

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable R. Markley Dennis, Circuit Court Judge

THE STATE,

ORIGINAL
RECEIVED
MAY 31 2017
SC Court of Appeals
RESPONDENT,

V.

AHSHAAD MYKIEL OWENS,

APPELLANT

APPELLATE CASE NO. 2016-000298

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT NO. 49 (PHOTOGRAPH OF DECEDENT AND FRIEND).**

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
STATE OF SOUTH CAROLINA,	)	CASE NO. 2015-GS-10-01107;
	)	2015-GS-10-01108;
	)	2015-GS-10-01109;
	)	2016-GS-10-00754
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
AHSHAAD OWENS,	)	
	)	
DEFENDANT.	)	
	)	

February 8, 2016 - February 10, 2016

Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis and a Jury.

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

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1 evidence. But it is proper for them to discuss that
2 evidence with you, to suggest reasonable inferences that you
3 may drawn from that evidence, and to give you suggestions of
4 how to resolve this case. Very helpful. Very important.
5 Please remember though while important, never should they be
6 considered evidence.

7 Following that, I will then give you the instruction on
8 the law where we will talk in more detail about the burden
9 of proof.

10 We will talk from various other legal aspects of this
11 dispute. And I will define for you two elements of each of
12 those crimes that Mr. Owens is accused of committing. And
13 then after that you will be instructed to retire, apply that
14 common sense and sense of logic and reason fairly and
15 impartially in deciding the facts and then do the same thing
16 in applying the law.

17 I look forward to trying this case with you. It is an
18 honor to serve as a judge with each one of you. I thank you
19 for your attention to my remarks and ask you now to give
20 that same attention to the attorneys as they give their
21 opening statements.

22 Ms. Linder.

23 MS. LINDER: Thank you, Judge.

24 **OPENING BY MS. LINDER:**

25 On the October the 10th of 2014 the defendant in this

1 case, Ahshaad Owens, had a plan. He had a plan, and he
2 followed through.

3 The defendant contacted the victim, Jarrod Howard, and
4 set up a drug transaction. He had a cover. He contacted
5 his friend Phillip Jewell 1 for transportation. He had a
6 driver. He grabbed his backpack, put his gun inside of it.
7 He had means.

8 He had a plan. He set his sights on an easy target.
9 His plan was to rob Jarrod at gunpoint. Around four o'clock
10 on a sunny Friday afternoon in October here in Charleston
11 the defendant road in Phillip Jewell 1's 2005 Mazda Six from
12 North Charleston off of Ashley Phosphate all the way
13 downtown to the Elliotborough neighborhood.

14 Phillip Jewell was the driver. And this defendant sat
15 in the rear passenger seat. His backpack was between his
16 legs with a gun in it ready and waiting. He was ready to
17 put the next step of his plan into action.

18 The defendant had the car parked on Percy Street just
19 above Bogart, that intersection. The engine was left
20 running, ready for a quick getaway.

21 Jarrod who was at his house a few blocks away playing
22 video games with his friends asked his childhood friend,
23 Hunter Bessinger, to walk with him.

24 He seemed nervous. He gave Hunter a pocket knife, and
25 he had a pocket knife. Jarrod grabbed his backpack and the

1 two of them started walking around, started trying to find
2 where this defendant set up for a drug deal to go down.

3 Jarrod and Hunter finally found the defendant's
4 selected parking spot. The two of them got in. There were
5 three grown men cramped in the backseat of that Mazda 6.
6 Jarrod was ready to do the exchange.

7 But the defendant wasn't there for a drug deal. He was
8 there for something different, and it was time to put that
9 plan into effect. He reached down to his book bag and he
10 pulled out a black firearm, black handgun. And he pointed
11 it at Jarrod and at Hunter demanding give me everything.

12 Hunter in shock started reaching for his wallet. At
13 the same time Jarrod opens the door to try to make a run for
14 it.

15 He unfortunately did not get that opportunity because
16 this defendant squeezed the trigger and he fired one shot
17 that hit Jarrod in his lower back instantly severing his
18 spine and killed him.

19 The defendant however was not done. He then turned the
20 gun on Hunter demanding give me everything. And then he
21 thought better of it.

22 There was a dead fellow who was just shot laying in the
23 street on a sunny afternoon. People would surely start
24 responding soon. So Hunter was able to make a run for it.

25 The defendant then got out of the car, gun still in

1 hand, and went around the car. He was going with what he
2 originally came there for. He went around the car holding a
3 gun, and he picked up Jarrod's backpack as Jarrod was lying
4 on the ground. He wasn't leaving empty handed.

5 After successfully executing his plan the defendant and
6 his driver had a straight shot up to I-26. Rode up 26, made
7 a few stops along the way just casually and then ended up
8 going to a girl's house in a neighborhood called The Gables
9 in North Charleston. The coast was clear. Everything was
10 set, or so he thought.

11 Throughout the course of this trial you are going to
12 hear from a number of witnesses. You are going to hear from
13 police detectives. You are going to hear from 911 callers.
14 You are going to hear from the pathologist. You are going
15 to hear from other concerned citizens from the
16 Elliottborough neighborhood. You are going to hear from
17 the crime scene people. And most importantly you were going
18 to hear from Hunter, Hunter who was both a victim and a
19 witness in this case.

20 At the conclusion of the trial I will address you again
21 and ask you to apply that common sense, to apply your common
22 sense and come back with murder, verdicts on murder,
23 possession of a weapon during the commission of a violent
24 crime, armed robbery, and criminal conspiracy. Thank you.

25 THE COURT: Mr. King.

1 MR. KING: Thank you, Your Honor.

2 **OPENING BY MR. KING:**

3 That day Ahshaad was going downtown to buy some Xanax
4 pills from this guy named Jarrod who died -- who passed
5 away. It is a guy he had met before. It is a guy he bought
6 pills from before without any problems. And there was no
7 reason to think anything would go wrong or any problems
8 today.

9 It was 4:00 p.m., broad daylight on a Friday in front
10 of a bar downtown. And he is in the backseat of a small
11 Mazda car. And as he is sitting in the backseat of that
12 car, Jarrod, the guy is expecting to see, has brought
13 someone else, a bigger guy, Hunter Bessinger. And he has
14 never seen this person before. And that person has never
15 seen Ahshaad before.

16 But that person gets in this small car first. And now
17 Hunter Bessinger is between Ahshaad and Jarrod. And he has
18 never met this guy before. And he has now cramped himself
19 in between them in this small car.

20 And Ahshaad is going to tell you his side of it, and
21 they pulled out the gun. Hunter Bessinger pulls out the
22 gun. Now the gun is pointed at Ahshaad's face. He grabs
23 the gun defending himself. There is a struggle over the gun
24 and the gun goes off by accident hitting Jarrod as he is
25 getting out of the car.

1 Now what happened after that, Ahshaad didn't do
2 everything that he should have done in that situation. But
3 what happened afterwards doesn't change what happened inside
4 of that car. He was 18, and he panicked. But they brought
5 the gun to the situation. They pulled the gun on him. They
6 had a plan.

7 So we are asking you to listen to all of the evidence.
8 And when we get to the end of it I believe you will see that
9 it is not happening the way the State says it happens and he
10 is not guilty of what they are charging him with. Thank
11 you.

12 THE COURT: Thank you, Mr. King.

13 Call your first witness, Solicitor.

14 MR. SOWARDS: Thank you. The State calls Officer
15 Marchant Faustin.

16 (WHEREUPON, the witness was duly sworn.)

17 THE CLERK: Please state your full name and spell your
18 last name for the record.

19 THE WITNESS: Marchant Faustin. Last name
20 F-A-U-S-T-I-N.

21 **DIRECT EXAMINATION BY MR. SOWARDS OF OFFICER MARCHANT**

22 **FAUSTIN:**

23 Q Good afternoon, Officer Faustin. Where do you
24 currently work?

25 A Charleston Police Department.

1 Q And how long have you been with the Charleston Police
2 Department?

3 A Approximately six years.

4 Q And were you with the Charleston -- sorry, what are
5 your current duties with the Charleston Police Department?

6 A I work downtown, Team-1 Patrol, the Peninsula area.

7 Q And when you say Team-1 Patrol what does that mean?

8 A It is the downtown peninsula area.

9 Q Okay. And did you have the occasion to work on October
10 10th, 2014?

11 A Yes, sir.

12 Q And did you become involved in the investigation and in
13 response to this case, State versus Ahshaad Owens on that
14 date?

15 A Yes, sir.

16 Q And how did you become involved in the investigation of
17 this case?

18 A I was working patrol on that day in the Team-1 area.
19 We got dispatched to a call in reference to shots fired in
20 the area of Percy and Bogard. I then responded to the call.

21 Q And what did you see when you responded to the call?

22 A From where I was located I took the route of Line
23 Street to Percy Street and I arrived on Bogard. Once I
24 arrived on the scene I observed the victim laying in the
25 middle of the ground with the gunshot wound to his lower

1 back.

2 MR. SOWARDS: May I approach the witness, Your Honor?

3 THE COURT: You may.

4 Q Officer Faustin, I want to show you what has been
5 marked for identification as State's Exhibits 2, 3, and 4.
6 I will ask you to take a look at those real quick.

7 (WHEREUPON, pause for review of exhibits.)

8 Q And do you know what is in those pictures, sir?

9 A Yes, sir.

10 Q And how do you recognize that?

11 A I recognize this as the -- we called it 121 Beat. I
12 have worked in downtown for a few years, so I am very
13 familiar with the area.

14 Q And are those fair and accurate representations of what
15 you know to be downtown Charleston?

16 A Yes, sir.

17 MR. SOWARDS: Your Honor, at this time the State would
18 move to admit State's Exhibits 2, 3, and 4 into evidence.

19 THE COURT: Any objection?

20 MR. KING: No, Your Honor.

21 THE COURT: Very well. Admit State's 2, 3, and 4, each
22 being a photograph. Admitted without objection.

23 (WHEREUPON, State's Exhibit 2 was admitted into evidence.)

24 (WHEREUPON, State's Exhibit 3 was admitted into evidence.)

25 (WHEREUPON, State's Exhibit 4 was admitted into evidence.)

1 MR. SOWARDS: And also, Your Honor, the State would
2 seek to publish ---

3 THE COURT: You may.

4 MR. SOWARDS: --- these items.

5 THE COURT: You may.

6 While he is doing that, ladies and gentlemen, you will
7 have it published and it will be up here (pointing); but
8 please know that anything that is admitted will accompany
9 you to your jury room and if you need to study it more
10 closely you will have that opportunity when you do begin
11 your deliberation.

12 BY MR. SOWARDS:

13 Q What are we looking at here?

14 THE COURT: What is -- which one is that?

15 MR. SOWARDS: I apologize, Your Honor. This is State's
16 Exhibit 2.

17 THE COURT: Thank you. I'm sorry.

18 A This is the 121 area. The downtown from this area.

19 Q Could you just point out some sort of areas, you know,
20 to see kind of generally what we see.

21 A May I approach up there or point?

22 THE COURT: Yes, you may.

23 A Okay. So ---

24 THE COURT: You need to keep your voice elevated
25 though, please, so the jurors can hear you.

1 A Let's see here. So this is the Septima Clark, also
2 known as the Crosstown. Essentially what I took was on the
3 Crosstown. The Crosstown converts into Line Street. I took
4 Line Street to Percy Street and that is how I got to the
5 area of Percy Street and Bogard.

6 Q I will show you State's Exhibit 3. And what are we
7 looking at here?

8 A More of the same area of Rutledge. Right here
9 (pointing) Coming. Like in around somewhere in this area
10 (pointing) we have the area Percy and Bogard. If you can
11 zoom it one more time I can show you exactly where we were
12 at.

13 Q I will show you State's Exhibit 4.

14 A Okay. Again, from the Crosstown I took Line Street. I
15 made a right onto Percy and then Percy to Bogard in this
16 area over here (pointing).

17 Q And where did you find the victim?

18 A I found him right at the intersection of just probably
19 a little further up Percy before Bogard Street.

20 Q And what was the scene like when you responded?

21 A The first thing I saw I saw the victim laying down with
22 a tunshot wound to his back. And then I saw a few people
23 around the area, a few witnesses that just happened to be
24 the area when the incident possibly happened after or what.
25 Some people on the sidewalk. And again the victim laying on

1 the sidewalk.

2 MR. SOWARDS: Beg the court's indulgence.

3 THE COURT: Certainly.

4 Q And Officer Faustin, did you approach the victim?

5 A Yes, sir. When I arrived on the scene I immediately
6 went to the victim. I saw he had a gunshot wound to his
7 back. At that point I began to apply pressure to the
8 gunshot wound.

9 MR. SOWARDS: The State has no further questions at
10 this time, Your Honor.

11 THE COURT: Cross-examine.

12 MR. KING: Yes, Your Honor.

13 **CROSS-EXAMINATION BY MR. KING OF OFFICER MARCHANT FAUSTIN:**

14 Q Officer, I just wanted to clarify one thing. You said
15 that -- when you first started testifying you said you
16 responded to shots fired?

17 A I can't remember exactly what it was, but something in
18 reference to shots fired; yes, sir. A shooting. Something
19 along those lines.

20 Q It wasn't a response to one shot fired?

21 A I can't remember exactly what exactly the call was.
22 But I just knew it was in reference to shots fired.

23 Q Would it refresh your memory if you are able to look at
24 your police report?

25 A Yes, sir.

1 MR. KING: May I approach, Your Honor?

2 THE COURT: Yes, you may.

3 (WHEREUPON, Defendant's Exhibit Number 1, police report, was
4 marked for identification.)

5 Q I am showing you what has been marked as Defendant
6 Exhibit 1 for ID.

7 A Okay.

8 Q Does that refresh your memory that it was a response to
9 a single gunshot fired?

10 A Yes, sir. In reference to a shooting that had just
11 occurred.

12 Q When you arrived did you see anybody running from the
13 scene?

14 A No, sir.

15 Q Nobody with a weapon or anything?

16 A No, sir.

17 MR. KING: That's all the questions I have, Your Honor.

18 THE COURT: Redirect.

19 MR. SOWARDS: No, Your Honor.

20 THE COURT: Okay. Thank you. You may step down.

21 Call your next witness, please.

22 MS. LINDER: The State calls Brett Gault.

23 (WHEREUPON, the witness was duly sworn.)

24 THE CLERK: Please state your full name and spell your
25 last name for the record.

1 THE WITNESS: My name is Brett Gault, G-A-U-L-T.

2 **DIRECT EXAMINATION BY MS. LINDER OF BRETT GAULT:**

3 Q Good afternoon. What is your occupation?

4 A I am a police officer with the City of Charleston
5 Police Department. I am assigned to Team-1, and I am on the
6 community action squad.

7 Q And what are your current duties with the community
8 action team?

9 A The community action team is basically an extension of
10 patrol. We are patrol officers, but our main responsibility
11 is not to answer calls for service. What we do is we try to
12 foster a relationship with the community. We attend all the
13 community functions. We go to the community monthly
14 meetings where we address concerns, answer questions, things
15 like that. So we are basically a link between the police
16 department and the community.

17 Q And how long have you been employed with the City of
18 Charleston Police Department?

19 A Four years.

20 Q Can you tell the jury just a little bit about your
21 training, education and experience?

22 A Yes. I attended Newberry College where I received a
23 degree in business administration, minor in psychology,
24 minor in coaching.

25 Once getting hired by the City of Charleston I attended

1 the South Carolina Criminal Justice Academy. While at the
2 Criminal Justice Academy I won three awards, one of which
3 was the distinguished graduate award for graduating top of
4 my academy class with higher than a 96 percent. I also
5 received a physical fitness award for completing the
6 challenge run as well as the Clifford A Moyer Award for
7 being the top shooter in the Academy class.

8 Since being out of the Academy I have attended annual
9 block trainings which are a week long each year where we go
10 over refreshers, new policies, new trends going on in the
11 country, go over new laws.

12 And I have also elected to take trainings on my own
13 that I paid for, street crimes training as well as a
14 detective's course.

15 Q And were you working back on October the 10th of 2014?

16 A I was.

17 Q And how did you first get involved in this case, the
18 State versus Ahshaad Owens?

19 A At the time of the incident I was working in the
20 Gadsden Green Community which is between President Street
21 and Hagood Avenue close to the Crosstown.

22 The call went out as a tone out. And what a tone out
23 is it is a long beep just to signify that there is an
24 emergency in process call going on. At that particular
25 moment I was close to Bruegger's Bagels which is on Spring

1 Street. The call went out that there was a possible
2 shooting in the area of Percy and Bogard Street with a
3 possible victim.

4 From where I was located I just took Cannon Street and
5 merged on to the Crosstown, took the Crosstown to Bogard
6 Street all the way to the intersection of Bogard and Percy.

7 Q And what time did you arrive on the scene?

8 A Approximately about 4:07 p.m.

9 Q And when you arrived on scene what did you observe?

10 A When I arrived on the scene I observed I believe
11 Officer Manning was close by with the victim who was face
12 down on Percy Street.

13 As I approached I noticed that there was a group of
14 people starting to gather, come out of their residences. If
15 I had to estimate I would say about 10 to 15 people were
16 starting to gather on the sidewalk.

17 At that point I just started to address the crowd since
18 Officer Manning was already with the victim.

19 Q And when you addressed the crowd did anyone come
20 forward to you?

21 A Yes.

22 Q And who was that?

23 A Hunter Bessinger.

24 Q I had asked if anybody had witnessed what occurred, if
25 anybody had seen any suspects, suspect vehicles. And Hunter

1 Bessinger immediately identified himself to me.

2 Q And can you describe to the jury kind of what the --
3 what the neighborhood in Elliottborough is like.

4 A In that general area it is a relatively quiet part of
5 town compared to other parts of the city. It is very little
6 traffic, vehicular traffic.

7 Recently there has been a lot of college age
8 demographic moving into the area. Very quiet area. There's
9 a few corner stores. But that's about it.

10 Q And did you do any investigation when you were on the
11 scene?

12 A I did not. Immediately upon arriving on the scene I
13 was about the second or third officer. Our primary
14 responsibility is to secure the scene to make sure it is
15 safe, to protect any evidence, to start roping off with
16 police tape the crime scene, to tend to the victim.

17 At that point I was on the scene very little time
18 before Mr. Bessinger identified himself. And that is when
19 that became my priority and my role.

20 Q And can you describe his demeanor when you saw Hunter?

21 A Mr. Bessinger was extremely upset. If I to classify it
22 I would say he was in a state of shock. But it was more
23 than that, because when I think of shock I think of someone
24 who has taken a step back and they are not present. He was
25 very much present. He was very much emotional. But he was

1 just he was distraught.

2 It is something I have seen many, many times, you know,
3 when dealing with victims of violence and their family and
4 friends.

5 Q And what did you do upon having Hunter approach you?

6 A It became apparent that he was going to be a witness to
7 the incident. At that point I escorted Mr. Bessinger to my
8 police car. I put him in the back seat and I relocated him
9 just outside of our outer perimeter.

10 Q And why would you put him in the back seat of your car?

11 A We are trained to do so, for two reasons. One, I don't
12 know what all is involved. I don't know if the shooter is
13 still on the scene. I don't know if they are going to come
14 back to the scene, if anybody else involved is there
15 watching what is being said or what we are doing.

16 So for safety purpose is one reason, but then another
17 reason it is very important is to protect his memory and
18 integrity.

19 Because he was a witness I didn't want any other
20 witnesses speaking with him to tamper his memory and
21 recollection of what he observed, so I wanted to isolate him
22 from anybody else to preserve his memory of the incident.

23 Q And after you put Hunter in your police car do you have
24 any other interaction with him or did you ever see him
25 again?

1 A We waited on the scene until I was advised by a
2 detective to go ahead and take him to headquarters where he
3 could be formally interviewed. At which point I escorted
4 him to 180 Lockwood Boulevard and took him upstairs to the
5 central detective's office. I completed my supplemental
6 report.

7 At that point I had no other interaction with Mr.
8 Bessinger and no other involvement in the investigation.

9 MS. LINDER: Beg the court's indulgence.

10 THE COURT: Okay.

11 MS. LINDER: I have no further questions. If you could
12 please answer anything the defense may have.

13 THE COURT: Cross-examine. Any questions?

14 MR. KING: I have no questions, Your Honor.

15 THE COURT: Thank you. You may step down, sir.

16 THE WITNESS: Thank you.

17 THE COURT: Call your next witness, please.

18 MR. SOWARDS: The State calls Thomasina Jakes.

19 (WHEREUPON, the witness was duly sworn.)

20 THE CLERK: State your full name and spell your last
21 name, please. I need you to get close to the microphone.

22 THE WITNESS: First name is Thomasina.

23 THE CLERK: Close to it, please.

24 THE WITNESS: Thomasina Jakes White. Last name White,
25 W-H-I-T-E.

1 **DIRECT EXAMINATION BY MR. SOWARDS OF THOMASINA WHITE:**

2 Q Good afternoon, Ms. White. Where are you from?

3 A Charleston, South Carolina.

4 Q And how long have you lived here in Charleston?

5 A All my life.

6 Q And what is your current occupation?

7 A I work at Rutledge Towers in Environmental Services.

8 Q And do you know why you are here today?

9 A Yes, sir.

10 Q And are you aware of a shooting that occurred on

11 October the 10th, 2014?

12 A Yes, sir.

13 Q And where were you when that occurred?

14 A I was on Percy Street on the way -- on my way to a
15 homecoming parade.

16 Q And could you kind of describe for the jury where that
17 location is?

18 A Percy is in between Bogard and Line Street.

19 Q And did you -- I apologize, did the police respond to
20 the scene?

21 A They did.

22 Q And did you speak with the police?

23 A After it had been over.

24 Q Now you mentioned that you were on the way to work to
25 Burke for the homecoming. What did you see?

1 A Well, I was -- me, my daughter and my grandson was on
2 our way to the parade, as I said. And my daughter stopped
3 to a friend of hers that they went to school with. And they
4 were just talking. And I was talking to the young lady's
5 grandmother.

6 And I looked up and I saw a red -- reddish car turn the
7 corner. But then after that I just kind of dropped my head
8 a little bit and then heard the gun went off and saw two
9 guys struggling to get out of the car. And that's when the
10 victim kind of metal out to -- to the street.

11 Q And what did you do after you saw that?

12 A Well, with a gun fire everybody seems to scatter. I
13 started to go into the porch where I was standing. But I
14 changed my mind and I started toward the victim. And as I
15 was walking toward him I was asking him if he was okay. And
16 by the time I got to him he -- already on the ground.

17 Q And how was he position on the ground?

18 A He was on his -- he was laying flat with his face
19 turned toward to where I was by him.

20 Q And did you do anything after you got to where the
21 victim was located?

22 A Well, I started talking to him to see if he could still
23 hear me. He was gurgling and it sounded like he was trying
24 to say something. But it wasn't really -- it wasn't clear
25 at all what he was trying to say.

1 So I called 911. But I asked those that were standing
2 around to somebody to please call 911; and they do seem like
3 they were taken too long, and so I called.

4 MR. SOWARDS: Beg the court's indulgence.

5 THE COURT: Yes, sir.

6 Q Now you mentioned that when after you heard the gunshot
7 you turned back and you saw people getting out of the car.
8 Did you see the car again?

9 A After they got out of -- they struggled and got out of
10 the car. Then the car just zoomed down Percy Street toward
11 Line Street.

12 Q And were you able to tell how many people were in the
13 car?

14 A I saw the driver.

15 MR. SOWARDS: Beg the court's indulgence.

16 THE COURT: Uh-huh.

17 Q Now, Ms. White, we have met before; right?

18 A Yes.

19 Q And when we met before do you recall telling us that
20 there was another individual in the back seat slumped over?

21 A Slumped down in the back seat, yes, sir.

22 Q So you did see ---

23 A Pardon me. Yes.

24 MR. SOWARDS: That is all the questions that the State
25 has. Please answer any questions the defense may have.

1 THE COURT: Cross-examine.

2 **CROSS-EXAMINATION BY MR. KING OF THOMASINA WHITE:**

3 Q Ms. White, I just kind of want to go through it with
4 you again too. You -- did you notice anything before you
5 heard a shot?

6 A Yes, they were about to get in the car. They had
7 walked up. The car came from around of of Bogard right
8 there on the corner of Percy and Bogard. And they were
9 entering the car. But Jarrod never made it into the car.

10 Q You said they were entering the car?

11 A Yes, the two guys.

12 Q Were they -- can you describe those two guys; were they
13 white or black?

14 A One was white, tall. The other one was maybe half his
15 size but he was a light-skinned black man. Young man.

16 Q You testified that you saw two guys struggling to get
17 out of the car.

18 A Those were the two guys that were struggling to get out
19 of the car.

20 Q Okay. So you saw them -- you saw two guys get in the
21 car?

22 A They were getting into the car. But after the gunfire
23 went off then they started -- they struggled to get out of
24 the car. Because the car was rocking back and forth.

25 Q Do you remember -- do you remember giving a statement

1 to police back when this happened? Do you remember meeting
2 with the police the day this happened, a Detective
3 Krasowski - I think he is maybe a taller officer with
4 blondish hair ---

5 A Uh-huh.

6 Q --- and giving him a statement that he recorded; do you
7 remember that?

8 A The other one.

9 Q And do you remember telling that officer, or Detective
10 Krasowski, that a black guy got out of the car first?

11 A Yeah, because he was the one that turned the corner
12 first; and then the tall white guy was behind him.

13 Q Okay. Right, you told them that you saw a black guy
14 get out of the car first, and he was running; and then you
15 saw a white guy running behind him?

16 A Yes.

17 Q And is that the same white guy that you saw who came --
18 who was back at the scene later?

19 A Yes.

20 MR. KING: Beg the court's indulgence for one moment.

21 THE COURT: Certainly.

22 MR. KING: That is all the questions I have, Your
23 Honor.

24 THE COURT: Redirect.

25 **REDIRECT EXAMINATION BY MR. SOWARDS OF MS. THOMASINA WHITE:**

1 Q Ms. White, when you spoke with police did you tell them
2 about a third black male that exited the vehicle?

3 A No.

4 Q Did you --

5 MR. SOWARDS: Beg the court's indulgence.

6 THE COURT: Sure.

7 Q And just to clarify, Ms. White, as all this was
8 happening you were walking towards the homecoming parade
9 kind of glancing back as you were going; is that correct?

10 A I stopped by the house, and then I looked up. Because
11 I was waiting on my daughter. As I said, she was talking to
12 one of her school friends. And I looked up and saw the car
13 had already turned the corner. Wasn't minding anybody's
14 business. I was just looking. I was just waiting for her
15 to finish talking. Because we were already running late for
16 the parade.

17 MR. SOWARDS: No further questions from the State, Your
18 Honor.

19 THE COURT: Okay. Recross?

20 MR. KING: No, Your Honor.

21 THE COURT: Ms. White, you may step down. Thank you.

22 All right, at this point, ladies and gentlemen, we will
23 take a break and let you go to your jury room. Do not begin
24 with deliberations. Don't discuss the case among
25 yourselves. We will be with you probably in about 10

1 minutes. Thank you.

2 (WHEREUPON, jury exits the courtroom 2/8/16, 3:32 p.m.)

3 THE COURT: Anything from the State before we recess?

4 MS. LINDER: Nothing further.

5 THE COURT: Anything from the defendant?

6 MR. KING: No, Your Honor.

7 THE COURT: We will be at ease for about 10 minute.

8 Thank you.

9 (WHEREUPON, break was had 2/8/16, 3:33 p.m.)

10 (WHEREUPON, trial resumed 2/8/16, 3:45 p.m.)

11 THE COURT: All right. Let the record reflect the
12 defendant is present.

13 Is the defense ready to continue?

14 MR. KING: Yes, Your Honor.

15 THE COURT: Is the State ready?

16 MS. LINDER: Yes, Judge.

17 THE COURT: All right. Bring the jury.

18 (WHEREUPON, jury enters courtroom 2/8/16, 3:47 p.m.)

19 THE COURT: Thank you, ladies and gentlemen. Give your
20 attention now to the next witness.

21 You may call your next witness, Solicitor.

22 MR. SOWARDS: Thank you, Your Honor. The State calls
23 Kellie Miller.

24 (WHEREUPON, the witness was duly sworn.)

25 THE CLERK: Say your full name and then spell your last

1 name.

2 THE WITNESS: Kellie Miller, M-I-L-L-E-R.

3 **DIRECT EXAMINATION BY MR. SOWARDS OF KELLIE MILLER:**

4 Q Good afternoon, Ms. Miller. Where are you from?

5 A Anapolis, Maryland.

6 Q And how old are you?

7 A Twenty-one years old.

8 Q And what do you currently do?

9 A I am a student at the College of Charleston.

10 Q And where do you live, Ms. Miller?

11 A Bogard Street.

12 Q And how long have you lived at Bogard Street?

13 A For about a year-and-a-half.

14 Q Now do you know why you are here today?

15 A Yes.

16 Q And are you aware of a shooting that occurred on
17 October the 10th, 2014?

18 A Yes.

19 Q And where were you when that happened?

20 A In my house.

21 Q Can you describe for the jury what you were doing at
22 the time.

23 A I had just come back from the beach and I had walked in
24 and I was in my living room.

25 Q And what happened after that?

1 A I heard a loud noise. And I thought that someone had
2 thrown a rock at my window. So I looked out of the window.

3 Q And could you describe for the jury where this window
4 is?

5 A It is right next to Percy Street across from the Mini
6 Bar.

7 Q And what did you see when you looked out of your
8 window?

9 A I saw a man running in the opposite direction towards
10 Coming Street.

11 Q And what did that man look like?

12 A He was white, had dark hair and had a striped green
13 shirt on.

14 Q And what did you do after you heard the sounds, looked
15 out of your window and you saw the man running away down
16 toward Coming Street?

17 A I kind of just looked around to see what was going on.
18 And I saw people come out of the Mini Bar. And then I went
19 ran outside to see exactly what was happening, and I saw a
20 man lying on the ground bleeding.

21 Q And you mentioned the man in the green and white
22 striped shirt. Did you ever see him again?

23 A Yes, he came back to the scene about like three minutes
24 later.

25 MR. SOWARDS: Beg the court's indulgence.

1 THE COURT: Yes, sir.

2 MR. SOWARDS: The State has no further questions at
3 this time, but please answer any questions the defense may
4 have.

5 THE COURT: Cross-examine.

6 MR. KING: Thank you, Your Honor.

7 **CROSS-EXAMINATION BY MR. KING OF KELLIE MILLER:**

8 Q Mr. Miller, did this -- you said you looked out of the
9 window and saw this guy running by?

10 A Uh-huh.

11 Q Did that happen ---

12 THE COURT: Is that a yes?

13 Q --- pretty quickly?

14 A Yes.

15 THE COURT: Okay.

16 Q Did that happen pretty quickly?

17 A Yes.

18 Q Okay. Do you remember was that person -- do you
19 remember if that person was holding anything, a gun for
20 example?

21 A No, not that I recall.

22 Q A backpack, did you see a backpack?

23 A No, not that I recall.

24 Q Is it possible that he could have something and it
25 happened so quickly that you missed it?

1 A Yes.

2 Q You didn't see the shooting?

3 A No.

4 Q You just heard it?

5 A Yes.

6 Q Did you hear anything before the shooting?

7 A No.

8 Q You saw no one else running from the scene?

9 A No.

10 Q And you said that you were -- I guess you went down on
11 the street and you were standing there while the police were
12 coming and all of that?

13 A Yes.

14 Q And you said 30 minutes later you saw him return to the
15 scene?

16 A I don't think it was thirty minutes. It was a few
17 minutes.

18 Q Oh; I thought you said ---

19 A No, it was probably like three or five.

20 Q Three to five minutes?

21 A Yeah.

22 MR. KING: That is all the questions I have.

23 THE COURT: Redirect?

24 MR. SOWARDS: None, Your Honor.

25 THE COURT: Okay. Thank you. You may step down, Ms.

1 Miller.

2 Call your next witness please.

3 MS. LINDER: The State calls Paul Krasowski.

4 (WHEREUPON, the witness was duly sworn.)

5 THE CLERK: Please state your full name and then spell
6 your last name for the record.

7 THE WITNESS: Detective Paul Krasowski. Last name is
8 spelled K-R-A-S-O-W-S-K-I.

9 **DIRECT EXAMINATION BY MS. LINDER OF PAUL KRASOWSKI:**

10 Q Good afternoon.

11 A Good afternoon.

12 Q Where do you work?

13 A I work for the City of Charleston Police Department.

14 Q And what area do you work in?

15 A I work in the Homicide Unit which is formally called
16 the Violent Crimes Unit.

17 Q How long have you been in law-enforcement?

18 A I have been an officer now for approximately ten
19 years.

20 Q And were you in the Homicide Unit or Violent Crimes
21 Unit back in October of 2014?

22 A I was.

23 Q And were you involved at all in any way during the
24 investigation of this case, the State versus Ahshaad Owens?

25 A I was involved. It was -- we were wrapping up our

1 regular work day when this call went out. So I responded to
2 the scene soon after it went out and was started off by
3 canvassing the area.

4 Q And in canvassing the area did you talk to witnesses?

5 A I did. I made contact with several different residents
6 in the area, door-to-door contact, just trying to reach out
7 to whomever may have heard anything or saw anything.

8 Q And in this case did you interview a 911 caller,
9 Thomasina Jakes White?

10 A I did interview her.

11 Q And when you interviewed her did she tell you how many
12 individuals she saw exit the vehicle?

13 MR. KING: Your Honor, objection to hearsay.

14 THE COURT: I don't think it is. It was a challenge to
15 what the recollection as I recall. So I would overrule it
16 on that basis.

17 A Proceed?

18 Q Yes.

19 A Yes, she did state that she saw two subjects exit the
20 rear door of the vehicle.

21 Q And then did she see any additional people exit the
22 car?

23 A No. She saw two subjects exit the vehicle.

24 MS. LINDER: If I may approach the witness, Your Honor.

25 THE COURT: You may.

1 Q Would it help refresh your recollection if you look at
2 your report?

3 A Yes.

4 THE COURT: Let's have it marked, please.

5 MS. LINDER: Yes.

6 (WHEREUPON, State's Exhibit Number 31, report, was marked
7 for identification.)

8 Q Okay. If you would like to review your report
9 approximately two-thirds of the way down on that page.

10 A Yes, ma'am.

11 Q And does that help refresh your recollection?

12 A That does. Yes.

13 Q How many individuals did Ms. White tell you that she
14 saw exit the vehicle?

15 A So Ms. White observed two subjects exit the rear door
16 of the vehicle. She also observed a third suspect that was
17 the driver of the vehicle.

18 Q And when she gave her interview with you did she
19 mention anything about a struggle?

20 A No struggle. She didn't mention anything of a
21 struggle.

22 Q And in her interview with you did she mention the order
23 of the gunshot and people getting out of the car?

24 A She did. So she had just walked past this incident
25 location. She heard a loud bang which diverted her

1 attention back to the area where she had just passed.

2 Her attention focused to a red vehicle that was parked
3 on the side of the road. She observed the two people get
4 out of the rear; and she first identified a light-skinned,
5 black male get out of the vehicle followed by a white male
6 get out of the vehicle.

7 Q And I guess I don't know if I was writing or not paying
8 attention, did she in your interview with her distinguish
9 whether it was a gunshot or hearing a noise and then exiting
10 or exiting first?

11 A How I interpreted it and how I believed it came out was
12 that the loud noise was the gunshot that she heard first
13 which diverted her attention back to that vehicle and it was
14 at that point then when she saw the subjects running out --
15 get out of the rear door of the vehicle.

16 MS. LINDER: Beg the court's indulgence.

17 THE COURT: Okay.

18 MS. LINDER: I have nothing further. If you could
19 answer anything the defense may have.

20 THE COURT: Cross-examine.

21 MR. KING: Court's indulgence for one moment.

22 **CROSS-EXAMINATION BY MR. KING OF DETECTIVE KRASOWSKI:**

23 Q Detective, you said you interviewed Thomasina White; is
24 that right?

25 A That is correct.

1 Q And didn't she tell you that the guy who was shot,
2 right, she ended up staying by that person until the police
3 came; isn't that right?

4 A That is correct..

5 Q She said that that person never got in the car; is that
6 right?

7 A If you will give me one second if I could just refer
8 back to my report.

9 (WHEREUPON, pause to review report.)

10 A Could you repeat your question?

11 Q She told you that the person who was shot, the guy who
12 shot, never got in the car?

13 A I don't know that she specified that part of it.

14 MR. KING: Your Honor, I think I move to -- is it
15 possible to admit Thomasina White's statement? Is that --
16 well

17 THE COURT: Well, did he take the statement?

18 MR. KING: He did, Your Honor.

19 THE COURT: Huh?

20 MR. KING: He did.

21 THE COURT: Okay. Well, why don't you show him the
22 statement and see if that refreshes his recollection. Isn't
23 that -- if it's --

24 MR. KING: May we approach, Your Honor?

25 THE COURT: Yes.

1 (WHEREUPON, bench conference was had.)

2 MR. KING: I have no other questions.

3 THE COURT: All right. Redirect?

4 MS. LINDER: No redirect, Your Honor.

5 THE COURT: You can come down.

6 (WHEREUPON, witness steps down from witness stand.)

7 THE COURT: Next witness, please.

8 MS. LINDER: Your Honor, if we could approach over
9 scheduling.

10 THE COURT: Yes.

11 (WHEREUPON, bench conference was had.)

12 THE COURT: Ladies and gentlemen, at this point it
13 appears we are at a point where we are going to recess a
14 little earlier today. Okay.

15 I have a matter not related to this that is scheduled
16 at 9:30. If you will be in your jury room, please, by 9:45.
17 It shouldn't take me that long to finish that. Again, it is
18 not related to this matter at all.

19 Please remember that you are not at liberty to discuss
20 this case among yourselves. You are not at liberty to talk
21 to anyone about it outside of the courtroom. That includes
22 if you go home tonight and there is somebody there I image
23 the first question is going to be what are you doing, what
24 is this case about.

25 If you were to respond you will have commenced your

1 THE COURT: Anything we need to take up the State has
2 this morning before we bring in a jury?

3 MS. LINDER: There is an exhibit, a photograph that we
4 had shown Mr. King.

5 THE COURT: All right. Well, he is coming in. We will
6 discuss that. Is there anything else other than that?

7 MS. LINDER: No, Judge.

8 THE COURT: All right. Good morning, Mr. King.
9 Anything from the defendant that we need to take up

10 this morning ---

11 MR. KING: No, Your Honor.

12 THE COURT: --- before we bring in the jury? All
13 right. There is a photograph. Is that going to be resolved
14 or do we need to put something on the record concerning
15 that?

16 MR. KING: Your Honor, she was -- they were going to
17 offer a photograph of the victim in this case. It looks
18 like he has kind of got his arm around his friend. I just
19 don't know what that is probative of, and it seems to be an
20 appeal to the sympathy of the jury.

21 THE COURT: All right. Let me see it.

22 (WHEREUPON, document provided to the court.)

23 THE COURT: And what is the purpose of the photograph?

24 MS. LINDER: And, Your Honor, the purpose of the
25 photograph is for the jury to see the victim and also to see

1 he was in the car. A lot of this -- a lot of what we are
2 going to say is about being in the car, sitting in the car
3 and all of that. And I think it shows his height.

4 THE COURT: Which one is -- which one is ---

5 MS. LINDER: The tall one.

6 THE COURT: Okay. All right. I understand your -- I
7 think it has probative value. First of all, we are entitled
8 to see a person that -- we have a name. We are entitled to
9 know the name of the person. So that is fine.

10 Subject to the objection of counsel, I would admit it.
11 And it would probably be relevance and then a 403 issue.
12 And I think certainly the State is entitled to show that,
13 entitled to show the size of the person.

14 We are talking about a small car. We are talking about
15 all sorts of things that a jury has got to assess, so it
16 further goes to -- it further goes to not just identifying
17 the victim but it goes to showing other issues that may
18 become important in deciding the credibility.

19 MS. LINDER: Thank you, Judge.

20 THE COURT: Thank you.

21 MS. LINDER: I am going to go ahead and put it up on
22 the ---

23 THE COURT: All right. Okay.

24 THE COURT: Okay. Thank you. All right. Is the State
25 ready?

1 MS. LINDER: The State is ready, Your Honor.

2 THE COURT: The defendant is ready?

3 MR. KING: Yes, Your Honor.

4 THE COURT: Thank you.

5 (WHEREUPON, jury enters courtroom February 9, 2016, 9:53
6 a.m.)

7 THE COURT: Okay. Thank you so much. Thank you,
8 ladies and gentlemen. Good morning to you.

9 (WHEREUPON, reply in unison by jury of good morning.)

10 THE COURT: And we are ready to continue. Give your
11 attention please to the next witness. Solicitor, good
12 morning. You may call your next witness.

13 MS. LINDER: Thank you, Your Honor. May it please the
14 court. The state calls Hunter Bessinger.

15 THE COURT: Okay.

16 (WHEREUPON, the witness was duly sworn.)

17 THE CLERK: State your full name and spell your last
18 name.

19 THE WITNESS: Hunter James Bessinger,
20 B-E-S-S-I-N-G-E-R.

21 **DIRECT EXAMINATION BY MS. LINDER OF HUNTER BESSINGER:**

22 Q Good morning, Hunter. May I call you Hunter?

23 A Oh, that's good.

24 Q Where are you from?

25 A I am from Hanahan.

1 Q And how old are you?

2 A Twenty-one.

3 Q How far did you go in school?

4 A I made it to freshman year of college.

5 Q And do you currently have a job?

6 A I do.

7 Q Where do you work?

8 A I work at Boeing.

9 Q And did you know the victim in this case, Jarrod

10 Howard?

11 A Yeah, he was my best friend.

12 Q And how long had you known the victim?

13 A I had known him forever. We were -- got close like

14 senior year in high school. But he lived in Hanahan, so I

15 had always known him.

16 Q Can you describe Jarrod to the jury?

17 A Jarrod was one of the nicest kids I've ever met. And I

18 know everyone says that when stuff like this happens, but he

19 really was. I mean he was awesome. That kid would do

20 anything for anyone. It didn't matter. Good guy.

21 Q And what did he look like?

22 A Jarrod was small, dark hair. He looked like any other

23 average kid you know. But he was -- he was very small.

24 Q At this time I am going to approach and show you what

25 has been marked as State's Exhibit 9. Do you recognize

1 that?

2 A Yes.

3 Q And how do you recognize it?

4 A That is Jarrod on the left and his brother.

5 Q Is this a fair and accurate depiction of what your
6 friend Jarrod looked like?

7 A Yeah, that is perfect.

8 MS. LINDER: Your Honor, at this time the State would
9 seek to admit State's Exhibit 49 into evidence.

10 THE COURT: As I understand the objection is to
11 relevance and then a 403 as well?

12 MS. LINDER: Yes, Judge.

13 MR. KING: Yes.

14 THE COURT: Very well. We placed that on the record
15 and the court stands by its previous ruling. State's 49 is
16 admitted subject to the objection of the defendant.

17 (WHEREUPON, State's Exhibit Number 49 was admitted into
18 evidence.)

19 BY MS. LINDER:

20 Q All right. And in this courtroom the monitor is back
21 behind you. And this is what you can look at. Can you tell
22 the jury who is in this picture?

23 A That is Jarrod on the left, and that is Holland on the
24 right.

25 Q And Jarrod is your friend?

1 A Jarrod is my friend.

2 Q I would like to take you back to October the 10th of
3 2014. Do you remember that day?

4 A Yes, ma'am.

5 Q When did you first see Jarrod on that day?

6 A I got over to Jarrod's house around like two o'clock
7 that day.

8 Q And what were you planning to do at Jarrod's that day?

9 A Well, I had just found out that I had gotten my new
10 good job at Boeing so I called Jarrod and he was excited for
11 me, so we were going to hang out all night. It was a
12 Friday. It was just going to be a good weekend.

13 Q And where did Jarrod live?

14 A He lived on Sires Street downtown.

15 Q And had he lived there for very long?

16 A No, I think it was his third day there I believe.

17 Q Did Jarrod receive any phone calls when you were at his
18 house?

19 A Yes.

20 Q And what did Jarrod do when he received a phone call?

21 A He went into his back room to take the call.

22 Q And did his voice sound that of familiarity with the
23 caller?

24 A No. You could tell that he didn't really know him.

25 Q Did Jarrod ever come out of his bedroom?

1 A Not during the call.

2 Q Okay. After -- did he come out of the bedroom at
3 all?

4 A Yes, he came out of the bedroom.

5 Q And what happened when he came out of the bedroom?

6 A He walked up to me and told me that we were about to
7 have to go do something.

8 Q Okay. What did he ask you to go walk with him to do?

9 A He said he had to go make a deal and he wanted me to go
10 with him because he was I guess like scared.

11 Q So Jarrod sold drugs?

12 A Yes.

13 Q And who did he mainly sell to?

14 A Just our group of friends. Inner circle pretty much.

15 Q And what types of drugs would Jarrod sell?

16 A Mainly just weed and Xanax.

17 Q So Jarrod asked you to go with him, to walk with him.

18 Is that something he typically would ask you to do?

19 A No, never. That was the first time that ever happened.

20 Q And what was Jarrod's demeanor; what did he -- what was
21 his mood?

22 A Shaky, worried. And that is unusual. He was -- he was
23 always calm, cool and collected. And I remember that day he
24 was just nervous.

25 Q He was nervous. Did he -- did he tell you anything or

1 give you anything?

2 A He -- he actually when he walked up to me he gave me a
3 knife for the walk. I guess he didn't want me to be -- feel
4 like nervous I guess.

5 Q Like a big butcher knife?

6 A No, it was -- it was a small pocket knife.

7 Q And did he have anything?

8 A Jarrod always kept a small pocket knife on him.

9 Q And what did it indicate to you, him giving you a
10 pocket knife?

11 A That this was unusual. That he was going to meet some
12 people that we didn't know, weren't friends with.

13 Q So he asked you to walk with him. He gets the pocket
14 knife. What happens next? What do you do next?

15 A Well, we leave the house to go walk to meet the kids.
16 And ---

17 Q Did Jarrod have anything with him?

18 A Jarrod had a book bag with him.

19 Q What color?

20 A It was black.

21 Q So Jarrod and his book bag and you leave Sires Street.
22 Where did you walk?

23 A Well, we walked from Sires down the street onto Bogard
24 I believe it is right there. And I remember we took a right
25 and we ended up going back -- taking a right and we went up

1 Spring Street I think. That might be Spring Street. I am
2 not really sure what that street is called or not from
3 downtown.

4 But we went up, and then we had walked like down that
5 block and Jarrod got a call. And we had apparently been
6 going the wrong way, so we had to turn back around and go
7 back down to Bogard to where we ended up at the corner of
8 Bogard and Percy.

9 Q And when you got to Bogard and Percy what did you see?

10 A We saw a red car on the corner like right next to the
11 mini bar right there.

12 Q Who was in the car?

13 A The two -- like I didn't know their names.

14 Q Did you previously know the two in the car?

15 A No, I didn't -- I didn't -- the car I didn't know who
16 was in the car.

17 Q How many people were in the car?

18 A Two.

19 Q And where were the two people sitting in the car?

20 A The kid driving was in the driver's seat, and the other
21 guy was in the backseat on the passenger's side.

22 Q And what did you and Jarrod do when you walked up to
23 the car?

24 A Well, we walked up to the car. And I remember I hopped
25 in the backseat first to get in the middle. And then Jarrod

1 got in after me on the driver's side.

2 Q Were the windows down in the car?

3 A No, the windows were up.

4 Q Was the car running?

5 A Yes, the car was running.

6 Q Were you able to as soon as the door opened just slide
7 right in the car?

8 A No. The driver had his seat like all the way back. So
9 I remember it took a second for us like to get in. Like
10 there was like no room in the backseat. So I had to squeeze
11 in.

12 Q And when you got in the car can you tell the jury about
13 the other individual in the backseat with you did he have
14 anything with him?

15 A He had a book bag in between his legs in the backseat.

16 Q And once the three of you were in the backseat were the
17 doors left open?

18 A No, we closed the doors behind us.

19 Q What happened once the three of you were all in that
20 backseat?

21 A Well, whenever we hopped in and closed the door we
22 tried to start like a conversation. We were like what is
23 up, how is it going. And that is when he pulled the gun out
24 of this book bag and pointed it at me and Jarrod.

25 Q Did the driver talk to you?

1 A No, he didn't say a word.

2 Q Did you talk any drug deal talk at all?

3 A No, we had -- we really hadn't even started a
4 conversation or anything.

5 Q So you hadn't started a conversation or anything. And
6 I need you to tell the jury what happened.

7 A Well, the kid in the backseat pulled the gun out of his
8 book bag, and then he was pointing it at me and Jarrod.

9 Q What did the gun look like?

10 A It was like an all-black gun. Like one that cops use.
11 One that you would pull back like this way (motioning). And
12 he was like waiving that in our faces. And then ---

13 Q Did he say anything?

14 A He just kept telling us to give him the shit. And he
15 just kept saying that over and over again. And for a couple
16 of seconds me and Jarrod were just frozen. I couldn't move,
17 say anything.

18 And then all of a sudden Jarrod swings the door open
19 and tried to make a move out of the car really quick. And
20 that is when he was shot in the back.

21 Q Okay. Where did the shot come from?

22 A The shot came from the guy sitting next to me.

23 Q And where was the gun when he pulled the trigger?

24 A He had the gun like it was right in front of my face
25 whenever he shot Jarrod.

1 Q What was that like having that gun shot right in your
2 face; tell me what you -- with all of your senses describe
3 that.

4 A It was just -- I remember it was really really loud and
5 I smelled like this burning smell and kind of a maybe a
6 blank for a second and my ears were ringing. It was really
7 loud. I mean it was right by head. And then I jumped out
8 of the car.

9 Q Now when Jarrod was shot where was he exactly?

10 A He had already started getting out of the car. So he
11 had like a foot on the ground I would say, like making his
12 move out of the car.

13 Q And when he was shot what did Jarrod do?

14 A He fell to the ground immediately.

15 Q What did you do when that happened?

16 A I remember I was kind of stuck in the car for like two
17 more seconds after I saw him hit the ground. Because I
18 thought I was just going to get shot too. And then he
19 didn't shoot me and he told me to get out. And that is
20 whenever I got out and ran around the corner.

21 Q Which corner did you run around?

22 A I ran around the corner, the mini-bar corner. Like the
23 side that our car was parked on it was -- that was the
24 closest corner to get around to so.

25 Q And did you -- did you hear anything next after you ran

1 around the corner?

2 A After I got around the corner I heard like tires
3 screeching, like a car pulling off.

4 Q And then did you ever go back to Jarrod?

5 A Yeah, as soon as I heard the tires and the car going
6 off I went straight back.

7 Q Did you call 911?

8 A I started to call 911 and the call wouldn't go through.
9 I didn't have any service. I have T-Mobile, awful service.
10 And I remember if tried calling 911 and it wouldn't dial.
11 But whenever I'd walk -- ran back up to Jarrod a lady was
12 there by his side and she said she had already called 911
13 so.

14 Q And when you went back up to Jarrod what did you do?

15 A I got on the ground with him, and I was trying to like
16 yell at him to keep him awake and tell him that the
17 ambulance was coming. So I just kept telling him that, to
18 keep his eyes open.

19 Q And did the police end up responding to the scene?

20 A Yes, they did.

21 Q And when the police responded to the scene did you tell
22 the police anything; what did you do?

23 A As soon as the cop came up I told him that I was in the
24 car and I saw everything. And they immediately took me down
25 to the station.

1 Q And did you give an interview with police?

2 A I did.

3 Q What was going on in your head when you were giving
4 this interview?

5 A Everything. I mean I -- that first hour in the
6 interview room was the worst hour in my life by far. I was
7 just so worried about my friend and my head was all over the
8 place. I was just trying to make sense of what I saw I
9 guess.

10 Q When you interviewed with police did you tell them
11 everything in a quick and organized manner?

12 A I told them everything I knew.

13 Q And did you show the police your phone at any point
14 during the interview?

15 A Yes, I did.

16 Q And did you give the police any property that you had
17 on you?

18 A I did.

19 Q What did you -- what did you give to them?

20 A I still had the pocket knife on me that Jarrod had
21 given me. And before I walked in the station I gave it to
22 them.

23 Q Did you ever get that pocket knife back?

24 A I did.

25 Q Did you do any vehicle identifications with police?

1 A Yes, I did.

2 Q And were you able to identify and write some things on
3 paper about the car?

4 A Yes.

5 Q And did you do any person photographic lineups with
6 police?

7 A I did.

8 Q And did you identify anyone in that?

9 A I immediately identified the shooter.

10 Q I want to try to get a little bit more detail from what
11 you said. What I would like to do is I would like to show
12 you what has already been entered into evidence as State's
13 Exhibit 3. Okay, can you see that okay from where you were
14 sitting?

15 A Yes.

16 Q Okay. I'm going to give you a pointer of sorts.

17 A Okay.

18 Q And if you can tell, can you point out to the jury
19 where Jarrod lived.

20 A On Sire Street. I can't really see what these words.

21 Q Sire?

22 A Is that where it is at -- yes, right here (pointing).

23 Q Okay. And then can you kind of show the jury. You
24 said you were walking around and you said you weren't really
25 certain of a bunch of the street names downtown.

1 A Right.

2 Q If you could just explain when you and Jarrod left his
3 house can you explain where y'all walked?

4 A Whenever we left Jarrod's we went down this way
5 (pointing). And then I remember we went -- we took a right.
6 And I believe it was this street (pointing) we walked. Or I
7 can't tell which street this is.

8 Q That says Rose Lane.

9 A No, we kept -- we kept walking.

10 Q Would it be easier if I hand you this for you to look
11 at the map?

12 A Probably, yeah. I can't really make out what this is.
13 (WHEREUPON, documents provided to witness.)

14 A Okay.

15 Q Okay.

16 A Are we going back up here?

17 Q Yeah. We will do this and then we will move on.

18 (WHEREUPON, witness approaches map.)

19 A So I believe this is Sires right there (pointing.) We
20 went down Sires, and we went all the way down this street
21 (pointing). And I believe we went here (pointing) -- or is
22 this -- we walked this -- okay, so here is Bogard and Percy
23 (pointing). We came down Sires and we walked all the way
24 down this road (pointing). And I remember we went past this
25 (pointing), because we had to come back this way. Like

1 whenever we came back down this way the car was right here
2 on this corner (pointing).

3 Q Okay.

4 A So we go all the way over here (pointing) to this
5 street right here (pointing). And we come down all the way
6 like -- and we were like almost down to the corner whenever
7 Jarrod got another phone call for us like to where to meet
8 at.

9 And then after Jarrod hung up the phone he said we had
10 to go back this way (pointing). So we go back down this
11 street (pointing). And that's when we come up and see the
12 car right here (pointing).

13 Q All right. At this time -- you can take your seat.

14 (WHEREUPON, witness complied.)

15 Q I am going to show you what has been marked as State's
16 Exhibit 6, 18, and 22. If you can look at those pictures,
17 please. Do you recognize those pictures?

18 A I do.

19 Q And how do you recognize them?

20 A This is where we were at when it happened.

21 Q Does it fairly and accurately show the area back on
22 October the 10th of '14?

23 A Oh, yes.

24 MS. LINDER: Your Honor, at this time the State would
25 seek to admit State's 6, 18, and 22 into evidence.

1 THE COURT: Is there any objection?

2 MR. KING: No objection, Your Honor.

3 THE COURT: Very well. State's 6, 18, and 22 and
4 admitted without objection, each being a photograph.

5 (WHEREUPON, State's Exhibit 6 was admitted into evidence.)

6 (WHEREUPON, State's Exhibit 18 was admitted into evidence.)

7 (WHEREUPON, State's Exhibit 22 was admitted into evidence.)

8 Q I would like for you to -- you don't need to get up.
9 Just look at the screen. This is State's Exhibit 6. Can
10 you explain to the jury what this picture shows?

11 A Well, that is the mini bar right there were that was
12 right there on that corner. And the car was parked like
13 right in front of that recycling and trash can.

14 Q And I don't know if State's Exhibit 18 is better or
15 worse for you.

16 (WHEREUPON, State's Exhibit displayed.)

17 A Still I am right -- right there. I mean it was like
18 enough up off the stop sign to where it wouldn't have looked
19 super suspicious; but, yeah, it was right there.

20 Q And then this picture is State's Exhibit 22. What does
21 this show?

22 A The same thing. A car right there in front of like
23 that tree, the tree and the recycling can.

24 Q All right. And then when you ran can you use this --
25 can you just tell the jury where you ran to?

1 A Well, I hopped out of the car right over there
2 (pointing) on the driver's side. And then I ducked right
3 around that corner right there by the mini bar.

4 Q By this mini bar (pointing)?

5 A Yes.

6 Q When you were with police you said that you -- that you
7 looked at some photographs of some cars?

8 A I did.

9 Q And how would you describe the car that day that y'all
10 got into?

11 A It was a red Mazda.

12 Q And at this time I show you what has been marked as
13 State's Exhibit 52 for identification purposes. If you look
14 at those, please. Do those look familiar to you?

15 A Yes, ma'am. These are the ones I picked out at the
16 station.

17 Q And these fairly and accurately represent what you
18 picked out at the station?

19 A Yes, completely. I picked the Mazda first, like the
20 model. And then I showed them what color it was.

21 MS. LINDER: At this time the State would seek to admit
22 State's Exhibit 52 into evidence.

23 THE COURT: Any objection?

24 MR. KING: No, Your Honor.

25 THE COURT: Without objection it is admitted.

1 (WHEREUPON, State Exhibit 52 was admitted into evidence.)

2 Q Okay. Can you explain to the jury what this is?

3 A Well, they were pulling up pictures of Mazda's because
4 I had told them it was a Mazda. And that is the model I
5 picked out.

6 It was a -- I remembered it -- I remembered it because
7 it didn't have the thing on the back like the -- I'm not
8 sure what it is called. It is like a -- it stands up on the
9 back of a car. But it didn't have that, so I remember I
10 picked that model.

11 Q And who -- who wrote this?

12 A That is my writing. I wrote it.

13 Q And what is this (displaying)?

14 A My initials.

15 Q This (displaying)?

16 A That is the time it was and the date.

17 Q And can you explain what this photograph is?

18 A The same thing. I just wanted to show them what color
19 of red the car was. So I -- that is my writing and I
20 initialed and dated it.

21 Q I would like to go back briefly to what happened inside
22 of the car. What I would like for you to do is -- I would
23 like to kind of slow it down a little bit and explain so the
24 jury fully understands what happened.

25 A Okay.

1 Q Can you describe what side did you enter the car?

2 A I entered the car on the driver's side. And that is
3 when I had to squeeze in the middle because the driver's
4 seat was all the way back. And I just remember the back
5 seat was really crowded that day.

6 Like he had -- the kid on the passenger side had his
7 legs like really wide whenever I tried to get in. And I'm
8 pretty big. So I had to squeeze in the middle. And then
9 Jarrod squeezed in behind me. And it was a tight fit. I
10 remember -- he was trying to close the door for like a
11 couple of seconds.

12 Q When you said the guy who was in the rear passenger
13 seat had his legs wide, what do you mean by that?

14 A Well, he had the book bag in between his legs. So he
15 had his legs spread far apart.

16 Q And I know you said you were close. When you are
17 sitting in there do you have personal space or ---

18 A Oh, no, I was -- I was all up in between them. I
19 didn't have any room to move around or anything.

20 Q And all of the doors were closed?

21 A All the doors were closed, yes.

22 Q How was Jarrod sitting?

23 A Jarrod was squeezed in between he and the door, not
24 very comfortably. And he had his book bag down by his feet
25 too. So I remember his feet were scrunched up.

1 Q And I want you to tell the jury about the gun. And I
2 would ask that you demonstrate to the jury how it was pulled
3 out and where it was.

4 A Absolutely. Okay, so he had the book bag sitting
5 between his legs; he being the shooter on the passenger's
6 side.

7 So whenever we get in and we were, you know, saying
8 what's up, you know, waiting to do the deal, he goes into
9 his book bag. I guess we thought he was going to pull out
10 whatever Jarrod wanted to buy or whatever.

11 And he pulled out a black gun. And he cocks it as soon
12 as he is pulling it out. And that is when he pointed it
13 straight in my face. And I mean he was like right beside
14 me. So it was right up against my head. And then Jarrod
15 was on the other side of me. So whenever he would point it
16 at Jarrod's face it would come across my face this way
17 (motioning).

18 Q And did you try to grab the gun?

19 A No. I was too scared. Whenever he pulled the gun out
20 I didn't want to try and grab it and get shot.

21 Q Did you yell help?

22 A No. I couldn't -- I didn't yell anything. I -- I mean
23 I really was just frozen. I can't explain what happened to
24 me, but I couldn't move or talk or anything.

25 Q And when the gun was -- when the trigger was pulled

1 where was the gun on you?

2 A He had it pointed like across my face. Like I was -- I
3 was looking right at the gun. It was like right across my
4 face.

5 Q So were you -- were you sitting with your back to the
6 back of the car?

7 A I was kind of up. I didn't really have room to sit
8 back like this (motioning). So I was kind of like up
9 scrunched up like this (motioning).

10 That's kind of why the gun was in my face I guess.
11 I couldn't really do this (motioning); it was too crowded.

12 Q And when Jarrod was shot you explained he was half in,
13 half out or a foot -- can you show to the jury -- and with
14 the court's permission you can stand behind that area to
15 show how Jarrod was when he was shot,

16 A Yes. Okay. So imagine this is Jarrod sitting right
17 here (motioning). And he is the driver's-side backseat
18 right by the door. So he goes to make a move. He opens the
19 door really quick, and then he takes like one step out. And
20 he is like this (motioning), you know, with his back facing
21 us. Like he was -- only had like one foot out the door.
22 And that is when he got shot right here (pointing).

23 Q When you were with the police you previously testified
24 that you did a photographic lineup identifying the shooter?

25 A Yes.

1 Q Did you describe to law enforcement what the shooter
2 looked like?

3 A I did.

4 Q What did you describe him as?

5 A He was a short guy, not very big in size, brown skin,
6 brown eyes. He was -- I think I had him around like 5'7".

7 Q And did you get a good look at the shooter's face?

8 A Yeah, I did.

9 Q How far away were you from the shooter's face?

10 A I mean a matter of inches really. It was -- it was
11 really close. I remembered his face pretty easily.

12 Q At this time I am showing you what has been marked as
13 State's Exhibit 53. If you can look at this, please. Do
14 you recognize that paperwork?

15 A I do.

16 Q And how do you recognize it?

17 A This is what I filled out that night at the station.

18 Q And do you see your signature or initials?

19 A Yes, this is my signature right here.

20 Q And did you identify someone as the shooter?

21 A I did.

22 Q Which picture number?

23 A Picture number four.

24 Q Are you certain that that was the shooter?

25 A Absolutely positive.

1 MS. LINDER: I beg the court's indulgence.

2 THE COURT: All right.

3 MS. LINDER: I have no further questions for you at
4 this time. If you could answer anything that the defense
5 may have.

6 THE WITNESS: Yes, ma'am. Thank you.

7 THE COURT: You may cross-examine.

8 MR. KING: Thank you, Your Honor.

9 **CROSS-EXAMINATION BY MR. KING OF HUNTER BESSINGER:**

10 Q Mr. Bessinger, you testified Jarrod sells drugs, right?

11 A Yes, sir.

12 MR. KING: May I approach, Your Honor.

13 THE COURT: Sure.

14 (WHEREUPON, Defendant's Exhibit Number 2, photo - pill
15 bottle, was marked for identification.)

16 Q Let me show you what has been marked as Defendant's
17 Exhibit Number 2 for identification. Can you look at that.

18 A Yes, sir.

19 Q Are you familiar with Xanax pills?

20 A Yes, sir, I am.

21 Q Do those look like Xanax pills to you?

22 A Yes.

23 Q They call them bars; is that right?

24 A Yes, sir.

25 Q Okay. And from your knowledge Jarrod sometimes sold
26

1 Xanax?

2 A Yes, sir. Sometimes.

3 Q Jarrod has just moved downtown from In-Town Suites in
4 North Charleston; is that right?

5 A Yes, sir. Like he had lived downtown about three days.

6 Q As you said, he gets a call from somebody while you are
7 at his house this day?

8 A Yes, sir.

9 Q And you end up going with him?

10 A Yes, sir.

11 Q Now you knew this was a drug deal?

12 A Yes, sir.

13 Q Do you know the details of the drug deal?

14 A No. Jarrod never said anything like that. He never
15 wanted to tell who he was doing business with or anything.

16 MR. KING: I beg the court's indulgence for a moment.

17 THE COURT: Sure.

18 Q You didn't meet with them and tell them it was some
19 sort of drug swap or something like that?

20 A Drug swap?

21 Q Yeah.

22 A I -- the only reason I said that -- Jarrod never told
23 me that. It is because they both had a bag so I kind of
24 assumed that maybe it was a swap. Usually if someone is
25 just buying drugs they would be like the only ones -- the

1 only person with a bag.

2 Q So you didn't know what was in Jarrod's bag?

3 A No, sir.,

4 Q And you didn't ask?

5 A No, I didn't ask.

6 Q He just says hey I am going to go do a drug deal?

7 A He said hey I -- he didn't say a drug deal. He said
8 hey I have got to go meet some kids, can you come with me.

9 Q And you just knew that is what he was going to do
10 because you are familiar with him?

11 A Yes, sir, I just get pretty much knew what was
12 happening.

13 Q All right. You said that Jarrod gave you a knife; is
14 that right?

15 A Yes, sir, that is correct.

16 Q Didn't you tell Detective Krasowski in an interview
17 later that night that you always carry a knife with you?

18 A That I always carry a knife with me? I do pretty much.
19 I always have one in my truck too.

20 Q So did you already have a knife, or did he hand you a
21 knife?

22 A No, he gave me that knife. I didn't have a knife with
23 me that day.

24 Q But you didn't tell -- you didn't tell Krasowski that
25 you always carry a knife with you?

- 1 A May have. But I didn't that day.
- 2 Q So the two of you left on foot?
- 3 A Yes, sir.
- 4 Q And it wasn't very far; it was a few blocks, right?
- 5 A Just a few blocks away.
- 6 Q Jarrod and a book bag with him?
- 7 A Yes, sir.
- 8 Q It was a black book bag?
- 9 A Black book bag.
- 10 Q You said there were some calls maybe back and forth?
- 11 A He -- there was a call before we left, and then he got
- 12 a call after we had been wandering around.
- 13 We -- we were kind of walking aimlessly really. Like
- 14 they -- they hadn't -- they weren't down there yet. So we
- 15 were just kind of just walking around. It was a really nice
- 16 day.
- 17 Q So you get to a point where you see the red Mazda
- 18 parked on Percy Street, right?
- 19 A Right.
- 20 Q And Ahshaad is in the backseat?
- 21 A Yes, sir.
- 22 Q You don't know him?
- 23 A No, I had never met him.
- 24 Q Never met him before?
- 25 A No, sir.

- 1 Q He doesn't know you?
- 2 A No, not at all.
- 3 Q You are bigger than Ahshaad?
- 4 A I am.
- 5 Q You are bigger than Jarrod?
- 6 A Yes, sir. Jarrod is little.
- 7 Q And you -- you get in the car first?
- 8 A I did. I got in the middle.
- 9 Q Right. You don't know this guy?
- 10 A No. I remember it was -- it was really weird that I
- 11 got in the middle. I -- like him and Jarrod were both
- 12 looking at me like why. I -- I have no idea why I got in
- 13 the middle. I just
- 14 Q Right, it is kind of strange; right?
- 15 A It was definitely strange. It was like they would have
- 16 to go across me to do the transaction. It was dumb on my
- 17 part. I don't know why I got in the middle.
- 18 Q And this was a small backseat, right?
- 19 A Very small.
- 20 Q Pretty cramped in?
- 21 A Very cramped.
- 22 Q And do you remember what Ahshaad's hair looked like
- 23 day; do you remember; did you describe it?
- 24 A Short hair.
- 25 Q He didn't have braids or cornrows?

- 1 A Nothing like that, no.
- 2 Q Or dreadlocks; anything like that?
- 3 A No, sir.
- 4 Q And the driver didn't either?
- 5 A No, sir.
- 6 Q Are you are testifying today that Ahshaad pulled out a
7 gun?
- 8 A Yes, sir.
- 9 Q Pointed it at you and Jarrod?
- 10 A Yes, sir.
- 11 Q And then Ahshaad demanded that you give him the shit;
12 is that ---
- 13 A Yes, sir, that is all he kept saying.
- 14 Q Now he yelled that?
- 15 A Yes.
- 16 Q Really loud?
- 17 A Pretty loud. Not like super loud. But it was
18 assertive.
- 19 Q You said the gun -- well, the gun is in his right hand?
- 20 A Yes, sir.
- 21 Q And he is reaching over like this (motioning), you said
22 pointing the gun at you and Jarrod?
- 23 A Uh-huh.
- 24 Q You weren't injured at all?
- 25 A No, sir.

- 1 Q You said the gun is inches from your face?
- 2 A Yes, sir.
- 3 Q Like a couple of inches from your face?
- 4 A Yeah, I would say a couple of inches.
- 5 Q Remember you I think told Krasowski that the gun was a
- 6 couple of inches ---
- 7 A Yes, sir.
- 8 Q --- from your face ---
- 9 A I mean pretty much, yes, sir, ---
- 10 Q --- when it went off?
- 11 A --- a couple of inches.
- 12 Q So then Ahshaad demands your wallet?
- 13 A He did. Like after Jarrod got out for a quick second
- 14 he is like -- I think he was confused maybe. Like I don't
- 15 know -- like maybe he thought I had something or like I had
- 16 it.
- 17 And he was like give me it, give me it. And but that
- 18 didn't last long. I mean for like a second. And then he
- 19 told me to get out.
- 20 Q Now Jarrod is getting out of the car and he is shot;
- 21 does he just fall right there?
- 22 A Immediately.
- 23 Q He didn't have time to run or anything?
- 24 A No, he didn't get anywhere.
- 25 Q Okay. You didn't struggle with Ahshaad?

1 A No, sir.

2 Q There was no sort of a struggle?

3 A No, sir.

4 Q You just when he told you to get out, you just got out
5 of the car?

6 A And ran.

7 Q Did you scream?

8 A Whenever the gun went off I think I yelled like ah.
9 But I didn't yell like help or anything, no.

10 Q Did you see Ahshaad ever get out of the car?

11 A No, sir. Whenever I ran around the corner and whenever
12 I came back they were gone. I never saw that they did.

13 Q And in fact you testified -- or you gave a statement to
14 one of the other detectives that night, Detective Bailey,
15 that I seen him go I guess to close the door; and they asked
16 you if he is out of the car, and you said no he never got
17 out of the car; is that right?

18 A Ahshaad?

19 Q Yeah.

20 A I don't recall that. I got out of the car and ran.
21 Whenever I came back they were gone. But I never saw
22 Ahshaad out of the car, no.

23 Q Did you see him going to close the door, like you said?

24 A Whenever I came back they were already going. They
25 were going down the road.

- 1 Q Did you see both of them in the car?
- 2 A Yes, sir, they were both in the car.
- 3 Q So Ahshaad didn't go running down Spring Street or
- 4 anything?
- 5 A No, no. They took off.
- 6 Q Then you run around the corner?
- 7 A Correct.
- 8 Q You call Zack?
- 9 A I called 911 first. But after I get back to Jarrod and
- 10 the lady had already told me that she called 911 I stepped
- 11 away from Jarrod for a second to call Zack.
- 12 Q And Zack is Jarrod's roommate?
- 13 A Yes, sir.
- 14 Q Who is a few blocks away on Sires Street?
- 15 A Right.
- 16 Q Did you tell him to come down there?
- 17 A Yeah. I said get down here, get down here, Jarrod got
- 18 shot.
- 19 Q You didn't call him to come down there and get a
- 20 backpack or anything did you?
- 21 A No, sir.
- 22 Q And then you go with the police down to the police
- 23 station?
- 24 A Correct.
- 25 Q So you didn't bring a gun with you ---

1 A No, sir.

2 Q --- to this drug deal?

3 A No, sir, I have never have a gun, owned a gun,
4 anything.

5 Q You had gunshot residue on your hands; are you aware of
6 that?

7 A I got -- he shot it pretty -- pretty close to me, yes,
8 sir.

9 Q So you are put in a room down at the police station and
10 questioned by I think it was first Detective Holmes and then
11 a Detective Bailey; ---

12 A Yes, sir.

13 Q --- do you remember that?

14 A I do.

15 Q You were in there for a long time, right?

16 A A couple of hours.

17 Q Yeah. Were you aware that they were recording in that
18 room?

19 A Yes, sir.

20 Q You knew at the time that they were recording?

21 A Recording?

22 Q Yeah.

23 A I mean they didn't -- I don't remember if they told me.
24 But I kind of just assumed that everything you say in there
25 is pretty much getting written down or something.

1 Q So when you meet with the police you didn't tell them
2 the truth, did you; you didn't tell them what you were
3 telling us now?

4 A I told them the truth, everything I knew.

5 Q You don't remember you met with them in the beginning,
6 Detective Holmes, Detective Bailey, and you kept telling
7 them you didn't know why you were going with Jarrod to meet
8 somebody, you didn't have any idea?

9 A That I didn't have any idea?

10 Q That is what you told them in the beginning, right?

11 A I guess maybe for a second I was a little shook I guess
12 by the whole thing. I remember whenever I first went in
13 there I also said that I didn't even think Jarrod had a book
14 bag.

15 But after like an hour or so when everything cools off,
16 you know, you go back and stuff that you didn't remember,
17 you know, you think about it and then you remember it.

18 So I believed I confirmed everything with my story
19 within an hour or two.

20 Q Well, in the beginning didn't you tell the --- and you
21 said that Jarrod is a drug dealer, right?

22 A Yes, sir.

23 Q And you knew that he used drugs, sold drugs; but you
24 told them in the beginning Jarrod is my friend but I don't
25 know him to be like into drugs. Do you remember telling

1 them that at the very beginning of the interview?

2 A Yes, sir.

3 Q Okay. That wasn't true, was it?

4 A No, I -- we did drugs. I was just nervous I guess.

5 Q Okay. And then shortly after that you told them Jarrod
6 didn't tell me anything like that, I think he never would
7 have told me because I knew I wouldn't have went probably;
8 do you remember that, you were telling them Jarrod didn't
9 give you any idea why you were going; do you remember
10 telling them that ---

11 A Jarrod ---

12 Q --- in the beginning?

13 Q Jarrod never told me, you know, like what was
14 happening. He -- and he never told me that the people were
15 someone that we definitely didn't know, like that, you know.

16 Q Right, but in the beginning the police are trying to
17 get information from you, right?

18 A Right.

19 Q They are trying to solve a crime -- a murder?

20 A Right.

21 Q A crime. Now they are asking you a lot of these
22 questions. But in the beginning you were pretending like
23 Jarrod is not even involved in drugs and you didn't have any
24 idea why you were going there?

25 A Sir, I will just tell you in the first hour of that

1 interview I've never felt worse about anything in my life.
2 I had just saw my best friend get shot right in front of my
3 face.

4 I -- my mind was everywhere. I was scrambled up. I
5 couldn't think. The whole time I was just thinking is my
6 friend going to die, is my friend going to die.

7 And I didn't -- you know, it is just hard to explain
8 when something like that happens. You can't -- you can't
9 think about anything other than I just want to know if
10 Jarrod is going to be okay.

11 Q All right. You were so shook up that you completely
12 forgot that your friend Jarrod sold drugs and used drugs?

13 A I told them that he sold drugs pretty soon after ---

14 Q Later on. But in the beginning you told them you
15 didn't even know him to be in to drugs; you are trying --
16 are you trying to cover for your friend?

17 A No.

18 Q As the interview progresses you eventually will tell
19 them -- because do you remember they were giving you like a
20 speech like look we don't care about the drugs?

21 A Right.

22 Q All right. We are doing an investigation of a
23 homicide; we don't care if you talk about drugs; we need to
24 know all the information we can get, right?

25 A Yes, sir.

1 Q They have to keep stopping -- they had to stop and give
2 you that speech, and then after that speech you said okay
3 Jarrod was probably trying to buy weed but he didn't tell me
4 that; right?

5 A Yes, sir.

6 Q And then they are still trying to get information from
7 you, right; they still kind of keep coming back and asking
8 you more questions, ---

9 A Yes, sir.

10 Q --- right? And you tell them I swear to God I have
11 told you everything I know, right?

12 A I believe I said that a couple of times.

13 Q Then Detective Holmes and Detective Bailey I think they
14 left and then a new detective came in, Detective Krasowski;
15 do you remember that?

16 A I do. I do.

17 Q And it was at that point I think he started talking to
18 you and you asked for a cigarette and you went and smoked a
19 cigarette; do you remember that?

20 A Yes, sir, I remember that.

21 Q All right. Detective Krasowski came in saying the same
22 things, you know, right, we don't care about drugs, you
23 know, just be honest with us, give us all the information
24 you can give; because they need details, right?

25 A Yes, sir, they kept stressing that to me.

1 Q And that you asked to go smoke a cigarette?

2 A Right. I just wanted to get my thoughts together and
3 everything, you know.

4 Q Okay. And then you came back after you have told them
5 Jarrod is not even involved in drugs and you have told them
6 that you didn't have any idea why he was going down there
7 and you told them I swear to God I have told them everything
8 I know -- I told you everything I know.

9 But then after you smoked that cigarette then you
10 come a little more clean, right; and you say okay he
11 sells a little weed to his friends. Do you remember
12 that?

13 A Yes, sir.

14 Q You told them you get your drugs from Jarrod, right?

15 A Yes, sir.

16 Q And in the beginning you had told them you are not
17 involved in drugs, right?

18 A Did I tell them I didn't do drugs? I don't remember
19 saying that.

20 Q And now you're saying you know it was a drug deal?

21 A Yes, sir.

22 Q And you never really told the police about the
23 backpack, did you; and you -- they kept asking you about
24 this backpack ---

25 A No, I told them about the backpack. Later on that

1 night I said I definitely remembered him having a backpack.

2 Q But in the beginning they asked you if Jarrod had a
3 backpack with him, and you said no?

4 A I was pretty sure he didn't. But in the beginning that
5 is what I said, yes. And then after thinking back, he
6 definitely had a backpack.

7 Q So in the beginning they -- because, you know, they are
8 trying to get details from you ---

9 A Right.

10 Q --- and you are saying I don't know about a backpack?

11 A In the beginning, yes.

12 Q But then later said it was?

13 A I had later thought about it and realized that he did
14 have backpack.

15 Q Now so you're testifying today that Ahshaad just pulled
16 a gun out, tried to rob you and your friend and then shot
17 him?

18 A Yes, sir.

19 Q And then you just got out and ran, right?

20 A Right.

21 Q Now when you are alone -- do you remember you are alone
22 in that interview room at one point and there is no one else
23 in there and you are in there saying I am so sorry, Jarrod.
24 Do you remember saying that?

25 A Yes.

1 Q I'm sorry, Jarrod; I am so sorry?

2 A Yes.

3 MR. KING: That's all the questions I have, Your
4 Honor.

5 THE COURT: Redirect.

6 MS. LINDER: Briefly, Your Honor.

7 **REDIRECT EXAMINATION BY MS. LINDER OF HUNTER BESSINGER:**

8 Q From the beginning with law enforcement did you tell
9 them who had the gun?

10 A Yes. I told them everything.

11 Q Did you tell them who pulled the trigger?

12 A Yes.

13 Q And you told them that from the beginning?

14 A Yes.

15 Q And you told them that midway through?

16 A Yes.

17 Q And you told them that at the end?

18 A At the end.

19 Q And you told myself in my office that in all of our
20 meetings?

21 A Yes.

22 Q And you have testified to that here today?

23 A Yes, ma'am.

24 MS. LINDER: I have nothing further?

25 THE COURT: Recross.

1 MR. KING: No, Your Honor.

2 THE COURT: Thank you. You may step down. Thank you,
3 sir.

4 THE WITNESS: Thank you.

5 THE COURT: All right, at this -- is your next witness
6 a lengthy witness?

7 MS. LINDER: Judge, I would say she is probably about
8 30 minutes total between both of us. Okay.

9 (WHEREUPON, judge checks with court reporter.)

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

11 MS. LINDER: The State calls Anna Faenza.

12 (WHEREUPON, the witness was duly sworn.)

13 THE CLERK: Please speak into this microphone and state
14 your full name and spell your last name for the record. You
15 need to get kind of close to it.

16 THE WITNESS: Okay. Anna Christine Faenza. And it is
17 F-A-E-N-Z-A.

18 **DIRECT EXAMINATION BY MS. LINDER OF ANNA FAENZA:**

19 Q Good morning.

20 A Good morning.

21 Q Anna, where are you from?

22 A I grew up in Charleston.

23 Q And how far did you go in school?

24 A I graduated with a master's degree.

25 Q And what do you do; what business are you in?

1 A I own a little craft beer and wine bar downtown.

2 Q And what is it called?

3 A It is called Elliottborough Mini-bar.

4 Q And what is the address of that place?

5 A 18 Percy Street.

6 Q Can you describe the neighborhood of Elliottborough?

7 A Yeah, it is a pretty mixed neighborhood culturally. A
8 lot of college kids. Some young adults. Some kids. And
9 then like older people who have lived there for a really
10 long time.

11 Q And do you know why you are here today?

12 A I do.

13 Q Do you remember October the 10th of 2014?

14 A Yes.

15 Q And where were you that afternoon?

16 A I was down at my business doing touchup paint to it.

17 Q Are you aware of a murder that occurred in that
18 intersection or close to that intersection that day?

19 A Yes.

20 Q And did the police ever respond to the scene?

21 A Yes.

22 Q And did you talk to police?

23 A I did.

24 Q And did you do any identifications, any photo lineups
25 of any people that day?

1 A I did not.

2 Q And can you tell the jury what happened that afternoon
3 when you were washing the paintbrushes?

4 A Yeah, I was standing at the sink which is in the back
5 part of my bar. And this red car pulled up kind of catty
6 corner to that back window where I was standing where I had
7 a view of like the tail end of it.

8 And I heard people arguing. But I am not really phased
9 by a lot, so I didn't pay attention and I just kept washing
10 my brush.

11 And then I heard a loud pop. And I looked out the
12 window and saw a white kid falling onto the ground, but his
13 back was facing me.

14 And he had a backpack in his hand that was kind of
15 halfway open, and he was clutching it. And these little
16 white balls were falling out of it. And I rationalized it
17 in my brain that they were just noise makers, like party
18 poppers. So I stopped watching and just went back to
19 washing my paintbrush.

20 And then I heard somebody scream like oh fuck or what
21 the fuck like really, loud. And it sounded terrifying to
22 me.

23 And so I looked back out the window and saw somebody
24 else running to where that kid was falling -- or had fallen
25 on the ground. And he kind of grabbed the backpack. And he

1 had a gun in his hand. And I was watching to see which way
2 he was going to run because of thinking oh great he is about
3 to come in -- he might have seen me just see that and he's
4 about to come in here and kill me.

5 So and then I realized that that wasn't party poppers
6 and that they were drugs. And I ducked down. Ran to the
7 front door of my business. Because I had the -- I had it
8 unlocked. Locked it and then came back, hid behind the bar
9 and called the cops.

10 Q Okay. I want to take you back to a little bit more
11 detail of all of this. You said that when the loud bang
12 went off you immediately looked up?

13 A Yes.

14 Q And you said you saw someone holding a backpack. Can
15 you describe that person?

16 A Yes. He was wearing like a hot pink shirt and had
17 short brown hair. And I don't know, maybe like 5'6", -7",
18 -8"; somewhere around there. Not a very big guy.

19 Q And what happened when you heard the loud pop and you
20 saw him; what did you see him do?

21 A He sort of fell forward kind of like crumbling to the
22 ground almost.

23 Q And ---

24 A And he holding -- trying to kind of hang on to the
25 backpack I guess, with his hands.

1 Q And how big were these white items that you saw come
2 out of the backpack?

3 A I don't know, about that big (demonstrating) maybe.
4 Like a golf -- a little smaller than a golf ball.

5 Q And did they appear to be wrapped in anything?

6 A Yes, there was like -- I mean it was something clear.
7 It looked like clear plastic really tightly bound around it.

8 Q And you told the jury that then there was the guy with
9 the gun who went over there. But I would like to slow that
10 down a little bit. Did you see somebody get out of the red
11 car?

12 A Just -- just the boy who got shot.

13 Q And then ---

14 A So yes.

15 Q --- the individual that you saw go toward the guy who
16 was shot, what did he -- do you remember approxi- -- his
17 approximate age; I know you didn't do ID's with the police
18 but?

19 A I mean he was young. Like 20-ish.

20 Q All right. And what was his race?

21 A Black.

22 Q Are did he have anything in his hands when you first
23 saw him?

24 A Yes.

25 Q What?

1 A A gun.

2 Q And was the gun bright and shiny and chrome, or what
3 did the gun look like?

4 A No, it was a handgun. And it was a really dark metal
5 color. I mean I guess it would be described as chrome. But
6 not shiny. It was like a dull darker gray. And it had
7 black on it too.

8 Q All right. So you see a young African-American male --

9 A Uh-huh.

10 Q --- holding a gun; ---

11 A Uh-huh.

12 Q --- what does he do next?

13 A He reaches for the backpack and kind of scrambles for
14 it and grabs it. And then he is just kind of like looking
15 to determine which way he was going to go.

16 Q Did you notice anything about his clothing or anything
17 he was wearing?

18 A His shoes really stuck out to me because I was like --
19 I was just thinking which way is he going to go. I was
20 nervous.

21 Q And can you describe his shoes?

22 A Yes. They were high-tops. They looked like, I don't
23 know, those like really nice like Nike high-tops that are
24 different colored, like a bunch of different colors.
25 Colorful. And they looked newish.

1 Q And ---

2 A I mean I can't say for sure they were Nikes. But they
3 were colorful.

4 Q All right. And you say he was kind of looking back and
5 forth. Where did he go; did you see him go anywhere?

6 A Yes, he took -- I watched him take about two steps
7 before I ducked down. And he ran in the direction of Bogard
8 Street.

9 Q And when you ducked down what did you hear next?

10 A I heard the car speed off.

11 Q And what did you do after you heard the car speed off?

12 A I called 911.

13 Q And what did you see when you next looked outside?

14 A So I was behind the bar for a while on the phone with
15 the dispatcher. And then whoever I was talking to on the
16 phone said that it was safe, there were other people on the
17 street and I could -- you know, other people were outside
18 and it was okay for me to get up.

19 And so I went and looked outside and saw the victim
20 laying on the street and a bunch of spectators kind of
21 standing around. And there were two people with him at the
22 time.

23 Q And who were those people?

24 A One was I think a lady who lives down the street from
25 the bar. It was an African-American woman, and she was kind

1 of praying over him. And then another guy, a bigger white
2 kid who was sort of like giving him pep talks and telling
3 him to hang in there.

4 Q And did you ever go outside?

5 A Yes.

6 Q And what happened when you went outside; what did you
7 do?

8 A Well, first I kind of stood there and watched and was
9 just in shock watching -- you know, couldn't believe that
10 this just happened.

11 I was watching the boy's friend kind of talk to him and
12 help him and the woman praying over him and just everybody
13 standing on the street.

14 And then I guess the cops showed up. And that guy who
15 I assumed was his friend disappeared. And I didn't under --
16 I was like where did he go. I was like this kid needs his
17 help right now. And he was gone.

18 And nobody was really on the ground with Jarrod at the
19 time trying to coach him to hand in there and stuff. So I
20 got down on the ground with him and was just talking to him
21 about, you know, the people are on the way and to hang in
22 there and think about his family and that, you know,⁹ he
23 needed to fight and just that kind of stuff over and over
24 again.

25 Q And how was Jarrod laying?

1 A How was he?

2 Q Uh-huh, how was he laying?

3 A He wasn't really communicating, and his eyes were sort
4 of in and out. At times it seemed like he was like really
5 with me and listening and trying to hang in there. And then
6 other times he would just sort of like distance off. And
7 his breathing was like he was gasping. It was audible. You
8 know, he was trying to take like super deep breaths almost
9 to get oxygen.

10 Q And how was his body positioned?

11 A He was laying on his stomach with his right cheek on
12 the ground.

13 Q All right, Anna, at this time I'm going to show you
14 what has been marked as State's Exhibits 7, 8, 9, 21 and 23.

15 A Okay.

16 Q If you could please look at these pictures.

17 (WHEREUPON, pause for review by witness.)

18 Q And do you recognize those pictures?

19 A Yes.

20 Q How do you recognize them?

21 A Well, it is my business; so I know it really well.

22 Q And do they fairly and accurately represent the scene
23 that they are depicting?

24 A Oh, yes.

25 MS. LINDER: Your Honor, at this time the State would

1 seek to admit State's Exhibit 7, 8, 9, 21, and 23 into
2 evidence.

3 THE COURT: Any objection?

4 MR. KING: No, Your Honor.

5 THE COURT: State's 7, 8, 9, 21, and 23 admitted
6 without objection; each being a photograph.

7 (WHEREUPON, State's Exhibit Number 7 admitted into
8 evidence.)

9 (WHEREUPON, State's Exhibit Number 8 admitted into
10 evidence.)

11 (WHEREUPON, State's Exhibit Number 9 admitted into
12 evidence.)

13 (WHEREUPON, State's Exhibit Number 21 admitted into
14 evidence.)

15 (WHEREUPON, State's Exhibit Number 23 admitted into
16 evidence.)

17 Q All right. And in this courtroom -- I am going to put
18 something on the overhead, and you can look back at that
19 monitor.

20 A Okay.

21 Q This is State's Exhibit 7. Can you describe what this
22 picture shows to the jury?

23 THE COURT: Excuse me. I'm sorry.

24 (WHEREUPON, request for break from jury.)

25 THE COURT: Ladies and gentlemen, we are going to let

1 too; so that is not a problem. So that you will have a
2 framework, that is generally what I try to do in taking
3 testimony time.

4 So thank you, ladies and gentlemen. Please continue to
5 give your attention to the witness.

6 You may continue.

7 MS. LINDER: Thank you, Judge.

8 THE COURT: I'm sorry for the interruption. Thank you.

9 RESUME DIRECT EXAMINATION BY MS. LINDER OF ANNA FAENZA:

10 Q Okay, Anna, if I could bring your attention back to the
11 T.V. screen back behind the court reporter. This is State's
12 Exhibit Number 7. If you can describe what this picture
13 shows.

14 A Yes, that is the back part of my bar. And there is a
15 driveway. There is beyond it is a house. But I was
16 standing at that window that you see in the picture.

17 Q (Pointing).

18 A Yes.

19 Q And where was the car parked?

20 A It was parked kind of in the street and kind of on that
21 driveway. It sort of just like seemed like it pulled off of
22 the street but not into the driveway. Sort of like diagonal
23 with that house. If that makes sense.

24 Q All right. And at this time I am going to show you
25 State's Exhibit 23. And can you describe to the jury what

1 this shows?

2 A Yes, that is the sink that I was standing at at the
3 time when the car pulled up. And my viewpoint from that was
4 basically just the tail end of the car. I could see like
5 maybe where the back doors were starting.

6 Q All right. And you testified that you were seeing all
7 of this out of the window and then at some point you ducked
8 down; is that correct?

9 A/ Yes.

10 Q And this is State's Exhibit 21. And again, correct me
11 if I am wrong; is this the window where you were?

12 A Yes.

13 Q And how far up does your business go; does it go all
14 the way to the corner; does it go to this door only; how far
15 does your business itself go?

16 A It goes all the way to the corner. And there is a
17 sidewalk that is a little bit narrower than the one you see
18 in the picture on Bogard Street.

19 Q So you are watching things out of this window, and at
20 what point did you duck down?

21 A I ducked down once I saw the guy with the gun take two
22 steps towards Bogard Street.

23 Q And just for people who aren't familiar with downtown,
24 is Bogard Street this way (pointing), ---

25 A No, that ---

1 Q --- or is Bogard Street this way (pointing)?

2 A Bogard Street is where all of those officers are
3 standing.

4 Q All right. He took two steps from the car to Bogard?

5 A Yes.

6 Q Did he make it into the intersection?

7 A I don't know.

8 Q Why don't you know?

9 A Because as soon as he took two steps I ducked down.

10 Q All right. At this point I am going to show you
11 State's Exhibit 8. Can you describe to the jury what we see
12 and what this picture shows?

13 A This is -- so I was standing in the back part where we
14 can kind of see the sink back there. And as soon as he took
15 two steps, I liked crouched way down and ran. Still
16 crouched all the way past those two tables towards the front
17 door of the bar. And I locked it and then turned around.

18 And ran -- that is the bar top where you see the wood
19 in the picture. And my cell phone was actually sitting
20 right on top of that at the time.

21 So I locked the door and kind of ran backwards and
22 grabbed my phone and went behind the bar and stayed down.

23 Q Did you see the car pull away?

24 A No.

25 Q Did you see how many people were in the car when it

1 pulled away?

2 A No.

3 MS. LINDER: I have no further questions for this
4 witness. If you can ask -- answer anything that the defense
5 may have.

6 THE COURT: Cross-examine, Mr. King.

7 **CROSS-EXAMINATION BY MR. KING OF ANNA FAENZA:**

8 Q Ms. Faenza, this happened pretty quickly you would say?

9 A Yes.

10 Q So you were washing something in the sink; is that
11 right?

12 A Yes.

13 Q Water was running?

14 A Yes.

15 Q You weren't really paying attention I guess until you
16 heard a shot?

17 A Yes. I mean I heard people -- it was just all -- stuff
18 I heard. Yeah, I heard some people arguing.

19 Q More than one person arguing?

20 A Yeah.

21 Q Anything like a struggle or a shuffle or anything like
22 that?

23 A Not until after the shot happened.

24 Q So it's fair to say you didn't see anything until after
25 that shot?

1 A Other than looking up to see the car pull up.

2 Q So you heard a loud bang and you looked up then and I
3 guess what did you see at that point?

4 A Once I heard the bang I looked up and saw a boy like --
5 look -- he looked like he tripped or someone pushed him
6 or -- he was crumbling to the ground.

7 Q And you said you saw a black male, right?

8 A Yes.

9 Q Do you remember what that black male looked like?

10 A I mean what stands out the most to me is his shoes and
11 the gun because that is what I was honing in on at the time.
12 But he was probably -- I mean he wasn't a big guy. Like
13 somewhere around five-eight-ish is what I would say. Not
14 super dark-skinned.

15 Q Hair?

16 A He seemed attractive to me.

17 Q Did you notice his hair?

18 A Yes. Well -- I saw it, but I didn't pay as much
19 attention to it as -- I mean just because I could tell you
20 like the color of his skin, you know. So I saw his face.
21 But I didn't like hone in on details of him.

22 Q Do you remember giving an interview to a Sergeant
23 Kosarco shortly after this, talking to a detective?

24 A I do.

25 Q And do you remember saying in that interview that there

1 was a black guy and I don't know if it was cornrows or
2 dreadlocks or braids or something in his hair; do you
3 remember saying that?

4 A Yeah, I am pretty sure I'm -- I mean I haven't listened
5 back to it. But I am pretty sure I said maybe his hair had.
6 I know I couldn't be certain to describe his face.

7 Q Okay. But you remember you did say -- do you remember
8 saying this exactly: There was a black guy who had I don't
9 know if it was like cornrows or dreadlocks or braids or
10 something in his hair?

11 A Probably something like that.

12 Q And then Sergeant Kosarco asked about the cornrows or
13 dreads, were they tight cornrows; and you said it seemed
14 pretty tight? You continue describing the hair and the
15 cornrows; do you remember that?

16 A I remember them asking me a lot about it to try to get
17 a better description. But I wasn't certain. I was like
18 kind of wavering on how exactly to describe it.

19 MR. KING: Your Honor, may I play that -- just that
20 quote from her recorded statement if I move to admit that
21 into evidence? I can ---

22 MS. LINDER: Your Honor, I would object.

23 THE COURT: She has said -- she has basically --
24 approach, please.

25 (WHEREUPON, bench conference was had 2/9/16, 11:20 a.m.)

1 MR. KING: So ---

2 THE COURT: I sustain the objection. Excuse me.

3 BY MR. KING:

4 Q After that you saw this -- the black male and you said
5 you saw a gun in his hand?

6 A Yes.

7 Q And you said that he grabbed this backpack, right?

8 A Uh-huh.

9 Q You had ---

10 THE COURT: Is that a yes?

11 Q --- testified before when --

12 A Yes.

13 Q When the guy who first had the backpack fell down you
14 said something came out of it?

15 A Yes.

16 Q It was more than one thing that came out of it, like a
17 bunch of things ---

18 A Yes.

19 Q --- came out of it? /

20 A Yes.

21 Q Kind of scattered on the road?

22 A I don't remember seeing them on the road. I just
23 remember watching a few things fall out of the bag.

24 Q And then you said there was a white guy there, right?

25 A Yes.

1 Q And he screamed?

2 A I did not see him. I don't know who screamed. I just
3 heard someone scream.

4 Q So you don't know -- you didn't see another white guy
5 there?

6 A Not until after I was on -- got up from talking to the
7 dispatcher.

8 Q Do you remember getting your interview with Sergeant
9 Kosarco?

10 A Yes.

11 Q You said and the other white kid was just kind of what
12 the fuck or something, you know, like screamed something and
13 the car took off; do you remember saying that?

14 A Yes. And that I pieced together after I was outside.
15 After -- they interviewed me after all of this so.

16 Q Did you see anyone picking up anything off the ground?

17 A No.

18 Q So you saw the white male just grab the backpack and
19 take off?

20 A Yes. And I'm -- I can't be certain if the backpack was
21 on the ground. It seemed like a very fast scramble like he
22 was just trying to get the backpack and grab -- you know,
23 keep it from spilled out more or maybe grabbing stuff. I'm
24 not sure. But he was scrambling for it.

25 Q Now did you ever see the white guy running away from

1 the scene? When you are looking -- I guess when you are
2 looking out the window and you are seeing the black male,
3 you didn't see the white guy?

4 A The only people I saw when I was looking out the window
5 was the kid who had fallen onto the ground and the black guy
6 with the gun.

7 Q And then you end up walking outside shortly afterwards?

8 A I mean it seemed like a long time afterwards.

9 Q When you get there, there is a woman already there ---

10 A Yes.

11 Q --- by the person on the ground?

12 A Yes.

13 Q And is the white guy there at that point?

14 A Yes.

15 Q But you said shortly after that he disappeared for a
16 bit?

17 A Yes -- well, I never saw him again.

18 MR. KING: That's all the questions I have, Your Honor.

19 THE COURT: Okay. Redirect.

20 MS. LINDER: No redirect, Your Honor.

21 THE COURT: Very well. Thank you. You may step down.
22 Call your next witness, please.

23 MR. SOWARDS: The State calls Andrea Senn.

24 (WHEREUPON, the witness was duly sworn.)

25 THE CLERK: State your full name and spell your last

1 name for the record.

2 THE WITNESS: Andrea Senn, S-E-N-N.

3 **DIRECT EXAMINATION BY MR. SOWARDS OF ANDREA SENN:**

4 Q Good morning, Ms. Senn. Are you from Charleston?

5 A No.

6 Q Were you in Charleston on October the 10th, 2014?

7 A Yes.

8 Q And what were you doing in Charleston on that date?

9 A I was on vacation with a friend.

10 Q And did anything happen on that date that sticks out in
11 your mind?

12 A Yes.

13 Q And what happened?

14 A My friend and I were traveling on Highway 26 and we saw
15 a car pass in front of us quickly and threw a gun out of the
16 window.

17 Q And did you see anything else when that car passed in
18 front of you and threw a gun out of the window?

19 A We -- yes, we saw was a -- there was a -- should I
20 start from the beginning what I saw? Yes, so we saw a
21 police car coming behind us. And we moved over.

22 And at that time a red car pulled in front of us -- or
23 swerved in front of us and threw the gun out of the window
24 and went to pull over to the side of the road after the gun
25 was thrown out of the window.

1 Q Which -- which lane was the car you were in traveling
2 at that point when you saw the blue lights?

3 A We were in the left-hand lane, and then we moved over
4 to the right.

5 Q And you said that -- well, I just want to make this
6 clear. Were you driving the car?

7 A No, I was not. I was the passenger.

8 Q And you saw a car -- after your car pulled over into
9 the right-hand lane a car pulled over in front of you
10 and ---

11 A Correct, a red car pulled over from -- they were to the
12 left of us and pulled over in front of us and threw the gun
13 out of the passenger side window.

14 Q And were there -- where there any cars in between yours
15 and the car -- and the red car?

16 A No.

17 Q And when you say you saw a gun thrown out of the window
18 could you -- could you describe the gun that you saw?

19 A It was a handgun. Black, grayish color. But it was a
20 handgun for sure.

21 Q And did you see where the gun landed?

22 A It landed on the gravel on the side of the road.

23 Q And what happened after you saw the gun laying on the
24 ground?

25 A So the red car pulled off onto the side of the road.

1 And we were able to get the license plate of the car. And
2 we saw the car stop, and someone got out of the car on the
3 passenger's side.

4 Q And were you able to make out anything about the person
5 who got out of the passenger side of the car?

6 A All I recall is the passenger had a white T-shirt on.

7 Q Now you have seen all of this. You have seen the gun
8 thrown. You have seen the car continue on for a little bit
9 and then stop and somebody get out. What did you do after
10 that?

11 A We kept going and we called 911 right afterwards just
12 to report what we saw.

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

14 THE COURT: Certainly.

15 MR. SOWARDS: No further questions at this time.

16 Please answer any questions the defense may have.

17 THE COURT: Cross-examine.

18 MR. KING: Thank you, Your Honor.

19 **CROSS-EXAMINATION BY MR. KING OF ANNA SENN:**

20 Q Ms. Senn, do you remember what time this was?

21 A I don't recall off hand. It was -- would have been in
22 the afternoon sometime. I am not exactly sure what time it
23 was at this point in time.

24 Q Do you remember if it was -- it would have been
25 probably after four o'clock or right after rush hour, right?

1 A I believe so. What we heard later was the police car
2 that was passing by us was going to an accident that was up
3 the road and that is why they were passing by quickly.

4 Q But like I said, this was ---

5 A It would have been in the afternoon. I don't recall
6 exactly what time, you know, exactly. We did call 911. So
7 I don't recall the exact time. But it was in the afternoon.
8 Later in the afternoon I would say.

9 We had been to the beach and we were coming back
10 from that. So it would have been later in the afternoon
11 so.

12 Q Were there a lot of cars on the road?

13 A Yes.

14 Q You were with someone else, you said?

15 A Yes, my friend.

16 Q You and a passenger?

17 A Yes.

18 Q And you said that you called 911?

19 A Yes.

20 Q You are testifying that you saw the gun -- the car is
21 right in front of you?

22 A So -- yes, the car -- the car was to the left of us.
23 And it moved over to the right-hand lane in front of us and
24 threw the gun out as it was moving to the right. And then
25 it continued and pulled over to the side of the road after

1 the gun was thrown out of the window.

2 Q And you saw who was in the car?

3 A I recall seeing the -- like once the car stopped there
4 was someone with a white T-shirt on. I did not see anyone
5 else in the -- in the car, the driver or anyone. This is
6 the passenger that I saw.

7 Q And do you remember when you called 911 you described
8 the car as a BMW?

9 A Yes. We knew it was a red car. We said BMW. We
10 didn't really know -- I don't really know cars that well.
11 But we got the license plate since it did happen.

12 So between my friend and I we were able to get the
13 numbers and write it down so that when we called 911 we had
14 the accurate license plate so.

15 Q So you said then after the gun is thrown out of the
16 window ---

17 A Uh-huh.

18 Q --- you said you saw the car pull over?

19 A Correct, pull to the side of the road on the -- like
20 the -- on the gravel to the right.

21 Q Y'all kept going past it?

22 A Yes, we kept -- we kept moving past it. And then as we
23 were moving past it, that is when we saw the passenger get
24 out of the car.

25 Q Now so you are saying that you saw a passenger get out

1 of the car?

2 A Yes. Someone with a white T-shirt, yes.

3 Q Now I asked you before. Do you remember -- you called
4 911 right after that, right?

5 A Yes.

6 Q Right when it was fresh in your memory?

7 A It was -- yeah, a few minutes after; yes.

8 Q Okay. And do you remember saying during that 911 call
9 it was on the side but the BMW stopped ---

10 A Right.

11 Q --- about, I don't know, maybe a hundred feet
12 before ---

13 A Right.

14 Q --- and we are assuming - but we kept going - we are
15 assuming that he was going to run back and get it but we
16 don't know.

17 A Right, I don't know if he got the gun. I don't know if
18 he -- if he did get the gun. We just saw them get out of --
19 we saw him get out of the car. The passenger, not driver.

20 Q You didn't say on the 911 call that you saw him get out
21 of the car though?

22 A Um, okay. I don't recall whether I did or not. But I
23 did see someone with a white T-shirt get out of the car.

24 And but -- and my friend, which I think on the 911 tape she
25 recalled seeing the person get out of the car and move back

1 towards the gun. But I did not see that part.

2 Q But do you remember saying on the 911 call: And we
3 think that he did stop right after the policeman stopped and
4 they were probably going to run back and get it?

5 A Well, the policeman did not stop. The policeman kept
6 going past us. The policemen were in the left-hand lane,
7 and they continued past us to -- I don't know where; but I
8 am assuming it was for an accident.

9 So the police never stopped. The police kept going
10 past us in the left-hand lane. And this was all happening
11 on the right-hand lane and on the side of the road.

12 Q Is that -- do you remember saying something like that
13 on the 911 call about they were probably going to run back
14 and get it?

15 A Yeah, because we -- we did not know if they did or not
16 go back and get the gun.

17 Q The ---

18 A But -- sorry. But we did -- we did get the license
19 plate and that was, you know, what we reported; yes.

20 Q And again, you -- you didn't tell the 911 caller that
21 you saw anybody get out of the car; is that right?

22 A I don't recall. But three other times later in that
23 day different people called me and asked some additional
24 questions. I don't remember what the 911, you know,
25 gentleman asked at the time.

1 But there were two or three people -- well, one or --
2 I'm not sure exactly how many people that called me later in
3 the day that were police officers that asked later if I had
4 any questions so.

5 I don't remember what the 911 person actually asked us
6 what we -- I think they asked us if we saw the driver. We
7 did not see the driver. We just saw the, like I said, the
8 person who was a passenger.

9 MR. KING: Your Honor, I would move to admit the
10 portion of the 911 call of ---

11 THE COURT: We would play the whole call. Do you have
12 the call?

13 MS. LINDER: Yes, Judge.

14 THE COURT: We will play the whole call. That is what
15 you -- I mean she -- you asked her about. It is there for
16 her. And then you can follow-up with questions. That is
17 the easiest way to do it.

18 Do you have it -- can you cue it up?

19 MR. KING: We do.

20 THE COURT: Okay. Let's -- we will admit -- do you
21 have a disc -- do you have a disc with just this call? Can
22 we -- I mean it is on your computer, so we will need a disc
23 of just the call if you have it already.

24 MS. LINDER: We do, Judge.

25 THE COURT: Okay.

1 MR. KING: We do.

2 THE COURT: All right. What is the exhibit?

3 MR. SOWARDS: I apologize. It is State's 54.

4 THE COURT: State's 54 is admitted, at least the
5 portion that was going -- is this -- the only thing on that
6 disc it ---

7 MR. SOWARDS: It is the only thing on this disc.

8 THE COURT: Okay. It is admitted without objection; is
9 that correct?

10 MS. LINDER: Yes.

11 THE COURT: It will be defense is admitting it, so what
12 is it State's Exhibit ...?

13 MR. SOWARDS: We had it as State's 54.

14 THE COURT: All right. We will admit it as State's 54.

15 MR. KING: I was just moving to move in that one
16 portion.

17 THE COURT: I understand what you are going -- but I am
18 not -- because under the rules you are entitled to hear it
19 all.

20 And she has asked -- she has by her testimony I -- if
21 you want -- if you don't want to play -- if you only want to
22 play that, then I will deny that. But if you want to play
23 the CD, that's fine. Okay.

24 MR. KING: Yes, Your Honor.

25 THE COURT: For completeness it needs to be played, the

1 entire call. Okay.

2 (WHEREUPON, State's Exhibit Number 54 was admitted into
3 evidence.

4 (WHEREUPON, State's Exhibit Number 54 was published to the
5 jury.)

6 Q Okay. Just trying to get that one question.

7 A Got it.

8 Q During that 911 call you didn't tell them that you saw
9 somebody getting out of the car, right?

10 A Right, so I think what -- in listening back to that I
11 think we are confused as to whether or not he was talking
12 about the driver or the passenger. So that may be where the
13 confusion was.

14 So I don't -- we did not say in that 911 tape. But
15 then I heard the gentleman say the driver. So I think in
16 the moment of it and in the frantiness that we were going
17 through I think we assumed he was talking about the driver.
18 But so that may be where it wasn't clear in that tape.

19 Q Do you ---

20 A So ---

21 Q Do you agree with me you never said that on
22 anywhere ---

23 A Correct, ---

24 Q --- on that call?

25 A --- but then there were several police officers that

1 called me later in the day and then we were able to give
2 them some more clarifying information that they asked us
3 specifically about.

4 But I don't know who -- I don't believe that was taped.
5 I am not sure. I don't think it was because they did not
6 say I was being taped, so.

7 Q And in fact what you said on the call when they said
8 where is the suspect now ---

9 A Right.

10 Q --- you said the last we saw him we kept going I-26, he
11 was in his car?

12 A So that is where I don't know if they were -- we were
13 confused as to whether or not they were talking about the
14 driver or any other passenger. So that may be where we were
15 just confused as to what he was asking.

16 MR. KING: No other questions, Your Honor.

17 THE WITNESS: Okay.

18 THE COURT: Redirect.

19 MR. SOWARDS: None, Your Honor.

20 THE COURT: Thank you. You may come down. Thank you,
21 ma'am. Call your next witness, please.

22 MS. LINDER: The state calls Sergeant Damien Seabrook.
23 (WHEREUPON, the witness was duly sworn.)

24 THE CLERK: If you will please state your full name and
25 spell your last name for the record.

1 THE WITNESS: Damien Latrell Seabrook, S-E-A-B-R-O-O-K.

2 **DIRECT EXAMINATION BY MS. LINDER OF DAMIEN SEABROOK:**

3 Q Good morning. What is your occupation?

4 A City of Charleston police officer.

5 Q And what are your current duties with the City?

6 A I am the sergeant over the Committee Action Team.

7 Q And how long have you been employed with the City
8 Police Department?

9 A Fifteen years.

10 Q Can you tell the jury just briefly about your
11 education, training and background?

12 A I have a bachelor's in criminal justice. I have a
13 master's degree in public administration. I have been to
14 four supervisor classes. I have been to DEA school. I have
15 been to Community Policing School and block training and a
16 whole other host of training.

17 Q And were you working back on the October the 10th,
18 2014?

19 A Yes, sir.

20 Q And how did you first get involved with this case,
21 State vs. Ahshaad Owens?

22 A We had an incident that happened, I think around Percy
23 and Bogard Street; somewhere in that area. And the street
24 supervisor -- I am not a street supervisor. The street
25 supervisor went to that incident which turns me into the

1 street supervisor. So that is how I got involved in that.

2 Q And what did you do as soon as you got involved with
3 that case?

4 A Well, Dispatch sent a call out about a red vehicle,
5 somebody saw a red vehicle on I-26 near Dorchester Road and
6 they threw a firearm out of the window. Our communication
7 dispatcher alerted me to that. And then I started to ride
8 up to that area.

9 Q And what did you do when you were in route?

10 A I called -- excuse me, I called the call, the person
11 you made the call so I could get better information on what
12 happened and what transpired.

13 Q And did you end up getting more detail?

14 A Yes.

15 Q And do you know what time you got the information?

16 A I think it was around 4:34. Somewhere in that area.

17 Q And what did you end up doing; you said you were on
18 route and you called; did you ever go up I-26?

19 A Yes, ma'am.

20 Q And what did you do when you made it up there?

21 A Once I got up there, based on the information I got
22 from the caller I started canvassing the area to see if I
23 could locate any evidence.

24 Q When you say canvass can you tell the jury what that
25 actually means?

1 A I got out on foot and I walked from Cosgrove Avenue
2 up -- on the interstate on the side up to around the
3 middle -- a little bit after Dorchester Road.

4 Q And are you aware of anyone aside from just you ever
5 attempted to canvass that area?

6 A Yes, we have some canine -- a canine officer came up
7 there to help me, North Charleston Police Department.

8 Q And what where you looking for on the canvass?

9 A I was looking for a gun.

10 Q And did you ever locate anything?

11 A No, ma'am.

12 MS. LINDER: Beg the court's indulgence.

13 THE COURT: Okay.

14 MS. LINDER: I have no more questions for this witness.
15 Please answer anything the defense may have.

16 THE COURT: Cross-examine.

17 MR. KING: I have no question, Your Honor.

18 THE COURT: Thank you. You may come down. Thank you
19 sir.

20 Call your next witness, please.

21 MS. LINDER: The State calls Detective Holmes.

22 (WHEREUPON, the witness was duly sworn.)

23 THE CLERK: If you will please state your full name and
24 spell your last name for the record.

25 THE WITNESS: Detective Richard J. Holmes. Spelling of

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

1 the last name is H-O-L-M-E-S.

2 **DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD**

3 **HOLMES:**

4 Q Detective Holmes, who is your -- what is your

5 occupation?

6 A I am a detective presently assigned to the Homicide

7 Investigations Unit with the Charleston City Police

8 Department.

9 Q And what are your duties being assigned to the Homicide

10 Unit?

11 A The Homicide Unit previously formed of the Violent

12 Crimes Unit. We investigate crimes that is reported to the

13 Charleston Police Department.

14 Q And can you tell the jury just briefly about your

15 education, training and experience?

16 A I graduated high school. I attended college at Trident

17 Technical College. Continuing on education I -- we go to

18 the South Carolina Criminal Justice Academy where we get our

19 certification.

20 I continued after certification to get detective level

21 classes. I completed multiple detective level classes in my

22 investigations. And continuously yearly we have to be

23 recertified in our field.

24 Q And how long have you been a detective?

25 A I have been a detective now for the last twenty-four

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

1 and a half years.

2 Q And were you working on October the 10th of 2014?

3 A Yes, ma'am, I was.

4 Q And how were you first brought into this case?

5 A I was notified by my supervisor in reference to a
6 shooting that occurred in the area of twenty- -- in the area
7 of Percy and Bogard Street on a Friday afternoon.

8 Q And do you know what time that was?

9 A It was about 4:30 in the afternoon.

10 Q 4:30?

11 A 4:30, 4:35; somewhere around in there, yes, ma'am.

12 Q Okay. This Percy and Bogard Street is that in
13 Charleston County?

14 A Yes, ma'am.

15 Q Can you describe to the jury what area that is?

16 A It is an area located off of -- it is cornered by
17 Coming Street, Rutledge Avenue, Spring Street, as well as
18 the corner of Line Street. It is enclosed in that area.

19 Q And who is the victim in this case?

20 A Well, there's two victims in this -- in this situation.
21 We have a victim who was murdered at the time which was
22 Jarrod Howard. And we also have a robbery victim who is
23 Hunter Bessinger.

24 Q And the murder victim in this case, Jarrod, where did
25 he live?

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

- 1 A He lived at Sires Street.
- 2 Q And can you explain to the jury what you first did when
- 3 you were made aware of this situation?
- 4 A In all of my investigations I generally want to see the
- 5 general area of what happened. So I responded to the
- 6 general area to get an overlay of what happened to see the
- 7 general scene itself. So I responded down and got a general
- 8 information of what was the overlay and everything and was
- 9 abreast of what was going on in the area.
- 10 Q And did you interview an eyewitness in this case?
- 11 A I did.
- 12 Q And who did you interview?
- 13 A Hunter Bessinger.
- 14 Q Where did that interview take place?
- 15 A It took place at the Charleston Police Department
- 16 upstairs in our investigation's office.
- 17 Q When did you first learn that he was an eyewitness
- 18 ready for interview?
- 19 A When I arrived on the scene I was notified by the
- 20 uniform patrol that they had taken a gentleman from the
- 21 scene and transported him over to headquarters in reference
- 22 to this incident that had taken place over there.
- 23 Q And do you know -- and if you don't, that's fine. Do
- 24 you know about what time you started conducting the actual
- 25 interview at headquarters with Hunter?

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

- 1 A The time roughly I believe it is some time after I
2 left. Some- -- in the area of like 4:55 in the afternoon.
- 3 Q And when you interviewed him did you advise and
4 Miranda?
- 5 A Yes, ma'am, I did.
- 6 Q And did he sign a card indicating he understood his
7 Miranda rights?
- 8 A Yes, ma'am, he did.
- 9 Q Do you happen to remember what hand he is?
- 10 A He is right-handed.
- 11 Q And did Hunter end up making any identifications of
12 people or things during the course of his interview?
- 13 A Yes, ma'am, he did.
- 14 Q Did you collect or take any property from Hunter?
- 15 A I did. When he came into our interview room he had a
16 knife on him. And investigations purpose we don't allow
17 weapons in our investigation, so the weapons -- the weapon
18 that he had, the conv- -- the knife was confiscated.
- 19 Q And what did you ever do with that knife?
- 20 A It was placed into evidence and secured in our
21 evidence.
- 22 Q And did you ever give it back?
- 23 A Yes, ma'am, he received it back.
- 24 Q Just so the jury can understand how these
25 investigations go, how these homicide and violent crime

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD

HOLMES:

1 investigations go, so you were assigned lead; does that mean
2 as soon as you started interviewing Hunter that everything
3 else stopped?

4 A No, ma'am. In an investigation we have what we call a
5 lead detective. That was myself on this case. And the lead
6 detective is basically general compiling different things.
7 But the investigation is compiled of many different
8 detectives in our borough, and we all work together to just
9 come to one central point on the investigation.

10 Q So as lead detective was there a canvass done of the --
11 of a few blocks around the area where the shooting happened?

12 A Yes, ma'am.

13 Q And do you have any idea about how many doors were
14 knocked on or how many people were interviewed?

15 A Approximately we had somewhere in the area of 30
16 interviews that was conducted on this -- on this case alone.

17 Q Aside from canvassing the area do you rely on dispatch
18 for anything?

19 A Yes, ma'am, we do.

20 Q And in this case what did you do as a result of hearing
21 information from Dispatch?

22 A We received information from Dispatch in reference to
23 information that was received on the highway in reference to
24 a vehicle that had thrown something out of the window. We
25 continued the investigation based on what we had at that

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

1 time.

2 Q And does Dispatch have information about when the first
3 call is, about when the shooting happened?

4 A Yes, ma'am, they do.

5 Q And do you know when that was?

6 A This call came in at approximately I believe it was
7 about 4:30 in the afternoon on a Friday.

8 MS. LINDER: Beg the court's indulgence.

9 THE COURT: Okay.

10 Q Detective Holmes, did you write any reports in this
11 case?

12 A Yes, ma'am, I did.

13 Q And would reviewing your report perhaps refresh your
14 recollection as to exactly what time the shooting occurred?

15 A Yes, ma'am. And I have a copy of the report. The
16 report the call actually came in earlier than my arrival on
17 the scene. The call came in at approximately 4:06 p.m.

18 Q Okay. And you said there was a gun thrown from a car.
19 Do you know what time that call came in?

20 A That call was approximately somewhere in the area of
21 about 4:12. We received that call through our dispatch
22 center.

23 Q And you talked about you received a license plate.

24 A Yes, ma'am.

25 Q Did you do anything or did you learn anything through

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

1 the investigation about what car matched that license plate?

2 A We have a system that we can run a tag through our
3 South Carolina Motor Division. And we can run a tag and it
4 will tell us who the car comes back registered to. And I
5 did get it -- we did have a tag on this car, and we ran the
6 tag.

7 Q And what kind of car did that come back to?

8 A It came back to a 2005 Mazda 6.

9 Q And who was that car registered to?

10 A It came back registered to a gentleman by -- a party by
11 the name of Phillip Jewell.

12 Q Phillip Jewell. And once you have this information on
13 a specific car with a license plate did you try to get that
14 information out to other agencies?

15 A Yes, ma'am, because of that information we broadcast in
16 the Tri-County area so we send the information -- we send
17 the information to all different local agencies in the area
18 so they can be on the lookout in case they spot that vehicle
19 that we are looking for.

20 Q And do you know approximately what time that BOLO went
21 out, to be on the lookout?

22 A The BOLO went out at approximately about --
23 approximately 5:40 p.m.

24 Q Now we are talking about this car, this car registered
25 to Phillip Jewell. Was that car ever located?

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

- 1 A Yes, ma'am, it was.
- 2 Q What time was the car located?
- 3 A The car was located at about 10 o'clock at night.
- 4 Q All right. And do you remember where the car was
5 located?
- 6 A Yes, ma'am, it was located up in the mobile home park
7 up off of Ashley Phosphate Road called The Gables.
- 8 Q The Gables. And are you aware of any relationship of
9 the individuals at that specific mobile home?
- 10 A I believe it is a friend of the accused in this case.
11 It is a place where they went to afterwards.
- 12 Q And did anyone, yourself or anyone on your team,
13 interview the defendants in this case?
- 14 A Yes, ma'am, we did.
- 15 Q And two defendants in this case are who; who are the
16 two people charged?
- 17 A The two defendants in this case is Phillip Jewell and
18 Ahshaad Owens.
- 19 Q And how did -- how did you or your team get them to
20 come into the Department?
- 21 A We were contacted by North Charleston Police Department
22 in reference to a family member of the defendant
23 transporting him to North Charleston Police Department in
24 reference to him wanting to speak with us about the
25 information. Because the broadcast had already gone out on

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

1 the local TV's in reference to this vehicle that we were
2 looking for.

3 Q And do you remember which defendant's family member?

4 A I believe it was Mr. Jewell's brother had contacted --
5 had transported them to North Charleston Police Department
6 in reference to surrendering him over to North Charleston
7 Police Department.

8 Q So brother of the other defendant turned them in?

9 A Yes, ma'am.

10 Q And do you remember what time -- did you yourself --
11 were you yourself interviewing this defendant?

12 A Yes, ma'am, I did.

13 Q Do you remember approximately what time that interview
14 started?

15 A It started somewhere at about sometime after 10
16 o'clock. Because I responded to North Charleston to pick me
17 up to transport him back to our headquarters to do the
18 interview.

19 Q And did you advise him of his Miranda rights before he
20 was interviewed?

21 A Yes, ma'am, he was.

22 Q Do you remember did he sign a card left-handed,
23 right-handed?

24 A He wrote in right hand, yes, ma'am.

25 Q Did you have GSR or gunshot residue collected on this

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

1 defendant, Owens?

2 A No, ma'am, it was not.

3 Q Why?

4 A Because of the timeframe. We have -- when we have a
5 shooting we have a very small timeframe that we have to
6 collect GSR.

7 It is not going to remain on a party -- an individual
8 for a period of time. So we have to collect it a very
9 quick time after a shooting incident took place -- take
10 place.

11 Q And did you collect any -- any clothing or shoes from
12 this defendant?

13 A Yes, ma'am, we did. And in a situation like this when
14 we have a shooting we collect -- because of the descriptions
15 that we get we collect every article of clothing that the
16 parties are wearing at this time and we place them into a
17 difference set of garments to be transported to a different
18 facility.

19 Q At this time I will show you what has been marked
20 State's Exhibit 51 for identification purposes. If you can
21 cut that open and take a look.

22 (WHEREUPON, exhibit opened by the witness.)

23 Q Do you recognize those?

24 A Yes, ma'am.

25 Q How do you recognize them?

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

1 A These are the sneakers that I collect -- we collected
2 the night of the investigation.

3 Q And where those sneakers collected from this defendant,
4 Ahshaad Owens?

5 A Yes, ma'am, it is -- it was.

6 Q And do they appear in substantially the same condition
7 as they did when you collected them?

8 A Yes, ma'am,

9 MS. LINDER: Your Honor, at this time I would seek to
10 admit State's Exhibit 51 into evidence.

11 THE COURT: Is there any objection?

12 MR. KING: No, Your Honor.

13 THE COURT: Without objection State's Exhibit 51 is
14 admitted. It is a bag containing sneakers.

15 (WHEREUPON, State's Exhibit 51 was admitted into evidence.)

16 Q So State's Exhibit 51, can you tell the jury what these
17 are?

18 A Those are a pair of sneakers.

19 Q Can you tell what type of sneakers they are?

20 A They are Nikes.

21 Q Can you describe the color on them?

22 A They are purple, green, black Nikes.

23 Q Based on your investigation of this case did you ever
24 attempt to look for surveillance video?

25 A We did. We -- the investigation led us to go along

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

1 different areas of the highway. We canvassed different
2 areas, and we went up into the Charleston area at which time
3 we did find some businesses that we attempted to get video
4 from in that area.

5 Q And do you remember which two locations you checked
6 surveillance video in Charleston?

7 A Yes, ma'am, there is a Hess Mart located on Ashley
8 Phosphate. And there is also a beer and wine, tobacco shop
9 on Ashley Phosphate that I requested that we have video
10 pulled from at that location.

11 Q And were any -- were any photographs taken of any
12 videos from the beer and tobacco outlet?

13 A Yes, ma'am, it was. We recovered video from the
14 tobacco outlet up on Ashley Phosphate.

15 Q All right. At this time I will show what has been
16 marked as State's Exhibit 28, 29 and 30. If you can review
17 this, please. Do you recognize these?

18 A Yes, ma'am.

19 Q How do you recognize them?

20 A These are pictures that were taken of the surveillance
21 video up at the beer shop up in Charleston, the tobacco shop
22 up in Charleston.

23 MS. LINDER: At this time the State would seek to admit
24 State's Exhibit 28, 29, and 30 into evidence.

25 THE COURT: Is there any objection?

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

1 MR. KING: No, Your Honor.

2 THE COURT: Without objection State's 28, 29, and 30
3 are admitted. Each being a photography.

4 (WHEREUPON, State's Exhibit Number 28 admitted into
5 evidence.)

6 (WHEREUPON, State's Exhibit Number 29 admitted into
7 evidence.)

8 (WHEREUPON, State's Exhibit Number 30 admitted into
9 evidence.)

10 Q And if you can look up at that TV screen behind you.
11 Can you show through your investigation what you deemed
12 significant in this photograph?

13 A In the lower corner we are looking at a red vehicle
14 which is it is actually going to be the vehicle in question.

15 Q And is there anything to know what time and date this
16 is?

17 A The time and date if you look at it, it is actually
18 timestamp from the bottom. It is dated 10:10:214. Out of
19 military time that is approximately 5:22 p.m.

20 Q And that is State's Exhibit 29. And what does this
21 show?

22 A That is the red Mazda vehicle that we're talking,
23 about. And it is stamped with the time on it -- the date on
24 it.

25 Q State's Exhibit 30, what does this show?

HOLMES:

1 A That is the codefendant of -- in this case that is Mr.
2 Phillip Jewell inside the beer and wine shop. And it is
3 also dated Friday the twenty -- I'm sorry, 5:00 p.m. -- 5:23
4 p.m.

5 Q Throughout the course of this investigation did you do
6 any search warrant?

7 A Yes, ma'am, we did.

8 Q And which search warrants did you execute?

9 A We executed -- before we could go in we executed a
10 search warrant on the actual vehicle and the car -- I'm
11 sorry, the car and the residence.

12 Q Which residence?

13 A There is a residence that came back registered to that
14 vehicle, and it comes back registered to Mr. Jewell's
15 residence located at Quail Harbor Court in North
16 Charleston, South Carolina?

17 Q Did you locate anything of interest during the search
18 warrant, Quail Hollow?

19 A No, ma'am, we did not.

20 Q And what about the car; where was the car located?

21 A The car was located in The Gables apartment complex.
22 And we had -- from there we had the car secured on a
23 wrecker.

24 It was followed by a police car and it was transported
25 over to our crime scene lab for processing.

DIRECT EXAMINATION BY MS. LINDER OF DETECTIVE RICHARD
HOLMES:

1 Q And did it get processed at Crime Scene?

2 A Yes, ma'am, it did.

3 Q And throughout the course of your investigation did you
4 get any cell phones or did you attempt to analyze any cell
5 phones?

6 A We received the cell phone of the victim. And we
7 attempted to get inside. Cell phone are very their unique,
8 that we have a unit that we call our DE Unit which is our
9 Digital Evidence Unit. They do all of our processing for
10 us.

11 And based on this phone that we had from our victim we
12 were not able to basically crack the code on it to get
13 inside. So we could not get inside this phone to see what
14 was in there.

15 Q And did you get any cell phone off of this defendant?

16 A No, ma'am, we did not.

17 Q Did you get any cell phone off of the other defendant,
18 Jewell?

19 A No, ma'am, we did not.

20 MS. LINDER: Beg the court's indulgence.

21 THE COURT: Certainly.

22 MS. LINDER: I have no further questions. If you could
23 please answer anything the defendants may have.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Cross-examine.

1 CROSS-EXAMINATION BY MR. KING OF DETECTIVE RICHARD HOLMES:

2 Q Detective Holmes. You are aware through your
3 investigation that a bottle of Xanax pills was found in the
4 deceased person's pocket, right?

5 A Yes, sir.

6 Q And you've testified -- you interviewed Hunter
7 Bessinger, right?

8 A I did.

9 Q Did you notice any injuries on Hunter Bessinger's his
10 body or his face or anything?

11 A No, sir, I did not.

12 Q Hunter Bessinger is larger than Ahshaad; is that right?

13 A Yes, sir.

14 Q When you -- when you interviewed Mr. Bessinger he
15 wasn't honest with you?

16 A In an interview we basically have -- what we have is an
17 initial phase. And I have been -- for 25 years you will
18 never get the entire truth out of an individual up front.
19 So it is an ongoing process in the investigation.

20 Q But the beginning of the interview he was denying any
21 knowledge of drugs or that Jarrod was involved in drugs?

22 A That's correct.

23 Q And you kept having to plead with him, like kind of
24 take a break and say look we are doing an investigation
25 here, we don't care about drugs; is that right?

- 1 A Yes, sir.
- 2 Q So it is fair to say that he wasn't honest --
- 3 completely honest with you during your interview with him?
- 4 A No, sir.
- 5 Q You -- and you saw Ahshaad later that night, right?
- 6 A Yes, sir..
- 7 Q He basically turned himself in -- or I mean that you
- 8 got a call to let you know where they were and y'all went
- 9 and picked him up, him and Mr. Jewell?
- 10 A He was transported by his family member to Charleston
- 11 Police Department.
- 12 Q So he turned himself in -- it later that night, but he
- 13 turned himself in?
- 14 A If you want to call it a turn in. I wouldn't call it a
- 15 turn in, so but he was surrendered over to North Charleston
- 16 Police Department.
- 17 Q He didn't -- well, he didn't flee the state?
- 18 A No, sir, he did not flee the state.
- 19 Q Y'all didn't have to chase him and go after him to get
- 20 him?
- 21 A No, sir.
- 22 Q Ahshaad didn't have cornrows or braids or dreads, did
- 23 he?
- 24 A No, sir.
- 25 Q You don't have any information that he has ever had

1 cornrows or dreads or ---

2 A No, sir.

3 Q Mr. Jewell either, no cornrows or dreads?

4 A No, sir.

5 Q Did you do a search warrant of Jarrod's house?

6 A No, sir, we did not.

7 Q But you were aware that Jarrod was participating in a
8 drug deal that night, right?

9 A We found out through the investigation, yes, sir.

10 Q But you didn't search his house to see if there were
11 any drugs or a backpack or a gun?

12 A No, sir.

13 MR. KING: That's all the questions I have.

14 THE COURT: Okay. Redirect.

15 MS. LINDER: Nothing further from the State.

16 THE COURT: Okay. You can come down. Thank you, sir.

17 Call your next witness, please.

18 MS. LINDER: If we may approach?

19 THE COURT: Yes.

20 (WHEREUPON, bench conference was had.)

21 THE COURT: Ladies and gentlemen, we are going to break
22 for our lunch break. And you are going to get a little bit
23 longer. Today I have another hearing at 1:45. We try to
24 work these things around timeframe. And normally I try to
25 fix it so it is like we break at 12:30-ish and come back at

DIRECT EXAMINATION BY MR. LINDER OF ASHLEY NEWELL

1 **DIRECT EXAMINATION BY MR. LINDER OF ASHLEY NEWELL:**

2 Q Good afternoon.

3 A Good afternoon.

4 Q Where are you employed?

5 A I am a crime scene investigator for the Charleston

6 Police Department in the City of Charleston.

7 Q And how long have you been with law-enforcement?

8 A I have been with the Department for five years.

9 Q And can you tell the jury any background, education or

10 training that you have had?

11 A Of course. I hold a bachelor of science in criminal

12 justice, a minor in psychology, a master of science in

13 criminal justice, as well as 400 hours of in-service

14 training with the Charleston Police Department.

15 In addition I am also a subject matter expert and

16 adjunct instructor for the National Center of Biomedical

17 Research and Training which is through the Department of

18 Homeland Security.

19 Q And what was your role back and what was your

20 occupation back in October of 2014?

21 A I was assigned to the Crime Scene Unit as a crime scene

22 investigator.

23 Q And what are your duties as a crime scene tech -- as a

24 crime scene investigator?

25 A As a crime scene investigator our jobs and

1 responsibilities are to respond to major and minor crime
2 scene incidents and to be able to locate, document, collect
3 and preserve all types of physical evidence that we may
4 encounter.

5 Q And a lot of times you hear about processing a scene.
6 How do you process a scene?

7 A Processing is a term that we use. And it basically
8 means to document, collect, analyze, give additional methods
9 if need be to that particular piece of evidence.

10 Q And on October 10th of 2014 did you have the occasions
11 to respond to a shooting that happened downtown near Bogard
12 and Percy Street?

13 A I did.

14 Q And what time did you respond?

15 A I responded at approximately 4:37 p.m.

16 Q And what was the purpose of you going to that location?

17 A The purpose for me to respond to that scene was that we
18 were informed that a shooting incident had occurred at that
19 location. And so I was dispatched to that area in order to
20 document, collect, any search for any kinds of possible
21 physical evidence.

22 Q And what did you do when you arrived on the scene?

23 A I met with the first responding officer, Officer
24 Boston. And he gave me an overall description of the
25 information that was known at the time, the condition of the

DIRECT EXAMINATION BY MR. LINDER OF ASHLEY NEWELL

1 scene, what was presently observed in plain view, and others
2 sorts of conditions of the scene.

3 Q And when you initiated your investigation what is the
4 first thing that you did?

5 A The very first thing that I did was do a preliminary
6 walk through of the scene. So basically I walked along
7 the borders of the primary crime scene barrier and observed
8 what was its state without any types of disturbance to the
9 scene.

10 Q And how did you document the scene itself?

11 A The scene was documented through photographs.

12 Q What did you observe in your initial walk-through?

13 A In the initial walk-through I noted that the scene
14 itself was relatively simple as compared to other types of
15 more serious scenes that I responded to. They are -- are
16 far as evidence goes the physical evidence was limited to
17 very few pieces.

18 I was informed while I was on scene documenting it by
19 the investigators on the scene that it was believed that the
20 scene itself was -- was kept mostly to a vehicle and that
21 the vehicle was no longer present on the scene, as well as
22 the victim was no longer on the scene.

23 Q When you did your walk-through did you end up
24 canvassing the crime scene area for anything?

25 A Yes. Myself, another crime scene investigator, as well

1 as one of our canine officers searched the scene for any
2 types of items of evidentiary value.

3 Q And did you find anything?

4 A No, nothing additional was found through that search.

5 Q And as far as photographs what are you trying to
6 capture in your photographs, what perspectives?

7 A The perspectives that we use for the photographs are
8 first to give an overall view of a scene to give the viewer
9 an idea of what types of evidence we have, where it is
10 placed, as well as if any information comes to us as far as
11 a possible witness to the incident then we try to document
12 the vantage point of that witness.

13 Q And if you find items of interest when you are
14 canvassing the scene is there anything that you do to make
15 them easily identifiable when you take a photograph?

16 A Yes. We have yellow, marked photo markers that are
17 numbered; and we will use those to document the pieces of
18 evidence.

19 Q And did you attempt to lift any prints from the scene?

20 A Yes.

21 Q And did you have -- what were your results?

22 A, Nothing.

23 Q And did you collect evidence from the scene?

24 A Yes.

25 Q And all the collected items from the scene were those

DIRECT EXAMINATION BY MR. LINDER OF ASHLEY NEWELL

1 all later turned in by crime scene techs to evidence?

2 A Yes, they were.

3 Q At this time I show you what has been marked as State's
4 17, 19, 20, 24, 25, 26 and 27. If you could please look at
5 these. Do you recognize these photos?

6 A I do.

7 Q How do you recognize them?

8 A These are the photographs that I took of the scene.

9 Q And are those a fair and accurate depiction of the
10 scene as you saw them when you arrived at approximately 4:37
11 or afterwards on that day?

12 A Yes.

13 MS. LINDER: Your Honor, at this time the State would
14 seek to admit these items into evidence; items 17, 19, 20,
15 24, 25 26, and 27.

16 THE COURT: Is there any objection?

17 MR. KING: No, Your Honor.

18 THE COURT: Without objection State's 17, 19, 20 24
19 through 27 inclusive are admitted without objection. They
20 are each a photo.

21 (WHEREUPON, State's Exhibit Number 17 admitted into
22 evidence.)

23 (WHEREUPON, State's Exhibit Number 19 admitted into
24 evidence.)

25 (WHEREUPON, State's Exhibit Number 20 admitted into

DIRECT EXAMINATION BY MR. LINDER OF ASHLEY NEWELL

1 evidence.)

2 (WHEREUPON, State's Exhibit Number 24 admitted into
3 evidence.)

4 (WHEREUPON, State's Exhibit Number 25 admitted into
5 evidence.)

6 (WHEREUPON, State's Exhibit Number 26 admitted into
7 evidence.)

8 (WHEREUPON, State's Exhibit Number 27 admitted into
9 evidence.)

10 Q All right. At this time I am going to direct your
11 attention to the screen behind. And I am going to just put
12 these up. And if you can explain to the jury what you
13 captured in this photograph.

14 A This is an overall photograph of Percy Street
15 (pointing). This is at near the intersection of Percy and
16 Bogard (pointing). And this is looking down Percy Street
17 (pointing).

18 Q Down Percy Street. What road is up here (pointing)?

19 A My goodness. I believe it's

20 Q If you are not certain, that's fine.

21 A I am not certain.

22 Q All right. I am going to show you now State's 27. Can
23 you please explain to the jury what this is?

24 A This is the area in front of Percy Street. And if
25 you look towards the bottom left of the photograph you see

DIRECT EXAMINATION BY MR. LINDER OF ASHLEY NEWELL

1 the yellow evidence markers.

2 Q Can you tell the jury what this is? This is State's

3 20.

4 A This is still the area in front of Percy Street.

5 And this is that same area, but this is before the evidence

6 markers were placed down.

7 Q State's 26?

8 A And this is with -- the same area with the yellow

9 evidence markers.

10 Q And do you recall what these evidence markers were

11 marking?

12 A Yes. Evidence Marker 1 is a tube of Chapstick. And

13 Evidence Marker 2 is a smaller pool of blood.

14 Q State's Exhibit 19?

15 A And this is the close-up picture of that area of blood

16 on the ground.

17 Q And did you take all of your photographs from inside --

18 from outside on the street?

19 A No, I did not.

20 Q Where else did you go?

21 A I also entered into a business that is located at the

22 intersection of Percy and Bogard. It is - at the time it

23 was the Elliottborough Mini-bar. And this was an area where

24 I was informed a witness had been located and was able to

25 observe the incident.

1 Q At this time I show you State's Exhibit 24. And what
2 is this picture?

3 A This is inside the business in a storage area where
4 there is a window looking out into that area in front of
5 Percy Street.

6 Q And State's 25.

7 A And you can faintly see my yellow evidence markers of
8 where those pieces of evidence were located.

9 Q After you left the scene did you have any other further
10 duties or involvements with this case?

11 A Yes.

12 Q And were you involved with any GSR tests?

13 A I was.

14 Q And how many people did you take a Gunshot residue kit
15 from?

16 A Two.

17 Q Okay. And who were those people?

18 A The first was the victim, Mr. Howard. And the second
19 was a witness to the scene, Mr. Bessinger.

20 Q And where did you do the -- collect the victim -- I'm
21 sorry, the gunshot residue kit on Mr. Howard, on Jarrod?

22 A I performed the gunshot residue kit on Mr. Howard at
23 MUSC ER where he had already been declared deceased.

24 Q And do you know approximately what time that was?

25 A Approximately 5:40 p.m.

DIRECT EXAMINATION BY MR. LINDER OF ASHLEY NEWELL

1 Q And where did you take Hunter Bessinger's GSR kit?

2 A His GSR kit was collected from him at the Charleston
3 Police Department where he was being interviewed by
4 detectives.

5 Q And do you know what time you collected that?

6 A Approximately 6:13 p.m.

7 Q Did you do a GSR test on the driver, Phillip Jewell, in
8 this case?

9 A No, I did not.

10 Q And did you do one of this defendant, Ahshaad Owens?

11 A No, I did not.

12 Q Can you explain to the jury when it is more and less
13 conducive to collect GSR?

14 A Of course. Gunshot residue is considered trace
15 evidence. And trace evidence it very fragile and can be
16 determined by the environment, different conditions of the
17 scene.

18 And with gunshot residue being very transient and very
19 fragile it can disappear after so many hours. So it would
20 not be conducive to conduct a GSR test after approximately
21 six hours because for a person's skin they secrete oils,
22 they may wash their hands, they may get wet, and you can
23 lose that evidence.

24 So after an elongated period of time it wouldn't be
25 conducive to conduct a test.

1 Q Did anyone from Crime Scene go to the hospital in this
2 case?

3 A Yes.

4 Q And was anything documented at the hospital?

5 A Yes.

6 Q Was anything collected at the hospital?

7 A Yes.

8 Q What was documented and what was collected at the
9 hospital?

10 A The victim's clothing was documented, as well as
11 personal property that was on him at the time of the
12 incident.

13 Q And how was it documented; was it photographed?

14 A Yes, it was.

15 Q At this time I am showing you what has been marked as
16 State's Exhibit 10, 11, 12, 13, 14, 15, and 16. If you
17 could please look at these photographs. And do you
18 recognize these?

19 A I do.

20 Q And are these photographs that were taken by members of
21 photograph crime scene?

22 A Yes, that were.

23 Q And do they fairly and accurately represent the items
24 in the photographs?

25 A Yes.

DIRECT EXAMINATION BY MR. LINDER OF ASHLEY NEWELL

1 MS. LINDER: Your Honor, at this time the State would
2 seek to admit these into evidence; 10 through 16?

3 THE COURT: All right. Any objection?

4 MR. KING: Objection to Number 10 and Number 11 under
5 Rule 403, Your Honor.

6 THE COURT: Okay. And what is the basis?

7 MR. KING: Cumulative and prejudicial.

8 THE COURT: Okay. May I see them?

9 (WHEREUPON, documents were provided to the court.)

10 THE COURT: Photographs, State's Exhibits 10 through 16
11 are admitted. Ten and eleven are submitted subject to
12 objection stated by counsel.

13 MS. LINDER: Thank you, Your Honor.

14 (WHEREUPON, State's Exhibit 10 admitted into evidence.)

15 (WHEREUPON, State's Exhibit 11 admitted into evidence.)

16 (WHEREUPON, State's Exhibit 12 admitted into evidence.)

17 (WHEREUPON, State's Exhibit 13 admitted into evidence.)

18 (WHEREUPON, State's Exhibit 14 admitted into evidence.)

19 (WHEREUPON, State's Exhibit 15 admitted into evidence.)

20 (WHEREUPON, State's Exhibit 16 admitted into evidence.)

21 Q Again, Ms. Newell, if you could look at the screen
22 behind you. I am going to put these photographs up. And if
23 you could explain to the jury what these photographs are of.
24 State's Exhibit Number 10.

25 THE COURT: Just one second. Obviously 12 through 16

1 are without objection? For clarity. Excuse me.

2 THE COURT REPORTER: Those were previously admitted.

3 THE COURT: Those were previously admitted?

4 THE COURT REPORTER: Yes.

5 THE COURT: Thank you.

6 Q State's Exhibit 10?

7 A This is a photograph of the shirt that the victim Mr.
8 Howard was wearing at the time of the incident.

9 Q State's 11?

10 A This is the same shirt but flipped over to the back.

11 Q State's 12?

12 A This is towards the lower center section of the back of
13 the same shirt.

14 Q And just to go back to 11 - I don't know if this is
15 helpful or not.

16 (WHEREUPON, display adjusted.)

17 A Lower center area is where that photograph is taken.
18 And you can note that there is a hole in that area that is
19 consistent with a fired projectile.

20 Q State's 13?

21 A That is a close-up of the same hole with a measuring
22 tool.

23 Q Fourteen?

24 A The same with a tool on the opposite side.

25 Q State's 15?

DIRECT EXAMINATION BY MR. LINDER OF ASHLEY NEWELL

1 A This is a photograph of the fired projectile that was
2 removed from the victim during autopsy.

3 Q State' 16?

4 A And this is a photograph of the personal property that
5 was on Mr. Howard at the time of the incident.

6 MS. LINDER: I have no further questions for you at
7 this time. If you can answer anything that they defense may
8 have.

9 THE COURT: Cross-examine.

10 MR. KING: Thank you, Your Honor.

11 **CROSS-EXAMINATION BY MR. KING OF ASHLEIGH NEWELL:**

12 Q Ms. Newell, you testified about the gunshot residue
13 kids that you performed?

14 A Yes, sir.

15 Q You testified that that is fragile evidence; it is
16 right?

17 A It is.

18 Q Over time the gunshot residue can get wiped off; is
19 that right?

20 A That's correct.

21 Q People can sweat and it can just sort of dissipate over
22 time; is that right?

23 A Yes, sir.

24 Q Even if you don't wash your hands?

25 A Yes, sir, that is possible.

1 Q Even if you don't wipe your hands off?

2 A It is.

3 Q So the earlier you get that gunshot residue test, the
4 better; right?

5 A Ideally, yes

6 Q Ideally you would like to get it right after or as
7 suspects as suspects are apprehended; or if there is a
8 shooting, to right after a shooting; is that right?

9 A That would be ideal.

10 Q Now in this case you said you took the gunshot residue
11 kit on Jarrod Howard at 5:40 p.m.?

12 A Yes, sir.

13 Q And on Hunter Bessinger at 6:13 p.m.?

14 A Yes, sir.

15 Q So for Mr. Bessinger almost around two hours after the
16 incident is supposed to have happened, ---

17 A Uh-huh.

18 Q --- right? Does that mean that there could be less
19 gunshot residue at 6:13 than there might have been two hours
20 earlier?

21 A It is possible for that to occur.

22 MR. KING: May I approach, Your Honor?

23 THE COURT: Sure.

24 (WHEREUPON, Defendants Exhibit Number 3, photograph, was
25 marked for identification.)

CROSS-EXAMINATION BY MR. KING OF ASHLEIGH NEWELL

1 (WHEREUPON, Defendant's Exhibit Number 4, photograph, was
2 marked for identification.)

3 Q Okay. I am going to show you three exhibits,
4 Defendant's Number 2, 3, and 4. Do you recognize these
5 photographs?

6 A I do.

7 Q And are those photographs that you took along with the
8 State's photographs of Jarrod Howard's property?

9 A Yes, sir.

10 MR. KING: Your Honor, I would move to admit
11 Defendant's 2, 3, and 4.

12 THE COURT: Is there any objection?

13 MS. LINDER: I would like to see them, but ---

14 THE COURT: Sure. No problem.

15 (WHEREUPON, documents shown to Ms. Linder.)

16 MS. LINDER: Without objection.

17 THE COURT: Very well. Defendant's 2, 3, and 4
18 admitted without objection, each being a photograph.

19 (WHEREUPON, Defendant's Exhibit Number 2 admitted into
20 evidence.)

21 (WHEREUPON, Defendant's Exhibit Number 3 admitted into
22 evidence.)

23 (WHEREUPON, Defendant's Exhibit Number 4 admitted into
24 evidence.)

25 MR. KING: I have no further questions.

1 THE COURT: Redirect.

2 MS. LINDER: No redirect.

3 THE COURT: Thank you. You may step down.

4 Call your next witness, please.

5 MS. LINDER: The State calls Jeff Miller.

6 (WHEREUPON, the witness was duly sworn.)

7 THE CLERK: Please state your full name and spell your

8 last name for the record.

9 THE WITNESS: Jeffrey Miller, M-I-L-L-E-R.

10 **DIRECT EXAMINATION BY MS. LINDER OF JEFFREY MILLER:**

11 Q What is your occupation?

12 A I am a crime scene tech for the Charleston Police

13 Department.

14 Q How long have you been with law-enforcement?

15 A I have been with the Department for 30 years.

16 Q What are your duties with crime scene?

17 A We respond to calls, we take photographs, we collect

18 items and document scenes.

19 Q And were you involved at all with the investigation of

20 this case, the State versus Ahshaad Owens?

21 A Yes, I was.

22 Q And what was your involvement?

23 A I was given a search warrant to do a car that had been

24 brought to our bay at the crime scene office.

25 Q And what type of car was that?

DIRECT EXAMINATION BY MS. LINDER OF JEFFREY MILLER

1 A It was a 2005 Mazda.

2 Q Can you explain to the jury the processes and
3 procedures that you do when you process a vehicle such as
4 this Mazda.

5 A Well, the normal process is I take photos of the car,
6 inside and outside of the car. That is the condition that I
7 received it in.

8 And then I -- depending on what is listed in the
9 warrant would it be -- what I am looking for, exterior would
10 be fingerprints, DNA, touch DNA. And that would work its
11 way into the car. That is where I would also take items out
12 of it and inventory it while I am looking for items that's
13 listed in the warrant.

14 Q And you said you photographed. What are you
15 photographing on the car?

16 A Just the condition of the car.

17 Q Interior, exterior?

18 A Correct.

19 Q And can you explain to the jury how you swab handles?

20 A I use Q-tips for -- it is for contact DNA or touch-DNA
21 where I take a swab and moist it with distilled water, swab
22 the area and then go back over it with a dry Q-tip.

23 Q And can you explain to the jury how you attempted to
24 lift prints in this case.

25 A For fingerprints I just used fingerprint powder --

1 fingerprint brush dipped in power, black powder, and then
2 processed the exterior of the car and then items from within
3 the car.

4 Q And did you lift any prints in this case?

5 A Yes, I lifted five total.

6 Q And did you lift a print off of the left, front corner
7 panel?

8 A Yes, I did.

9 Q At this time I would like to show you State's Exhibit
10 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 50.
11 If you can please review all of those photographs.

12 (WHEREUPON, pause for review.)

13 A Yeah, these are photographs of the vehicle.

14 Q And do you recognize them?

15 A Yes.

16 Q How do you recognize them?

17 A They are photos that I took prior to starting the
18 processing of the car.

19 Q And do they fairly and accurately represent the car and
20 the condition it was when you received it?

21 A Yes.

22 MS. LINDER: Your Honor, at this time the State would
23 seek to admit State's Exhibit 32 through 44 and 50.

24 THE COURT: Any objection?

25 MR. KING: No, Your Honor.

DIRECT EXAMINATION BY MS. LINDER OF JEFFREY MILLER

1 THE COURT: Without objection State's 32 through 44 and
2 State's 50 are admitted.

3 MS. LINDER: Thank you.

4 (WHEREUPON, State's Exhibit Number 32 admitted into
5 evidence.)

6 (WHEREUPON, State's Exhibit Number 33 admitted into
7 evidence.)

8 (WHEREUPON, State's Exhibit Number 34 admitted into
9 evidence.)

10 (WHEREUPON, State's Exhibit Number 35 admitted into
11 evidence.)

12 (WHEREUPON, State's Exhibit Number 36 admitted into
13 evidence.)

14 (WHEREUPON, State's Exhibit Number 37 admitted into
15 evidence.)

16 (WHEREUPON, State's Exhibit Number 38 admitted into
17 evidence.)

18 (WHEREUPON, State's Exhibit Number 39 admitted into
19 evidence.)

20 (WHEREUPON, State's Exhibit Number 40 admitted into
21 evidence.)

22 (WHEREUPON, State's Exhibit Number 41 admitted into
23 evidence.)

24 (WHEREUPON, State's Exhibit Number 42 admitted into
25 evidence.)

1 (WHEREUPON, State's Exhibit Number 43 admitted into
2 evidence.)

3 (WHEREUPON, State's Exhibit Number 44 admitted into
4 evidence.)

5 (WHEREUPON, State's Exhibit Number 50 admitted into
6 evidence.)

7 Q At this time I am going to put these pictures up here.
8 If you could turn your attention to that TV screen and just
9 explain to the jury what they are seeing in these
10 photographs.

11 What is this? This is State's Exhibit 32.

12 A This is a picture showing the rear -- back portion of
13 the vehicle, down the right side.

14 Q And where is this picture taken?

15 A That is inside of our crime scene bay.

16 Q State's Exhibit 33?

17 A That is the back of the car.

18 Q And can you read what that license plate is?

19 A

20 Q State's 34?

21 A That is the driver's area.

22 Q State's Exhibit 35?

23 A That is the driver's area showing all the way over to
24 the passenger door.

25 Q And did you move this seat?

DIRECT EXAMINATION BY MS. LINDER OF JEFFREY MILLER

- 1 A No.
- 2 Q State's 36?
- 3 A That is going to be the left, rear passenger door.
- 4 Q State's 37?
- 5 A That is the left, rear floorboard showing all the way
- 6 across to the right side.
- 7 Q State's 38?
- 8 A Left rear seat area.
- 9 Q Can you explain what this item is?
- 10 A That is part of the center console that comes back
- 11 toward the back seat.
- 12 Q State's 39?
- 13 A That is showing the right side showing where there is a
- 14 coat sitting in the back seat.
- 15 Q State's 40?
- 16 A That is the right rear door.
- 17 Q State's 41?
- 18 A That is the right side, front door.
- 19 Q State's 42?
- 20 A That is where I lifted the fingerprint off of the hood,
- 21 the quarter panel area.
- 22 Q State's 43?
- 23 A That is the center console cup holder that is showing
- 24 some loose change and a shell casing.
- 25 Q State's 44?

DIRECT EXAMINATION BY MS. LINDER OF JEFFREY MILLER

1 A And that is just a picture of the shell casing showing
2 the make.

3 Q I apologize. And what was the make?

4 A It is a Federal 40, Smith and Wesson.

5 Q And State's 50?

6 A And that is the outside front area of the car, driver's
7 side.

8 MS. LINDER: I have no further questions for this
9 witness. If you can please answer anything that the defense
10 may have.

11 THE COURT: You may cross-examine.

12 **CROSS-EXAMINATION BY MR. KING OF JEFFREY MILLER:**

13 Q Ms. Miller, do you remember when you were searching
14 this car any problem with the front right door?

15 A I don't recall one, no. There was damage to the right
16 front of the vehicle. But I don't remember any.

17 Q You don't remember if it was difficult to open or ---

18 A I don't remember.

19 MR. KING: No other questions.

20 THE COURT: Redirect.

21 MS. LINDER: No redirect.

22 THE COURT: Thank you. You may step down, sir.

23 Call your next witness, please.

24 MR. SOWARDS: The State calls Mary Phillips.

25 (WHEREUPON, the witness was duly sworn.)

DIRECT EXAMINATION BY MR. SOWARDS OF MARY PHILLIPS

1 THE CLERK: Please state your full name and spell your
2 last name for the record.

3 THE WITNESS: Mary Catherine Phillips. Phillips,
4 P-H-I-L-L-I-P-S.

5 **DIRECT EXAMINATION BY MR. SOWARDS OF MARY PHILLIPS:**

6 Q Good afternoon, Ms. Phillips.

7 A Good afternoon.

8 Q Who is your employer?

9 A I work for the City of Charleston Police Department.

10 Q And how long have you been with the City of Charleston
11 Police Department?

12 A Since October of 2006.

13 Q And what is your job title with the City of Charleston
14 Police Department?

15 A Currently I am assigned to the Crime Scene Unit, and I
16 work in the Latent Recovery Unit for Crime Scene.

17 Q And what are your duties in the Latent Recovery
18 Unit?

19 A I process any evidentiary items in a laboratory
20 setting that could not be processed in a -- out on the
21 field.

22 Q And could you just describe for the jury, please, the
23 process of recovering or attempting to recover a latent
24 print?

25 A Okay. So generally speaking most of the time when you

DIRECT EXAMINATION BY MR. SOWARDS OF MARY PHILLIPS

1 touch an item and your finger comes into contact the oils in
2 your hand leave a fingerprint impression. And we use a
3 different variety of techniques to bring out that
4 fingerprint. Because usually you can't see it.

5 So we use, you know, powders and different chemicals to
6 where it makes it visible. And then we can collect that
7 fingerprint and send it in for comparison.

8 Q And did you have the occasion to become involved in the
9 investigation of this case, State vs. Ahshaad Owens?

10 A I did.

11 Q And how did you become involved in this case?

12 A A fire cartridge casing was submitted to me for latent
13 recovery processing.

14 Q And did you in fact process that for latent recovery?

15 A I did. And what were your results?

16 A I did not get anything.

17 MR. SOWARDS: May I approach the witness, Your Honor?

18 THE COURT: Yes, you may.

19 Q I am going to hand you what has been marked for
20 identification as State's Exhibit 45. Do you recognize
21 that?

22 A I do.

23 Q And how do you recognize that?

24 A It is a copy of my report. And it has my signature on
25 it.

DIRECT EXAMINATION BY MR. SOWARDS OF MARY PHILLIPS

1 Q And is it in the same or substantially the same
2 condition as it was when you generated it?

3 A Yes.

4 MR. SOWARDS: Your Honor, at this time the State would
5 seek to admit State's Exhibit 45 into evidence and publish
6 to the jury.

7 THE COURT: Any objection?

8 MR. KING: No objection, Your Honor.

9 THE COURT: Very well. State's 45 is admitted without
10 objection.

11 (WHEREUPON, State's Exhibit Number 45 admitted into
12 evidence.)

13 Q And if you could just briefly just explain what this
14 report is and what it shows.

15 A All of our reports we have to state exactly what we did
16 to the item for processing. So in this case it was just a
17 fired cartridge casing, Item Number 401 that was submitted
18 to me.

19 And for every piece of evidence before we do any
20 processing we do a visual exam on it just to make sure
21 there's no fingerprints that we can see on it prior to
22 processing. So we do a visual examination.

23 And then we use cyanoacrylate which is Superglue. It
24 is a fuming method where it builds up humidity inside of a
25 chamber and the Superglue will actually adhere to the oils

1 that were deposited from a fingerprint.

2 It will make the print more permanent so that we can --
3 we can actually work with it a little bit more in dusting
4 it. And then we use powder to try and bring out that
5 print.

6 Q Thank you. Now you said that -- or you testified that
7 what you processed was a fired cartridge casing?

8 A Yes, sir.

9 Q Would you say is it common for you to process a fired
10 cartridge casing and to find a -- or recover a latent
11 print?

12 A No.

13 Q And why is that?

14 A When a gun is fired there is almost like an explosion
15 with inside of the gun and a lot of heat is generated, and
16 so that heat basically disintegrated any oil or water that
17 would have been deposited on to that cartridge casing by the
18 finger print.

19 Q And I think you may have touched on this a little bit
20 earlier, but would you say that some surfaces hold a print
21 better than others?

22 A Definitely. Any item that is smooth and porous and
23 doesn't come into contact with anything else -- I'm sorry,
24 smooth and nonporous such as glass it is probably one of our
25 best surfaces. But if it comes into contact with anything

DIRECT EXAMINATION BY MR. SOWARDS OF MARY PHILLIPS

1 else such as heat it can disintegrate those oils and waters
2 that are -- what make up your fingerprint.

3 Q And what kind of things can affect even on a surface
4 that holds a print well what kind of things can affect
5 whether you're able to recover a latent print off of?

6 A Well, first of all you have to -- you have to have
7 enough oil on your skin to leave the fingerprint. You also
8 have to come into good enough contact with it.

9 So that item coming into contact with, you know,
10 somebody else touching it or it rolling around or anything
11 else come into contact and it can obliterate that
12 fingerprint off of there and we wouldn't be able to recover
13 it then.

14 MR. SOWARDS: Beg the court's indulgence.

15 THE COURT: Certainly.

16 MR. SOWARDS: No further questions at this time from
17 the State. Please answer any questions the defense may
18 have.

19 THE COURT: Cross-examine.

20 MR. KING: I have no questions, Your Honor.

21 THE COURT: Thank you. You may step down.

22 Call your next witness.

23 (WHEREUPON, The witness was duly sworn.)

24 THE CLERK: Please state your full name and spell your
25 last name for the record.

1 THE WITNESS: Nada Kerstein, K-E-R-S-T-E-I-N.

2 **DIRECT EXAMINATION BY MR. SOWARDS OF NADA KERSTEIN:**

3 Q Good afternoon, Ms. Kerstein.

4 A Good afternoon.

5 Q What is your occupation?

6 A I am a latent print examiner for the City of Charleston
7 Police Department.

8 Q And how long have you been with the City of Charleston
9 Police Department?

10 A Since 2003.

11 Q You said your occupation involves fingerprints. Could
12 you describe the nature of your work with the -- with the
13 City of Charleston Police Department.

14 A I analyze and compare latent print impressions for the
15 purpose of identification and elimination.

16 Q And what training and experience do you have related to
17 your work as a fingerprint examiner?

18 A I started out a tenprint examiner. That is --
19 tenprints are cards designed to capture the rolled
20 impressions of the ten fingers, and I classify them and
21 compare them. And I did that since 2004.

22 And then at the end of 2007 I started training with the
23 latent print division. And I had a formal training program
24 with them for about a year and a half. And then in 2009 I
25 was released to do my own casework.

DIRECT EXAMINATION BY MR. SOWARDS OF NADA KERSTEIN

1 Q Now are you a member of any professional associations
2 related to your work?

3 A Yes, I am a member of the IAI which is the
4 International Association for Identification. They hold my
5 certification as a tenprint examiner, and they hold my
6 certification as a latent print examiner.

7 Q And what schooling or seminars have you attended?

8 A I have attended over a dozen training schools, which is
9 normally 40-hour classroom time. And usually they are with
10 instructors who have been doing this work for many many
11 years.

12 Q What type of equipment do you -- or do you use
13 equipment in the line of your work?

14 A When we do comparisons I use magnifying glasses. I use
15 pointers. Additional light source. And I have several
16 pieces of equipment in my office that can blow up the latent
17 prints a little bit more than magnifying glasses can.

18 Q And have you had occasions to identify persons by
19 comparing latent prints with inked print?

20 A Yes.

21 Q And approximately how many comparisons have you
22 performed in your career?

23 A Since 2004 with the casework and proficiency tests and
24 training and classroom time I would say that I have done
25 over 100,000 comparisons. But I don't have an exact number.

1 Q And have you had an occasion to qualify as an expert in
2 the area of fingerprint analysis in court?

3 A Yes.

4 Q And how many times?

5 A Twelve times for the State of South Carolina.

6 Q Could you describe what the term known print means?

7 A A known print is a reproduction of the friction ridges
8 of your fingers and palms, and it is transferred onto a
9 contrasting background which is normally a tenprint card.

10 A tenprint card is designed to capture the ten fingers
11 individually and then simultaneously. And it is usually
12 done either with black printer's ink. Now it is done
13 electronically with a live scan machine.

14 Q And what about a latent print, what does that mean?

15 A Latent means hidden or not easily seen by the naked
16 eye. It is an invisible impressions that can be left when
17 somebody touches a surface. Usually a latent print has to
18 developed with either a powder or some type of chemical.

19 Q And what types of surfaces are conducive for leaving a
20 fingerprint?

21 A The best types of surfaces are going to be clean,
22 smooth, shiny -- I don't want to say flat. But any type of
23 surface that is not porous, like a piece of glass or even
24 something smooth like this like a piece of wood. Anything
25 that is porous or has a lot of texture is not a very good

DIRECT EXAMINATION BY MR. SOWARDS OF NADA KERSTEIN

1 surface for leaving a print.

2 Q And what are the basic factors for the use of a
3 fingerprint as a means for identification?

4 A The reason that we can use fingerprints for
5 identification is permanence and uniqueness. Every finger
6 of every person has a ridge arrangement that is unique to
7 that finger.

8 And the ridge arrangement that you have when you are
9 born you keep throughout your entire lifetime until death
10 and decomposition.

11 The exception to that is with scarring or intentional
12 mutilation, something like that.

13 Q And how many points of identification are needed for
14 you to make an identification?

15 A In the United States we do not have a set number of
16 points that we use. When we do a comparison we are looking
17 at the entire print. We look at the pattern type. We look
18 at the points. They are important, but there are other
19 things that we use.

20 There are three levels of detail. And the first level
21 is the pattern type. The second level are the
22 characteristics, or the points. But third level is also
23 important. If there are any scars or creases or if it is
24 clear enough that you can see pores we can use that to make
25 an identification as well.

1 Q And you talked a lot about identification. But I think
2 we have touched on how exactly to do it. How are
3 comparisons performed?

4 A The methodology that we use is called ACEV. It is
5 analysis, comparison, evaluation, and then verification. In
6 the analysis I am looking at what I have, do I have enough,
7 is it clear, can I see a pattern type, can I see the
8 characteristics, is there anything I can use such as creases
9 or scars.

10 If it is enough and I can do the comparison my
11 comparison is a side-by-side comparison. I have the latent
12 on one side. I have the tenprint next to it. And I am
13 using two magnifying glasses. And I am looking for a
14 starting point.

15 I can use either a common area or a specific cluster of
16 characteristics in a certain area. And I'm going to look
17 for that same cluster or common point in the known print.
18 And if I find it then I am going to go ridge by ridge around
19 the entire latent print.

20 And what I am looking for is that the characteristics
21 are the same and that they are in the same order.

22 And then my conclusion is basically my opinion. And
23 then a verification is when a second exhibitor goes through
24 those first three steps and comes to their own conclusion.

25 MR. SOWARDS: Your Honor, at this time the State would

DIRECT EXAMINATION BY MR. SOWARDS OF NADA KERSTEIN

1 seek to admit Ms. Kerstein as an expert in the area of
2 fingerprint analysis.

3 THE COURT: Would you care to examine her as to
4 qualifications?

5 MR. KING: No, Your Honor, I have no objections.

6 THE COURT: I will allow her to render opinions in the
7 area of fingerprint analysis and identification.

8 MR. SOWARDS: Thank you, Your Honor. May I approach
9 the witness?

10 THE COURT: You may.

11 Q I am going to hand you what has been marked as State's
12 Exhibit 55 and ask you if you recognize any of those items.

13 A These are the five latest cards that were turned in on
14 on Case 1417259.

15 Q And in the case did you perform any comparisons?

16 A Yes, I did.

17 Q And were you able to identify any of the prints on
18 those cards that you have in your hand?

19 A Yes. Can I look at my notes?

20 Q Yes. On latent number one there was an identification
21 to the tenprint card bearing the name Ahshaad Owens. It was
22 identified to the left palm.

23 Q And I ask you if you recognize those items in your
24 hand. How do you recognize them?

25 A My initials and the date that I worked the case is on

DIRECT EXAMINATION BY MR. SOWARDS OF NADA KERSTEIN

1 the card.

2 Q And are they in the same or substantially the same
3 condition as they were when you worked on them?

4 A When I received them they would be sealed. They are
5 not now, but they would have been sealed when I received
6 them.

7 MR. SOWARDS: Your Honor, at this time the State would
8 seek to admit State's Exhibit 55 into evidence.

9 THE COURT: Is there any objection?

10 MR. KING: No, Your Honor.

11 THE COURT: Without objection State's 55 is admitted.

12 Q I will also hand you what has been marked for
13 identification as State's Exhibit 46. Do you recognize
14 that?

15 A Yes, this is my report.

16 Q And does that fairly and accurately depict or represent
17 the conclusions that you made based on your analysis in this
18 case?

19 A Yes, it does.

20 MR. SOWARDS: Your Honor, at this time the State would
21 seek to admit State's Exhibit 46 into evidence and publish
22 to the jury.

23 THE COURT: Is there any objection?

24 MR. KING: No, Your Honor.

25 THE COURT: State's Exhibit 46 is admitted without

DIRECT EXAMINATION BY MR. SOWARDS OF NADA KERSTEIN

1 objection. You may do so.

2 (WHEREUPON, State's Exhibit Number 46 admitted into
3 evidence.)

4 Q And if you could, could you just describe generally
5 what we are looking at right here.

6 A That is a lift that is a lift of the latent lift cards
7 that were submitted. And on each card is a description of
8 where it was lifted from.

9 Q Thank you. Beg the court's indulgence.

10 THE COURT: Certainly.

11 MR. SOWARDS: No further questions from the State at
12 this time. Please answer any questions Mr. King may have.

13 THE COURT: Okay. You may cross-examine.

14 **CROSS-EXAMINATION BY MR. KING OF NADA KERSTEIN:**

15 Q Ms. Kerstein, you can't tell when a print was placed on
16 a surface, can you?

17 A You cannot put a date on a fingerprint.

18 Q So you don't know if that palm print was from that day
19 or someday previous from some point in the past?

20 A That is correct, there is no way to tell when that
21 print was left.

22 MR. KING: I have no more questions, Your Honor.

23 THE COURT: Redirect.

24 MR. SOWARDS: None, Your Honor.

25 THE COURT: Thank you. You may come down. Thank you,

1 ma'am.

2 At this point, ladies and gentlemen, we are going to
3 take a break. I know you all haven't been in, but we have
4 been here since 1:45 so I think we need to take a little
5 break right now for my benefit and the court reporter's
6 benefit.

7 So please retire to your jury room. Do not begin your
8 deliberations. We will be with you in about 15 minutes.
9 Thank you.

10 (WHEREUPON, jury exits courtroom 2/9/16, 3:24 p.m.)

11 THE COURT: All right. Anything from the State before
12 recessing?

13 MS. LINDER: Nothing from the State.

14 THE COURT: Anything from the defendant?

15 MR. KING: No, Your Honor.

16 THE COURT: Thank you. We will be at ease for about
17 10, 15 minutes.

18 (WHEREUPON, break was had 2/9/16, 3:26 p.m.)

19 (WHEREUPON, resumed trial 2/9/16, 3:40 p.m.)

20 THE COURT: Let the record reflect Mr. Owens is
21 present. Is the defendant ready?

22 MR. KING: Yes, Your Honor.

23 THE COURT: Okay. Let's bring them in. Thank you so
24 much.

25 (WHEREUPON, jury in enters courtroom 2/9/16, 3:40 p.m.)

CROSS-EXAMINATION BY MR. KING OF NADA KERSTEIN

1 THE BAILIFF: All jurors are present, Your Honor.

2 THE COURT: Thank you so much. Thank you, ladies and
3 gentlemen.

4 Solicitor call your next witness, please.

5 MR. SOWARDS: Thank you, Your Honor. The State calls
6 Whitney Berry.

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: Please state your name for the record and
9 spell your last name for the record.

10 THE WITNESS: My name is Whitney Berry, B-E-R-R-Y.

11 **DIRECT EXAMINATION BY MR. SOWARDS OF WHITNEY BERRY:**

12 Q Good afternoon, Ms. Berry.

13 A Good afternoon.

14 Q Where do you work?

15 A I work for the South Carolina Law Enforcement Division
16 more commonly known as SLED.

17 Q And what is SLED?

18 A SLED is the State Law-Enforcement Division, so we
19 assist other agencies in the state when they need assistance
20 with investigations or in my case with processing evidence
21 that they may not have the capability to process.

22 Q And how long have you been with SLED?

23 A I have been with SLED for about three years.

24 Q And what is your current job title?

25 A I am a criminalist two, and I work in the Trace

1 Evidence Department; and I specialize in the analysis of
2 gunshot residue.

3 Q And could you describe for the jury your duties and
4 responsibilities as it relates to gunshot residue?

5 A Yes, I can. I am responsible for accepting or
6 receiving evidence for gunshot residue cases, which is
7 typically clothing or GSR kits.

8 I am also responsible for preparing those items for the
9 analysis on the scanning electron microscope. I also need
10 to be able to analyze them on the scanning electron
11 microscope and go back through the information on the
12 microscope and make sure it detected the right particles in
13 the right shape with the right composition.

14 And I also have to be able to troubleshoot my scanning
15 electron microscope and its software.

16 Q And have you ever been declared as an expert in court
17 before?

18 A Yes, I have.

19 Q And what were you declared an expert in?

20 A I have been declared as an expert in gunshot residue
21 analysis.

22 Q And how many times have you been declared an expert?

23 A Twenty-five.

24 Q Could you describe for the jury your educational
25 background, please.

DIRECT EXAMINATION BY MR. SOWARDS OF WHITNEY BERRY

1 A Yes, I can. I have a bachelors of science degree from
2 the University of South Carolina where I majored in
3 chemistry and minored in criminal justice.

4 I then when I was hired at SLED completed our
5 nine-month in-house GSR training course which includes
6 readings from journals and other published -- or
7 publications such as books on the theory of GSR and SEM.

8 I also have done hands on practical tests and written
9 tests to demonstrate competency in these areas. I have been
10 watched and observed other analysts through casework as well
11 as testimony.

12 And I have worked approximately 100 cases under the
13 supervision of a qualified analyst before I was allowed to
14 go on and take my final competency exam which included a
15 mock court where I had to defend my own evidence. .

16 I have also gone to the College of Applied Science of
17 Microscopy in Westmont, Illinois, where I have taken the
18 scanning electron microscopy course for gunshot residue
19 analysis.

20 Q Is SLED an accredited agency?

21 A Yes, SLED is accredited right now.

22 Q And what accreditation does it have?

23 A It currently has a CALEA accreditation as well as an
24 ISO accreditation.

25 Q Now earlier you mentioned gunshot residue. What is

1 gunshot residue?

2 A Gunshot residue is the primer residue from the
3 cartridge of ammunition. So in the bottom of the cartridge
4 there is a mixture of metals. And these metals contain
5 lead, barium, and antimony in most cases.

6 And when a gun is fired the explosion that takes place
7 in the primer capsule makes these metal elements molten, and
8 as they cool when they hit the air they resolidify.

9 So where they may have started off crystalline or like
10 shards of lead or barium or antimony, but the high head and
11 pressure causes them to fuse together into what we call a
12 three component gunshot residue particle which when it lands
13 is round or molten in shape.

14 Q And how is the gunshot residue tested?

15 A Gunshot residue is collected from a person using a
16 particle life. We had out kits at SLED from a company that
17 we use. I do the quality assurance for all of the GSR kit
18 lots in the state that we distribute throughout the state.

19 These kits are given out free of charge to any agency
20 that wants to come pick them up. Each one includes four of
21 these the particles lifts labeled for the different areas of
22 the hand that we expect to have sampled.

23 It also includes a pair of disposable gloves, an
24 instruction sheet, a worksheet about the person that you are
25 collecting from, as well as evidence tape to seal the

DIRECT EXAMINATION BY MR. SOWARDS OF WHITNEY BERRY

1 container with.

2 Q And what procedures are involved in the testing of
3 gunshot residue?

4 A What we would do is we would take the sample which is
5 collected by pressing on the area of the hand. And we would
6 load it into our scanning electron microscope.

7 The microscope has an electron beam which is kind of
8 like a laser beam that is going to shoot straight down onto
9 the flat surface.

10 And it is going to go back and forth. And as it goes
11 back forth across the surface of the sample. It is going to
12 be able to detect if there are any particles there, any kind
13 of particulate matter -- matter, such as metals or dirt or
14 blood or other kind of debris it will be picked up.

15 When it detects something like that, some sort of
16 shape, it is going to snap an X-ray of it. And the X-ray is
17 going to give me the elemental composition of what it is
18 looking at.

19 Q Are there different degrees of gunshot residue?

20 A Yes, we have what we call gunshot residue. And that is
21 a three-component particle that contains molten lead,
22 barium, and antimony together.

23 We have a consistent particle which is two-component
24 particle, so that would be just lead and barium or barium
25 and antimony or some combination thereof.

1 So those particles are round, and they definitely
2 include two particle -- or two elements.

3 And then we have associated particles. And associated
4 particles are single component particles that can be found
5 in the environment as well as different occupational areas.

6 So, for example, round lead is very prevalent in the
7 environment. You can go to many different hardware stores
8 and handle things and come out with round lead on your hand.

9 So round lead by itself doesn't necessarily mean
10 gunshot residue, but round lead with other components such
11 as consistent or gunshot residue particles can indicate GSR.
12 We look at the whole population.

13 MR. SOWARDS: Your Honor, at this time the State would
14 ask to have the witness declared an expert in the area of
15 gunshot residue analysis.

16 THE COURT: Okay. Do you care to question her as to
17 qualifications?

18 MR. KING: No, Your Honor. No objection.

19 THE COURT: She will be permitted to render opinions in
20 that area.

21 Q Now Ms. Berry, did you have the occasion to become
22 involved in the investigation of this case, State vs.
23 Ahshaad Owens?

24 A Yes, I did.

25 Q And how did you become involved in this case?

DIRECT EXAMINATION BY MR. SOWARDS OF WHITNEY BERRY

1 A I am the primary gunshot residue analyst for SLED; so
2 the majority, I would say probably 95 percent of the cases
3 involving GSR at SLED, go through me. I do them.

4 Q And who brought the gunshot residue kits to you?

5 A I don't know who ---

6 Q Which agency?

7 A Charleston City PD.

8 MR. SOWARDS: Your Honor, may I approach the witness?

9 THE COURT: Yes, you may.

10 Q Ms. Berry, I am handing you what has been marked as
11 identification as State's Exhibit 57. Do you recognize
12 that?

13 A No, I do not.

14 Q I may have handed you the wrong one. I apologize.

15 A It is the -- to the Firearms Department and initialed
16 by Suzanne Cromer.

17 Q I'm sorry. I handed you the wrong one.

18 THE COURT: You passed the test.

19 THE WITNESS: That is the first test I have ever had
20 like that, and I am glad I passed.

21 Q Okay. This has been marked for identification as
22 State's Exhibit 56. Do you recognize that?

23 A Yes.

24 Q And what is that?

25 A This is SLED L15-02391, container A. Everything that

DIRECT EXAMINATION BY MR. SOWARDS OF WHITNEY BERRY

1 comes into SLED is given an identifying case number and a
2 corresponding container number, item number, and bar code.
3 This is so we can track through our digital chain of custody
4 where anything is at any given time or who it has gone
5 through.

6 This containers as I recall contained two gunshot
7 residue kits. They were SLED Items 4 and 5.

8 Q And are they in substantially the same condition as
9 when you last saw them?

10 A Yes.

11 Q And do they fairly and accurately depict the GSR kits
12 as they were when they were tested?

13 A Yes ---

14 (WHEREUPON, scissors were provided to witness to open
15 envelope containing gunshot residue kits.)

16 A Yep.

17 MR. SOWARDS: Your Honor, at this time we move to admit
18 Exhibit 56 into evidence?

19 THE COURT: Is there any objection?

20 MR. KING: No, Your Honor.

21 THE COURT: State's 56 it admitted without objection.
22 (WHEREUPON, State's Exhibit Number 56 admitted into
23 evidence.)

24 Q Ms. Berry, what happened when those kits were received
25 at SLED?

DIRECT EXAMINATION BY MR. SOWARDS OF WHITNEY BERRY

1 A Well, as I mentioned, when everything -- anything is
2 entered into evidence it comes through our evidence control
3 department and is given a case number or a SLED lab number
4 as well as item numbers and container numbers.

5 When I am notified that a case needs to be analyzed for
6 court or for rush purposes I come and get the evidence from
7 one of our evidence control technicians. It is transferred
8 to me via chain of -- or electronic chain of custody.

9 So while every item at SLED has a bar code, every
10 person at SLED also has a bar code. These items when I open
11 them I put a bar code for the item number on and then
12 initial and date when I opened it.

13 And then each one of the particle lifts is also -- has
14 the lab number, item number and initials and dates on them
15 as well.

16 After I had done that, I fill out a worksheet stating
17 about the condition of the packaging, whether everything was
18 sealed and initialed as it should be. And then I go ahead
19 and I put it on the instrument for analysis.

20 Q Now Ms. Berry, did you perform analysis on the gunshot
21 residue kit associated with the victim Jarrod Howard?

22 A Yes, I did.

23 Q What were the results of that analysis?

24 A The GSR kit from Jarrod Howard the right hand had one
25 particle of gunshot residue on it. And the left hand was

DIRECT EXAMINATION BY MR. SOWARDS OF WHITNEY BERRY

1 negative, so no gunshot residue was found.

2 Q And what about the gunshot residue kit associated with
3 Hunter Bessinger?

4 A On the right hand of Hunter Bessinger multiple
5 particles of gunshot residue were found, and on the left
6 hand one particle of gunshot residue was found.

7 Q And does the test distinguish between the back of the
8 hand and the palm?

9 A When we move the samples we distinguish right palm,
10 right back, left palm, left back, for the different areas of
11 the hand because that is what is sampled.

12 When we go to report we report left hand versus right
13 hand. Because we can't really put any scientific emphasis
14 on whether something found on one side of the hand is
15 necessarily more pertinent than another side of the hand.

16 Q And as to the victim Jarrod Howard, you just testified
17 that gunshot residue was found on his right hand; was that
18 on the palm or the back of the hand?

19 A I would have to consult my case file on that.

20 (WHEREUPON, pause to retrieve document.)

21 A One particle was found on the right of palm of Jarrod
22 Howard.

23 MR. SOWARDS: May I approach the witness, Your Honor?

24 THE COURT: Yes, you may.

25 Q Ms. Berry, I would like to hand you what has been

DIRECT EXAMINATION BY MR. SOWARDS OF WHITNEY BERRY

1 marked for identification as State's Exhibit 47. Do you
2 recognize that?

3 A Yes, sir, this is a copy of the report that I generated
4 electronically.

5 Q And is that a fair and accurate representation of your
6 conclusions?

7 A Yes, sir.

8 MR. SOWARDS: Your Honor, at this time the State would
9 seek to admit State's 47 into evidence.

10 THE COURT: Is there any objection?

11 MR. KING: No, Your Honor, no objection.

12 THE COURT: Without objection State's 47 is admitted.
13 (WHEREUPON, State's Exhibit Number 47 admitted into
14 evidence.)

15 Q What does it mean -- what does gunshot residue tell
16 you?

17 A Doing a test for gunshot residue is good for
18 corroborating a circumstance or a story. It is good for if
19 a person says they have never handled a gun, never touched a
20 gun in their life and then you go and sample their hands and
21 they are positive for gunshot residue then clearly there is
22 a discrepancy there because gunshot residue the three
23 component molten particle only comes from firing a weapon or
24 coming into contact with something that has been in the
25 vicinity to the firing of a weapon. So it is good for

DIRECT EXAMINATION BY MR. SOWARDS OF WHITNEY BERRY

1 circumstances like that.

2 MR. SOWARDS: Beg the court's indulgence.

3 THE COURT: Certainly.

4 MR. SOWARDS: The State has no questions at this time.
5 Please answer any questions Mr. King may have.

6 THE COURT: Cross-examine.

7 MR. KING: Thank you, Your Honor.

8 **DIRECT EXAMINATION BY MR. KING OF MS. WHITNEY BERRY:**

9 Q Ms. Berry, it is important when you get these samples
10 that you get it is important that the samples are taken
11 close in time to exposure to gunshot residue, right?

12 A On a living person they have to be collected within six
13 hours at a given incident time. If they are collected
14 outside of six hours we will not test them a SLED.

15 That is because the scientific working group for
16 gunshot residue has come to the conclusion that you won't be
17 able to find GSR on someone's -- a living person's hand four
18 to six hours after an incident.

19 So if we were to test something after six hours and we
20 did find something we wouldn't be up to tie it to the
21 specific incident more than six hours ago.

22 On a deceased person there is no time limit because
23 they are not moving, they are not sweating, they are not
24 touching things, wiping their hands or any of those sort of
25 things. So it can be sampled the next day at autopsy is

DIRECT EXAMINATION BY MR. KING OF MS. WHITNEY BERRY

1 typically what happens for a victim of a gunshot wound.

2 Q So you said that it last up to six hours?

3 A About four to six hours. GSR is very fragile. So if
4 you think about having flour on your hands in your kitchen,
5 every time you touch something a little bit of that flour
6 comes off. You don't have to rub really hard to get rid of
7 it or anything like that.

8 But it is similar to gunshot residue in how you can
9 remove it. It is fragile. It is delicate. It doesn't take
10 a lot to remove. You can sweat it off. Rain can wash some
11 of it off. Excessive blood can remove some of it.
12 Conditions such as wind like excessive wind can help remove
13 it. Putting your hands in your pockets, touching your face,
14 touching anything has the potential to remove a little bit
15 of GSR every time.

16 Q Now would it -- so just touching things with your hand
17 can wipe off that gunshot residue?

18 A It has the potential to remove it. We don't have any
19 studies saying what the transfer rate is on GSR. Just like
20 we don't have any studies saying exactly how much GSR is
21 going to come out of a given gun or ammunition. There is
22 just no way of knowing that.

23 Q Sweaty palms, it is more likely for gunshot residue to
24 go away on your palm than on another part of your hand
25 because that is the part that touches surfaces more often?

1 A I really can't say if it is more likely to be removed
2 from the palm versus from the back of the hand. There are
3 so many to be aware of all situations where either could be
4 the case. But I don't think I can -- am qualified to answer
5 that question.

6 Q But sweaty palms, for example, could make gunshot
7 residue gunshot ---

8 A Yes, ---

9 Q --- go away?

10 A --- if your palms were sweating, that could potentially
11 remove GSR.

12 Q And if a sample is taken -- you didn't take the sample,
13 right?

14 A No, sir.

15 Q But if the sample is taken two hours after exposure
16 to gunshot residue in that case does that mean there could
17 have been more right after the exposure than two hours
18 later?

19 A That could have been. But as I mentioned earlier, we
20 look at the full population. So we also look for those two
21 component consistent particles, and those single component
22 associated particles; and if those were found, they also
23 would have been reported so you would expect to find an
24 abundance of all three kinds of particles if that were the
25 case.

DIRECT EXAMINATION BY MR. KING OF MS. WHITNEY BERRY

1 Even in decreased amount you would still want to see
2 all three -- expect to see all three different kinds.

3 Q Now you are not talking about what comes out of the
4 barrel of the gun, right, when you are talking about gunshot
5 residue?

6 A Yes, I am. Gunshot residue can come out of two places
7 on a firearm. That would be the muzzle end of the gun, that
8 is where the majority of it is going to come out.

9 The majority of the GSR is going to go out and it is
10 going to follow the projectile towards its target. So
11 anything in that area has the potential to get GSR on it.

12 So if I were to fire a gun at the wall from here
13 anything in that area could potentially have gunshot residue
14 on it.

15 The other area for a semi automatic gun would be the
16 ejection port. So every time it slides back and ejects that
17 is where some gunshot residue can come out on the hands.
18 Also on the cylinder gap on a revolver.

19 So if you have ever seen an old western move when they
20 pull the trigger and you get a little plume of smoke around
21 the hands, that is also GSR.

22 Q And you testified in your report today that Jarrod
23 Howard had a particle a gunshot residue on his right hand?

24 A Yes, sir.

25 Q And Hunter Bessinger had gunshot residue on his right

1 hand, particles, more than one particle; and one particle on
2 his left hand?

3 A Yes, sir.

4 MR. KING: I have no other questions, Your Honor.

5 THE COURT: Redirect.

6 MR. SOWARDS: None, Your Honor.

7 THE COURT: Thank you. You may step down.

8 THE WITNESS: Thank you, sir.

9 THE COURT: You can call your next witness.

10 MR. SOWARDS: The State calls Suzanne Cromer.

11 THE CLERK: Please state your full name for the record
12 and spell your last name for the record.

13 THE WITNESS: My name is Suzanne Cromer, C-R-O-M-E-R.

14 **DIRECT EXAMINATION BY MR. SOWARDS OF SUZANNE CROMER:**

15 Q Good afternoon, Ms. Cromer.

16 A Good afternoon.

17 Q Where do you work?

18 A I am employed by the South Carolina Law Enforcement
19 Division commonly referred to as SLED.

20 Q And how long have you been with SLED?

21 A It was 17 years this December.

22 Q And what do you do at SLED?

23 A I am a firearm and tool mark examiner. What we do is
24 called firearms identification. We look at ammunition
25 components, bullets, cartridge cases, shotgun shells,

DIRECT EXAMINATION BY MR. SOWARDS OF SUZANNE CROMER

1 waddings, to determine whether they were fired by or loaded
2 into and extracted out of a specific firearm.

3 Q And have you ever been declared as an expert in court
4 before?

5 A Yes, I have.

6 Q And what were you declared as an expert?

7 A I was an expert in firearm and tool mark
8 identification.

9 Q And how many times have you been declared as an expert?

10 A Approximately 89 or 90.

11 Q Could you describe for the jury training and -- your
12 education, training and experience?

13 A Yes, sir. I have a bachelor's degree from Clemson
14 University. I did some graduate work at the University of
15 South Carolina in criminal justice.

16 I have completed SLED in-house training program for
17 firearm and tool mark examiners which is a three- to five-
18 year intense study program.

19 It is more of an apprenticeship where you take tests,
20 we have oral exams, practical exams. We prepare cases for
21 other examiners.

22 Upon completion of all of our sections in the training
23 manual we are given a comprehensive final exam and also
24 practical case work that goes along with it that is graded
25 by our training officer and our lieutenant before we are

1 deemed competent to take cases on our own.

2 I have attended and I am a member of the Association of
3 Firearm and Tool Mark Examiners which is an international
4 organization for our profession.

5 They meet once a year for a weeklong seminar. And they
6 also offer extra classes during those seminars. Which I
7 have attended numerous of those extra classes including
8 highpoint firearm familiarization, barrel making, distance
9 determination, ethics.

10 I have also taken seminars with the association of --
11 South Carolina Association -- International Association of
12 Identification. Shooting scene -- a three-day shooting
13 scene reconstruction workshop, forensic photography,
14 pathology of gunshot wounds.

15 I have toured numerous firearm manufacturers including
16 for FN, Smith and Wesson, Ruger. I have taken classes with
17 the Bureau of Alcohol, Tobacco and Firearms, commonly
18 referred to as the ATF, on serial number restoration and the
19 integrated ballistics identification system, which I am also
20 a member of their users congress and represent North and
21 South Carolina for that. I am also a training officer in
22 our department.

23 Q And could you describe the process of analyzing the
24 shell casing as it relates to firearm identification?

25 A Well, it depends on whether or not I have a firearm or

1 not. If I have a firearm I will look at that cartridge
2 case. What I do is a microscopic comparison on a comparison
3 microscope where I can look at two pieces of evidence versus
4 each other at the same time under one eyepiece.

5 What I'm looking at on that cartridge case is five
6 different areas that are marked by the firearm. You have
7 the breech face.

8 The breech face of the firearm is the part that holds
9 the head of the cartridge case during the firing process.
10 It also has a hole in it that has the firing pin.

11 And so any imperfections that are left on that breech
12 face during the manufacturing process can be imprinted on
13 the head of that cartridge case during the firing process.
14 And then the firing pin itself when it hits the primer of
15 that cartridge it can also leave detects.

16 There is also what we call an injector and extractor
17 for semi automatic. The extractor is like a little claw
18 that snaps over the head of the cartridge and it holds it
19 into the slide.

20 And if you have ever seen a movie where they shoot the
21 firearm and this part moves forwards and backwards, that is
22 what we call the slide. And that cartridge is being held
23 into that slide by that extractor or that claw.

24 And when it goes -- when you shoot and it goes
25 backwards it is pulling that cartridge case back with it.

1 Well, when it hits a certain point it is going to hit the
2 ejector and it is going to kick it out of the gun and you
3 will see the shell casing leave the firearm.

4 So those -- and then also the last part is chamber
5 marks. The chamber is the part of the firearm where that
6 cartridge is resting during where it's -- when it is being
7 fired. And it is supporting that cartridge case tightly.

8 So any imperfections on the walls of that -- of that
9 chamber can be imprinted on the body of that cartridge case.

10 So the five areas are the breech face, the firing pin,
11 the extractor, the ejector, and the chamber.

12 Q And could you describe the process for analyzing a
13 fired bullet or a fired bullet fragment?

14 A Yes. What we do with a fired bullet is first we try to
15 determine its caliber. We measure it. We weigh it. We take
16 numerous measurements from that particular firearm. And
17 what we are looking at is the rifling.

18 Rifling is what is put in the gun barrel by the
19 manufacturer to put rotary motion on the bullet. Very
20 similar to a quarterback throwing a football, he wants it to
21 go into a tight spiral so it will go more accurately towards
22 its target.

23 So that is what the rifling does. It makes that bullet
24 spin so it is not just lobbing end over end when it is
25 flying through the air.

DIRECT EXAMINATION BY MR. SOWARDS OF SUZANNE CROMER

1 So rifling can be made up of many different lands and
2 groves, raised and depressed areas. So we look at the
3 rifling. We determined how many lands and grooves that
4 bullet has on it.

5 And then we can measure those dimensions of those lands
6 and grooves and we can plug it into a program that is given
7 to us from the FBI. And it will give us a list of
8 manufacturers that actually use that rifling.

9 And the last part of that is which direction is it
10 going to spin, is it spinning to the left or to the right.
11 So we have the -- from that bullet we can the rising lands,
12 the number of lands and grooves, the direction of twists and
13 actual dimensions of those lands and grooves.

14 MR. SOWARDS: Your Honor, at this time the State would
15 seek to have Ms. Cromer declared as an expert in the area of
16 firearm's identification.

17 THE COURT: Do you care to question her concerning her
18 qualifications?

19 MR. KING: No, Your Honor.

20 THE COURT: Very well. She will be permitted to render
21 opinions in that area.

22 Q Ms. Cromer, did you have the occasion to become
23 involved in the investigation of this case, State vs.
24 Ahshaad Owens?

25 A Yes, sir, I did.

1 Q And how did you become involved in the investigation of
2 this case?

3 A I received some evidence from my login department.

4 Q Ms. ---

5 MR. SOWARDS: May I approach the witness, Your Honor?

6 THE COURT: You may.

7 Q Ms. Cromer, I am going to hand you what has been marked
8 for identification as State's 57. Do you recognize those
9 items?

10 A Yes, sir. This is my item six. And it is still in a
11 sealed container with my initials and seal date. And this
12 is my Item 12. Again, it is still in a sealed contained
13 with my initials and seal date.

14 Q Ms. Cromer, did you have the occasion to analyze a
15 fired cartridge case?

16 A Yes, sir, I did. .

17 Q And what were your conclusions?

18 A My Item 6 was a fired 40-caliber cartridge case. And I
19 determined that it could be suitable for identification with
20 a specific firearm.

21 Q And were you able to make any identification?

22 A No, I was never submitted a firearm.

23 Q And did you have the occasion to analyze a fired bullet
24 in this case?

25 A Yes, sir, I did.

DIRECT EXAMINATION BY MR. SOWARDS OF SUZANNE CROMER

- 1 Q And what was your conclusion?
- 2 A I determined that this bullet was most consistent with
- 3 a 40 Smith and Wesson caliber bullet. It was fired through
- 4 a firearm that had the rifling consistent with seven lands
- 5 and grooves, left twist. And the only known manufacturer to
- 6 use that type of rifling is highpoint firearms.
- 7 Q And those items in your hand, are they in the same or
- 8 substantially the same condition as when you last saw them?
- 9 A Yes, sir.
- 10 MR. SOWARDS: Your Honor, at this time the State would
- 11 seek to move the State 57 into evidence.
- 12 THE COURT: Any objection?
- 13 MR. KING: No objection, Your Honor.
- 14 THE COURT: Without objection State's 57 is admitted.
- 15 (WHEREUPON, State's Exhibit 57 admitted into evidence.)
- 16 MR. SOWARDS: May I approach the witness?
- 17 THE COURT: You may.
- 18 Q I will now hand you what has been marked for
- 19 identification as State's Exhibit 48. And do you recognize
- 20 that?
- 21 A Yes, sir.
- 22 Q And how do you recognize that?
- 23 A It appears to be a copy of my report.
- 24 Q And is that a fair and accurate representation of the
- 25 report that you generated in this case?

DIRECT EXAMINATION BY MR. SOWARDS OF SUZANNE CROMER

1 A Yes, sir, it is.

2 MR. SOWARDS: Your Honor, at this time the State would
3 seek to move Exhibit 48 into evidence.

4 THE COURT: Is there any objection?

5 MR. KING: No, Your Honor.

6 THE COURT: State's 48 is admitted. Admitted without
7 objection.

8 (WHEREUPON, State's Exhibit Number 48 admitted into
9 evidence.)

10 Q Ms. Cromer, are you familiar with the term trigger
11 pull?

12 A Yes, sir, I am.

13 Q And what does that mean to you?

14 A Trigger pull is the amount of pressure applied to cause
15 the firearm to fire.

16 Q And you mentioned previously that your conclusions told
17 you that the bullet that was fired was most likely fired or
18 was consistent with being fired from a 40 caliber high point
19 pistol. Are you familiar with trigger pull as it relates to
20 a 40 caliber high point pistol?

21 A Yes, sir, I am.

22 Q And generally speaking if you were to do a trigger pull
23 test on a 40 caliber high point pistol what would you expect
24 the results to be?

25 A Well, I had tested four 40 caliber high point pistols

DIRECT EXAMINATION BY MR. SOWARDS OF SUZANNE CROMER

1 just this last week; and the trigger pulls varied from six
2 and a quarter pounds to nine pounds of pressure. Meaning if
3 you think a half gallon of milk weights approximately four
4 and a half pounds. A gallon of water weighs a little over
5 eight -- eight and a half pounds. So between those weights
6 with one finger that is the amount of pressure it usually
7 takes to fire these four high point firearms that I tested.

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

9 THE COURT: Yes, sir.

10 MR. SOWARDS: The State has no further questions at
11 this time. Please answer any questions Mr. King may have.

12 THE COURT: Cross-examine.

13 MR. KING: No questions.

14 THE COURT: Thank you. You may come down. You can
15 call your next witness.

16 MS. LINDER: The State calls Sergeant Thomas Bailey.
17 (WHEREUPON, the witness was duly sworn.)

18 THE CLERK: If you would please state your full name
19 for the record, and spell your last name for the record.

20 THE WITNESS: My name is Thomas Bailey, B-A-I-L-E-Y.

21 **DIRECT EXAMINATION BY MS. LINDER OF SGT. THOMAS BAILEY:**

22 Q What is your occupation?

23 A I am a sergeant with the City of Charleston Police
24 Department.

25 Q How long have you been with the City?

1 A Approximately ten years.

2 Q And can you tell the jury just a little bit about your
3 training and education and experience?

4 A Sure. I graduated from the Citadel in 2006, where I
5 was hired by the Charleston Police Department. I started
6 in -- my first assigned was in Team-One Patrol which is in
7 downtown Charleston. I did that for about five years.

8 I was then transferred to the Central Investigations
9 Unit, our detective's division. And I investigated
10 robberies. I did that for a year.

11 I was then laterally transferred to the Detectives
12 Division which is the Violence Crime Unit; and that unit
13 investigates homicides, shooting, stabbings, death
14 investigations; things of that nature. And I did that for
15 about three years until I was promoted to sergeant.

16 Which now I am back on Team One supervising the patrol
17 squad. And during that time I was on the SWAT team for six
18 years.

19 I have been to two different types of interrogation and
20 interview courses. I have been through a homicide and
21 question and death course. I have been to a Failures in
22 Investigation course.

23 When I was on the numerous -- I went to numerous
24 narcotics interdiction courses, firearm's interdiction
25 courses, and just street-level interdiction.

DIRECT EXAMINATION BY MS. LINDER OF SGT. THOMAS BAILEY

1 Q And in what capacity were you working back in October
2 of 2014?

3 A I was a detective in the Violent Crimes Unit.

4 Q And were you involved with this case, the State vs.
5 Ahshaad Owens?

6 A I was.

7 Q And can you tell the jury how you first got involved in
8 this case?

9 A On October 10th, 2014, at about 4:15 I was aware that a
10 homicide had just occurred in the area of Percy Street. I
11 was contacted by supervisor, Sergeant Kosarko at the time.
12 And he advised me that the victim, slash, witness needed to
13 be interviewed.

14 That witness, slash, victim, Hunter Bessinger, was
15 brought to the station and he was then placed in an
16 interview room, one of our interview rooms in the
17 Detective's Bureau. And an interview was conducted with
18 him.

19 I contacted the case agent first, Detective Holmes. I
20 said, Detective, Hunter is here to be interviewed, would you
21 like for me to interview him myself. He says no stick
22 around for -- just hold up for a second and I would like to
23 interview him with you.

24 So when Detective Holmes returned back to the station
25 we conducted an interview with Mr. Bessinger.

1 Q And can you kind of describe what the interview room
2 looks like or what its capabilities are?

3 A Sure. It is about a six by six room. It has a table,
4 a small table, a few chairs. It has the capability of audio
5 and video recording. And it is located at our -- at our
6 police station at 180 Lockwood Blvd.

7 Q And you mentioned interviewing Hunter Bessinger. Can
8 you describe to the jury what his demeanor was when you
9 encounter him?

10 A Hunter was very shook up I would say. He was very
11 shook up. He was obviously concerned for the safety of his
12 friend. He was very concerned about his friend and his
13 current status and what he was.

14 He was shook up; however, he was able to recall --
15 provide a detailed statement which stayed consistent
16 throughout. But he seemed very open and very cooperative at
17 the time.

18 Q And could you describe to the jury just generally what
19 happens in an interview, how interviews are generally
20 conducted.

21 A Sure. During the interview a detective's main goal
22 is -- is to get as much factual information about what
23 occurred during that incident, during that crime, as you
24 can.

25 During the interview obviously you are going to speak

DIRECT EXAMINATION BY MS. LINDER OF SGT. THOMAS BAILEY

1 to -- one or two detectives might speak to that individual;
2 however, you are going to use -- you are going to try to use
3 any type of avenue that you can to try to gain all of the
4 information that is relevant to the case.

5 For instance, you might use a computer to look up
6 certain types of vehicles. You might use a computer to look
7 through social media for friends or things of that such
8 nature. You might look through a cell phone to get a good
9 time reference or to get call logs or contact lists.
10 Different things. You will conduct identifications. You
11 will conduct -- whether that be a single identification or a
12 photographic lineup, different things -- different things
13 like that.

14 Q When you do an interview do you generally advise the
15 individual of their Miranda rights?

16 A In certain situations Miranda will apply and will be
17 read -- the person being interviewed will be read their
18 Miranda rights.

19 Q And in this case did you advise Miranda?

20 A Myself and Detective Holmes, Miranda was issued to --
21 to Hunter.

22 Q And as far as this case is concerned in interviewing
23 Hunter can you describe how the interview process with him
24 and if anything else was happening outside of that interview
25 room?

1 A Sure in this case and in a lot of homicide cases there
2 are a lot of moving parts. There are a lot of detectives
3 that are working at the scene, that are at the station that
4 want to help out, trying to see what they can add to the
5 investigation. And then there is actually other detectives
6 conducting interviewed.

7 And that was - that was the case in this. There were
8 detectives at the scene that, you know, during the interview
9 with might step out and gain more information that was
10 learned through the maybe witness statements or something
11 that the detective learned at the scene. But it is
12 definitely an ongoing situation that is always being
13 updated.

14 Q You mentioned that sometimes you look at call logs.
15 Did you look at Hunter's call log in this case?

16 A I did.

17 Q And did he hand you his phone?

18 A He did.

19 Q And what did you see on his call log?

20 A On his call log there was a call placed to 911 at 16:06
21 or 4:06 p.m.

22 Q And you mentioned trying to do some identifications and
23 look at pictures such as vehicles. Did you do that with
24 this person, with Hunter?

25 A I did do that with Hunter. That process was not

DIRECT EXAMINATION BY MS. LINDER OF SGT. THOMAS BAILEY

1 conducted in the interview room due to my computer being
2 located at my desk. But it was audio recorded.

3 And it was a basic -- I pulled up a vehicle -- a
4 broader scope of vehicles that had been previously mentioned
5 in the interview room. And I asked Hunter if he saw a
6 vehicle picture that matched the one that was -- that was
7 mentioned in the interview room that he would have pointed
8 out to me.

9 And I also asked him to after that was conducted I
10 asked him to pick out the color of the vehicle that most
11 resembled the one that was in question.

12 Q At this time I am going to have you look at State's
13 Exhibit 52. And this has already been admitted into
14 evidence. That has already been admitted into evidence.
15 Can you explain to the jury exactly what that is that I
16 handed you, State's 52?

17 A Sure. This first one here is just a -- this is -- this
18 image, click on. So this is the image that Hunter picked
19 out that is the vehicle that was similar to the one in
20 question.

21 This one here is -- was also on the same page that we
22 pulled up. But this one wasn't -- he wasn't picking out
23 the similar vehicle; he was picking out the similar shade of
24 color of the vehicle in question.

25 Q And speaking of vehicles, was a vehicle identified and

DIRECT EXAMINATION BY MS. LINDER OF SGT. THOMAS BAILEY

1 located in this case?

2 A Yes, ma'am.

3 Q And what was that specific vehicle?

4 A That was a 2005 Mazda 6.

5 Q And in preparation for this trial did you do research
6 regarding the dimensions of the backseat of the vehicle?

7 A I did do research. I researched the dimensions of the
8 rear hip room of the -- of a 2005 Mazda 6. And I learned
9 that it was 54.1 inches wide.

10 Q All right. I am a visual person. So I am going to
11 have you use a measure and tape. And I would like for you
12 to cut the string as long as the hip room.

13 A Let's see the best way to do this.

14 Q Or I can help.

15 A Do you mind if I come around?

16 THE COURT: You may step down if you need to.

17 Q Tell me what I can do.

18 A If you can just pull that down. You would just like
19 me to cut it 54 inches?

20 Q Yes, please. So this string is 54 inches?

21 A Yes, ma'am.

22 Q And this is the dimensions of the backseat of the car,
23 the total dimensions?

24 A Yes, ma'am.

25 MS. LINDER: I have no further questions for this

CROSS-EXAMINATION BY MR. KING OF SERGEANT THOMAS BAILEY

1 witness. Sergeant Bailey, if you could answer anything the
2 defense may have.

3 THE COURT: Cross-examine.

4 MR. KING: Thank you, Your Honor.

5 **CROSS-EXAMINATION BY MR. KING OF SERGEANT THOMAS BAILEY:**

6 Q Detective Bailey, you testified Hunter Bessinger you
7 interviewed him; is that right?

8 A Yes, sir.

9 Q You testified his statement to you was consistent
10 throughout; is that what you said?

11 A Yes -- yes, sir, I would say for the most part it was.

12 Q He told you about the back -- he said Jarrod had a
13 backpack?

14 A He said he was unsure.

15 Q In the beginning didn't he tell you and Detective
16 Holmes that Jarrod is my friend too but I didn't know him to
17 be like into drugs; do you remember that?

18 A I can't recall exactly if he said that. But there was
19 a comment about that.

20 Q Okay. And then you don't remember -- in the beginning
21 he was saying he had no idea why they were going to get in
22 this car and he said ---

23 A No, he did say that.

24 Q He did say that?

25 A Uh-huh.

1 Q Right. And then you said Jarrod is my friend too but I
2 don't know him to be like into drugs, right, he said that at
3 the beginning?

4 A I believe so. I can't quote exactly.

5 Q And then you and Detective Holmes you give him -- you
6 have to keep talking to him and telling him look we don't
7 care about drugs; ---

8 A Correct.

9 Q --- do you remember telling him that, we don't care
10 about the drugs?

11 A Yes, sir.

12 Q We are just trying to -- we need all the information
13 and details we can get, ---

14 A Yes, sir.

15 Q --- right? And then he says, okay, Jarrod was probably
16 trying to get a weed -- get some weed, but he didn't tell
17 you that; remember you -- get a little bit more, right?

18 A He kind of guessed that that was the reason why he was
19 going to be there.

20 Q And you eventually had to get Detective Krasowski to
21 come in there and talk to him, right?

22 A Yes, sir.

23 Q And it wasn't until the end that he admitted that
24 Jarrod sold drugs, right?

25 A I believe he mentioned he sold marijuana.

CROSS-EXAMINATION BY MR. KING OF SERGEANT THOMAS BAILEY

1 Q Right. Because in the beginning he said Jarrod is my
2 friend too but I don't -- I didn't know him to be like into
3 drugs, ---

4 A Yes, sir.

5 Q --- right? That is not consistent with what he said
6 later in the interview though, is it; because he admitted
7 that Jarrod sold drugs to his friends?

8 A Right, that wouldn't be the same.

9 Q And the book bag, for example, you asked him
10 specifically did Jarrod -- did you or Jarrod have a backpack
11 with you; and you said no, right; do you remember that?

12 A Correct.

13 Q And then when y'all kept asking about a book bag he
14 eventually said maybe there was a book bag?

15 A He said there could have been. He said he carries a
16 book bag with him but I am not sure he had it with him; he
17 carries a book bag with him a lot of the time but I am not
18 sure if he has a book bag with him. Something to the
19 effect.

20 Q Okay. So he never -- he never came out and told you
21 Jarrod had a book bag?

22 A No, not outright.

23 Q Okay.

24 MR. KING: That's all the questions I have.

25 THE COURT: Redirect.

1 **REDIRECT EXAMINATION BY MS. LINDER OF DET. THOMAS BAILEY:**

2 Q Was Hunter consistent with you about who had the gun?

3 A He was.

4 Q About who pulled the trigger?

5 A He was.

6 Q About people's positions in the car?

7 A That remained consistent, yes, ma'am.

8 Q And that was from the word go, from the beginning?

9 A Yes, ma'am.

10 MS. LINDER: I have nothing further.

11 THE COURT: Recross.

12 MR. KING: No, Your Honor.

13 THE COURT: Thank you. You may step down.

14 Call your next witness.

15 MR. SOWARDS: The State calls Rich Burkhardt.

16 (WHEREUPON, the witness was duly sworn.)

17 THE CLERK: If you will please state your name for the
18 record and spell your last name for the record.

19 THE WITNESS: My name is Richard Burckhardt. That's
20 B-U-R-C-K-H-A-R-D-T.

21 **DIRECT EXAMINATION BY MR. SOWARDS OF RICH BURCKHARDT:**

22 Q Mr. Burckhardt, where do you currently work?

23 A I currently work in the federal court system.

24 Q And where did you work prior to working in the federal
25 court system?

DIRECT EXAMINATION BY MR. SOWARDS OF RICH BURCKHARDT

1 A I worked for the City of Charleston Police Department.

2 And I retired November 30th of this year.

3 Q And how long were you with the Charleston Police
4 Department?

5 A Twenty-seven years.

6 Q And what were your duties while at the Charleston
7 Police Department?

8 A Started as most officers back then. I worked in the
9 uniform patrol capacity. I rode horses when we had horses.
10 And for the last 17 years and to finish my career I finished
11 in the violent crimes section as a detective.

12 Q And could you describe for the jury your training and
13 experience.

14 A Okay. So starting out starting as all officers I
15 attended the Criminal Justice Academy in Columbia, South
16 Carolina, basic training. From that point on I worked in
17 several areas where I received numerous hours of federal and
18 state training.

19 I was assigned to the DEA, the Drug Enforcement
20 Administration and Task Force. I was also deputized with
21 the FBI in their Violent Crime Task Force.

22 And throughout all of those areas of work there were
23 countless hours of training in various aspects of the job,
24 job related stuff, things.

25 Q And were you working on October the 10th, 2014?

1 A Yes.

2 Q And did you have the occasion to become involved in the
3 investigation of this case, State vs. Ahshaad Owens?

4 A I did.

5 Q And did you administer a photographic lineup to Hunter
6 Bessinger in this case?

7 A I did.

8 Q And could you just describe the process of
9 administering a photographic lineup.

10 A Okay. In this lineup and as in any lineup that I would
11 have presented, I was handed a lineup myself. It was
12 probably done by our intelligence unit.

13 And it searches a data base after putting in certain
14 parameters you are looking for; age, size, ethnicity, things
15 like that to make a six person photographic lineup.

16 And that lineup was handed to me along with an
17 admonition form which is basically the instructions on the
18 person reviewing the lineup as to what they are supposed to
19 follow.

20 MR. SOWARDS: May I approach the witness, Your Honor?

21 THE COURT: Yes, you may.

22 Q I am going to hand you what has been marked for
23 identification as State's Exhibit 53. Do you recognize
24 that?

25 A I do.

DIRECT EXAMINATION BY MR. SOWARDS OF RICH BURCKHARDT

1 Q And is that the photographic lineup that you presented
2 to Hunter Bessinger in this case?

3 A It is.

4 Q And how do you know that?

5 A Number one, my handwriting is on it. And also I signed
6 on the bottom of the admonition form.

7 Q And how did you present that admission for to Hunter
8 Bessinger?

9 A I would read him the actual -- the narrative, the
10 instructions that's on this front page. I can read it if
11 you would like.

12 Q That is okay.

13 A Okay.

14 Q And did he indicate to you that he understood the
15 admonishment?

16 A He did.

17 Q And how did he indicate that?

18 A He verbally told me that he understood the
19 instructions. And after he reviewed it he immediately would
20 have reviewed the admonition -- and I'm sorry, the first
21 page is actually the instructions and behind it is the
22 actual lineup. So when he sees that, we open the lineup. I
23 ask him to review it. And in this particular lineup he was
24 able to identify an individual almost immediately.

25 Q And after admonishing him did you present the

1 photographic array to him?

2 A I did.

3 Q And was he able to identify anyone in the array?

4 A He did. He identified the individual in Position
5 Number 4.

6 Q And did he do it right away or did it ---

7 A Yes. And in my notes there is a comment section on the
8 bottom of the lineup that is my notes of how the person
9 reviewing the lineup responded.

10 And in this particular lineup I stated the witness
11 picked out Number 4 without hesitation, stating that is the
12 person who shot my friend.

13 Q And who is the person in Position 4?

14 A It is Mr. Owens, Ahshaad Owens.

15 MR. SOWARDS: Beg the court's indulgence.

16 THE COURT: Certainly.

17 MR. SOWARDS: No further questions from the State at
18 this time. Please answer any questions that Mr. King may
19 have.

20 THE COURT: Cross-examine.

21 MR. KING: I have no questions, Your Honor.

22 THE COURT: Thank you. You may step down. Okay.

23 THE WITNESS: Excused?

24 THE COURT: You are.

25 Ladies and gentlemen, at this point we will take our

DIRECT EXAMINATION BY MR. SOWARDS OF RICH BURCKHARDT

1 an opportunity to get this case to you about lunch time.
2 And if we don't, still we are delighted to bring you lunch.
3 I hope it will be -- you have had an opportunity to
4 order it. It might not be a five-course meal, but you will
5 find it nourishing and enjoyable. And we appreciate, again,
6 your services that you rendered this week and will continue
7 to render in this matter.

8 Please give your attention now to the next witness.
9 Good morning, Solicitor. If you will call your next
10 witness, please.

11 MR. SOWARDS: Thank you. May it please the court. The
12 State calls Dr. Ellen Reimer.

13 THE COURT: Okay.
14 (WHEREUPON, the witness was duly sworn.)

15 THE CLERK: If you will please state your full name and
16 spell your last name for the record.

17 THE WITNESS: It is Dr. Ellen Riemer, R-I-E-M-E-R.
18 (WHEREUPON, the witness was duly sworn.)

19 **DIRECT EXAMINATION BY MR. SOWARDS OF DR. ELLEN RIEMER:**

20 Q Good morning, Dr. Riemer. Where are you employed?

21 A I am employed at the Medical University of South
22 Carolina.

23 Q And what is your position at the Medical University of
24 South Carolina?

25 A I am a physician who specializes in forensic pathology.

1 Q And what are your duties as it relates to forensic
2 pathology?

3 A I perform autopsies on individuals who died
4 unexpectedly, in order to do determine the cause and manner
5 of death.

6 Q And how long have you been at MUSC?

7 A Seven years.

8 Q And how long have you been performing autopsies in
9 Charleston County; is it the same seven years?

10 A Seven years.

11 Q And approximately how many autopsies would you say you
12 have performed in your career?

13 A Approximately 3,500.

14 Q And are you board certified in forensic pathology in
15 the State of South Carolina?

16 A I am board certified in forensic pathology. And I am
17 licensed to practice medicine in the State of South
18 Carolina.

19 Q And could you just describe your medical training for
20 the jury?

21 A Yes. After obtaining my doctor of medicine, by M.D.
22 degree, I did training in pathology, my residency in
23 pathology, at Columbia Presbyterian Medical Center which is
24 in the State of New York.

25 And after completing that I did a fellowship which is

DIRECT EXAMINATION BY MR. SOWARDS OF DR. ELLEN RIEMER

1 sub specialty training in forensic pathology at the Office
2 of the Chief Medical Examiner of the State of Maryland which
3 is in Baltimore.

4 And following that I did an additional year of
5 subspecialty fellowship training in cardiovascular and
6 pulmonary pathology at Johns Hopkins Hospital also in
7 Baltimore.

8 Q Thank you. Have you ever been qualified to testify as
9 an expert in the area of forensic pathology in the State of
10 the South Carolina?

11 A Yes.

12 Q And how many times approximately?

13 A Probably a few dozen. I haven't kept track exactly.

14 Q Your Honor, at this time the State would seek to have
15 Dr. Riemer designated as an expert in the area of forensic
16 pathology.

17 THE COURT: Do you wish to exam her as to
18 qualifications?

19 MR. KING: No, Your Honor.

20 THE COURT: She will be permitted to render opinions in
21 the area of forensic pathology.

22 Q Dr. Riemer, in the scope of your position as a forensic
23 pathologist did you have the occasion to perform an autopsy
24 on Jarrod Howard back in October of 2014?

25 A Yes.

1 Q And before we get into your findings could you just
2 explain to the jury how an autopsy is performed?

3 A Yes, an autopsy is basically a specialized surgical
4 procedure that starts with an external exam. So I would
5 start by examining the body from head to toe and looking for
6 any abnormalities or injuries or anything that might be
7 present on the body.

8 And after completing an external exam I will do an
9 (internal examination which involves looking at all of the
10 organs and any -- evaluate them for any injuries or defects
11 or other abnormalities that may be present.

12 And then after completing that, I frequently am able
13 to determine why the individual died unexpectedly. And
14 sometimes there are other tests that need to be done if
15 there are no findings at the autopsy that can help come
16 to -- help me make a determination as to the cause and
17 manner of death.

18 So it's basically an external and internal examination
19 and with training. And as a pathologist I know what
20 normally and abnormal. And I also specialize in forensic
21 pathology, and I am an expert in examining injuries.

22 Q Thank you. Now specifically to your findings, what was
23 the age of Jarrod Howard at the time of death?

24 A I am going to -- if you don't mind I am going to pull
25 out my autopsy report so I can refresh my recollection. He

DIRECT EXAMINATION BY MR. SOWARDS OF DR. ELLEN RIEMER

1 was 19.

2 Q And his weight?

3 A He weighed 156 pounds.

4 Q What about his height?

5 A And I measured him at sixty-eight-and-a-half inches,
6 which is five-eight-and-a-half.

7 Q Now during your external examination of Jarrod did you
8 observe any injuries on his face?

9 A Yes, he had a couple of abrasions which are scrapes.
10 They are skin scrapes.

11 Q And would that finding be consistent with someone who
12 fell face first on the pavement?

13 A Yes.

14 Q And were you able to fulfill your charge and determine
15 a cause of death for Mr. Howard?

16 A Yes.

17 Q And what was the cause of death?

18 A A gunshot wound to the back.

19 Q And could you just maybe a little more specifically
20 describe where the gunshot wound was?

21 A Yes, the gunshot wound was on the middle of the lower
22 back. So on the lower lumbar region which is at the midline
23 superior to the buttock area. And if you would like me to
24 describe the path?

25 Q Please.

1 A Okay. The gunshot would have went into the skin and
2 the muscle underneath the back, and then went through the
3 backbone including the lumbar spinal cord.

4 So it went through the backbone and the spinal cord and
5 then proceeded through the abdominal aorta which is a major
6 conduit, a major blood vessel of the body that carries a
7 large amount of blood away from the heart.

8 And after going through the aorta it continued and went
9 through the right renal artery which is a blood vessel that
10 connects the aorta to the right kidney; then went through
11 the right adrenal gland, parts of the large bowel, the
12 colon, and then continued through the liver and the
13 diaphragm, and then into and through the right lung.

14 And then it sort of -- you know, it is in the upper
15 part of the body and toward the front. And then it went
16 through the right front rib in the front of the chest.

17 And the bullet terminated underneath the skin on the
18 right side of the chest. So it was from back to front and
19 upward.

20 Q And would that be consistent with a person who was kind
21 of leaned over and shot right here (pointing) and the bullet
22 wound up up here in the chest (pointing)?

23 A Yes.

24 MR. SOWARDS: May I approach the witness. Your Honor?

25 THE COURT: Yes, you may.

DIRECT EXAMINATION BY MR. SOWARDS OF DR. ELLEN RIEMER

1 Q At this time I will hand you what has been marked for
2 identification as State's Exhibits 58 and 59. I will ask
3 you to take a look at those. Do you recognize those?

4 A Yes, these are x-rays that I performed at the
5 commencement of the autopsy examination so I can see if
6 there are any projectiles in the body.

7 Q And are those a fair and accurate depiction of the
8 x-rays that you took on ---

9 A Yes.

10 Q --- when you performed the autopsy?

11 A Yes.

12 MR. SOWARDS: At this time, Your Honor, the State would
13 seek to admit State's 59 and 58 into evidence.

14 THE COURT: Any objection?

15 MR. KING: No, Your Honor.

16 THE COURT: Without objection State's 58 and 59 are
17 admitted.

18 (WHEREUPON, State's Exhibit Number 58 admitted into
19 evidence.)

20 (WHEREUPON, State's Exhibit Number 59 admitted into
21 evidence.)

22 Q I will show you State's Exhibit 58 first and have you
23 explain. Could you tell the jury what we are looking at
24 right here?

25 A Yes. So that is an x-ray, an AP x-ray, which is like

1 from the front to the back. It's kind of snowy now.

2 Something happened to the image.

3 (WHEREUPON, the image was refocused.)

4 A Okay. And we can see on the right, the middle of the
5 back we can see the backbone in there; and then we can see a
6 bunch of ribs. And there is a white looking object. That
7 is a bullet. And it is on the right side of the chest.

8 And so from this -- from this x-ray because it is only
9 two-dimensional I can see, oh, there is a bullet in the
10 chest and it is on the right side of the chest.

11 And so in conjunction with that x-ray it is important
12 to do an x-ray that is sort of taken from the side so I can
13 see where in the right side of the chest it is, if it is
14 closer to the front or the back or in the middle.

15 And the reason I do these is because it is helpful for
16 me to actually find the bullet in the body. And because it
17 is not always -- you know, it is not always so easy to get a
18 bullet out of, you know, a small area of tissue.

19 And this is an x-ray from the side of the body. It
20 looks sort of hard to tell exactly what that is. But you
21 can see there is a white, oval, solid object.

22 The whiter something is, the more solid it is. So
23 black is air. And then white where there is like bone and
24 organs it is sort of white.

25 Like the darkest thing -- or the lightest thing, the

1 whitest thing on that is actually the bullet. And we can
2 see that that is right next to the rib cage. So it is into
3 the front part of the chest.

4 So the reason I did that was so I could -- I saw the
5 entrance bullet wound on the back. And like I don't see an
6 exit wound on anywhere on the body, so the bullet must be in
7 the body; so I do x-rays to find it. And there it is.

8 Q Thank you. Now as part of performing an autopsy do you
9 order a toxicology report?

10 A Yes, toxicology is ordered routinely on all forensic
11 autopsies.

12 Q And what were your findings in this case?

13 A Yeah, well, I send the blood samples out to a
14 toxicology lab and they perform the test and then I get the
15 results. So I report what the findings were.

16 And in this case there was marijuana, Delta 9 THC, and
17 then the Delta 9 carboxy-THC which is a metabolite of
18 marijuana. And there was also Alprazolam which is generic
19 name for Xanax. And there was amphetamine as well.

20 Q And finally as a result of your autopsy were you able
21 to determine the cause of death?

22 A Yes, a gunshot wound to the back.

23 MR. SOWARDS: Beg the court's indulgence.

24 THE COURT: Yes, sir.

25 MR. SOWARDS: The State has no further questions at

1 this time. Please answer any questions Mr. King may have.

2 THE COURT: Cross-examine.

3 **CROSS-EXAMINATION BY MR. KING OF DR. ELLEN RIEMER:**

4 Q You are not involved in the overall investigation of
5 the case; is that right?

6 A No.

7 Q Your job is basically just to examine the body?

8 A And to determine the cause and manner of death.

9 Q Are you given a lot of information about the whole
10 case, the facts of the case?

11 A Sometimes. I am given some information. Not -- not
12 very much. I mean some cases I am given more or less. But
13 I come to an independent determination.

14 Q But you are able to determine the cause of death, I
15 guess in laymen's terms, a bullet fired from a gun that hit
16 him in the back; right?

17 A Yes.

18 Q But you don't know who shot that gun?

19 A That is correct.

20 Q Or the circumstances surrounding how that gun fired?

21 A I have no idea.

22 Q You testified that the examination you performed you
23 did a toxicology test?

24 A Yes.

25 Q You found amphetamine?

CROSS-EXAMINATION BY MR. KING OF DR. ELLEN RIEMER

1 A Yes.

2 Q Is that a drug that can cause someone to be maybe more
3 aggressive than they normally would?

4 A Well, it is a stimulant; so the effects of the
5 stimulation can vary among different people so.

6 Q Is it possible to make someone maybe more aggressive
7 than they normally would be?

8 A It is possible.

9 Q Bolder than they may normally would be?

10 A It is possible.

11 Q As part of your expertise you learned a lot about
12 gunshot wounds?

13 A Yes.

14 Q And one of the things you look for is soot and
15 stippling?

16 A That is correct.

17 Q Can you explain what that is?

18 A Yes, when a bullet is discharged from the barrel of the
19 gun gunpowder is discharged from the barrel along with the
20 bullet. It helps propel the bullet forward.

21 And a bullet has the ability to travel a considerable
22 distance. And the gun power that gets -- that leaves the
23 barrel of the gun can travel a shorter distance. It doesn't
24 travel as far as the bullet, but it can travel some inches
25 to feet depending on the gun.

1 And if a person -- or if -- if a person is within a
2 certain range of the barrel of the gun when it is shot some
3 of that gunpowder can get deposited on the skin.

4 And so when there is stippling on the skin it would
5 indicate that that is basically fragments of gunpowder. So
6 it would tell us that the person was shot within a certain
7 range of the barrel of the gun.

8 And similarly, soot it actually, you know, is the
9 gunpowder, burnt residue, that travels a very short
10 distance; and that would indicate the contact range. But in
11 this case neither of those were present on the skin.

12 Q Stippling, it can cause burns on skin?

13 A Yes.

14 Q And that is because when a firearm is fired there is an
15 explosion, right?

16 A Yes.

17 Q Now something other than the bullet comes out of the
18 front of the gun?

19 A Yes. I mention that that was gunpowder. And the
20 gunpowder can deposit on the skin and that is what -- that
21 is what stippling is.

22 Q Does the gun powder spread out as it exits the gun?

23 A Yes.

24 Q Now I am going to ask you a hypothetical question. If
25 someone -- let's say a gun was fired a couple of inches from

CROSS-EXAMINATION BY MR. KING OF DR. ELLEN RIEMER

1 my face. That may depend on how far it is, but if it was a
2 couple of inches from my face could I have injuries on my
3 face from the gun being fired?

4 MR. SOWARDS: Objection. Your Honor.

5 THE COURT: Yes?

6 MR. SOWARDS: It is beyond her expertise.

7 THE COURT: Well, I will allow it; but let's -- let's
8 frame it in the fashion that it has got to be to a
9 reasonable degree of medical certainty. Not possible,
10 because possible is not relevant and not proper.

11 So it would have to be -- it has to be stated in
12 that -- ask her in that fashion.

13 Q Let's maybe explain it. Let's say there is a gun in
14 this area -- the tip of the gun is in this area of my face
15 (motioning), can you say to a reasonable degree of medical
16 certainty whether that could cause injuries on the face?

17 A The question is too vague. I can't answer it. I don't
18 know what you mean by the gun is here. I mean where is it
19 pointed? If a gun is pointed at your -- at your face -- or
20 at my face and discharged, yes, it is going to cause an
21 injury.

22 But, you know, just being in close proximity I don't
23 necessarily -- can't say whether it would or wouldn't cause
24 an injury.

25 I mean is a bullet striking somebody's face? I mean

1 that's -- or striking -- whatever the bullet -- the
2 person who is struck by the bullet is going to have an
3 injury. Otherwise I don't -- I don't know what you are
4 referring to.

5 Q Well, you said that the gunpowder comes out of the gun;
6 it does spread out, right?

7 A Gunpowder, yes.

8 Q Gunpowder does?

9 A And it comes and it travels in the direction that a
10 bullet travels.

11 Q So I guess the question to a reasonable degree of
12 medical certainty is that if someone is not directly in
13 front of the gun but is maybe off to the side where the gun
14 is not pointing straight at them but the gunshot happens --
15 or the explosion happens within a couple of inches from
16 their face.

17 A And so are you asking me if there could be gunpowder
18 residue on them or gunpowder or stippling on their body?

19 Q Any kind of injuries or signs.

20 A Well, I can't say if it would happen or wouldn't
21 happen. You would have to test fire the individual
22 weapon to see the spread of gunpowder in that particular
23 weapon.

24 Q What about eardrums, a person's ears, do you have any
25 expertise on that? If a gun was fired a couple of inches

CROSS-EXAMINATION BY MR. KING OF DR. ELLEN RIEMER

1 from my face in this direction (motioning).

2 A I am not familiar with the effect on the eardrum.

3 MR. KING: That's all the questions I have.

4 THE COURT: Redirect.

5 MR. SOWARDS: None, Your Honor.

6 THE COURT: Thank you. You may step down, Doctor.

7 Have a good day.

8 Call your next witness, please.

9 MR. KING: The State rests.

10 THE COURT: Ladies and gentlemen, at this point there
11 are some matters of law that I have to take up out of your
12 presence.

13 I am going to ask you to retire to your jury room.
14 Please do not begin your deliberation. We will be with you
15 as quickly as we can. Thank you.

16 (WHEREUPON, jury exits courtroom 10:03 a.m.)

17 THE COURT: All right. Any motions from the State at
18 this point?

19 MS. LINDER: Nothing from the State.

20 THE COURT: Mr. King.

21 MR. KING: Your Honor ---

22 THE COURT: Yes, sir.

23 MR. KING: At this time the defense would make a motion
24 for a directed verdict. Start off with the armed robbery
25 charge.

1 THE COURT: Thank you very much.

2 Thank you, ladies and gentlemen. You will recall when
3 we started this I mentioned to you that Mr. Owens of course
4 has no responsibility as he or any person accused of a
5 criminal offense in this state has no responsibility to
6 prove or disprove anything whatsoever. But they still have
7 the right to present evidence that choose to for your
8 consideration.

9 Mr. King, we have we've reached that point. Does Mr.
10 Owens wish to present any additional evidence for the jury's
11 consideration?

12 MR. KING: Yes, Your Honor, at this time ---

13 THE COURT: You may proceed.

14 MR. KING: The defense calls Matt Goodrick.

15 THE COURT: Okay.

16 (WHEREUPON, the witness was duly sworn.)

17 THE CLERK: If you would please state your full name
18 and spell your last name.

19 THE WITNESS: Matthew D. Goodrick, G-O-O-D-R-I-C-K.

20 **DIRECT EXAMINATION BY MR. KING OF MATTHEW GOODRICK:**

21 Q Mr. Goodrick, do you live here in Charleston?

22 A Yes, I do.

23 Q What do you do here in Charleston?

24 A I work in kitchens.

25 Q Okay. Do you remember an incident back on October

DIRECT EXAMINATION BY MR. KING OF MATTHEW GOODRICK

- 1 10th, 2014, that happened?
- 2 A I do.
- 3 Q Percy and Bogard Street?
- 4 A Yes.
- 5 Q Where were you living back then?
- 6 A I was living on Spring Street. I was
- 7 Q And where were you when this incident happened?
- 8 A I was at my friend's house on Percy Street.
- 9 Q Do you know the address on Percy Street?
- 10 A Not off of the top of my head.
- 11 Q Do you know how far it is from the intersection of
- 12 Percy and Bogard?
- 13 A One house.
- 14 Q Okay. So you were pretty close to this incident when
- 15 it happened?
- 16 A Yes, I was.
- 17 Q Okay. Can you tell us what you see -- saw or heard
- 18 that day?
- 19 A We were in the yard. I heard a scuffle. There was a
- 20 shot. And then a car drove off.
- 21 Q Okay. So you are sitting in the yard; it is someone
- 22 else's yard, like a friend?
- 23 A Uh-huh.
- 24 THE COURT: Was that a yes?
- 25 A Yes, sir.

DIRECT EXAMINATION BY MR. KING OF MATTHEW GOODRICK

1 Q Could you see the incident at all?

2 A No.

3 Q You just heard?

4 A I just saw a car drive off.

5 Q Okay.

6 A And then ran to the fence.

7 Q Again, what was -- what was the first thing that you
8 heard that drew your attention to it?

9 A Sneakers on the ground, scuffling, like a fight.

10 Q Okay. There were police officers out there ---

11 A Yes.

12 Q --- after the incident? You were interviewed by a
13 police officer, at least one police officer?

14 A Yes, I was.

15 Q And they got your information and everything?

16 A Yes.

17 Q Do you remember at that interview I think it was
18 Detective Krosowski; I think it was a tall blonde police
19 officer?

20 A I couldn't tell you.

21 Q But your remember giving a statement to a police
22 officer that day?

23 A Yes, I did.

24 Q Because you used a different word back then. Do you
25 remember saying this, the thing that stuck out though,

DIRECT EXAMINATION BY MR. KING OF MATTHEW GOODRICK

1 discussing there was no yelling, there was no cry for help,
2 there was like no real struggle except for the struggle
3 right before the gunshot that I heard so it seemed to me
4 that they knew each other; do you remember saying that?

5 A I do.

6 Q So at least back then -- you said scuffle today, but
7 you used -- you used the word struggle right before the
8 gunshot back then?

9 A Yeah.

10 Q I have no other questions, Your Honor.

11 THE COURT: Cross-examine?

12 MS. LINDER: Briefly.

13 **CROSS-EXAMINATION BY MS. LINDER OF MATT GOODRICK:**

14 Q You know, one of the great things about words is that
15 they can mean different things to different people. So I am
16 glad Mr. King asked you what scuffle meant.

17 And what did you say the sound you hear, what did that
18 sound like -- I believe you said it was -- didn't you say it
19 was sneakers on the ground?

20 A Something to that effect, yeah.

21 MS. LINDER: That's all I have.

22 THE COURT: Recross -- excuse me, I mean redirect.

23 MR. KING: No, Your Honor.

24 THE COURT: You may come down, Mr. Goodrich. Thank
25 you.

26

DIRECT EXAMINATION BY MR. KING OF AHSHAAD OWENS

1 THE WITNESS: Thank you.

2 THE COURT: Any additional testimony?

3 MR. KING: At this time the defense calls Ahshaad
4 Owens.

5 THE COURT: Okay. Mr. Owens.

6 (WHEREUPON, the witness was duly sworn.)

7 THE CLERK: State your full name and then spell both
8 your first and last name.

9 THE WITNESS: Ahshaad Owens. May first name is spelled
10 A-H-S-H-A-A-D. Owens, O-W-E-N-S.

11 **DIRECT EXAMINATION BY MR. KING OF AHSHAAD OWENS:**

12 Q Mr. Owens, Ahshadd, who was -- let's get something out
13 in the beginning. Who is Jarad Howard to you?

14 A My drug supplier.

15 Q And on October 10th, 2014, did you try to buy drugs
16 from Jarrod Howard?

17 A Yes, sir.

18 Q Did you plan to rob him that day?

19 A No, sir.

20 Q Did you bring a gun with you that day?

21 A No, sir.

22 Q And did you pull out a gun that day?

23 A No, sir.

24 Q All right. Let's go back a little bit. Maybe just a
25 little bit about your background. How old are you now?

DIRECT EXAMINATION BY MR. KING OF AHSHAAD OWENS

- 1 A I am actually 20 years old.
- 2 Q How old were you back on October 10th, 2014?
- 3 A I was 19.
- 4 Q Nineteen. Okay. Where were you born?
- 5 A North Charleston, South Carolina.
- 6 Q And were you raised there?
- 7 A Yes, sir, I was.
- 8 Q Where did you go to school?
- 9 A Fort Dorchester High School.
- 10 Q Have you had any jobs in the past?
- 11 A Yes, sir, I have.
- 12 Q What kind of places have you worked?
- 13 A My junior and senior year of high school I worked at
- 14 the Nike Outlet. And in 2013 I worked at Petco and Dunkin
- 15 Donuts at the same time. And from there I worked at
- 16 Applebee's and Hubeedees (ph) on Savannah Highway at the
- 17 same time also. Once -- after those jobs.
- 18 Q Now who raised you here in North Charleston?
- 19 A My grandparents and my mother.
- 20 Q What about your father?
- 21 A No.
- 22 Q You don't have a relationship with him?
- 23 A No, I do not.
- 24 Q Do you know who he is?
- 25 A I know of him.

1 Q But he has never been a part of your life?

2 A No, sir.

3 Q Let's go to October 10th, 2014. What were your -- what
4 was your plan that day?

5 A To get some drugs from Jarrod and then me and my
6 friends were actually heading to Columbia to go to a USC
7 football game for the next day.

8 Q And why did you need Xanax?

9 A That is usually my drug when I go party and have fun.

10 Q And who were you going to Columbia to see or who were
11 you going to stay with?

12 A I was just going to stay with my friend Davonte
13 Bradley.

14 Q Now tell me about -- well, where were you going to get
15 the Xanax?

16 A I was going to get it from Jarrod.

17 Q Tell us about Jarrod. How long had you known Jarrod?

18 A I would say two-and-a-half to three months.

19 Q And had you bought Xanax from him before?

20 A Yes, sir, I did.

21 Q Had you ever had any problems buying Xanax from him
22 before?

23 A No, sir, I didn't.

24 Q No arguments?

25 A No, nothing at all.

DIRECT EXAMINATION BY MR. KING OF AHSHAAD OWENS

- 1 Q Did anything unusual happen during the previous times?
- 2 A No, sir.
- 3 Q So on that day October 10th did you call Jarrod?
- 4 A Yes, sir, I did.
- 5 Q And why did you call him?
- 6 A To purchase some Xanax before I went up to Columbia.
- 7 Q Do you know how many Xanax you were trying to purchase?
- 8 A Five.
- 9 Q Do you know how much -- how much does that cost?
- 10 A It kind of differentiate -- it is different every time.
- 11 It will usually be from two dollars -- two dollars to five
- 12 dollars per pill. It just depends.
- 13 Q Where were you going to buy the Xanax from him?
- 14 A Usually I buy them from him at In-Town Suites on Rivers
- 15 Avenue, but he told me when I called to meet him downtown.
- 16 Q Had you ever met him downtown before?
- 17 A No, sir, I hadn't.
- 18 Q So you called Jarrod about some Xanax. How did you get
- 19 down there?
- 20 A My friend Phillip drove me.
- 21 Q How do you know Phillip?
- 22 A I have known him from school.
- 23 Q For how long?
- 24 A Since 2011 or 2012.
- 25 Q So Phillip drove you downtown in his car?

1 A Yes, sir, he did.

2 Q So when you first get downtown what happens then?

3 A I called Jarrod. We first got down there and I had to
4 call him back to see exactly where he wanted us to park.
5 And I told him that I couldn't find anywhere to park so I
6 told him I was outside of Building 20.

7 Q And did you -- did Phillip end up parking the car?

8 A Yes, sir, he did.

9 Q What happened when the car was parked on Percy Street?

10 A I called Jarrod and I told him that we were outside of
11 Building 20. And I seen him coming down the street. And I
12 seen Hunter walking with him, a big old white guy at the
13 time.

14 And I called him back and I asked him who the guy was.
15 And he stated that and that was his friend, that he is okay,
16 that is his bud. I said well all right well I said is it
17 fine if he stays outside the car. He said yeah that is
18 fine.

19 Q And you called him Hunter. Did you know this guy?

20 A No, sir, I didn't.

21 Q Did he know you?

22 A No, sir.

23 Q So at some point they did approach the car?

24 A Yes, sir, they did.

25 Q What happened when they approached the car?

DIRECT EXAMINATION BY MR. KING OF AHSHAAD OWENS

1 A He -- Hunter actually entered the car first and slid
2 next to me. Got in the car next to me and was in the middle
3 seat, and then Jarrod got in.

4 Q And what was going through your head when that
5 happened?

6 A He just told me that Hunter would stay outside of the
7 car so why did he get in the car and why did he get in the
8 car first.

9 Q And you said what was his size compared to yours?

10 A He -- probably about -- at the time I weighed about 130
11 pounds or so. He was probably at least 180 and probably
12 about 6'1, 6'2. I'm probably 5'7.

13 Q So Hunter Bessinger got in the car first, a guy you had
14 never seen before; and Jarrod got in the car next. Did you
15 have anything with you at the time?

16 A Actually I did. I had my brown book back.

17 Q Did Jarrod or Hunter have anything with them?

18 A They had a black book bag.

19 Q Who had the book bag?

20 A Jarrod.

21 Q Now when they sat in the car what happened then, did
22 y'all talk?

23 A Yeah, we had a small conversation, just kind of talking
24 about what we were going to do that. And then I just asked
25 him I said why is he down here. He said he moved down here.

1 He said he was moving closer to his drug supplier.

2 Q Are you talking about Jarrod?

3 A Yes.

4 Q Okay. Did you end up buying Xanax from Jarrod?

5 A No, I did not get to.

6 Q What happened?

7 A In the middle of the conversation Hunter he interrupts
8 us and tells Jarrod to hurry up. And so he asked me again
9 how much Xanax I wanted, and I told him five. And so he
10 told me the price.

11 And so I unzipped my book back and I was reaching down
12 to grab my wallet out of my book bag. And I feel kind of a
13 nudge a little bit. And I look up and the gun is in my
14 face.

15 And from there he tells me to give me -- give him my
16 book bag. So I hand him my book bag. And he hands my book
17 bag to Jarrod, and he turns his head away from me not paying
18 attention and I hit the gun out of his hand, and it fell by
19 both of our feet and ---

20 Q Hold on a second. You said -- who pulled the gun out?

21 A Hunter.

22 Q Did you see where it came from?

23 A I would think it came from the black book bag.

24 Q All right. So you go down to get money out of your
25 back -- your book bag?

DIRECT EXAMINATION BY MR. KING OF AHSHAAD OWENS

1 A Yes, sir.

2 Q And then there is a gun in your face?

3 A Yes, sir.

4 Q All right. Now tell us what happened after that.

5 A From there I hit the gun out of his hand, and it fell
6 by my feet and his one foot. Just like yesterday there is
7 an extended middle console that is basically a hump in the
8 back seat on the -- basically on the floor panel.

9 So one -- his right leg is by both of my legs behind
10 the passenger seat. And that's where the gun fell. And me
11 and him start tussling for the gun.

12 And we were continuing to tussle for the gun, and I was
13 basically getting full possession of the gun. And we were
14 tussling, and I accidentally fired the gun by accident.

15 Q So how did you end up getting the gun out of his hand?

16 A I hit the gun out of his hand when he wasn't paying
17 attention. He actually would look toward Jarrod, and they
18 were about to start talking; and I hit the gun out of his
19 hand.

20 Q And you said when that happens -- what does Hunter
21 Bessinger do after you knock the gun out of his hand?

22 A We both start tussling trying to get the gun.

23 Q Do you know what Jarrod is doing at that point?

24 A No, I really was not paying attention to him at all. I
25 was just basically trying to get the gun away from Hunter,

1 because he was the closest person to me.

2 Q What happened to your backpack?

3 A Jarrod had my backpack.

4 Q And you said that -- how did Jarrod end up getting
5 shot?

6 A We were both -- me and Hunter was tussling over the
7 gun, and I was gaining possession of the gun. And while we
8 were tussling trying to fight over the gun I pulled the
9 trigger on accident.

10 Q Had you gotten the gun away from Hunter Bessinger?

11 A Yes.

12 Q How quickly did this happen from the time the gun came
13 out?

14 A Between one and two minutes. It was very fast.

15 Q So after the gun goes off what happens then?

16 A I told Hunter to get out of the car, and he runs. He
17 gets out of the car and runs.

18 Q And then what did you do?

19 A I grabbed my backpack from Jarrod. I just extended
20 my -- his body was very very close to the car. It was not
21 even feet -- it was basically inches away from the car. So
22 I grabbed my backpack and I closed the door and I told
23 Phillip to drive off.

24 Q Did you have the gun?

25 A Yes, sir, I did.

DIRECT EXAMINATION BY MR. KING OF AHSHAAD OWENS

- 1 Q Do you know where the black backpack is?
- 2 A No, I do not.
- 3 Q That Jarrod and Hunter had?
- 4 A No, I do not.
- 5 Q Do you know what was in that, that black book bag?
- 6 A I believe it to be nothing except for the gun.
- 7 Q Did you realize what had happened to Jarrod at the
- 8 time?
- 9 A No, I did not.
- 10 Q Did you know he had even been shot?
- 11 A Yes, I did.
- 12 Q Did you know how bad it was?
- 13 A No, I did not.
- 14 Q You didn't call the police?
- 15 A No.
- 16 Q What is going through your head at that point?
- 17 A I was just basically trying to get out of that area
- 18 because I am not familiar with downtown anyways and I didn't
- 19 know where he was running to or what could happen if I did
- 20 stay there. So I was just basically in panic mode and I
- 21 just told him to drive off and he left.
- 22 Q And you didn't check on Jarrod to see if he was okay?
- 23 A No, sir, I didn't.
- 24 Q So how do y'all get out of downtown? What happens ---
- 25 A We went up -- I don't know the street names, but we

1 went up -- continued going up that street. Made a right and
2 made a left and then you are immediately basically turning
3 onto the highway.

4 Q Do you still have the gun with you?

5 A Yeah; at that time, yes.

6 Q Now did anything happen when you were driving on the
7 interstate?

8 A Yes, we seen the -- we seen about two or three police
9 officers -- police officer cars riding behind us with the
10 lights. So I panicked and I threw the gun out of the
11 window.

12 And from there we slowed down because we thought we
13 were going to get pulled over. And we did wind up pulling
14 over. But the police cars kept going, so we got back on the
15 highway and kept continuing to go to North Charleston.

16 Q Did you ever get out of the car?

17 A No, sir, I didn't.

18 Q And did you ever see the gun again after that?

19 A No, sir, I didn't.

20 Q Okay. So you continued on the interstate. Where did
21 you go first?

22 A We got off the exit at Ashley Phosphate, and we went to
23 the Hess Gas Station. I believe it is a Raceway now if I am
24 not mistaken.

25 Q What did y'all do there?

DIRECT EXAMINATION BY MR. KING OF AHSHAAD OWENS

1 A Phillip went in and paid for gas, and he got -- he put
2 gas in his car.

3 Q And where did you go after the Hess Station?

4 A We went to Phillip's house.

5 Q And what did you do at Phillip's house?

6 A I was on the phone to -- basically just checking online
7 to see -- to kind of check in with the news to see if
8 anything happened.

9 Q Did you see anything?

10 A No, I did not.

11 Q How long did you stay there?

12 A Probably about thirty minutes maybe.

13 Q Where did you go after that time?

14 A To the beer and tobacco outlet. It is basically at the
15 beginning of his neighborhood on Ashley Phosphate.

16 Q What did you do at the beer and tobacco outlet?

17 A Phillip went in and got something to drink or something
18 to eat. I can't remember exactly what he did or what he
19 bought.

20 Q Where did you after the beer and tobacco outlet?

21 A We went to The Gables to my friend's house.

22 Q What did you do there?

23 A We basically continued to keep checking to see if
24 anything was online. And then that is when his brother
25 contacted him and told him that the police officers came to

1 his house and they were looking for him.

2 And so from there he came to pick us up from The Gables
3 and drove us to the North Charleston -- headquarters, if I
4 am not mistaken.

5 Q So you turned yourself in at that point?

6 A Yeah.

7 Q Did you stay at the North Charleston Police Department?

8 A No, we would have drove into the City of Charleston
9 downtown. I am thinking that's what it is.

10 Q And what happened when you got downtown to the police
11 station there?

12 A I was questioned by Detective Holmes.

13 Q Okay. Do you remember about what time you got in
14 the -- that -- they put you in a room?

15 A Probably I would say 9:00 or ten o'clock.

16 Q Do you remember how long you were in there?

17 A Until about 1:00 or 2:00 in the morning.

18 Q Now were you completely honest?

19 A At first I was not; but in the end, yes.

20 Q What did you -- what were you dishonest with, them
21 about?

22 A About Phillip driving me there.

23 Q Why didn't you tell them about Phillip?

24 A I didn't want them to arrest him because I didn't know
25 that anything like that would happen going down there and I

DIRECT EXAMINATION BY MR. KING OF AHSHAAD OWENS

1 didn't -- I just didn't want him to get arrested. Because
2 he didn't know and I didn't know.

3 Q What else were you dishonest about?

4 A Just about the -- about that, about

5 Q Did you tell Detective Holmes that you threw the gun
6 out of the window?

7 A No, I didn't at the time-- at the beginning I did not.

8 Q But did you later?

9 A Yes, sir, I did.

10 Q And how long do you say you were in the interrogation
11 room?

12 A From about 9:00 or 10 o'clock until about 1:00 or 2:00
13 in the morning.

14 Q I am going to ask you again. Did you try to rob Jarrod
15 Howard and Hunter Bessinger that night?

16 A No, I did not.

17 Q Did you bring a gun with you?

18 A No, I did not.

19 Q Did you shoot Jarrod Howard on purpose?

20 A No, I did not.

21 MR. KING: That's all the questions I have. If you
22 would answer any questions Ms. Linder may have.

23 THE COURT: You may cross-examine, Ms. Linder.

24 MS. LINDER: Thank you, Your Honor.

25 **CROSS-EXAMINATION BY MS. LINDER OF AHSHAAD OWENS:**

1 Q So Mr. Owens -- or do you want me to call you Ahshaad
2 or Mr. Owens?

3 A Just whatever is fine.

4 Q All right. On October 10th of 2014 you didn't have a
5 job?

6 A No, I did not. I actually quit my job the day before.
7 But I was going to ---

8 Q So on October 10th of 2014 did you have a job?

9 A No, I did not.

10 Q And did you have a car yourself?

11 A No, I did not.

12 Q Did you have a phone that was working?

13 A No, I did not.

14 Q Were you wearing a white T-shirt that day?

15 A Yes, ma'am.

16 Q When you talked to police I know on direct you talked
17 about how -- you weren't fully forthright from the
18 beginning, but didn't you tell police that actually you used
19 your friend's car that day?

20 A Yes, ma'am.

21 Q Didn't you tell the police you got up early and picked
22 it up in Summerville?

23 A Yes, ma'am.

24 Q And didn't you tell police that you then went and ran
25 errands?

CROSS-EXAMINATION BY MS. LINDER OF AHSHAAD OWENS

1 A Yes, ma'am.

2 Q Then you told police that you went to Zaxby's off of
3 Dorchester Road and you had some food, you went inside, and
4 you were alone and you paid cash?

5 A Yes, ma'am.

6 Q And didn't you tell police that you were actually
7 waiting on the victim in this case, Jarrod, to call you?

8 A Yes, ma'am.

9 Q And didn't you tell police that you went alone downtown
10 and once you parked you crawled into the back seat?

11 A Yes, ma'am.

12 Q And didn't you tell the police that you had no full
13 possession of the gun?

14 A Yes, ma'am.

15 Q And you told police you did not pull that trigger?

16 A Yes, ma'am.

17 Q On a number of occasions you told them that, correct?

18 A Yes, ma'am.

19 Q And you told the police that you were reaching down
20 because you had money in your backpack?

21 A Yes, ma'am.

22 Q When you went to the police station did you have any
23 money on you?

24 A Yes, I did.

25 Q Was that in your backpack?

1 A No, it was in my wallet. Or I believe I had -- I
2 believe I had cash. It was either in my wallet or I had
3 cash on me. I had sixty dollars.

4 Q And but in the car your cash was in your backpack?

5 A Yes, ma'am.

6 Q And didn't you tell police that Hunter held a gun and
7 you demonstrated right at your cheek, on your cheek?

8 A Yes, I did. I didn't put in on my face how you are
9 describing it. But I said it was in my face.

10 Q And didn't you tell police you never got out of the
11 car?

12 A Yes, I did.

13 Q And you told police that after everything you called
14 Phillip Jewell and told him all about it?

15 A Yes, I did.

16 Q And then you also told police there is no way anybody
17 can link me to a gun?

18 A Yes, I did.

19 Q You told police again you didn't shoot, you didn't
20 kill?

21 A Yes.

22 Q And you also told police that you are not scared of
23 white boys?

24 A I mean I am really not scared of anybody. I mean I ---

25 Q Didn't you tell police that you are not scared of white

CROSS-EXAMINATION BY MS. LINDER OF AHSAAD OWENS

1 boys?

2 A I didn't say -- I don't believe that I said that in
3 general I said I am just not scared of white boys. I didn't
4 say that.

5 Q And when asked by police about the victim's black
6 backpack didn't you tell them that well maybe it is in the
7 back seat of the car?

8 A Yes, because I did not actually see -- just like I said
9 earlier when Mr. King was asking me what about the backpack.
10 I said I did not see, I believe that Hunter took it when he
11 ran out. I did not see with my eyes.

12 Q And didn't you tell police that there's no gun that
13 y'all can find?

14 A Yes.

15 Q Did you tell police that the gun was left in the car by
16 Hunter?

17 A Yes.

18 Q And when you were talking to police didn't you tell
19 them that you were going to buy five Xanax for \$25?

20 A Yes, I said 20 or \$25.

21 Q And then you are buying five for twenty; didn't you
22 tell police that?

23 A Yes. I didn't know exactly how much he was going to
24 charge me. It is usually two to five dollars. It just
25 depends on when I go there. It all depends. It can differ

- 1 from time to time when I buy Xanax from him.
- 2 Q You would agree that \$25 is more than \$20?
- 3 A Yes.
- 4 Q And you had \$20 in your pocket?
- 5 A Yes.
- 6 Q And you told police that you were planning to buy it
- 7 for \$25?
- 8 A I said 20 or \$25.
- 9 Q Did the victim, Jarrod, did he ever close the backseat
- 10 door and get into the car?
- 11 A Yes, he did.
- 12 Q Did you when you were there that day did you ever get
- 13 out of the car?
- 14 A No. I reached with my left hand out of the car.
- 15 Q Did you ever take a black backpack?
- 16 A No, I did not.
- 17 Q Did you stop on I-26?
- 18 A Yeah, we pulled over when we thought the police was
- 19 going to pull us over; but the police cars kept going so we
- 20 got back on the highway.
- 21 Q Did you stop on I-26 after the blue lights went past
- 22 you?
- 23 A No.
- 24 Q Did you get out on the shoulder of I-26?
- 25 A No, I did not.

CROSS-EXAMINATION BY MS. LINDER OF AHSHAAD OWENS

1 Q Was your testimony here today you said that Hunter
2 interrupted you and Jarrod in the middle of the drug
3 exchange?

4 A Yes, I did.

5 Q And you said that Hunter was saying hurry up, hurry up?

6 A Yes.

7 Q And you said you felt the nudge of a gun?

8 A I said I felt a nudge of movement next to me. I said
9 I looked up and the gun was in my face. That is what I
10 said.

11 Q And today you testified that Hunter took your backpack;
12 is that correct?

13 A Yes, I did.

14 Q And you didn't tell police Hunter took your backpack?

15 A Yes, I did. I said that was my book bag that was
16 outside that Jarrod had.

17 Q And today you testified that Hunter gave Jarrod your
18 backpack, but you didn't tell police that Hunter gave Jarrod
19 your backpack?

20 A Yes, I did.

21 Q Today you testified that you hit the gun and it fell
22 out of Hunter's hands?

23 A Yes, I did.

24 Q You didn't tell police that?

25 A Yes, I actually did.

CROSS-EXAMINATION BY MS. LINDER OF AHSHAAD OWENS

- 1 Q And the gun fell by your feet?
- 2 A Yes, ma'am.
- 3 Q And you didn't tell police that?
- 4 A Yes, I actually did.
- 5 Q Didn't you tell police that the front door does not
- 6 open?
- 7 A Yes. But it was actually a car accident.
- 8 Q But you told police the front door didn't open?
- 9 A Yes.
- 10 Q I am going to show you what has already been marked as
- 11 State's Exhibit 41. Does that door look open or closed to
- 12 you?
- 13 A It looks open.
- 14 Q I am going to show you what has already been entered as
- 15 State's Exhibit Number 39. Okay. Sometimes it is tough to
- 16 see looking behind you. You know what this is, right; what
- 17 is it?
- 18 A That is the backseat.
- 19 Q And I am going to be pointing over here. You were
- 20 sitting over here (pointing), the far side; ---
- 21 A Right.
- 22 Q --- right?
- 23 A Yes, ma'am.
- 24 Q And you said Hunter was here (pointing)?
- 25 A Yes, ma'am.

CROSS-EXAMINATION BY MS. LINDER OF AHSHAAD OWENS

1 Q And this is that console you were talking about with
2 Mr. King on your direct, right?

3 A Yes, ma'am.

4 Q Okay. So you're sitting on this far side (pointing)?

5 A Yes, ma'am.

6 Q And you said you have a backpack at your feet?

7 A Yes, ma'am.

8 Q And you said the gun hit the floor, and I am just --
9 the gun hit the floor and not in your backpack?

10 A No.

11 Q But it hit the floor where?

12 A To the left of my feet. Right there (pointing). If
13 you can put your finger in the black -- do you see where the
14 black mat is at?

15 Q Yeah, uh-huh.

16 A Right there.

17 Q Where on the black mat? Let's go side to side.

18 A Where your thumb was at.

19 Q It is right here, right at the center console?

20 A No, your finger -- your thumb was right there on the
21 black mat. Not the middle console.

22 Q Okay. Black mat.

23 A Yes, ma'am. Right there (motioning).

24 Q So it fell to the left of you, to the right of Hunter,
25 to the left of your backpack?

1 A Yes.

2 Q All that action was happening on that side in the
3 backseat?

4 A Yes, ma'am.

5 Q You testified on direct about Phillip's brother. You
6 said that his brother called and said the cops were at
7 Phillip's house, right?

8 A Yes.

9 Q And his brother called and said hey the cops were here
10 looking for you, to Phillip?

11 A Yes.

12 Q And then his brother came and picked you up?

13 A Yes.

14 Q Was Phillip's car at The Gables?

15 A Yes.

16 Q Did it have gas in it?

17 A Yes.

18 Q When you were interviewing with police didn't you tell
19 them that nothing was in Jarrod's backpack, it was totally
20 empty?

21 A That is what I said I believed. I believed the only
22 thing that was in his backpack was the gun.

23 Q Okay. If you can please listen to my question. Didn't
24 you tell the police that Jarrod's backpack was empty?

25 A Yes.

CROSS-EXAMINATION BY MS. LINDER OF AHSHAAD OWENS

- 1 Q Did you call 911 when this first happened?
- 2 A No, I did not.
- 3 Q Did you call 911 later?
- 4 A No, I did not.
- 5 Q Did you stay on the scene?
- 6 A No, I did not.
- 7 Q Did you render aid?
- 8 A Excuse me, can you say that again.
- 9 Q Did you render aid?
- 10 A Can you tell me what that is?
- 11 Q Did you help him?
- 12 A No, I did not.
- 13 Q Did you go into the Charleston Police Department and
- 14 tell them what happened right after you sped off?
- 15 A No, I did not.
- 16 Q Did you go to North Charleston right after when you
- 17 sped off and you go immediately tell them what happened?
- 18 A No, I did not.
- 19 Q So it is your testimony today that you had the gun
- 20 alone in your hand; you are the one person who had the gun
- 21 in your hand and you pulled the trigger?
- 22 A I said Hunter and me were tussling over the gun.
- 23 Q When the gun went off, when you -- you said you pulled
- 24 the trigger of the gun, right?
- 25 A Yes, I did.

1 Q And you said when you pulled the trigger of the gun you
2 were the only person who had the gun?

3 A I said I had full -- almost full control of the gun. I
4 said me and him were tussling over the gun and I pulled the
5 trigger on accident. That is what I said.

6 MS. LINDER: I have nothing further for you at this
7 time. Please answer anything your attorney may have if he
8 has anything.

9 THE COURT: Redirect.

10 **REDIRECT EXAMINATION BY MR. KING OF AHSHAAD OWENS:**

11 Q Ahshaad.

12 A Yes, sir.

13 Q How long were you in the interrogation room when they
14 are asking you questions?

15 A From 9:00 to 10 o'clock until 1:00 and 2:00 in the
16 morning.

17 Q Now did the whole time did you tell Detective Holmes
18 that Hunter Bessinger is the one who pulled out the gun?

19 A Yes.

20 Q Did you tell him there was a struggle over the gun?

21 A Yes, I did.

22 Q And you always told him that the shooting was an
23 accident?

24 A Yes, I did.

25 MR. KING: No further questions, Your Honor.

REDIRECT EXAMINATION BY MR. KING OF AHSHAAD OWENS

1 THE COURT: Is the State ready?

2 MS. LINDER: The State is ready.

3 THE COURT: Is the defendant ready?

4 MR. KING: Your Honor, I would just ask that any reply
5 testimony -- my client admitted many, many, things.

6 THE COURT: I -- you can object. I will deal with it.
7 I understand it has to be specifically in reply to his
8 testimony. And that would be direct or indirect though.

9 So be careful, Solicitor.

10 Let the record reflects Mr. Owens is present. Bring in
11 our jury, Mr. Robinson, please, sir.

12 (WHEREUPON, jury enters 11:09 a.m.)

13 THE COURT: Thank you, ladies and gentlemen of the
14 jury. We are ready to continue.

15 Solicitor, you mentioned that you had reply testimony.
16 You may proceed.

17 MS. LINDER: Yes, Judge. The State calls Detective
18 Holmes.

19 THE COURT: Detective Holmes, I would remind you that
20 you are still under oath in this matter.

21 THE WITNESS: Yes, sir.

22 **REPLY TESTIMONY - MS. LINDER OF DETECTIVE RICHARD HOLMES:**

23 Q Just briefly, Detective Holmes. Did -- were you
24 involved and did you run the interview done with this
25 defendant, Ahshaad Owens?

REPLY TESTIMONY - MS. LINDER OF DETECTIVE RICHARD HOLMES

1 A Yes, ma'am, I did.

2 Q And in the course of that interview did he tell you
3 that Hunter took his brown backpack?

4 A Yes, ma'am, he did.

5 Q What did -- what did he tell you about the backpack?

6 A During the investigation he said that -- if I could go
7 back. He said that during the transfer in the car the book
8 bag was take -- his book bag was taken.

9 Q Did he tell you that during the struggle with Hunter
10 that the gun was knocked out of Hunter's hand?

11 A He never told me that.

12 Q Did he tell you that the gun fell by his feet in the
13 car?

14 A No, ma'am, he did not.

15 Q During the interview did the defendant tell you that he
16 got out of the car with the gun while still downtown?

17 A Yes, ma'am, he did.

18 Q And at any time in the interview did the defendant tell
19 you that they pulled over and stopped on I-26?

20 A No, ma'am, he did not. To -- he basically -- tell me
21 as he was traveling - during the interview - he -- the car
22 was traveling down the interstate and the gun was thrown out
23 of the window.

24 MS. LINDER: Beg the court's indulgence.

25 THE COURT: Certainly.

REPLY TESTIMONY - CROSS-EXAMINATION BY MR. KING OF DETECTIVE
HOLMES

1 MS. LINDER: I have nothing further.

2 THE COURT: Cross-examination.

3 MR. KING: Yes, Your Honor.

4 **REPLY TESTIMONY - CROSS-EXAMINATION BY MR. KING OF DETECTIVE**

5 **HOLMES:**

6 Q How long have you been a detective?

7 A For 25 years -- I have been with the City Police
8 Department 25 plus.

9 Q And you have been trained in interrogations?

10 A Yes, sir, I have.

11 Q And I imagine you have interrogated many suspects in
12 your career?

13 A Yes, sir.

14 Q And in this case Ahshaad was in the interrogation room
15 from about maybe a little before 10:00 until about 2:00,
16 2:30 in the morning, right; he was in that room for a while?

17 A We didn't respond to North Charleston Police Department
18 until about ten o'clock to pick him up, so it was after we
19 got back to our headquarters.

20 Q So what time do you think his interrogation began?

21 A It had to be -- the traveling distance probably about
22 somewhere about 10:25, in that area, when we came back down.

23 Q Okay. And he wasn't removed from that room until about
24 2:30 in the morning, right?

25 A During an interview we allow -- people that's being

REPLY TESTIMONY - CROSS-EXAMINATION BY MR. KING OF DETECTIVE
HOLMES

1 interviewed they are allowed to go to the bathroom. They
2 have bathroom breaks. We allow them to -- whatever -- we
3 offer them drinks or whatever.

4 So they have the privilege of going in and out of
5 that room. But they can't just get up and walk out of
6 there.

7 Q So from about 10:25 until about 2:00, 2:30, in the
8 morning, he is being questioned on and off, not necessarily
9 the whole time, but he is getting questioned during on and
10 off during that time?

11 A Yes, sir.

12 Q And you are also like tag teaming, right; it is not
13 just you interrogating him, it is your supervisor?

14 A Yes, sir, it is.

15 Q What was his name, Weise?

16 A Lieutenant Weise.

17 MS. LINDER: Your Honor, I would object.

18 THE COURT: What is the basis of your objection?

19 MS. LINDER: Beyond the scope of reply.

20 THE COURT: Overruled.

21 Q So it is not just you interrogating him; you question
22 him for a little bit and then Detective Weise would come in
23 and question him some, right?

24 A Lieutenant Weise, yes, sir.

25 Q Lieutenant Weise. And sometimes you and Lieutenant

REPLY TESTIMONY - CROSS-EXAMINATION BY MR. KING OF DETECTIVE
HOLMES

1 Weise would question him together at the same time, right?

2 A I don't believe this interview was conducted where we
3 worked together. If Lieutenant Weise started it I would
4 step out of the way and let him take over the interview.

5 Q Okay. But y'all did switch off?

6 A Yes, sir.

7 Q Okay. Is that part of what you are trained to do?

8 A Yes, sir.

9 Q Switch off like ---

10 A Yes, sir.

11 Q Did you tell him hey my supervisor is right out there,
12 you know ---

13 A I wouldn't tell him my supervisor because basically he
14 wouldn't know who it is.

15 Q Okay. So when you are interrogating him you said --
16 you said some things to him like for example do you remember
17 saying this: I am giving you one last chance because you
18 are at the threshold right now of everything coming down, I
19 am going to call your mom and I am going to tell her you're
20 facing a murder charge; do you remember that?

21 A Yes, sir.

22 Q So you were bringing up his mom, right?

23 A That is a part of my investigation, yes, sir.

24 Q Is that part of what you are trained to do too, to try
25 to maybe look appeal to his -- he doesn't want to let his

REPLY TESTIMONY - CROSS-EXAMINATION BY MR. KING OF DETECTIVE
HOLMES

1 momma down, right?

2 A It is a part of my investigation, yes, sir.

3 Q And you would ask him kind of the same things over and
4 over again, kind of have him go through it all again,
5 because you are in there for -- he is being interrogated for
6 hours; so is that right y'all would have him go through it,
7 leave, come back, have him go through it again and ask more
8 questions?

9 A As we spoke earlier, the investigation continues; so,
10 yes, sir, that's part of it. So we can go back and forth.
11 I have had them last sometimes as much as ten hours.

12 Q But you are leaving at some point during that, right?

13 A Yes, sir.

14 Q So you are getting to leave and take a break at least?

15 A Yes, sir.

16 Q You didn't make some subtle threats to him?

17 A I don't make threats in an investigation, sir.

18 Q Do you remember saying this: This is only the
19 beginning; my recommendation is you stay on my good side.

20 A That is not ---

21 Q You didn't say that?

22 A I don't take that as a threat, sir.

23 Q And he says you are not even giving me the benefit of
24 the doubt though.

25 And you say: Listen to me, okay. My recommendation is

REPLY TESTIMONY - CROSS-EXAMINATION BY MR. KING OF DETECTIVE
HOLMES

1 you stay on my good side because everything that happens to
2 you comes through me first. They are going to ask me what
3 do I think, what do I feel, what do I recommend.

4 Right, do remember saying that?

5 A That is a part of my investigation.

6 Q And he is asking you is he still going to jail tonight.
7 And he asks you so you basically control all of that, right,
8 whether he goes to jail or not; he is asking you; and you
9 said well I am the case agent?

10 A The understanding was when we -- when I transported him
11 from North Charleston Police Department he was under the
12 impression that he was already arrested.

13 Q But he didn't want to go to jail that night, did he?

14 A To me jail is being arrested, sir.

15 Q But you said my recommendation is you stay on my good
16 side; do you remember saying that?

17 A Part of my investigation, yes, sir.

18 Q And he did tell you during that interrogation he didn't
19 bring the gun, right; he was consistent with that, he never
20 brought a gun?

21 A He never told me that, I don't recall.

22 Q You don't -- you don't remember him telling you that
23 Hunter Bessinger brought the gun?

24 A As you said earlier, there's two investigators in
25 there. He never told me that he didn't bring a gun.

REPLY TESTIMONY - CROSS-EXAMINATION BY MR. KING OF DETECTIVE
HOLMES

1 Q So are you saying that when you interrogated him he
2 admitted bringing a gun?

3 A When I interrogated him there was a disposition of he
4 stated that he never had a gun.

5 Q Right, he said -- he was consistent that he never
6 brought a gun to that transaction, right?

7 A Through my investigation, the first part it, yes, sir.

8 Q Okay. And he was consistent that there was some
9 struggle over the gun, right?

10 A He never told me about a struggle over the gun.

11 Q He never at any point?

12 A He might have told Lieutenant Weise that, but it wasn't
13 given to me.

14 Q Okay. Is it fair to say Lieutenant Weise came in maybe
15 toward the end?

16 A Yes, sir.

17 MR. KING: I have no other questions, Your Honor.

18 THE COURT: Redirect.

19 MS. LINDER: No, Judge.

20 THE COURT: Thank you. You may come down.

21 Any additional witnesses?

22 MS. LINDER: No, Judge.

23 THE COURT: All right. Ladies and gentlemen, that
24 would conclude the evidentiary portion of this process.

25 There still remains two very important aspects of this

REPLY TESTIMONY - CROSS-EXAMINATION BY MR. KING OF DETECTIVE
HOLMES

1 (WHEREUPON, break was had 11:20 a.m. to 11:21 a.m.)

2 THE COURT: Motions?

3 MR. KING: Your Honor, I would renew my motions for a
4 directed verdict.

5 THE COURT: I grant your motion for directed verdict on
6 the conspiracy. I don't think it really falls under the
7 case you cited because I think it is separate and apart.
8 But I am going to grant it so we don't have to deal with it.
9 Thank you.

10 All right. As to the others I think the evidence is
11 clearly there. However, now let's talk about the charge.
12 You had talked about just in general self defense.

13 There really is no evidence of self defense in this
14 case. If there's anything, it is an accident; because he
15 wasn't -- he didn't say I was trying to defend myself. He
16 said I was trying to get the gun and it went off.

17 So from the standpoint of that, you know, I don't see
18 self-defense as a part. I see an accident as being there.
19 But if you want -- what is your position on that?

20 MR. KING: Your Honor, I -- we cite to the State versus
21 Demetric Burriss.

22 THE COURT: Okay.

23 MR. KING: And there are some cases out involving this.
24 And the language I read is the self defensive is important
25 because that is how he armed himself. There's a difference

REPLY TESTIMONY - CROSS-EXAMINATION BY MR. KING OF DETECTIVE
HOLMES

1 between arming yourself and self defense and using deadly
2 force to defend yourself.

3 So I am not arguing that he shot this guy in self
4 defense, but when a gun is in -- he testified a gun was in
5 his face. I think he has a right to defend himself from
6 that and grab the gun. Now once he grabs the gun he is
7 acting lawfully by arming himself ---

8 THE COURT: Okay.

9 MR. KING: --- and then he is -- if he is negligent in
10 handling that gun, then I think that is where involuntary
11 manslaughter comes in. And if he is not negligent then I
12 think that is where accident comes in. So I am requesting
13 self defense ---

14 THE COURT: Well, that is my point. It really -- it
15 really and truly gets to the point that in order for the
16 State to find him guilty of involuntary manslaughter you've
17 got to prove negligence.

18 And clearly if they don't prove -- or, excuse me,
19 they can prove recklessness is what they have got to prove.
20 The -- that is the argument that says it is not involuntary
21 manslaughter. Because that -- I was trying to defend
22 myself.

23 I will probably include it. That's fine. It's just --
24 I mean I understand your position. I ---

25 MR. KING: I am trying to look up a case, Judge.

REPLY TESTIMONY - CROSS-EXAMINATION BY MR. KING OF DETECTIVE
HOLMES

1 Because I found a case ---

2 THE COURT: That's all right. I mean there is evidence
3 of trying to defend yourself. There's no question about
4 that. But the shooting itself didn't have anything to do
5 with defending himself according to the testimony.

6 MR. KING: Right. Right. I believe admit it for
7 the -- a jury is going to interpret it either be accidental
8 or negligent.

9 THE COURT: All right. That's fine.

10 MR. KING: And I can cite case law if you are ---

11 THE COURT: No, that's fine.

12 MR. KING: --- if you will agree to charge accident and
13 self defense.

14 THE COURT: I will do both.

15 MR. KING: Involuntary?

16 THE COURT: I am going to charge involuntary, not -- I
17 am not going to charge voluntary; I am going to charge
18 involuntary. Because there is no evidence that he intended
19 to shoot him.

20 Because I think in order to be voluntary he would have
21 had to have -- it had to be the intent to shoot, but he
22 didn't intend to shoot. He could have been angry but -- but
23 that is not -- that is no -- there is no evidence of that.

24 So I will charge murder, involuntary manslaughter,
25 charge the defense of self defense and accident, charge

REPLY TESTIMONY - CROSS-EXAMINATION BY MR. KING OF DETECTIVE
HOLMES

1 MS. LINDER: No, sir, nothing aside from the standard
2 ones that Your Honor will. Reasonable doubt, evidence, all
3 that.

4 THE COURT: All right. Are we ready to go?

5 MS. LINDER: If we could have about ten minutes.

6 (WHEREUPON, break was had 2/10/16 11:29 p.m.)

7 (WHEREUPON, trial resumed 2/10/16, 11:52 p.m.)

8 THE COURT: Solicitor are you about ready?

9 MS. LINDER: Yes, Judge.

10 THE COURT: Okay. Is the defense ready?

11 MR. KING: Yes, Your Honor.

12 THE COURT: Bring in our jury.

13 (WHEREUPON, jury enters 2/10/16, 11:52 p.m.)

14 THE BAILIFF: Jurors are all present, Your Honor.

15 THE COURT: Thank you very much.

16 Thank you, ladies and gentlemen. As I mentioned, we
17 now move into the third phase of the process where the
18 attorneys have their second opportunity to speak to you.
19 Their remarks will be extremely helpful and beneficial when
20 you begin your deliberations.

21 Please give them your attention. But remember their
22 remarks are not considered evidence.

23 Solicitor.

24 **CLOSING BY MS. LINDER:**

25 Good almost afternoon, ladies and gentlemen. Everybody

CLOSING BY MS. LINDER

1 here appreciates your attention over the past couple of days
2 and we ask for you to stay with us a bit longer and then you
3 go back into your deliberations.

4 I am going to address you after the defense goes and do
5 my actual argument, but right now I am going to tell you a
6 little bit about the law.

7 The judge, as he stated in the beginning of this, is
8 the judge of the law. What he says goes. I am going to try
9 to explain a couple of concepts to you; but if anything I
10 say contradicts him, go with him. He is the default. He is
11 the judge of the law.

12 I just want to take a few moments to talk to you about
13 the law in this case and the law that applies and the
14 options that you will be having as this jury to consider.

15 In this case the defendant, Ahshaad Owens, is accused
16 of murder. That is the intentional killing of a person with
17 malice aforethought.

18 Now what is malice. Malice is an act committed with no
19 just cause or excuse. It is an act committed with a general
20 malignant recklessness of lives and safety of others or a
21 condition of the mind that shows a heart without social duty
22 and fatally bent on mischief.

23 Malice aforethought means that you have an intent to
24 kill without provocation or excuse and you intend to do
25 serious harm. And the malignant heart shows that there is

1 very high risk of death.

2 And something important to know is malice need not
3 exist for any appreciable period of time before the
4 commission of the act, and malice in fact may be conceived
5 at the very moment that the fatal blow is given.

6 How can you spot malice? There are different types of
7 malice. There is express and implied malice. Expressed
8 malice is just that. It is an expression by word-of-mouth
9 of the hatred or ill will toward another. Implied malice
10 you can do a number of things that imply malice such as the
11 use of a deadly weapon.

12 The defendant is also charged with possession of a
13 weapon during the commission of a violent crime. And in
14 this case it is we allege that the defendant possessed a
15 firearm or he visibly displayed what appeared to be a
16 firearm during the commission of a violent crime.

17 And as the judge will explain to you, murder is defined
18 in South Carolina law as a violent crime. Armed robbery is
19 also defined by South Carolina law as a violent crime.

20 Armed robbery is robbery or taking from someone else
21 while armed with a deadly weapon or using the representation
22 of a deadly weapon or alleging that you are armed.

23 In this case you are going to have a few different
24 items to consider in the jury room. Some of the items that
25 you are going to be able to consider is involuntary

CLOSING BY MS. LINDER

1 manslaughter. That's the unintentional killing of another
2 without malice but while engaged in an unlawful not
3 naturally tending to cause death or great bodily injury, or
4 it is the unintentional killing of another without malice
5 while engaged in unlawful activity with reckless disregard
6 for the safety of others.

7 In this case you will also be able to consider
8 self-defense. Self-defense is when the defendant must be
9 without fault in bringing on the difficulty.

10 Along with that the defendant must believe that he was
11 in imminent danger of losing his life or sustaining a
12 serious bodily injury and that a reasonably prudent person
13 would have entertained the same belief and the defendant had
14 no other probably means of avoiding serious injury other
15 than the act as he did in this particular instance.

16 You also have the opportunity to consider accident.
17 Accident is when the defendant must have been acting
18 lawfully at the time of the accident.

19 The defendant must -- the act must have been
20 unintentional and there must have been no criminal or
21 unlawful purpose, due care was exercised, and the defendant
22 did not show utter disregard for the safety of others who
23 might reasonably be expected to be injured thereby.

24 As I said, everything I am going over, the judge is
25 going to review with you. He is going to instruct you. And

1 I do ask you to follow the judge in his laws.

2 Something that you're going to be able to consider in
3 this case is credibility. Credibility is the credibility of
4 the witnesses. You determine that. You alone are the judge
5 of the facts. You get to determine if you believe someone
6 or if you don't or if you believe one thing they said and
7 not everything else or if you believe everything they said
8 except one thing.

9 You have the ability to decide whether you believe all
10 a witness. And it is up to you if you believe none of what
11 a witness has to say.

12 In this case also you will be instructed on reasonable
13 doubt. Reasonable doubt is something that makes a
14 reasonably prudent person hesitate to act. What we ask
15 here, reasonable doubt is we are asking to leave you firmly
16 convinced of your decision. Firmly convinced.

17 Another thing that the judge will instruct you about
18 that you will get to determine and consider when you weigh
19 everything is there's two types of evidence; there's direct
20 and circumstantial evidence.

21 Direct evidence and circumstantial evidence, that
22 have -- one does not have a greater weight than the other.
23 All of that is for you as jurors to determine.

24 Direct evidence is when a person sees something,
25 touches something, tastes something and can tell you what it

CLOSING BY MS. LINDER

1 was, what happened.

2 Circumstantial evidence is where there is a chain of
3 events that lead to a conclusion. And in many cases you
4 have both direct and circumstantial evidence that you
5 consider.

6 Circumstantial evidence is one of those things that I
7 like -- it is kind of a cheesy example, but -- I don't
8 today, but circumstantial evidence. Let's say we are
9 sitting in this courtroom. There are no windows to outside.
10 We don't see anything. We see a gentleman come in with a
11 raincoat on and he brushes off some drops. We see another
12 person come in and they take down their umbrella and they
13 shake it off.

14 Now I haven't been out there. I haven't seen if it is
15 raining. But I can deduct through seeing those two people
16 come that those circumstances point me to it is raining or
17 it was raining recently.

18 That's what circumstantial evidence is. Direct is if I
19 am outside standing there when the rain is coming down. I
20 don't know if that helps at all. I try to give an example
21 that I think it is easily accessible. But that is also
22 something for y'all to consider.

23 Again, I will address you in a few more minutes. And
24 at this time I am going to pass it back to the judge. And
25 again, I just urge you to listen to the judge as he

CLOSING BY MS. LINDER

1 instructs you on the law, because he is in fact the judge of
2 the law.

3 THE COURT: Thank you, Solicitor.

4 Mr. King.

5 MR. KING: Thank you.

6 **CLOSING BY MR. KING:**

7 I think one thing we may learn from this trial is about
8 eyewitness testimony and how there can be problems there.
9 You know, if you have five different people that see
10 something happen you're probably going to get five different
11 explanations or descriptions of how that happened.

12 One of the first witnesses is Thomassina White. And I
13 just want to point out from her testimony she testified that
14 she saw two guys struggling to get out of the car.

15 All right. Now Hunter Bessinger said that Ahshaad
16 pointed the gun at him and just told him to get out of the
17 car. That is different from than what Hunter Bessinger is
18 saying happened.

19 There is evidence of some -- she used the word
20 struggling. She said struggling to get out of the car, but
21 she used the word struggling. And that is what Ahshaad says
22 happened.

23 She also says she saw -- she said the white guy ran
24 last. She saw a black male running and a white guy running
25 behind him. But no real testimony about how that could have

CLOSING BY MR. KING

1 happened. So you may not be able to trust it, everything
2 somebody saw as an eyewitness to something that shocking and
3 that fast.

4 Anna Faenza, now she says she's at the window and she
5 hears a bang and looks up. She said she never saw a white
6 guy. She saw the black man with dreads or cornrows or
7 braids. And nobody there had dreads or cornrows or braids.
8 You know, I asked the detective who saw them. No evidence
9 of anybody having any hair like that.

10 So that is the kind of things that people can see
11 things that maybe didn't happen. After an event like that
12 is over your mind can think it saw things that it didn't
13 see. I think we know that from our common experience. Like
14 I said, five different people can describe an event five
15 different ways. That is just human nature.

16 Anna Faenza said she heard voices before the shooting.
17 I called Matt Goodwick, and he testified that he heard a
18 struggle right before the gunshot. And that is consistent
19 with what Ahshaad is saying.

20 But not Hunter Bessinger. The police interviewed him.
21 He was one of the witnesses. They didn't call him. They
22 weren't going to put that up in front of you because that
23 doesn't match up with what they are trying to say. But he
24 was there and he heard a struggle. That is evidence that
25 supports what Ahshaad said happened.

1 Other evidence supports Ahshaad. Jarrod was a drug
2 dealer. Jarrod sold Xanax. He had a big bottle of Xanax in
3 his pocket. He had a lot of cash in the wallet. Now they
4 may try to argue well why does he need to rob anybody with
5 all that cash. But we don't know. Whoever has enough
6 money. Or maybe it is not for the money, maybe there is a
7 thrill. Maybe they thought he had something valuable.

8 They are going to get up here, I'm assuming, after I
9 sit down, and say Ahshaad lied to the police. I want you
10 to remember that Hunter Bessinger lied to the police also.
11 He told police in the beginning Jarrod was not even into
12 drugs and that he thought they were maybe going to buy some
13 weed.

14 And the detectives are pleading with him like, you
15 know, we don't care about drugs, we need all the details we
16 can get from you. We don't care about drugs. Tell us what
17 you know so we can investigate this case.

18 They send in another detective, Detective Krasowski.
19 Took him out to let him have a cigarette for a minute. And
20 then he comes back in and says okay he sells some weed to
21 his friends. He admits that he does sell drugs.

22 We have got two different persons. A Detective Bailey
23 said Hunter Bessinger said he wasn't sure about a backpack
24 where he -- he never told the police that he saw Jarrod with
25 a backpack. And Detective Holmes said he did say he saw

CLOSING BY MR. KING

1 Jarrod with a backpack. Those two things don't match up if
2 you were paying attention to when they testified. And that
3 is a problem.

4 The detectives are covering for Hunter Bessinger. They
5 are down playing how he lied. They don't want you hear that
6 he wasn't honest when he came in there. But they want to
7 make a really big stink about how Ahshaad wasn't honest when
8 he went in there. And that's not fair.

9 Detective Bailey said Hunter Bessinger was consistent
10 the whole time. And if I hadn't got up and said well no he
11 wasn't, then that is information that was coming to you that
12 is just not true.

13 The police didn't search Jarrod's house or Hunter
14 Bessinger's house. Were they fair in this case? I mean it
15 is possible Hunter Bessinger could have run around that
16 corner with a book bag -- he said he called his friend Zack
17 who was blocks away and he said this: He said he tried to
18 call 911 but he couldn't get a signal on his phone to work.

19 But he was able to call his roommate Zack. He admitted
20 that.

21 Now Ahshaad took the stand today. He didn't have to do
22 that. He has got a right to remain silent and you would
23 have been instructed you can't hold that against him.

24 But he took the stand and he told what happened. And
25 yet he wasn't honest, just like Hunter Bessinger wasn't

1 honest. He was interrogated, and the detectives were trying
2 to cover for Hunter Bessinger. They are not being fair to
3 both sides. When he was interrogated by Detective Holmes
4 for hours and Detective Holmes' supervisor, Lieutenant
5 Weise.

6 These are trained detectives. They are trained in
7 interrogation techniques, years of experience. Detective
8 Holmes I think he said 20, 25 years. I mean really
9 experienced police officers.

10 You know, we don't know what went on for four hours in
11 an interview in there. There is audio and video in the
12 room.

13 We haven't seen that. So without the benefit of having
14 to see four hours of that interrogation is it fair to hold
15 it against him, some inconsistencies in his statement?

16 They were asking him over and over. They were
17 tag-teaming. One goes in and one goes out. Making some
18 subtle threats.

19 Detective Holmes told him stay on my good side,
20 everything that happens to you comes through me. And
21 Ahshaad said you control all of that? And he is concerned
22 about going to jail. Detective Holmes says I am the case
23 agent.

24 Ahshaad, he was 19. And Detective Holmes is basically
25 saying stay on my good side, I control what happens to you.

CLOSING BY MR. KING

1 You know, it could be interpreted as if Ahshaad doesn't tell
2 him what he wants to hear then something bad is going to
3 happen.

4 Ahshaad is 19 years old and has just been through a
5 shocking event. But he never said that he brought a
6 gun. He was always consistent on that. He never said he
7 tried to rob anybody. He was consistent on that. He said
8 there was a struggle over the gun and the shooting was
9 accidental.

10 And we kind of have a dispute here. And some of it
11 kind of boils down to what Hunter Bessinger says and what
12 Ahshaad says.

13 But, you know, this isn't a lawsuit. This isn't one
14 person suing another. The judge will instruct you. And I
15 think he mentioned this in when y'all were first seated that
16 it is not a balancing test. It is not like well do you
17 believe this side more than this side. It is not weighing
18 the both sides. This is much more powerful than that. This
19 is proof beyond a reasonable doubt.

20 He has the presumption of innocence. And you have a
21 duty to presume that he is innocent and give him the benefit
22 of the doubt. I have heard it sometimes described as a robe
23 of righteousness, that presumption of innocence. Whoever
24 sits in that chair gets this robe.

25 Hunter Bessinger doesn't have that robe on. So the

1 State has to prove beyond a reasonable doubt that he was not
2 defending himself by grabbing that gun, that he is the one
3 who brought the gun there, that it wasn't an accident.

4 We don't -- he took the stand to testify, but we don't
5 have to prove to you that it was self-defense or that it was
6 an accident. They have to prove it wasn't. They have that
7 burden. And it is a high burden to meet.

8 Someone died. And that is terrible. But sympathy and
9 emotion, no role here. It has nothing to do with it. The
10 decision here today is made on facts and the law.

11 It is a big day for Ahshaad. He testified he didn't
12 bring the gun, he didn't try to rob anybody, they pulled out
13 the gun.

14 Now I am not saying that he shot Jarrod in
15 self-defense. What I am saying is when there is a gun in
16 his face he has a right to grab that gun and defend himself.
17 And when he does that he is acting lawfully. And the gun
18 went off. And that is an accident.

19 So when you retire back to the jury room remember that
20 Ahshaad took the stand and told you. She asked him
21 questions. He said yes, ma'am.

22 And when you think about all the evidence and add it
23 all, they can't prove this beyond a reasonable doubt. And I
24 am asking you to find him not guilty.

25 THE COURT: Thank you, Mr. King.

CLOSING BY MS. LINDER

1 Solicitor.

2 MS. LINDER: Thank you, Your Honor.

3 THE COURT: Yes, ma'am.

4 **CLOSING BY MS. LINDER:**

5 Here I am again. And I am here to talk to you a little
6 bit about this case. I told you in the beginning, I told
7 you on Monday, that the defendant in this case, Ahshaad
8 Owens, he had a plan. He had a plan, and he followed it
9 through. That is what happened. That is what happened in
10 this case.

11 He had a plan to go downtown, and he had a plan to pull
12 out his gun and rob Jarrod. And he wasn't getting what he
13 wanted, and he pull that trigger and he killed Jarrod in the
14 back. Shot him in the back as he is trying to run for his
15 life.

16 What I want to do is talk to you a little at first
17 about what Mr. King was talking about. He talked about
18 eyewitness testimony, five people see things five different
19 way.

20 You know, I agree with that in a lot of ways. You
21 know, somebody may describe a shade of blue. The rug, some
22 people may say this is navy. Some people will say it is
23 chambray. Some people will say it is like a dark royal.

24 At the end of the day though, whether you use the right
25 technical terms, you know it is a rug and you know it is a

1 blue hew. You still know certain things.

2 The defendant also made a big issue saying that both
3 guys lied, both guys lied, Hunter lied and Mr. Owens lied.
4 You know what, yeah. Yes.

5 Hunter told you. He didn't want to talk about the
6 drugs. Hunter was 19. His friend Jarrod was 19. Smoking
7 weed, playing video games, whatever they are doing. Yeah,
8 he is nervous going in there.

9 But he came off of that. That is what he didn't want
10 to talk about was the drugs. The defendant, however,
11 didn't want to talk about that he had someone drive him
12 and, you know, the door actually works. You know, he meant
13 to sit in the back seat. That's kind of weird. You know,
14 he didn't want to say that he had the gun in his hand. But
15 he eventually came clean and he alone had the gun in his
16 hand.

17 He didn't want to say that he pulled the trigger. And
18 eventually he did say that he alone had the gun, he alone
19 pulled the trigger.

20 What I want to do is talk to you about what you have
21 heard in this case. And I apologize if you can't see this
22 very well. Approximately two o'clock back on October 10th
23 of 2014 Jarrod Howard and Hunter Bessinger were playing on
24 the Xbox at Jarrod's house at Sires. And that's that
25 area that is circled there on the map.

CLOSING BY MS. LINDER

1 Jarrod gets a phone call. And based on that phone call
2 he ends up going back to his room, grabs his backpack. He
3 gives Hunter a knife, a pocket knife. He has a pocket
4 knife. And then they go.

5 And then they leave and about 3:45. Hunter was
6 describing to you where all they walked. He said they went
7 up and they turned right and actually went past it and then
8 they turned again.

9 I submit to you the house -- the little yellow house on
10 the far left, that is Jarrod's house. So they went up to
11 Bogard. Went all the way down Bogard. Went down. And then
12 there is a little phone. That's when they got the call
13 saying woops, too far, come back to where I parked -- to
14 where I planned. Turn around. They went back.

15 And there you see the yellow car is close to the
16 center. That is the corner of Percy and Bogard. And you
17 saw this -- and you will have this picture and everything
18 that has been introduced in evidence you will have back
19 there with you. I urge you to go through it. Go through
20 it. Look at it. Pass around the pictures. Think about
21 it.

22 I submit to you that it is approximately in that --
23 where that red box is where the Mazda 6 was. And I think
24 that came out through multiple people's testimony.

25 This is the car. This in the Mazda 6. Tinted windows.

1 Small car. Again, all these pictures you will have back
2 with you. You see in the top left, that is the back
3 passenger door. That is the back passenger -- I'm sorry,
4 the back driver door. That is the back driver's side door
5 that Jarrod got into and slid over.

6 The next picture on the upper right shows he was
7 reclined, the driver was. He had to move on up. Because
8 there is no space in that car.

9 The next picture shows the back seat, and as does the
10 following. That is the front door, ladies and gentlemen.
11 The front door of the car open.

12 Well, I will be. What sense does it make? Why are you
13 riding in the back seat if the front seat you can be up
14 there? Why? I submit to you it is because Mr. Owens, as I
15 said before, had a plan. He went down to rob.

16 If you are in the front seat and someone gets in the
17 back how the heck are you going to turn around and rob
18 someone?

19 They positioned themselves. They position themselves
20 to have the advantage in this situation. The door works.
21 Ride in the front. Oh, right, it is not helpful if you're
22 trying to rob someone.

23 Again, this is a picture showing the back door that
24 Jarrod and was trying to get out of. He had opened it
25 and he was just trying to get out of the car when he was

CLOSING BY MS. LINDER

1 shot.

2 And you also saw this picture. This is the back of his
3 shirt. I believe Ms. Faenza described it as a hot pink
4 shirt. And the very bottom center, that is the bullet
5 entrance point.

6 The pathologist told you the entrance wounds in the
7 lower back which severed Jarrod's spinal cord immediately
8 paralyzed him from the entry point down.

9 The bullet traveled up through his abdominal cavity and
10 ended up hitting every major organ and then stopping in his
11 chest wall.

12 You heard from Anna Faenza. This red, square,
13 rectangle is about where the car was. And you see her
14 window. And you see just how close she was. Just how close
15 she was to see, to see the defendant get out of the car, to
16 see the defendant with the backpack, to see the defendant
17 with the gun in his hand, to see the defendant go around the
18 tail end -- so going closer to her, and then picking up
19 Jarrod's black backpack she said. Black backpack.

20 Hunter is scared out of his mind. He told you he was
21 frozen when the gun came out. He didn't know what to do.
22 He was in shock. So when he got out, he ran.

23 Listen, frankly, he didn't even run toward his friend's
24 house. He didn't even run toward a safe haven. He just
25 ran. He ran. So he curved around the mini bar, and he ran.

CLOSING BY MS. LINDER

1 That's pretty close. The gravel shoulder is usually about a
2 car length, a car width.

3 She was able to get the license tag. She was able to
4 get the license tag, and she called law enforcement. That
5 was a big help for law enforcement because they were able
6 then to start figuring out whose car this was.

7 Because, you know, no one was coming forward as far as
8 oops I was in an accident, oops I had to have myself, be in
9 self-defense.

10 So -- so then we hear further that through the police
11 investigation that they continued. After throwing a gun,
12 kept on driving all the way up to Ashley Phosphate.

13 It is kind of hard to see the icons from where you are,
14 but there is a gas -- stopping at the Hess Gas Station. And
15 then there is a little shopping cart and a beer and tobacco
16 place. And this is where those two still photographs came
17 in. Time stamped 5:22.

18 They were at Phillip's house which is a house back --
19 and the furthest one is The Gables where both of them ended
20 up ultimately.

21 So just to talk to you a little about the investigation
22 that the police did in this case, you heard from Detective
23 Holmes who is the lead. You also heard briefly from
24 Detective Krasowski, Sergeant Bailey and some other people.

25 They did canvassing that they do in every case. This

1 happened downtown. That is what they do. It is not
2 exciting. (Making knocking sounds.)

3 Okay. Anybody home? Did you see anything? No? Okay.
4 This is what they do. They canvassed a few blocks. They
5 then were interviewing about 30 people on the scene.

6 They tried to do a phone analysis. But the defendant
7 didn't have a phone. And the driver didn't have a phone.
8 And then unfortunately I am already struggling enough this
9 thing -- our technology sometimes protects us from
10 ourselves. And the Digital Evidence Unit as Detective
11 Holmes explained, couldn't break the pin to get into the
12 victim's phone even.

13 They tried to do search warrants. They did a search
14 warrant on the co-defendant's, Jewell's, home and on the
15 car.

16 And crime scene came out. They were trying for prints.
17 They were looking for a gun. They did lineups. The car,
18 the one with the defendant in it. There were SLED experts.
19 There were all sorts of people.

20 What I think is important to talk about is with all
21 these experts and all -- law enforcement was trying. They
22 were doing everything they could to solve this case and
23 figure out why Jarrod Howard was murdered. That is what
24 they were trying to figure out.

25 And you heard from Whitney Berry. And you heard from

CLOSING BY MS. LINDER

1 Suzanne Cromer from SLED.

2 Let's talk about the actual timeline of events. So
3 around three o'clock the defendant and Jarrod were setting
4 up the deal. At 4:05 was the shooting and the robbery. At
5 4:06 Hunter tried to call 911.

6 And you heard from Sergeant Bailey. He looked at
7 Hunter's phone. He wasn't just believing him because his
8 lips were moving. He looked at his phone and he saw 4:06
9 911.

10 At 4:12 that is when we have Andrea on the interstate
11 calling, reporting was just thrown, almost hit her car. Hit
12 the gravel side. Blue lights went shoo, flying by. And
13 after the blue lights passed, that is when the defendant --
14 they pulled over. After the blue light the coast was clear.
15 They pulled over. The white T-shirt got out.

16 The defendant told you he was wearing a white T-shirt.
17 And then at 4:34 you heard from Sergeant Seabrook. He went
18 up there to try to start canvassing. He said North
19 Charleston was involved, canines were involved.

20 If the gun, I submit to you, was merely thrown on the
21 gravel part of the shoulder, ladies and gentlemen, multiple
22 police officers and a canine probably would have found it if
23 it was still there.

24 At about 5:40 law enforcement put a BOLO out on the
25 vehicle, a be-on-the-lookout for the vehicle. Because they

1 knew at this point, thanks to Andrea, the license plate, the
2 type of car, and all of that.

3 And then it was at 6:45 when Hunter was picking out the
4 car types. The police already knew what type of car. But
5 they were doing an investigation. They didn't tell him
6 anything about the car. He picked it out.

7 And then around 8:30 the co-defendant's brother saw the
8 BOLO and said, huh-uh, brother, you and your buddy, let's
9 go. And the co-defendant's brother surrendered the two of
10 them to the police station.

11 About ten o'clock his interview started. And it was
12 11:55 that night that Hunter finally did the lineup and
13 identified the defendant as the shooter. He immediately
14 identified him as the one who shot his friend.

15 The defense made a big issue of about how long, how
16 long Owens was in there interviewing. Well, we heard on
17 testimony that Hunter stayed on the scene; I witnessed it; I
18 was right there. Was taken in. And his interview started
19 approximately 4:55, according to Detective Holmes. He is
20 still being interviewed at 11:55.

21 So it is not that it's, oh, Hunter tell us your story
22 and then after 20 minutes pat on the head, have a good day.
23 That's not what happened. The police did their job. They
24 slowly and methodically went through and did their
25 investigation.

CLOSING BY MS. LINDER

1 The first officers you heard from told you at 4:07 they
2 responded and he had a gunshot in the back.

3 The people on the scene, I want to briefly touch on
4 them. Anna Faenza, she saw a lot. She did not know anybody
5 who was involved in this. She had a really good
6 perspective. And you will have that picture back there.
7 You decide could she have seen, would she have seen. I
8 submit to you the answer is yes.

9 She says that there was no struggle. She says she
10 heard a loud pop. She said she saw Jarrod holding a black
11 backpack - not brown that the defendants said his was - and
12 fell.

13 She said that she then saw a black male, gun in hand,
14 brightly colored shoes. When the police were pushing her
15 for a better physical description she was kind of wavering,
16 the same way she wavered on the stand. She never said she
17 saw it enough to do any sort of ID, because she didn't.

18 Because as she told you, she was focused on the gun.
19 She was watching where those feet were going, was it going
20 to come back to her and her business. That's when she got
21 nervous and went down. After, she said the black male did a
22 fast scramble while holding the backpack and the gun.

23 What does a fast scramble sound like? Could that
24 although be a scuffle like sneakers on the ground like Matt
25 Goodrick said? I don't know. I mean -- scuffle, you know,

1 scramble, those are all really subjective. But sneakers on
2 the ground. When I asked him to clarify, sneakers on the
3 ground.

4 Yes, I would submit to you that if you have a gun in
5 your hand and you pick up a backpack that is not yours and
6 you are thinking about where to go, where to go, and where
7 can I not be caught -- you are not on carpet if you are
8 outside. I think that -- I submit that probably would sound
9 like sneakers on the ground.

10 You heard from Thomasina Jakes White. You know, I
11 agree with Mr. King on a lot of parts about her. She was
12 very -- it was up setting for. And she told you that, to
13 see a young boy like that.

14 And she said a lot of things. She said that the victim
15 never got in the car. And everyone says the victim got in
16 the car. The defendant says the victim got in the car.
17 That is kind of a major point. She said she heard the loud
18 pop and there was a struggle to exit.

19 I submit to you if you were in a car and a gun was just
20 pulled on your friend and your friend was murdered right in
21 front of you, you too would struggle to get out of the car
22 to go and try to find safety.

23 Again, you heard from Andrea. And you will have her
24 911 call. If you want to re-listen to her call, you can.
25 She talks about pulling over. And then she told you on the

CLOSING BY MS. LINDER

1 stand that -- you know, she called 911 and then she talked
2 to three other -- three other times that day she talked to
3 law enforcement. So she was on the phone with a lot of
4 people, and she knew what she saw.

5 You know, I think it is important to think about -- I
6 briefly addressed credibility with you before. It is up to
7 you. You can believe everything someone says or nothing
8 someone says.

9 I submit to you in order for you to believe the
10 defendant's story and for you to believe the defendant's
11 theory this is not Hunter versus Ahshaad. It is not that.
12 You have -- Anna is a liar. She is lying. She didn't she a
13 black male get out. She didn't see a gun in his hand. She
14 didn't see a black backpack being picked up. She is lying.
15 In order for you to believe the defense's theory, Andrea is
16 lying.

17 This nice lady who is just visiting from town. She had
18 no -- she didn't hear a gun go off. She just thought holy
19 crap, what was that that just came out of that window. She
20 didn't have any reason.

21 You have to believe that Hunter, Andrea, and Anna are
22 all ball-faced liars in order to believe the defendant's
23 story.

24 I think it is important to talk about the bit that the
25 analysts did. The door open. The door open. I cannot

1 stress that enough. If you are going to do a drug deal, it
2 is fast. It's fast. Why are you in the back seat?

3 Because he positioned himself there. He positions
4 himself to be in a position to do what he wanted to do,
5 which is to commit a robbery.

6 You know, Suzanne Cromer talked about trigger pull.
7 And weights I am horrible with. She said that she tested
8 the projectile, which was from Jarrod's body, and the casing
9 that was in the car are both consistent with high points and
10 40 caliber Smith and Wesson.

11 And she said that had she had a gun she would have done
12 more testing and could have told you definitively. But she
13 didn't have a gun.

14 But she did tell you how she did tests with that model
15 of firearm with trigger pull. And it is not like can you
16 like a half of gallon. It -- I mean -- I don't know if I
17 want to do this.

18 You know, she said the lightest is four and a half
19 pounds, four and a half pounds of pressure with a finger.
20 And the heaviest is eight and a half or nine. Which is
21 like -- she said a gallon of water is eight and a half. So
22 your one finger is holding a half a gallon to a gallon.

23 That is how much it takes to pull a trigger. It does
24 it like (making noise). It doesn't just go off. It doesn't
25 make sense. Use your common sense as jurors.

CLOSING BY MS. LINDER

1 You know, I want to talk to you briefly about the
2 defendant when he testified in his statements. You know, he
3 was -- according to him he has no -- nothing to do with the
4 robbery, he is there for a drug deal.

5 He doesn't even know the details of his own deal that
6 he set up. Is he paying 10, is he paying 20, is he paying
7 25? He said all three of those numbers. He doesn't know
8 how much the deal is for, and he is the one who set it up.

9 If am going to a movie, I am not bringing two dollars
10 in my pocket. I wish I could go see a movie for two
11 dollars, but it doesn't happen. If you are going to make a
12 purchase you bring that money with you.

13 You know, I think it is important -- the defendant made
14 a comment and on the stand he admitted he told police that
15 you are not going to find a gun. And he told police that
16 you can't link him to a gun.

17 Well, yeah, I kind of agree. I mean it is important to
18 him because if we found that gun potentially it could have
19 linked. But we will never know.

20 The defendant said, was his version, he is there to buy
21 drugs. You have got a backpack to carry that oh so heavy
22 \$20 bill.

23 So he is there. So he is carrying that heavy \$20 bill.
24 And if he goes down to pull it out -- his story. But when
25 he goes to the police station he has got 60 on him. It's in

1 his pocket.

2 Again, it doesn't make sense. It doesn't make sense.
3 He has a heavy \$20 bill apparently in a backpack for five
4 pills of Xanax. Five tiny pills of Xanax. It doesn't make
5 sense.

6 You know, you heard that there's different -- different
7 versions. Today he testified, and he said that he was able
8 to knock that gun out of Hunter's hand, that big guy Hunter
9 as he has described him. He was able to knock that gun
10 right out of his hands.

11 And woo woo the luck. He knocked it out of his hands
12 and it just went right in that tiny little spot between the
13 center console and his foot and his backpack. Woo, that was
14 lucky. That is lucky.

15 You know, I think it is important -- I want you when
16 you are back there think about this. Because I think this
17 case is a case about common sense. Whose story do you
18 believe? That is what it is.

19 It is not one versus one like the defense would have
20 you believe. I submit to you it is one versus all. So when
21 Sergeant Bailey was up there I had him measure how big the
22 backseat of that car was.

23 Now I'm not a petite thing, but I'm also -- so, okay.
24 So if you hold this to the end of this chair. Pull that
25 over (addressing assistant with string).

CLOSING BY MS. LINDER

1 Okay. So the entire back seat is about the size of two
2 chairs.

3 So Hunter's story is that the defendant was sitting
4 with his legs spread, where they got in, crammed in. They
5 are talking. He goes down. You heard the defendant is
6 right-handed. Goes down. Pulls it up. He is pointing it
7 at both of them. Give me everything. He is pointing it.
8 He is pointing it at them.

9 Jarrod tried to get out. He pulls the trigger. Look
10 at that. Right there from here (motioning), and you are
11 getting out of a car. It is right there. Okay. That's
12 Hunter's story for inside the car.

13 The defendant's story - I am not going to sit
14 here because I will fall - is that Hunter who is also
15 right-handed -- we are going to imagine there is more space.
16 They are shoulder to shoulder. They are really tight.
17 Because they all say it is small. His story is Hunter,
18 right-handed, pulled out a gun. Right here (motioning).
19 Pulled out a gun on him.

20 And then he was able to -- the guy who now has a gun at
21 him right here (motioning) was able to knock -- move his arm
22 and knock it out of his hand and drop it on the ground.

23 And then he is saying that they then tussled over it.
24 I think this is what he was doing on the stand (motioning).
25 They tussled over it. And then it went off that way

1 (motioning)? It doesn't make sense.

2 If I am Hunter and I am robbing you and it goes down
3 and we are tussling, it is going to roof, I submit to you.
4 It is hitting the driver, I submit to you. It is hitting
5 Hunter.

6 Because if you are trying to get the upper hand and you
7 are fighting over a gun, I certainly wouldn't sit back and
8 just (making noise), I would put my body into it. I would
9 want that thing. And if I am fighting and I am tussling,
10 I'm getting hit.

11 It is not just somehow amazingly bypassing Hunter to
12 strike Jarrod in the small of his back in the fraction of a
13 second that he is getting out of the tiny area of a car. It
14 doesn't make sense. It does not make sense. None of this
15 makes sense.

16 Why would you rob someone with no job? Why would you
17 rob someone with no car, with no phone? Why? Why would you
18 rob someone for 10 bucks, for 20 bucks, 25 bucks? That is
19 what he would have you believe.

20 Do you know what is really sad is, you heard from
21 Hunter. Those two boys, Jarrod and Hunter, they brought
22 knives to a gun fight. That was a fight they were always
23 going to lose.

24 I respectfully request that you go back and you apply
25 that common sense that each and every one of you have as

CLOSING BY MS. LINDER

1 jurors and you come back with a verdict of guilty on murder,
2 guilty on possession of a weapon during the commission of a
3 violent crime which is armed robbery or murder, and also a
4 guilty on armed robbery. Thank you.

5 THE COURT: Thank you very much, ladies and gentlemen.
6 We are now moving to the final stage of this process where
7 as I indicated to you when I started it becomes my
8 responsibility as the judge of the law to give you the law
9 which you -- to promise that you will accept and apply to
10 the facts that you will determine very shortly when you
11 begin your deliberations in this case.

12 And each of the parties, the State and Mr. Owens,
13 expect that you will very shortly evaluate all of the
14 evidence, decide what you find to be credible and then apply
15 the law and reach a decision. And when you're done that you
16 will have honored the commitment that you made when we
17 started this process.

18 Please remember something, you and I as judges, and
19 especially in that capacity, really have no friends to
20 reward nor do we have enemies to punish.

21 We can't be motivated in our decision making by any
22 human emotion. And we have to acknowledge our humanity.
23 There is no question about that.

24 But each one of us, you and me, have to set aside
25 those -- those natural human emotions and decide this case
26

1 based on your common sense, your sense of logic and reason
2 as to what is credible and believable and then take the law
3 as I will give it to you and apply that law carefully to
4 those facts.

5 Now during this instruction -- and you may hear me use
6 the word defendant. That is a term of art. That is a term
7 that we use in the legal profession to designate a party
8 against whom a claim is made. That is the sole significance
9 of that term. It means nothing else. It is just another
10 way of identifying Mr. Owens. So if you hear that term,
11 please know that it is just a reference to him. And that is
12 the sole significance of it.

13 Mr. Owens was accused, as I mentioned to you, in the
14 indictments which I shared with you when we started. And
15 they basically are the charges are murder, armed robbery and
16 possession of a firearm during the commission of a violent
17 crime. There are contained in these documents that I hold
18 in my hand.

19 They won't accompany you to your jury room because they
20 are simply what I explained when we started. They are
21 allegations. They are not evidence.

22 To those -- to these charges he has rendered a plea of
23 not guilty which places upon the State the burden of proving
24 his guilt beyond a reasonable doubt.

25 Because in this country and in this state persons

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1 accused of committing criminal offenses are never required
2 to come in and prove anything at all.

3 In fact, there is a principle of law which applies in
4 this case and in every criminal dispute in this country that
5 persons accused of criminal violations are to be presumed
6 innocent. And that is not just -- those aren't just words.

7 You have to actively presume that he is innocent. And
8 that presumption remains and stays at all times throughout
9 the trial of this case and is only removed when in your
10 deliberations you are convinced by the evidence that the
11 State has established his guilt beyond a reasonable doubt to
12 one or more of these crimes.

13 What is a reasonable doubt? A reasonable doubt is a
14 doubt that would make an honest, sincere, conscientious
15 juror who is searching for the truth in a case to hesitate
16 to act or take some action.

17 Proof beyond a reasonable doubt is proof that leaves
18 you firmly convinced of the defendant's guilt. Now there
19 are very few things in this life that we know and in this
20 our daily world that we know with absolute certainty. And
21 in criminal cases such as this the law does not require
22 proof that overcomes every possible doubt.

23 If based on your consideration of the evidence you are
24 firmly convinced that Mr. Owens is guilty of one or more of
25 these offenses then you must return a verdict of guilty.

1 If on the other hand you think there is a real
2 possibility that he is not guilty then you must give him the
3 benefit of that doubt and return a verdict of not guilty.

4 Reasonable doubt may arise from the evidence which is
5 in the case or the lack or absence of evidence in the case.
6 It is up to you to determine whether or not a reasonable
7 doubt exist as to the guilt of Mr. Owens.

8 I charge you that he is entitled to every reasonable
9 doubt arising in the whole case. And that means simply
10 this: If upon any issue of fact which would be essential to
11 a conviction or verdict of guilty you should have a
12 reasonable doubt as to how that issue is to be resolved I
13 would instruct you that you must resolve that doubt in his
14 favor.

15 Now the evidence in a case is presented. There are two
16 types of evidence. One is direct evidence. The other is
17 indirect evidence. And the more popular name for indirect
18 evidence is circumstantial evidence.

19 And evidence -- direct evidence would be as the name
20 implies. Generally we are talking about a sensory
21 perception. I saw something, I heard something, I felt
22 something or the like.

23 And if you are firmly convinced of the truthfulness and
24 reliability of that evidence then that would establish that
25 particular fact or circumstance.

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1 Circumstantial evidence is when persons testify to a
2 number of facts and when you link they lead you to a logical
3 conclusion which likewise you are firmly convinced of that
4 logical progression. And that would establish that
5 particular fact or circumstance.

6 I would tell you that it doesn't matter whether it is
7 circumstantial evidence or direct evidence. In fact in our
8 trials it is quite often that both methods are used in
9 presenting a case.

10 And our law makes absolutely no distinction between the
11 weight or the value to be given to either direct or
12 circumstantial evidence nor is any greater degree of
13 certainty required of circumstantial evidence than direct
14 evidence.

15 You are instructed to weigh all of the evidence in the
16 case. The law does say that to the extent that the State
17 relies on circumstantial evidence to meet any particular
18 fact it has to meet a certain test.

19 First, as to each one of those events or circumstances
20 that the State is relying on it has to prove those facts
21 beyond a reasonable doubt, as I have stated.

22 Further, these facts must point conclusively to
23 the guilt of the defendant and they must be wholly
24 perfectly consistent with each other in every particular
25 respect.

1 I further instruct you that the mere fact that the
2 circumstances brought out in a case are strongly suspicious
3 of guilt or that the guilt -- of guilt or that the
4 circumstances are such that a -- the defendant's guilt is
5 probable that that is not sufficient.

6 As I mentioned to you, in a civil -- there are
7 proceedings in our courts, but it is in civil process where
8 probability does meet the test. But not in a criminal
9 dispute.

10 In a criminal dispute it is greater than somebody being
11 probably guilty. It has to be proof that convinces you
12 beyond a reasonable doubt. Because that is what is the
13 standard that you are expected to apply.

14 Now the evidence which you are to consider consists of
15 the testimony of the witness -- witnesses and exhibits that
16 may have been introduced through that testimony.

17 As I mentioned to you, when they would show you the
18 exhibits those exhibits were introduced and they will be
19 sent to you in your jury room and you will have an
20 opportunity to study them. And that is the evidence that
21 you are expected to decide this case on.

22 Please remember that nothing that I have said during
23 this trial, nothing the attorneys have said in relationship
24 to matters for my considerations. And what are those? You
25 have heard attorneys make objections. And sometimes

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1 I -- most of the times we heard those discussions out of
2 your presence.

3 But you heard if there was an objection, I made a
4 ruling. And my rulings were one of two. I either sustained
5 the objection or I overruled the objection.

6 That was a matter for my consideration. That was
7 generally dealt with a matter of evidence, a rule of
8 evidence, which I have to apply.

9 The fact that the attorney made the objection should
10 never be considered by you at all. Because they have as
11 officers of this court, as advocates for their respective
12 clients, they have a duty to raise those objections. And my
13 responsibility is to rule on them.

14 And if I sustained the objection I said simply that you
15 are not going to hear that testimony, the witness is not
16 going to be allowed to testify to that fact.

17 Don't weigh -- don't put any weight on that. If you
18 should go back and say well I wonder why or I wonder what
19 the witness would have said, you have kind of stepped over
20 into my area of responsibility.

21 If I overruled it, then I allowed the witness to
22 testify and now it is up to you to consider it. The fact
23 that I allowed it though, shouldn't be weighed or put any
24 weight on that. Because if you said well the judge allowed
25 this I guess we have to accept that, if you do that then you

1 have let me step skip over into your area of responsibility.

2 Quite honestly, I told you we work together, two judges
3 working together with two separate responsibilities.

4 Probably the greatest example I have to share with you to
5 address that is this: I overruled it. I said as a matter
6 of law I was going to allow it. That was my job as the
7 judge of the law.

8 Now it shifts to you. You decide whether you believe
9 it or not and if so how strongly you believe that particular
10 circumstance or fact. And that is how we work together in
11 resolving this dispute.

12 Please remember, as I have said throughout, that the
13 attorney's remarks, while extremely important, very
14 beneficial, and certainly you should consider them and they
15 will be helpful when you analyze the evidence in this case,
16 but remember their remarks should never be considered
17 evidence either because the testimony came through -- from
18 that witness chair. And that is what you are expected to
19 analyze.

20 And if you in your collective recollection differs
21 from anything that one of the attorneys said about what a
22 witness said or didn't say, I will instruct you to disregard
23 the attorney's remark and go with your recollection because
24 you and you alone are the sole judge of the facts in this
25 case.

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1 Likewise, if any principle of law that I give you that
2 what the attorney said the law was differs from what I
3 say you are instructed to again disregard their comments
4 on that, because for the purposes of this proceeding today
5 I have the responsibility to be the sole judge of the
6 law.

7 Now how do you decide what you find to be the true
8 facts of the dispute? As I told you when we started, you
9 brought all the things you are going to need, all the tools
10 necessary.

11 You brought your common sense, your sense of logic and
12 reason. You brought what you use every day of your life.
13 And, folks, I would hate to guess how many times a week we
14 make that decision in our day-to-day lives. You are
15 expected to use those same tools that you have used all of
16 your life to make those decisions.

17 And the real catch to all of this is what I said when
18 we -- when I started this charge. We have to be very
19 intentional about being fair and impartial in making those
20 decisions. And I am confident that you will do that.

21 Now there are very many factors that we use to assist
22 us in making the decisions of what we find to be credible
23 and believable.

24 I am going to discuss some of them with you now; but if
25 I don't mention a method or factor that you have used in

1 your life and you have found it to be reliable, please use
2 it when you do begin your analysis of the evidence in this
3 case.

4 Some of the factors though that you may choose to use
5 would be the appearance of the witness; how do they appear
6 to you, straightforward or hesitant in answering the
7 question. Was the testimony of a witness consistent or was
8 it inconsistent. Was it strengthened or weakened by other
9 evidence in the case. How did the witness come to know the
10 facts that he or she testified to. What was the ability of
11 that witness to know those particular facts or
12 circumstances. Is there a reason for a witness to give
13 testimony which may be helpful to one side or the other or
14 may be detrimental to one side. In other words, was the
15 witness biased or prejudiced in any fashion.

16 In making the decisions on credibility and
17 believability of witnesses you are given very broad
18 discretions. You have the right to believe many witnesses
19 against one, one witness against many.

20 You certainly don't make a decision on credibility and
21 believability or burden of proof based on the number of
22 witnesses, but you consider all of the witnesses.

23 And in that regard you have the right to believe all of
24 a witness's testimony, parts of a witness's testimony, or
25 none of the witness's testimony.

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1 Now you don't make those decisions arbitrarily. But if
2 there is a reason in the record of this case for taking that
3 position, you have that prerogative. For you see, your
4 objective since you raised your hand - really since we have
5 qualified you - has been to determine the truth regardless
6 of the source of the evidence.

7 Now again, nothing that I have said or say during this
8 instruction should be considered by you as evidence or a
9 suggestion of how you are to resolve an evidentiary issue.
10 That is your job.

11 But likewise, please remember something. While you are
12 given very broad discretions in determining the facts, you
13 don't enjoy the same with the law.

14 As I mentioned to you, one of the things that you
15 promised to do is to take the law as I give it to you and
16 apply it fairly and impartially.

17 And that means even if you came here when we started
18 this process or even today feel that -- thought the law was
19 one thing or another or even more so that the law should be
20 changed, I respect your right to feel that way; and in this
21 great country we have that right and we have a right to do
22 some things to help change laws. But that is for another
23 time and place. Because what you have promised to do today
24 is to take the law as I give it to you and apply that law
25 fairly and impartially to the facts that you will determine.

1 Please know that I had to give you a charge on certain
2 aspects. The fact that I give you a charge is not a
3 suggestion as to how you -- to resolve that particular
4 issue.

5 Also consider the charge as a whole. Don't put any
6 greater emphasis or weight on any one aspect of the charge
7 but apply the charge as a whole.

8 Let's look now at the charges that have been made. I
9 first would like to discuss with you the charge of murder.
10 Section 16-310 of our code of laws defines murder as the
11 killing of a person with malice aforethought either
12 expressed or implied.

13 In order to be entitled to a verdict of guilty the
14 State must prove beyond a reasonable doubt that Mr. Owens
15 killed another person with malice aforethought.

16 Now malice is hatred, ill will or hostility towards
17 another person. It is the intentional doing of a wrongful
18 act without just cause or excuse and with an intent to
19 inflict an injury or in the circumstances that the law will
20 infer an evil intent.

21 Malice indicates a formed purpose and design to do a
22 wrongful act under circumstances that exclude any legal
23 right to do it.

24 Further, the malice must be aforethought which means
25 that the malice must have conceived in the mind of the

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1 defendant prior to the act producing the fatal result.

2 The word aforethought is usually understood to refer to
3 the time when the evil is conceived. Now the law does not
4 require that the malice must exist for any appreciable
5 length of time before the commission of the act. It may be
6 conceived at the very moment the action is taken which
7 results in the death of another. Therefore, there must be a
8 combination of a previous evil intent and the act.

9 Malice aforethought may be expressed or inferred. The
10 terms expressed, inferred, do not mean different kinds of
11 malice but merely the manner in which the malice may be
12 shown to exist.

13 Direct obviously can be shown through words. A person
14 speaks which expresses hatred or ill will towards another or
15 when the person prepared beforehand to do the act which was
16 later accomplished.

17 Malice may be inferred from conduct showing a total
18 disregard for human life. Now if the facts are proven in
19 this case sufficient beyond a reasonable doubt, sufficient
20 in your mind to raise an inference of malice, this inference
21 would be simply an evidentiary fact to be taken into
22 consideration by you along with all other evidence in the
23 case and you may give it the weight you find it should
24 receive.

25 You are as judges of the facts are free to accept or

1 reject a permissive inference depending on your view of the
2 facts.

3 Now if malice is present in the mind of the one doing
4 the killing any length of time before the act, then it's
5 present would be sufficient to render the killing murder.

6 Now if you find that the State has failed to prove
7 beyond a reasonable doubt that the defendant committed
8 murder you may consider whether the State has proved beyond
9 a reasonable doubt that the defendant committed a lesser
10 included offense of the charge of murder. And that would be
11 involuntary manslaughter.

12 In order to prove involuntary manslaughter the State
13 must prove beyond a reasonable doubt that the defendant
14 unintentionally killed the victim without malice but while
15 engaged in a law- -- unlawful activity not amounting to a
16 felony and to naturally tend -- and not naturally tending to
17 cause the death or great bodily harm or that the defendant
18 unintentionally killed the victim without malice while
19 engaged in a lawful activity with reckless disregard for the
20 safety of others.

21 Unintentional means that the defendant did not intend
22 for anyone to be killed or seriously injured. Reckless
23 disregard for the safety of others is more than mere
24 negligence or carelessness. Mere negligence or carelessness
25 is a failure to use the care that a person of ordinary

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1 reason and prudence would have used under those
2 circumstances. Recklessness is a conscious failure to use
3 ordinary care.

4 Reckless disregard for the safeties of others means
5 that you are not interested in the consequences of your act
6 or the right and safety of others.

7 If a person who knows or should know that ordinary care
8 requires certain precautions be taken for the safety of
9 others when using a dangerous instrumentality, such as a
10 gun, that a -- that but that a person fails to use
11 precautions without concern, the person's action could be
12 considered reckless.

13 The State must also prove beyond a reasonable doubt
14 that the defendant's act was the proximate cause of the
15 death.

16 Proximate cause is a direct cause. It is the immediate
17 cause. It is the efficient cause. It is the cause without
18 which the death of the victim would not have resulted and in
19 order for there to be a proximate cause there must be a
20 chain of causation from the time of the injury inflicted
21 until the time of the victim's death.

22 Proximate cause does not necessarily mean that it
23 occurred immediately prior to the death. There may be more
24 than one proximate cause, and the acts of two or more
25 persons may combine together to be a proximate cause of a

1 death.

2 The defendant's act may be regarded as a proximate
3 cause if it is a contributing cause to the death of the
4 victim. The fact that other causes also contribute does not
5 relieve the defendant from responsibility.

6 The defendant's act need not be the sole cause of death
7 but must be a proximate cause contributing to the death of
8 the victim.

9 Now the defendant in this case has raised the defense
10 of self-defense. And self-defense is a complete defense.
11 And if it is established, you must find the defendant not
12 guilty on the charge of murder. The State has -- or
13 voluntary manslaughter.

14 The State has the burden of disproving self-defense by
15 proof beyond a reasonable doubt. If you have a reasonable
16 doubt of the defendant's guilt after considering all the
17 evidence including the evidence of self-defense then you
18 must find the defendant not guilty.

19 On the other hand, if you have no reasonable doubt of
20 the defendant's guilt after considering all of the evidence
21 including the evidence of self-defense then you must find
22 the defendant guilty.

23 The following elements are required to establish
24 self-defense. One, first, the defendant must be without
25 fault in bringing on the difficulty. If the defendant's

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1 conduct was the type which was reasonably calculated, too,
2 and did provoke a deadly assault, the defendant would be at
3 fault in bringing on the difficulty and it would not be
4 entitled to acquittal on the basis of self-defense.

5 Second, that if self-defense that the defendant was --
6 must believe he was in actually -- was actually in imminent
7 danger or death -- or fear of death or imminent danger or
8 serious bodily injury or that the defendant believed that
9 he was in imminent danger of death or serious bodily
10 injury.

11 If the defendant was actually in imminent danger it
12 must be shown that circumstances would have warranted a
13 person of ordinary firmness and courage to strike the fatal
14 blow to prevent the death or serious bodily injury.

15 If the defendant believed that he was in imminent
16 danger or serious -- of death or serious bodily injury it
17 must be shown that a reasonable and prudent person of
18 ordinary firmness and courage would have had the same
19 belief.

20 In deciding whether the defendant actually was or
21 believed he was in imminent danger of death or serious
22 bodily you should consider all the facts and circumstances
23 surrounding the crime including the physical condition and
24 characteristics of the defendant and the victim.

25 The defendant does not have to show you that he was

1 actually in danger. It would be enough if the defendant
2 believed he was in imminent danger and a reasonably prudent
3 person of ordinary firmness and courage would have had the
4 same belief.

5 The defendant has the right to act on appearances even
6 though the defendant's belief may have been mistaken. If --
7 it for you to decide whether the defendant's fear of
8 immediate danger or death of serious bodily -- or serious
9 bodily injury was reasonable and would have been felt by an
10 ordinary person in the same situation.

11 The final element of self-defense is the defendant had
12 no other probable way to avoid the danger of death or
13 serious bodily injury other than to act as the defendant did
14 in this particular instance. If the defendant was -- excuse
15 me.

16 Also a person cannot be required to make an exact
17 calculation as to the degree or amount of force which may be
18 needed to avoid death or serious bodily injury or harm,
19 therefore, in self-defense the defendant has the right to
20 use the force needed to avoid death or serious bodily injury
21 and the force used does not have to be limited to the degree
22 or amount of force used by the victim.

23 The defendant has a right to use as much force as
24 appears to be necessary for the complete self protection and
25 a person of ordinary reason and firmness would have believed

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1 that they needed to be to prevent death or serious bodily
2 injury.

3 The defendant has also raised the defense of accident.
4 An act may be excluded on the ground of accident if it is
5 shown that the act was unintentional, that the defendant was
6 acting lawfully, and that reasonable care was used by the
7 defendant in handling the weapon.

8 The burden is on the State to prove beyond a reasonable
9 doubt that that act was not an accident -- that the act was
10 not an accident but was caused by the negligence or
11 carelessness on the part of the defendant in handling of a
12 dangerous instrumentality or by unlawful activity by the
13 defendant himself.

14 Now let us look at the charge of armed robbery. The
15 defendant in order to prove -- in order to be entitled to a
16 verdict of guilty on the charge of armed robbery the State
17 must first prove beyond a reasonable doubt that Mr. Owens
18 took personal property from the person or presence of
19 another person.

20 Property is in the presence of a person if it is within
21 the person's reach, inspection, observation or control so
22 that the person could not if -- could if not overcome with
23 violence or prevented by fear keep possession of the
24 property.

25 The State must also prove beyond a reasonable doubt

1 that the defendant carried the property away intending to
2 permanently deprive the owner of the property and to keep
3 the property for the defendant's own use.

4 The slightest removal of the property or the complete
5 possession of the property even for an instant by the
6 defendant would be sufficient to show a taking and a
7 carrying away of the property.

8 The taking and carrying away of the property must have
9 been done with violence or by putting the owner of the
10 property in fear of violence.

11 Finally, the State must prove beyond a reasonable doubt
12 the defendant was armed with a deadly weapon during the
13 robbery. A deadly weapon is any article, instrument or
14 substance which is likely to cause death or great bodily
15 harm.

16 Whether an instrument has been used as a deadly weapon
17 depends on the facts and circumstances of each case. I
18 would instruct you that a pistol is considered to be a
19 deadly weapon.

20 Next let's look at the offense -- the charge possession
21 of a firearm during the commission of a violent crime. If a
22 person is in possession of a firearm or visibly displays
23 what appears to be a firearm during the commission of a
24 violent crime and is convicted of the committing or
25 attempting to commit the violent crime which is defined by

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1 Section 16-1-60 - and I would charge you in that respect
2 that both murder and/or armed robbery are considered violent
3 crimes - then the person would be guilty of this offense,
4 that is being in possession of a firearm during the
5 commission of a violent crime.

6 In that regard I would charge you a firearm is defined
7 as any machine gun, automatic rifle, revolver, pistol or any
8 weapon which will or is designed to or may readily be
9 converted to expel a projectile.

10 Now another element of each of these which is necessary
11 is as to the offenses of murder and armed robbery and the --
12 and being in the possession of a firearm is criminal intent.

13 And the State must prove criminal intent, this element
14 the same as any other element. And that has to be
15 determined beyond a reasonable doubt. And that is
16 determined by you as the judge of the facts by the
17 circumstances surrounding the situation.

18 The law states that criminal intent may be inferred
19 from the circumstances which have been shown to have
20 existed. And intent, the State in that regard is not
21 required to prove any motive; but you may consider that in
22 determining this case.

23 Criminal intent is a state of mind that operates
24 jointly with an act or in the commission of -- in the
25 commission of a crime.

1 Intent would include those consequences which represent
2 the very purpose for which an act is done or known to be
3 substantially certain to result regardless of one's desire.

4 Criminal intent is a mental state of a conscious wrong
5 doing. It is up to you to determine whether or not, what
6 the defendant intended to do in this case, and based on the
7 circumstances shown to have existed.

8 And you must in order to return a verdict on any of
9 these crimes, you must find that the State has established
10 criminal intent beyond a reasonable doubt.

11 As I stated to you when we started this charge, you and
12 I have no role to play in this as friends of anyone or any
13 enemies. We don't have any enemies or friends to reward or
14 punish.

15 In fact, we aren't advocates for either side. We
16 aren't to be partisan. We are here to be objective human
17 beings applying our common sense and sense of logic and
18 reason. And you will do that very shortly.

19 And when you have done that and analyzed the evidence
20 you will have fulfilled your responsibility and honored the
21 commitment that you made to Mr. Owens and to the State.

22 Mr. Presiding Juror, to assist you in reporting that
23 decision I have prepared three verdict forms which I will be
24 sending back with the evidence. I would like to discuss
25 them with you now.

BY THE COURT

1 You will note that they are captioned. The caption
2 means nothing. I had to -- that is simply to facilitate the
3 filing of it. And so you are not to infer anything from
4 that.

5 Basically they read the same. There is one for each of
6 the crimes charged. There is one that has one other choice.
7 But two of them, possession of a firearm during the
8 commission of a violent crime and armed robbery, only has
9 two possible choices.

10 The murder has three. As I mentioned to you if you
11 find the State failed as to the murder you would consider
12 the involuntary manslaughter. So that is included. And
13 that is the difference.

14 The order that they are placed on these forms means
15 nothing. I had to put them in some order. So don't put any
16 weight or emphasis on that.

17 Let's look at the murder charge. That has the
18 different. You will note that there are three. There is a
19 blank that precedes your choices.

20 Whichever your choice if you will place a check in the
21 blank that precedes that choice and sign that form you will
22 have completed that form. And then date it today's date.

23 Once you have completed all three of the forms you will
24 knock on the door and we will return you and receive your
25 verdict.

1 What will you be saying? Well, on the murder let's
2 just look at that one. If it is guilty you will say that
3 the State has proved beyond a reasonable doubt to your
4 satisfaction that Mr. Owens committed the offense of killing
5 another with malice aforethought and therefore it is a
6 murder.

7 Involuntary manslaughter if you are not convinced that
8 he intentionally killed a person with malice aforethought
9 but you have gone through and you have analyzed it and you
10 believe beyond a reasonable doubt that the State has met its
11 elements and there -- if you recall there are two different
12 situation for the involuntary manslaughter, and you are
13 satisfied of that and therefore that is your verdict.

14 Not guilty would mean that you are not convinced the
15 State has met its burden of proof as to any of the elements
16 or that they didn't disprove self-defense and/or accident
17 and you are returning a verdict of -- of not guilty as to
18 that particular charge.

19 Whichever your choice on any of these it has to be
20 unanimous. All 12 of you must agree. So that is what --
21 that is what it will say.

22 On the armed robbery it's those elements I discussed
23 with you, taking personal property from another, threat of
24 violence while armed with a weapon.

25 And if you are satisfied as to each of those elements

BY THE COURT

1 then it would be guilty. If you are not then you return a
2 verdict of not guilty. Whichever your choice, again, it has
3 to be unanimous. All 12 of you must agree.

4 The last one that I will discuss is possession of a
5 firearm during the commission of a violent crime. In order
6 to return a verdict of guilty as to this you must have found
7 the defendant guilty of one of -- either murder and/or armed
8 robbery.

9 Why, because if you don't find him guilty of those you
10 can't return a verdict of being in the possession of a
11 firearm during the commission of a violent crime. Because
12 the State has to prove that to your satisfaction.

13 So, again, which ever your choice. Guilty if you find
14 that he was in possession of a firearm and you found him
15 guilty of one -- or either armed robbery or murder then you
16 return a verdict of guilty. Not guilty would be if the
17 State failed to meet its burden of prove and establish the
18 guilt as to the other two crimes.

19 Again, whichever your choice on that one has to be
20 unanimous. All of you must agree. I know you are anxious
21 to get started. And you are almost there. I need to excuse
22 you so I can discuss my charge with the attorneys.

23 If there are any additions that need to be given then
24 we will return you to the courtroom and give you those
25 clarifications. But if there aren't any then we will gather

1 the exhibits, the verdict forms, and deliver them to you.

2 Once you receive the exhibits then you may commence
3 your deliberations. But not before. Now once the
4 deliberations start, Mr. Presiding Juror and ladies and
5 gentlemen, the only restriction I place is this: If any
6 juror has to leave the table for any reason, you have to
7 stop deliberating until all 12 of you are together. Other
8 than that you proceed as you deem fit and proper.

9 As I understand, your lunch is waiting for you. You
10 may want to chose to eat your lunch before or however
11 you want to do it that's -- I will leave that to your
12 judgment, your collective judgment, what you feel
13 comfortable doing.

14 The only thing that I ask, again, if anyone is not
15 present you can't talk about the case until everyone is
16 together. Thank you for your attention throughout. Thank
17 you for your attention to my remarks.

18 Please retire to your jury room and await the exhibits
19 before commencing your deliberations. Thank you.

20 (WHEREUPON, jury exits courtroom 2/10/16, 12:56 p.m.)

21 THE COURT: Exceptions or additions from the State?

22 MS. LINDER: None from the State.

23 THE COURT: Mr. King.

24 MR. KING: Your Honor, I just renew the voluntary
25 manslaughter, the objection to that. And I apologize, I

STATE VERSUS OWENS

1 realize something I didn't raise.

2 The Protection of Persons and Property Act. If he is
3 in a place where he is entitled to be ---

4 THE COURT: I appreciate that. I decline to charge
5 that. I don't think it applies in this case. Nothing in
6 here -- but if that is decided by the preponderance of
7 the evidence, that is my call. And I say no. I think there
8 is no question it is not in this case given the
9 circumstances.

10 MR. KING: One other little thing.

11 THE COURT: Sure.

12 MR. KING: On the accident. And I'm sorry there was a
13 lot of research I was trying to do on this. If -- I think
14 the charge was if he is involved with an unlawful activity
15 he may not be able to claim accident. But I think the
16 unlawful activity must proximately cause the death.

17 THE COURT: Well, that's ---

18 MR. KING: What I'm

19 THE COURT: Okay.

20 MR. KING: What I am worried is that they are going to
21 think he is involved in a drug deal, he can't claim
22 accident. I don't think that is the law.

23 THE COURT: I charged proximate cause though. I
24 charged proximate cause as part of the involuntary man- --
25 involuntary manslaughter. Which would be -- which would be

1 I don't think you get to say -- well, first of all in so far
2 as accident he can't be reckless -- he can't be negligent in
3 committing. It doesn't really matter whether it is a lawful
4 or unlawful, does it? He can't be negligent. I mean that
5 is the basis for it. If he is negligent. So which would
6 mean doing some lawfully. So how is that not covered by
7 what I charged -- I charged that portion.

8 MR. KING: I am just

9 THE COURT: I understand.

10 MR. KING: Just am concerned about that.

11 THE COURT: I think ---

12 MR. KING: That he is involved in a drug deal ---

13 THE COURT: I don't think there is any -- that is one
14 of the reasons also I granted the directed verdict to take
15 that whole condition out of the picture.

16 The bottom line is I'm -- to be candid with you, in
17 charging this it really almost requires me to explain.
18 Because there never was an act. The shooting was not
19 self-defense by your testimony. There's no testimony that
20 he intended to shoot. It was always an accident.

21 So self-defense really adds a factor in there that
22 really doesn't have anything to do with accident. Because
23 accident said I am doing something which would be lawful --
24 and I understand you have got to have that. But clearly
25 that is where we get into the problem with -- and it is not

STATE VERSUS OWENS

1 your fault. It is not the constitution's fault either. But
2 we chose to have that in this state that we can't charge
3 them the facts. I wish we could because I could do some
4 explaining about how that fits.

5 But thank you. I think it would be getting close to
6 charging on the facts, Mr. King, in addition. And that
7 would be constitutionally improper for me to do.

8 But I think the charge as a whole adequately addresses
9 it.

10 MR. KING: Thank you.

11 THE COURT: Thank you very much for raising that.
12 Okay. Anything else? Thank you all. Appreciate it. We
13 will be at ease then.

14 (WHEREUPON, break 2/10/16, 12:56 p.m.)

15 (WHEREUPON, Court's Exhibit 2, jury note, was marked for
16 identification.)

17 THE COURT: All right. Let's bring in our jury panel,
18 please.

19 (WHEREUPON, break awaiting jury.)

20 THE COURT: Does the victim pronounce his name Jared?

21 MS. LINDER: Jared. Yes, Judge.

22 (WHEREUPON, jury enters courtroom.)

23 THE BAILIFF: All are present, Your Honor.

24 THE COURT: Thank you so much. And thank you ladies
25 and gentlemen. Mr. Cygan, what I have is Court's Exhibit

1 Number 2. It is a note that says please clarify whose
2 wallet Defense 4 and Defense 3. And you sent me the
3 photographs.

4 Typical we would have to replay the testimony of that
5 witness, but the parties have agreed for me to let you know
6 that Defense 4 is the wallet of Jared Howard and the
7 contents are from the wallet of Jared Howard.

8 Okay. Thank you. With that additional information you
9 may retire, and I will return these exhibits to you. If you
10 need any further information or requests let me know. Thank
11 you, ladies and gentlemen.

12 (WHEREUPON, jury exits courtroom to resume deliberations.)

13 THE COURT: Any exceptions or additions from the State?

14 MS. LINDER: Nothing from the State.

15 THE COURT: Any exceptions or additions from the
16 defendant?

17 MR. KING: None, Your Honor.

18 THE COURT: And let the record reflect that Mr. Owens
19 was present throughout the entire proceedings. Thank you.
20 We will be at ease.

21 (WHEREUPON, recess awaiting jury verdict.)

22 (WHEREUPON, Court's Exhibit 3, note from jury, marked for
23 identifications.)

24 THE COURT: Have y'all seen Court's Exhibit 3?

25 MS. LINDER: I have not. Mr. King relayed it to me.

STATE VERSUS OWENS

1 THE COURT: All right. They want the definitions.

2 Let the record reflect Mr. Owens is present. Can we
3 have these definitions; and then they want murder,
4 involuntary manslaughter, malice. Of course that is part of
5 the murder charge.

6 I have done it -- since I have been -- I have been
7 doing this 22 years. And I've done it consistently because
8 of what I learned in Reno in 1994 that we are one of the few
9 states -- and it wasn't because I was gambling. That is
10 where the judicial college is.

11 I learned that we are one of the few states that
12 doesn't send the charge back. And there is a reason for
13 that.

14 We all know there are all types of learners, visual,
15 auditory, and a combination of the two. If you are visual
16 you can never -- you can read it to them 57 times and they
17 won't see it.

18 So I've been doing it. There have been some cases that
19 have come down, one Jimmy Williamson's case because he sent
20 back more than what they asked for I think is what triggered
21 that one.

22 But Judge Thomas has sent one that says this -- and I
23 understand that -- that is their opinion. My logic for not
24 doing it I will explain. But she says if they ask for it
25 you have to send the whole charge back.

1 That doesn't make sense because if you -- to bring --
2 to answer this question -- if I am not going to charge -- I
3 am going to give them the whole charge, I am going to give
4 them that portion of the charge that they requested.

5 I simply tell them if you want something else, let me
6 know, but here is what you requested, just as I would if
7 they came in here.

8 But that is Judge Thomas' case says, no, you have got
9 to send the whole charge back.

10 For instance, they don't ask about armed robbery. ~I
11 don't know what that means; I don't want to know what that
12 means. It appears that they are still dealing with the
13 murder charge apparently. And if they then ask for armed
14 robbery I will give them that.

15 What is the State's position? My intent would be to
16 copy those portions of the charge that address that, tell
17 them I have attached that portion and I will bring them in
18 and explain to them what I have done and if they need any
19 additional instruction or any of the portions of my charge I
20 will be happy to respond to that.

21 What is the State's position?

22 MS. LINDER: I agree with that and I think that sounds
23 like you are addressing their question yet offered if they
24 would like additional information.

25 THE COURT: Precisely if they need it. I just don't

STATE VERSUS OWENS

1 think we need to give them everything else.

2 MR. KING: Are you talking about sending back just in
3 writing their request?

4 THE COURT: What they have asked me for.

5 MR. KING: And I think the opinion that you are
6 referring to is the reasoning was that it may have undue
7 influence ---

8 THE COURT: That is correct.

9 MR. KING: --- on that particular part of it.

10 THE COURT: That is right. But the only reason -- it
11 needs to be undue and -- my response to that opinion is well
12 that is true, but when they bring them in -- if I brought
13 them in I wouldn't read them the whole charge, I would read
14 just what they are asked me for. So it doesn't make any
15 sense that you give them the whole charge.

16 That is my logic for that. I don't think it creates
17 undue influence.

18 MR. KING: I guess -- I guess I would -- I would
19 place -- I just worry because it is that thing that, you
20 know, they are not going to rehear the burden of proof, they
21 are not going to rehear accident. I would just request they
22 either be read their charge or send back the entire jury
23 instructions.

24 THE COURT: Okay. That is fine. I will send it all
25 back. Thank you. It will be just a moment. I will bring

1 you a copy of it.

2 (WHEREUPON, break was had 4:22 p.m. and resumed 4:51 p.m.)

3 THE COURT: I am not going to explain why I am giving
4 the whole charge. I am just going to say they have asked
5 for portions, I have given you the whole charge, so you can
6 look at it. Rather than say I can't just give you that, I
7 would have to read it to you. If that is okay with
8 everybody.

9 MR. KING: Yes, Your Honor.

10 MS. LINDER: Yes, sir.

11 THE COURT: All right. Okay. We can bring them in.

12 (WHEREUPON, jury enters courtroom 4:51 p.m.)

13 THE BAILIFF: All are present, Your Honor.

14 THE COURT: Thank you very much.

15 Thank you, ladies and gentlemen. You have requested
16 the definition of murder, involuntary manslaughter, malice,
17 and can we have these definitions in writing.

18 I have given you that. In fact what I will send back
19 is my entire charge. And if there are additional questions
20 you will be able to address that.

21 If you need further questions answered, don't hesitate
22 to call it to my attention and I will be happy to try to
23 respond to it. Thank you.

24 And if you will make sure that the court's exhibit
25 stays attached to it, please.

STATE VERSUS OWENS

1 Thank you very much. Please retire and resume your
2 deliberations.

3 (WHEREUPON, jury exits courtroom 4:51 p.m.)

4 THE COURT: Exceptions or additions from the State?

5 MS. LINDER: None from the State.

6 THE COURT: Exceptions or additions from the defense?

7 MR. KING: No, Your Honor.

8 THE COURT: Thank you all very much.

9 (WHEREUPON, break was had.)

10 (WHEREUPON, resume 6:48 p.m.)

11 THE COURT: The jury has received a verdict -- or we
12 have been advised that they have reached a verdict. The
13 defendant will be ready to receive the verdict when the
14 State gets here?

15 MR. KING: Yes, Your Honor.

16 THE COURT: Let me say to the persons who have been
17 patiently waiting that you have been very courteous
18 throughout this entire matter, that it has been proper
19 decorum; and I thank you for that. We appreciate it. And
20 the dignity that you have shown and the respect to the
21 process.

22 And I thank each one of you and I understand. My heart
23 goes out to both sides. This is a tragedy in every sense of
24 the word.

25 But one of the things that is important -- and I

1 defendant, first form, we the jury by unanimous consent find
2 the defendant Ashaad Michael Owens on the charge of murder
3 guilty. Signed by the foreperson of the jury on February
4 10th, 2016.

5 Ladies and gentlemen of the jury if this was your
6 verdict please raise your right hand.

7 (WHEREUPON, all jurors complied.)

8 THE CLERK: Thank you. Please let the record reflect
9 that all 12 jurors raised their right hand.

10 The second form. We the jury by unanimous consent find
11 the defendant Ashaad Michael Owens on the charge of
12 possession of a firearm during the commission of a violent
13 crime guilty. Signed by the foreperson on February 10th,
14 2016.

15 Ladies and gentlemen of the jury if this was your
16 verdict please raise your right hand.

17 (WHEREUPON, all jurors complied.)

18 THE CLERK: Thank you. Please let the record reflect
19 that all 12 jurors raised their right hand.

20 The third form. We the jury by unanimous consent find
21 the defendant Asaad Michael Owens on the charge of armed
22 robbery guilty. Signed by the foreperson of the jury on
23 February 10th, 2016.

24 Ladies and gentlemen of the jury if this was your
25 verdict please raise your right hand.

STATE VERSUS OWENS

1 wish you luck in that.

2 I would agree with you, Mr. King, I -- you know, these
3 are horrible crimes. And there is a reason to give the most
4 severe sentence to try to make a statement to the community,
5 be careful what you're doing folks, think about it before
6 you do it.

7 But I agree with you, I don't think this man deserves a
8 life sentence; and I am going to impose the minimum sentence
9 for the murder offense. And that is 30 years. And of
10 course that is 30 years. That is day for day.

11 I am going to impose a sentence of 30 years for the
12 armed robbery and five years for the possession of the
13 violent crime. They are concurrent.

14 Good luck to you, sir.

15 And I give him credit for time served since October the
16 10th, 2014.

17 (WHEREUPON, the trial concluded 7:20 p.m.)

SLB20141010774

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1417259

ARREST WARRANT NUMBER

2014A1010205443

DATE OF ARREST

October 11, 2014

ACTION OF GRAND JURY

TRUE BILLNancy McKee
Foreperson of Grand Jury
Date:

MAR 7 2015

VERDICT

GUILTYAndrea V. Cyron
Foreperson of Petit Jury2/10/16
Date:

INDICT

DOCKET NO. 2015GS1001107

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2015

THE STATE

vs.

AHSHAAD MYKIEL OWENS

DOB: [REDACTED]

B/M

Indictment for

Murder

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

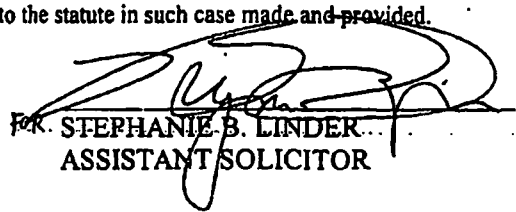
INDICTMENT

At a Court of General Sessions, convened on March 2, 2015 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about October 10, 2014; with malice aforethought, AHSHAAD MYKIEL OWENS did kill and murder Jarrod Howard by means of gunshot wound to the back, and that Jarrod Howard did die in Charleston County as a proximate result thereof on October 10, 2014; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


For STEPHANIE B. LINDER
ASSISTANT SOLICITOR

SLB20141010774

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1417259

ARREST WARRANT NUMBER

2014A1010205444

DATE OF ARREST

October 11, 2014

ACTION OF GRAND JURY

TRUE BILL

Nancy McKeown
Foreperson of Grand Jury

MAR 2 2015

Date:

VERDICT

Guilty

Andrew V. Gynn

2/10/16

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2015GS1001108

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2015

THE STATE

vs.

AHSHAAD MYKIEL OWENS

DOB: [REDACTED]

B/M

Indictment for

Armed Robbery

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

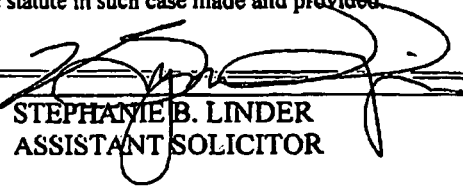
INDICTMENT

At a Court of General Sessions, convened on March 2, 2015 the Grand Jurors of Charleston County present, upon their oath:

Armed Robbery

That on or about October 10, 2014, in Charleston County, South Carolina, the Defendant, Ahshaad Mykiel Owens, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Jarrod Howard with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

For 
STEPHANIE B. LINDER
ASSISTANT SOLICITOR

SLB20141010774

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1417259

ARREST WARRANT NUMBER

2014A1010205445

DATE OF ARREST

October 11, 2014

ACTION OF GRAND JURY

TRUE BILL

Nancy McKeown

Foreperson of Grand Jury

Date:

MAR 2 2015

VERDICT

GUILTY

Arthur V. Ayers

Foreperson of Petit Jury

Date:

2/10/16

INDICT

DOCKET NO. 2015GS1001109

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2015

THE STATE

vs.

AHSHAAD MYKIEL OWENS

DOB: [REDACTED]

B/M

Indictment for

Possession of a Firearm During the
Commission of a Violent Crime

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

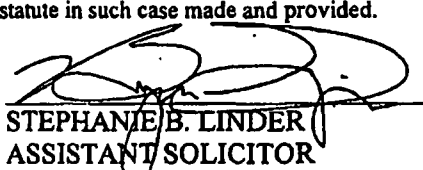
INDICTMENT

At a Court of General Sessions, convened on March 2, 2015 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about October 10, 2014, the Defendant, AHSAAD MYKIEL OWENS, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

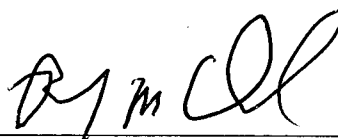

FOR STEPHANIE B. LINDER
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED
MAY 31 2017
SC Court of Appeals

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 31st day of May, 2017.