important.

8 Q Okay. Could some of the -- would or could or should
9 some of the shots also come outside?

10 A Depending on at which time in the sequence the injury
11 occurs, I would expect to see some of the pellets to come
12 out that wound while it's gaped open.

13 Q And if the shot occurred inside the vehicle, would you
14 expect to see any pellets in the vehicle?

15 A If he was sitting inside the vehicle, pellets should be
16 inside the vehicle or there should be indications that the
17 pellets struck something inside the vehicle.

18 Q Okay. Now, one other thing about the nature of the
19 angle or lack of angle of the wound. Was it going
20 horizontally across or was it angled up or down or can you
21 tell?

22 A From what I can see as far as where the avulsion injury
23 is in this, it looks like, if anything, it's going very
24 slightly downward. But not in a significant -- I mean, it's
25 not like forty-five degrees downward. It's got some

1 downward angle to it but you could almost describe it, it's
2 almost perpendicular.

3 Q Right. So the shots coming across --

4 A Across, directly across his chest.

5 Q Okay. All right. And if the shots -- if the shot was
6 fired outside the vehicle then the pellets would then just
7 disperse?

8 A Out into the wild blue yonder is what we always call
9 it.

10 Q But you would expect to find some in the car if it
11 happened in the car?

12 A I would expect there to be some pellets in this vehicle
13 if it occurred in the vehicle.

14 Q And potentially, if you had the shirt, you might
15 actually see some exit of the pellets coming back out?

16 A That is correct. The shirt is kind of confirmation of
17 my opinion n this case.

18 Q All right. From the fact that the wadding was found
19 inside of the wound, does that confirm your opinion about
20 the approximate distance of the end of the muzzle from the
21 injury?

22 A Yeah. Dr. Ross even said no greater than two feet.
23 One of the things we don't have from a surgical report, we
24 don't know how deep inside the wound it was found. But,
25 yeah, I would agree that, you know, two feet's about the

1 max. Once the wadding gets to about two feet, what we call
2 the pellets -- or not the pellets -- the petals of the shot
3 are going to start to spread. And they'll hold it against
4 the skin sometimes and some will mark, even in clothing
5 where it's hit and then bounced off because they start to
6 spread out also.

7 Q Okay. And you also have training in blood spatter.
8 And you heard the SLED officer testify that there didn't
9 appear to be any -- there was blood, but there didn't appear
10 to be any that would be -- could be analyzed as a blood
11 spatter. Do you agree with that?

12 A I agree with that.

13 Q Okay. So having agreed with that, then what is the
14 origin -- if the blood didn't spatter all over the car, how
15 did the blood get into the car?

16 A Well, this gentleman took a significant gunshot wound
17 to the left lung. He's aspirating blood.

18 Q Aspirating means breathing in.

19 A Breathing it out. It's getting into his lung. Blood
20 is an irritant to the lung. He's trying to get rid of it.
21 So he's aspirating some of it out. Some may be coming from
22 his hands over this gaping wound. But kind of the smaller
23 pieces -- smaller pieces -- smaller droplets that we see,
24 they're aspirated blood.

25 Q Just coming out when he's breathing out?

1 A Just trying to breathe.

2 Q Okay. And then I think also you differ from what the
3 SLED agent said that some of the blood is transferred, it
4 looks like with fingerprints on it that somebody --

5 A Yeah. There are transfer stains inside the car. I
6 totally agree with the transfers.

7 Q But as far as there being a wound that would have
8 splatted that you could have found anything about where the
9 shot took place from the spatter, there's nothing in the car
10 that suggests that?

11 A There's no highspeed velocity spatter inside the car.
12 I would not expect to find that because the clothing would
13 have kept that from occurring.

14 Q So inside or outside the car, this is probably not a
15 spatter case?

16 A It's not a good exit spatter case because clothing will
17 mask it and hold it in. It's only when you get a wound to
18 an open area that the highspeed gun velocity spatter is
19 identifiable.

20 Q Okay. I guess go ahead and tell us what you have
21 looked at as it relates to the autopsy report and any other
22 opinions or conclusions that you've drawn from that?

23 A Basically, I've gone over everything. I've seen the
24 autopsy, the photographs, the vehicle photographs. We went
25 to the scene yesterday to get an idea. I agree with the

1 SLED agent that you're not going to find any pellets in that
2 grass. They're too small. They're dispersed too far. I
3 would not expect, as she said, to find any blood at the
4 scene. He probably didn't start bleeding to the point that
5 the blood was noticeable probably for about thirty seconds
6 to a minute.

7 Q All right. Of course, if he's shot in the car, he's in
8 the car. If he's shot out of the car and then gets in the
9 front seat?

10 A Yeah. He's got plenty of time to get into the vehicle.

11 Q Okay. Now, we had some testimony yesterday about the
12 car being parked sort of in front of the bush in front of
13 the house. And you took some photographs with a measurement
14 to show approximately from the front porch to the car?

15 A Yes.

16 Q And those are in evidence. I guess, if you would, just
17 describe what distance measurements you took?

18 A Yeah. From where the vehicle was placed by Mr. Riley
19 from the edge of the front porch to the headlight bucket was
20 sixteen feet from the edge. And that's just a photograph of
21 the measurement. Then we opened the door --

22 Q Hang on just one second, please, sir. Hold on to this
23 and tell me when we get sixteen feet away.

24 A Keep going. Keep going. Fifteen. Sixteen feet.

25 Q All right. So from the front of the porch the bottom

1 of the porch to the car --

2 A To the headlight bucket. It's approximately that
3 distance.

4 Q Okay. All right. What's your next measurement?

5 A The next measurement was to the open passenger's door?

6 Q From the steps up here?

7 A Yeah. We're out twenty feet.

8 Q Twenty --

9 A Two more feet. Twenty feet's right here.

10 Q All right. So from the steps to the front passenger
11 door --

12 A With the door in the open position is twenty feet. And
13 then we took a measurement from the corner of the house to
14 the car, which was fifteen feet.

15 Q From the --

16 A The edge of the house.

17 Q -- edge of the house to the car?

18 A To the car.

19 Q Okay.

20 A And that's all these photographs are depicting.

21 Q Okay. Now, a question about whether the muzzle of the
22 gun, the barrel of the gun could have been inside -- did you
23 take a measurement to show that if the barrel of the gun
24 were actually inside the window to a person sitting in that
25 seat, it would have been how far away?

1 A From a normal seating position with me in the car, I'm
2 six feet, two hundred thirty pounds. From the clavicle area
3 to the edge of the door was one foot. So the muzzle of the
4 shotgun would have been one foot outside the door.

5 Q Okay. If fired from two feet, which is your opinion
6 and what other people testified --

7 A It would be outside the car.

8 Q If it were inside the car, it'd have been -- there's no
9 way to be from the window to where somebody's sitting the
10 passenger seat to be two feet is it?

11 A No.

12 Q Because the car's not that big.

13 A And one of the things that I looked at was can I keep
14 this plane, the gunshot wound and lean over towards the
15 console. Well, I can except you're going to have to be
16 standing way above me.

17 Q The shooter barrel is going to have to be --

18 A The barrel would be above their -- the trigger
19 mechanism would be above their head in order to keep that
20 angle.

21 Q So in other words, to keep the line of the travel of
22 the pellets through the body, if the person was leaning far
23 enough away from the door to get two feet away, to lean,
24 you've got to lean --

25 A If I'm leaning this way and I take a gunshot wound here

1 and it's from two feet, I expect to see a significant upward
2 angle to that bullet.

3 Q If it's shot straight in?

4 A If it's shot straight.

5 Q So to see the travel that you saw first it would have
6 had to have been with the gun up in the air?

7 A Up in the air to fire.

8 Q All right. If the person were outside the car and you
9 see in a standing position -- and some of the testimony
10 we've had is that coming from the trunk area, coming from
11 the back, had reached in the back. But coming somewhere
12 near that open passenger side door, is that consistent with
13 what you see as far as the travel of the pellets in the
14 body?

15 A The victim, Mr. Green in this case, would have to have
16 turned. He cannot be facing the shooter. In other words,
17 he has to turn his upper torso in order to make the
18 tangential wound. And if --

19 Q But toward the car?

20 A But towards the car. He would have to be facing the
21 car if everybody's in the position that they say they're in.
22 Mr. Riley's standing here, the car here. He would have to
23 turn towards the car to receive a gunshot wound to the left
24 upper chest.

25 Q Or would had to have been coming from the car, turning

1 back --

2 A But turning back. You know, it's one of those things.
3 I can follow trajectory by moving the torso and the body in
4 any direction. But I've got to keep it on the same plane of
5 where everything goes.

6 Q Okay.

7 A So that tells me where certain things are not possible
8 because, you know, it's not possible in this case for the
9 shooter to be way down low, unless there's significant other
10 scenarios that aren't in play in this case.

11 Q Right. Is it consistent with both the shooter being
12 standing and the victim being standing at the time? Is the
13 shot pattern consistent with that?

14 A Yes. Because where it enters into Mr. Green is about
15 shoulder height. And we always call it in the military,
16 it's called point arms. You fire with the shotgun into the
17 shoulder and you fire straight. Well, Mr. Riley fired
18 straight. Mr. Green receives a gunshot wound that's almost
19 in the shoulder area, so it's a leveled-off shot.

20 Q Okay. And if a shooter were standing and a victim were
21 sitting the trajectory would be significantly --

22 A Should be downward, significantly downward.

23 Q All right. But what you see in this case is almost
24 perfectly but a little --

25 A It's got a little bit of downward tilt.

1 Q Of course, at any point in time if the victim is in
2 between sitting and standing, like leaning, he was coming up
3 or going down, that would -- could effect how this happened?

4 A It could, yes.

5 Q So we've got two scenarios here. One that he's sitting
6 in the car and shot by a .20 gauge shotgun with the barrel
7 through the window. And we've got another scenario where
8 he's standing outside the car, but near the open door of the
9 passenger's side of the car. And after the shot -- he gets
10 into the car. And there's blood -- you saw the blood that's
11 on the window sill of the car?

12 A Yes, sir.

13 Q What could that be consistent with?

14 A Some of it on the inner door panel is consistent with
15 dropping blood. Some of it's consistent with transfer
16 stain.

17 Q So if a person had blood on their hand and put their
18 hand on the door sill, you would get a transfer?

19 A You'd get some transfer there.

20 Q All right. With all your years of experience and in
21 analyzing what you have seen, have you been able to form a
22 conclusion of what you think most probably happened as far
23 as the position of the shooter to the victim at the time of
24 this case?

25 A Well, my opinion has always been that with the lack of

1 pellets inside the car, the shooting had to occur outside
2 the car. With the SLED report finding GSR on the rear
3 quarter panel and on the trunk lid, and hearing the
4 testimony today talking about that from the side of the
5 weapon about three feet, if the gun was fired into the car,
6 the trunk lid is way more than three feet past the vehicle.

7 Q It's also obstructed by the entire back window?

8 A By the entire back window and everything else. So we
9 have gunshot residue on the back rear quarter panel and on
10 the trunk lid. If the weapon is fired with the barrel close
11 to the open passenger window, three feet easily gets you, as
12 our measurements show, three feet easily gets you to the
13 center console and to the dash area. So that could be the
14 source of the GSR that was found inside of the vehicle.

15 Q All right. So your opinion then is that the gunshot
16 did not occur inside the vehicle?

17 A From a forensic standpoint, I have no evidence that
18 indicates that the gunshot occurred inside the vehicle.

19 Q Okay. What about could it have occurred outside of the
20 vehicle?

21 A It could have, yes.

22 Q Okay. And why do you say that that could happen?

23 A Well, because we have a scenario where we've got
24 straight through trajectory. We've got a flap of skin
25 that's come out with a shirt over it. Any pellets that

1 would have come through the shirt, which we don't have that
2 to opine about. But if those pellets had continued on, they
3 would have cleared the car and be out in that yard
4 somewhere. So with gunshot residue testing, trying to be
5 able to fit, except for being shot in the car, the wounds
6 and the lack of pellets inside the car, this shooting had to
7 occur outside.

8 Q Okay. And I want to be clear about this. What the
9 avulsion wound shows in the photograph and what is described
10 in the medical notes is not just a pellet or two coming out
11 the front of the skin over his lung, it's the whole --

12 A A three inch section of tissue is totally blown out.

13 Q All right. And what is blowing that out is most likely
14 pellets?

15 A Well, a combination of pellets, tissue and possibly
16 bone from the sternum that's being blown out.

17 Q Whatever's getting blown out could have included the
18 pellets. You expect the pellets to come out?

19 A To come out, yes.

20 Q And that's why -- is that why you think there should be
21 pellets in the car if this happened in the car?

22 A That's -- and if this happened in the car, there should
23 be pellets inside that vehicle with that injury.

24 Q Okay. Looking at the pictures to the door -- this
25 photograph No. 8 showing -- are you suggesting by -- does

1 this suggest by the direction of the tape anything about the
2 direction the shot traveled?

3 A No, it's just trying to measure the distance. It's
4 just measuring the distance, It's not trying to replicate
5 the directionality.

6 Q All right. But this mark outside the door is the two
7 foot mark?

8 A That's the two foot mark.

9 Q So from sitting upright in the passenger's seat to be
10 two foot away, the gun would have had to be --

11 A At that level.

12 Q Okay.

13 A Approximately that level, the level with the chest at
14 that point.

15 Q Okay. And a closer shot of that shows that actually
16 where the mark hits the door is thirteen inches?

17 A Thirteen inches. I call it one foot to the inner door
18 panel.

19 Q One foot to the inner door. And so another foot beyond
20 it?

21 A Beyond it?

22 Q All right. And I think you also measure from the fully
23 extended open door to the person sitting in the seat?

24 A Yes.

25 Q All right.

1 A And that's well beyond the two foot range.

2 MR. HUTTO: Your Honor, just for the record, 12,
3 13 and 14 are actually just duplicates of the same
4 photograph. I don't know if it confuses anything to leave
5 them in or whether I should take them out but there just
6 three pictures of the same thing.

7 THE COURT: Okay.

8 MR. HUTTO: I'm going to leave them in, but that's
9 what they are.

10 THE COURT: Okay.

11 BY MR. HUTTO:

12 Q Okay. And finally, No. 15 shown with a directional
13 shot -- directional image of the tape measure going down,
14 has you leaning away from being seated towards the console?

15 A Towards the console and showing approximately how high
16 up it would have to be for the weapon to be fired.

17 Q Okay. All right. And then 17 just is a picture
18 showing kind of just perspective from the back of the car
19 towards the house? The back of the car with open --

20 A With the door.

21 Q And then 24 just interestingly enough -- I don't know
22 that you have anything to say about this. But just so I
23 cover all the numbers. This just a picture of the bag from
24 the trunk that shows blood on it?

25 A Yes, sir.

1 Q That they described as fresh blood, I guess?

2 A I agree with that from the photograph.

3 Q Looking at it, it looks like fresh blood?

4 A It does look like fresh blood.

5 Q All right. Have you formed any other conclusions or
6 opinions about this case just to share with the Court?

7 A I don't believe so at this point in time.

8 Q All right. Answer any questions that the State might
9 have.

10 THE COURT: Yes, ma'am.

11 MS. CORNWELL: Your Honor, if I may have a
12 request. It's about lunch time. I was -- I mean,
13 obviously, I knew that he was going to call an expert but I
14 didn't know what the expert was in or anything like that.
15 Could we maybe break for lunch so I could go over some
16 things and just look at some of the documentation that he's
17 referenced and then do my cross-examination after lunch?

18 THE COURT: What all do you have after this? I
19 know --

20 MR. HUTTO: I have no other witnesses. And I
21 believe she's got --

22 MS. CORNWELL: I have one witness, Your Honor.

23 THE COURT: Okay.

24 MR. HUTTO: And I don't know -- one other
25 suggestion. I don't have any problem if she wants to

1 interrupt this and put the other one up, if you wanted to
2 keep going. Or we can just break now and come back and do
3 them both after lunch.

4 THE COURT: Okay.

5 MS. CORNWELL: I have no objection to that. I
6 just, if you don't mind, have a few things that I want to
7 look over and look up but I don't want to take the court's
8 time to -- during lunch. We can go ahead and do lunch or I
9 can put my witness up. It doesn't matter.

10 THE COURT: Okay. I was going to ask Sarah in the
11 back what we were doing. Do we have anything else left to
12 do today? Here she comes.

13 MS. FORD: No, ma'am.

14 THE COURT: Nothing. So this is everything?

15 MS. FORD: This is everything for today. Yes,
16 ma'am.

17 THE COURT: Okay. Well, let me ask you this.
18 Would it be okay if we just took a short break to give you
19 the amount of time you need to look over a couple of things.
20 Is that okay?

21 MS. CORNWELL: Sure.

22 THE COURT: I just was thinking -- Hilda and I
23 spoke about it earlier. And if this is all we were doing,
24 we thought we'd just keep going until we were done.

25 MR. HUTTO: Until we finish?

1 THE COURT: Yeah. If that's okay with you.

2 MS. CORNWELL: If you could give me fifteen or
3 twenty minutes.

4 THE COURT: Absolutely. So let's come back at
5 about, like I said, fifteen or twenty after if that's all
6 right? If that gives you enough time, hopefully?

7 MS. CORNWELL: Yes.

8 THE COURT: To be able to look at what you need to
9 do. And then we'll -- okay. Thank you.

10 All right. Mr. Tressel, I have to tell you you can't
11 talk about your testimony obviously when you step down.

12 THE WITNESS: That's fine.

13 THE COURT: I think you know that but just to
14 state --

15 THE WITNESS: I've done this a few times. Thank
16 you.

17 THE COURT: Okay.

18 (Witness steps down)

19 (Court in recess at 11:57 a.m.)

20 (Court in session at 12:23 p.m.)

21 (Witness takes stand)

22 THE COURT: Mr. Tressel, are you ready to go, sir?

23 THE WITNESS: I am. Thank you.

24 THE COURT: Thank you, sir. Whenever you're ready,
25 Solicitor.

1 MS. CORNWELL: Thank you, Your Honor.

2 ROBERT TRESSEL -- CROSS-EXAMINATION

3 BY MS. CORNWELL:

4 Q Mr. Tressel, just to go over a few things with you.

5 Did you do a report on your findings in this case?

6 A No, I have not.

7 Q And you indicated that you had been provided some
8 documentation and you went to the crime scene. I think you
9 said you reviewed SLED's incident reports. Did you have the
10 Orangeburg County Sheriff's Office reports?

11 A I do not have any of those.

12 Q Okay. Did you review any of the video and audio
13 statements of the eyewitnesses?

14 A No, I did not.

15 Q Did you review any of their written statements?

16 A No.

17 Q So I believe what you testified to you were given SLED
18 incident reports, the autopsy report and the medical
19 records?

20 A I had the SLED reports that are available. I know
21 we're still waiting on some things.

22 Q On the DNA. Yes, sir.

23 A Yeah. Uh-huh. (Affirmative response)

24 Q But you would agree with me with your opinion that is
25 one way that this could have happened, but there are also a

1 number of other ways that this could have happened as well;
2 correct?

3 A Sure.

4 Q And in discussing the victim's shirt, obviously the
5 preservation of evidence is important. However, the
6 preservation of life is going to take precedence over the
7 preservation of evidence; correct?

8 A Depending on who you are, yes. In other words, if
9 you're a medical provider, yes. If you're law enforcement
10 yes, at the scene. But when I get to the hospital there are
11 certain things that I know that I'd have to do.

12 Q And obviously in a perfect world we could have gotten
13 the victim's shirt and it would have been in tact and we
14 could have done the analysis that you're discussing.
15 However, in the real world that doesn't always occur, right?
16 I mean, if he's got a gunshot wound in the chest, medical
17 personnel is trying to give him immediate lifesaving
18 attention, they're likely cutting that shirt off or ripping
19 it off and getting rid of it and getting it out of the way
20 so they can attend to the injuries.

21 A That's why local law enforcement has to have a working
22 relationship with their emergency rooms.

23 Q And you would admit that, you know, while in a perfect
24 world we would get all of this but a lot of times there is
25 things that are missing that we would like to have?

1 A Sure. In a lot cases there's a lot of things I would
2 like to have that we don't have.

3 Q And what I'm getting at is I think we call it Monday
4 morning quarter backing. You get to come in from the back
5 end of this and say well, if we had this we could determine
6 this. And if we had this, we could determine this. But in
7 the rush of the moment in the crux of the game, that's not
8 always what happens?

9 A Not what always happens but that's why most agencies
10 have a checklist. What I should be doing as I go down my
11 checklist. Clothing, big red marks. I mean, clothing is so
12 vital to a gunshot case.

13 Q Correct.

14 A That I started in homicide investigations in 1975. And
15 at that point in time, we would preach it. Get the
16 clothing. Even if you have to go into the dumpster to get
17 the clothing. And that's where we started working with our
18 emergency rooms and our local hospitals to have set
19 procedures for gunshot wounds. So --

20 Q And the sheriff's office did actually collect the
21 victim's clothing. It was given to them by the hospital.
22 Unfortunately, the shirt was just not a part of it?

23 A And obviously they didn't have a working relationship
24 on how clothing is maintained.

25 Q But even if you did have the shirt -- you're assuming

1 that you're going to see these potential pellet holes or the
2 bullet shot wound. But you don't know that for certain; do
3 you?

4 A I don't know for certain until I see the item of
5 clothing.

6 Q So your analysis is on best case scenario of what
7 supports your theory as far if there's an avulsion injury
8 there's going to be pellets. They're going show -- you're
9 going to see it in the shirt. We're going to find it in the
10 car. That's your best theory on your case examination?

11 A That's my opinion. There should be pellets in the car.

12 Q Okay. And you talked about avulsion injuries. Did you
13 speak with the nurse or the doctor regarding these medical
14 records?

15 A No.

16 Q And it's true that an avulsion injury can be caused by
17 trauma, but it can also be caused by surgery?

18 A Yes.

19 Q So you don't know because you didn't speak with the
20 nurse or the doctor, so this avulsion injury that you're
21 discussing could have happened at the hospital while they
22 were performing his life-saving procedures. And that would
23 negate the --

24 A It would have been documented as a procedure. It's
25 documented in the nurses notes as arriving with an avulsion

1 injury.

2 Q But, again, didn't discuss that with the nurse or
3 anything, didn't discuss that with the doctor to see exactly
4 what type of injury and when it occurred?

5 A No. I didn't interview them, no.

6 Q Okay. So arriving could be when they, you know,
7 arrived from the emergency department into the surgical area
8 or arrived from the emergency department or from the
9 surgical area into admittance. You don't know when the
10 arrival was?

11 A I know it's a nurses note from the moment he arrived
12 documenting an avulsion injury active bleeding. So I would
13 say, in my opinion and working with emergency rooms, that's
14 the first thing they observed when they got the shirt off of
15 him.

16 Q All right. And then with the pellets that you claim
17 should have been found in the car, are you aware of whether
18 or not the defendant's [sic] shirt was tucked into his pant
19 or untucked from his pants when he arrived at the hospital?

20 A I have no information.

21 Q Okay. So similar to how the blood may not have come
22 out of the shirt, in your opinion, if he's holding it, he's
23 got this avulsion injury and all of that, there's a
24 possibility that the pellets could have been in his shirt
25 and they wouldn't have been in the car; correct?

1 A No, they would be at the emergency room when he got
2 out.

3 Q And you did know that the emergency room did remove
4 pellets and did collect pellets?

5 A From the wound, yes. But not from the ground where
6 they fell out.

7 Q But, again, you haven't talked to the doctors and
8 nurses or anything so you don't know that for a fact?

9 A That wouldn't be in a doctor's note. It should be in
10 the security notes.

11 Q How so?

12 A Security's responsible for the sally port.

13 Q Okay. But if his shirt is tucked in and he gets taken
14 into the emergency room and they're ripping his shirt off
15 and cutting him and stuff, those pellets could have been
16 anywhere in the hospital. It doesn't necessarily have to be
17 that they would have been in the car or in the sally port;
18 correct?

19 A They could be in the emergency room.

20 Q Okay.

21 A And it should have been collected.

22 Q Okay. But there is also -- those are other
23 possibilities of why the pellets would not have been found
24 inside the car; correct?

25 A If they didn't exit the shirt, that's a possibility;

1 yes.

2 Q And I just want to briefly talk about the trajectory of
3 the injury and the gunshot and all of that. There's a
4 photograph of where, I guess, y'all are holding a tape
5 measure of a downward angle if it was at -- the hit and all
6 of that or if it was at the shoulder and how that would
7 look; correct?

8 A Is that the one where I'm leaning over?

9 Q I believe so.

10 A Yeah. Yes.

11 Q You recall the photograph I'm --

12 A I think I know which one you're talking about, yes.

13 Q But logic tells you, if you're sitting in a car and
14 somebody approaches you with a gun, you're not just going to
15 sit there. You're probably going to lean over into the car,
16 I mean, to go away. And that would give you some of that
17 two foot distance that we're discussing if the barrel were -

18 -

19 A But the angle is wrong.

20 Q Okay. If the gun were on your shoulder. But if I have
21 the gun like this, that changes the angle and it puts it
22 pretty much straight forward. If I'm at the window of the
23 car and I've got the gun like this, that's also a
24 possibility of an angle too. You don't know exactly how he
25 was holding the gun when he shot; did you?

1 A Oh, no, I don't.

2 Q So you can't definitively say one way or another how
3 the trajectory of the gun was, because you don't know
4 position of the gun. You can say the trajectory of the
5 bullet?

6 A No. I know the position of the gun related to the
7 trajectory of the bullet, bullets or pellets in this case.
8 I know that it would have to be on this plane. And if I
9 move the body, then I move the plane up. If I move the body
10 this way, I move the plane down. It's got to maintain that
11 plain in order for the gunshot wound to occur straight
12 across.

13 Q But that plane can be determined by a number of
14 different variables. I mean, if I'm holding the gun here
15 and, you know, you're coming across, you're coming down.
16 There's a different way. If I'm moving back, if I'm moving
17 to the side, that's going to be different?

18 A The barrel of the gun has got to be on the plane of the
19 gunshot wound.

20 Q And if the gun is being held from the hip -- if
21 somebody's sitting in a car and I'm standing next to the
22 car, I'm about waist height with that. If the gun is at the
23 hip, then that's also going to give the same trajectory that
24 you've discussed earlier?

25 A That could be possible, yes.

1 Q And, again, talking about the pellets and the
2 trajectory and all of that, with the wadding being found,
3 you gave an example with the cup of how, you know, that
4 wadding's going to hold those pellets together for a little
5 while before they fully disperse?

6 A Correct.

7 Q And so there is a strong possibility and more likely
8 than not, that the victim in this case took the entire
9 impact of that shot, including all the pellets?

10 A Oh, I agree; one hundred percent. Everything went into
11 that entry wound.

12 Q And with the exception of this avulsion injury that you
13 discussed, and we've already talked about how you wouldn't
14 find some of the pellets in the car if the shirt was tucked
15 in, if the shirt trapped the pellets and all of that. You
16 wouldn't find pellets in the car if he was shot in the car?
17 There's a possibility that you would not find pellets in the
18 car?

19 A Anything is possible.

20 Q And that's what I'm --

21 A What it is is, what is probable.

22 Q Okay. And that's what I'm getting at. Anything is
23 possible. And we've heard testimony from both you and other
24 experts that kind of give various statements on whether or
25 not this could have occurred inside the car or outside the

1 car?

2 A Yes.

3 Q And as an expert in your field, I think that you've
4 given, you know, documentation of why you believe your
5 theory. However, you would agree that there are other
6 situations that could happen that would support the other
7 theory?

8 A I would agree that there can be additional theories.
9 As a forensic investigator, if you find any pellets in the
10 car, then I'll tell you this gunshot occurred in the car.
11 Without pellets in the car and explaining the avulsion
12 wound, I can't agree that it occurred in the car.

13 Q But the opposite of that is if it occurred outside the
14 car and you still have this avulsion injury and everything
15 else, there should be pellets in the ground. And it would
16 have been, you said, out in the wild blue yonder. It's not
17 as if these pellets would have traveled -- if he took the
18 full in force of that shot shell, it's not like these
19 pellets would have traveled, you know, out into the woods
20 hundreds of feet away?

21 A Well, in order to avulse this three inches of tissue on
22 his chest, it's got force. So these pellets are going past
23 that avulsion. So they're going out there. Now, how far
24 they're going to go is a good question. But they're not
25 going to be right where he's standing.

1 Q Okay. But it's still going to be in that general area.
2 And if he's -- as soon as he's shot put his hands over that,
3 that's going to effect their ability to avulse out as well?

4 A Well, they're gone by the time he gets his hands to his
5 chest.

6 Q So you're telling me that these can avulse immediately
7 but it's going to take somebody to get shot at point-blank
8 range by a shotgun a long time to bleed? So you expect to
9 find pellets that have come out from this injury, but you
10 wouldn't expect to find blood to also come out with that
11 injury?

12 A There might be some blood coming out with the pellets.
13 But if I hold -- it's just like any pressure wound. If I
14 immediately grab my chest and pull that avulsion back in
15 place, that's essentially slow bleeding to a normal course,
16 like a cut.

17 Q So your hand can stop the pellets from avulsing --

18 A No, they --

19 Q Or you can't stop from the pellets from avulsing --

20 A The pellets -- they're already gone.

21 Q -- but you can stop the bleeding from avulsing?

22 A The pellets are already gone. The pellets --

23 Q But you understand what I'm saying?

24 A The pellets are what caused the avulsion. And by the
25 time I realize I'm injured, I put my hands to my chest.

1 I've now pressurized that wound over my chest. Those
2 pellets are gone.

3 Q And I guess -- and I'm not trying to argue with you.
4 And I apologize if it seems that I'm being argumentative.
5 But in my head and my logic is, if pellets are coming from
6 inside of the body out of the body, they're going to bring
7 blood with them.

8 A They're so small. They're very tiny. And they didn't
9 puncture individually through the skin. It pulled the whole
10 flap of skin out.

11 Q Which, again, logically I would think if you've got a
12 whole flap coming out, that blood is going to come out with
13 that?

14 A Not -- I always go this way. Has anybody ever cut
15 themselves on a finger or their hand with a knife in the
16 kitchen. And you go, oh, crap. Does it bleed immediately?
17 No. It takes five, ten seconds for blood to start appearing
18 from that injury. They don't bleed immediately. There
19 might be some tissue that comes out with pellets. But
20 actual, physical bleeding will not occur until a few seconds
21 later.

22 Q But it would still happen within seconds, that he
23 bleeding would occur?

24 A And it all depends on how much bleeding? If I stem the
25 large area of active bleeding to what we see in the car -- I

1 don't want to disagree with the SLED agent. But this was
2 not a lot of blood in this car.

3 Q But you would admit there is blood obviously --

4 A Oh, yeah. There's blood in the car. But it is not a
5 tremendous amount of blood.

6 Q But you've seen the reports that there's no blood found
7 anywhere at that crime scene?

8 A That doesn't surprise me one bit. I agree with that.

9 Q So it doesn't surprise you that somebody that was shot
10 at point blank range with a shotgun had an avulsion injury
11 and didn't bleed at the scene?

12 A No. Not if he's able to get into that vehicle like has
13 been described and he's out of there.

14 Q Okay. And he's standing -- in the defense's theory, if
15 he's standing back towards the trunk, towards the, you know,
16 the rear part of the car --

17 A Rear door.

18 Q -- and he gets shot, obviously there's a moment of stun
19 because we've heard testimony that he says you shot me. So
20 you've got -- you're standing there stunned. You, you know,
21 go like this. And then you have to -- you would imagine
22 take at least two or three steps. That's a good amount of
23 seconds where you think the blood could --

24 A No, it would not hit the ground by that point in time.
25 It's not significant enough at that point in time. The

1 clothing's going to act as a wick and absorb the blood
2 that's coming out. That's why we need the shirt.

3 Q But, again, without having the shirt, you are just
4 assuming things based on your theories?

5 A I'm not assuming anything.

6 Q Well, you don't have the shirt and you said that that's
7 critical in having -- in figuring out what happened with the
8 pellets --

9 A That would prove my theory

10 Q -- and whether it absorbed all of this blood that could
11 have been on the ground on the scene or why it's in the car.
12 So --

13 A It's not an assumption.

14 Q But you haven't looked at the shirt. You don't have
15 the shirt?

16 A I don't have it, no. As I said just a few minutes ago,
17 find me a pellet inside the car and I'll tell you that this
18 gunshot wound occurred in the car.

19 Q Okay. And on the opposite, find a pellet outside the
20 car and you could tell if it happened outside the car?

21 A And you had your own SLED expert said you'll never find
22 this pellet in that grass yard that's smaller than a BB?

23 Q And I don't believe she said never. She said it would
24 be difficult, but it's not impossible.

25 A A needle in a haystack.

1 Q These are the size the pellets. You would agree those
2 were what was taken from the autopsy?

3 A Well, do you have a measuring device. I notice that
4 it's blown up.

5 Q I mean, this is the photograph that they took?

6 A That they provided you. Yeah. Unless there's a
7 measuring device in there -- yeah, those are the pellets.
8 But those are bigger than #8 shot in the photograph.

9 Q Okay. These are the actual pellets. And they've got
10 blood on them. I wasn't going to open them or anything like
11 that. But I think you can feel -- and I'm obviously not
12 asking you to as far as that. But they're still a
13 definitive size that you could see and feel and touch and
14 analyze?

15 A Oh, yeah. Yeah.

16 Q And, you know, find? So, again, and I'm not trying to
17 argue with you. I know that you have your analysis and your
18 theory, but there are other ways that this could have
19 occurred, other than what you've testified to today?

20 A I would agree with that, yes.

21 Q Thank you.

22 ROBERT TRESSEL - REDIRECT EXAMINATION

23 BY MR HUTTO:

24 Q I just want to clarify one thing about the timing of
25 the nurses note. If the incident report from the sheriff's

1 department from the 9-1-1 call or whatever says that this
2 occurred between 12:10 and 12:20, and the nurses report is
3 at 12:37, which is twenty-seven to seventeen minutes later?

4 A Minutes later.

5 Q And then the doctor's note is from 1:07, this is pre-
6 surgery?

7 A Pre-surgical.

8 Q Okay. That the avulsion wound was pre-surgical?

9 A Pre-surgical.

10 Q Okay.

11 THE COURT: Anything else?

12 MS. CORNWELL: No, Your Honor.

13 THE COURT: You may step down, sir. Thank you.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: And that was your witness Mr. Hutto?

16 MR. HUTTO: It is, Your Honor.

17 THE COURT: Okay.

18 MR. HUTTO: I just -- I think we've got the
19 agreement but everything that's been marked is in.

20 THE COURT: Okay. I think we're good. Yeah, I
21 would agree about all the exhibits.

22 MS. CORNWELL: Do you want --

23 THE COURT: Sure. Sure. Go grab him. Go grab
24 him.

25 MS. CORNWELL: Would you like me to mark the

1 autopsy report, make it an exhibit?

2 THE COURT: I think it's a good idea. Yeah.

3 COURT REPORTER: You want it as a State's Exhibit?

4 MS. CORNWELL: State's fine. Yeah.

5 (State's Exhibit No. 43, autopsy
6 report, was marked and entered.)

7 (Off record discussion with counsel
8 and the Court)

9 THE COURT: Okay. Are you ready to call your
10 witness?

11 MS. CORNWELL: Yes, Your Honor. The State would
12 call Thomas Keitt.

13 THE COURT: Come on forward, Mr. Keitt.

14 (WHEREUPON, Thomas Keitt was sworn
15 to tell the truth.)

16 THOMAS KEITT - DIRECT EXAMINATION

17 BY MS. CORNWELL:

18 Q How you doing Mr. Keitt?

19 A Good.

20 Q I appreciate you being here. I know it's difficult all
21 around. But if you could for me, you want to tell the Judge
22 kind of where you live, what your association with
23 Orangeburg is?

24 A I live at 1117 Lancaster Street, Orangeburg, South
25 Carolina.

1 THE COURT: All right. Mr. Keitt, I'm going to
2 have to ask you this. I already have the benefit of having
3 seen your interview earlier?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: And I think you're the only person I
6 know that talks faster than I do. So if you could just try
7 to slow down a little bit for me.

8 THE WITNESS: Oh, okay. All right.

9 THE COURT: And enunciate for Hilda, we'd all
10 appreciate it.

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: All right.

13 A 1117 Lancaster Street, Orangeburg, South Carolina. I
14 do like home improvement work and fiberglass work. Thank
15 you.

16 BY MS. CORNWELL:

17 Q Did you grow up in Orangeburg?

18 A Yes, ma'am.

19 Q Have family here in Orangeburg?

20 A Yes, ma'am.

21 Q And are you, in fact, related to the Defendant's wife
22 in this case?

23 A Yes, ma'am. She's my first cousin.

24 Q And were you also related to the victim in this case?

25 A Yes. He's my first cousin, also.

1 Q And let's talk about the time frame around when this
2 occurred. And I think it all started January 29th when you
3 and Mr. Smith and the victim, Mr. Green, were going around
4 trying to help Mr. Smith get some things with his title
5 straightened out?

6 A Yes, ma'am. That happened on a -- it was like that
7 Friday morning. We picked Mr. Smith up and he had owed my
8 cousin some money. And he told him he didn't have the money
9 right then. He had to go to his truck, try to get some
10 money off the title loan. And we picked him up. We went
11 pick up the truck. We drove it to Orangeburg, to the title
12 loan place. And I looked at the title he had in his hand.
13 I said Mr. Smith, I said Jeff, you can't get a title loan
14 because the title paper he had was still in the person, the
15 person whose truck were. He had to go to highway department
16 and get it transferred into his name. So me and my cousin,
17 we took him to the highway department, get everything
18 transferred over. So when he sign, we told him how much
19 everything was going to cost so my cousin gave him the money
20 to pay for everything. I fill out his paperwork in the
21 highway department. After we got it title in his name, we
22 left there. We drove back to the title place and he went
23 inside and talk to the lady about getting a personal loan.
24 So the people came outside and look at the vehicle and
25 everything. And then we went back inside. I help him fill

1 out the paperwork he signed. And they deny him a loan
2 because he didn't have no income coming in for to pay the
3 loan back. And so he told my cousin --

4 Q Let me stop you there. I kind of interjected a couple
5 of times?

6 A Yes, ma'am.

7 Q So when y'all were doing all of this -- the three of
8 y'all were friends; correct?

9 A Yes, ma'am. Yeah. We all cool. Yes, ma'am.

10 Q So there's no issues between any of y'all?

11 A No, ma'am. Huh-uh. (Negative response) There wasn't
12 none of that.

13 Q Okay. And then after he got denied the title loan,
14 we've heard testimony that y'all went back and ended up
15 taking his truck to a niece's house?

16 A Yeah. After we left there, Mr. Smith drove his vehicle
17 to his niece house, Lisa Parker. That was down on Bull
18 Street, like two lights down where we was at. And so he
19 parked the truck in the back yard and he locked the truck
20 up. He gave D, my cousin D, the title and keys to that
21 vehicle. So my cousin ask me to drove it that after -- I
22 said it's late. Wasn't no insurance on the vehicle and he
23 and a fake tag on the back of it. I told him I wasn't going
24 to drive that vehicle. I told him we'd get it the next
25 morning, which would have been Saturday morning. So we got

1 up that Saturday morning me and my --

2 Q Hold on. When you dropped the truck off at Lisa's
3 house and he gave your cousin the title --

4 A And the keys to it.

5 Q -- and the keys. Y'all decided you weren't going to
6 drive it back to your place because --

7 A So we left it there to --

8 Q -- of the insurance issues --

9 A Yes, ma'am.

10 Q -- and the tag?

11 A Yes, ma'am.

12 Q Did y'all take Jeffrey home?

13 A Yes, ma'am.

14 Q So y'all drove him home?

15 A Yes, ma'am.

16 Q All in your car; right?

17 A Yes, ma'am.

18 Q And then you and your cousin, after dropping Jeffrey
19 off, just went back to your cousin's house?

20 A Yes, ma'am. We just hang out. Yes, ma'am.

21 Q Okay. And the next morning, which would have been
22 January 30th, that's Saturday?

23 A Yes, ma'am.

24 Q Kind of tell me what happened that day?

25 A Okay. We all got up that Saturday morning. My cousin

1 Stanley had to go to work at my cousin shop. So me and my
2 cousin D, we had to go --

3 Q And D is --

4 A That's my cousin Donnie.

5 Q -- the victim in this case?

6 A Yes, ma'am. So we went back to town. So me and him
7 went over there, got the vehicle. I drove it back. Went to
8 the gas station put some gas in it, at the gas station -- I
9 drove it back to D house where he living at. I park it in
10 the back yard, lock it up and then we left. Me and my --

11 Q Before this happened, on Friday night --

12 A Uh-huh. (Affirmative response)

13 Q -- did your cousin ever discuss with Mr. Smith that he
14 was going to come back and get the car the next day and take
15 it to his to property?

16 A Yeah. He already know that we was going to get the
17 truck. He already knew that.

18 Q So that was a conversation that was on Friday?

19 A Yes, ma'am. They already made agreement about the
20 truck.

21 Q And then Saturday morning, did your cousin also make
22 any phone calls or let him know that the truck was, in fact,
23 on the property locked up?

24 A Yes, ma'am. Yes, ma'am. He let him know.

25 Q And so you and you cousin -- I think you said y'all

1 were going to run some errands?

2 A Yes, ma'am.

3 Q Went to Autozone?

4 A Got the brakes pad for me to put on the back of his
5 vehicle.

6 Q And so you were getting brake pads for your vehicle or
7 your cousin's vehicle?

8 A For my cousin's vehicle. The one we was riding in.

9 Q Okay. Because that's the vehicle that he was driving?

10 A Yes, ma'am.

11 Q Did he have any intention of driving Mr. Smith's truck
12 at any time?

13 A No, sir. He told him he was going to park him in the
14 yard just like he told him. He was going to get, park it in
15 the back yard, lock it up until he get his money. That's
16 where the vehicle was at the whole time. No one never
17 messed with it or nothing.

18 Q So it was basically being held as collateral?

19 A Yes, ma'am.

20 Q And once y'all got back from running your errands, what
21 did you notice?

22 A When we got back to the house for me to put the brakes
23 pad on my cousin car, he said, he said, Thomas, the truck
24 gone. Jeff must came and got the truck. And he said --
25 that's when we got back in the car. And so we drove in the

1 neighborhood. That's where Mr. Smiths live at, that's where
2 our family, all of us hang out. We went in the
3 neighborhood. We didn't see him home or see the vehicle in
4 his yard. So we came right through the neighborhood. And
5 we said well, he probably over at Butler or Kerry (sp)
6 house. They live next door to my cousin and Mr. Riley
7 house. So we drove -- I drove through there -- I was
8 driving. So we drove -- we was coming down through there on
9 the dirt road. We sees Mr. Kerry and Butler in the back
10 yard. We didn't see Mr. Smiths no where. When we look up,
11 he was sitting on my cousin step. So I turn in the
12 driveway, on the farthest end of the driveway, was next to
13 Butler house.

14 Q Let me stop you on that. So after y'all went to Mr.
15 Smith's house looking for him, were you intentionally going
16 to Mr. Riley's house next?

17 A No. We was looking -- going to the place we know he
18 normally be at. That was like Mr. Butler Kerry house.
19 Those are the two places he's known to hang out.

20 Q Okay. So at this point Mr. Riley's names is not even
21 mentioned. Y'all weren't thinking about him?

22 A No, we wasn't even -- no, we wasn't even thinking about
23 him or being at his house.

24 Q Okay. And obviously once the truck is found to be
25 missing, your cousin was upset?

1 A Yeah. He was mad because he know he took the truck
2 back and that wasn't the agreement they made. He went back
3 on his deal and agreement about the vehicle.

4 Q But in that same sense, was your cousin threatening to
5 kill or --

6 A No, he didn't threaten him or anything. None of that
7 never happened. He didn't threaten him about that. Nothing
8 about that.

9 Q All right. So you're driving by. You find out that
10 he's not at the Butler residence. And you happen to see him
11 as you're driving by Mr. Riley's?

12 A Yeah. He was setting on Mr. Riley and them's step. So
13 I pull up in the yard. My cousin -- Mr. Smith, he got up.
14 He was walking towards the car. That's when my cousin --

15 Q When you pulled up in the yard, did you have to go
16 through any fences?

17 A No.

18 Q Was there any barricade that would keep you from going
19 into the yard?

20 A No, ma'am. No, ma'am.

21 Q Were there any signs that were posted that said no
22 trespassing?

23 A No, ma'am.

24 Q Don't come on the property?

25 A No, ma'am.

1 Q And had you or your cousin, to your knowledge, been
2 ever placed on any trespass notice or told not to come on
3 that property?

4 A No, ma'am.

5 Q Okay. Were you going on that property with the intent
6 of creating any harm or anything?

7 A No, ma'am.

8 Q So you drive on the property. You're driving and your
9 cousin's in the passenger seat?

10 A Yes, ma'am.

11 Q When y'all drove up -- I think we've discussed how
12 there's a horseshoe type drive. Can you show on State's
13 Exhibit 1 where you pulled the car up to and make sure you
14 let the Judge know as well.

15 A Okay. This like the front part of the house.

16 THE COURT: Uh-huh. (Affirmative response)

17 A Okay. We was over here. The first driveway is coming
18 in on this side of the house. And all this right here is
19 just like the dirt would come straight down in front of the
20 house. There's a driveway over here that come right on
21 through here like this. When I pull up, I turn right here,
22 over here. Mr. Smith was sitting on the step right here.
23 And my cousin was standing on the porch up here. Mr. Jeff
24 came off the step. He walk over towards the car. My cousin
25 got out of the car from this side and come -- this side is

1 the driveway. He walk around to the front of the car.

2 That's when he pushed Mr. Smith's in the chest.

3 THE COURT: Uh-huh. (Affirmative response)

4 A That's when -- excuse me.

5 Q Okay. I want to slow you down.

6 A So that's when Mr. Smith swing back at my cousin. He
7 almost hit him. He fell back towards the side of the car.
8 And that's when he ran back trying to look for something to
9 hit Mr. Smith with. And that's --

10 Q Okay. Hold on one second.

11 A Okay.

12 Q So we've talked about the drive and everything. When
13 you pulled up, did you pull up straight or did you pull
14 around --

15 A No, ma'am. It was like straight.

16 Q It was straight?

17 A Yes, ma'am. I was straight.

18 Q So whose door -- was the driver's side door or the
19 passenger's side door closest to the front of the house?

20 A The driver's side of the door. My side was closest to
21 that side of the house.

22 Q Okay. All right. So you said that your cousin got out
23 of the passenger's side. That he's on the other side of the
24 house?

25 A Yeah. Far side.

1 Q The car is between him and the house?

2 A Yes, ma'am. Uh-huh. (Affirmative response)

3 Q And Mr. Smith comes off the steps and walks around to
4 the car?

5 A Met him, yeah. To the car.

6 Q And admittedly, there's a heated argument between them?

7 A Yes, ma'am. Uh-huh. (Affirmative response) Yes,
8 ma'am.

9 Q And were you able to hear any part of that
10 conversation?

11 A Yes, ma'am. Uh-huh. (Affirmative response)

12 Q And what was the conversation?

13 A The conversation was -- when my cousin got out of the
14 car and Mr. Smith was walking up to D he said we need to
15 talk about this. We need to talk about this, man. And D
16 said man, I ain't going to talk to you about nothing. When
17 I gonna get my money. Where the truck, man. That's when
18 they got into altercation.

19 Q Okay.

20 A And Mr. Jeff -- my cousin couldn't do nothing with Mr.
21 Smith. He and Mr. Smith got in a tussle. So he ran back
22 out of the way. About that time, he was looking for
23 something. He couldn't find it. He got back in the car.
24 And the next thing I know, that's when I seen Mr. Riley -- I
25 heard my cousin on the front porch she say Charles where you

1 going with that gun. And I look up and I see him coming out
2 with the gun like this. Then I seen Mr. Riley came down the
3 step, walk up to the side of the car. He ask my cousin
4 three times. He said D -- can I say exact what word? I
5 ain't gonna --

6 THE COURT: You can say it.

7 A -- he said motherfucker what you doing in my yard, D?
8 D said Charles I came here to ask Jeff where my money was.
9 Why he took the vehicle. And that's all he said to Mr.
10 Riley. The second time -- he asked my cousin a second time,
11 then my cousin turn and look at me. Because the third time
12 he ask him, he just shot him. And my cousin look at me he
13 say this motherfucker shot me Thomas. And the next thing I
14 know blood was getting everywhere. And he was bracing in
15 the car like this right here, holding on. And I cranked up
16 the car. I spin out the yard because that's when I drove
17 him to the hospital. And the whole time driving I was
18 trying to hold -- he was holding me so tight. I was trying
19 to like keep him awake because blood was just going
20 everywhere. And all I know he fell on this side of my
21 shoulder, like he's going to bleed out. And he just rolled
22 out. And I say Yo, man. Look, you can't die on me. Wake
23 up. And about the time I got him to the hospital, I jump
24 out the car. I ran inside and beat on the door and I told
25 them my cousin got shot at close range with a shotgun. They

1 came outside. I went -- and the blood on the side the car,
2 that's when I had my hand print on. I open the door. I
3 pull him up out of the car and he had, was holding up on his
4 own so like we walking me to the hospital. And I helped
5 them pick him up and put him in the bed. And they ripped
6 the t-shirt everybody asking about, it was soaked in blood.
7 They rip it off. They cut it up off of him. And they told
8 me I had to leave after that. And I was standing up in the
9 doorway watching them cut all these bloody clothes off of
10 him. He was soaked in blood. All this blood was like all
11 in his clothes.

12 BY MS. CORNWELL:

13 Q Okay. And let's -- I'd like to kind of break all of
14 this down a little bit. So you've in the courtroom
15 throughout the hearing?

16 A Yes, ma'am.

17 Q And you've testified that Mr. Smith came around, that
18 there was admittedly -- your cousin pushed Mr. Smith first?

19 A Yes, ma'am. He did.

20 Q Did your cousin ever have a weapon on him?

21 A No, ma'am.

22 Q Did he ever try to assault Mr. Smith with any type of
23 weapon, anything of that nature?

24 A No, ma'am.

25 Q Okay. At any time did your cousin, standing up outside

1 the car, get into an altercation with Mr. Riley?

2 A No, sir. No, ma'am. Mr. Riley wasn't -- he never was
3 outside until I seen him coming down the step with the gun.
4 My cousin never -- he never touched Mr. Riley. He never
5 even threatened Mr. Riley. He wasn't out there. Everything
6 he said was direct to Mr. Smith. He never say nothing to
7 Mr. Riley.

8 Q Okay. And the only thing that you heard your cousin
9 say to Mr. Riley was basically I'm not here for you --

10 A Yeah.

11 Q -- I'm here to talk to Jeff about the truck?

12 A Yeah. That's what he stated. That's the only thing he
13 ever say to Mr. Riley, I think. He came to ask Jeff about
14 the truck. He wouldn't have never been in his yard if he
15 wouldn't have seen Mr. Smith on his step. We would have
16 never been in his yard.

17 Q Okay. All right. And when your cousin was shot, where
18 was he when he got shot?

19 A Sitting right next to me in the car. He was sitting
20 right next to me. Because when he turn and look at me and
21 he was shot and he was like -- and I looked at him. And I
22 was like -- I felt the impact. Like he took the full impact
23 of it. And he was big and wide up here. All I looked and
24 the next the thing I knew, all I seen was like a bunch of
25 white meat and like something inside his heart was beating.

1 His whole inside was bust open. And then some blood was
2 everywhere.

3 Q And where was -- was the passenger door open or shut?

4 A No, ma'am. It was closed.

5 Q Okay.

6 A The door was closed.

7 Q Was the window up or down?

8 A The window was down.

9 Q And how far away was Mr. Riley standing when --

10 A Just like they said about three -- about three or four
11 feet away from him. About three or four feet.

12 Q And so was the barrel of the gun kind of close to your
13 cousin or far away from your cousin?

14 A Yeah. It was close to him. It was like he had it --
15 he just came up and just shot him right in the chest. He
16 was like -- he hit what he was aiming for.

17 Q And did you have any injuries on you?

18 A No, ma'am. I didn't, you know, he didn't touch me.

19 Q So none of these pellets hit your or anything?

20 A Huh-uh. (Negative response) No, ma'am.

21 Q And the car that you were driving, that y'all were
22 riding in, was that your car or was that your cousin's car?

23 A No, that was my cousin car.

24 Q Okay. You just happened to be driving?

25 A Yes, ma'am. I was driving for him that morning.

1 THE COURT: That's Mr. Green's car?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Okay.

4 BY MS. CORNWELL:

5 Q But in order for Mr. Green to leave Mr. Riley's
6 property, he would have had to wait on you --

7 A Yes, ma'am.

8 Q -- to start the car up --

9 A Yes, ma'am.

10 Q -- put the car in reverse and leave?

11 A Yes, ma'am.

12 Q And I think y'all all say that this all happened in
13 just a matter of minutes?

14 A Yes, ma'am.

15 Q After the confrontation with Mr. Smith -- I believe it
16 was your testimony that that's when he got in the car?

17 A Yes, ma'am.

18 Q Was Mr. Riley down there at the conclusion of the
19 argument with Mr. Smith?

20 A No, ma'am. He wasn't out there.

21 Q Did you ever see Mr. Green try to get in the face of
22 Mr. Riley?

23 A No, ma'am.

24 Q Did you ever hear Mr. Green threaten Mr. Riley?

25 A No, ma'am.

1 Q Did you ever see Mr. Green with anything in his hands
2 that anybody could have mistaken for a weapon?

3 A No, ma'am.

4 Q Did you ever see Mr. Green try to forcibly enter onto
5 the porch or into the house of Mr. Riley?

6 A No, ma'am. No, ma'am.

7 Q All right. But you did hear him telling Mr. Riley he
8 wasn't there for anything with him?

9 A Yeah. The only thing he wanted was to talk to Jeff
10 about that vehicle and his money. That was it.

11 Q And when Mr. Green got into the car, was it your
12 understanding that he was complying and about to leave?

13 A Yes, ma'am. He just wanted to have a word with Mr.
14 Smith and that was it.

15 Q Okay. All right. So he got back in the car, shut the
16 door and basically was waiting on you to take him away?

17 A Yes. And before I knew anything, that's when Mr. Riley
18 came out and got up -- he came up to the car so fast with
19 the gun and he just went, actually went straight to my
20 cousin and ask him what he was doing in the yard. And my
21 cousin told him. And he didn't say nothing about leave my
22 yard or what y'all doing here or nothing. He just ask him
23 three three time.

24 Q Well, let me ask you this. When he came out waving
25 that gun if y'all were both in the car, why didn't you just

1 leave then?

2 A Because I wasn't even -- I wasn't even thinking about
3 it. I was looking at Mr. Smith and listening to Mr. Smith
4 and my cousin. And then when he came out with the gun, I
5 seen him but he came up so fast, you know. I almost felt
6 like we were doing nothing for him to want to shoot nobody.
7 I wasn't expecting him to shoot nobody. I thought he might,
8 you know -- I wasn't even thinking about, you know -- I was
9 focused on my cousin and Mr. Smith at the time.

10 Q So you're both sitting in the car and he comes out of
11 his house with a shotgun. In order to get to where he was
12 to where Mr. Green was, he had to come off the porch steps -
13 -

14 A Uh-huh. (Affirmative response) And came up to the
15 car.

16 Q -- walk around the car and walk all the way over to the
17 passenger's side?

18 A Yeah. He came down the step, came in front of the car,
19 come around on this side where my cousin was at. And he was
20 asking him, asking him what he was doing in his yard.

21 Q And when he came off the steps was he closer to you in
22 the beginning or closer to --

23 A No, he had to been -- he was in front of the car. So
24 I'm just saying that -- let me see. He would have had
25 passed my side of the side of the car first even to come

1 around. I was like -- I was sitting on this side and he was
2 in the front of the car and my cousin was on this side of
3 the car. So he had to pass my side to come around because
4 he passed in front of the vehicle.

5 Q So you, as the driver --

6 A Yes, ma'am.

7 Q -- were sitting in the seat that's closest to the
8 house?

9 A Yes, ma'am.

10 Q If Mr. Riley wanted y'all to leave so badly and had the
11 gun out, the person that he would have approached first or
12 should have, could have approached first --

13 A Would have been me.

14 Q -- would have been you?

15 A Yes, ma'am.

16 Q Since you were driving the car and could have gotten
17 the car out?

18 A Yes, ma'am.

19 Q But did he do that?

20 A No, ma'am. No, he didn't say nothing to me. I didn't
21 had anything to do with none of it. I was just the driver,
22 you know, I didn't have any beef with nary one of those guys
23 so I ain't had no reason -- nary one of them say anything to
24 me about anything.

25 Q Okay. And have you ever had any disagreements or

1 arguments or anything with Mr. Riley?

2 A No, ma'am.

3 Q So you really had no reason to make anything up on
4 either side?

5 A No, ma'am.

6 Q And then we've heard testimony that Mr. Riley had some
7 issues with your cousin, Mr. Green in the past. Are you
8 aware of those?

9 A No, ma'am. I heard about all of that but I didn't know
10 anything about it until this, all this happened. Because,
11 you know, I didn't know anything about this.

12 Q Okay.

13 A And I found out afterward.

14 Q Okay. And you said that Mr. Riley asked three times?

15 A Yes, ma'am.

16 Q And the second time I think you indicated that your
17 cousin turned to look at you?

18 A He turned to look at me and -- he just turn and look at
19 me.

20 Q Did he ever reach in the back seat?

21 A No, ma'am. He just turn and look at me like he's --
22 like he said what's going on. What's wrong? And that was
23 it. He turn and look back at Mr. Riley and Mr. Riley asked
24 him again. The next thing I know he shot -- the gun went
25 off and he shot him.

1 Q Where were his hands?

2 A My cousin hands were down on his leg. He was sitting
3 -- like I'm sitting here with his hands down on both of his
4 thighs.

5 Q Okay. And then once he was shot you said -- did he
6 seem surprised that he was shot?

7 A Yes, ma'am.

8 Q And so really -- I mean, y'all weren't there to cause
9 any injury to anybody were you?

10 A No, ma'am. We weren't there for no other reason than
11 trying to find out what happened to the truck and whatever.
12 That was it.

13 Q Okay.

14 THE COURT: Sir, do you know why Mr. Smith owed
15 Mr. Green money?

16 THE WITNESS: Yeah. I knew he had owed my cousin.
17 Yes, ma'am.

18 THE COURT: But for what? Why did he owe money?

19 THE WITNESS: Well, he had owed him money for
20 drugs and some money that he went to the highway department
21 for --

22 THE COURT: Okay. So for drugs and for
23 transferring the title?

24 THE WITNESS: Yes, ma'am. For stuff like that.
25 Yes, ma'am.

1 THE COURT: Okay.

2 BY MS. CORNWELL:

3 Q So once he's been shot, you back out of the driveway.
4 Do you back out or do you pull around the horseshoe?

5 A No, ma'am. I back out the driveway. The same -- I
6 pull in -- the same drive I pull in, I back out that
7 driveway. I back out and went back out.

8 Q And is that because your car was straight or did you
9 have --

10 A It was straight. No, ma'am. It was straight.

11 Q Okay. And you rush to the hospital. How long did it
12 take you to get to the hospital?

13 A Well, I drove -- the last time I look at the speed
14 hand, I was running 110. I got up to about 120 one time.
15 And I think I did like it was seven or eight minutes.

16 Q Okay. All right. And you pulled up in the sally port.
17 You got him out. Obviously, did he have blood -- did you
18 have his blood on you?

19 A Yeah. I had his blood on my side and on my jeans
20 because he fell -- he kept felling around into me. And at
21 one point he grabbed me by my right arm. I was driving with
22 my left hand. Then he grabbed on my right arm like he was
23 trying to pull me to him he was in so much pain. He was
24 like holding onto me so tight like he was fighting for his
25 life. And I kept shaking. I kept holding onto him. At one

1 time -- when I got Edisto Drive a cop pulled out in front of
2 me. We almost ran into a vehicle sitting in the road like
3 that. And he fell -- he lock around a bit in the front seat
4 of the car. And, you know, but that's --

5 Q At any time did you or Mr. Green throw anything out of
6 the car on the way to the hospital?

7 A Oh, no, ma'am. Huh-uh. (Negative response)

8 Q You never got rid of anything?

9 A No, ma'am.

10 Q And once he pulled into sally port and got him out, I
11 believe they asked you to move your vehicle?

12 A Yes, ma'am. I had to back it up and put it over on the
13 parking space on the side. And by the time that happened,
14 the sheriff was already up -- by the time I came back, the
15 sheriff met me coming out of the hospital. I was told I
16 couldn't go anywhere. And she told me I had to give a
17 statement of what happened. And everybody kept wondering
18 about the blood on the back of the car and stuff. I was
19 kneeling -- I mean standing -- resting against the back of
20 the car at the emergency room. That's where the blood came
21 from is -- worrying about the blood on the back of the car.

22 Q And then before you locked the car and everything up,
23 did you ever move anything from inside the car to the trunk
24 of the car?

25 A No, ma'am. The only thing that was seen in the car was

1 that bag they talking about? That was the bag that we had
2 purchased the brakes pad for me to put on the vehicle. So
3 when they asked me to move it, I thought -- leave the car
4 there. I put that bag in the -- I placed it in the trunk.
5 I told the Detective that, because when they let me come
6 home to change my clothes to come back to the hospital, I
7 left my cousin Stanley with the keys to the car in case they
8 -- because he said they wanted to search -- they had a
9 search warrant to search the vehicle. And I told them about
10 the bag because they asked me about how the bag got in the
11 trunk with the blood on it. I told them that's the bag I
12 bought -- the brakes pad was in it when I put in the trunk
13 out the car because I didn't want to leave it inside the
14 back of the car. I put it all in the trunk. But he know I
15 told him about that bag. I put the stuff in the trunk.

16 Q So the bag -- when the shooting occurred the bag was in
17 --

18 A It was in the back seat?

19 Q On the back seat of the truck [sic]?

20 A Uh-huh. (Affirmative response)

21 Q And so you moved it once you parked the car?

22 A Yeah. Because I had my bag in there with my clothes, a
23 change of clothes and stuff. I put all that in the trunk.

24 Q And did you still have blood on your hands when you
25 moved the bag to the trunk?

1 A Yes, ma'am. All of that was Mr. Green blood. It
2 wasn't none of my blood.

3 Q Okay.

4 A That was my cousin blood.

5 Q And then, of course, after they let you leave the
6 hospital to get cleaned up --

7 A Uh-huh. (Affirmative response)

8 Q -- you also went to the police department?

9 A Well, they took me to the police department before I
10 got to clean up. They took my statement and everything.
11 One of the sheriff officer drop me off after I got finished
12 with me at the investigation place. That's when they
13 dropped me back off at the house.

14 Q Okay. And in that statement you gave a verbal
15 statement to officers --

16 A Yes, ma'am.

17 Q -- and you also gave a written statement?

18 A Yes, ma'am.

19 Q All right. And in the written statement and your
20 verbal statement and everything that you've given the
21 officers, has anything changed in your statements?

22 A No, ma'am.

23 Q So it's your testimony today that your cousin was
24 inside the car when he was shot?

25 A Yes, ma'am.

1 Q And you never saw him with a weapon?

2 A No, ma'am.

3 Q And you never heard him physically threaten anyone?

4 A No, ma'am.

5 Q The only physical altercation that you witnessed was
6 when your cousin pushed Jeff?

7 A Mr. Smith.

8 Q And after he pushed Jeff --

9 A That was the only altercation that took place that day
10 in that yard. He never touched Mr. Riley. He never
11 threatened Mr. Riley. The only -- I mean, Mr. Jeff the only
12 one that had the physical altercation outside of the
13 vehicle.

14 Q And after he pushed him and Mr. Smith swung at him, he
15 got in the car and called him --

16 A Yeah, that's right. They was trading word for word.
17 Mr. Smith was standing at the side out in the front of the
18 car, talking back to my cousin about this or that. All my
19 cousin did say to Mr. Jeff he said, man, I'll catch up with
20 you later man. I'll get you. I'll catch up with you later.
21 That's what everybody saying he was threatening. He was
22 speaking to Mr. Smith. He never said noting to Mr. Riley.

23 Q Okay. And when he said I'll catch up with you later,
24 was that in a threat as like in a physical --

25 A He was just so mad with him because he know he couldn't

1 -- my cousin couldn't do nothing with Mr. Smith. Mr. Smith
2 almost knock him out. So he was mad about, you know, he
3 couldn't do nothing with him so he just left. He got mad
4 and he got back in the car and said I'll catch up with you
5 later. That was all he say to him.

6 Q And I'll catch up with you later indicates I'm leaving?

7 A Yeah. Whatever we going to do is going to be between
8 them. Whatever they do later, you know. That's all that
9 happened as far as them two. That's all that happened.

10 THE COURT: Mr. Keitt, how old was Mr. Green?

11 THE WITNESS: My cousin? He was like forty-three
12 at the time, I think, this happened. Because his birthday
13 was like a week later.

14 THE COURT: How big was he?

15 THE WITNESS: Ma'am?

16 THE COURT: How big was he?

17 THE WITNESS: My cousin was like a little short
18 fellow but he was pretty plunky and wide. I'd say he weight
19 about two thirty-five or two forty. But he was a little
20 short fellow, short and plunky. He had a big -- he had a
21 big stomach, you know, but he was short.

22 THE COURT: Mr. Smith is twelve years older than
23 him.

24 THE WITNESS: Uh-huh. (Affirmative response)

25 THE COURT: Not in the greatest shape right now.

1 THE WITNESS: But Mr. Smith can box.

2 THE COURT: He can box?

3 THE WITNESS: He got good hands to be -- the boy
4 can -- Mr. Smith can box. That what it was. He was quick
5 with his hand. He's got long reach. That's what it was.

6 THE COURT: Okay. At fifty-five. Okay.

7 BY MS. CORNWELL:

8 Q Thank you, Mr. Keitt.

9 A Yes, ma'am.

10 THOMAS KEITT - CROSS-EXAMINATION

11 BY MR. HUTTO:

12 Q Hey, Mr. Keitt?

13 A How you doing, sir?

14 Q I'm doing all right. I know none of us want to be
15 here.

16 A Yes, sir.

17 Q So we'll just go through with -- let me ask you some
18 questions here. First question, were you with your cousin,
19 Mr. Green -- I know you were with him when y'all went
20 looking around for the title and the DMV and all that?

21 A Uh-huh. (Affirmative response)

22 Q But were you with him that Friday night?

23 A Yes, sir.

24 Q Okay. The hospital records showed when he got to the
25 hospital that he had cocaine and other drugs in his system.

1 Were you with him when he took drugs on Friday night?

2 A Everybody was at the house drinking and partying or
3 whatever they were doing. And I was in and out.

4 Q But that was the night before?

5 A Yes, sir.

6 Q Okay. All right. So --

7 A Hold on. Can I ask you a question. You said they said
8 that he had drugs in his system, right?

9 Q That's what the hospital records said, yeah.

10 A Okay. But that could be previous before that Friday
11 night.

12 Q It could be. It could be.

13 A Okay. That's all.

14 Q But you admit he was partying that Friday night?

15 A Yeah. We was all drinking, having a good time. Yes,
16 sir.

17 Q All right. And also the other thing I wanted to ask
18 you about is the -- you admit or you are alleging that the
19 reason for Mr. Smith owing Mr. Green money was drugs?

20 A Drug and what he had already borrowed; yes, sir.

21 Q And for the title. And for the title?

22 A Yes, sir.

23 Q All right. So, I mean, it's no mystery that your
24 cousin, Donnie Green, had -- not only had sold drugs before
25 but actually had been caught by the police and convicted and

1 sentenced to do, you know, had been under a sentence for
2 drugs before. That was just in his past?

3 A Uh-huh. (Affirmative response)

4 Q Is that a yes?

5 THE COURT: Is that yes, for the record?

6 A Yes, sir.

7 BY MR. HUTTO:

8 Q Okay. All right. Now, I didn't hear you say, so I'm
9 making the assumption if you tell me, Mr. Riley wasn't
10 involved in anything on Friday?

11 A No, sir.

12 Q And on Saturday Mr. Riley -- y'all didn't know that Mr.
13 Riley was the one that had carried Jeff over. You didn't
14 know that?

15 A No, sir. I didn't know that.

16 Q You went over to the neighborhood that Mr. Smith lived
17 in, which is a couple of blocks away from where Mr. Riley's
18 house is?

19 A Yes, sir.

20 Q So you first went actually over to Mr. Smith's house
21 and rode kind of down that Joe Paul Street that way and you
22 just didn't see him?

23 A Yes, sir.

24 Q All right. And then you kind of have to come back out
25 on the road that goes to Edisto High School. And then

1 there's several other roads off of that. And one of them's
2 Parker Street; correct?

3 A Yes, sir.

4 Q And did you say the Butler's live on Parker Street?

5 A Butler and Mr. Kerry.

6 Q All right. So Kerry and Butler and Riley all live on
7 Parker?

8 A Same road on the same side of the street. Yes, sir.

9 Q All right. So y'all were riding down that street,
10 Parker Street, thinking that maybe Mr. Smith was either at
11 the Kerry house or the Butler house?

12 A Yes, sir.

13 Q But the next house after that is the Parker house -- I
14 mean, is the Riley house?

15 A Yes, sir.

16 Q Okay. And so even though you weren't looking for him,
17 according to you, at the Riley house, because you were on
18 that street, you just saw him over at the Riley house?

19 A Yes, sir.

20 Q And he was sitting on the front steps?

21 A Yes, sir.

22 Q Okay. So admittedly, at that point in time, Mr. Green
23 was mad?

24 A He was mad. Yeah. He was upset.

25 Q Well, upset to the point that y'all actually were

1 looking for Jeff Smith?

2 A Uh-huh. (Affirmative response)

3 Q He went looking for him to confront him about this
4 truck --

5 A Yes, sir.

6 Q -- and the deal that they had and the fact that he
7 thought that Jeff had backed out of the deal?

8 A Yes, sir.

9 Q Okay. And that was a dispute between Mr. Green and Mr.
10 Smith?

11 A Yes, sir.

12 Q Your role was you were just the driver?

13 A I was just the driver. I had nothing to do with it,
14 yes, sir.

15 Q So as far as when you got into the Riley driveway and
16 into the Riley yard, you really didn't have anything to Mr.
17 Smith, but Mr. Green did?

18 A Yes, sir.

19 Q All right. So at that point in time that y'all pulled
20 up into the yard, did you ever get out of the car?

21 A No. I never exited. I never got out. I never got out
22 of the car.

23 Q Well, if you remember, do you know whether the windows
24 in the car were up or down?

25 A My window was down and my cousin window, both windows

1 down.

2 Q The driver's side window was down?

3 A Was down.

4 Q And the passenger side?

5 A And the passenger window was down.

6 Q All right. And I ask you that because you said you
7 heard some things.

8 A Uh-huh. (Affirmative response)

9 Q I'm assuming that if you stayed in the car, the reason
10 you could hear is that the windows were down?

11 A Yes, sir.

12 Q Okay. And when you got in the yard, you turned it off,
13 the car off?

14 A Yes, sir.

15 Q And Mr. Smith started walking toward the car and Mr.
16 Green got out of the passenger's side and started walking
17 toward Mr. Smith?

18 A Yes, sir.

19 Q So you're saying that where they met was somewhere
20 between the car and the house?

21 A He was right in front of the car, almost close to the
22 side. He was right in front of the car on the passenger's
23 side.

24 Q Okay. That's where -- so Mr. Green was on the
25 passenger's side and Mr. Smith?

1 A Yeah. Both of them.

2 Q All right. So where the altercation took place was on
3 the passenger's side of the car?

4 A Yes, sir.

5 Q All right. And words were exchanged?

6 A Yes, sir.

7 Q Probably some profanity?

8 A All I know my cousin -- all I know Mr. Jeff say this is
9 the exact word heard word for word. Mr. Jeff came up to my
10 cousin. He said man, we need to talk about this thing. We
11 need to talk about this truck. We need to talk about it.
12 My cousin I don't want to hear nothing about what you got to
13 say. I want my money. I want that truck. Where my money?
14 Where my so and so money. And he pushed him.

15 Q Okay.

16 A Jeff did this number like this and swung out of him.
17 He missed. He fell back. My cousin ran back beside the
18 car. He look around like this right here, couldn't see
19 nothing. Opened the door, got back in the car, sat down.

20 Q All right. Looking around for something you thought to
21 arm himself with whatever he might find, an object that he
22 use to swing at --

23 A On the ground. On the ground, yes, sir.

24 Q That he could swing at him? But he couldn't find
25 anything?

1 A Yes, sir.

2 Q So there's no doubt that at some point in time Mr.
3 Green was looking in the car?

4 A No, sir. He never got -- he never looked for nothing
5 once he got back in the car. When he got back in the car,
6 he was sitting down facing Mr. Smith, just talking to him?

7 Q Well, maybe I mischaracterized that.

8 A Okay.

9 Q. But basically when you say that Mr. Smith swung at him
10 and either glazed or hit him or almost hit him, he ran back
11 to the car to look for something?

12 A He was outside the car. He ran down beside the car.

13 Q I understand that.

14 A Okay.

15 Q Okay. But the windows were open?

16 A Yeah. The window was open. The door was closed.

17 Q Right. And all I'm saying is if there had -- and I
18 know it wasn't. But if there had been a hammer or a tire
19 iron or something like that off the seat he could have
20 grabbed it.

21 A It wasn't none of that in there.

22 Q But there wasn't anything there for him to grab?

23 A No, sir. None of that.

24 Q All right. But he did run back to look for something?

25 A Yeah. Outside the car. You keep saying -- outside the

1 car. He was looking around the ground for something.

2 Q Well, I mean, okay, if there had been a stick on the
3 ground? I mean, that's what you're saying --

4 A Yes, sir.

5 Q -- is he was looking for something?

6 A Yes, sir.

7 Q And the arguing continued on?

8 A Yes, sir.

9 Q The way I hear you telling it as opposed to -- you've
10 been in here while others have told it. It sounds like to
11 me what you're saying is when they were fighting, that Mr.
12 Riley just ran straight on out with the gun. That he never
13 came out initially and then went back in?

14 A Well, I never seen him outside. The only I time seen
15 Mr. Riley when he did have the gun, coming towards the
16 vehicle.

17 Q All right.

18 A And that when I heard my cousin on the porch asking she
19 said, Charles where you going with that gun? Where you
20 going? That's the conversation and everything I heard what
21 was going on, on the outside.

22 Q All right. But there's no doubt in your mind that on
23 at least three different occasions Mr. Riley asked Mr. Green
24 what you doing in my yard. Why you in my yard? Get out of
25 the yard kind of thing?

1 A Yeah.

2 Q Three times?

3 A Three times, yes, sir.

4 Q All right. Now, from where you say the car was or even
5 where they say the car was from the steps, if you see
6 somebody coming with a gun, there was time for you to crank
7 up the car but you did not do that?

8 A No, I mean, I didn't see when he originally come with
9 that gun because he was already down. Whatever happened,
10 the little conflict with them, it was over. He was sitting
11 back in the car. And I was just looking at them two
12 arguing. I didn't even see him, see him until about the
13 time he done got up to the car.

14 Q So they continued their argument near the side of the
15 car. Is that where they were?

16 A Yeah. Because my cousin done got back in the car,
17 sitting down in the car. And Mr. Jeff was standing up
18 taking to him.

19 Q Okay. So if Jeff was standing by -- if he was actually
20 sitting in the car and Jeff was standing by the door of the
21 car arguing with him?

22 A Jeff was standing up in front of the car at that time.
23 He got back up in front of the car.

24 Q You're saying that Mr. Riley had to come around the car
25 and around Jeff to come to where he was?

1 A Yes, sir.

2 Q All right. Where was Jeff when the shot got fired?

3 A I really didn't see him. The last I heard what he was
4 saying he was trying to hold Mr. Charles. I never could --
5 I didn't know what happen but he disappear. I didn't see
6 nowhere after that.

7 Q At the time of the shot, you didn't see him?

8 A I didn't see Mr. Smith.

9 Q That's what I'm asking.

10 A I didn't know where he disappeared?

11 Q At the time the gunshot went off, you didn't see Mr.
12 Smith?

13 A I didn't see Mr. Smith. I didn't know where he
14 disappeared to?

15 Q Just prior to the gunshot, he had been there still
16 arguing with Mr. Green?

17 A Yeah, he was standing up in the front of the car.

18 Q Okay. You also testified that right after, and your
19 cousin indicated that he got shot, you could see some white
20 meat?

21 A Yeah, all this was bust open and gap open and I seen
22 something just beating in his heart like this right here.

23 Q Okay. So no doubt to you that the wound, not only was
24 it maybe a gunshot, but his whole chest was kind of busted
25 open?

1 A Busted. He had a big hole in his chest.

2 Q All right. Did you call 9-1-1?

3 A No. I just cranked up and drove him straight to the
4 hospital.

5 Q Okay. Did you have a phone with you?

6 A No, sir. He had a cellphone with him but everybody
7 kept calling his phone because everybody told him what
8 happened and his phone kept ringing inside the car. But I
9 never, you know.

10 Q Okay. All right. So on the way to the hospital, you
11 could hear Mr. Green's phone ringing but you did not answer
12 or grab it and call 9-1-1?

13 A No. I know I talked to my cousin. I picked the phone
14 one time. And I asked, I said who this is? It was my
15 cousin Stanley. He asked me what happened. And I said I'm
16 driving D to the hospital. He got shot.

17 Q Okay. All right. Now, finally, I just want to get to
18 one more thing.

19 A Uh-huh. (Affirmative response)

20 Q Tell me again this bag, it had the brake pads in it
21 that y'all had gone to Autozone earlier in the day to buy?

22 A Yes, sir.

23 Q To put not on Mr. Smith's truck, but on --

24 A No. On my cousin vehicle.

25 Q On the car you were in?

1 A Yes, sir.

2 Q All right. So the car that you were driving that was
3 Mr. Green's car, that's the car that the brake pads were
4 for?

5 A Yes, sir. Uh-huh. (Affirmative response) For the
6 back.

7 Q Right. But when you moved the -- if I heard you right,
8 and tell me if I'm wrong now.

9 A Uh-huh. (Affirmative response)

10 Q But when you moved the car from the sally port at the
11 hospital to the parking place, you moved that bag into the
12 trunk?

13 A Yes, sir.

14 Q And there were other things, clothes and a big jacket
15 and other stuff --

16 A Yeah, all that was my clothes. That was my stuff.

17 Q Did you move that into the trunk?

18 A I put all that in the trunk.

19 Q So all of that had been in the back seat?

20 A It was on the back seat. Yes, sir.

21 Q All right. And I don't know if you'll know the answer
22 to this or not --

23 A Uh-huh. (Affirmative response)

24 Q -- but there wasn't any blood on the jacket or the --

25 A There was some blood, just a little bit of blood was on

1 one of the sleeve on the jacket. I still have the jacket.

2 Q Okay. All right. So all of that had been in the car?

3 A On the backseat behind me, on the passenger's side
4 behind me.

5 Q But admittedly when you went to grab it, your shirt
6 already had blood on it from helping your cousin into the
7 emergency room?

8 A Yes, sir.

9 Q In other words -- he was a big guy?

10 A Yes, sir.

11 Q For you to help him out of the car and all, you had to
12 be pretty close to him?

13 A Yes, sir. I pick him up -- pull him up on one of his
14 arm and he had his shoulder on me, across my shoulder
15 walking along until we got inside. And the first room on
16 the left, that's where we pick him up and set him in the
17 bed. They cut his tee shirt off and clothes. They told me
18 I had to leave, go out. And the last thing they told me
19 they said we need two pint of blood right away. And the guy
20 told me I had leave out. And when I was coming out, the
21 sheriff lady stop in the hallway. She told me I couldn't go
22 nowhere. And she told me you the person driving the
23 vehicle. I told her yes, ma'am. She said I had to move the
24 vehicle. And so she walked with me outside. Then another
25 sheriff pull up. Told me I had to park my vehicle over

1 there. I got out, parked the vehicle over there. And all I
2 was thinking about trying to get out them bloody clothes.
3 So what I did, I opened the back door. I got my bag out and
4 everything that was in the backseat, I decided I would put
5 it in the trunk. My bag, my tote bag with my change of
6 clothes in it, my jacket and the Autozone bag, I just set it
7 in the trunk.

8 Q You moved all that to the trunk?

9 A Yes, sir. That was it.

10 Q ~~And you stayed at the hospital until you were carried~~
11 by law enforcement --

12 A Yes, sir.

13 Q -- from the hospital over to the Chestnut Street where
14 you did the video?

15 A Yes, sir. I had to give like two statements to the
16 people that came up there.

17 Q That's what I want -- I just wanted to make sure it was
18 two?

19 A Uh-huh. (Affirmative response)

20 Q Officer Chestnut, who was the woman who was the officer
21 at the hospital?

22 A It was -- I don't remember the sheriff lady name.

23 Q All right. I'm telling you the report says her name
24 was Officer Chestnut?

25 A Okay.

1 Q She says in her report that she got you to write out a
2 statement at the hospital?

3 A Yes, sir.

4 Q And you did?

5 A Yes, sir.

6 Q And as far as you know -- you don't know where that
7 report -- nobody seems to have that -- you did write a
8 report?

9 A It's the same thing that I put on the other previous
10 one. It's the same thing. Nothing changed.

11 Q I'm going to ask you about. You wrote a second --
12 after they did the video, you wrote another statement?

13 A Yes, sir.

14 Q And are you telling me or telling the court that what
15 you wrote in the second statement was very similar of the
16 words to what you had written in the first statement --

17 A Yes, sir.

18 Q -- even though we don't have the first statement?

19 A Yes, sir.

20 Q Okay. But no doubt that the first time you were asked
21 to tell what happened, that was in a statement that was
22 given at the hospital?

23 A That's right.

24 Q Okay. The second time was when the officer talked to
25 you on the videotape. And the third time was when you wrote

1 down in the room what happened?

2 A Yes, sir.

3 MR. HUTTO: Okay. Just give me one second.

4 BY MR. HUTTO:

5 Q The shirt that your cousin had on -- I know we don't
6 have it --

7 A Uh-huh. (Affirmative response)

8 Q But was it a button up shirt or a --

9 A No, it was a tee shirt.

10 Q A tee shirt?

11 A Uh-huh. (Affirmative response)

12 Q So he's wearing a tee shirt. Is that the only thing he
13 was wearing?

14 A Yes, sir. Just a tee shirt.

15 Q All right. So if he had the tee shirt on and he had a
16 gunshot wound on him and you could see the white meat from
17 the gaping wound, you were looking through his shirt?

18 A Uh-huh. (Affirmative response)

19 Q He didn't take his shirt off in the car; did he?

20 A No, it was, it was -- I just could see it. Like it was
21 tore open.

22 Q Okay. The shirt was tore open?

23 A Yes, sir.

24 Q Such that you could see into the shirt and you could
25 see the gaping --

1 A I could see his heart and whatever was beating and all
2 this white meat was hanging over, just showing up.

3 Q And you could see that through his tee shirt as he was
4 sitting --

5 A I think his shirt had to be bust open. It had to be
6 rip open.

7 Q Okay. All right.

8 THE COURT: Sir, can I ask you --

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Did Ms. Riley, did Angela Riley tell
11 you all to leave?

12 THE WITNESS: No, ma'am. She never say nothing,
13 not one word to us the whole time we was there.

14 THE COURT: Did she come out at all?

15 THE WITNESS: No, ma'am. She was just standing up
16 on the porch, ma'am.

17 THE COURT: She never said a word?

18 THE WITNESS: No, ma'am. She never say anything.

19 THE COURT: Okay. Go ahead.

20 THOMAS KEITT - REDIRECT EXAMINATION

21 BY MS. CORNWELL:

22 Q And -- obviously, when you pulled up in the yard, you
23 were kind of focused on --

24 A Mr. Smith.

25 Q -- Mr. Smith and your cousin; right?

1 A Yes, ma'am.

2 Q So you say that you didn't seen Mr. Riley or you didn't
3 see Ms. Riley or hear them. Is it possible that they could
4 have been out there and you just weren't paying attention to
5 them?

6 A I wasn't paying attention. I didn't see them.

7 Q Okay. And then we talk about the trunk. Did you ever
8 give Mr. Green the keys --

9 A No, ma'am.

10 Q -- to the car anytime that y'all were on the property?

11 A No, ma'am.

12 Q Did you ever pop the trunk for him?

13 A No, ma'am.

14 Q Was there anyway he could have gotten into the trunk of
15 the car?

16 A No, ma'am. The trunk never opened.

17 Q When you talk about after Mr. Smith swung at him, and
18 your cousin kind of ran around toward the back and stuff
19 looking for stuff, do you think your cousin was a little bit
20 of afraid of Mr. Smith at that time?

21 A He was afraid because he almost got -- with him. He
22 almost got struck.

23 Q And your cousin, he's a big guy, I believe --

24 A But he's big but he's a short fellow.

25 Q He's about five-eight?

1 A Yeah. He's a short fellow.

2 Q And about two hundred and sixty pounds.

3 A He's got a big stomach.

4 Q So would it be fair to say that his bark his bigger
5 than his bite?

6 A Yes, ma'am.

7 Q So he likes to kind of use his size to intimidate
8 people with?

9 A Yes, ma'am.

10 Q If somebody bows back up at him, he backs down pretty
11 quickly?

12 A Yes, ma'am.

13 Q Unless he has multiple people with him?

14 A That's him. That's how he is or he was, anyway.

15 Q And in this situation at your house, you didn't jump
16 out of the car? You weren't involved --

17 A No, ma'am. I never got out the car. I never did get
18 out of the vehicle.

19 Q Okay. So based on what you know on your cousin and
20 what you saw that day, after Mr. Smith swung at him, your
21 cousin was afraid and got back in the car?

22 A Yeah. That exactly what happened.

23 Q And he never did try to approach Mr. Riley or threaten
24 him.

25 A No, ma'am.

1 MS. CORNWELL: Thank you, Your Honor.

2 THE COURT: Nothing further? You may step down,
3 sir.

4 THE WITNESS: Thank you, ma'am.

5 THE COURT: Does the State have anything else?

6 MS. CORNWELL: No, Your Honor.

7 THE COURT: All right. What I'm going to do just
8 really quickly, let's just take a five-minute break and come
9 back. And I just want a really quick argument from both
10 sides. And I mean really quick. I mean five minutes.
11 Obviously, the statute you're relying on, your evidence
12 standard and just from there, okay?

13 MR. HUTTO: Thank you.

14 THE COURT: All right. Thank you. So we'll just
15 take a five minute break.

16 (Court in recess for short break)

17 (Court in session after short
18 break)

19 THE COURT: All right.

20 MR. HUTTO: Your Honor, obviously we are here on
21 our motion under the protection of persons and property act,
22 which by its face says it to be a codification of the common
23 law castle doctrine. The expressed legislative intent is --
24 I don't have to tell you about it. It's actually in the
25 language of what the intent was.

1 THE COURT: Right.

2 MR. HUTTO: And it's clear that the legislature
3 intended that a person in his own home not have to worry
4 about being molested or intruded upon. And in this case we
5 say that Mr. Riley had a right, obviously, to be at his
6 home. He wasn't doing anything. Admitted he hadn't even
7 been involved in the controversy about the truck and had no
8 prior conversation with anybody. And out of the blue, a
9 man, a big man, with drugs in his system who is admittedly
10 is like agitated, upset, looking for a confrontation enters
11 his yard. Brings the confrontation into his yard. There's
12 a fight going on in his yard, argument, confrontation,
13 pushing, shoving, swinging, however you want to describe it.
14 But it's been described to all of those things. And, you
15 know, there are -- there were five people there. Of course,
16 there are four present that you've heard from. And you've
17 heard from them all. You've seen their -- all of them had a
18 videotaped interview on the day of the incident and you've
19 had the benefit of seeing that as well. There are some
20 similarities and then again, as you might expect when four
21 people see the same thing, not everybody sees it from
22 exactly same angle, vantage point, or has the same
23 recollection. So there's admittedly some differences. But
24 one thing that's common to all four is Mr. Riley's request
25 that they leave. That they leave. Said what you're doing

1 here? Get off my property. You know you're not supposed to
2 be here. The words might vary from person to person, but
3 the intent that he was attempting to eject or expel them
4 from his property was clear.

5 Now, three of the witnesses say that there was an
6 attempt to eject followed by entry to the house to become
7 armed and come back out. And the one, Mr. Keitt, the last
8 witness said that, no, it was only one time or he kind of
9 said I didn't see him if he was out there the first time and
10 went back in. Only the first time I saw him was with the
11 gun. Everybody else says that not only was Mr. Green
12 arguing with Mr. Smith but he was also had kind of turned
13 toward Mr. Riley and said variously, depending on which
14 witness you hear, got something for you. I'm going to F you
15 up, that kind of thing.

16 Now, the one thing that is also similar between the
17 witnesses who were out there at the time, is that Mr. Green
18 at some point in time was reaching for something. Even Mr.
19 Keitt acknowledges that he thought he was doing that in an
20 attempt to arm himself. Your Honor, this is a situation in
21 which in the -- I guess the sanctity and clarity of a
22 courtroom everything seems like we could talk about it and
23 hit happened like this. But in reality, there was an
24 emotion going on and it happened really fast. And whether
25 it took two minutes or three or minutes or four minutes,

1 this thing was happening quickly. People are moving around.
2 People are agitated. There's an argument. There's fist
3 fights. They're pushing. They're shoving. So I ask you to
4 take that into account as well.

5 The burden you asked me to address I believe is
6 preponderance. I don't think there's any question there's
7 preponderance of the evidence. I don't think there's any
8 question, but it's a question for you and not a jury. The
9 question for you is, is he entitled to immunity. We say
10 that clearly a man's home is his castle. There's no doubt
11 that that extends to the yard. I don't think there's any
12 question about that as well. The Solicitor may tell you --
13 I'm just guessing because she's kind of told me that's she's
14 going to say well, once he's retreated -- while he had no
15 duty to retreat and once he retreated, he needs to stay
16 retreated. Kind of the argument that once he got back in
17 the house, he had other options. He could have locked the
18 doors. He could have called 9-1-1. That's not what the law
19 says.

20 THE COURT: Well, where is that required in the
21 act?

22 MR. HUTTO: No, absolutely not. He is entitled to
23 expel, repel somebody from his yard. So the fact that he
24 becomes armed in order to do that is contemplated. And if
25 you go back -- and I cited this in my motion -- all the way

1 back to the Bradley case, which is from I think the 1930's.
2 And there are cases probably even before that under the old
3 -- 1923, I'm sorry. The Bradley case is in '23. The old
4 common law, you have a right to repel the person and Bradley
5 even says that there need not even be a request to depart
6 before you have a right to defend your own property from
7 somebody who is intruded onto your property. And, Your
8 Honor, this was not a -- just a random visitor to the
9 property. This wasn't the two Mormon Missionaries on the
10 bicycle coming up. This wasn't a guy trying to sell them a
11 vacuum cleaner. This wasn't even somebody who was lost
12 asking for directions. This is a car that came up into the
13 yard looking for a fight. Agitated, the victim, who was on
14 drugs as evidenced not only by the fact that he -- his
15 reports at the hospital show that. But, in fact, the co-
16 occupant of the car, Mr. Keitt, admits that he'd been
17 partying the night before. To what extent, nobody knows.
18 But we know it was enough that it showed up on the screen at
19 the hospital the very next day.

20 Finally, for three people to saying that the car was
21 one place and the other has it probably, maybe a car length
22 or two farther away and angled at a different angle, I guess
23 if that's the case you have to believe that these three
24 people in a matter of about ten minutes between the 9-1-1
25 call got made and the time the sheriff showed up, all got

1 together and remade up this other version of the facts, as
2 opposed to being how they all viewed it at the time.
3 Because there's no doubt that police were on the scene
4 almost immediately. So for Mr. -- all I'm saying is
5 obviously the position of the car is definitely at the
6 corner of the house. The angle of the car -- and I don't
7 even know if that's significant or not, which way the car
8 was positioned. But you could see from the tape measure
9 that we had that it was probably twenty feet or twenty-four
10 feet away. And so I gather Mr. Keitt was saying would have
11 put it back, maybe another car length farther back, but
12 instead of angled sideways, angled this way. Like I say, I
13 don't know that that makes any difference. It actually
14 might make a difference from Mr. Keitt's point of view. He
15 had a much more direct shot at the porch, seeing Mr. Riley
16 come off with the gun and still, in spite of three -- and he
17 even used the term three times told them before he shot.
18 And the other thing finally I would say, Mr. Keitt verified
19 what Mr. Tressel said, is that there was a blow open wound
20 coming out of his shirt that he actually saw immediately.
21 We think that that is indicative of the fact the pellets
22 when they went in in such a velocity pushed out the front
23 flap. Those pellets are -- there are three hundred of them,
24 nearly four hundred of them. They are all over the place.
25 Some you can see singularly embedded up in his shoulder, but

1 the mass of them would have rolled out, fallen out, been --
2 we think, and Mr. Tressel surely thinks -- somewhere in the
3 car and there is no evidence of pellets in the car. If they
4 were on the ground the SLED agent says it would be like
5 looking for a needle in a haystack.

6 Your Honor, I think I've covered everything in the
7 motion. There are a few facts that were added from what
8 came out in testimony that I didn't address in here. But if
9 you've got any questions, I'll be glad to try to answer
10 them. But generally, we're applying for immunity under the
11 protection of persons and property act and common law
12 castle doctrine. I say and because I think we're entitled
13 to immunity under the act, but the standard is still
14 basically the same. The two things is, and you're obviously
15 aware of this, we had no duty to retreat. And also the fact
16 that he's a trespasser and intruder on our property, we
17 really don't even have to show that he was in fear of
18 anything. You're just not entitled to come on somebody's
19 property and be there uninvited, bringing confrontation to
20 them, particularly when you've got a record of assaulting
21 that same individual four years earlier?

22 THE COURT: What about his also protecting
23 potentially Mr. Smith?

24 MR. HUTTO: Well, I added that in and he has a
25 right to do that. In fact --

1 THE COURT: On his property?

2 MR. HUTTO: It is an -- he has a right to protect
3 himself, others and his property. So there's no doubt that
4 he had a right to protect Mr. Smith and protect him with the
5 use of deadly force. And, also, given his size and the fact
6 that it appeared at some point in time to almost everybody,
7 that he was reaching for something. The timing when he was
8 reaching for something varies from person to person, but
9 every single one of them said he was reaching for something.
10 And if Mr. Riley has the impression that he's reaching for a
11 weapon or obtained a weapon, he has a right to repel him.
12 But quite frankly he doesn't even have to wait that long.

13 We think we're entitled -- I think, you know, these
14 are all tragic cases. These people all know each other. I
15 understand all of that. But if there was ever a case that
16 the act was intended to protect the property owner for, we
17 think this is the case, because he brought this not on
18 himself but he was in his yard minding his own business when
19 this confrontation came to him from a person with prior bad
20 blood towards. The person, by everybody's account at least
21 three times was asked to leave. By two other accounts was
22 asked to leave by two different people. By another account
23 asked to leave by all three of the people. You know, two of
24 the accounts asked to leave prior to getting the gun. By
25 one account, only asked to leave after he had the gun. But

1 no doubt asked to leave when a heated -- it's not like he
2 called over -- even when he saw Jeffrey in the yard, it's
3 not like he blew the horn out at the road and said Jeffrey,
4 come over here. I want to talk to you. He went right up to
5 the house, like I say, within a car length or two. They
6 both agreed. He was right there at the corner of the house.
7 He brought it into Mr. Riley's yard. Mr. Riley is not
8 required to take that from somebody who had beaten him up
9 before and is on his property and he's told him to leave.
10 And we just think that it's pretty clear that, you know, Mr.
11 Green was not backing down. He did not pack up and go on
12 home. He was not backing down. And Mr. Riley had a right
13 to defend himself and a right to defend Mr. Smith. And he
14 did that. Thank you.

15 THE COURT: Yes, ma'am?

16 MS. CORNWELL: Thank you, Your Honor. It's the
17 State's position that one, the Defendant's not entitled to
18 immunity under 16-11-448. I believe that the language of
19 that statute is clear and unambiguous where it says that
20 deadly force may be used: One, against whom the deadly
21 force is used is in the process of unlawfully and forcefully
22 entering or has unlawfully and forcefully entered the
23 dwelling; number two says that it's okay to use deadly force
24 who has reason to believe that unlawful and forcible entry
25 or unlawful and forcible act is occurring or has occurred.

1 The statute is clear that it not only has to be an unlawful
2 entry, but there has to be a forcible entry. The reason
3 behind this is clear. Some sixteen year old kid breaking
4 into your car on your property is obviously they're
5 unlawful. But that doesn't give a homeowner the right to
6 come out and just shoot to kill the kid for breaking into
7 your car because it's on your property. It has to be an
8 unlawful and forcible entry. There is no testimony that
9 there was any sort of forcible entry onto this property.
10 The Defendant himself admits that there's no -- there's no
11 fence, there's no barricade, there were no signs, nothing
12 that would have prevented or had a forcible entry to get
13 onto the property. Even the Defendant himself admits that
14 the victim never tried to forcibly go up on the porch, never
15 tried to forcefully go into the house or forcefully go into
16 any sort of occupied vehicle that was on the property. So
17 that element of unlawfulness may be there, but the
18 forcefulness is not there. And because it was not an
19 unlawful and forcible entry, it does not qualify under
20 subsection (a) of that statute. Because it doesn't qualify
21 under subsection (a), we then go to subsection ©, which
22 argues immunity -- that if he's anywhere he has a right to
23 be, even if unlawful activity is not occurring. And in that
24 case, a valid case of self-defense must be established.
25 Obviously, we know the four elements of self-defense that

1 you can't bring on the difficulty; you have to actually
2 believe that you're in reasonable imminent peril or danger;
3 that a reasonable, prudent man of ordinary firmness would
4 have that; and, that there were no other probable means to
5 avoid the danger. In this case, and I think we can look to
6 Curry. In Curry, the court specifically states that murder
7 defendant was not entitled to immunity from prosecution or
8 protection of the person's and property act where the
9 testimony of the defendant and the eyewitness was in direct
10 conflict as to whether or not the victim attacked the
11 Defendant. In that case Curry says that it absolutely has
12 to go to a jury in that instance. As far as the elements of
13 self-defense, I think if you look at that he was without
14 fault in bringing on the difficulty, and this can actually
15 relate back to subsection (b), because I think section (b)
16 of 16-11-440 also talks about that they can't be on your
17 property in the furtherance of an unlawful act.

18 We've heard all about this truck and this truck that
19 was gotten. Mr. Riley obviously knew that the truck was on
20 Mr. Green's property, that when Mr. Smith went and got the
21 truck and brought it back onto his property, he wasn't sure
22 how he got the truck or what the conversation was or
23 anything like that. But even in testimony from Ms. Riley in
24 the video is that he comes back to the house after letting
25 him off saying I hope those boys don't come onto my

1 property. So he knew that there could have been an unlawful
2 act that was occurring on his property. I think that's a
3 stretch, but under (b) I think that I can at least make that
4 argument. If you go under © the fact that he was without
5 fault in bringing on the difficulty, there's testimony that
6 he was on the porch. In his own testimony he comes off the
7 porch. He gets -- he inserts himself between Mr. Smith and
8 Mr. Green.

9 THE COURT: But does he do anything unlawful up
10 until, according to you, he shoots the Defendant because he
11 has a permit. It is his weapon. Has he done anything
12 unlawful, Mr. Riley, until he actually shoots him, shoots
13 Mr. Green on his own property?

14 MS. CORNWELL: No, unless he is furthering Mr.
15 Smith's concealment or taking of the truck and I don't know
16 that there's any testimony to that.

17 THE COURT: Uh-huh. (Affirmative response)

18 MS. CORNWELL: I was just throwing that out there
19 as there's (a); there's (b); and, now we're on to ©.

20 THE COURT: Okay.

21 MS. CORNWELL: I think it definitely --

22 THE COURT: I guess the only --

23 MS. CORNWELL: -- falls under (a). I don't think
24 it think it should really be considered under (b). It's
25 obviously just in my notes writing down.

1 THE COURT: Let me ask you. What concerns me
2 about your argument is that when you talk about, okay, so at
3 this point he retreated. And you say that he should have
4 stayed away. But does that mean he needs to sit at his
5 house and wait, presumably, for -- and, again, this is
6 hypothetical -- but wait for whatever that intruder is to go
7 arm themselves and come back up and come into his home?
8 Does that make sense? Or to continue to do whatever he --
9 let's say he had a different intent or whatever he was going
10 to do.

11 MS. CORNWELL: And I understand your argument on
12 that. I think that once he goes into the safety of his home
13 and locked his doors, at that point he has retreated and he
14 is in a safe place.

15 THE COURT: But what prevents Mr. Green from not
16 pulling out a gun and blowing through his door and coming
17 into his home.

18 MS. CORNWELL: I mean, I think at that point then,
19 yes, there's a forcible entry and then he --

20 THE COURT: Under the act, do you think he has to
21 wait until Mr. Green comes with a gun and blows through his
22 front door? I mean, I'm been trying to figure out how far
23 we go.

24 MS. CORNWELL: Sure.

25 THE COURT: I mean, and how far or how much we

1 have to do to wait.

2 MS. CORNWELL: And I don't necessarily know that
3 he has to wait on this to happen, but there also has to be
4 some sort of offensive action on the part of Mr. Green. He
5 can't just assume that this is going to happen.

6 THE COURT: Well, how is he not fighting Mr. Smith
7 an offensive action and then yelling at him and telling
8 him, I going to get you and then turning around and walking
9 away and looking for something to hit, presumably, Mr. Riley
10 with or potentially Mr. Smith with, as well.

11 MS. CORNWELL: I think you can look in some part
12 at Justice Beatty's dissent in Dickey. Obviously, Dickey
13 was a little bit of a different situation here. But in his
14 dissent he specifically says because Dickey could have
15 remained inside behind the safety of locked doors to wait
16 for the police, there is evidence that Dickey could have
17 avoided the confrontation. And I think in this case we talk
18 about the defense of others and the defense of Mr. Smith.
19 But even in the defense of others, there has to be a
20 reasonable imminent belief that there's peril of great
21 bodily injury or death that's going to occur, even for the
22 defense of others. I think there's been testimony that Mr.
23 Smith and Mr. Green were friends. They, you know, had
24 interactions before. He offered money and everything else,
25 that there was no weapon. Even Mr. Riley said that when

1 they're having that argument, he never saw a weapon. He
2 never saw anything. He didn't see -- and this is the
3 Defendant's testimony -- that he didn't see anything in his
4 hands until after he came back outside with the weapon. So
5 at that point, even the defense of others is arguable.

6 THE COURT: But he kept pushing him. I mean, my
7 understanding is from the testimony I heard was that Mr.
8 Green was pushing Mr. Smith. And Mr. Smith swung at him.
9 But, I mean, they were pushing him. This was a physical
10 altercation. I mean, it was an assault.

11 MS. CORNWELL: But I think that that's a stretch
12 from a simple assault to imminent death or serious bodily
13 injury.

14 THE COURT: I guess there's a battery too because
15 he touched him and he pushed him. So I guess there's an
16 assault and battery.

17 MS. CORNWELL: But, again, the standard isn't that
18 there has to be an assault. It has to be that there is a
19 reasonable, imminent fear of death or great bodily injury.
20 I don't think that the Court would want to say that anybody
21 that pushes somebody is automatically entitled to be killed
22 because that would obviously not be in the best interest of
23 --

24 THE COURT: But couple that with him looking for
25 something on the ground. He could find anything to pick up,

1 even if it was simply a board. You know, you could pick up
2 a board and crack someone over the head. We've all seen
3 people die over things like that.

4 MS. CORNWELL: But even Mr. Riley's own testimony
5 was that before he went inside and got the gun, there was
6 nothing in his hands. There was no weapon. There was no
7 anything. So to say that he went and got the gun in defense
8 of others is still taking that action to an extreme. And
9 when you look at, you know -- in the dissent on Dickey,
10 Beatty also says that Dickey could not have considered
11 himself in imminent danger as Dickey readily exited a locked
12 building to continue the confrontation outside of the
13 apartment building. And what Justice Beatty is explaining
14 in his dissent is exactly what happened here. How can you
15 be in so fear of your life and threat of bodily injury and
16 peril if you're willing to exit a safe place to reinsert
17 yourself into a confrontation. I think if you look at the
18 elements of self-defense, you know, he fails on the fact
19 that he actually believed he was imminent danger of losing
20 his life or sustaining bodily injury because he reinserts
21 back into situation after he able to remove himself. I
22 think that if you look at the reasonably prudent man of
23 ordinary firmness and courage, I believe that anybody else
24 would say I will call law enforcement. Even his own wife
25 was saying don't go out there. Don't go out there with a

1 gun.

2 THE COURT: Well, what about their prior history
3 of them having been a person that had beaten up Mr. Riley
4 four years earlier?

5 MS. CORNWELL: Well, I believe that there was an
6 extended period of time that occurred between those two
7 instances. You've heard testimony that they weren't there
8 for Mr. Riley. They even informed Mr. Riley I'm not here
9 for you. I'm not here for you. So letting Mr. Riley that
10 there was no beef. I'm here for Mr. Smith and to talk about
11 the truck. As far as the assault goes, the incident report
12 shows and the testimony is that there were multiple people
13 in the assault. It's not like Mr. Green just one on one
14 assaulted him, in fact --

15 THE COURT: I understand it was a group of people.
16 At least two we know of. But, again, these people are all
17 related. And if your first cousin is willing to beat you up
18 or relations are going to beat you up four years ago, it
19 seems to not be out of logic that they would do it again
20 would the need arise. And could the need arise.

21 MS. CORNWELL: And I guess speculatively you could
22 assume that. You could assume that Mr. Riley could also
23 have had malice in his mind and aforethought in his heart
24 where he sees this guy that's beat him up before and he has
25 the perfect opportunity to exact revenge on this person.

1 And that's where the anger came in. And I think that he
2 testified that he was angry and that he was tired of this.
3 And so I think that that could go to malice. And that also
4 shows that a reasonable person who is fear of great bodily
5 injury, death, isn't going to come back and exit a house
6 that they're safe where they can call the police, where his
7 own wife is telling him, don't go out there. Don't put
8 yourself in that situation. And as far as having no other
9 probable means to avoid the danger. Well, again, he could
10 have stayed in his locked house at that point. He could
11 have called the police, you know. I don't believe the that
12 the ejection of shooting somebody to get them off the
13 property is lawful when it is not taking in a measure of
14 self-defense. And I don't believe that he has proven a
15 valid case of self-defense. And, again, the law stated that
16 if there is any conflict in testimony as to whether or not
17 the victim attacked the Defendant, then that hasn't
18 established the necessary elements under the person's and
19 property act. And that that's got to go to a jury at that
20 point.

21 So I think that he's failed to establish that he's
22 entitled to immunity under section (a) because there was no
23 forcible entry. And I think that he's failed to establish a
24 valid case of self-defense as required under section ©
25 because I think that a jury can reasonably infer that he was

1 not acting as a reasonably prudent person would act, that he
2 did have other probable means to avoid the fatal incident,
3 that he did not fear of -- he did not have a reasonable or
4 actual fear of losing his life or sustaining bodily injury.
5 And it could be argued that he was within fault in bringing
6 on the difficulty when he reinserted himself in the
7 situation.

8 THE COURT: On his own property?

9 MS. CORNWELL: Yes. And nobody's arguing that
10 curtilage isn't a part of the property. But the intent of
11 the legislature is clear where it said a forcible entry into
12 an occupied residence, dwelling and all of that. There was
13 no forcible entry here and nobody has made any claim that
14 there was any sort of forcible entry of any type, that there
15 was simply an argument with no weapons, with no threats,
16 other than one push and one swing that would have escalated
17 this to where a reasonably prudent person of ordinary
18 firmness and conviction would think that they were going to
19 fear great bodily injury or death. So I believe -- the
20 State's argument is that he's failed under section (a)
21 because it was not a forcible entry. He's failed under
22 section © because he's not established a valid case of self-
23 defense. I think that the Supreme Court in Curry has
24 indicated that there's any dispute in eyewitness testimony
25 and the Defendant's testimony as to whether an attack

1 occurred on the property, that it goes to a jury. And we
2 would respectfully ask the Defendant's motion be denied.

3 THE COURT: Yes, sir.

4 MR. HUTTO: Just briefly.

5 THE COURT: A brief response.

6 MR. HUTTO: Very brief. I've got something for
7 you. I'm going to F you up. That's a threat. We knew
8 about the threat. She said one swing, one push. The
9 testimony is there was a lot more confrontation than one
10 swing, one push. What she cites in Dickey is, in fact, the
11 dissent. That is not the ruling in the case. And it is
12 clear that if Mr. Riley went back in his house with the
13 intent to go out and kill Mr. Green, he'd have grabbed his
14 pistol, which is loaded with more than one shot and is
15 designed to shoot at people as a self-protection weapon,
16 rather than grab a shotgun with a #8 bird shot. Which was,
17 we think, intended to say I'm serious about this. And
18 that's what was going to happen until he saw him reaching
19 for something. He then reacted with the weapon he had in
20 hand. But he did not leave the house with the intent to go
21 out and kill Mr. Green or he would have certainly taken a
22 better weapon.

23 THE COURT: All right. Y'all, I'm going to take
24 it under advisement but I'll let y'all know something
25 shortly, okay?

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MS. CORNWELL: Thank you, Your Honor.

MR. HUTTO: Thank you, Your Honor.

THE COURT: Thank you all.

(This proceeding was concluded)

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE ABOVE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 19 - 20 DAY OF SEPTEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

December 18, 2016

Defendant.

ORDER GRANTING IMMUNITY FROM PROSECUTION

The intended purpose of the Protection of Person's and Property Act (the "Act") is to codify the common law Castle Doctrine, "which recognizes that a person's home is his castle." S.C. Code Ann. § 16-11-420(A). The Act goes on to state, "[t]he General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution . . . for acting in defense of themselves and others." S.C. Code Ann. § 16-11-420(B). Further, the Act provides "persons . . . have a right to expect to remain unmolested and safe within their homes . . ." and "no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required

to needlessly retreat in the face of intrusion or attack.” S.C. Code Ann. §§16-11-420(D), (E). An individual “who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer . . .” S.C. Code Ann. 16-11-450(A). In other words, section 16-11-450 provides immunity from prosecution when an individual is found to be justified in using deadly force under the Act. *See State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013). To be immune from prosecution, the Defendant must prove, by a preponderance of the evidence, his actions fall within the scope of the Act. *See State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 655 (2011).

Here, Defendant claims protection under section 16-11-440(A) and section 16-11-440(C) of the Act. Under subsection (A):

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440(A). Subsection (C), referred to as the “stand your ground provision,” provides:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but

not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person

S.C. Code Ann. § 16-11-440(C). In other words, the "stand your ground" provision deals with the use of force by a person who is attacked in another place where he has a right to be. *Curry*, 406 S.C. at 370, 752 S.E.2d 266. "[A] valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat."¹ *Curry*, 406 S.C. at 371, 752 S.E.2d at 266.

This Court finds Defendant is entitled to immunity under the "stand your ground" protections of section 16-11-440(C).

The Defendant has met the burden of proving he was in reasonable fear of death or great bodily injury to himself or another person at the time he shot Green. The Defendant was not engaged in an unlawful act when the incident occurred and he was attacked in a place where he

¹ The four elements required to establish self-defense are as follows:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)

had a right to be. See *State v. Jones*, 416 S.C. 283, 295, 786 S.E.2d 132, 138 (2016) (finding "another place" as stated in subsection (C) encompasses a person's residence); *State v. Wiggins*, 330 S.C. 538, 548 n.15, 500 S.E.2d 489, 494 n.15 (1998) (noting the Court follows the general rule that the absence of a duty to retreat also extends to the curtilage of a home). Further, Defendant satisfies the requisite elements of self-defense. See *Curry*, 406 S.C. at 371, 752 S.E.2d at 266 (stating the elements of self-defense, save the duty to retreat, must be established in order to receive immunity under section 16-11-440(C) of the Act).

At the time the incident occurred, Green came on to Defendant's property uninvited, initiated a verbal and physical altercation with Smith—a friend and guest of Defendant's, refused to leave Defendant's property when asked several times by Defendant and his wife, and threatened Defendant; thus, the Defendant was without fault in bringing about the difficulty. See *Davis*, 282 at 46, 317 S.E.2d at 453. Defendant actually believed he was in imminent danger of losing his life or sustaining great bodily injury—Defendant had been beaten by Green in the past; Green threatened Defendant when he demanded that Green get off his property; and Defendant believed he saw Green reaching for a gun after Green said "I've got something for you." *Id.* Further, the Court finds a reasonably prudent person of ordinary "firmness and courage" would have entertained the same belief if in the position of the Defendant. *Id.* Therefore, Defendant had no duty to retreat from Green, and Defendant was justified in using deadly force because he believed such force was necessary to prevent death or great bodily injury to himself. Immediately following the incident, Defendant put down the shotgun, walked into his home and called 911 to report the incident. Defendant cooperated with law enforcement, made no attempt to conceal any evidence, did not request an attorney, and voluntarily gave both video and written statements to law enforcement.

After reviewing the testimony and evidence presented at the Hearing, and after considering the Parties' arguments and the relevant case law, it is **THEREFORE ADJUGED, ORDERED, AND DECREED** that Defendant Charles Riley is entitled to immunity from prosecution in this case pursuant to S.C. Code Ann. § 16-11-440(C). The charges against Charles Riley are hereby dismissed.

IT IS SO ORDERED.



Carmen T. Mullen

Judge, First Judicial Circuit

~~September 29, 2016~~

Oct 4

The Supreme Court of South Carolina

The State, Appellant,

v.

Charles Thomas Riley, Respondent.

Appellate Case No. 2016-002123

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ATTORNEY GENERAL'S
OFFICE

The Honorable Carmen T. Mullen
Orangeburg County
Trial Court Case No. 2016GS3800731

ORDER

Pursuant to Rule 204(a) of the South Carolina Appellate Court Rules, the appeal in the above entitled matter is hereby transferred to the South Carolina Court of Appeals.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

October 18, 2016

cc:

C. Bradley Hutto, Esquire

✓ Alan McCrory Wilson, Esquire

Ashley B. Cornwell, Esquire

The Honorable Jenny Abbott Kitchings

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OCT 19 2016

Referred to

Answered

Aplin/dm

NOTICE OF APPEAL FROM A RULING IMPOSED BY THE COURT OF
GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

OCT 20 2016

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

ATTORNEY GENERALS
OFFICE

Carmen T. Mullen, Circuit Court Judge

Case No. 2016-GS-38-0731
Warrant No. 2016A38107001253

The State,

Appellant,

v.

Charles Thomas Riley

Respondent.

NOTICE OF APPEAL

The State hereby appeals the ruling by the Honorable Carmen T. Mullen granting immunity to the respondent following a Duncan hearing held on September 19, 2016 and final order filed on October 4, 2016. Due to one of the principal issues on appeal being the constitutionality of §16-11-410, *et seq.* of the S.C. Code (2006) this appeal is made directly to The Supreme Court of South Carolina pursuant to Rule 203(d)(1)(A)(ii), SCACR.

October 12, 2016
[Notice sent via U.S. Mail on this date]


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