

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Honorable R. Knox McMahon, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CORY NETTLES ALLEN,

APPELLANT

APPELLATE CASE NO. 2016-000686

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT #2 (911 TAPE)**

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF FLORENCE) COURT OF GENERAL SESSIONS
3) No. 2014 GS 21 01340

4 STATE OF SOUTH CAROLINA)
5)
6 versus) TRANSCRIPT OF RECORD
7)
8 CORY NETTLES ALLEN)
9 Defendant)

10 Florence, South Carolina
11 March 21-23, 2016
12

13 B E F O R E :

14 HONORABLE R. KNOX McMAHON, Judge, and a Jury

15
16 A P P E A R A N C E S :

17 For the State: EDGAR L. CLEMENTS, III, Esq.
Solicitor

18 For the Defendant: ROSE MARY PARHAM, Esq.
19

20 Reporter Present: KESHIA REED

21
22 HARRIET P. BENNETT
Reporter, S. C. Court Administration
23 46 Regency Oaks Drive
Summerville, S.C. 29485
24
25

1 THE COURT: All right, anything additional from the
2 State before we take our recess?

3 SOLICITOR: No, Your Honor.

4 THE COURT: Ms. Parham?

5 MS. PARHAM: No, Your Honor.

6 THE COURT: Thank you very much. We'll be in recess
7 until two o'clock.

8 (Whereupon, the Court stood in recess until two o'clock
9 when the case was resumed)

10 THE COURT: All right, Solicitor.

11 SOLICITOR: Your Honor, before we get to Jackson v.
12 Denno, I have a witness I'd like to proffer, if I may.

13 I'd like to call Debra Coe to the stand.

14 THE COURT: All right. Ms. Parham?

15 MS. PARHAM: I would move to sequester the witnes-
16 ses, Your Honor.

17 THE COURT: Tell me about Ms. -- what's her name?

18 SOLICITOR: Coe.

19 THE COURT: Tell me about Ms. Coe.

20 SOLICITOR: Your Honor, she's under subpoena. She's
21 been avoiding us and telling us she was scared; didn't
22 want to come.

23 THE COURT: She's here?

24 SOLICITOR: She's right here but she has informed me
25 she does not wish to testify; that she will not testify.

1 She didn't want to come but we had a deputy pick her
2 up this morning and bring her here. She was an eye-witness
3 and she called nine one one. She gave a statement to law
4 enforcement, a handwritten statement she wrote there at
5 the scene at the time.

6 We would proffer her to see if she is going to be will-
7 ing to testify or not.

8 We would call her to the stand.

9 THE COURT: All right. Ms. Parham?

10 MS. PARHAM: I would object to that. I don't believe
11 they can dry-run a witness. I don't understand the pro-
12 cedure that would initiate.

13 THE COURT: Well, if he's telling me as an officer
14 of the Court she is going to refuse to testify then we'll
15 have to take it up outside of the presence of the jury.

16 To go back to your motion to sequester the witness-
17 ses, you want them sequestered at this time?

18 MS. PARHAM: Yes, sir.

19 THE COURT: Well, my position on sequestration, State
20 versus Carmack -- in Carmack, any witness who has given a
21 sworn statement I'll allow to remain.

22 Any witness that is a member -- that is protected un-
23 der the statute or Constitution as far as the victim impact
24 is allowed to remain.

25 I allow the chief investigating officer to remain.

1 the Defendant -- I don't know if he'll be a witness or not.
2 He was on their witness list and is on our witness list. I
3 would like him to stay if you would allow him to stay.

4 THE COURT: Do you have objections to that?

5 SOLICITOR: Your Honor, I don't believe he was on
6 our witness list. We had him down early on but he is not
7 on our witness list any further.

8 THE COURT: Did he give a sworn statement?

9 SOLICITOR: Your Honor, he gave a statement but it
10 was not sworn.

11 MS. PARHAM: But it was recorded.

12 THE COURT: You need to recheck Cormack.

13 SOLICITOR: Yes, sir.

14 THE COURT: All right. Do you want to call Ms. Coe?

15 SOLICITOR: I would, Your Honor. I would call Ms.
16 Debra Coe.

17 DEBRA COE, being duly sworn,
18 testified as follows, out of the presence of the jury:

19 CLERK: Please go around and have a seat. State your
20 name for the record.

21 WITNESS: My name is Debra Coe.

22 DIRECT EXAMINATION

23 BY SOLICITOR:

24 SOLICITOR: Your Honor, I don't think we need to un-
25 der the rules now, but I would ask Your Honor to be able

D. COE IN CAMERA

1 to lead this witness. She is a hostile witness.

2 THE COURT: I don't think she has to be declared hos-
3 tile under Cormack.

4 Q. Ms. Coe, you live at East Candy Lane in
5 Florence?

6 A. Yes.

7 Q. And are you under subpoena to be here today? Is that
8 correct?

9 A. I told you I wouldn't testify.

10 THE COURT: Ms. Coe, just answer the questions. You
11 are under subpoena from yesterday.

12 BY SOLICITOR:

13 Q. Ms. Coe, are you scared to testify?

14 A. Yes.

15 Q. Okay. Was Edward Jamell Windham, known to you as
16 (inaudible), killed in your front yard on the fourth of
17 June, 2012?

18 A. Yes, he was killed in the street in front of my house.

19 Q. In front of your house?

20 A. Yes.

21 Q. He was the second one who was killed in front of
22 your house, is that correct?

23 A. Yeah.

24 Q. Was the first incident -- did that involve Mr. Windham?

25 A. Yes.

D. COE IN CAMERA

1 Q. Was he the shooter or the alleged shooter?

2 A. Yes.

3 Q. And did you give a handwritten statement to investi-
4 gators?

5 A. Yes.

6 Q. And you wrote that in your own hand?

7 A. Yes, sir.

8 Q. I want to show you what's been marked State's Exhibit
9 Number 1 for identification. Do you recognize that?

10 A. Yes.

11 Q. Did you write that?

12 A. Yes, sir.

13 Q. Is that your signature at the bottom of the page?

14 A. Yes, sir.

15 Q. Is that a truthful statement as to what happened that
16 night?

17 A. Yes, sir.

18 Q. Did you also call nine one one?

19 A. Yes, I did.

20 Q. Immediately after the shooting?

21 A. Yes.

22 Q. And did you give a statement to the nine one one oper-
23 ator?

24 A. Yes.

25 Q. Was that an accurate depiction of what you saw or

D. COE IN CAMERA

1 heard?

2 A. Yes, sir.

3 Q. Okay. Now, were you under any stress at that time,
4 Ms. Coe, when you called nine one one?

5 A. No.

6 Q. You weren't excited or stressed about it?

7 A. No, sir. I just didn't want to testify.

8 Q. But you related that right after it had just
9 happened?

10 A. Yes.

11 Q. Okay, can you tell us what happened?

12 A. Well, I was cutting grass in my back yard, and Little
13 Skin going past. I spoke to him and he went on in the
14 back, and the Defendant came to the stop sign. So he's
15 just standing there and Little S he came out the back and
16 then I heard shots.

17 And I ran around to the front and he asked me what I
18 was getting ready to do, and I said, I'm gonna call the
19 police, and he said, go ahead; he wasn't going no where.

20 So I . . .

21 Q. When you said Little S came back up, that was Edward
22 Windham?

23 A. Yes.

24 Q. And was he riding a Moped?

25 A. He was riding a Moped.

D. COE IN CAMERA

- 1 Q. Okay, and who did you see shoot?
- 2 A. The Defendant there.
- 3 Q. And did you see anybody else shoot?
- 4 A. No, there was nobody else out there.
- 5 Q. Nobody else out there?
- 6 A. No.
- 7 Q. You didn't see Jamell Windham shoot?
- 8 A. No, sir.
- 9 Q. Did you see Jamell Windham pull a gun out?
- 10 A. No, sir.
- 11 Q. Okay. How many times, if you know, did you hear the
- 12 shots?
- 13 A. It was about three or four times. I'm not sure.
- 14 Q. Three -- at least three or four?
- 15 A. Yeah.
- 16 Q. And thereafter what happened?
- 17 A. Well, I was still on the phone with the operator,
- 18 talking to the nine one one operator, and we just stood
- 19 there waiting on the police to get there.
- 20 Q. All right. When the police got there, did you tell
- 21 law enforcement what happened?
- 22 A. Yeah.
- 23 Q. Did you speak to Chad Collins?
- 24 A. Yes, sir.
- 25 Q. Did you speak to Thomas McFadden?

D. COE IN CAMERA

1 A. Yes, sir.

2 Q. Okay, and did you tell them truthfully what you saw?

3 A. Yes, sir.

4 Q. Okay. Did you ever go out in the roadway to check
5 things out for yourself?

6 A. They ask me to check to see was he alive or dead, and
7 I checked him and . .

8 Q. Who asked you that?

9 A. The operator.

10 Q. Okay. All right.

11 SOLICITOR: Your Honor, that's all the questions I
12 have at this time. Let me ask this, you know you are un-
13 der subpoena -- still under subpoena. Right?

14 A. Yes, sir.

15 Q. Okay, and will you testify to what you just said again
16 in front of the jury?

17 A. I don't want to.

18 Q. All right. I can understand that. Why are you scared?

19 A. There's too much going on in this world. Too many
20 gangs, and I don't want to be involved. I mind my busi-
21 ness and don't worry about what nobody else does.

22 Q. Well, I'm sorry you were involved in this, but you
23 are. You saw what happened and called nine one one. Right?

24 A. . .

25 Q. Thank you.

D. COE IN CAMERA

1 Please answer any questions Ms. Parham might have.

2 THE COURT: Ms. Parham.

3 MS. PARHAM: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MS. PARHAM:

6 Q. Good afternoon, Ms. Coe.

7 A. How you doing.

8 Q. Good. Do you recall my client asking you to call
9 nine one one?

10 A. No, he didn't ask me to call. He ask me what I was
11 doing and I said I was calling nine one one. Then he said
12 go ahead, he wasn't going anywhere.

13 Q. And then you stood there together and waited?

14 A. Yes, we did.

15 Q. Do you recall telling law enforcement that you saw --
16 you call him Mr. Little, but Mr. Windham -- he was reach-
17 ing around behind him like he was trying to protect him-
18 self?

19 A. No, I didn't see none of that and I didn't put that
20 in my statement.

21 Q. Now, let me show you State's Exhibit 1. I saw Little
22 with his arm back trying to defend himself.

23 Do you recall writing that in your statement?

24 A. No.

25 Q. Is that your handwriting right there?

D. COE IN CAMERA

1 A. Yes, maam.

2 Q. So did you see him with his arm back?

3 A. No, I didn't see his arm back.

4 Q. Well, did you see my client, or did you just hear it?

5 A. I heard it from behind my house. Nobody else was
6 around there.

7 Q. Okay, so you never saw my client shoot?

8 A. No.

9 Q. Did you see any part of this incident?

10 A. No, maam.

11 Q. So you never saw anything?

12 A. No, I didn't see, nothing because I was standing behind
13 my house.

14 Q. All right. So the first thing that you saw was what?

15 A. When I came around the corner and looked, and Little
16 was laying in the street.

17 Q. All right. So you didn't see any part of my client
18 shooting or . . .

19 A. No, maam.

20 Q. . . nothing?

21 A. No, maam.

22 Q. Okay, and do you recall my client being there after
23 you came out there?

24 A. Yes.

25 Q. And when the police got there he was sitting on the

D. COE IN CAMERA

1 ground?

2 A. I don't remember about that.

3 Q. All right. Do you recall seeing Littles on the road-
4 way next to the motorcycle?

5 A. Yes, I saw that.

6 Q. You saw that?

7 A. Yes.

8 Q. Do you recall seeing a magazine from Mr. Windham's
9 gun with bullets out in the street as well?

10 A. I don't recall seeing that. No.

11 Q. Okay. All right, as you were cutting your grass in
12 the back yard you heard these shots?

13 A. Yes.

14 Q. How many shots do you recall hearing?

15 A. It was three or four. May have been five. I don't
16 know.

17 Q. All right, and were they all in a row?

18 A. Yes.

19 Q. And there was no . . .

20 A. There was no hesitation.

21 Q. How much time do you think that those shots took from
22 beginning to end?

23 A. . .

24 Q. Were they right in a row?

25 A. They were right in a row, yes.

D. COE IN CAMERA

1 Q. Yes. And in just a few seconds?

2 A. Yes.

3 Q. And there was no stray shot? There was no shot that
4 came after the fact?

5 A. No, maam.

6 Q. They were all just right there together?

7 A. Yes, maam.

8 Q. And you didn't see anything that happened?

9 A. No, maam.

10 Q. All right, that's all I have.

11 THE COURT: Redirect, Solicitor?

12 SOLICITOR: Yes, sir.

13 REDIRECT EXAMINATION

14 BY SOLICITOR:

15 Q. Do you recall writing he said Littles pulled a gun
16 on him, I'm told, but I had not seen any?

17 A. I didn't see any, no.

18 Q. You didn't see it?

19 A. No, I didn't see it. They were down the street, three
20 houses down and kinda on the side.

21 Q. All right, but when the shooting took place you went
22 from behind your house . . .

23 A. Yeah, to call nine one one.

24 Q. You could see them from the back yard?

25 A. Yeah, I could see him on the corner but I was in the

D. COE IN CAMERA

1 back corner of my yard.

2 Q. You saw him when he was shooting the gun?

3 A. I didn't see him shoot. I just heard the shots and
4 I started running then.

5 Q. Okay, but you saw when he was holding Cory?

6 A. Yeah, he was the only one with Cory.

7 Q. Okay, and Littles had to go by him on the moped and
8 nobody else was there. Is that correct?

9 A. That's correct.

10 Q. Okay.

11 SOLICITOR: Your Honor, we would move the statement,
12 State's Exhibit 1, into evidence.

13 THE COURT: For purposes of this hearing.

14 SOLICITOR: Yes, sir.

15 THE COURT: You would have to offer it in front of
16 the jury if you want it in evidence.

17 SOLICITOR: Yes, sir.

18 THE COURT: All right.

19 SOLICITOR: That's all I have.

20 THE COURT: Any Recross, Ms. Parham?

21 MS. PARHAM: No, Your Honor.

22 THE COURT: Thank you, Ms. Coe. Do you have a place
23 she can wait?

24 SOLICITOR: Yes, sir.

25 THE COURT: You can step down.

1 (Witness excused from stand)

2 THE COURT: What are you asking me as far as Ms. Coe
3 is concerned?

4 SOLICITOR: Well, Your Honor, what I want is for her
5 to remain under subpoena and to put her up in the jury's
6 presence.

7 Really I didn't expect her to answer any questions
8 today, but she has, and I want to put her up on front of
9 the jury.

10 THE COURT: Do you believe you will be calling her
11 today?

12 SOLICITOR: Yes, sir, I'd like to get her in once
13 we get through the Jackson v. Denno. She would probably
14 be the second witness.

15 THE COURT: All right. Do you have anything further
16 on this matter to offer?

17 MS. PARHAM: Well, Your Honor, with regard to her
18 testifying, Your Honor, if he is planning to introduce --
19 she's the one who talked to nine one one -- there are sev-
20 eral nine one one calls, but she's the one who talked to
21 nine one one at length.

22 So I would object to the nine one one conversation
23 because it gets into a lot of extraneous stuff that is
24 not actually accurate as to date and time.

25 So if he plans to offer the nine one one tape, we'd

1 like to have a hearing on that before Your Honor.

2 SOLICITOR: I absolutely intend to introduce the
3 nine one one tape, Your Honor. I think it admissible.
4 It's not hearsay. It's present sense impression, excited
5 utterance, and as far as it being inaccurate on date and
6 time, she said there was another hearing that took place
7 a year ago. That's what she told the nine one one operator,
8 when actually it was in 2006.

9 This happened in 2014, so it was seven years before
10 instead of one year before.

11 MS. PARHAM: Eight years earlier, not one year ear-
12 lier.

13 We don't object to the earlier portion of the nine one
14 one tape but toward the latter part she starts talking
15 and telling the nine one one operator, no, I think this
16 shooting must have been because his brother got shot last
17 year and they really hate this guy.

18 Anyhow, I think the opinion she gave as to why this
19 shooting happened is too prejudicial and not admissible.

20 SOLICITOR: Your Honor, I believe you'd have to hear
21 the nine one one tape to make that call. I don't recall
22 her saying anything about her opinion. She was like why
23 did they shoot somebody in front of my -- damn house is
24 what she said -- a second death.

25 But I don't think she said anything about I think so

1 and so. She was -- you can tell by her voice she was up-
2 set and that's what she said.

3 Like I said earlier, I think you'd have to hear that,
4 Your Honor, to make the determination on that, make a
5 judgment.

6 MS. PARHAM: And I believe my objection was very
7 clear. My objection would be to the latter part of the
8 nine one one call. It is no longer an excited utterance
9 but clearly was a conversation she had with the nine one
10 one operator, no longer an excited utterance about what
11 happened on this day.

12 SOLICITOR: Again, Your Honor, I think you need to
13 hear it. That is part of why she was so upset and excited,
14 knowing it was the second time someone was shot down right
15 in front of her house.

16 THE COURT: Well, as far as the admissibility of the
17 tape I would have to hear the tape before I can rule on
18 that.

19 As far as her referencing the shooting that -- her
20 reference to a year ago when it was actually eight years
21 ago, the prior shooting, that it is somehow relevant to
22 this, you all can stipulate as to the time and when it hap-
23 pened.

24 SOLICITOR: Yes, Sir.

25 Do you have an objection to the prior shooting or

1 that it was a death that occurred? It was an event that
2 occurred and obviously eight years ago and not a year
3 ago -- you can give accurate information to the jury and
4 not go into the facts.

5 SOLICITOR: Yes, sir.

6 THE COURT: I'd have to listen to the tape to see. I
7 would agree on the theory of a subjective opinion from a
8 witness who necessarily wouldn't know why someone did it,
9 unless there is some surrounding circumstance which would
10 be more firm, such as if they heard something.

11 But as far as Ms. Coe is concerned, you are under a
12 subpoena. Do you understand?

13 What that means is that you are ordered to appear in
14 Court. Do you understand?

15 MS. COE: Why do I have to testify when I don't want
16 to?

17 THE COURT: Well, you don't have to testify if you
18 don't want to but you -- she has no Fifth Amendment pri-
19 vilege. Is she charged with anything?

20 SOLICITOR: No, Your Honor.

21 THE COURT: You don't have any constitutional right
22 now to testify. If a person is subpoenaed and has no fear
23 of prosecution, they are required to testify.

24 Now, if you were to refuse to testify the option I
25 would have would be to place you in the Florence County

1 Detention Center until such time as you purge yourself of
2 that contempt by testifying.

3 So obviously, Ms. Coe, I'm not going to force you to
4 testify. If you refuse to do so without any pending
5 threat of prosecution against you, you would be in con-
6 tempt of Court as with other witnesses as I have done in
7 the past.

8 I would place you in the Detention Center until you
9 purge yourself of that contempt.

10 Do you understand?

11 MS. COE: There is no way I can get out of this with-
12 out testifying? Is that what you're telling me?

13 THE COURT: Yes. I can only tell you what I have
14 done in the past.

15 MS. COE: So if I don't testify, I'll go to jail?
16 Okay, if somebody die in front of me they'll be just dead.
17 How about that?

18 I ain't gonna testify for nobody.

19 THE COURT: Maam, . . .

20 MS. COE: I'm not testify against nobody. I tell
21 them I don't want to testify and they want to know what hap-
22 pened but I didn't tell.

23 THE COURT: Are you -- are you telling me now -- let
24 me ask you this. I need to understand. What are you
25 telling me?

1 MS. COE: I don't want to testify. That's all I'm
2 saying. I told the Solicitor that before this trial came
3 up, that I didn't want to testify.

4 THE COURT: There's a difference between not wanting
5 to do something and . .

6 MS. COE: But why should I be forced to testify for
7 somebody and I had nothing to do with it?

8 THE COURT: There's a difference between wanting to
9 do so and having to do so.

10 All right.. Who is the CoDefendant represented by?

11 SOLICITOR: The Codefendant is represented by Mr.
12 Steve Cadell of the Public Defender's Office.

13 THE COURT: He would be an Assistant Public Defender?

14 SOLICITOR: Yes, sir.

15 (Brief pause)

16 (The Court speaking to counsel)

17 THE COURT: All right, this young lady is Ms. Coe.

18 Ms. Coe is a witness and was subpoenaed by the State to
19 testify.

20 She has no pending charges and she is not subject to
21 prosecution in this case or any other as far as I know.

22 She has testified before me and questioned by both
23 the Solicitor and Ms. Parham. She indicates -- she has
24 testified in camera.

25 She indicates to me that she does not want to testify

1 before the jury. I have informed her that contempt is the
2 step I would likely take if she refused to testify and
3 did not testify.

4 I said I would place her in the Florence Detention
5 Center. I would like to appoint the Public Defender's
6 Office to quietly speak with her and advise and represent
7 her.

8 As I say, she is under subpoena. She must remain
9 today, and if she does not testify today and continues to
10 refuse to testify I will place her in the Detention Cen-
11 ter.

12 However, if we don't get to her I may allow her to go
13 home but she is still under subpoena.

14 If you would talk to her. Ms. Coe, do not leave the
15 Courthouse. You are under the subpoena of the Court. Do
16 you understand?

17 I won't take her into custody at this time. Okay?

18 Is that a yes? This lady is taking everything down.

19 MS. COE: All right, yes.

20 THE COURT: All right. You may step out and talk to
21 the attorney.

22 Stop right there. Stop right there. I will treat
23 you with the respect you treat me. No one here would ever
24 treat you disrespectfully. I will treat you how I'd want
25 to be treated.

1 If you are not respectful to this Court, I will hold
2 you in direct contempt. I know you're between a rock and
3 a block. I understand that but I know the law. Some peo-
4 ple think I don't, but I understand. I understand your
5 emotion and I understand your concerns.

6 Please do that for me. I thank you very much.

7 All right, what's next?

8 SOLICITOR: Your Honor, the State would call Andrew
9 Hardin.

10 ANDREW HARDIN, being duly
11 sworn, testified as follows out of the presence of the
12 jury:

13 CLERK: Please have a seat and state your full name,
14 sir.

15 WITNESS: Andrew Hardin.

16 DIRECT EXAMINATION

17 BY SOLICITOR:

18 Q. Andrew, where do you work now?

19 A. I work at Farmer Subaru in Florence, South
20 Carolina.

21 Q. How long have you been there?

22 A. Since August of last year.

23 Q. And prior to that, where did you work?

24 A. Florence County Sheriff's Office.

25 Q. As what?

T. McFADDEN IN CAMERA

1 time.

2 Q. All right, and did you question him any more?

3 A. No. I don't believe I questioned him any more. I
4 talked to his brother.

5 Q. You talked to his brother?

6 A. Yes.

7 Q. So when did you find he had said he'd talk to you
8 with a lawyer?

9 A. I walked over and talked to Chad Collins who I saw
10 at that time.

11 Q. Did you go back and try to talk to him any more?

12 A. Not then.

13 Q. Not then?

14 A. No, not after that.

15 Q. Not after that?

16 A. No.

17 Q. All right. So let me be sure I've got this correct.

18 He volunteered to you what happened and told you what hap-
19 pened?

20 A. Yes. He told me the guy pulled a gun and shot at him
21 and I shot him back.

22 Q. Did you ask him what he was doing in Tara Village?

23 A. Yes.

24 Q. Did you ask him anything else?

25 A. No, I didn't ask him anything else.

1 what he was doing; he was there looking for a ride. When
2 he understood his rights, he could have stopped right
3 there and not answered that question.

4 He could have told Mr. McFadden I don't have anything
5 to say. I want my lawyer.

6 THE COURT: I think it is admissible. He had asked
7 him if he was mirandized to begin with. I did not think
8 it was relevant.

9 SOLICITOR: I understand, Your Honor. Just trying
10 to if I could push the envelope a little bit.

11 THE COURT: It wasn't a confession per se, but I think
12 it was self-serving hearsay.

13 SOLICITOR: Yes, sir. That's all we have on this
14 issue, Your Honor.

15 THE COURT: Anything further for the Defense?

16 MS. PARHAM: No, Your Honor. Thank you.

17 SOLICITOR: Your Honor, I think there is one
18 thing that would impact opening statements. Ms. Parham's
19 motion in limine which referred to Cory Allen working for
20 Pete Farnum at the body shop, and there was -- several
21 months prior to this happening it was said that he told
22 Mr. Farnum about his brother getting killed and getting
23 convicted on the gun charge; that he was going to kill
24 him; that all that started when he noticed him wearing a
25 gun. Mr. Farnum tried to talk him out of it and said he

1 paper written by him, Justice -- now Chief Justice McCulloch
2 -- you can also catch the film edition on Forensic Files,
3 if you're a fan of Forensic Files. Mr. Beck in a chal-
4 lenge of Mr. Barlow -- Mr. Barlow testified that Beck had
5 asked him on July 10, 1996, to participate in a plan to
6 call escort services for Beck and then lie and have sex
7 with the employees.

8 Although it wasn't admissible under Lyle, the Supreme
9 Court went on to say that it was admissible under other
10 grounds as a general statement of declarations made by
11 one accused of a crime and admissible against him, and it
12 must meet the threshold test of admissibility; i.e., of
13 relevance.

14 Obviously this statement made to Mr. Farnum is rele-
15 vant. You have an individual, Mr. Allen, making a state-
16 ment that he wanted to kill Mr. Windham.

17 As far as the Beck case, the statement was made four
18 months prior to the homicide that occurred in this case,
19 and as Justice -- now Chief Justice McCulloch -- stated,
20 it can form a continuation between the making of the state-
21 ment, and the crime in this case.

22 The four months there as opposed to one year or a
23 number of years says nothing in the matter bearing on the
24 weight which was for the jury to determine.

25 State versus Williams, 492 Southeast Second 393. The

1 part of this County, a part of the State of South Carolina,
2 and I'm asking you not to let your thoughts wander, for
3 you to stay focused.

4 If at any time during this trial you feel you need a
5 break, if your thoughts start wandering or if you've been
6 sitting there a long time, please raise your hand. Raise
7 your hands. The odds are that you're not the only one to
8 need a break. That's number one.

9 Number two. You will take your break and we will
10 take our break. Again, this is not a judicial marathon.
11 It's a very, very important case to the parties. Please
12 keep that in mind.

13 All right, with that being said, any objection to
14 anything I've told the jury, from the State?

15 SOLICITOR: No, Your Honor.

16 THE COURT: Any from the Defense?

17 MS. PARHAM: No, Your Honor.

18 THE COURT: All right. Solicitor, you may address
19 the jury.

20 SOLICITOR: Thank you, Your Honor.

21 Good afternoon. You all have heard the old saying,
22 that revenge is a dish best served cold. Well, the issues
23 in this case are not what you have most of the time when
24 you have a murder case.

25 Most of the time when you have a murder case, it is a

1 who-done-it. This is not going to be a who-done-it. This
2 is a what-is-it.

3 You're going to hear that Edward J. Windham, the per-
4 son who was the victim in this case -- he was killed on
5 June 4 of 2014 right out there on Candy Lane in Tara Vil-
6 lage.

7 He was involved in another episode a few years before
8 right on that same block, in that same place.

9 Cory Allen is charged with murder in this case, and
10 he had a younger brother by the name of Robert who lived
11 at Belle South.

12 Cory lived in Belle South.

13 Robert was killed on Candy Lane on May 28th of 2006,
14 and you're going to hear that arrested and charged with
15 that case was Edward Windham. He was arrested on 7 20 of
16 '06, was indicted by a Grand Jury in Florence County on
17 March 8, 2007, and then he was tried in September of 2008,
18 and the jury came back with a verdict. They found him not
19 guilty on the murder but guilty on the gun charges.

20 So he went to prison, and you're going to hear Cory
21 Allen got a concealed weapons permit and Cory Allen was
22 out there after Mr. Windham got out of prison, and he got
23 out of prison on January 20th, 2014.

24 He was back in his old neighborhood on a moped, rid-
25 ing around, and he was coming down Candy Lane. There was

1 a house with some people there and there was Edward
2 Wingham and there was Cory. Frederick Allen and Cory
3 Allen.

4 And Cory Allen walked out to the corner of Candy and
5 Leigh Lane after Edward Jamal Windham, who they called
6 Littles. He had gone by this area and turned down Leigh
7 Lane, gone down on Leigh Lane. Then he turned around and
8 came back.

9 When he came back through he had to pass that corner
10 to turn left on Candy Lane. Cory Allen was standing there.

11 Cory Allen, you're going to hear, made statements to
12 law enforcement officials and said, I did this out of self-
13 defense; he pulled a gun on me; I didn't have a concealed
14 weapons permit for nothing.

15 He said statements like that to members of law en-
16 forcement, but you've got to listen to the statements that
17 the witnesses made, and if there are any out-of-court
18 statements that the Judge rules is proper evidence to
19 come in you've got to listen to those statements.

20 Then you've got to compare all of that with the phy-
21 sical evidence and the scientific evidence in this case.
22 Law enforcement officers will come in and testify that
23 they got there and what Cory Allen said.

24 That Cory Allen was there and he had a nine mili-
25 meter Ruger and he laid it on the ground.

1 You're going to hear from officers who were there
2 doing the forensic work that they gathered up eight spent
3 nine millimeter shell casings in a little area right there,
4 right in a row, right where Candy Lane and Leigh Lane have
5 an intersection.

6 That right there with all those eight spent shell
7 casings, laying in the middle of the road was Edward J.
8 Windham, crashed over the handle bars, laying there dead.

9 You're going to hear testimony that Edward J. Windham
10 was shot seven times -- seven times of eight shots, riding
11 there on the moped.

12 I would submit that is pretty good shooting. One
13 shot went through the right thigh and came out by the
14 feet. One shot went through the left arm. One shot went
15 through the left thigh.

16 One shot hit right in the left hip, and that bullet
17 was found in his abdomen. One more shot came right square
18 in his back, straight-away, and that bullet was found in
19 that wound as well.

20 You're going to hear from the pathologist that he had
21 one more shot. You're going to hear one more shot that
22 came and went straight through and hit him right in the
23 back of the neck right here, and it came out through his
24 left nostril, and it was lights out.

25 You're going to hear that there was a twenty-five

1 (inaudible) gun that was there on the asphalt, and that
2 the magazine came out of it and it was laying there in the
3 road by all those bullets.

4 There were two twenty-five -- two twenty-five cali-
5 ber bullets in the magazine.

6 What you are not going to hear is that there were
7 any spent shell casings from a twenty-five. All of the
8 spent shell casings you're going to hear about in the tes-
9 timony are nine millimeter, the kind of gun that Cory
10 Allen was carrying that night and that he used on that
11 night.

12 You've got to weigh those facts and see what makes
13 sense, and I believe the evidence is going to provide you
14 with a proper inference that that Edward Windham never
15 fired a shot. There were no spent shell casings that were
16 twenty-five.

17 Even more than that, you're going to hear about the
18 gunshot residue test where they took swabs from the hands
19 of Edward J. Windham, who was right there, right where he
20 fell, and they tested that and there was no gunshot resi-
21 due or there was none on his hands, which is consistent
22 with having not fired a gun.

23 Now, you're going to hear there was gunshot residue
24 taken from Cory Allen's hands, and there was gunshot resi-
25 due on his hands.

1 You're going to have all of these facts before you
2 and you've got to look at the facts. I would suggest
3 you're got to look at motive -- whether there was motive
4 there, whether this was planned out, and you've got to
5 look at the issues on both sides of the evidence to see
6 if there was any evidence of any shots fired by Edward
7 Windham, or did he even have his gun out. Maybe it came
8 out when he crashed, but there was no shots fired from his
9 gun.

10 There were eight shots fired by Cory Allen. Seven
11 times he hit his target. One through the leg, as he was
12 riding on his moped. He was shot through his legs and he
13 was shot finally in the back.

14 I would submit to you that those facts don't show
15 or bear any inference that this was self-defense. It
16 was planned out, it was anticipated, and the defense was
17 anticipated.

18 Cory Allen knew all the time that he knew what he was
19 going to do and I'm going to claim self-defense. He was
20 motivated by the fact that his brother was killed by Edward
21 J. Windham and he wasn't convicted.

22 Now he's here charged with the same thing. Same
23 block, same spot, almost identical. To much coincidence.
24 This didn't just happen. This was a plan. It was laid
25 out over time and patiently waited for because just like

1 that old saying, revenge is a dish best served cold.

2 Thank you.

3 THE COURT: Thank you. Ms. Parham.

4 MS. PARHAM: Thank you, Your Honor. May it please
5 the Court?

6 THE COURT: Yes, maam.

7 MS. PARHAM: Ladies and gentlemen, good afternoon.

8 Mr. Clements says that revenge is a dish best served
9 cold, but it is usually not served eight years later, and
10 that is what he'd have you believe.

11 The fact of the matter is -- I'll agree with him that
12 this is not a who-done-it. My client shot Mr. Windham
13 but only because Mr. Windham pulled a gun, pointed it at
14 my client, and the gun malfunctioned.

15 You will hear evidence that he had a twenty-five cal-
16 iber pistol that was a malfunctioning gun, and, further-
17 more, if it were not for that malfunction my client would
18 not be here today.

19 Just because he was not able to get a shot off does
20 not mean that my client is not allowed under our law and
21 any law in this country to act in self-defense.

22 You will have to weigh, ladies and gentlemen, for
23 someone to get a round off at you before you are lawfully
24 allowed to pull the trigger in self-defense, and that is
25 what happened, ladies and gentlemen.

1 Mr. Windham -- and this is a high crime area of town,
2 Tara Village here in Florence -- multiple shootings there,
3 but Mr. Windham is on a moped, and my client is at a cook-
4 out with his family.

5 Yeah, he had a concealed weapons permit which you
6 will see in evidence, but my client has no criminal his-
7 tory. He got the concealed weapons permit after the jury
8 acquitted Mr. Windham of killing his brother, because he
9 was terrified that Mr. Windham was going to kill him and
10 his other brother.

11 So he always had a gun on him. After he knew Mr.
12 Windham was going to be free he always had a gun on him,
13 and he had a gun on him that day, and he was lawfully al-
14 lowed to carry that gun.

15 And he had a good gun. He didn't have a gun that
16 was going to malfunction. He had a Ruger nine millimeter,
17 and Mr. Windham had a (inaudible) twenty-five caliber.

18 You're going to hear evidence that Mr. Windham was
19 on a moped that day, and my client had no idea that he's
20 there or that he's going to be there. There is no evi-
21 dence that there is any communication or that my client
22 knew he was there or that he was going to be making the
23 left hand turn on a moped.

24 When Mr. Windham made a left hand turn, my client was
25 on the sidewalk. Mr. Windham raised his gun and my client

1 raises his gun and shoots him as Mr. Windham's gun mal-
2 functioned, and the evidence in this case is going to
3 support that, Mr. Windham had his malfunctioning gun and
4 pointed it at my client.

5 Under the law, ladies and gentlemen, you are legally
6 justified in that, whether you are a police officer, whe-
7 ther you're a citizen in South Carolina or anywhere in
8 this country.

9 You don't have to wait for someone to get a round
10 off. If they point a gun at you, you are legally allowed
11 to shoot them in self defense, and that's what he did.

12 He shot eight rounds in a row in self defense. The
13 shell casings are right there in a row to support that.
14 He had more shots he could have fired, and Mr. Windham's
15 motorcycle is down at the other end, and in between the
16 two there are -- you're going to see there are unfired bul-
17 lets that came out of Mr. Windham's gun, and I submit to
18 you that the reason for the clip and unfired bullets from
19 Mr. Windham's gun is because his gun malfunctioned and he
20 couldn't get a round in the chamber. That's why.

21 So this is an important case for Cory Allen, and Cory
22 Allen gets people to call nine one one, and as the crowd
23 is gathering there at Tara Village and Mr. Windham is
24 there, Cory Allen -- people come up to him and say, come
25 on; we'll take you away; let's flee. But he says, no, I

1 am not . . .

2 THE COURT: If somebody said that they may testify
3 to that. All right.

4 I apologize for interrupting you.

5 MS. PARHAM: That's okay, Judge.

6 (Brief pause. Conference at the bench between counsel
7 and the Court off the record)

8 THE COURT: Okay, you may continue.

9 MS. PARHAM: Thank you, Your Honor.

10 You don't have to wait for someone to get a shot off,
11 and that is what happened.

12 This is an important case for Cory Allen. He sat
13 there and waited on the police. He made sure nine one one
14 was called. He waited on the police.

15 You will hear that when the police got there Cory
16 Allen said, the man pulled a gun on me and I acted in
17 self-defense.

18 I can think of better ways to get revenge than to
19 shoot someone and wait there until the police come. I
20 mean, it's broad daylight in front of witnesses, and how
21 would he even know that the victim would come outside?
22 Had he been waiting two years for this day?

23 The State has the burden of proving its case beyond
24 a reasonable doubt. As the Judge told you, as Cory sits
25 there today he is cloaked in innocence. He is completely

1 innocent, and the State bears the burden of proving be-
2 yond a reasonable doubt that he is guilty of murder.

3 If the defense of self-defense is raised, the State
4 bears the burden of disproving self defense beyond a rea-
5 sonable doubt, and that is a high burden, as it should be,
6 ladies and gentlemen, because that's the same burden whe-
7 ther you're in General Sessions Court, whether you're in
8 traffic court, whether you're in City Court. It is always
9 proof beyond a reasonable doubt.

10 That is the burden that protects all of us, our fam-
11 ily members, every citizen of this Country from being
12 wrongfully convicted.

13 I submit to you that Cory Allen is innocent today as
14 he should be innocent as he walks out of this Courtroom
15 because he acted in self defense which is a legal defense,
16 and the State is not going to be able to prove to you he
17 did not act in self-defense beyond a reasonable doubt.

18 The evidence will be consistent with what Cory Allen
19 said all along, and that is that when Edward Windham pulled
20 a gun on him that he shot in self-defense and waited
21 there for the police. He waited there because he was com-
22 pletely justified in doing what he did.

23 We look forward to trying this case before you.

24 THE COURT: Solicitor, you may call your first wit-
25 ness.

1 SOLICITOR: Thank you, Your Honor.

2 We would call Ms. Veronica Peoples.

3 VERONICA PEOPLES,

4 being duly sworn, testified as follows:

5 CLERK: Please be seated and state your full name
6 for the record.

7 WITNESS: My name is Veronica Peoples.

8 DIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Ms. Peoples, where do you work?

11 A. I work for Nine One One.

12 Q. And what is your job there?

13 A. I'm assistant supervisor for nine one one dispatch
14 service.

15 Q. Now, can you tell us what nine one one dispatch work-
16 ers do?

17 A. They answer nine one one emergency calls for fire,
18 EMS and law enforcement.

19 Q. And are the calls all recorded?

20 A. They are.

21 Q. Okay, and do you all have one operator or several
22 operators?

23 A. Several operators.

24 Q. Do you recall - were you working at around eight
25 twenty or eight thirty on June 4, 2014?

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1 A. Yes, sir, I was.

2 Q. And do you recall any calls coming about events hap-
3 pening at Tara Village?

4 A. Yes, sir. We had several calls.

5 Q. All right, and did you answer any of those calls?

6 A. Yes, sir, I did pick up on one.

7 Q. All right, and where was that call coming from?

8 A. It was coming from Tara Village, and I picked up on
9 a female caller.

10 Q. And do you know the residence it was coming from, or
11 was it a cell phone?

12 A. I think it was a cell phone.

13 Q. Okay, and was that recorded and preserved?

14 A. Yes, sir, it was.

15 Q. Okay. All right.

16 SOLICITOR: Your Honor, at this time . .

17 BY SOLICITOR:

18 Q. I show you State's Exhibit 2. Are these maintained
19 and put on CDs for Court?

20 A. Yes, sir.

21 Q. Do you know what this is?

22 A. Yes, sir. That's one that was recorded.

23 SOLICITOR: Your Honor, we would ask to publish this
24 to the jury.

25 THE COURT: Ms. Parham?

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1 MS. PARHAM: We would have an objection, Your Honor,
2 subject to your earlier ruling about extraneous state-
3 ments.

4 SOLICITOR: I don't think that was the ruling, Your
5 Honor. I think it was raised and we may have to publish
6 this in camera.

7 THE COURT: All right. In-camera means it is one of
8 those times you have to step in your jury room, and I have
9 to listen to it outside of your presence.

10 So if you will please do that and do not discuss the
11 case.

12 (Jury excused from Courtroom)

13 THE COURT: All right. You may publish it. Go ahead
14 and publish it.

15 (Whereupon, State's Exhibit 2 containing nine one
16 one call published to the Court out of the presence of
17 the jury)

18 THE COURT: All right, Ms. Parham.

19 MS. PARHAM: Thank you, Your Honor.

20 I would object to portions where the nine one one
21 caller said this has to do with what happened last year,
22 and the answer was yes, and then goes on to talk about --
23 and just for the record, Your Honor, this is Ms. Debra
24 Cce who testified earlier today and stated she might re-
25 fuse to testify in Court.

1 So I would object to that portion about it happened
2 last year -- yeah -- and then she says, Your Honor, that
3 she didn't see anything happen; that she was cutting the
4 grass in her back yard.

5 She says that on this tape, and she testified ear-
6 lier today on the stand that she was in her back yard and
7 didn't see anything that happened.

8 So later in the tape she makes a statement twice --
9 Cory Allen was waiting for him on the corner, and that he
10 turned around and started shooting.

11 Well, that statement, coupled with her statement on
12 the nine one one call that she was cutting grass and did
13 not see anything, and her statement today that she didn't
14 see anything and goes into great detail, but those are
15 just conclusions, I believe, that she has drawn.

16 It may be confusing to the jury and is inconsistent
17 with her other sworn testimony that she didn't see any-
18 thing. I mean, I think they are just conclusions she has
19 come to by the end of the call, that my client turned and
20 started shooting at him.

21 She testified earlier that she didn't see my client
22 shoot at anyone, and she said, the first thing on the
23 tape, I believe, and I submit, Your Honor, that the first
24 part of the tape might well be qualified as an excited
25 utterance, but by the time she gets past the first two

1 minutes I don't believe it falls under the hearsay excep-
2 tion any longer, and that is just all the stuff about
3 what happened last year.

4 It is just basically her conversation with the nine
5 one one operator that no longer seems to be excited, and
6 I think it is confusing and prejudicial and inconsistent
7 with her other sworn testimony today.

8 THE COURT: Thank you. Solicitor, I'll hear from
9 you.

10 SOLICITOR: First off, Your Honor, no where on that
11 tape did she say on the nine one one call that she didn't
12 see anything.

13 Today she equivocated a lot because she is scared to
14 death, but this thing on present sense impression -- a
15 statement describing or explaining an event or condition
16 made by the declarant was preceding the event or condi-
17 tion or immediately thereafter.

18 That is exactly what a nine one one tape is. This
19 is a present sense impression. She is describing and/or
20 explaining the earlier condition, and it is an exception
21 to the hearsay rule, and she never said on there that she
22 didn't see anything.

23 All she said was what she saw.

24 THE COURT: Thank you.

25 SOLICITOR: And for the Court's information, Littles

1 came through according to her information on Candy Lane
2 and then turned around. Candy Lane is right outside of
3 her house and the back yard -- it's all open, completely
4 open back there for her to see.

5 She'd seen him coming back by from her back yard.
6 She can see the corner where Cory Allen is standing, and
7 that's what she said she saw on the nine one one tape.

8 THE COURT: Thank you. Ms. Parham?

9 MS. PARHAM: Your Honor, I have my notes here and it's
10 clear she said in the beginning of the call, I didn't see
11 anything; I was cutting my grass in my back yard.

12 That's what my notes say.

13 (Brief pause)

14 THE COURT: Okay, and that was not the only concern
15 I have. The fact that she said the incident happened -- I
16 believe she said something in regard to last year.

17 SOLICITOR: Yes, sir.

18 THE COURT: The jury has to have valid information.

19 SOLICITOR: Well, Your Honor, I'm going to present --
20 I have the Indictment on that case which I'm going to
21 call the Clerk of Court. I have certified copies of that.

22 THE COURT: As far as -- it is clearly admissible un-
23 der the 803 rule.

24 But in all fairness there ought to be consistent or
25 contemporaneous. I do not think it is prejudicial, nor

1 do I think it is misleading.

2 Whether she was cutting grass and could not see --
3 she testified today she couldn't see anything. In the
4 past she said she did see, and that is clearly a jury is-
5 sue. It's for the jury to determine credibility, the
6 weight and value.

7 Part of what they do in determining credibility is
8 to determine the opportunity the witness may have to see
9 or hear things about which the witness testified.

10 So that is clearly a jury issue, and analyzing §03
11 one 403. I think it is relevant and that the prejudicial
12 effect -- I do not think its prejudicial effect outweighs
13 the probative value.

14 I think it is an issue that goes to the weight and
15 the value given to it by the jury. I find it is admissi-
16 ble.

17 MS. PARHAM: I would just like to note an objection
18 to that. If she refuses to testify then it would violate
19 the confrontation clause because I would not be allowed or
20 have the opportunity to cross examine her on those issues
21 on which she refuses to testify.

22 So I believe they are trying to circumvent it and
23 trying to get her testimony in without me having the abil-
24 ity to cross examine her on all these issues.

25 That would violate the confrontation clause if she is
125

1 not available as a witness.

2 THE COURT: I think that is what I would think to be
3 an anticipatory ruling. I certainly cannot predict what
4 Ms. Coe is likely to do. We'll cross that bridge.

5 MS. PARHAM: Then I would note an objection on this
6 issue.

7 THE COURT: I can only focus on what's in front of
8 me. I can't rule on that if I'm not presented with that
9 at the time -- I don't know whether she is or is not going
10 to testify.

11 I don't know how I could take that into considera-
12 tion. I guess it could be an issue at some point, but
13 I can't rule on that. She may have made prior inconsis-
14 tent statements.

15 MS. PARHAM: I would still object to the nine one one
16 tape as testimonial with the witness possibly being un-
17 available for cross examination.

18 THE COURT: All right. I would place on the record
19 that I don't know how I'm going to rule on something that
20 hasn't occurred.

21 All right, bring the jury.

22 (Jury returned to the Courtroom. Witness Peoples on
23 the witness stand)

24 THE COURT: All right. The jury is present so, Soli-
25 citor, you may proceed.

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1 (Whereupon, State's Exhibit 2 was published to the
2 jury)

3 THE COURT: All right, Solicitor.

4 SOLICITOR: Thank you, Your Honor.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR:

7 Q. All right, Ms Peoples, was that you?

8 A. Yes, sir, that's me.

9 Q. Okay, and it was a lady you spoke with?

10 A. Yes, sir.

11 Q. Okay. Please answer any questions Ms Parham has for
12 you.

13 THE COURT: Ms. Parham.

14 CROSS EXAMINATION

15 BY MS. PARHAM:

16 Q. This call came in to nine one one at approximately
17 eight twenty-seven on June 4th, 2014?

18 A. I'm not sure about the time but I know it was in the
19 evening because I just came on shift.

20 Q. So eight twenty-seven P.M. on June 4, 2014?

21 A. Yes, maam.

22 Q. And the caller was a woman by the name of Debra Coe?

23 A. I know the first name was Debra but I don't know the
24 last name.

25 Q. All right, that's all I have.

1 THE COURT: Any Redirect?

2 SOLICITOR: That's all, Your Honor.

3 THE COURT: Thank you very much. You are excused.

4 (Witness excused from the stand)

5 THE COURT: All right, Solicitor. You may call your
6 next witness.

7 SOLICITOR: Your Honor, I'd like to call Nichole
8 Bethea to the witness stand.

9 NICOLE BETHEA, being
10 duly sworn, testified as follows:

11 THE COURT: Thank you. Have a seat and when you are
12 comfortably seated please state your name for the record,
13 spelling your last name.

14 WITNESS: Allison Nicole Bethea, B E T H E A.

15 DIRECT EXAMINATION

16 BY SOLICITOR:

17 Q. Ms. Bethea, you work where?

18 A. Florence County Clerk of Court.

19 Q. And you work mostly in what Court?

20 A. General Sessions.

21 Q. Okay. How long you been working here in the Clerk's
22 Office?

23 A. Fifteen years.

24 Q. So you were working back in 2008?

25 A. I was.

N. BETHEA ON DIRECT

1 Q. All right, I want to show you what has been marked
2 State's Exhibit Number 5. Can you identify that?

3 A. Yes, sir. An Indictment.

4 Q. All right, is it a certified document?

5 A. It is.

6 Q. And what else is along with that Indictment?

7 A. I have a verdict form and a sentencing sheet.

8 Q. Okay. Can you please us who is the Defendant in that
9 case?

10 A. Edward Jamel Windham.

11 Q. All right, and can you tell me who the victim is who
12 is listed in that case?

13 A. This says Robert Allen.

14 Q. And what is the charge?

15 A. On the sentencing sheet?

16 Q. On the Indictment.

17 A. Murder, possession of a weapon in the commission of
18 a violent crime and possession of a weapon by a person
19 convicted of a violent crime.

20 Q. All right, and would you please tell me what the
21 guilty verdict is and the not guilty verdict on that ver-
22 dict form?

23 A. It was not guilty of murder and voluntary manslaughter,
24 not guilty for possession of a weapon during commission of
25 a violent crime, but guilty of possession of a pistol by

N. BETHEA ON DIRECT

1 a person convicted of a violent crime.

2 Q. Okay, and can you tell me from the sentencing sheet
3 what kind of sentence he got?

4 A. He received five years.

5 Q. Okay. Is there a probation revocation that went on,
6 or is that reflect on the sentencing sheet?

7 A. Apparently there was a probation violation heard at
8 the same time which was run consecutive with the time he
9 had received -- same day, yes. They were run consecutive.

10 Q. Okay, so the probation violation was to run consecu-
11 tive with the five years he got for the . .

12 A. Correct, yes.

13 Q. Okay.

14 SOLICITOR: Your Honor, may I ask for permission to
15 publish this to the jury.

16 THE COURT: Any objection to State's Exhibit 5?

17 MS. PARHAM: No, Your Honor.

18 SOLICITOR: The State would move it in evidence at
19 this time.

20 THE COURT: It is in evidence.

21 (State's Exhibit 5, Indictment, verdict form and sen-
22 tencing sheet admitted into evidence with out objection)

23 (State's Exhibit 5 published to the jury by the
24 Solicitor)

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N. BETHEA ON DIRECT

1 BY SOLICITOR:

2 Q. Please answer any questions Ms. Parham may have.

3 THE COURT: Thank you, Solicitor. Ms. Parham.

4 CROSS EXAMINATION

5 BY MS. PARHAM:

6 Q. All of this happened in 2006?

7 A. I'm not sure. He was sentenced in 2008, but I am
8 not sure when the actual offense was.

9 Q. Do you know how much time he served in jail from 2006
10 to 2008?

11 A. It says on here how much credit there was and I be-
12 lieve it was seven hundred and something days but I cannot
13 be positive.

14 Q. It was two hundred something days that he was incar-
15 cerated during that time period?

16 A. Correct.

17 Q. All right, and so he was acquitted of voluntary man-
18 slaughter. Right?

19 A. He was.

20 Q. And he was convicted of having a gun, having been
21 previously convicted of a violent crime?

22 A. Right.

23 Q. Does it say on there what the crime was that he had
24 been convicted of?

25 A. I don't think it does.

N. BETHEA ON CROSS

1 Q. That's all I have.

2 SOLICITOR: That's all I have.

3 THE COURT: You may step down.

4 (Witness excused from stand)

5 THE COURT: All right, Solicitor.

6 SOLICITOR: Your Honor, we would like to call Miss
7 LaSheia Windham to the stand.

8 THE COURT: Come around and be sworn.

9 LaSHEIA WINDHAM, being
10 duly sworn, testified as follows:

11 CLERK: Have a seat and state your name, please, for
12 the record.

13 WITNESS: LaSheia Patterson Windham.

14 DIRECT EXAMINATION

15 BY SOLICITOR:

16 Q. Mrs. Windham, who is your deceased husband?

17 A. Edward Jamell Windham.

18 Q. And do you remember when he got out of prison?

19 A. On January 20th, 2014.

20 Q. Of 2014?

21 A. Uh hm.

22 Q. A few months before he was killed?

23 A. Uh hm, yes, sir.

24 Q. In the weeks or months leading up to the event, did
25 you ever have any conversations at all with him regarding

L. WINDHAM ON DIRECT

1 the Allen Brothers?

2 A. . .

3 MS. PARHAM: Objection as to anything he told her.
4 Hearsay, Your Honor.

5 THE COURT: Solicitor?

6 SOLICITOR: I didn't ask her anything that was said,
7 Your Honor, nor am I going to.

8 THE COURT: He's just asking if she had a conversa-
9 tion with him. Okay, but not anything about what in fact
10 he may have said.

11 SOLICITOR: Just if she had conversations with him.

12 THE COURT: All right. You may answer.

13 A. Yes. The answer is yes.

14 BY SOLICITOR:

15 Q. Now, during the weeks before his death, did you no-
16 tice any change in his demeanor or the way he was acting?

17 A. Yes.

18 Q. What sort of things stood out to you in his demeanor
19 or actions?

20 A. Nervous. He wasn't sleeping at night. Always kind
21 of looking out the blinds and stuff.

22 THE COURT: Looking out what?

23 WITNESS: The blinds.

24 Q. The windows?

25 A. Yes, the windows.

L. WINDHAM ON DIRECT

1 Q. All right, and that started when? Do you remember?

2 A. Probably about two months before all this happened.

3 (Brief pause)

4 Q. Thank you. Please answer any questions Ms. Parham
5 may have.

6 THE COURT: Ms. Parham.

7 MS. PARHAM: Thank you.

8 CROSS EXAMINATION

9 BY MS. PARHAM:

10 Q. Mrs. Windham, what was your husband's prior convic-
11 tion for?

12 A. Are you talking about the dog fighting?

13 Q. What convictions did he have prior to the last inear-
14 ceration?

15 A. . .

16 SOLICITOR: Your Honor, I would object to the rele-
17 vance of that to this case.

18 THE COURT: It was not a precise question. Are you
19 asking what he was on probation for?

20 MS. PARHAM: Well, Your Honor, she talked about his
21 nervousness and looking out the windows some two months
22 before.

23 THE COURT: Do you have an objection, Solicitor?

24 SOLICITOR: I object on relevancy.

25 THE COURT: I think what he was on probation for and

L. WINDHAM ON CROSS

1 sentenced for is what she is asking. It may be that I'll
2 have to review it. You may ask your next question.

3 BY MS. PARHAM:

4 Q. How many firearms did your husband have?

5 A. One.

6 Q. All right. Are you aware that he was in possession
7 of crack cocaine when he was . .

8 SOLICITOR: Objection, Your Honor. The question is
9 putting facts in evidence that are not in evidence.

10 THE COURT: Ladies and gentlemen of the jury, please
11 go to your jury room. Do not discuss the case.

12 (Jury excused from Courtroom)

13 THE COURT: All right. What is our objection, Soli-
14 citor?

15 SOLICITOR: Your Honor, I object. She is trying to
16 put facts in evidence that aren't in evidence.

17 She asked, are you aware -- I think she was going to
18 say he had crack in his pocket or something like that, but
19 this is not the proper witness to get that in through.

20 It's trying to put evidence in through the back door
21 instead of the front door, and that's why I object to it.

22 THE COURT: All right.

23 MS. PARHAM: Your Honor, there is evidence in the re-
24 cord that she believed her husband was nervous, and whe-
25 ther he had a drug problem is highly relevant as far as

1 the cause was for his nervous behavior.

2 If someone is using crack cocaine or marijuana or
3 any other drug, that is going to affect their behavior. I
4 also believe from his prior criminal history -- I believe
5 it is relevant because he had a violent criminal history,
6 yet Mr. Clements wants to treat him and through this wit-
7 ness suggest he was afraid and nervous when he was very
8 familiar with crime.

9 THE COURT: His prior criminal history might be rele-
10 vant under State versus Clinkscales or Lyle as prior diffi-
11 culty but this is a victim. Mr. Allen is the Defendant. I
12 don't find it relevant here.

13 Also, a person's reputation in the community may be
14 admissible if he was a defendant in the case, but I don't
15 know of a case that says a victim's prior conviction is
16 admissible. I'm not aware of any although I'll be glad
17 to listen if you can cite me any.

18 If you have an expert to get up here and tell me
19 an addiction to drugs to the extent you are nervous, not
20 sleeping, looking out the blinds, and it would cause some
21 type of fear or paranoid state then I would allow you to
22 recall Ms. Windham.

23 I don't think you can ask her at this point about his
24 criminal history. I don't think it has anything to do
25 with this case, his having drugs on him.

1 MS. PARHAM: He was a felon.

2 THE COURT: But why is that admissible? Why is that
3 admissible under State versus Allen? I believe you'd have
4 to have a connection between that and the homicide itself.

5 MS. PARHAM: I believe the Solicitor admitted to that
6 because he said in his opening statement that the gun could
7 have been in his left-hand pocket but in actuality he had
8 crack cocaine and a cell phone in his left-hand pocket.

9 So I believe he suggested that in his opening.

10 SOLICITOR: Your Honor, I never said anything about
11 anybody having a gun in their left-hand pocket. I said
12 something about it might have fallen out when he crashed
13 his moped.

14 I never said anything about the pocket, left or right.

15 THE COURT: I think there has got to be some connec-
16 tion or some basis for it, and . . .

17 MS. PARHAM: I would just submit to the Court that all
18 the time people have guns in connection with drug dealing.
19 It's a high crime area. There are drugs and guns -- if she
20 doesn't know he had it, then I withdraw the question but I
21 would like a ruling on it before the jury comes out.

22 SOLICITOR: I would object to the relevance of that.
23 I don't think any of that is at issue in this case.

24 THE COURT: Say again.

25 SOLICITOR: I don't think it is probative of anything

1 that is at issue in this case.

2 MS. PARHAM: I believe it would be relevant, Your
3 Honor, because she is portraying him as getting out of
4 jail and being frightened, but he's got a life-size
5 tattoo of crime boss on his stomach. I mean, this is . .

6 THE COURT: Has your client seen it?

7 MS. PARHAM: I don't know if my client has seen it or
8 not. I know that . .

9 THE COURT: How do you know about it?

10 MS. PARHAM: I read about it.

11 THE COURT: How does that go to the issue of fear or
12 being in fear? I've got a tattoo and the victim -- I've
13 sent for two cases. I recall a case out of Richland County
14 and I believe it was State v. Lovett.

15 (Brief pause in the proceeding)

16 THE COURT: As to the crack cocaine, there is no nexus
17 between the crack cocaine in this particular offense, and
18 I think there has to be. This is not a drug offense.

19 Do you have anything further, Ms. Parham?

20 Your objection is overruled. It is not admissible.

21 MS. PARHAM: Please note our objection for the record,
22 Your Honor.

23 THE COURT: Anything further?

24 MS. PARHAM: Just to note the objection.

25 THE COURT: All right, bring in the jury.

L. WINDHAM ON CROSS

1 (Jury returned to the Courtroom)

2 (Witness continuing on the stand)

3 THE COURT: All right, the jury is back.

4 Ms. Parham, you may continue.

5 MS. PARHAM: Thank you, Your Honor.

6 CROSS EXAMINATION CONTINUING

7 BY MS. PARHAM:

8 Q. Do you recall telling law enforcement that your hus-
9 band had been spending a lot of time with family in the
10 past two months before this happened?

11 A. Yes.

12 Q. And do you recall telling them that you tried but you
13 could not keep him from going to Tara Village?

14 A. . . .

15 SOLICITOR: Your Honor, I would object as to relevance.

16 THE COURT: I would allow that question. You may an-
17 swer the question.

18 Q. That you tried to keep him from going but could not
19 keep him from going to Tara Village?

20 A. Yes.

21 Q. And you said that he had not been spending time with
22 the family when this happened, but how often would he have
23 gone to Tara Village?

24 A. Well, he used to be home, you know, every night and it
25 wasn't that he was staying out. It was generally in the

L. WINDHAM ON CROSS

1 day -- during the day.

2 Q. Now, when he was put on probation for any of these of-
3 fenses -- when he was released was he effectively still on
4 probation?

5 A. No, he was released.

6 Q. Okay. When was he released?

7 A. January 20th of 2014.

8 Q. Okay. Prior to that . .

9 A. No, he wasn't on probation.

10 Q. And so the probation revocation was just run with the
11 other sentence?

12 A. Yes.

13 Q. I think that's all I have. Thank you.

14 THE COURT: Thank you, Ms. Parham. Anything on Re-
15 direct, Solicitor?

16 SOLICITOR: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY SOLICITOR:

19 Q. Ms. Windham, where was Jamell's hood?

20 A. Tara Village.

21 Q. Where were most of his friends?

22 A. Tara Village.

23 Q. Thank you.

24 THE COURT: Recross, Ms. Parham?

25 MS. PARHAM: No, Your Honor.

1 THE COURT: You can step down. Thank you very much.

2 (Witness excused from stand)

3 THE COURT All right, Solicitor. Call your next wit-
4 ness.

5 SOLICITOR: Your Honor, we'd call Andrew Hardin.

6 ANDREW HARDIN, being duly
7 sworn, testified as follows:

8 CLERK: Please have a seat and state your name for
9 the record.

10 WITNESS: Andrew Hardin.

11 DIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. How you doing, Andrew?

14 A. Good. How you doing?

15 A. Good.

16 Q. Where do you work now?

17 A. I work at Farmer Subaru City in Florence.

18 Q. What is that?

19 A. It's like a distribution center.

20 Q. Are you like in sales?

21 A. (Inaudible)

22 Q. Prior to working there, where did you work?

23 A. The Florence County Sheriff's Office.

24 Q. How long did you work for the Sheriff?

25 A. Right at two years.

A. HARDIN ON DIRECT

1 Q. And what was your job while you were there?

2 A. I was a patrol deputy.

3 Q. Why did you leave to go where you are now?

4 A. Just financially and for my family.

5 Q. Okay. Were you working on patrol there on June 4
6 of 2014?

7 A. Yes, sir, I was.

8 Q. And did you have occasion to respond to a call about
9 a shooting?

10 A. I did.

11 Q. Where did you respond to and what did you find when
12 you got there?

13 A. I was dispatched to the area of Leigh and Candy Lane
14 which is in Tara Village. Upon my arrival, I saw a moped
15 in the middle of the street with a male victim, and he was
16 unconscious with blood around him, and two gentlemen stand-
17 ing next to him on the curb.

18 Q. All right, do you see one of those men in the Court-
19 room?

20 A. Yes, sir, I do.

21 Q. Would you please point him out for the jury?

22 A. That's him right there.

23 Q. Sitting by Ms. Parham?

24 A. Yes, sir.

25 Q. When you got there and saw the two men standing there
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A. HARDIN ON DIRECT

1 and the man on the roadway, the man slumped over the moped,
2 what did you do?

3 A. I got out of my patrol vehicle and had my patrol pis-
4 tol in low ready position.

5 Q. What is low ready position?

6 A. Low ready position is drawn but pointed down at the
7 ground in the near position toward where the people were
8 waiting just in case something was to happen.

9 Q. Why do you do that?

10 A. On the way to -- the reason for the call as it came
11 out was shots fired and the body laying in the middle of
12 the street.

13 As I was arriving in my car and viewing the situation
14 dispatch advised me that there was a shooting and the sus-
15 pect was waiting on law enforcement to arrive on the scene,
16 so I took that as a possible threat.

17 So to protect myself and my co-workers, I had my wea-
18 pon ready to go.

19 Q. Okay, and did you see any weapons when you pulled up?

20 A. No, sir, not initially.

21 Q. Okay. When did you first see a weapon?

22 A. I saw a weapon when I asked Mr. Cory and his brother
23 to get on their knees and let me see their hands, and at
24 that point in time as I was watching the two individuals
25 and they got on their knees Mr. Cory pulled a pistol from

A. HARDIN ON DIRECT

1 around his backside where he was holding it, and he then
2 placed it on the ground and got on his knees and spread his
3 arms and legs out.

4 Q. Did you see him eject a magazine?

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

6 Q. Okay. Did you gather up that pistol, or someone else
7 did that?

8 A. We secured it until it -- we secured it until it was
9 out of his reach.

10 Q. Okay, and what then did you do with Mr. Cory Allen?

11 A. At that point in time I was placing my handcuffs on
12 him, leaving plenty of room on his wrist to make sure it
13 was not hurting him. I then stood him up and then at that
14 time I walked him around to the side of my patrol car.

15 Q. Did you have any conversation with him?

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

17 Q. Okay, and did you mirandize him?

18 A. Yes, sir, I did.

19 Q. When you say you mirandized him, you know, we all
20 watch TV and take it for granted, but what exactly did you
21 do when you mirandized him?

22 A. At that point in time I had the individual in my pa-
23 trol car along with his brother and my backup and various
24 amount of people came. There was a deputy by the name of
25 James Haymar who gave me a Miranda card which has the

A. HARDIN ON DIRECT

1 Miranda statements on it that I'll read for every suspect.

2 That is how the Miranda was read, off of that Miranda
3 card.

4 Q. What is the purpose of Miranda?

5 A. To advise the suspects or individuals of their rights
6 upon arrest.

7 Q. Were you planning on questioning him or interrogating
8 the suspect?

9 A. No, I was not.

10 Q. But you did read Miranda to him, correct?

11 A. Yes, sir.

12 Q. Did you ask him any questions?

13 A. No, sir.

14 Q. Did he offer any information to you or make any state-
15 ments to you?

16 A. Yes, sir, he did.

17 Q. What?

18 A. He advised me numerous amounts of times that he did
19 shoot the individual, the victim, but it was out of self-
20 defense. He advised me that the victim was -- pulled a gun
21 on him so he protected himself through the use of deadly
22 force.

23 Q. And that was unsolicited by you?

24 A. Yes, sir.

25 Q. He just offered that?

A. HARDIN ON DIRECT

1 A. Yes, sir.

2 Q. Now, he had told you that when you were first putting
3 the handcuffs on im?

4 A. Yes, sir.

5 Q. All right, and what did you do after that, after you
6 had him secured?

7 A. I had him sit in the back of my patrol car. During
8 that time Investigations was on the scene at that point in
9 time, and then Investigations was talking to him while he
10 was in the back of my patrol car I then started a crime
11 scene log sheet and walked the perimeter to make sure that
12 nothing would be touched or stepped on.

13 Q. And when you say you walked the perimeter, tell us ex-
14 actly what that means?

15 A. That means to block off with caution tape or forensics
16 tape on the area of the crime, and the outside perimeter
17 is where I would walk back and forth to make sure nobody
18 messes with any evidence or steps on the crime scene.

19 Q. Did you secure that successfully, the perimeter around
20 the crime scene?

21 A. Yes, sir.

22 Q. Okay. All right, now, later on did you have occasion
23 to be with Mr. Cory Allen?

24 A. Yes, sir. I was the deputy who transported him to
25 the Florence County Detention Center.

A. HARDIN ON DIRECT

1 Q. Okay, and you turned him over to the jailer?

2 A. Yes, sir.

3 Q. Did you question him at all during that ride?

4 A. No, sir, not at all.

5 Q. All right.

6 SOLICITOR: Beg the Court's indulgence, Your Honor.

7 THE COURT: Yes, sir.

8 (Brief pause in proceeding)

9 BY SOLICITOR:

10 Q. Please answer any questions Ms. Parham has.

11 A. Yes, sir.

12 THE COURT: Ms. Parham.

13 MS. PARHAM: Yes, sir, no questions.

14 THE COURT: Thank you. You may step down.

15 (Witness excused from stand)

16 THE COURT: Solicitor.

17 SOLICITOR: We would call Jake Chamberlain.

18 JAKE CHAMBERLAIN, being

19 duly sworn, testified as follows:

20 CLERK: Please have a seat and state your name for the re-
21 cord.

22 WITNESS: Jake Chamberlain.

23 DIRECT EXAMINATION

24 BY SOLICITOR:

25 Q. Officer Chamberlain, where do you work?

J. CHAMBERLAIN ON DIRECT

1 A. Florence County Sheriff's Office.

2 Q. And you've worked there how long?

3 A. Around eight years.

4 Q. And what is your job there now?

5 A. I'm a narcotics investigator.

6 Q. Do you work undercover?

7 A. Yes, sir.

8 Q. They wouldn't let you have a beard if you weren't doing that, would they?

10 A. That's right.

11 Q. Okay. Prior to working with the drug unit, what did you do?

13 A. I worked patrol -- the community active patrol enforcement team.

15 Q. Shortly called the PACE Team?

16 A. Yes, sir.

17 Q. Okay, and did you have occasion to respond to Tara Village on the 4th of June, 2014?

19 A. Yes, sir, I did.

20 Q. Can you tell this jury why you went to Tara Village, the time you got there, and what you did?

22 A. We responded for a shots fired call. Our patrol units were dispatched and patrol deputies in the County also responded.

25 Q. How many deputies were out there?

J. CHAMBERLAIN ON DIRECT

- 1 A. I'm not sure, exactly.
- 2 Q. Were there a lot?
- 3 A. Yes, sir. There was a bunch.
- 4 Q. From Florence County?
- 5 A. Yes, sir.
- 6 Q. Was the Highway Patrol there as well?
- 7 A. Yes.
- 8 Q. A pretty large crowd?
- 9 A. Yes, sir.
- 10 Q. Okay. When you got there, did you notice any suspects
- 11 there?
- 12 A. Yeah. While I was standing on the site, Mr. Allen
- 13 was sitting beside me. He was in the grass.
- 14 Q. Do you see him here in the Courtroom?
- 15 A. The gentleman here.
- 16 Q. The gentleman sitting beside Ms. Parham?
- 17 A. Yes, sir.
- 18 Q. And if you had any conversation, did you initiate the
- 19 conversation or did he initiate the conversation?
- 20 A. As I was standing there beside him when he was sit-
- 21 ting on the grass, he said these handcuffs are hurting my
- 22 back -- hurting my shoulders and back. I went and put an
- 23 extra set of handcuffs on him.
- 24 Q. You did?
- 25 A. Yes, sir.

J. CHAMBERLAIN ON DIRECT

1 Q. You helped him out?

2 A. Yes, sir.

3 Q. Okay, and once you did that did you ask him anything
4 or say anything to him?

5 A. Whenever I was standing there next to him there was a
6 light pole or some kind of pole next to him. When I went to
7 put another pair of handcuffs on him to help him lean on one
8 of the poles I asked him if he was good.

9 Q. And what were you referring to when you asked him if
10 he was good?

11 A. I was inquiring about his -- I guess his back, you
12 know, and his shoulder, inquiring whether he was more com-
13 fortable.

14 Q. What did he say?

15 A. I said, are you good, and he said, I'm good, man.
16 That guy pulled a gun on me and I went to a concealed wea-
17 pons class.

18 Q. Okay. Is that all he said to you?

19 A. Yes, sir.

20 Q. Did you respond back or say anything following that?

21 A. No, sir.

22 Q. Just made note of it?

23 A. Yes, sir.

24 Q. Okay. All right, did you mirandize him?

25 A. At the time as far as Miranda I wasn't inquiring about

J. CHAMBERLAIN ON DIRECT

1 anything in the case.

2 Q. Okay, you were just there on the crime patrol?

3 A. Yes, sir.

4 Q. And how long did you stay there?

5 A. I'm not sure. We were there for a long time.

6 Q. And for what reason was law enforcement there for so
7 long?

8 A. Several people from the community came out and we
9 remained there because of disorderly people around there.

10 Q. It was a bad event?

11 A. Yes, sir. There were several disorderly people.

12 Q. Were you maintaining the areas of the crime scene so
13 the officers could do their job?

14 A. Yes, sir.

15 Q. And that took a while, didn't it?

16 A. Yes, sir.

17 Q. And if you do it thoroughly, you have to be
18 there a while?

19 A. Yes, sir.

20 SOLICITOR: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 (Brief pause)

23 BY SOLICITOR:

24 Q. I appreciate it, Officer Chamberlain. Would you
25 please answer any questions Ms. Parham has?

J. CHAMBERLAIN ON CROSS

1 A. Yes, sir.

2 CROSS EXAMINATION

3 BY MS. PARHAM:

4 Q. My client wasn't disorderly?

5 A. Where I was at? No, maam.

6 Q. I mean, he was cooperative?

7 A. Correct.

8 Q. He wasn't part of the disorderly crowd you were talk-
9 ing about?

10 A. That's right.

11 Q. That's all I have. Thank you.

12 THE COURT: Any Redirect?

13 SOLICITOR: No, Your Honor.

14 THE COURT: Thank you. You may step down.

15 (Witness excused from stand)

16 SOLICITOR: Let me see who else we've got, Your Honor.

17 (Brief pause)

18 THE COURT: Mr. Foreman and ladies and gentlemen of
19 the jury, perhaps now would be a good time to take our
20 evening recess.

21 I remind you again that you are not to discuss this
22 case with others, including your fellow jurors, family,
23 friends or anyone else.

24 You are not to read, watch or listen to any newscasts
25 about the case. Do not use your computers, phones or any

1 MS. PARHAM: What is being done about Ms. Coe?

2 THE COURT: She is still under subpoena. I'm not
3 going to release her from the subpoena.

4 What about Mr. Allen? Do you have a copy of his bond?

5 SOLICITOR: He's not on bond, Your Honor.

6 THE COURT: All right. If you have anything about
7 Ms. Coe, I'll be glad to hear it. She is still under the
8 subpoena.

9 All right, thank you all very much. Have a pleasant
10 evening.

11 (Whereupon, the Court stood in recess for the evening)

12 (The case was resumed on March 22, 2016)

13 THE COURT: All right, anything from the State before
14 we bring in the jury?

15 SOLICITOR: Nothing from the State.

16 THE COURT: Anything from the Defense?

17 MS. PARHAM: No, sir.

18 THE COURT: Bring in our jury, please.

19 (Jury returned to the Courtroom)

20 THE COURT: Good morning. I hope you all had a pleas-
21 ant evening.

22 As you recall, we are continuing in the trial of the
23 case by presentation of evidence and testimony by the State
24 in its case in chief.

25 If you would please continue to give your attention,

1 as you have done, throughout the trial.

2 With that being said, Solicitor, you can call your
3 next witness.

4 SOLICITOR: Thank you, Your Honor. May it please
5 the Court?

6 We would call Maurice Lloyd.

7 MAURICE LLOYD, being duly
8 sworn, testified as follows:

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

11 WITNESS: Maurice Lloyd.

12 DIRECT EXAMINATION

13 BY SOLICITOR:

14 Q. Deputy Lloyd, I'm going to stand back out here so if
15 I can hear you I know all the jurors can.

16 A. Yes, sir.

17 Q. Speak up loudly, okay?

18 A. Yes, sir.

19 Q. You work with the Florence County Sheriff's Office?

20 A. Yes, sir.

21 Q. How long have you worked there?

22 A. Since February of 2013.

23 Q. And in what capacity are you employed with the
24 Sheriff's Office?

25 A. I was a patrol officer at that time. Now I work for

M. LLOYD ON DIRECT

1 the Courtroom division.

2 Q. All right, and back on June 4th of 2014 were you on
3 patrol that day?

4 A. Yes, sir.

5 Q. Did you respond to a call in any particular area of
6 Florence County?

7 A. Well, a call came out to Tara Village so I was dis-
8 patched out in reference to that call.

9 Q. All right, and what time was that?

10 A. I think it was around eight twenty-nine.

11 Q. Eight twenty-nine, and you said a call came out?

12 A. Yes, sir.

13 Q. What exactly does that mean?

14 A. Actually, a ten eighty-five call came out from dis-
15 patch. They dispatched a call about a shooting at Tara
16 Village, and since I was near that way I responded in re-
17 ference to that call.

18 Q. What time did you arrive on the scene?

19 A. It was about eight thirty-four.

20 Q. Okay, and when you got to the scene, were you the
21 first or the second or third officer to arrive there?

22 A. I was the second officer.

23 Q. Who was first?

24 A. Officer Hardin.

25 Q. When you got there on the scene where exactly did you

M. LLOYD ON DIRECT

1 report to?

2 A. When I first got on the scene, two subjects were in
3 the roadway, standing in the roadway.

4 Q. All right, and on what street was that? Do you know?

5 A. Uh, it was -- I think it was Leigh Lane, between Leigh
6 Lane and . .

7 Q. Candy?

8 A. . . Candy Lane.

9 Q. Okay, and you saw two suspects or two subjects stand-
10 ing up in the roadway?

11 A. Yes, sir.

12 Q. What else did you see?

13 A. I seen one subject with a handgun.

14 Q. And what was he doing with that handgun?

15 A. It looked like he was taking the clip out of it.

16 Q. Okay. Did he take one out or do you know exactly what
17 he was doing?

18 A. I'm not sure.

19 Q. Okay. All right, when you saw that, what did you do?

20 A. Um, Officer Hardin had told them to get down. I took
21 the other subject and placed him in custody. Officer
22 Hardin had the other subject and placed him in custody.

23 Q. All right, and what was the name of the subject you
24 took in custody?

25 A. Frederick Allen.

M. LLOYD ON DIRECT

1 Q. Okay, and what was the name of the subject Officer
2 Hardin took in custody?

3 A. Cory Allen.

4 Q. All right, and you said he had a gun. What did he do
5 with the gun?

6 A. He was ordered to put it down on the ground.

7 Q. Did he?

8 A. Yes, sir.

9 Q. He complied?

10 A. Yes, sir.

11 Q. All right, and did you see him put a holster or
12 anything else down?

13 A. No, sir.

14 Q. Okay, no holster?

15 A. No, sir.

16 Q. Who else did you see on the scene there?

17 A. . .

18 Q. Anybody alive or dead?

19 A. I seen a subject laying on the ground.

20 Q. All right, and how was he laying?

21 A. Face down on the handle bars of a moped.

22 Q. What color was the moped, if you remember?

23 A. I can't remember the color.

24 Q. Okay. All right, and did you check him out?

25 A. Yes, sir. After I detained Mr. Allen I advised

M. LLOYD ON DIRECT

1 dispatch that we had both subjects in custody, and I ad-
2 vised him to send EMS in.

3 Q. All right, and was Mr. Windham alive or dead?

4 A. He was deceased.

5 Q. Okay. All right, what other officers arrived?

6 A. Barry Noles arrived and Lieutenant Powell arrived.

7 Q. What's his full name, Lieutenant Powell?

8 A. Wilson Powell.

9 Q. Was he your Lieutenant?

10 A. Yes, sir.

11 Q. Okay, so he arrived on the scene, and what did you
12 do?

13 A. I advised him what we had, and he called investiga-
14 tors to come.

15 Q. What else did you do?

16 A. After they were processing the crime scene, I went
17 back on patrol.

18 Q. All right. How do you process a crime scene?

19 A. You get the crime scene tape about the area to make
20 sure nobody comes in or goes out the area.

21 Q. And was this a large area or a small area?

22 A. It was a pretty big area.

23 Q. Okay. Did you wind up having a lot of deputies out
24 there?

25 A. Yes, sir.

M. LLOYD ON DIRECT

1 Q. All right.

2 A. And there was also the Highway Patrol.

3 Q. The Highway Patrol came?

4 A. Yes, sir.

5 Q. And were any people in the neighborhood out -- did
6 they come out to the scene?

7 A. Yes.

8 Q. It got to be a pretty good crowd?

9 A. Yes, sir.

10 Q. And did you all maintain it safely?

11 A. Yes, sir.

12 Q. The people out on the crime scene?

13 A. Yes, sir.

14 Q. How long did you stay out on the scene that day?

15 A. I stayed there -- the investigator instructed me to
16 transport the prisoner to the detention center.

17 Q. All right, and that was Mr. Fred Allen?

18 A. Yes, sir.

19 Q. Okay, and about what time was that?

20 A. I'm not sure -- close to midnight.

21 Q. So about three and a half or four hours later?

22 A. Yes, sir.

23 Q. All right.

24 SOLICITOR: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

M. LLOYD ON DIRECT

1 (Brief pause)

2 BY SOLICITOR:

3 Q. Thank you, Officer Lloyd. Please answer Ms. Parham's
4 questions.

5 A. Yes, sir.

6 THE COURT: Thank you. Ms. Parham.

7 MS. PARHAM: Thank you.

8 CROSS EXAMINATION

9 BY MS. PARHAM:

10 Q. Deputy Lloyd, who set up the crime scene log?

11 A. Deputy Hardin.

12 Q. All right, and that is done to preserve all of the
13 evidence and keep anyone out of the scene who is not abso-
14 lutely necessary to be on the crime scene. Is that
15 right?

16 A. Yes, maam.

17 Q. And that includes civilians and officers, is that
18 right?

19 A. Yes, maam.

20 Q. Only people who are supposed to be in the crime scene
21 are supposed to be within that tape. Correct?

22 A. Yes, maam.

23 Q. That's all I have.

24 THE COURT: Redirect, Solicitor?

25 SOLICITOR: Nothing, Your Honor.

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1 THE COURT: Thank you very much, Officer Lloyd. You
2 may step down.

3 (Witness excused from stand)

4 THE COURT: Solicitor.

5 SOLICITOR: At this time we'd call Officer Jason
6 Bazen.

7 JASON BAZEN, being duly
8 sworn, testified as follows:

9 CLERK: Please be seated and state your name for the
10 record.

11 WITNESS: Jason Scott Bazen.

12 DIRECT EXAMINATION

13 BY SOLICITOR:

14 Q. And where do you work?

15 A. Florence County Sheriff's Office.

16 Q. How long have you worked for law enforcement?

17 A. Nine years.

18 Q. All with the Florence County Sheriff's Office?

19 A. Yes, sir.

20 Q. Were you employed as a patrol officer or in some other
21 aspect?

22 A. Currently or at the time of this?

23 Q. At the time of this.

24 A. I was on the PACE Team which is investigations of
25 crimes in the community.

J. BAZEN ON DIRECT

1 Q. Investigations of crimes in the community?

2 A. Yes, sir.

3 Q. Are you still with the PACE Team?

4 A. Yes, sir.

5 Q. Okay. How did you happen to be on the scene? Let
6 me ask you this first. Did you report to a scene of a
7 shooting that night?

8 A. I did.

9 Q. How did you get called out and what place did you re-
10 port to?

11 A. We were working around there and we heard a call on
12 the radio that we needed to respond and assist.

13 Q. And at the time did you all respond to shootings --
14 the PACE Team?

15 A. Yes, sir.

16 Q. And when you got there, what were the things you were
17 anticipating you would do?

18 A. Assist with crowd control and be there if a crowd were
19 to gather, and try to secure the scene to make sure it was
20 not disturbed.

21 Q. All right. About what time did you respond?

22 A. Approximately eight forty or eight forty-one.

23 Q. And where exactly did you respond to?

24 A. Tara Village, the intersection of Candy and
25 Leigh Lane.

J. BAZEN ON DIRECT

1 Q. Okay. When you got there, what did you find?

2 A. Many law enforcement officers were already on the
3 scene. It was just a few moments after the initial call
4 is when we arrived on the scene.

5 Q. Okay. So you all got there pretty quick?

6 A. Yes, sir.

7 Q. And when you got there, what did you begin to do?

8 A. We began to assist with the crime scene and to secure
9 the area, keep people out of the area.

10 Q. How many people did it take to put up the crime scene
11 tape and protect the scene?

12 A. I don't -- it was around a large area, and there was
13 a crowd that was starting to gather when we arrived on the
14 scene.

15 Q. All right. As the deputies, did you all stand close
16 together or spread out or what did you do?

17 A. When we arrived we just kind of maintained the outer
18 perimeter. We were spread out around the crime scene.
19 There were a number of officers there.

20 Q. And did you see anything in particular or notice any-
21 thing in particular out there?

22 A. Yes, sir. EMS had come and left, and they had not
23 covered the victim's body. To preserve his identity or for
24 the sake of the family after we were there we called EMS
25 who were dispatched and responded back to the location.

J. BAZEN ON DIRECT

1 We protected the scene there until they came and cov-
2 ered the victim's body.

3 Q. And did you have a family member there, or was it
4 something you just thought needed to be done?

5 A. At the time it was just something I thought needed
6 to be done. It was a pretty gruesome scene, him laying
7 out there in the street. I was just trying to show respect
8 for the victim.

9 Q. What did -- what was the length of time that you spent
10 out there on that scene?

11 A. I was there from approximately eight thirty or eight
12 forty until about one twenty in the morning.

13 Q. One twenty in the morning?

14 A. Yes, sir.

15 Q. And at one thirty in the morning, did you -- is that
16 when you left the scene?

17 A. Yes, sir.

18 Q. And what did you do when you left?

19 A. The roll back responded to retrieve a vehicle. The
20 moped and vehicle were loaded up and taken from there.

21 Q. What kind of vehicle was it?

22 A. It was a Lincoln Town Car. The moped and the ve-
23 hicle was there.

24 Q. Okay.

25 A. At the time I was driving a pickup truck so we put

J. BAZEN ON DIRECT

1 the vehicle in the back of my truck and took it over to
2 the impound.

3 Q. All right. When you got to the impound what did you
4 do?

5 A. When we arrived at the impound the wrecker was unable
6 to, or the wrecker driver was unable to get the car off
7 or to roll back off the truck.

8 We thought maybe the keys may be inside the car some-
9 where and while we were looking for the keys we observed
10 a holster and pistol in the glove box.

11 Q. Do you know what kind of pistol it was?

12 A. I do not. I had no idea.

13 Q. What did you do when you found the pistol in the glove
14 box?

15 A. I immediately stopped and contacted Lieutenant Street.

16 Q. What was the purpose of doing that?

17 A. . .

18 Q. Were you going to leave the car out at impound with
19 the gun in it?

20 A. No, sir. That way the -- the firearm had to be re-
21 moved so we could put it in evidence for safekeeping at
22 that time.

23 Q. All right. You didn't do that particular job, did
24 you?

25 A. No, sir. Lieutenant Street advised me that Corporal
166

J. BAZEN ON DIRECT

1 Barnes would be responding out there to retrieve the fire-
2 arm.

3 Q. All right, and did you stay on the scene until he
4 came?

5 A. I did.

6 Q. All right. Is there anything else you did in regards
7 to this incident that night?

8 A. No, sir.

9 Q. Thank you, Officer Bazen. Please answer any question
10 Ms. Parham may have.

11 THE COURT: Thank you. Ms. Parham?

12 MS. PARHAM: Thank you.

13 CROSS EXAMINATION

14 BY MS. PARHAM:

15 Q. Who was the owner of the Lincoln Town Car?

16 A. I do not know.

17 Q. All right. It was located at Candy Lane. Cor-
18 rect?

19 A. I can't tell you.

20 Q. Well, it was located on the roadway where the shoot-
21 ing took place. Correct?

22 A. I did not see the Lincoln in the roadway, no, maam.

23 Q. Where did you see the Lincoln?

24 A. When the rollback was loading it.

25 Q. Okay, so it was nearby where you were?

J. BAZEN ON CROSS

1 A. Yes, maam.

2 Q. And you were by the crime scene?

3 A. Yes, maam.

4 Q. Nothing further.

5 THE COURT: Redirect?

6 SOLICITOR: Nothing further, Your Honor. We'd ask
7 that he be released from the subpoena.

8 THE COURT: Thank you very much. You may step down.
9 Any objections to the officer being released?

10 MS. PARHAM: No, Your Honor.

11 THE COURT: You are released.

12 (Witness excused)

13 THE COURT: The next witness would be Mikel McFadden.

14 MIKEL McFADDEN, being duly
15 sworn, testified as follows:

16 CLERK: Please have a seat and state your name for
17 the record.

18 WITNESS: Mikel McFadden.

19 DIRECT EXAMINATION

20 BY SOLICITOR:

21 Q. Would you please tell us where you work and in what
22 capacity?

23 A. I'm with the Florence County Sheriff's Office, and I
24 am a shift sergeant.

25 Q. How long have you been working for the Sheriff's
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M. McFADDEN ON DIRECT

1 Office?

2 A. Eleven years.

3 Q. Do you have any prior law enforcement experience?

4 A. No.

5 Q. How long have you been a shift sergeant?

6 A. Three years.

7 Q. On June 4, 2014, were you working on patrol that day?

8 A. Yes, I was.

9 Q. And were you working as a sergeant on the shift?

10 A. Yes, I was.

11 Q. Who was your Lieutenant?

12 A. Wilson Powell

13 Q. And who were some of the officers working under you
14 on your shift?

15 A. Uh, Maurice Lloyd, Deputy Andy Hardin -- during that
16 period of time.

17 Q. Okay. All right, and you had occasion to respond to
18 a scene where there was a shooting that night before you
19 came?

20 A. Yes, I was. Yes, I did.

21 Q. All right, and can you please tell the jury how you
22 received the call or how you responded and where?

23 A. I received a call there had been a shooting on Candy
24 Lane in Florence at the intersection of Leigh Lane, and
25 we had a suspect.

M. McFADDEN ON DIRECT

1 That there was someone who was shot laying in the
2 roadway, and we also had the suspect who was still on the
3 scene.

4 So we responded to the location. When I got there I
5 did see a suspect laying in the roadway.

6 Q. All right, and how was he laying?

7 A. Face down and leaning toward his moped.

8 Q. Okay. Did you go and do a close inspection of him or
9 not?

10 A. Not at that time. I went out to look at him and I
11 saw some shell casings laying on the ground so I secured
12 the shell casings that may be involved in the case.

13 Q. How did you secure them?

14 A. I stayed there in the area so no one would contam-
15 inate them.

16 Q. Okay.

17 A. So we could mark off the casings and nobody would see
18 them or lean down and contaminate them.

19 Q. Okay, they could step on them?

20 A. Step on them -- someone could do that, and at this
21 time we got some crime scene tape and tore pieces off to
22 put down there so everyone could see.

23 Q. Okay, and what else did you all do in that area?

24 A. We just secured the area so nobody could get in and
25 contaminate it or anything. We just kept it as secure as

M. McFADDEN ON DIRECT

1 we could until forensics could arrive on the scene and
2 take possession of them.

3 Q. All right. Did anybody enter that crime scene that
4 wasn't supposed to?

5 A. No. Not to my knowledge.

6 Q. All right, and did you stay there until forensics got
7 there?

8 A. I stayed there to keep it secured until we got backed
9 up on calls and after Corporal Nunn got there.

10 Q. About how many officers were out there total?

11 A. I couldn't tell you that.

12 Q. Was there a lot?

13 A. Yes, a good bit.

14 Q. Any other agencies, law enforcement agencies, out
15 there?

16 A. I think the Highway Patrol.

17 Q. Okay, and were they assisting?

18 A. I'm not sure.

19 Q. Doing traffic?

20 A. Could have been.

21 Q. I show you what's been marked for identification as
22 State's Exhibit 29. Do you recognize that?

23 A. This is crime scene tape we put out to mark an area.

24 Q. Until forensics can get there?

25 A. Yes.

M. McFADDEN ON DIRECT

1 SOLICITOR: Your Honor, I would ask to make State's
2 Exhibit 29 in evidence at this time.

3 THE COURT: Ms. Parham.

4 MS. PARHAM: No objection.

5 THE COURT: State's 29 in evidence.

6 (Photo admitted in evidence without objection as
7 State's Exhibit 29)

8 BY SOLICITOR:

9 Q. About how many houses there -- let me ask this. Was
10 there more than one house that was involved in the crime
11 scene?

12 A. More than one house?

13 Q. Yeah. In that area, was there more than one house?

14 A. Yes, there were several houses on both sides of the
15 street.

16 Q. All right, and in State's Exhibit 29 what is lying
17 there?

18 A. The moped.

19 Q. Is that where the victim was?

20 A. Yes..

21 Q. Okay, and this is before or after forensics got there
22 and started processing the scene?

23 A. I believe forensics had arrived by this time.

24 Q. Okay, and all those little yellow specks are what?

25 A. Crime scene tape.

M. McFADDEN ON DIRECT

1 Q. Okay.

2 A. Marking where the casings are in the roadway.

3 Q. Okay. All right.

4 SOLICITOR: Your Honor, I ask permission to show this
5 to the jury.

6 THE COURT: Yes, sir, you may.

7 (State's Exhibit 29 published to the jury)

8 BY SOLICITOR:

9 Q. Will you please answer any questions that Ms. Parham
10 has?

11 A. I sure will.

12 THE COURT: Thank you. Ms. Parham.

13 CROSS EXAMINATION

14 BY MS. PARHAM:

15 Q. Corporal Barnes took crime scene photos, is that cor-
16 rect?

17 A. I can't answer that question.

18 Q. But you didn't take that photograph?

19 A. No, I didn't.

20 Q. It was obviously someone with forensics?

21 A. Yes.

22 Q. Nothing further.

23 THE COURT: Redirect, Solicitor?

24 SOLICITOR: No, Your Honor.

25 THE COURT: Thank you. You may step down.

1 (Witness excused from stand)

2 SOLICITOR: For our next witness, Your Honor, we'd
3 call Eric Barnes.

4 ERIC BARNES, being duly
5 sworn, testified as follows:

6 CLERK: Please have a seat and state your name for
7 the record.

8 WITNESS: Corporal Eric Wayne Barnes, Florence
9 County Sheriff's Office.

10 DIRECT EXAMINATION

11 BY SOLICITOR:

12 Q. Corporal Barnes, how are you today?

13 A. Fine. How are you?

14 A. Good. What is your job that you do with the Sher-
15 iff's Office?

16 A. I'm a crime scene investigator.

17 Q. A crime scene investigator -- is that kind of like
18 CSI on TV?

19 A. Yes, sir.

20 Q. Is it really like CSI or just sort of?

21 A. Just sort of. TV sort of speeds things up a little
22 bit.

23 Q. TV is a little bit fiction?

24 A. Yeah, a little bit.

25 Q. But you're the real deal?

E. BARNES ON DIRECT

1 A. I am.

2 Q. How long have you been working at crime scenes?

3 A. Probably about three or four years.

4 Q. Okay. Do you have any prior law enforcement experi-
5 ence?

6 A. Ten or eleven years.

7 Q. Total?

8 A. Yes, sir.

9 Q. What did you do before you got to crime scene?

10 A. I was a patrol deputy.

11 Q. How long were you a patrol deputy?

12 A. About five or six years, and I was with the City
13 before that a couple of years.

14 Q. With the City of Florence?

15 A. City of Manning.

16 Q. City of Manning?

17 A. Yes.

18 Q. Did you receive a call to go to a crime scene on June
19 4th of 2014?

20 A. That's correct.

21 Q. And where was that crime scene that you were called
22 to respond to?

23 A. At Candy Lane.

24 Q. Where is that located?

25 A. In Tara Village.

E. BARNES ON DIRECT

1 Q. Is that in Florence County?

2 A. Yes, sir.

3 Q. About what time did you receive the call, if you
4 know that?

5 A. Twenty forty-one hours.

6 Q. Twenty forty-one hours?

7 A. That's correct.

8 Q. All right, I'm a non-military type so what would that
9 be?

10 A. Ten forty-one.

11 Q. Ten forty-one. Okay, and is that what time you got
12 the call or is that what time you arrived on the scene?

13 A. That was the time I got the call.

14 Q. Okay. How quickly did you get to the scene?

15 A. I got on the scene at eleven o'clock.

16 Q. All right, and you said twenty forty-one?

17 A. Yes, sir.

18 Q. You said that's ten forty-one or is that eight forty-
19 one?

20 A. Ten forty-one.

21 Q. There's twenty-four hours in a day, right?

22 A. That's correct.

23 Q. All right, and let's do the math. You've got twenty-
24 four hours and that would be twelve o'clock at night?

25 A. That's correct.

E. BARNES ON DIRECT

1 Q. So that would be eight forty-one, wouldn't it?

2 A. That's correct.

3 Q. You've got as much military experience as I do?

4 A. Yeah, I guess so.

5 Q. I need to be sure of that. Little details make a dif-
6 ference.

7 So you got out there about eight forty-one?

8 A. That's correct.

9 Q. So around eight forty-one when you arrived on the
10 scene or shortly thereafter?

11 A. That's correct.

12 Q. Okay, and when you got on the scene, what did you
13 find when you got there?

14 A. Um, I met with Deputy Hardin and he told me he had
15 a -- there was a . . .

16 MS. PARHAM: Objection to what he told him.

17 THE COURT: All right. Sustained.

18 BY SOLICITOR

19 Q. Just tell us who you talked to and what you did?

20 A. I talked to Deputy Hardin and noticed there was two
21 subjects in a car.

22 Q. Okay.

23 A. Separated.

24 Q. Separated -- and what else did you notice there?

25 A. Can you rephrase the question?

E. BARNES ON DIRECT

1 Q. You noticed two subjects and they are separated?

2 A. That's correct.

3 Q. And they were in custody, is that correct?

4 A. That's correct.

5 Q. What else did you notice out there on the scene?

6 A. I saw a moped with a white sheet over it and a subject
7 under it, shell casings, several guns.

8 Q. All right. When you come to a crime scene like that
9 do you do that solo or do you do that in partnership with
10 other officers?

11 A. It all depends.

12 Q. How about where there's a murder?

13 A. We usually have two or more.

14 Q. Two or more?

15 A. Yes, sir.

16 Q. And when you were at the crime scene, what other --
17 did you see Officer Lloyd?

18 A. I did.

19 Q. Who were the other deputies that worked crime scene
20 with you?

21 A. Sergeant Andrew Clendenin and Tim Huggins.

22 Q. All right, and when you get to a crime scene gener-
23 ally who gives the specifics of a crime scene?

24 Explain to this jury in general when you get to a
25 crime scene what are you trying to do and how do you go

E. BARNES ON DIRECT

1 about doing it?

2 A. First of all, I try to preserve the crime scene. Um,
3 I sit there and try to observe the crime scene, see what's
4 going on, where everything is at by location to try to get
5 me an idea of where everything is at and where I need to
6 start.

7 Like I said, you record the evidence by photographs,
8 do tests if called for for gunshot residue. We collect evi-
9 dence and pretty much contain the integrity of the scene.

10 Q. Now, what was done to preserve the integrity of this
11 crime scene by law enforcement in general?

12 A. Law enforcement out there set up the perimeter of the
13 crime scene with tape to keep people out.

14 Q. Was anything done to block the roadway?

15 A. Yeah, there were police cars blocking the roadway and
16 keep the crowd back.

17 Q. Okay, and did they have the headlights shining?

18 A. They did, yes.

19 Q. Did you have any other lighting that you would use
20 because this was nighttime, wasn't it?

21 A. That's correct.

22 Q. What other lighting did you use out there on the scene?

23 A. Flashlight and camera flashes.

24 Q. Okay. All right, and when you got there I want you
25 to tell us -- break down what you did. You talked to the

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1 other officers and got debriefed and found out what you
2 had?

3 A. That's correct.

4 Q. Did you observe -- I think you said you observed what
5 you had on the scene?

6 A. That's correct.

7 Q. All right. Can you tell this jury what you began to
8 do to document and record what the crime scene was like?

9 A. Um, by then . . .

10 Q. Once you make your own review, looked it over, you
11 eye-balled it, and then you began to do what?

12 A. First of all, I began to perform gunshot residue
13 tests on both subjects out there. Then I began to take
14 photographs of the scene, the shell casings and other
15 evidence.

16 Q. All right. Let's back up to the gunshot residue test
17 and you said you did that on both subjects?

18 A. That's correct.

19 Q. And who were those two subjects?

20 A. It was Cory Allen and --- Cory Allen and Frederick
21 Allen.

22 Q. All right. Now, when you do a gunshot residue test,
23 what are you looking for?

24 A. There are three factors that a gunshot residue kit
25 can test for. One is whether you fired a gun or not, and

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1 it tests for lead and barium and something else.

2 Q. Antimony?

3 A. That's correct.

4 Q. Now, how do you perform the GSR kit and the test on
5 the individual?

6 Explain that to the jury, what you do and how
7 it's done.

8 Q. Well, you take the test kit and you sit there and you
9 take mold capsules and do the palms, the back of the hand
10 -- of each hand, left to right, and these are sealed and
11 sent to SLED for further testing for gunshot residue.

12 Q. Okay, and what do you -- how do you collect the mat-
13 ter and put it in -- what do you say you put it in?

14 A. A capsule with a sticky strip, and you run it on the
15 skin so it will pick up any kind of particle that is on
16 there.

17 Q. And once you did the GSR test on Mr. Cory Allen, tell
18 us how you did that?

19 A. Well, I had them step out the police car and I did
20 -- I filled out the sheets with the names and all of that
21 stuff, and then I performed the kit on both hands -- both
22 of his hands, left and right hand.

23 Q. Okay, and that's with the sticky stuff?

24 A. Yes, sir.

25 Q. You dabbed it on his hands in different places?

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1 A. That's correct.

2 Q. And then you put it in a capsule and seal it up?

3 A. That's correct.

4 Q. And submitted it to SLED For analysis?

5 A. That's correct.

6 Q. Okay. You did this on Cory Allen and you did it on
7 Frederick Allen as well?

8 A. Yes, sir.

9 Q. Which did you do first?

10 A. I did Cory Allen.

11 Q. Okay, and did you -- do you ever do gunshot residue
12 kits on victims?

13 A. I do it on the victims as well.

14 Q. Why do you do it on victims?

15 A. Just standard protocol. To see if they may have
16 fired a gun as well.

17 Q. Okay, and did you do one on the victim here?

18 A. That's correct.

19 Q. How did you do that and how quickly did you do that?

20 A. You go over to the sheet that covers him.

21 Q. Okay.

22 A. I did the subjects first and took care of them.

23 Q. Okay. You did them and then a little later on you
24 did Mr. Windham?

25 A. That's correct.

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1 Q. How did you do Mr. Windham's GSR test?

2 A. I went to where he was and did the same thing with the
3 kit. Did both sides of his hands and palms, left to right.

4 Q. Okay. Now, you submitted that to SLED as well?

5 A. Yes, sir.

6 Q. Okay, once you had gathered these kits, did you take
7 them to SLED itself or do you log them in somewhere first?

8 A. I logged them into evidence first.

9 Q. In your evidence room?

10 A. Yes, sir.

11 Q. Where is the evidence room located at?

12 A. Florence County Sheriff's Office.

13 Q. And would you explain to the jury how secure that evi-
14 dence room is?

15 A. It's very secure. It has two doors, steel front doors
16 and cages.

17 Q. I'm sorry.

18 A. I said it's two steel doors and a brick wall and that
19 people have limited access to.

20 Q. You can't go in there unless you're supposed to be
21 in there?

22 A. That's correct.

23 Q. So you gathered up evidence and logged it in there un-
24 til it can be taken to SLED at some later day?

25 A. That's correct.

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1 Q. Okay. All right. Now, you did gunshot residue tests
2 on Cory and Frederick Allen?

3 A. Correct.

4 Q. What was the next step you took?

5 A. I walked the scene to see what was in the same area
6 with the different shell casings.

7 Q. And after you walked through that, what did you do?

8 A. I began taking photographs.

9 Q. Okay. Now, what angles -- how many angles do you
10 take photographs of?

11 A. All angles.

12 Q. Three hundred and sixty degrees?

13 A. Yes, sir.

14 Q. Okay, so did you take a lot of pictures?

15 A. A lot of pictures.

16 Q. All right. When you walked through and looked around
17 to see what you saw, what you could see with your eyes in
18 your first walk-through, did you do that with somebody or
19 just by yourself?

20 A. There were several -- I had Andrew Clendenin with me
21 as well. We both walked together.

22 Q. You walked together?

23 A. Yes.

24 Q. When you do that, do you make notes at that time, or
25 do you come back and make notes?

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1 A. I would come back and make notes.

2 Q. Okay. So you walk through it and you pull out your
3 camera and start taking pictures?

4 A. That's correct.

5 Q. All right. Did Clendenin take any pictures at the
6 scene or were you doing all the photographs?

7 A. I did the photographs.

8 Q. Was he present with you while you were taking photo-
9 graphs?

10 A. Yes, he was.

11 Q. Before you take photoraphs, do you go through to mark
12 anything?

13 A. We do. Usually we take photographs before we mark
14 anything, where anything is, and then we take numbered yel-
15 low tower markers and we mark each piece of evidence.

16 Q. Did you say tower markers?

17 A. Tower markers.

18 Q. And what are tower markers?

19 A. They are little things -- they are triangles with a
20 scale on them that are numbered.

21 Q. Okay. Like one through 12?

22 A. Yes, sir.

23 Q. And did you do that here?

24 A. I did.

25 Q. And then after you put up tower markers, do you take

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1 photographs again?

2 A. Yes, sir.

3 Q. Okay. Now, what did you find when you finished put-
4 ting tower markers on the scene?

5 A. Well, at tower marker number one was a nine milli-
6 meter clip magazine containing several nine millimeter
7 rounds.

8 Q. Okay.

9 A. Tower marker number two was a Ruger P95 nine milli-
10 meter handgun, and number three I marked a Lorschien BT 25
11 caliber handgun.

12 Number four was a Newport cigarette. Number five was
13 a PMC 25 caliber unfired round and number six, a 25 cali-
14 ber magazine containing PMC 25 caliber rounds.

15 Number 7 was a PMC 25 caliber unfired round, 8 was a
16 25 caliber unfired round, and 9 through 16 was a Federal
17 nine millimeter shell casing.

18 Q. When you say shell casing, you mean that's one that
19 has been fired?

20 A. That's correct.

21 Q. How many nine millimeter shell casings were there?

22 A. Eight.

23 Q. Eight?

24 A. Yes.

25 Q. Okay. Do you all make diagrams?

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1 A. We do.

2 Q. And who made the diagrams, you or Clendenin, or did
3 you all do that together?

4 A. Clendenin.

5 Q. And how do you all make the diagrams. Do you just
6 kind of draw it out or what?

7 A. Well, I have a measuring wheel to measure distance
8 from the different points. I took measurements from points
9 as we laid them down, and then later on converted them to a
10 scale model of the incident.

11 Q. Okay, and you all put down what the items were?

12 A. That's correct.

13 Q. You took pictures out there at the scene, is that cor-
14 rect?

15 A. That's affirmative.

16 Q. And you took pictures of other places as well, didn't
17 you?

18 A. That's correct.

19 Q. I'm going to show you what's been marked for identi-
20 fication as State's Exhibits 30 through 43, and ask you,
21 first, can you identify them, and, second, if you took the
22 photographs?

23 A. I took these photographs.

24 Q. I show you what's been marked State's Exhibit 29, al-
25 ready admitted into evidence. Who took that photograph?

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1 A. I did.

2 Q. Okay. All right, let's -- I want to ask you about
3 State's Exhibit 21. I show you what's marked as State's
4 Exhibit 21. Tell me if you know what those are?

5 A. They were three GSI kits.

6 Q. And who photographed that?

7 A. I did.

8 Q. Okay. Frederick Nettles Allen, Cory Nettles Allen
9 and Edward J. Windham, is that right?

10 A. Yes, sir.

11 Q. And you testified that you logged these into evidence?

12 A. That's correct.

13 Q. With the Florence County Sheriff's Office?

14 A. That's correct.

15 Q. And you said they were sent to the SLED lab?

16 A. That's correct.

17 Q. Okay. State's Exhibit 29 -- the jury has seen this.
18 Can you tell us why you took that picture?

19 A. . . .

20 Q. What is there?

21 A. I took a picture of the perimeter scene as is. There
22 were several pieces of yellow crime scene tape marking some
23 shell casings, so that nobody would step on them
24 there.

25 Q. Okay. All right, and when a law enforcement officer
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1 comes and he sees yellow out there on a crime scene, what
2 does that tell him?

3 A. That there is a crime scene there and that's a piece
4 of evidence; to be careful not to step on it.

5 Q. Don't tamper with it?

6 A. That's correct.

7 Q. Okay. I want to show you State's Exhibit 30 through
8 43.

9 A. . .

10 SOLICITOR: I would like to move them in evidence at
11 this time.

12 THE COURT: Ms. Parham.

13 MS. PARHAM: No objection.

14 THE COURT: State's 30 through 43 admitted without
15 objection.

16 (Photographs admitted in evidence without objection as Ex-
17 hibits 30 through 43 for the State)

18 SOLICITOR: Your Honor, I would ask permission to ask
19 the witness to step down in front of the jury.

20 THE COURT: All right, and please keep your voice up.

21 WITNESS: OKay.

22 BY SOLICITOR:

23 Q. I'm going to ask you to stand over here so your voice
24 will carry and the Court Reporter can hear you. If you'll
25 stand right here.

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1 A. All right.

2 Q. I show you State's Exhibit 30. Can you show that to
3 the jury and tell them what that is?

4 A. . .

5 Q. And tell them why you took that picture and what it
6 depicts?

7 A. This right here shows the tower markers that show where
8 each of the shell casings are.

9 Q. Are those the same shell casings that were marked by
10 the crime scene tape in the earlier picture?

11 A. Yes, sir.

12 Q. Did you look around out there to see if there were
13 any others?

14 A. Yes, we did.

15 Q. You and who else?

16 A. Me and Clendenin.

17 Q. Okay. All right, and those are all eight nine milli-
18 meter shell casings?

19 A. That's correct.

20 Q. I'm going to show you State's Exhibit 31 and ask you
21 to please show this to the jury and please explain to them
22 what that is and why you took that picture?

23 A. (inaudible)

24 THE COURT: Speak up a little bit for me.

25 A. I'm sorry. These right here were the Ruger casings --

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1 not casings but other rounds.

2 Q. Unfired bullets?

3 A. Unfired bullets and magazine.

4 Q. And what kind of bullets were those that were not
5 fired?

6 A. They was three PMC 25 caliber unfired rounds. There
7 is a magazine with three PMC 25 caliber unfired rounds and
8 a Ruger P95 millimeter handgun and a nine millimeter clip
9 containing four nine millimeter rounds.

10 THE COURT: Solicitor, would you hand them up when
11 you are finished with them?

12 SOLICITOR: Yes, sir.

13 BY SOLICITOR:

14 Q. I want to show you State's Exhibit 32 and it is very
15 similar to State's Exhibit 30. If you would explain to
16 the jury what that depicts?

17 A. . . .

18 Q. And please keep your voice up.

19 A. This shows where the tower markings are and the shell
20 casings in the perimeter exactly as they were.

21 Q. And this is after law enforcement had the perimeter
22 surrounded?

23 A. That's correct.

24 Q. I show you State's Exhibit 33. Can you explain what
25 that scene depicts?

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1 A. It depicts an overall view there.

2 Q. Does this show another angle of the tower markers and
3 shell casings?

4 A. Yes.

5 Q. And the perimeter set up around there?

6 A. Yes, the entire scene.

7 Q. And does it show where the shell casings were located
8 there?

9 A. That's correct.

10 Q. I show you State's Exhibit 34, and explain to us why
11 you took that different angle of that picture?

12 A. We always take a close up or a little bit closer view.

13 Q. Does that show where the shell casings were and where
14 the moped was located?

15 A. That's correct.

16 Q. And State's Exhibit 35 is a closer view of what?

17 A. The moped, the magazines and unfired rounds -- where
18 they were.

19 Q. Does this show how close those were to the moped?

20 A. That's correct.

21 Q. I show you State's Exhibit 36. Can you tell the jury
22 what that depicts and why you took that picture?

23 A. The two towers where the handgun and magazine was lo-
24 cated.

25 Q. Was that magazine full or not?

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1 A. It wasn't really full. There was rounds inside.

2 Q. Did the Ruger nine millimeter have a full clip in it?

3 A. It did.

4 Q. Was that clip full?

5 A. The clip was full.

6 Q. So that clip was full and the other clip was partially
7 empty?

8 A. That's correct.

9 Q. Okay.

10 SOLICITOR: If you would give me one second.

11 THE COURT: Yes, sir.

12 BY SOLICITOR:

13 Q. I want to be sure as far as the two clips. That hand-
14 gun had a full clip in it?

15 A. Yes.

16 Q. And there was another clip right there close to it . .

17 MS. PARHAM: Your Honor, I would just object to lead-
18 ing, Your Honor.

19 THE COURT: Rephrase your question.

20 Q. What about the clip close by . . .

21 A. And it was partially empty.

22 Q. And was the clip out of the gun?

23 A. That's correct.

24 Q. But partially empty?

25 A. Correct.

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1 Q. How about the clip in the gun?

2 A. It was full.

3 Q. Completely full?

4 A. Right.

5 Q. State's Exhibit 37 -- what does that depict?

6 What kind of gun is that and where was that located?

7 A. This was a 25 caliber handgun.

8 Q. How close was it?

9 A. It was pretty close to the moped.

10 Q. Okay. Did you find any spent shell casings from the

11 25?

12 A. No, sir.

13 Q. I mean -- yeah, the 25.

14 I show you State's Exhibit 38, and please tell the

15 jury what that depicts?

16 A. This -- that would be a 25 caliber unfired round.

17 Q. How many other unfired 25 caliber rounds were out
18 there?

19 A. Six total. Three in the magazine and three on the
20 ground loose.

21 Q. And are there two different pictures like this from a
22 different angle?

23 A. That's correct.

24 Q. Okay. I show you State's Exhibit 39. Can you tell
25 us what that is?

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1 Can you tell us what those two items are that are
2 depicted there?

3 A. Twenty-five caliber unfired rounds in the magazine
4 and three on the site.

5 Q. That's the second of the three unfired rounds?

6 A. That's correct.

7 Q. How many rounds were on that clip?

8 A. Three.

9 Q. I show you State's Exhibit 40. What is that a closer
10 view of?

11 A. The twenty-five caliber magazine.

12 Q. How close was that to the moped?

13 A. I'd have to look at the chart to get an approximate
14 amount of feet it was. It was in close proximity.

15 Q. State's Exhibit 41 -- what is that?

16 A. That is the same thing.

17 Q. Just from a different angle?

18 A. A different angle.

19 Q. What does that show?

20 A. A cigarette and the magazines laying on the ground.

21 Q. And that -- in that picture, was that from the other
22 end with the headlights or backed up?

23 A. Toward the headlights where the spent shell casings
24 were.

25 Q. Okay.

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1 A. The distance from there to the -- from the headlights
2 to where the spent shell casings were.

3 Q. State's Exhibit 42. Tell us what it shows. If you'd
4 describe that to the jury?

5 A. The Ruger and the magazine. The nine millimeter where
6 the victim was located.

7 Q. The nine millimeter?

8 A. That's correct.

9 Q. What else? Is there another weapon depicted on there?

10 A. Um, there were three -- a twenty-five caliber handgun
11 and . . .

12 Q. Point out where that is.

13 A. Right here. Tower marker three.

14 Q. And in what direction the nine millimeter shell cas-
15 ings? Was it at the top of this picture or at the bottom
16 of this picture?

17 A. Right there where the headlights is. You can see the
18 shell casings right there, way back here.

19 Q. So the nine millimeter shell casings were way back
20 here?

21 A. That's correct.

22 Q. And the nine millimeter gun and magazine were here?

23 A. That's correct.

24 Q. State's Exhibit 43.

25 A. This is an image of the Ruger nine millimeter and the
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1 twenty-five handgun where the victim was, off a little bit.

2 Q. Thank you. You can have a seat for right now.

3 SOLICITOR: Your Honor, we'd ask that Exhibit 21 be
4 entered into evidence at this time.

5 THE COURT: Ms. Parham.

6 MS. PARHAM: No objection.

7 THE COURT: State's 21 is admitted without objection.

8 (Gunshot residue kits admitted in evidence without
9 objection as State's Exhibit 21)

10 BY SOLICITOR:

11 Q. I'm going to show you what's been marked State's Ex-
12 hibit 28 for identification. Tell me what these are?

13 A. Shell casings from the abdomen of Edward Windham.

14 Q. How many projectiles from the abdomen?_____

15 A. One from the abdomen, one from the lower abdomen.

16 Q. And what caliber were those?

17 A. Nine millimeter.

18 Q. Okay, and what else is in there with the two projec-
19 tiles?

20 A. A nine millimeter shell casing -- several shell cas-
21 ings.

22 Q. Are those all the shell casings and did you gather
23 those?

24 A. That's correct.

25 Q. Did you go to the autopsy?

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1 A. I did.

2 Q. When the two projectiles were removed from the abdo-
3 men of Mr. Windham, did you collect those?

4 A. I did from the pathologist, yes.

5 Q. Okay, and you brought them back and did what with
6 them?

7 A. I logged them into the evidence room.

8 Q. For what purpose?

9 A. For evidentiary purposes.

10 Q. To go to SLED?

11 A. To be tested -- sent to SLED for testing.

12 SOLICITOR: At this time, Your Honor, we'd move State's
13 Exhibit 28 into evidence.

14 THE COURT: Ms. Parham.

15 MS. PARHAM: No objection.

16 THE COURT: Twenty-eight is in evidence.

17 (Projectiles admitted in evidence without objection
18 as State's Exhibit 28)

19 BY SOLICITOR:

20 Q. I show you what's been marked State's Exhibit 27, and
21 can you tell me what those are, and who collected those?

22 A. PMC rounds -- PMS 25 auto rounds, nine millimeter
23 shell casing.

24 Q. And what were done with those?

25 A. The nine millimeter was sent to SLED.

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1 Q. So what is remaining in there?

2 A. The twenty-five auto rounds.

3 Q. Were those spent?

4 A. They were unfired rounds.

5 SOLICITOR: Your Honor, we'd move State's Exhibit 27
6 into evidence.

7 MS. PARHAM: No objection.

8 THE COURT: Number 27 for the State is admitted.

9 (Twenty-five caliber bullets admitted without objec-
10 tion as State's Exhibit 27 in evidence)

11 BY SOLICITOR:

12 Q. I'm going to show you State's Exhibit 25, but first
13 I want to show you State's Exhibit 23. Can you look at
14 this and tell me what this is and who collected it?

15 A. It's a twenty-five caliber handgun and magazine and
16 rounds. I collected these.

17 Q. At the scene?

18 A. That's correct.

19 Q. What did you do with them after you collected them?

20 A. They were logged into evidence.

21 Q. In the Sheriff's Office evidence room?

22 A. That's correct.

23 SOLICITOR: Your Honor, at this time we'd move State
24 Exhibit 23 into evidence.

25 MS. PARHAM: No objection.

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1 THE COURT: State's 23 is in evidence.

2 (Twenty-five handgun, magazine and rounds admitted
3 in evidence without objection as State's Exhibit 23)

4 BY SOLICITOR:

5 Q. I show you State's Exhibit 22. Can you identify this
6 for me?

7 A. Yes, sir.

8 THE COURT: State's Exhibit 23 is a firearm?

9 SOLICITOR: Yes, sir.

10 THE COURT: What is the condition of that firearm? Is
11 it loaded or do you have a gun lock in it?

12 A. It does not have a round in the chamber.

13 THE COURT: Is it semi-automatic?

14 A. Yes, sir. It is entirely secured and it is wrapped.

15 THE COURT: Thank you.

16 BY SOLICITOR:

17 Q. I show you State's Exhibit 22. Can you identify that?

18 A. Yes, sir. It's the Ruger nine millimeter.

19 Q. Is it loaded?

20 A. It is unloaded. It is secured, a semi-automatic.

21 Q. What else is in there with it?

22 A. It's got two magazines.

23 Q. And are they empty now?

24 A. They are empty.

25 Q. Who emptied them?

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1 A. I did.

2 Q. And where were these two magazines found?

3 A. At the scene.

4 Q. Where was one of them?

5 A. One was in the gun and one was on the ground nearby.

6 Q. And is that the two magazines where you testified one
7 was full and one was partially empty?

8 A. That's correct.

9 Q. All right.

10 SOLICITOR: Your Honor, at this time we'd move State's
11 Exhibit 22 in evidence, the nine millimeter and magazines.

12 MS. PARHAM: No objection.

13 THE COURT: State's 22 is in evidence.

14 (Weapon and magazines admitted in evidence without
15 objection as State's Exhibit 22)

16 BY SOLICITOR:

17 Q. I show you State's Exhibit 24. What are those?

18 A. Firearm magazine and six nine millimeter rounds.

19 Q. Who collected those?

20 A. That was me.

21 Q. And that the magazine here that was in there?

22 A. Correct.

23 Q. Okay, State's Exhibit 25. What is that?

24 A. Sixteen nine millimeter rounds.

25 Q. And where was that collected from?

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1 A. Magazines.

2 Q. In the Ruger?

3 A. That's correct.

4 SOLICITOR: Your Honor, I'd move State's Exhibits 24
5 and 25 in evidence at this time.

6 MS. PARHAM: Are these the ones found at the crime
7 scene?

8 WITNESS: Yes.

9 MS. PARHAM: No objection.

10 THE COURT: State's 24 and 25 are admitted.

11 (State's Exhibit 24, magazine and rounds, and State's
12 Exhibit 25, nine millimeter rounds, admitted in evidence
13 without objection)

14 BY SOLICITOR:

15 Q. I show you what has been marked for identification as
16 State's Exhibits 45 through 51, and ask you if you can
17 identify these for me first?

18 A. Yes, sir. Yes.

19 Q. Look at all of them.

20 A. Yes.

21 Q. Can you identify all of these?

22 A. That's correct.

23 Q. Who took these pictures?

24 A. I did.

25 SOLICITOR: Your Honor, at this time I would move

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1 State's Exhibits 45 through 51 into evidence.

2 THE COURT: Ms. Parham.

3 MS. PARHAM: No objection.

4 THE COURT: What are the numbers?

5 SOLICITOR: Forty-five through 51.

6 THE COURT: They're admitted.

7 (Photographs admitted in evidence without objection
8 as State's Exhibits 45 through 51)

9 SOLICITOR: I would ask permission to publish them to
10 the jury.

11 THE COURT: Yes, you may.

12 (Photographs shown to the jury)

13 BY SOLICITOR:

14 Q. State's Exhibit 50 -- can you please tell us why you
15 took that picture? What that is and where it was found.

16 A. This is a (inaudible) forty Galveston weapon that was
17 found inside the car that was brought to Candy Lane.

18 It was found in the glove box.

19 Q. Okay, that's a forty caliber?

20 A. That's correct.

21 Q. And that's different from the nine millimeter that
22 was found?

23 A. That's correct.

24 Q. Okay. What is this?

25 A. A picture of the holster with the weapon that was

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1 located inside the car.

2 Q State's Exhibit 47.

3 A. It's a picture of the gun and holster located inside
4 the glove box of the vehicle.

5 Q. Where the last two items in pictures were located?

6 A. Yes, that's correct.

7 Q. And State's Exhibit 48.

8 A. The house where the vehicle was located on Candy Lane.

9 Q. Is that Candy Lane?

10 A. I don't recall the number but I can look for it in
11 the . .

12 Q. That's all right. State's Exhibit 49 -- what does it
13 depict?

14 A. A picture where the car was parked outside the resi-
15 dence on Candy Lane where the gun was found inside the car.

16 Q. State's Exhibit 50.

17 A. A closer picture of the car beside the residence on
18 Candy Lane.

19 Q. State's Exhibit 51 -- what is that?

20 A. A picture of the victim.

21 Q. Corporal Barnes, I show you what's been marked as
22 State's Exhibit 52 for identification. You didn't take
23 this picture, did you?

24 A. I did not.

25 Q. Can you identify what's in the picture?

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1 A. A picture of the car.

2 Q. A picture of the same car?

3 A. Yes.

4 SOLICITOR: I would move State's Exhibit 52 into evi-
5 dence at this time.

6 THE COURT: Ms. Parham.

7 MS. PARHAM: No objection.

8 THE COURT: State's 52 is in evidence without objec-
9 tion.

10 (Photo of vehicle entered in evidence without objec-
11 tion as State's Exhibit 52)

12 BY SOLICITOR:

13 Q. Would you explain to the jury what State's 50 de-
14 picts?

15 A. A side view of the car. The car that was found on
16 Candy Lane.

17 (Brief pause)

18 Q. I want to show you State's Exhibits 53 through 63 for
19 identification.

20 A. Okay.

21 Q. I would ask you to look at each of all of these if
22 you would and tell me, number one, can you identify these
23 -- yes or no -- and, number two, did you take these photo-
24 graphs -- yes or no?

25 A. . . .

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1 Q. Just keep them so that I can turn them around from
2 the jury.

3 Can you identify 53 through 63?

4 A. That's correct. I took those photos.

5 Q. All right.

6 SOLICITOR: Your Honor, I believe we may have an is-
7 sue of law to take up at this time.

8 THE COURT: All right. Ms. Parham, is that correct?

9 MS. PARHAM: Yes, Your Honor.

10 THE COURT: All right, thank you very much.

11 Mr. Foreman, ladies and gentlemen, perhaps now will
12 also be a good time to give you a morning break. So we
13 will take at least fifteen minutes so I can hear this mat-
14 ter. It may be a bit longer.

15 Please do not discuss the case, and thank you very
16 much.

17 (Jury excused from the Courtroom)

18 (Whereupon, the Court took a brief recess, after which
19 the matter was resumed out of the presence of the jury)

20 THE COURT: All right, Solicitor.

21 SOLICITOR: May we approach the bench, Your Honor?

22 THE COURT: Yes, sir.

23 (Conference at the bench between counsel and the Court
24 off the record)

25 THE COURT: Let's put it on the record now.

1 THE COURT: The State's Exhibits 53, 54, 55, 56, 57,
2 60, 61 and 62 you have moved to be entered into evidence,
3 is that right?

4 SOLICITOR: We believe without objection, Your Honor.

5 THE COURT: Is that correct?

6 MS. PARHAM: Yes, sir.

7 THE COURT: Then those are admitted.

8 (Photographs marked State's Exhibit 53 through 57 and
9 60, 61 and 62 were admitted in evidence without objection)

10 THE COURT: State's 58, State's 59, State's 63 are
11 for identification purposes only.

12 Do you have an objection, Ms. Parham?

13 MS. PARHAM: Yes, Your Honor.

14 THE COURT: All right, tell me the basis of your ob-
15 jection, then, to State's 58, 59 and 63, if it is the same
16 as to 58, 59 and 63. If not, tell me what the objection
17 is to 59 and 63.

18 MS. PARHAM: Yes, sir, Your Honor.

19 I don't know the relevance of the photographs, and I
20 believe they are prejudicial and not probative regarding
21 the issues.

22 There is not any kind of crime scene markers in the
23 pictures, and, Your Honor, in addition to those photographs
24 they have autopsy photographs of a cleaned-up body that ac-
25 curately depicts all of the injuries to the victim.

1 We also have photographs of the moped and damages to
2 the moped. In other words, there are pictures that depict
3 that and there are autopsy pictures of a cleaned-up body
4 which show entrance and exit wounds, and I just don't know
5 that those photographs show anything of evidentiary value.
6 I believe they will be used to try to inflame the passions
7 of the jury.

8 THE COURT: Thank you.

9 (Brief pause)

10 THE COURT: All right, Solicitor. The first objec-
11 tion as to the photographs, the relevance?

12 SOLICITOR: Yes, sir, Your Honor.

13 THE COURT: What is the relevance according to the
14 State?

15 SOLICITOR: Your Honor, I think -- if I may look at
16 the ones she just mentioned, I might . .

17 THE COURT: Yes, sir.

18 (Brief pause)

19 SOLICITOR: Your Honor, the relevance would be as to
20 the position of the body and how it landed, which goes to
21 that he was trying to get away, but there's a couple of
22 pictures I think that were not objected to that I think I
23 could make that point without these that are more gruesome.

24 So I would withdrawn 58, 59 and 63, Your
25 Honor.

1 THE COURT: I would agree with that. Those three
2 then, 58, 59 and 63 are withdrawn.

3 MS. PARHAM: That's correct.

4 THE COURT: Any other matters of law at this time?

5 SOLICITOR: I don't think so, Your Honor. Not that I
6 know of at least.

7 THE COURT: All right. Then the other pictures I don't
8 think have been objected to, but we can take it up now if
9 it is.

10 (Brief pause)

11 THE COURT: All right, if there is nothing further,
12 you may bring in the jury.

13 (Jury returned to the Courtroom)

14 THE COURT: Welcome back, ladies and gentlemen. Please
15 continue to give the lawyers your complete and undivided
16 attention.

17 (Witness E. BARNES remaining on the witness stand)

18 THE COURT: You were examining the witness, and you
19 may continue.

20 SOLICITOR: Thank you, Your Honor. May it please the
21 Court?

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR:

24 Q. I show you what's been marked for identification as
25 State's Exhibits 53 through 63, and you identified those,

E. BARNES ON DIRECT

1 I believe, and told me you took the pictures.

2 Look at them again and make sure.

3 A. I took those.

4 Q. Keep your voice up.

5 SOLICITOR: Your Honor, State's Exhibits 53, 54, 55,
6 56, 57, 60, 61 and 62 we would move into evidence at this
7 time.

8 MS. PARHAM: No objection.

9 THE COURT: All right. They are in evidence, without
10 objection.

11 (Photographs admitted in evidence without objection
12 as State's Exhibits 53, 54, 55, 56, 57, 60, 61 and 62)

13 THE COURT: Those numbers are 53, 54, 55, 56, 57, 60,
14 61 and 62. All right.

15 SOLICITOR: Your Honor, one other housekeeping matter.
16 I don't have these checked off on my pad but maybe I did,
17 but State's Exhibit 2 we published to the jury and I would
18 move to have it put into evidence in case I did not.

19 THE COURT: The call?

20 MS. PARHAM: That's right.

21 THE COURT: State's 2 admitted.

22 MS. PARHAM: Subject to my earlier objections, Your
23 Honor.

24 THE COURT: State's 2 subject to previous objection.

25 (Nine one one call admitted subject to objection, the

E. BARNES ON DIRECT

1 nine one one call tape)

2 THE COURT: You may continue with Corporal Barnes at
3 this time. Please keep your voices up.

4 BY SOLICITOR:

5 Q. Again, look at State's 53 and explain this angle and
6 why you took the picture and what it depicts for the jury?

7 A. This is a picture similiar to State's 51 of the vic-
8 tim and the moped, basically a different angle.

9 Q. Okay. Explain State's Exhibit 54, please, for the
10 jury?

11 A. This is out on the street where the 25 caliber hand-
12 gun is laying.

13 Q. Also facing toward Leigh Lane?

14 A. Right.

15 Q. State's Exhibit 55 -- please explain what that shows
16 as far as marks on the road?

17 A. This is a close-up of where the moped was and the vic-
18 tim with the blood that was behind it.

19 Q. All right. Same question as to State's Exhibit 56?

20 A. This is a closer up view of where the victim
21 was located and the moped. The way he was laying.

22 Q. State's Exhibit 57. Explain to the jury what that
23 depicts?

24 A. Closer up photo of the victim and where he was laying
25 out there on the scene.

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E. BARNES ON DIRECT

1 Q. You said you took the GSR kit on Mr. Allen, but was
2 this after these photographs were made?

3 A. That's correct.

4 Q. And is this a depiction of his hands in this photo-
5 graph, State's Exhibit 57?

6 A. That's correct.

7 Q. State's Exhibit 60 -- same question.

8 A. A closer up picture of the victim and the moped.

9 Q. And State's Exhibit 61, when was that photograph made
10 in relation to these others?

11 A. At the same time as I took these.

12 Q. State's Exhibit 62.

13 A. It's a picture of where the tires were and also it
14 shows the location of where the victim was laying with the
15 sheet over him.

16 Q. Okay, and as far as that picture, is that the front
17 tire or the back tire?

18 A. That's the front tire of the moped.

19 Q. And the 25 millimeter never was fired by the victim?

20 A. That's correct.

21 Q. Thank you. Have a seat.

22 I'm going to show you State's Exhibits 67, 68, 69, 70,
23 71, 72, 73, and I ask you, do you recognize these photo-
24 graphs? Yes or no.

25 A. Yes, sir.

E. BARNES ON DIRECT

1 Q. Okay.

2 A. I recognize these photos.

3 Q. What do they depict? First, where were the photos
4 made?

5 A. At the impound.

6 Q. Do these photos accurately depict the condition of
7 the moped?

8 A. That's correct.

9 Q. Did you actually take them?

10 A. I did not take those photos, no.

11 Q. But you immediately examined the moped?

12 A. That's correct.

13 Q. Okay.

14 SOLICITOR: Your Honor, we'd move State's Exhibits 67
15 through 73 into evidence at this time.

16 THE COURT: Ms. Parham.

17 MS. PARHAM: I'd just like a little bit more founda-
18 tion as to when they were taken and who by.

19 THE COURT: All right. Offer that testimony.

20 SOLICITOR: Yes, sir.

21 BY SOLICITOR:

22 Q. Do you know when these pictures were taken?

23 A. I'm not sure when they were taken.

24 Q. Okay. Who took these?

25 A. I'm not sure who took them. Mostly they are taken

E. BARNES ON DIRECT

1 of the evidence very quick.

2 Q. Okay, but you don't know if this was the day after or
3 not?

4 A. No, I'm not sure.

5 Q. Okay, and are those an accurate depiction?

6 A. That's correct.

7 Q. And you observed the moped and examined the moped?

8 A. I did. I did a supplemental on my examination.

9 Q. Okay. You went out and examined the moped on the
10 scene or at the impound or both places?

11 A. Both places.

12 Q. Okay, and when you examined it at the impound, what
13 were you looking for at the impound?

14 A. To see if it had any kind of manual clutch, where the
15 brakes -- where the front brakes were located, the acceler-
16 ator and which side it was on -- things of that nature.

17 Q. Okay, and was it an automatic? Did it have a clutch
18 or was it automatic?

19 A. It was automatic and also had a controllable
20 clutch.

21 Q. Where were the brakes?

22 A. The left was the back and the right was the front --
23 the front bar was for the front brake and the throttle was
24 on the right side.

25 Q. All right. How did you keep it running?

E. BARNES ON DIRECT

1 A. Twist it with your right hand.

2 Q. Twist it right your right hand?

3 A. That's correct.

4 Q. Okay, and the left hand brake was for the back brake?

5 A. That's correct.

6 Q. And the front brake was on the right hand side?

7 A. That's correct.

8 Q. Is it like a lever you pull?

9 A. That's correct.

10 Q. Okay, and were there any things you do with your feet?

11 A. You control the rudders of the moped.

12 Q. Okay.

13 SOLICITOR: Your Honor, we would move these into evi-
14 dence. What he has said is what he examined and what he
15 saw.

16 THE COURT: Ms. Parham.

17 MS. PARHAM: No objection, Your Honor.

18 THE COURT: And they were State's 67 through 73, cor-
19 rect?

20 SOLICITOR: Correct, Your Honor.

21 THE COURT: Admitted without objection.

22 (Photographs marked State's Exhibit 67 through 73 ad-
23 mitted in evidence without objection)

24 SOLICITOR: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

E. BARNES ON DIRECT

1 BY SOLICITOR:

2 Q. Just to be sure, Corporal Barnes, you did this crime
3 scene process in conjunction with Sergeant Clendenin?

4 A. That's correct.

5 Q. And who made the diagrams? You or him?

6 A. He did.

7 Q. He did. Okay, and who took the measurements on the
8 diagrams, you, him or both of you?

9 A. I did.

10 Q. You did?

11 A. Yes.

12 Q. And he incorporated your measurements when he did the
13 diagrams?

14 A. That's correct.

15 Q. I don't have any further questions. At this time if
16 you would please answer any questions that Ms. Parham may
17 have?

18 A. Yes, sir.

19 THE COURT: Cross examine, Ms. Parham.

20 MS. PARHAM: Thank you, Your Honor.

21 May I have a moment?

22 THE COURT: Yes, maam.

23 (Brief pause in the proceeding)

24 SOLICITOR: Your Honor, may we approach?

25 THE COURT: Yes, sir.

1 (Conference at the bench between counsel and the
2 Court off the record)

3 THE COURT: Mr. Foreman, ladies and gentlemen, if you
4 will please step out to your jury room. Please do not dis-
5 cuss the case during this brief recess.

6 (Jury excused from Courtroom)

7 THE COURT: All right, Solicitor.

8 SOLICITOR: Your Honor, Ms. Parham has several photo-
9 graphs for the Defense, and I would have no real objection
10 to most of them, save the one, although it is sort of cum-
11 ulative.

12 It will take too much time , I think, to go through
13 all of them.

14 THE COURT: At this time I would allow it.

15 SOLICITOR: But I do have an objection to Defense Ex-
16 hibit Number 38 which depicts a plastic container, I believe,
17 that was retrieved from the pocket of the deceased, Mr. Ed
18 Windham, and it had some crack cocaine in it.

19 I believe you have already ruled, Your Honor, as to
20 the nexus between the drugs and this crime, so I think it
21 would be prejudicial as well as not probative, and I will
22 object to that photograph, Your Honor.

23 THE COURT: All right, Ms. Parham.

24 MS. PARHAM: Thank you, Your Honor. Defendant's Ex-
25 hibit 38 is one of the many crime scene photos, Your

1 Honor, and was said to be contained in one of his pants
2 pockets. In one pocket there was a lighter and money, and
3 that is another photograph Mr. Clements does not object
4 to.

5 In the other pocket there is a cell phone and plastic
6 container. The photograph does not depict the alleged
7 crack cocaine, just a container and cell phone.

8 So it is entirely relevant and probative because it
9 goes to show that the victim had a phone on him, and it
10 also goes to show that he had money in his pocket.

11 That is with regard to that photograph, Your Honor,
12 and it's relevant and not prejudicial. There is a plastic
13 container and a cell phone in that picture.

14 I have a separate argument though about the crack co-
15 caine. Shall I proceed with that?

16 THE COURT: Yes, maam.

17 MS. PARHAM: Several things, Your Honor. First of
18 all, there is a -- the victim's firearm was found on the
19 ground, the 25 caliber handgun was found on the ground in
20 front of the motorcycle.

21 Solicitor Clements is not stipulating that that gun
22 belongs to the victim. There is no stipulation, so we
23 all have to wonder whose gun it was and how it got there.

24 Solicitor Clements has gotten now testimony from the
25 victim's wife that if he had a pistol that that pistol was

1 carried by him because he was nervous. If he had a pis-
2 tol and was carrying a pistol it was because he was ner-
3 vous.

4 So the fact that the police . .

5 SOLICITOR: I don't believe she testified to that.

6 THE COURT: I don't believe she testified that he had
7 a pistol or was carrying a pistol.

8 MS. PARHAM: I believe she testified as to his behav-
9 ior leading up to this was that he was nervous, so there
10 is . .

11 THE COURT: I disagree with that. I never connected
12 -- the nervousness and not sleeping -- how would that apply
13 to -- I never connected the gun to him being nervous and
14 not sleeping.

15 How would that relate to his carrying a pistol? How
16 does it apply in this case?

17 MS. PARHAM: Well, Your Honor, there is an issue as
18 to who was the owner of that pistol that was found at the
19 crime scene on the ground. There is no stipulation as to
20 whose pistol it was.

21 It is highly relevant. There are a lot of cases in
22 which drug dealers carry guns to protect their drugs, and
23 it is highly relevant to show that that gun belonged to
24 the victim who was a convicted felon, carrying a gun and
25 protecting his drugs with the gun.

1 THE COURT: . So now you are going from the crack co-
2 caine in his pocket to he's a drug dealer? There is abso-
3 lutely no evidence whatsoever in this record that Mr.
4 Windham was a drug dealer.

5 MS. PARHAM: Your Honor, obviously in the pictures it
6 doesn't show the crack cocaine. It shows the plastic con-
7 tainer and the cell phone that were in his pocket. This
8 is a whole separate argument about the picture.

9 THE COURT: What are we arguing about? I thought the
10 only question before me was matter of law on the photograph.
11 Not being rude to you, Ms. Parham, or anybody, but what
12 is before me now?

13 MS. PARHAM: As to the photograph, Your Honor, we
14 made our argument about the crack cocaine just to save time
15 outside of the presence of the jury. I'm sorry to have
16 confused the two issues, Your Honor.

17 THE COURT: As to the crack cocaine, there is no men-
18 tion whatsoever that he was a drug dealer. None whatso-
19 ever.

20 You just have to go back until that is documented cor-
21 rectly. If you can connect the dots -- that's what circum-
22 stantial evidence is. Unless you can document it, it can-
23 not come in. It is not relevant.

24 I don't even think I have to reach a 403 analysis.
25 It is not relevant. If it were, then I think the question

1 would be prejudicial effect outweighing the probative value.

2 MS. PARHAM: I would like to make a record on why I
3 believe it is relevant, Your Honor.

4 THE COURT: Make whatever record you would like to
5 make, Ms. Parham.

6 MS. PARHAM: I would -- for the record, I would like
7 to -- as far as the photograph, Your Honor, there are the
8 plastic container and the cell phone, and that is the clas-
9 sic picture of the items that were in his pants pocket. He
10 has those items in one pants pocket. He had a lighter and
11 cash in the other pants pocket, so it is very probative as
12 to whether he could have anything else in his pants pocket
13 such as the pistol.

14 That is the argument as far as that photograph, Your
15 Honor. It is relevant, being on the crime scene, and it
16 was in his pocket. How much he could fit in his pants po-
17 cket with the container and the cell phone in there? It is
18 highly relevant as to whether he could fit something else.

19 That is why this is a relevant picture, but with re-
20 gard to the crack cocaine, Your Honor, there is a 25 cal-
21 iber pistol that is found on the ground in close proximity
22 to the victim's motorcycle. In between the victim's motor-
23 cycle and my client's shell casings that were fired there
24 is a clip and three unspent bullets in that clip and three
25 unspent bullets on the pavement.

1 There is testimony from the nine one one tape that ..
2 people gathered around the scene prior to law enforcement
3 getting there. Additionally, Your Honor, there is going
4 to be testimony from this witness that he logged this 25
5 caliber Lorcein pistol for DNA but we have no test results
6 or a SLED report as to the DNA result for that 25 caliber
7 pistol.

8 So the jury may be left wondering who the owner of
9 that 25 caliber pistol is, and the facts of this picture,
10 the crack cocaine in his pocket, is highly relevant to the
11 case because of what he did have in his pocket. He not
12 only had crack but he had money in his pocket as well, and
13 that is highly relevant.

14 It cannot be separated out from this case because it
15 is a reason that someone would have a firearm. The fact
16 that someone had money and crack in his pocket is a reason
17 that he also would be in possession of that 25 caliber
18 pistol.

19 We don't know who the owner of that 25 caliber pistol
20 is.

21 THE COURT: All right. Anything further you would
22 like to put on the record?

23 MS. PARHAM: That would be it, Your Honor.

24 THE COURT: Solicitor, anything further?

25 SOLICITOR: Ms. Windham said in answer to Ms.

1 Parham's question that he had a gun, and I didn't ask
2 her about it on the stand. She volunteered it was the
3 only gun he had.

4 I didn't ask her about it and I have no argument on
5 it, Your Honor.

6 THE COURT: Anything further?

7 MS. PARHAM: Your Honor, I would ask for a stipula-
8 tion.

9 SOLICITOR: The first time I was asked and I'll answer
10 it for the first time. Yes, I'll stipulate it as to the
11 facts. We certainly don't want to mislead . .

12 THE COURT: I'm certainly not going to allow any at-
13 torney in a criminal or civil case that I try, and I have
14 not tried that many, but I will not allow an attorney to
15 mislead a jury in any way.

16 If you agree on a stipulation then I will publish it
17 to the jury.

18 MS. PARHAM: Thank you, Your Honor.

19 THE COURT: You are protected on the record, and in
20 regard to the photograph State's Exhibit -- excuse me --
21 Defense Exhibit 38 is marked for identification.

22 MS. PARHAM: With regard to 38, Your Honor, it is a
23 plastic container and cell phone.

24 THE COURT: Thank you, maam. Anything further before
25 I bring in the jury?

1 From the State?

2 SOLICITOR: Nothing from the State.

3 THE COURT: From the Defense?

4 MS. PARHAM: No, sir.

5 THE COURT: Then bring in the jury.

6 (Jury returned to Courtroom)

7 (Witness E. Barnes on the stand)

8 THE COURT: All right, welcome back, ladies and
9 gentlemen. I apologize for delay. Please continue to
10 give the parties your complete and undivided attention.
11 Thank you.

12 At the very least, I would like to finish with this
13 witness before we take our noon break. That is not to
14 rush either of the parties. You may take however long it
15 takes, but I would like to finish this witness before the
16 luncheon recess.

17 All right. Thank you, Ms. Parham.

18 MS. PARHAM: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. PARHAM:

21 Q. Corporal Barnes, I show you what's been previously
22 marked as Defense Exhibits 1 through 38. Can you identify
23 those, please?

24 A. Yes, maam.

25 (Brief pause)

E.BARNES ON CROSS

1 Q. You took these?

2 A. That's right.

3 Q. And, Corporal Barnes, when you go to a crime scene,
4 is it your -- you take pictures from outside a crime scene
5 and work toward more detail?

6 A. That's correct.

7 Q. And so the picture that Mr. Clements showed to you and
8 the pictures I have shown you are pictures out of the hun-
9 dreds of pictures you took at this crime scene?

10 A. Yes, maam.

11 Q. And they thoroughly and accurately depict what happened
12 or what you took pictures of that night?

13 A. That's correct.

14 MS. PARHAM: Your Honor, I would offer Defendant's 1
15 through 37 without objection of the State, and just note an
16 objection to Defendant's 38 not coming into evidence.

17 THE COURT: Defendant's 1 through 37 in evidence.
18 I have previously ruled on 38 outside the presence of the
19 jury.

20 MS. PARHAM: Thank you.

21 (Crime scene photographs entered in evidence without
22 objection as Defense 1 through 37)

23 BY MS. PARHAM:

24 MS. PARHAM: If I may, I would like to show these
25 pictures to the jury.

E. BARNES ON CROSS

1 (Photos exhibited to the jury)

2 Q. Corporal Barnes, Defendant's Exhibit 1, what is that
3 a picture of?

4 A. This is patrol cars.

5 Q. And a number of patrol cars responded to the scene, is
6 that right?

7 A. That's correct.

8 Q. State's Exhibit 2, what is that a picture of?

9 A. The victim and the moped.

10 Q. All right, and what is the line there in the picture?

11 A. Crime scene tape.

12 Q. And why do you put up crime scene tape?

13 A. To keep people off the crime scene.

14 Q. All right, and is that also for officers, that no one
15 not working with the crime scene come on the crime scene?

16 A. . .

17 Q. Are officers supposed to come on the crime scene?

18 A. Not all the time, no. Just officers involved in the
19 collection of evidence.

20 Q. Okay, and you have a crime scene log, is that correct?

21 A. That's correct.

22 Q. There was a log in this case?

23 A. That's correct.

24 Q. And the officers whose names appear on the log, there
25 is supposed to be a reason they are coming on the crime

E. BARNES ON CROSS

1 scene, correct?

2 A. That's correct.

3 Q. All right. So for an officer to come on the crime
4 scene, he or she is supposed to have a specific reason to
5 be on that crime scene?

6 A. That's correct.

7 Q. Because if they don't, evidence from the scene may not
8 be as accurate as it should be. Is that fair to say?

9 A. That's correct.

10 Q. Defendant's Exhibit 3 -- is that another picture of
11 the scene?

12 A. Yes, ma'am.

13 Q. And those officers, are they inside or outside of the
14 tape?

15 A. . .

16 Q. The ones on the bottom there?

17 A. Inside.

18 Q. Okay. State's Exhibit 4, is that another picture of
19 the crime scene?

20 A. That's correct.

21 Q. So in the distance would be the moped that is involved
22 in this incident?

23 A. That's correct.

24 Q. And those markers on the ground, do they depict where
25 the nine millimeter shell casings were found?

E. BARNES ON CROSS

1 A. That's correct.

2 Q. And those are all found together at that end of the
3 road, Candy Lane, which leads to Leigh Road?

4 A. That's correct.

5 Q. Defense Exhibit 5, this is a close-up. Correct?

6 A. That's correct.

7 Q. And the marker 3 is where the Lorschien 25 caliber
8 pistol was found?

9 A. That's correct.

10 Q. Defense Exhibit 6 -- you can still see that Exhibit
11 3 right there, is that correct? The Lorschien . .

12 A. That's correct.

13 Q. And 1 and 2 are the guns that -- the gun that Cory
14 Allen put down?

15 A. That's correct.

16 Q. And officers told you that is where he laid it down?

17 A. Correct.

18 Q. All right, so this is a loaded Lorschien nine milli-
19 meter and clip?

20 A. That's not a Lorschien.

21 Q. I'm sorry, a Ruger and nine millimeter?

22 A. That's correct.

23 Q. The clip -- and the clip that was partially full as
24 you testified earlier?

25 A. That's correct.

E. BARNES ON CROSS

1 Q. The clip inside the Ruger?

2 A. That's correct.

3 Q. Defense Exhibit 7 -- is that a closer photograph of
4 the one we just looked at?

5 A. That's correct.

6 Q. All right, the pistol and the clip.

7 A. That's correct.

8 Q. Marker one is the clip and then 3 is the Lorcein 25
9 caliber pistol?

10 A. That's correct.

11 Q. Exhibit 8 -- is that a closer view of the 25 caliber
12 pistol?

13 A. That's correct.

14 Q. And Defense Exhibit 9 -- as you look from the lane
15 where the nine millimeter shell casings were found toward
16 the moped?

17 A. That's correct.

18 Q. And these nine millimeter -- these markers you put
19 by a cigarette, the clip and the 25 caliber gun and three
20 unspent shell casings?

21 A. That's correct.

22 Q. And Defense Exhibit 10 -- another picture of the
23 Lorscien and markers depicting the cigarette? Number 6
24 would be the clip, is that correct?

25 A. That's correct.

E. BARNES ON CROSS

1 Q. And then seven, five and eight are the unspent bullets
2 from that Lorscien 25 caliber pistol? Correct?

3 A. That's correct.

4 Q. And so that from Number 8 is another unspent bullet
5 from the Lorscien?

6 A. That's correct.

7 Q. And Defense Exhibit 11 shows another view of those
8 markers. Correct?

9 A. That's correct.

10 Q. And five^{seven} and eight are unspent rounds?

11 A. That's correct.

12 Q. And three we can't see because of it being blocked
13 by the moped?

14 A. That's correct.

15 Q. But three is the gun for those that had those rounds
16 in it?

17 A. Oh, yes, that's correct.

18 Q. Defendant Exhibit 12, another picture of those mark-
19 ers?

20 A. That's correct.

21 Q. And Defense Exhibit 12, a closer view of those mark-
22 ers?

23 A. That's correct.

24 Q. Defendant's 14, another picture of those markers?

25 A. That's correct.

E. BARNES ON CROSS

1 Q. And you took all of those different views and angles
2 to get an accurate representation of how those were since
3 from different angles things can appear different?

4 A. That's correct.

5 Q. And 15 would be marker four which would be the cigar-
6 ette?

7 A. That's correct.

8 Q. Did you swab that cigarette for DNA?

9 A. No, I did not.

10 Q. Okay, Defense Exhibit 16, that is of the Lorschien 25
11 caliber round?

12 A. That's correct.

13 Q. And a closer view of that Lorschien unspent round in
14 17? Defense Exhibit 17?

15 A. That's correct.

16 Q. And Defense Exhibit 18, is that the clip?

17 A. Yes, maam, with two rounds in it.

18 Q. And what is this? What are Z clips on a magazine?

19 A. Basically it is what keeps the bullet from sliding
20 out of this frame.

21 Q. Okay, in this picture that would be down here?

22 A. Yes, maam.

23 Q. And this piece of metal keeps unspent bullets in a
24 magazine?

25 A. That's correct.

E. BARNES ON CROSS

1 Q. And is Exhibit 19 a closer view of that same magazine?

2 Is that correct?

3 A. That's correct.

4 Q. And the Z clips would be right here?

5 A. That's correct.

6 Q. Is Exhibit 20 the same view of that magazine?

7 A. That's correct.

8 Q. Defense Exhibit 21 shows that magazine with one of the
9 unspent rounds . .

10 THE COURT: What is that exhibit number?

11 MS. PARHAM: I'm sorry, Your Honor. I'll back up.

12 BY MS. PARHAM:

13 Q. In Defense Exhibit 21 is a picture of -- Defense Exhibit
14 21 is a picture of what?

15 A. Unfired rounds in the 25 caliber magazine.

16 Q. Okay, and is Defense Exhibit 22 a closer view of it?

17 A. That's correct.

18 Q. And Defense Exhibit 23 is what?

19 A. Unfired round, 25 caliber.

20 Q. Okay, thank you.

21 Defense Exhibit 24?

22 A. That's another 25 caliber unfired round.

23 Q. And Defendant's Exhibit 25 -- is that a view basic-
24 ally from the area of the moped looking back toward the
25 spent nine millimeter shell casings?

E. BARNES ON CROSS

1 A. That's correct.

2 Q. All right, and so you're standing in the middle of
3 Candy Lane facing back toward Leigh Lane?

4 A. Correct.

5 Q. And what are those markers? I believe there's eight
6 of them.

7 A. Yes.

8 Q. They are next to the nine millimeter shell casings?

9 A. That's correct.

10 Q. This is Defense Exhibit 26. Is that a closer view of
11 those markers?

12 A. That's correct.

13 Q. Defense Exhibit 27 -- is that another view of those
14 markers with the moped in the distance?

15 A. . .

16 Q. Behind it?

17 A. I can't testify to that.

18 Q. Is that the moped down there?

19 A. Yes.

20 Q. Okay.

21 MS. PARHAM: Beg the Court's indulgence.

22 THE COURT: Yes, maam.

23 MS. PARHAM: Thank you.

24 (Brief pause)

25 BY MS. PARHAM:

E. BARNES ON CROSS

1 Q. Is Defense Exhibit 28 a closer view of those markers
2 with what we now know are the spent shell casings?

3 A. That's correct.

4 Q. Defense Exhibit 29 -- what is that a picture of?

5 A. Shell -- spent shell casings.

6 Q. When shell casings come out of a gun do they -- would
7 it be unusual for them to come out of a gun such as they did
8 with this one?

9 A. It does -- it is.

10 Q. So could this be one that perhaps was stepped on?

11 A. That's correct.

12 Q. All right, and not only would it be unusual for it to
13 be stepped on, but it would also be unusual for it to be per-
14 fectly up and down like that?

15 A. . .

16 Q. Laying perfectly on its head?

17 A. It's not the usual way.

18 Q. Okay, and would you agree that that appears to have
19 been stepped on?

20 A. Stepped on -- I guess.

21 Q. Okay, and Defense Exhibit 30 -- is that another one of
22 the fired nine millimeter . .

23 A. Yes..

24 Q. And is State's Exhibit 31 another nine millimeter shell
25 casing?

E. BARNES ON CROSS

1 A. That's correct.

2 Q. Defense Exhibit 32, another nine millimeter shell cas-
3 ing?

4 A. That is correct.

5 Q. Defense Exhibit 33, marker number 13 -- another nine
6 millimeter shell casing?

7 A. Correct.

8 Q. Defense Exhibit 34, marker 14, a fired casing? Nine
9 millimeter?

10 A. Yes, maam.

11 Q. Is Defense Exhibit 15 another fired shell casing from
12 that nine millimeter Ruger?

13 A. That is also correct.

14 Q. State's Exhibit 36, marker number 16, another nine mil-
15 limeter shell casing?

16 A. That's correct.

17 Q. And Defense Exhibit 37 -- what is in that picture?

18 A. U. S. currency and a lighter.

19 Q. All right, and is that from the victim's pocket?

20 A. That's correct.

21 Q. Do you remember which pocket it was in?

22 A. I'm not sure if it was in the left or right pocket.

23 Q. All right. Did you remove that from his pocket or did
24 someone else?

25 A. I would say that Sergeant Clendenin helped me with it.

E. BARNES ON CROSS

1 Q. Okay. All right.

2 MS. PARHAM: May I have a moment?

3 THE COURT: Yes, maam.

4 (Brief pause)

5 BY MS. PARHAM:

6 Q. Corporal Barnes, I have shown you photographs of nine
7 millimeter shell casings grouped together at the intersec-
8 tion of Candy Lane and Leigh Lane?

9 A. That's correct.

10 Q. Did you measure the distance of how far apart they were
11 from one another?

12 A. I believe the diagram -- we did from several points.

13 Q. All right, how did you do that?

14 A. And we had a street sign, a light pole and a mail box
15 that we did -- we did three points.

16 Q. All right. You took distances from those points?

17 A. That's correct.

18 Q. And you prepared a diagram in this case?

19 A. I'm sure there is one. I think the Solicitor had one.

20 Q. Let me show you what has been previously marked as
21 Defense Exhibits 52, 53 and 54. Can you identify those?

22 A. Yes, maam.

23 Q. What are they?

24 A. Diagrams with different points on where the tower
25 markers were.

E. BARNES ON CROSS

1 Q. And Defense Exhibit 51?

2 A. That is a simulation for the schematics of that scale.

3 Q. Okay, and so basically you didn't measure the distances
4 from the tower items, but what you did do was you have four
5 poles and you measured the distances from those items to the
6 poles?

7 A. That's correct.

8 Q. All right, and so we don't know the distances between
9 each of the items. Right?

10 A. That's correct.

11 Q. And these Exhibits are your impressions and your diagram
12 of measurements as they pertain to these particular items?

13 A. That's correct.

14 Q. All right. Now, you looked at both of these handguns,
15 the Ruger and the Lorschien?

16 A. Correct.

17 Q. Now, you looked at both of these handguns, both the
18 Ruger and the Lorschien?

19 A. That's correct.

20 Q. And based on your knowledge of firearms and your looking
21 at these, both of those would eject -- both of those guns
22 would eject shell casings from the right hand side. Correct?

23 A. That is correct.

24 Q. The Lorschien would eject from the right side and the Ruger
25 would eject from the right side?

E. BARNES ON CROSS

1 A. Correct.

2 Q. And explain to the jury what you mean by the ejection.
3 in that sort of gun? How that works?

4 A. With a semi-automatic handgun, every time a round is
5 fired a portion of the gas is used to slide down there and
6 eject the shell casing and make the next round go into the
7 chamber for the next round.

8 Q. All right, and if you have a round that was jammed or
9 it wasn't functioning properly, to get that round out or to
10 clear that round, that would also eject on the right hand
11 side, is that right?

12 A. . .

13 SOLICITOR: Objection to that, Your Honor.

14 THE COURT: Approach.

15 (Conference at the bench between counsel and the Court
16 off the record)

17 THE COURT: Thank you, Solicitor and Ms. Parham.

18 MS. PARHAM: Thank you, Your Honor.

19 BY MS. PARHAM:

20 Q. The bullet jammed in there as you clear it, it would
21 also eject to the right?

22 A. That's correct.

23 Q. So . . .

24 A. But not always.

25 Q. Well, the hole on the gun for the bullet to . . .

E.BARNES ON CROSS

1 SOLICITOR: Objection, Your Honor.

2 THE COURT: Overruled.

3 BY MS. PARHAM:

4 Q. The hole on the gun for the bullet to -- where is an
5 ejection point?

6 A. The point on the gun for the shell casing or round,
7 depending on what it is, will come out there, on the side.

8 Q. And so on the right hand side of the gun?

9 A. That's correct.

10 Q. Now, did you do a DNA swab of the Lorschien 25 caliber
11 pistol?

12 A. I did.

13 Q. And you put it into evidence?

14 A. That's correct.

15 Q. Was that ever sent to SLED?

16 A. Not that I know of, no.

17 Q. Why would you do a DNA swab of the 25 caliber pistol?

18 A. . .

19 Q. The 25 caliber pistol found at the scene?

20 A. It's just common protocol. We always do that, depend-
21 ing on the circumstances.

22 Q. The DNA is a device to identify who touched a gun or
23 who held a gun?

24 A. Yes, ma'am.

25 Q. All right, and so DNA could be used to determine who

E. BARNES ON CROSS

1 touched the gun?

2 A. That's correct.

3 Q. Because when you touch something you can leave DNA
4 trace on an object?

5 A. Sometimes, yes.

6 Q. And that is the purpose of swabbing an item, to see
7 who the last people were that touched the gun. Is that
8 correct?

9 A. That's correct.

10 Q. And you swabbed the Lorschien 25 caliber pistol and
11 that is in the evidence log just like the swabs of the gun-
12 shot residue you testified about?

13 A. That's correct.

14 Q. But that DNA evidence wasn't tested?

15 A. That's correct. We're only allowed so many items to
16 send to SLED at one time.

17 Q. All right. Well, did you send any DNA in this case?

18 A. I have to look at the list.

19 (Brief pause)

20 Yeah, we did. We sent the swabs of both the subjects
21 and the victim.

22 BY MS. PARHAM:

23 Q. Just to identify those people as to their genetic
24 characteristics?

25 A. That's correct.

E. BARNES ON CROSS

1 Q. But nothing to compare it to, or did you send any-
2 thing to compare it to?

3 A. . .

4 Q. For SLED to use to compare it to?

5 A. I'd have to go through my list.

6 Q. Well, I'll move on. The car that we saw pictures of,
7 that car was located in the side yard of Candy Lane,
8 is that correct?

9 A. That is correct.

10 Q. All right, and at the corner of Candy Lane and Leigh
11 Lane, that would be Candy Lane. Correct?

12 A. That's correct.

13 Q. And so basically the house where the burgandy vehicle
14 was found was diagonally and across the street from
15 Candy Lane?

16 A. A little way up, yes.

17 Q. Right. There is a span between the yards of the
18 houses on this street where this crime scene was?

19 A. That's correct.

20 Q. Did you determine when you looked toward the crime
21 scene how many rounds the Lorscien would hold?

22 A. I did not.

23 Q. How many hours after you responded did you take gunshot
24 residue off the victim?

25 A. Would you repeat the question?

E. BARNES ON CROSS

1 Q. Yes. When did you do the test for gunshot residue
2 off the victim's hands? Off Mr. Windham's hands?

3 A. It would be written on the GSR kit if I could see
4 that.

5 Q. Do you just recall generally how long you had been at
6 the scene prior to taking that?

7 A. I'm not sure of exact time, no. If you want to get
8 that more precise, we can.

9 Q. Once you took the gunshot residue, you sent that to
10 SLED along with the Allens' GSR kit?

11 A. That's correct.

12 Q. This photograph that shows the 40 caliber gun you
13 found, and it was found in the glove box. Correct?

14 A. That is correct.

15 Q. And that is a lawful place to keep a gun in South
16 Carolina?

17 A. . .

18 Q. In the glove box?

19 A. That's correct.

20 Q. All right. Nothing illegal about someone who has not
21 been convicted having a gun, is there?

22 A. No.

23 Q. Let me show you what's been previously marked as De-
24 fense Exhibit 50. Can you identify that?

25 A. That's the log sheet.

E. BARNES ON CROSS

1 Q. Okay.

2 A. The crime scene log sheet.

3 Q. Let me . .

4 MS. PARHAM: Your Honor, at this time we would offer
5 Defense Exhibits 51, 52, 53 and 54 into evidence, without
6 objection from the State.

7 THE COURT: Solicitor.

8 SOLICITOR: That's correct.

9 THE COURT: Exhibits 51, 52, 53 and 54 admitted in
10 evidence without objection.

11 (Defense Exhibits admitted without objection being
12 51, crime scene legend; 52, chart; 53, diagram; and 54,
13 a photograph)

14 (Brief pause)

15 THE COURT: Everyone okay on the jury?

16 (No audible response)

17 MS. PARHAM: Your Honor, I would now offer Defense
18 Exhibit 50, the crime scene log, without objection.

19 THE COURT: That's 50 without objection in evidence.

20 (Defense Exhibit 50 admitted without objection into
21 evidence)

22 BY MS. PARHAM:

23 Q. Corporal Barnes, as you answered questions by Solici-
24 tor Clements, you said you attended the autopsy and took
25 photographs at the autopsy yourself?

E. BARNES ON CROSS

1 A. I didn't take photos of the autopsy.

2 A. You did not?

3 Q. No, they take the photos at the autopsy.

4 Q. Okay, but you were present?

5 A. That's correct.

6 Q. And you received the photographs from them?

7 A. I received a disc of the photographs, that's correct.

8 Q. Okay, and the photographs that you identified before,
9 do those fairly and accurately represent that?

10 A. That's correct.

11 Q. The photographs that were taken?

12 A. That's correct.

13 (Brief pause. Conference at the bench between coun-
14 sel and the Court off the record.)

15 THE COURT: Thank you, Solicitor. Thank you, Ms.
16 Parham.

17 MS. PARHAM: Thank you, Your Honor. At this time,
18 Your Honor, we would offer Defense Exhibits 40, 41, 42, 43,
19 44 and 45 into evidence, without objection, and please
20 note our objection to 49.

21 THE COURT: They are admitted without objection, the
22 photographs you indicated, 40 through 45. Number 49 is
23 marked only for identification.

24 (Defense Exhibit 49 marked for identification, and
25 Defense Exhibits 40, 41, 42, 43, 44 and 45 admitted without

E. BARNES ON CROSS

1 objection in evidence)

2 MS. PARHAM: I would like to publish these to the
3 jury, Your Honor.

4 THE COURT: All right. You may do so.

5 (Photographs shown to the jury)

6 BY MS. PARHAM:

7 Q. Corporal Barnes, Defense Exhibit 50, is that a copy
8 of the crime scene log?

9 A. That's correct.

10 Q. And in the left hand column, is there denoted a time
11 someone entered the crime scene?

12 A. Correct.

13 Q. And there is the name and the agency?

14 A. Correct.

15 Q. Everyone on this sheet are law enforcement officers,
16 EMS or the coroner. Correct?

17 A. That's correct.

18 Q. And the back side of that exhibit is the rest of the
19 crime scene entry log?

20 A. I believe so, yes.

21 Q. Let me show you what's been entered as Defense Ex-
22 hibit 53. Is that -- are those the measurements you were
23 speaking of earlier?

24 A. That's correct.

25 Q. And so those are the evidence marker numbers?

E. BARNES ON CROSS

1 A. That's correct.

2 Q. And distance to those poles?

3 A. That's correct.

4 Q. And those numbers correspond with the yellow evidence
5 markers that were on the photographs earlier?

6 A. Could I see -- I can hardly see them from this angle.
7 If I could . . .

8 Q. Yes.

9 A. . . see them?

10 Q. Yes. Why don't you step down?

11 A. That's better. What was your question?

12 A. Were the numbers in the circles, do they correspond
13 to the yellow crime scene markers that we saw in the pic-
14 tures earlier?

15 A. That would be correct.

16 Q. Let me hand you Defense Exhibit 53. Those are the
17 markers, yellow markers, we saw in the photographs earlier?

18 A. That's correct.

19 Q. All right, and it goes to the respective poles?

20 A. That's correct.

21 Q. In State's Exhibit 54, are those the markers for the
22 nine millimeter shell casings and their distance to the re-
23 spective poles?

24 A. That's correct.

25 Q. And Exhibit 52 is a chart where all the evidence is

E. BARNES ON CROSS

1 located?

2 A. That's correct.

3 Q. Let me ask you this. When you compare Defense Ex-
4 hibits 54 and 52, why are there some different places on
5 the two?

6 For example, 15, 13 and 14.

7 A. (Inaudible)

8 THE COURT: Speak up a little bit.

9 A. We can't make the sketch to scale out there.

10 Q. Okay, but it appears from the picture that 15 would
11 have been directly above item 16?

12 A. That's correct.

13 Q. But on this it's 14?

14 A. It looks like it.

15 Q. Which is more accurate?

16 A. . .

17 Q. The measurement?

18 A. That's correct.

19 Q. What was measured would be more accurate?

20 A. That's correct.

21 Q. Okay. At some point, Corporal Barnes, my client had
22 his pants swabbed for DNA? His pants and/or shoes?

23 A. That's my information.

24 Q. You didn't have anything to do with that?

25 A. I don't think so, no.

E. BARNES ON CROSS

1 MS. PARHAM: I believe that's all I have, Your Honor.

2 Thank you.

3 THE COURT: Thank you. Any Redirect?

4 SOLICITOR: Briefly, Your Honor.

5 THE COURT: All right.

6 REDIRECT EXAMINATION

7 BY SOLICITOR:

8 Q. Corporal Barnes, I just want to ask you about swab-
9 bing the cigarette for DNA. You were asked about that on
10 Cross?

11 A. That's correct.

12 Q. The cigarette hadn't been lit, had it?

13 A. No.

14 Q. Is that right?

15 A. It had not been.

16 Q. Just like it was right out of the package?

17 A. That's correct.

18 Q. That wasn't an issue in this case, was it?

19 A. Not that I know of.

20 Q. And as far as the 25 Lorschien, swabbing that for DNA,
21 was the issue whose gun that was?

22 A. I believe so.

23 Q. Now, when you found all the shells in that one area
24 did anyone walk in that area that you know of but Cory
25 Allen. Is that correct?

E. BARNES ON REDIRECT

1 A. That's correct.

2 Q. No one else was standing in that area?

3 A. That's correct.

4 Q. The nine millimeter shells?

5 A. That's correct.

6 Q. I believe that's all I have. Thank you.

7 THE COURT: Thank you. Anything on Recross?

8 MS. PARHAM: No, Your Honor.

9 THE COURT: You may step down. Thank you.

10 (Witness excused from stand)

11 THE COURT: All right. Perhaps now would be a good
12 time to take our luncheon recess. While you are away, la-
13 dies and gentlemen of the jury, please remember that you
14 are not to discuss the case with anyone, do not read or
15 watch or listen to any news reports about the case.

16 Do not do any independent investigation on the in-
17 ternet or any other place.

18 We will start back at -- let's say fourteen hundred
19 hours, two o'clock. We'll say two o'clock, and I hope you
20 all have a nice lunch.

21 Thank you very much.

22 (Jury excused from Courtroom)

23 SOLICITOR: May Corporal Barnes be released from his
24 subpoena?

25 THE COURT: Any objection, Ms. Parham?

1 the Court?

2 We would call Lynn Rollin from the State Law Enforce-
3 ment Division as our next witness.

4 LYNN ROLLIN, being duly
5 sworn, testified as follows:

6 CLERK: Please have a seat and state your name for the re-
7 cord.

8 WITNESS: My name is Lynn Rollin.

9 DIRECT EXAMINATION

10 BY SOLICITOR:

11 Q. Ms. Rollin, I'm going to stand back here so I know
12 if I can hear you then the jurors can hear you. You have
13 a soft voice.

14 Would you please tell the jury where you work?

15 A. I work at the South Carolina Law Enforcement Division
16 in the office of Regulatory Services.

17 Q. The State Law Enforcement Division, is it more com-
18 monly known as SLED?

19 A. Yes, sir.

20 Q. Can you please tell us what the Regulatory Services
21 Division -- what exactly that is?

22 A. Our office issues weapons permits for the State, and
23 we also regulate armed and unarmed security guards. We
24 regulate the constable program for the State.

25 Q. Now, of those three things you talked about, people

L. ROLLIN ON DIRECT

1 that have concealed weapons permits, licensed security
2 guards and constable regulation, do they all have sets of
3 rules applying to all three of them?

4 A. That's correct.

5 Q. Okay, and do you have to meet certain requirements to
6 be a constable, be a licensed security guard, or hold a
7 concealed weapons permit?

8 A. Yes, you do.

9 Q. Okay, and can you tell us what you have to do to have
10 a concealed weapons permit?

11 A. To obtain a concealed weapons permit in this State,
12 you have to take a class that is with a certified weapons
13 permit instructor as certified by SLED and have maintained
14 particular course instruction, firing instructions and
15 legal instruction.

16 Once the class is completed satisfactorily, the indi-
17 vidual would apply for a concealed weapons permit, submit
18 that training, submit a set of fingerprints, a copy of
19 their driver's license, and a Fifty Dollar fee to the State,
20 and we would process that application.

21 Q. So do you have to pass a written test?

22 A. Yes, sir.

23 Q. Do you have to pass a shooting test?

24 A. Yes, sir.

25 Q. Okay. Did your office ever issue a concealed weapons

L. ROLLIN ON DIRECT

1 permit to a Cory Nettles Allen?

2 A. Yes, sir, we did.

3 Q. Can you please tell us the date, if you know, that
4 Mr. Allen was tested for his concealed weapons permit?

5 A. The test -- training was September 13th of 2008.

6 Q. And that was when he took the shooting test and the
7 written test?

8 A. Yes, sir.

9 Q. All right. He submitted those?

10 A. Yes, sir.

11 Q. And did he get the concealed weapons permit?

12 A. Yes, sir, he did.

13 Q. Can you please tell me the date it was issued and for
14 how long that permit was for?

15 A. Okay. The concealed weapons permit was issued on Jan-
16 uary 7 of 2009. It would have been good for four years
17 at that time, so it would have been expired on January 5th
18 of 2013.

19 He renewed his concealed weapons permit which was is-
20 sued on April 25th of 2013. It's set to expire on April
21 25, 2017.

22 Q. Let me make sure I have these correct. He was
23 tested for the concealed weapons permit on September 13 of
24 2008. It was issued January 5, 2009 and expired. In 2013
25 it was reissued on April 25, 2013?

L. ROLLIN ON DIRECT

1 A. Yes, sir.

2 Q. All right, and is the concealed weapons permit cur-
3 rently in good standing?

4 A. No, sir, it was revoked.

5 Q. And why was it revoked?

6 A. It was revoked in June of 2014 because of his murder
7 arrest.

8 Q. Now, if someone has a concealed weapons permit, how
9 are they supposed to carry that?

10 A. The firearm is supposed to be concealed at all times
11 on your person, and you must carry the concealed weapons
12 permit with you when you are carrying it concealed. But
13 it must be concealed at all times.

14 Q. Does that mean it has to be covered up?

15 A. Yes, sir.

16 Q. All right. So can you -- is it permissible or not
17 to wear a gun in a shoulder holster?

18 A. If it remains concealed such as a jacket is over it
19 or a shirt is covering it, but if it is in the open it is
20 not acceptable. It must be concealed.

21 Q. Okay. All right. Please answer any questions Ms.
22 Parham may have.

23 A. Yes, sir.

24 THE COURT: Thank you. Ms. Parham.

25 MS. PARHAM: Thank you, Your Honor.

L. ROLLIN ON CROSS

1 CROSS EXAMINATION

2 BY MS. PARHAM:

3 Q. First, in issuing a concealed weapons permit on my
4 client, Cory Allen, you ran his criminal history, is
5 that correct?

6 A. That's correct.

7 Q. And do you maintain a copy of that in your file?

8 A. Yes.

9 Q. And prior to this murder in 2014 or his arrest?

10 A. That's correct.

11 Q. That's all I have.

12 THE COURT: Redirect?

13 SOLICITOR: Your Honor, we have no Redirect and we
14 would ask that Agent Rollin be released from the sub-
15 poena.

16 THE COURT: Any objection?

17 MS. PARHAM: No, sir.

18 THE COURT: Thank you. You are released from your
19 subpoena.

20 (Witness excused)

21 THE COURT: You may call your next witness.

22 SOLICITOR: Your Honor, we'd call James Green.

23 JAMES GREEN, being duly
24 sworn, testified as follow:

25 CLERK: Please be seated and state your name for the

J. GREEN ON DIRECT

1 record.

2 WITNESS: James Green.

3 DIRECT EXAMINATION

4 BY SOLICITOR:

5 Q. Do you go by James, Jim or Jamie?

6 A. Jamie.

7 Q. All right, and, Agent Green, would you please tell
8 the jurors where you work?

9 A. I'm employed by SLED in the firearms department of
10 the Forensic Service Laboratory.

11 Q. In what capacity?

12 A. You mean what type . .

13 Q. Are you a scientist?

14 A. Yes, I work in forensic sciences.

15 Q. All right, and in the firearms division?

16 A. Yes, sir.

17 Q. Can you please tell this jury what people who work in
18 the firearms division do?

19 A. We examine firearms and firearm-related evidence,
20 fired bullets and fired cartridge casings. I also examine
21 tool marks and that sort of things.

22 Q. Okay. How long have you worked for SLED?

23 A. Since June of 2005.

24 Q. Prior to June of 2005, were you employed as a forensic
25 scientist anywhere else?

J. GREEN ON DIRECT

1 A. No, sir.

2 Q. Okay, and can you please tell us about your educa-
3 tional background?

4 A. I have a Bachelor of Arts from Charleston Southern
5 University. I also have a Master's of Science and Crim-
6 inal Justice from Charleston Southern University.

7 I completed the South Carolina Criminal Justice Acad-
8 emy and after I was hired at SLED I began a course of in-
9 struction that is probably a three to three and a half year
10 course of instruction in print site pattern under Court-
11 qualified examiners in order to be able to do what I do
12 now.

13 Q. And over your time at SLED have you had any seminars
14 or outside training that you have attended?

15 A. Yes, sir. We go to numerous courses, and we also go
16 to courses put on by makers of firearms we deal with. We
17 also go to the Association of Firearms and Tool Mark Exam-
18 iners -- AFTE -- seminar rotations when it comes about.

19 Q. Have you ever been qualified to testify as an expert
20 in State or Federal Court in the area of firearms examina-
21 tion and tool mark identification?

22 A. Yes, sir.

23 Q. How many times?

24 A. Forty-five times in State and one time Federal.

25 SOLICITOR: Your Honor, we'd ask that Agent Green be

J. GREEN ON DIRECT

1 allowed to testify as an expert in the area of firearm
2 examination and tool mark identification.

3 MS. PARHAM: We would stipulate, Your Honor.

4 THE COURT: All right. Thank you.

5 Mr. Foreman and ladies and gentlemen of the jury, nor-
6 mally a person cannot give opinion testimony. Normally
7 when a person testifies, they must testify as to either
8 what they saw, heard, or sensed by smell or something of
9 that nature.

10 However, there is an exception when someone is qual-
11 ified because of education or training. They are permit-
12 ted to give their opinions and the basis of those opinions
13 in certain areas if the Court qualifies them that way.

14 This witness, Agent James Green, will be qualified in
15 areas of firearm examination and tool mark identification
16 to give opinion testimony in those areas.

17 That does not mean that you must accept the opinion
18 but it is evidence for you, the jury, in any way you deem
19 appropriate.

20 Thank you, Solicitor. You may continue.

21 SOLICITOR: Thank you, Your Honor. May it please the
22 Court?

23 THE COURT: Yes, sir.

24 SOLICITOR: May I approach, Your Honor?

25 THE COURT: Yes, sir.

J. GREEN ON DIRECT

1 (Brief pause. Conference at the bench between coun-
2 sel and the Court off the record)

3 BY SOLICITOR:

4 Q. Agent Green, did you have an opportunity to examine
5 a weapon, shell casings and bullets that were involved in
6 a murder of Edward Jamell Windham in Florence County that
7 occurred on June 4, 2014?

8 A. Yes, sir.

9 Q. And as a result of that, did you write a report with
10 your findings?

11 A. Yes, sir.

12 Q. I want to show you State's Exhibit Number 8 for iden-
13 tification. Can you identify that, and if so please tell
14 me what that is?

15 A. State's Exhibit 8 is the report I issued with the SLED
16 Laboratory Number L14-06207653.

17 Q. And that is pertinent and relevant to this case?

18 A. Yes, sir.

19 SOLICITOR: Your Honor, at this time I would move
20 State's Exhibit 8 into evidence.

21 THE COURT: Ms. Parham.

22 MS. PARHAM: I would object as to hearsay. May I
23 have a minute?

24 THE COURT: Yes, maam.

25 (Brief pause)

J. GREEN ON DIRECT

1 MS. PARHAM: I don't have an objection to it.

2 THE COURT: All right. State's 8 is in evidence
3 without objection.

4 (SLED firearms report admitted without objection as
5 State's Exhibit 8 in evidence)

6 BY SOLICITOR:

7 Q. Agent Green, can you please tell this jury what you
8 received and what you examined with reference to the crime
9 we are here on today?

10 A. Yes, sir. The Florence County Sheriff's Office sub-
11 mitted one pistol, eight fired nine millimeter Ruger car-
12 tridge casings, one fired bullet and then a fired bullet
13 jacket, one fired bullet core.

14 Q. All right, and when you got those items, what did you
15 do with them?

16 A. The first thing I do is -- when I get evidence I'll
17 take pictures of the evidence so that makes me give it
18 all back, and we do our work sheet.

19 Then I will look at the evidence submitted in each
20 container and see if I can reconcile what is supposed to
21 be there versus what I have.

22 After I do that, I start filling out our work sheets
23 with individual item numbers -- get the worksheet done and
24 then do microscopic comparison.

25 Q. Now, when you say reconcile the evidence as to what
260

J. GREEN ON DIRECT

1 you have against what is supposed to be there, what do you
2 mean by that?

3 A. Sometimes agencies will submit -- they will send us
4 stuff in quite a few cases and in actuality something is
5 missing. So what I'm doing is I'm making sure everything
6 the Florence County Sheriff's Office said is supposed to be
7 in those containers is in those containers.

8 Q. And did that reconcile?

9 A. Yes, sir.

10 Q. Okay. All right, please continue. What did you do
11 next?

12 A. . . .

13 Q. I think you were beginning to tell us about doing a
14 microscopic comparison?

15 A. Yes, sir. There are two microscopes that we use that
16 are connected by a single optical bridge and it lets us
17 look at two objects simultaneously.

18 And what we will do is we will look at the evidence
19 items in this case that are marked with numbers as SLED
20 items, and in the case of the cartridge casings we are now
21 trying to see if they were all fired by the same firearm.

22 The way we would do that is that firearms are cre-
23 ated -- the manufacturer will leave marks on the guns by
24 metal contact and metal scoring inside the firearms with
25 tiny individual and microscopic marks which are left on

J. GREEN ON DIRECT

1 surfaces that are unique for that firearm and are unique to
2 one made before it and one made immediately after it.

3 If we all go to the beach and we all stay in a three
4 foot section of sand leaving the same marking, it will
5 look the same, but when you look at it microscopically the
6 way the grainy structure of the sand falls will make a dif-
7 ference.

8 The same thing with firearms. The more you shoot a
9 firearm it becomes more individual.

10 The more you clean and use a bristle brush, you can
11 leave markings you don't mean to put there, but they are
12 there. That's what makes the firearm more individual, and
13 that is what we're looking for when we look at fired car-
14 tridge casings, fired bullets.

15 Once I determine that all of the cartridge casings
16 that were submitted were fired by the same firearm, the
17 firearm that was submitted in this case, then I fired the
18 gun myself. After that I look at that case under the mic-
19 roscope to see if there are markings consistently, and I
20 will then compare the evidence cartridge cases and bullets
21 to the bullet and cartridge case I fired out of the fire-
22 arm.

23 Q. I will hand you what's been marked as State's Exhibit
24 28, and tell me if it is familiar to you?

25 A. Yes, it is.

J. GREEN ON DIRECT

1 Q. Okay.

2 A. State's Exhibit 28 -- inside of it is a container and
3 which is Laboratory known 14-06753, container number E --
4 this is a package that was submitted to me at SLED and on
5 the inside of it were the fired bullets or fired cartridge
6 cases that I examined.

7 Q. I see some initials on this.

8 A. Those are my initials and I sealed that package on
9 August 12, 2014.

10 Q. All right, and how many spent shell casings were in
11 there?

12 A. Eight.

13 Q. Did you test all eight of those shell casings against
14 the weapon that was provided by Florence County?

15 A. Yes, I did.

16 Q. I show you what's marked State's Exhibit 22. If you
17 can, look at that and tell me if you recognize that?

18 A. Yes, sir. State's Exhibit 22 is the nine millimeter
19 Ruger, the nine millimeter pistol that was submitted in
20 this case.

21 Q. And what else is contained in that box?

22 A. Two magazines.

23 Q. How many bullets does that magazine in that weapon
24 hold?

25 A. Let me look at my notes.

J. GREEN ON DIRECT

1 (Brief pause)

2 A. This is a magazine that was submitted and with State's
3 Exhibit 22. The magazine itself will hold fifteen or the
4 gun will hold sixteen. Fifteen in the magazine and one in
5 the chamber.

6 Q. Okay. So if the gun is fully loaded and you fire it
7 eight times, you'll have eight left?

8 A. Yes, sir.

9 Q. Okay. Now, this was also a part of State's Exhibit
10 28, and can you explain to the jury what this is?

11 A. Inside this package there is a fired bullet that was
12 submitted as SLED item 18, and on the other side of the
13 package is SLED item 19, which was a fired bullet jacket,
14 a fired bullet core..

15 Q. Okay, and do you know where those came from?

16 A. I don't have direct knowledge but on the evidence sub-
17 mitted form they have listed where it came from.

18 Q. Okay, and Florence County is on the tape?

19 A. Yes, sir.

20 Q. All right, and did you test these to see if they would
21 match the gun?

22 A. Yes, sir.

23 Q. The nine millimeter?

24 A. Yes, sir.

25 Q. And did you do anything different on the bullets as

J. GREEN ON DIRECT

1 you did on the shell cases to examine them?

2 A. No, sir. The same thing. I examined them under the
3 microscope and compared them and did the same thing.

4 Q. And all ten of these match?

5 A. Yes, sir.

6 Q. Was anything else submitted to you for exam-
7 ination by Florence County?

8 A. No, sir.

9 Q. And there would be no reason to submit any unfired
10 bullets to you, would there?

11 A. Some agencies do. If they have a gun they will send
12 everything with it. Sometimes you may test fire them but
13 in most cases we do not.

14 Q. Okay. Now, you were not submitted a 25 caliber pis-
15 tol of any sort to examine, were you?

16 A. No, sir.

17 Q. Okay.

18 SOLICITOR: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 BY SOLICITOR:

21 Q. All right, thank you, Agent Green. Please answer any
22 questions Ms. Parham might have.

23 THE COURT: Cross examine, Ms. Parham.

24 MS. PARHAM: Thank you, Your Honor.

25 CROSS EXAMINATION

J. GREEN ON CROSS

1 BY MS. PARHAM:

2 Q. Agent Green, did the Ruger nine millimeter function
3 as it was supposed to function?

4 A. Yes, maam.

5 Q. And did you have occasion previously to test-fire
6 nine millimeter Ruger . .

7 A. Yes, maam.

8 Q. And generally they eject shell casings from the right
9 and back from where you are standing?

10 A. If you are holding it like in front of you as I was
11 taught, yes, maam. As a general rule they will come back
12 and to the right.

13 Q. Now, let me ask you this. A round is somewhat of a
14 softer metal, is that correct?

15 A. Yes, maam.

16 Q. And that is why marks are left on the bullet?

17 A. Well, there are different types of jackets. There is
18 brass, there's copper, there's steel, but the copper, the
19 steal and brass they use, they are all softer. Yes, maam.

20 Q. Let me ask you this. If you try to chamber a bullet
21 that has not fired, will marks be left on that bullet?

22 A. Sometimes marks will be left on there but it depends
23 on the make of the cartridge.

24 Q. Would you be able to take a bullet that was not fired
25 and see if the bullet went through the sequence?

J. GREEN ON CROSS

1 A. Sometimes you can, yes, maam.

2 Q. All right, and you didn't do that in this case?

3 A. No, maam. There was no unfired ones submitted to me.

4 Q. Okay, and no Lorschien 25 caliber pistol was submitted
5 to you for testing?

6 A. No, maam.

7 Q. That's all I have.

8 THE COURT: Redirect, Solicitor?

9 SOLICITOR: Just very briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY SOLICITOR:

12 Q. Agent Green, when you hold a gun like this, Texas-
13 style, what's going to happen with the ejection?

14 A. As a general rule, it would kind of go this way.

15 Q. This way?

16 A. Maybe over your head or maybe over your left shoulder.

17 Q. And if you are shooting in a concrete area, when shell
18 casings hit the ground they are going to stop, aren't they?

19 A. Some may and some may skid or bounce.

20 Q. They can skid or they can bounce?

21 A. Yes, sir.

22 Q. And they can hit and bounce in any direction, can't
23 they?

24 A. Yes, and that is one reason we don't deal with what
25 both sides are asking about. There are many variables so

J. GREEN ON REDIRECT

1 that unless we have a video to examine the situation, it
2 is kind of hard for us to tell. In the Ruger it will go
3 back and to the right if they are held this way.

4 Basically whichever way they are held, they will come
5 back and to the right, depending on which way the gun was
6 pointed and the direction.

7 Q. Thank you. Nothing further.

8 THE COURT: Recross, Ms. Parham.

9 MS. PARHAM: Yes, sir.

10 RECROSS EXAMINATION

11 BY MS. PARHAM:

12 Q. And when -- well, have you ever seen the weapon that
13 the permit training classes use?

14 A. No, ma'am.

15 Q. That's all I have.

16 THE COURT: Thank you, Agent Green. You may step
17 down.

18 SOLICITOR: Your Honor, I'd ask that he be released
19 from his subpoena.

20 THE COURT: Any objection?

21 MS. PARHAM: No, sir.

22 THE COURT: Yes, sir. You may step down and you may
23 be excused.

24 (Witness excused)

25 THE COURT: You may call your next witness.

1 SOLICITOR: Your Honor, we'd call Investigator Chad
2 Collins.

3 CHAD COLLINS, being duly
4 sworn, testified as follows:

5 CLERK: Please be seated and state your name for the
6 record.

7 WITNESS: Chad Collins.

8 DIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Please tell the ladies and gentlemen of the jury where
11 you work and in what capacity?

12 A. Yes. I work for the Florence County Sheriff's Office.
13 I'm an investigator with the Criminal Investigations Divis-
14 ion.

15 I've been there with the Sheriff's Office since 1999,
16 and I've been in investigations since 2005.

17 Q. Were you called out in regards to a shooting that oc-
18 curred on June 4, 2014, in Tara Village?

19 A. Yes, sir, I was.

20 Q. Okay, and can you tell the jury what you did when you
21 received that call?

22 A. Yes, sir. I arrived on the scene and met with the in-
23 vestigator who was already on the scene, Investigator Helen
24 Cain. She briefed me on what she found out when she ar-
25 rived on the scene.

C. COLLINS ON DIRECT

1 I viewed the scene and after that I learned there was
2 a witness on the scene, and I met with her along with In-
3 vestigator Cain.

4 Q. Okay, and did you take a written statement from her?

5 A. Yes, sir, I did.

6 Q. Okay, and tell us what you did after that?

7 A. I met with Investigator Thomas McFadden. He was going
8 to be the lead investigator on this case, and I told him I
9 would help him as much as he needed.

10 Q. And what did that consist of?

11 A. Not much beyond that, what I described.

12 Q. Did you do any other duty that night?

13 A. No, sir.

14 Q. Okay. How about the next day?

15 A. I did go and get the cell phone from the suspect or
16 that was on the suspect that evening.

17 Q. How about the victim's?

18 A. I do not recall getting the victim's phone that night.

19 Q. Okay.

20 A. I did get the suspect's phone that evening that was
21 recovered in the search incident to arrest.

22 I did get the three phones that were on the suspect
23 that evening, and I got information off the phone with
24 search warrants to get the download.

25 Q. What were you downloading?

C. COLLINS ON DIRECT

1 A. Information, phone numbers, phone calls out, any pic-
2 tures, text messages. Things we could use to either in-
3 clude or exclude the suspect in this.

4 Q. All right, and what were you going to compare that
5 to?

6 A. To numbers that might have been associated with the
7 victim.

8 Q. Did you do that?

9 A. Yes. I met once I got the search warrants and gave
10 the phones to now Captain Scott Brown, for the download to
11 be done at that time, and he downloaded as much information
12 as he could from the phones. He compared that to the in-
13 formation we had at the time and nothing was found.

14 Q. After you did all that, nothing of value was found?

15 A. No, sir.

16 Q. No connection whatsoever with the victim by the sus-
17 pects? Nothing of evidentiary value?

18 A. Not by the phone. No, sir.

19 Q. Okay.

20 SOLICITOR: Beg the Court's indulgence.

21 (Brief pause)

22 BY SOLICITOR:

23 Q. Did you do a search warrant for the victim's phone?

24 A. The information that I have is that I did get search
25 warrants for the phone that I recall and then for the

C. COLLINS ON DIRECT

1 vehicle that was at the scene parked down the road.

2 Q. And the search warrant was on what kind of vehicle?

3 A. It was on a Lincoln vehicle.

4 Q. Okay, and was that search warrant executed?

5 A. Yes, sir, it was.

6 Q. Okay. All right. That's all I have.

7 Please answer any questions Ms. Parham has for you.

8 A. Yes, sir.

9 THE COURT: All right, any Cross?

10 MS. PARHAM: Yes, sir, thank you.

11 CROSS EXAMINATION

12 BY MS. PARHAM:

13 Q. Thank you. Do you recall who downloaded that infor-
14 mation from the victim's phone?

15 A. I believe we were unable to download the information.
16 We actually had to take picture.

17 Q. And those pictures were placed in evidence?

18 A. Yes, maam.

19 Q. Now, did you compare the phones that you recovered from
20 Mr. Allen and the victim?

21 A. Yes.

22 Q. And there were not common numbers or connections be-
23 tween the two?

24 A. There were none.

25 Q. All right, and did you also call or dial numbers on

C. COLLINS ON CROSS

1 each phone to see if there was any evidence you could use?

2 A. I did not.

3 Q. Do you know if that was done?

4 A. I do not.

5 Q. That's all I have.

6 THE COURT: Redirect?

7 SOLICITOR: None, Your Honor. May Mr. Collins be re-
8 leased from his subpoena?

9 THE COURT: Any objection?

10 MS. PARHAM: No, sir.

11 THE COURT: You may step down and be released from
12 your subpoena.

13 WITNESS: Yes, sir. Thank you.

14 (Witness excused)

15 THE COURT: You may call your next witness.

16 SOLICITOR: Your Honor, our next witness would be
17 Andrew Clendenin.

18 THE COURT: Come around.

19 ANDREW CLENDENIN, being
20 duly sworn, testified as follows:

21 CLERK: Please be seated and state your name for the
22 record.

23 WITNESS: Andrew Clendenin.

24 THE COURT: Ladies and gentlemen, I had ordered the
25 sequestration of certain classes of witnesses, and they are

A. CLENNIN ON DIRECT

1 not being disrespectful if there is a short delay in their
2 getting to the Courtroom.

3 DIRECT EXAMINATION

4 BY SOLICITOR:

5 Q. Can you tell us where you work, what your rank is, and
6 what you do?

7 A. I work with the Florence County Sheriff's Office. Cur-
8 rent rank is Sergeant, and I work with the crime scene
9 unit.

10 Q. How long have you been with the crime scene unit?

11 A. For the past eleven years.

12 Q. And do you have prior law enforcement experience prior
13 to working with the crime scene unit?

14 A. I've been working with the Florence County Sheriff's
15 Office for the last sixteen years.

16 Q. Okay, so what did you do the first five years?

17 A. I was on patrol.

18 Q. Okay, and did you have occasion on June 4, 2014, to
19 be called to the scene of a shooting?

20 A. I was.

21 Q. And can you tell us where you went and what you found
22 when you got there?

23 A. I went to Candy Lane where I met with Corporal Eric
24 Barnes, and I discovered that a homicide had taken place.

25 Q. Okay, and when you got there on the scene, do you know

A. CLENDENIN ON DIRECT

1 what time it was?

2 A. If I can have a moment. At nine twenty-two P.M., I
3 arrived on the scene.

4 Q. I won't ask you what that is in military time.

5 Now, when you arrived on the scene, what did you find
6 as far as who was there from law enforcement and what the
7 scene looked like?

8 A. I remember seeing crime scene tape around the roadway
9 blocking a lot of entry ways. I met with Corporal Barnes
10 and Chad Collins and Investigator Helen Cain.

11 Q. And did they debrief you?

12 A. Corporal Barnes did.

13 Q. And after you were debriefed, what did you start to
14 do next?

15 A. After that Corporal Barnes started taking photographs,
16 and I started actually observing the scene a little better
17 then.

18 Q. Did you all take a walk-through prior to taking the
19 photographs?

20 A. . .

21 Q. Is that normally what you do?

22 A. Yes.

23 Q. Is this a small or medium or how large crime scene?

24 A. I would call it a large crime scene.

25 Q. And how was that crime scene secured or separated

A. CLENDENIN ON DIRECT

1 from the rest of the scene out there?

2 A. With crime scene tape.

3 Q. What agencies were out there maintaining that peri-
4 meter?

5 A. I noticed the Florence County Sheriff's Office and
6 also some units from the South Carolina Highway Patrol were
7 on the scene.

8 Q. Okay. When you began your walk-through, what did you
9 see? What did you see first?

10 A. I saw a moped laying in the middle of the roadway, with
11 a subject covered by a sheet.

12 Q. And what else did you see next?

13 A. I observed two handguns that was laying in the street,
14 shell casings, unfired shells, magazines, a cigarette un-
15 smoked, a cigarette lighter and different items.

16 Q. Okay. Did you begin to document those items?

17 A. I began to draw on graph paper where I seen them and
18 did follow-up measurements. Documented the location and
19 followed up by measurements.

20 Q. Okay, and did you mark those items?

21 A. Yes, they were marked with yellow towers that have
22 the numbers on them.

23 Q. And who actually put the towers out?

24 A. That was Corporal Eric Barnes.

25 Q. Okay, and you were taking notes as he did that?

A. CLENDENIN ON DIRECT

1 A. Yes.

2 Q. Okay. How many shell casings that were spent did you
3 find?

4 A. Of the spent shell casings -- there were eight spent
5 shell casings.

6 Q. What caliber were they?

7 A. Nine millimeter.

8 Q. All right, and after you found those, did you look
9 for any other types of shell cases or any other casings
10 whatsoever?

11 A. Yes, we did.

12 Q. What did you look for and how did you go about search-
13 ing for those?

14 A. Walking through the area and looking at the perimeter
15 for shell cases, and there were also three unfired twenty-
16 five caliber shells laying in the roadway.

17 Q. Unspent bullets?

18 A. Unspent bullets, unfired.

19 Q. All right, and what did you find also that would match
20 up with the three bullets?

21 A. A magazine with 25 caliber bullets inside of it also.

22 Q. How many?

23 A. Three.

24 Q. Okay, and did you see any spent shell casings anywhere
25 from the twenty-five?

A. CLENDENIN ON DIRECT

1 A. No, I did not.

2 Q. Did you look for them?

3 A. Yes, we did.

4 Q. All right, and did you gather these items yourself,
5 or Corporal Barnes gather . .

6 A. Corporal Barnes gathered those items up.

7 Q. Was this before or after you took photographs?

8 A. That would be after.

9 Q. Okay, and after all the photographs were made, did you
10 prepare any diagrams?

11 A. I did.

12 Q. And how did you go about preparing diagrams?

13 A. First I had hand-drawn the scene, and once they are
14 hand drawn they are taken back to the office where I do
15 them on the computer for a print-out.

16 Q. I ask you who prepared these diagrams?

17 A. I did.

18 Q. Are those diagrams to scale?

19 A. No, they are not to scale.

20 (Brief pause)

21 (Colloquy between counsel and the Court off the re-
22 cord)

23 BY SOLICITOR:

24 Q. I'm going to show you what's been marked as
25 State's Exhibits 50 and 51, 52 and 53. Do you recognize

A. CLENDENIN ON DIRECT

1 those?

2 A. I do.

3 Q. Who prepared 51?

4 A. I did.

5 Q. What does it depict?

6 A. Exhibit Number 51 depicts the scene with --- according
7 to the numbers marked on the back.

8 Q. And the numbers were of the tower markers?

9 A. Yes.

10 Q. Okay, and there were sixteen items in total?

11 A. In total, yes.

12 Q. I show you State's Exhibit -- excuse me. Defendant's
13 Exhibit 52. Can you identify --- excuse me. Can you identify
14 that and tell me what that is?

15 A. It's the unscaled drawing of Leigh Lane and Candy Lane
16 and involving some items that was located in the roadway.

17 Q. Is that to scale?

18 A. No, it's not.

19 Q. Okay.

20 SOLICITOR: I would ask permission for Sergeant
21 Clendenin to step down.

22 THE COURT: You may step down, Sergeant, but keep your
23 voice up.

24 BY SOLICITOR:

25 Q. Step to this side.

A. CLENDENIN ON DIRECT

1 A. Yes, sir.

2 Q. I show you State's Exhibit 52. If you can, explain
3 to the jury what that is and address the markings and the
4 items on there?

5 A. Yes, this is going to be East Candy Lane and
6 East Candy Lane. Other side, East Candy Lane, and
7 -- Leigh Lane on the house that faces out toward
8 Leigh Lane.

9 Marks A, B and C would be the light pole and the stop
10 sign and mail box. I picked those because they are fixed
11 objects and won't be moved around on the crime scene.

12 You will see all these numbers inside the roadway,
13 items of evidence, and you will see the moped. You will
14 see the line behind that which was a gouge in the asphalt.

15 Q. The gouge in the asphalt was what?

16 A. It looked like one of the pegs from the moped had
17 gouged into the asphalt as it was sliding.

18 Q. How long was that gouge mark?

19 A. I don't know. I'd have to see the next one.

20 Q. I show you Exhibit 53.

21 A. That gouge mark ran for twenty-six feet and nine
22 inches.

23 Q. Anything else on Exhibit 52?

24 A. That is pretty much it.

25 Q. All right, I show you State's Exhibit 53. You told

A. CLENDENIN ON DIRECT

1 us about the gouge marks on there. Can you explain what's
2 the role of that information and what process you used?

3 A. These -- you can see the numbers of the tower markers
4 where evidence was found. I used these locations from the
5 light pole, the stop sign and the mail box and triangulated
6 the distance from this point to this point to mark a piece
7 of evidence.

8 So that is the reason you see the lines running to the
9 different numbers.

10 Q. Can you explain what you mean by triangulate?

11 A. Yes. Once the evidence is collected if it ever needs
12 to be placed back in the same way, a measurement can be
13 taken from this light post to that mail box and then can be
14 rolled out with a ruler to match up to the exact point it
15 was lifted.

16 If there needs to be a redirection later on, then you
17 have that.

18 Q. I show you Defense Exhibit 54. Can you again explain
19 the details on that exhibit and the process you used?

20 A. This is Leigh Lane, East Candy Lane, and again the
21 stop sign, light pole and I triangulated the position of
22 these pieces of evidence.

23 Q. All right. What are those pieces of evidence there
24 at that point?

25 A. At this point these were all nine millimeter shell

A. CLENDENIN ON DIRECT

1 casings.

2 Q. Is that where the shooting occurred?

3 A. Yes.

4 Q. Where the shots were fired?

5 A. Yes.

6 Q. Okay, you may sit back down.

7 And after you did the measurements and photographs,
8 what did you do with the items that were out there?

9 A. They were collected and transported back to the Flor-
10 ence County Sheriff's Office.

11 Q. And logged into evidence?

12 A. Yes.

13 Q. Do you recall seeing a cigarette out there?

14 A. Yes.

15 Q. Was that cigarette smoked or unsmoked?

16 A. Unsmoked.

17 Q. Had not been lit?

18 A. It had not been lit.

19 Q. Okay, and did you all do anything to gather any DNA
20 on this crime?

21 A. Yes, I did.

22 Q. What did you do?

23 A. I gathered items of clothing and then swabbed them
24 for possible DNA.

25 Q. Did you swab anyone?

A. CLENDENIN ON DIRECT

1 A. I swabbed Frederick Allen on the scene. He submitted
2 to us and was swabbed with a bocal swab.

3 Q. And how about Cory Allen?

4 A. He refused while he was on the scene that night.

5 Q. Where did you see him or ask him?

6 A. While he was in the back of a patrol car.

7 Q. Okay, and did you ask him any other questions?

8 A. No.

9 Q. What did you do as far as getting a swab from Cory
10 Allen later?

11 A. An Order was submitted and then I collected the swab
12 then.

13 Q. Okay, and did you do anything with that?

14 A. They were sent to the South Carolina Law Enforcement
15 Division laboratory where they still remain.

16 Q. Was there any need to your knowledge to have the DNA
17 tested?

18 A. No, there was not.

19 Q. Was there any question as to the identity of the
20 shooter?

21 A. No, there was not.

22 Q. The Lorscien 25, do you know if anything was done with
23 that as far as DNA?

24 A. From my understanding, Corporal Eric Barnes did swab
25 that.

A. CLENDENIN ON DIRECT

1 Q. Was that sent to the SLED Lab as well or not?

2 A. I'm not sure of that.

3 Q. Okay. Was there any question in your mind as to who
4 the 25 Lorscien belonged to?

5 A. No, there was not.

6 Q. Okay. What else did you do out at the scene that
7 night as far as collection of evidence?

8 A. That was as far as I took it on the scene that night.

9 Q. Did you all look in that whole area for anything else?

10 A. Yes. Once everything was removed, we did then
11 another search just to make sure we didn't miss anything
12 on the first go-around.

13 Q. Did you broaden out as far as you needed to go?

14 A. Yes. We're talking about from the highway to the mo-
15 ped to see if anything we had missed. We go back through
16 and search again.

17 Q. Okay. Find anything else?

18 A. No, we did not.

19 Q. Okay. Was there any other potential second area crime
20 scene?

21 A. . .

22 Q. A potential secondary place that you had to search?

23 A. The car on Leigh Lane all the way down Candy Lane was
24 a search made.

25 Q. Did you ever have the opportunity to check out any

A. CLENDENIN ON DIRECT

1 vehicles?

2 A. On the scene I did not.

3 Q. Okay. What about later?

4 A. Later I did through a search of a Lincoln that was
5 located at the Florence County impound yard.

6 Q. Okay, and what did you -- what was the reason for the
7 search of the Lincoln, and what exactly did you do?

8 A. I initially photographed the vehicle and then I did
9 start going through the vehicle because of a search war-
10 rant given to me.

11 Q. Okay. What were you looking for and what did you
12 find?

13 A. I found a silver holster that contained one magazine
14 that was loaded with twelve rounds of nine millimeter.

15 Q. Nine millimeter?

16 A. Yes, sir.

17 Q. Okay.

18 A. I found some photographs and cell phones.

19 Q. What did you do with the cell phones?

20 A. They were submitted into evidence.

21 Q. Okay. I show you what's been marked as State's Ex-
22 hibit 52. Do you know that photo?

23 A. Yes.

24 Q. You're familiar with that?

25 A. Yes.

A. CLENDENIN ON DIRECT

1 Q. Who took that photograph?

2 A. I took it.

3 Q. And what does that show?

4 A. That was of the Lincoln that was located at the Flor-
5 ence County Sheriff's Office impound yard.

6 Q. I show you State's Exhibit 64. Do you recognize that
7 and tell me what that is?

8 A. I do. That's the shoulder holster and the one maga-
9 zine found in the Lincoln.

10 Q. And what type of magazine?

11 A. It was a nine millimeter loaded with twelve rounds.

12 Q. Okay. State's Exhibit 65?

13 A. That's the shoulder holster I found in the vehicle.

14 Q. And why did you stretch it out on the car?

15 A. To take a better photograph.

16 Q. I show you what's been marked as State's Exhibit 66.

17 Do you recognize that?

18 A. I do.

19 Q. What is that?

20 A. That's the magazine and shells I found inside the hol-
21 ster.

22 Q. Shells were inside the magazine?

23 A. Yes.

24 Q. Okay. How many were there?

25 A. Twelve.

A. CLENDENIN ON DIRECT

1 Q. Okay.

2 SOLICITOR: Your Honor, at this time we'd move to ad-
3 mit Exhibits 66, 65, 64 and 52 into evidence.

4 MS. PARHAM: May I see them?

5 (Brief pause)

6 SOLICITOR: I believe without objection, Your Honor.

7 THE COURT: Okay, give me the numbers again.

8 SOLICITOR: 66, 65, 64 and 52.

9 THE COURT: In evidence without objection.

10 (Photographs admitted in evidence without objection

11 State's Exhibit 52, 64, 65 and 66)

12 BY SOLICITOR:

13 Q. Sergeant Clendenin, is that all you did with the ve-
14 hicle?

15 A. Correct.

16 Q. Did you check to see who the vehicle was registered
17 to?

18 A. No, I did not.

19 Q. Okay. Can you tell me what direction the moped was
20 headed in in regard to Leigh Lane?

21 A. From Leigh Lane down to Candy Lane.

22 Q. Away from Leigh Lane or towards Leigh Lane?

23 A. It would be going away from Leigh Lane.

24 Q. Can you tell me, was there any way to determine the
25 speed of the moped before it came to a stop?

A. CLENDENIN ON DIRECT

1 A. No, it was not.

2 Q. Do you know or could you tell from the indications on
3 the moped whether it was in motion or not?

4 A. It was in motion.

5 Q. Okay. What else did you do in regards to any of the
6 weapons found?

7 A. I tested the Lorschien 25 caliber handgun.

8 Q. Okay. I show you what's been marked State's Exhibit
9 23. Do you recognize that?

10 A. That is the weapon. The box with the weapon.

11 Q. And what is contained in the box with the weapon?

12 A. Four twenty-five caliber bullets in the handgun, one
13 magazine and unfired rounds that was found inside the -- it
14 looks like six rounds. Three that was found outside of
15 the magazine and three that was found inside the magazine
16 beside the moped.

17 Q. Okay. Now, can you tell me about this gun? Is it
18 safe?

19 A. It's safe enough.

20 Q. Is it loaded?

21 A. No, it's not.

22 Q. Can you please tell us what type of marks -- you
23 found this in the street, is that correct?

24 A. That's correct.

25 Q. What type of marks of wear and tear are present on

A. CLENDENIN ON DIRECT

1 this gun?

2 A. I found a lot of markings, scratches on both sides,
3 the rear, and on the bottom butt of the weapon.

4 Q. Were these like gouges or . .

5 MS. PARHAM: I would rather he not lead his witness,
6 Your Honor.

7 THE COURT: Rephrase the question, Solicitor.

8 BY SOLICITOR:

9 Q. How would you best describe those marks?

10 A. Deep scratches on the sides of the hand gun.

11 Q. All right. How was it found in the roadway?

12 A. It was found laying on its side in the roadway. The
13 magazine was not inserted in the weapon.

14 Q. On which side, if you recall?

15 A. I do not recall. I'd have to be looking at the photo-
16 graphs.

17 Q. I show you Defense Exhibit 8. Is that -- does that
18 refresh your recollection as to that?

19 A. Yes, it does. It was found laying on the flip side
20 about the same as most of the scratches you see on the
21 left side of the weapon.

22 Q. Most of the scratches were on the left side?

23 A. That's correct.

24 Q. Would that be consistent or inconsistent with sliding
25 down the roadway?

A. CLENDENIN ON DIRECT

1 A. Consistent.

2 Q. Did you do any testing with this weapon?

3 A. I did some test firing with this weapon.

4 Q. And where did you do the test firing at?

5 A. At the Florence County Sheriff's Office firing range.

6 Q. I'm going to show you State's Exhibit 6. Do you re-
7 cognize that?

8 A. I do.

9 SOLICITOR: Your Honor, I would move to have State's
10 Exhibit 6 introduced in evidence at this time.

11 MS. PARHAM: That's hearsay, Your Honor. He can tes-
12 tify as to what it is in it.

13 THE COURT: Let me see it.

14 (Brief pause)

15 THE COURT: I would sustain the objection.

16 SOLICITOR: Thank you, Your Honor.

17 BY SOLICITOR:

18 Q. With the Court's permission, I'd ask you to step down.

19 THE COURT: Yes, sir. Before you do that, I would
20 advise you -- I assume all the parties are familiar with
21 the rule, procedures and guidelines for the use of fire-
22 arms as exhibits in Court from the South Carolina Clerk of
23 Court's Manual.

24 It may not be loaded and may not be pointed at any
25 juror or person. It does have a lock to it.

A. CLENDENIN ON DIRECT

1 It should be held in a position which is practical if
2 handled by a witness.

3 All right, thank you.

4 SOLICITOR: Thank you, Your Honor.

5 THE COURT: You may proceed.

6 BY SOLICITOR:

7 Q. Step right about here, please, and face the jurors.

8 Did you test-fire the weapon?

9 A. I did.

10 Q. And did it test fire as far as firing the weapon?

11 A. Firing the weapon -- it wouldn't fire initially, the
12 first initial rounds.

13 Q. All right, and how did you end up firing the weapon?

14 A. I fired it with (inaudible).

15 Q. At any time did it mis-fire?

16 A. It never mis-fired but it refused to engage another
17 round into the chamber.

18 Q. Okay. What did you have to do to get it to fire a
19 second round?

20 A. I would have to push the slide manually for it to go
21 into the chamber.

22 Q. And where is the slide located?

23 A. The slide is the top portion of the handgun.

24 Q. And what happened when you pulled the trigger and it
25 fires?

A. CLENDENIN ON DIRECT

1 A. It fired and ejected the round but when it goes to
2 strip another round off the magazine, it will only go so
3 far and did not go into the chamber, so you have to push
4 the slide forward to get it to go in place in the chamber
5 to be fired.

6 Q. Let me make sure I understand. Could you fire the
7 gun?

8 A. It fires and ejects the shell, and then the next shell
9 comes up and hangs up.

10 Q. It hangs up. All right, and you tried it six times?

11 A. Yes. Six times it fired but wouldn't go in place.

12 Q. Okay. But did it fire the first time?

13 A. The first round fired falsely, and didn't discharge
14 from the weapon.

15 Q. Okay.

16 A. And the second round didn't go into the chamber.

17 Q. And did you find any spent shell cases on the ground?

18 A. No, I didn't. Not at the scene.

19 Q. Now, the magazine was not in the gun at the scene,
20 is that correct?

21 A. No, it was not.

22 Q. Can you show or tell this jury how that magazine could
23 come out?

24 A. There is a magazine release located on the very back.

25 When you slide it backwards then the magazine comes out.

A. CLENDENIN ON DIRECT

1 Q. And is that it right here?

2 A. That's correct.

3 Q. So right there?

4 A. Yes, it is.

5 Q. And if it -- is it possible or not possible to drop
6 this and hit that slide and the magazine come out?

7 A. It very could possibly.

8 Q. Okay, and when the magazine comes out and falls can
9 the bullets come out of it?

10 A. . . .

11 MS. PARHAM: Your Honor, I would object. He's lead-
12 ing his own witness.

13 THE COURT: Ms. Parham has made the same objection to
14 leading. Rephrase your question, please, Solicitor.

15 SOLICITOR: Thank you, Your Honor.

16 BY SOLICITOR:

17 Q. Is it possible or not possible when the magazine comes
18 out of the gun and falls that the bullets can come out?

19 A. It's possible.

20 Q. All right, and would that be considered unusual or
21 usual at a crime scene location?

22 A. With that particular weapon it could occur quite eas-
23 ily with the fall upon impact.

24 Q. Okay, you may step back up.

25 You said you fired this weapon six times, is that

A. CLENDENIN ON DIRECT

1 correct?

2 A. That's correct.

3 Q. What happened to shot one?

4 A. It fired but did not fully engage the second run to
5 push it into the chamber.

6 Q. All right, and what happened on shot two?

7 A. The same thing again.

8 Q. It fired . .

9 A. It fired but would not -- the next round would not go
10 in.

11 Q. What happened when you tried shot three?

12 A. The exact same thing. It would not pull the round in
13 the chamber.

14 Q. But it fired?

15 A. It fired.

16 Q. Shot four?

17 A. Shot four -- the same thing. It would not fully seat
18 the round into the chamber so I had to manually pull the
19 slide.

20 Q. But it fired successfully?

21 A. It fired successfully.

22 Q. Shot five?

23 A. On shot five it would not take the round off of the top
24 of the magazine so I had to manipulate it to get the round
25 out of the magazine and into the chamber -- seated into the

A. CLENDENIN ON DIRECT

1 chamber.

2 Q. What happened to shot six?

3 A. Shot six I had to take the round out of the magazine
4 and insert it into the chamber.

5 Q. Thank you.

6 SOLICITOR: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 (Brief pause)

9 BY SOLICITOR:

10 Q. Sergeant Clendenin, did you have an opportunity to
11 examine the cell phone in this case?

12 A. I did examine one cell phone in the case, yes.

13 Q. Whose cell phone was it?

14 A. Edward Windham's.

15 Q. Where was that cell phone found?

16 A. In his pocket.

17 Q. What did you do or what steps did you take to get the
18 information off the phone regarding calls, texts or con-
19 tacts?

20 A. I used the phone back at the lab where I took photo-
21 graphs of the phone.

22 Q. Screen shots . .

23 A. Screen shots of the phone. All contacts, messages,
24 all texts.

25 Q. What, if anything, was found on the phone to signify

A. CLENDENIN ON DIRECT

1 any connection or communication between the victim in this
2 case, Mr. Windham, and Mr. Allen?

3 A. There was nothing that came up on the phone.

4 Q. Okay. Thank you.

5 Please answer any questions Ms. Parham may have.

6 THE COURT: Thank you. Ms. Parham.

7 MS. PARHAM: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BYMS. PARHAM:

10 Q. The 25 caliber Lorschien gun would not chamber load?

11 A. It would not.

12 Q. And every time you tried to fire you would have to
13 manually slide the bullet in?

14 A. That's correct.

15 Q. And you took a picture of yourself testing it, is that
16 correct?

17 A. That is correct.

18 Q. The entire time you were testing it?

19 A. That is correct.

20 Q. The entire time you tested it, you couldn't get a
21 bullet to properly chamber itself in that gun?

22 A. That is correct.

23 Q. And that magazine held seven bullets?

24 A. That is correct.

25 Q. And so if there was one in the chamber it would hold

A. CLENDENIN ON CROSS

1 eight?

2 A. Yes.

3 Q. So if someone had a magazine that wasn't full in the
4 gun and it didn't have one in the chamber, then that first
5 shot, based on your testing, would not have been able to
6 slide from the chamber into the gun. Is that correct?

7 A. If you manually did it then it would chamber, but upon
8 firing the gun it would not chamber another round.

9 Q. Okay. Where did you manually -- when did you ever
10 rack the gun manually into the chamber?

11 A. After each shot.

12 Q. But you had to manually do that?

13 A. I had to manually rack the shot.

14 Q. Did you ever do any test on the springs of that gun?

15 A. I noticed the springs would not come up to its full
16 capacity after the magazine was loaded with six rounds.

17 Q. And it looks like the clips that lower it into the
18 magazine are still intact?

19 A. Yes, they are.

20 Q. And what purpose do they serve?

21 A. They hold the rounds inside the magazine.

22 Q. Those are intact on that gun?

23 A. Yes.

24 Q. And you all never sent that gun to SLED for any test-
25 ing to see if those bullets -- why they are not being racked

A. CLENDENIN ON CROSS

1 into the chamber?

2 A. No, I did not.

3 Q. When you say you found the gun on the victim, you
4 found it in his left front pants pocket. Correct?

5 A. Let me make sure. Left pocket.

6 Q. And although you test-fired the gun, you did not do
7 any type of video or recreate the dropping of the gun to
8 see if the magazine would come out?

9 A. No, I did not.

10 Q. So you don't even know if that's what happened?

11 A. No, I do not.

12 Q. And you don't know if bullets could come out or if
13 that clip could come out by dropping it?

14 A. I couldn't recreate the scene in relation to the ac-
15 tual incident.

16 Q. And when Mr. Clements asked you about markings on the
17 gun, there is a significant amount of markings all over
18 the 25 caliber gun, is that right?

19 A. Right.

20 Q. And we don't know how those got there?

21 A. No, I do not. I had never seen the Lorschien prior to
22 this.

23 Q. And so when he asked you if that was consistent with
24 sliding on the pavement, none of us know that or were there
25 to know that, and you were not?

A. CLENDENIN ON CROSS

1 A. That would be correct.

2 MS. PARHAM: Your Honor, for the next questions I'll
3 have to set up the projector.

4 (Pause in the proceeding)

5 MS. PARHAM: May the witness step down for this?

6 THE COURT: Yes, maam.

7 Please keep your voices up.

8 BY MS. PARHAM:

9 Q. Let me show you what has previously been entered into
10 evidence as Defense Exhibit 53. This is the diagram you
11 were speaking about on direct examination. Is that right?

12 A. That's correct.

13 Q. And would you say it is to scale?

14 A. No.

15 Q. So it is not to scale?

16 A. No.

17 Q. Okay. Cone A to (inaudible) is -- Cone A to A here
18 is eight feet three inches?

19 A. Yes.

20 Q. And then Cone B to A is sixty-two feet one inch?

21 A. That's correct.

22 Q. So that line is significantly shorter, A to A than B
23 to A?

24 A. That is correct.

25 Q. So not only is it not to scale but it is not actually

A. CLENDEMNON CROSS

1 in proportion to the measurement?

2 A. No, it's a recreation of a hand sketch.

3 Q. So that would mean that those items are not in the
4 correct place on this map?

5 A. It is used for informational purposes in case we need
6 to create the scene at later date. Yes, ma'am.

7 Q. And take, for example, this item six here to here?

8 It says eighty-six feet eleven inches, and then item
9 six to C is fifty-six feet two inches?

10 A. That's correct.

11 Q. And, again, that means those lines are not consistent
12 with the measurements?

13 A. No, they would not be.

14 Q. In fact, none of them are, and if you look at A to
15 number four -- so is it fair to say that the most accurate
16 recreation of this scene would be the photographs because
17 they are not subject to human interpretation; they are as
18 they appear?

19 A. That's correct. This is a field sketch for informa-
20 tion, not an actual to-scale drawing of the location.

21 Q. But the photographs that are in evidence were taken
22 there and they fairly and accurately represent what was on
23 the scene that night?

24 A. They were taken on the scene.

25 Q. Yes, and, again, with these side by side, Defense

A. CLENDENINON CROSS

1 Exhibit 54 and Defense Exhibit 53, the numbers on Exhibit
2 54 are not the same as Exhibit 53, are they?

3 A. No, they are not.

4 Q. In fact, when you look at Defense Exhibit 53, item num-
5 ber 15 is below number 16? On Defense Exhibit 54 it's to
6 the right of it?

7 A. That's correct.

8 Q. And 14 is completely different on Defense Exhibit 54 and
9 53?

10 A. . .

11 Q. Correct?

12 A. That's correct.

13 Q. And, again, on -- even comparing Defense Exhibit 54 and
14 52 -- let's get those two on the screen -- the item numbers
15 are completely different?

16 In Defense Exhibit 54, for example, item number 14 is
17 down here and on Exhibit 52 item 14 is up here?

18 A. That's correct.

19 Q. That couldn't be -- I mean, it can't be both ways?

20 A. The only thing true in these drawings are the measure-
21 ments. Everything else is interpretation of the way things
22 are on an eight and a half by eleven sheet of paper.

23 Q. And so, again, the photographs that are in evidence
24 would actually be a more accurate depiction of the scene?

25 A. Yes.

A. CLENDENIN ON CROSS

1 Q. Did you take any additional photographs of the Lorscien
2 25 caliber pistol?

3 A. I did not.

4 Q. I believe you testified that you measured the distance
5 between the items and the poles in case a recreation later
6 was necessary.

7 Did you ever measure the distance between the items
8 themselves?

9 A. No, I did not.

10 Q. So the gun to moped -- none of that? Clip to . . .

11 A. None of that.

12 Q. I believe that's all I have. Thank you.

13 THE COURT: Redirect, Solicitor?

14 SOLICITOR: Yes, sir.

15 REDIRECT EXAMINATION

16 BY SOLICITOR:

17 Q. Sergeant Clendenin, what purpose other than to record
18 the accurate measurements were the diagrams for?

19 A. It is a not to scale sketch for us to have the in-
20 formation we need for recreation.

21 Q. And that would be the accurate measurements?

22 A. Accurate measurements. It was a hand drawn sketch in
23 this case and we can use computer software to try to re-
24 create it somewhat by the hand sketch.

25 Q. Thank you. No further questions.

1 MS. PARHAM: No, Your Honor.

2 (Jury returned to the Courtroom)

3 THE COURT: All right, our jury is back in.

4 Solicitor, you may call your next witness.

5 SOLICITOR: Thank you, Your Honor. If it please the
6 Court, we'd call Mr. G. P. Farnum.

7 G. P. FARNUM, being duly
8 sworn, testified as follows:

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

11 WITNESS: My name is Glynn Peter Farnum. Nickname Pete.

12 DIRECT EXAMINATION

13 BY SOLICITOR:

14 Q. Spell your name for the Court Reporter.

15 A. My last name is Farnum, F A R N U M.

16 Q. Mr. Farnum, . .

17 A. Yes, sir.

18 Q. . . I'm going to stand back over here so I know if I
19 can hear you all the jurors can hear you. If you will
20 keep your voice up.

21 A. Yes, sir.

22 Q. And if you don't understand one of my questions and
23 you ask me to restate it I'll be happy to do that.

24 A. All right.

25 Q. Okay?

P. FARNUM ON DIRECT

1 A. Yes, sir.

2 Q. As the old saying goes, in listening to you talk, you
3 are not from around here, are you?

4 A. No, I'm from Barbados.

5 Q. Barbados?

6 A. Yes, sir.

7 Q. And how did you come to be in Florence, South Carolina?

8 A. I came to live in New York and I came when I was young
9 to Florence. I fall in love with it and never went back
10 to New York.

11 Q. I can understand that. Now, Mr. Farnum, what do you
12 do for a living? Where do you work?

13 A. I own my business, Farnum Frame and Body Shop at 76
14 South Barringer Street.

15 Q. How long have you maintained that business?

16 A. Sixteen years almost.

17 Q. Okay, and do you have young men working for you from
18 time to time?

19 A. Yes, sir.

20 Q. And did you have occasion to know a young man by the
21 name of Cory Allen?

22 A. Yeah, I know him.

23 Q. And did he work for you at all?

24 A. Yeah, he did work. He was learning the trade.

25 Q. Learning the trade?

P. FARNUM ON DIRECT

1 A. Yes, sir.

2 Q. Okay, and the trade being body work, body man?

3 A. Frame and body shop.

4 Q. Okay. Frame and body?

5 A. Yes, sir.

6 Q. All right, and how long was he working with you to
7 try to learn that trade?

8 A. Six -- maybe six months or a little more, but around
9 that.

10 Q. When was the last time he was there working with you
11 learning the trade?

12 A. . .

13 Q. Do you recall?

14 A. I can't recall the date but it was about a year and
15 a half ago. Around there, or more.

16 Q. Before this incident?

17 A. Well, before the incident it was about sixteen months,
18 I think.

19 Q. That's your best recollection?

20 A. Yes, sir.

21 Q. All right, and was he a pretty good worker?

22 A. Well, yes, he was very smart and we used to get along
23 very well.

24 Q. Okay. Did he ever come to work at any time wearing
25 anything unusual?

P. FARNUM ON DIRECT

1 A. Well, one day one of the guys told me he was carrying
2 a gun. I then confront him and ask him, are you carrying
3 a gun on you. He said, yes, but I have a permit for it.

4 He went in his pocket and he pulled a written permit
5 and it was him, but the address was my address.

6 Q. Okay.

7 A. And so sometime back later I confront him again and
8 ask him, are you in any trouble, and he said, no.

9 The conversation went on. This guy kill his brother.
10 He told me . . .

11 Q. He told you about it?

12 A. Yeah, and he told me that -- I say, he didn't get a
13 long time, and he say, yeah, he unrelented not for murder.

14 Q. Okay.

15 A. So he then go on and he said, I'm gonna kill him. He
16 was doing about seven or eight years in prison. So I try
17 to talk to him. I said, your momma already lost one son.
18 If you do this, she gone lost two sons.

19 I say your momma is a strong lady because she used to
20 bring him burgers at the shop sometimes, and I told him
21 you don't know when she cry at night and on Thanksgiving
22 she miss that boy too. I said, don't let it happen so she
23 lose you too.

24 That's what her son told me, what he disclose.

25 Q. He disclosed what?

P. FARNUM ON DIRECT

1 A. I'm going to kill him, he disclose.

2 Q. Okay. He was talking about doing this?

3 A. When he was at my shop working and after the incident
4 happened I didn't know about it or any previous accident or
5 when it happened.

6 But then I saw it happened in my town which is our
7 town here. If I had known about it I would have notify the
8 police that something about to happen and don't let it hap-
9 pen. He had been wearing the gun or whatever. That is
10 possible because when you invest -- I invest in my home and
11 invest in my business. People come over here and tell what
12 a beautiful place this is. Some come in my house and my
13 business and tell me what happen.

14 They say, you know what happen last night, and it is
15 unusual that it happen like that here.

16 Q. Now, what, if anything, did Mr. Cory Allen tell you
17 about his knowledge of when Edward Windham was getting out
18 of prison?

19 A. No, he didn't tell me when -- when the guy was com-
20 ing out, but he just tell me when he come out.

21 Q. When he came out he was . . .

22 A. He was going to kill him. Just like that.

23 Q. All right. When did Mr. Cory Allen leave working
24 with you to learn a trade?

25 A. Well, his brother -- I assume it was his brother -- he

P. FARNUM ON DIRECT

1 came one afternoon and demanded him to come and let's go
2 and . . .

3 MS. PARHAM: I would object to anything his brother
4 said, Your Honor.

5 THE COURT: Don't tell us what somebody else said.

6 BY SOLICITOR:

7 Q. Just tell us why he left you?

8 A. Well, he left that afternoon and he came back to work
9 but he was always leaving early and then he stopped.

10 Q. Stopped coming to work?

11 A. Yeah.

12 Q. Okay. When was the next time you heard anything about
13 his brother?

14 A. One time at home when I was watching the news and I
15 saw this flash. Then about two hours later I saw his pic-
16 ture.

17 Q. What did you do as a result of that?

18 A. I called the police and tell them what he told me be-
19 cause I didn't believe that it would happen.

20 Q. Who did you talk with with the police?

21 A. I had talk to the Sheriff. He was my closest friend.

22 Q. And did anyone come out to see you?

23 A. The next morning I talk to Mr. McFadden who came to
24 see me.

25 Q. Okay. All right.

P. FARNUM ON DIRECT

1 SOLICITOR: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 BY SOLICITOR:

4 Q. Please answer any questions Ms. Parham has for you,
5 Mr. Farnum?

6 A. Yes, sir.

7 THE COURT: Ms. Parham.

8 CROSS EXAMINATION

9 BY MS. PARHAM:

10 Q. Good afternoon, Mr. Farnum.

11 A. Good afternoon, maam.

12 Q. How much did you pay Cory when he worked for you?

13 A. Cory never ask for money. He was a person who came
14 to my shop to learn a trade and never ask for money. When
15 I ask him, he said I don't need any money.

16 I told him I will give you a Hundred and Twenty-five
17 Dollars a week, but he say he didn't want it; to keep your
18 money. He just wanted to learn the trade.

19 Q. Okay, so how did you pay him?

20 A. In cash.

21 Q. And did you keep any business records of when he had
22 worked for you?

23 A. But he was not working, maam. He was learning trade
24 so he had an option of coming. He wanted to learn trade
25 on his own time.

P. FARNUM ON CROSS

1 Q. Did you keep any records of him learning a trade?

2 A. No, I didn't write down his name or social security
3 or none of that at the time because I would be working and
4 I would just be glad to see him coming and working.

5 Q. Do you have any records to show when he worked?

6 A. No, maam.

7 Q. Well, my -- would it be correct as to the months that
8 he worked, that he worked in 2010?

9 A. I can't tell you if it was 2010 because I can't re-
10 collect exactly. Time moves so fast.

11 Q. Okay.

12 A. And guys come in and out. Some stay and some don't
13 stay at it.

14 Q. Okay, so it could have been 2010?

15 A. It's possible. I don't know.

16 Q. And how long did he work for you?

17 A. Six months, I think, or maybe a little more. I can't
18 be sure.

19 Q. And so you paid him a Hundred and Twenty-five Dollars
20 a week to learn a trade?

21 A. I give him that amount that I paid him, because it
22 was something . .

23 Q. Okay.

24 A. . . I show him how to do what I can do myself and do
25 it faster. So it was just like showing him because he had

P. FARNUM ON CROSS

1 good hands. He was smart, and I saw something in him that
2 he could take up the mantle from me if he had held on to
3 carry on the business, because I am looking for someone to
4 take it up and carry it on.

5 Q. But you did pay him a Hundred and Twenty-five Dollars
6 a week?

7 A. Yes, maam, I give him that amount.

8 Q. So that is Twenty-five Dollars a day?

9 A. I didn't put it as a day salary but I give it to him
10 as allowance.

11 Q. Okay. Was it true he was learning the trade from nine
12 o'clock in the morning until five o'clock in the afternoon?

13 A. Yes, maam. It's possible.

14 Q. Okay, and so when you told Mr. Clements earlier that
15 this conversation he allegedly had with you happened sev-
16 eral months before this incident, if the time he worked
17 for you was 2010, then it was more than four years before
18 this incident?

19 A. I can't remember exactly.

20 Q. All right, and isn't it true that the reason -- he
21 told you the reason he carried a gun was because he was
22 scared?

23 A. No, he never told me the reason he carry a gun but
24 he told me when I confront him about the gun -- he said
25 this man had kill his brother but he get time for an

P. FARNUM ON CROSS

1 unrelated crime and he was going to kill him when he come
2 out. That's when I try to explain to him why not to do it.

3 Q. Did he tell you that the person had threatened him as
4 well?

5 A. He never said . .

6 Q. Did he tell you the person threatened him?

7 A. No, maam.

8 THE COURT: Let him answer the question, please, Ms.
9 Parham.

10 A. No, he never told me about threats. He told me the
11 guy was still in prison.

12 BY MS. PARHAM:

13 Q. But you don't recall the day that he made reference in
14 the context of if he comes after me, I'm going to kill
15 him? You don't recall that?

16 A. No, maam.

17 Q. How long -- did you ever see Cory Allen after he had
18 worked for you?

19 A. Yes, maam. Months later.

20 Q. Okay, and would that have been the last time you saw
21 him?

22 A. No. He came in once or twice, just walk in.

23 Q. All right.

24 A. Before the incident.

25 Q. All right, and whenever you had this conversation with

P. FARNUM ON CROSS

1 him, you never called the police or anything like that?

2 A. No, because I didn't expect him -- that he was going
3 -- this was a conversation back then and not urgent, and
4 his father's in Manning. I didn't want to go and speak with
5 his father.

6 Q. You thought his father was in Manning and not in
7 Florence?

8 A. Yes, maam.

9 Q. Thank you.

10 Q. You're welcome.

11 THE COURT: Redirect, Solicitor?

12 SOLICITOR: No, Your Honor. We'd ask that Mr. Farnum
13 be released from his subpoena.

14 THE COURT: Thank you. Any objection, Ms. Parham?

15 MS. PARHAM: No, Your Honor.

16 THE COURT: Thank you for being a witness. You may
17 step down and you may be excused.

18 (Witness excused)

19 THE COURT: All right, Solicitor.

20 SOLICITOR: Your Honor, our next witness is Vonquell
21 Pittman.

22 THE COURT: All right.

23 VONQUELL PITTMAN, being duly
24 sworn, testified as follows:

25 CLERK: Please be seated and state your name for the

V. PITTMAN ON DIRECT

1 record.

2 WITNESS: Vonquell Pittman.

3 DIRECT EXAMINATION

4 BY SOLICITOR:

5 Q. How you doing this afternoon, Mr. Pittman?

6 A. Great.

7 Q. I'm going to stand back over here, and if I can hear
8 you then I know the jury can hear you. You are sort of
9 soft-spoken.

10 Get close to the microphone and speak up loud.

11 Do you mind spelling your name for the Court Reporter.

12 A. V O N Q U E L L P I T T M A N.

13 Q. Mr. Pittman, where do you work?

14 A. I work at General Electric.

15 Q. On the assembly line?

16 A. Yes, sir.

17 Q. How long have you worked there?

18 A. Five years.

19 Q. And where were you working in 2014? In June?

20 A. (Inaudible)

21 Q. Where were you living at that time?

22 A. Candy Lane.

23 Q. And who were you living with?

24 A. My brother.

25 Q. You were staying with your brother?

MR. PITTMAN ON DIRECT

1 A. Yes.

2 Q. Would that be Candy Lane?

3 A. Yes.

4 Q. You don't still live there, do you?

5 A. No.

6 Q. Okay. I'm going to show you what's been marked as
7 State's Exhibit Number 4. If you can, point out where you
8 live? Can you see where Candy Lane is on that map?

9 A. Yes, I see it. There.

10 Q. Please step down and come closer to the jury.

11 A. You want me to step down? Okay.

12 Q. Do you recognize this neighborhood?

13 A. Yes, right here.

14 Q. So you can recognize that?

15 A. Yes.

16 Q. All right.

17 SOLICITOR: Your Honor, at this time we would move
18 to enter State's Exhibit 4 into evidence.

19 THE COURT: Ms. Parham.

20 (Brief pause)

21 MS. PARHAM: No objection.

22 THE COURT: All right, State's 4 is in evidence with-
23 out objection.

24 (Map entered in evidence without objection as State's
25 Exhibit 4)

MR. PITTMAN ON DIRECT

1 BY SOLICITOR:

2 Q. All right, if you will, stand on this side where I am
3 right now.

4 A. Yes, sir.

5 Q. I'm going to hold this up. Speak up so the Court Re-
6 porter can hear you.

7 A. Yes, sir.

8 Q. Can you point out where Candy Lane is and Leigh Lane
9 on this map, if you can?

10 A. . .

11 Q. Do you know where Leigh Lane is and Candy Lane?

12 A. . .

13 Q. Do you know where Candy Lane is?

14 A. Yes, sir.

15 Q. Can you point that out to the jury?

16 A. Yes, sir.

17 Q. Right in this direction?

18 A. Yes, sir.

19 Q. Okay. Where on Candy Lane did you live with your bro-
20 ther?

21 A. .

22 Q. ?

23 A. Yes, sir. Right there.

24 Q. How many houses from this corner right here?

25 A. Uh, two.

MR. PITTMAN ON DIRECT

- 1 Q. Two in between and one facing the other direction?
- 2 A. Right.
- 3 Q. Okay. Do you know where the shooting took place on
- 4 that night?
- 5 A. Uh, right here in between and
- 6 Q. Okay. All right, and on the other side there?
- 7 A. Yes, sir.
- 8 Q. This side here?
- 9 A. Yes, sir.
- 10 Q. You can sit back down.
- 11 A. Yes, sir.
- 12 Q. Can you tell us what you were doing that day?
- 13 A. Uh, I had just got off work and I seen the two men,
- 14 so I spoke to them and went in the house.
- 15 Q. And whose house was that?
- 16 A. My brother's house.
- 17 Q. What's his nick name?
- 18 A. Ruger.
- 19 Q. Ruger?
- 20 A. Yes, sir.
- 21 Q. Who lived there with your brother and you?
- 22 A. Kathleen.
- 23 Q. Okay. You came up and saw the people you were
- 24 talking about?
- 25 A. Yes, sir.

MR. PITTMAN ON DIRECT

1 Q. Who was there, if you recall?

2 A. I can't recall right now. Some friends of my brother.

3 Q. What were they doing?

4 A. Cooking out.

5 Q. Were they drinking or consuming any beer?

6 A. Yeah. Yes, sir.

7 Q. And how long had you been staying with your
8 brother at that time?

9 A. Probably two months.

10 Q. And did you know many of his friends well?

11 A. Well, no. It was a lot of people so I didn't really
12 know the names of all of them.

13 Q. So you didn't hang with them?

14 A. Yes, sir.

15 Q. When you got to your brother's house, they were cooking
16 out, you said?

17 A. Yes, sir.

18 Q. Who was there that you recall?

19 A. Uh, my cousin and I seen Cory and I spoke to him.

20 Q. All right, do you see Cory here in Court?

21 A. Yes, sir.

22 Q. In the Courtroom today?

23 A. Yes, sir.

24 Q. Point him out for us.

25 A. . .

V. PITTMAN ON DIRECT

1 Q. What does he have on?

2 A. A black suit.

3 Q. All right,

4 SOLICITOR: Let the record reflect he has identified the
5 the Defendant.

6 THE COURT: All right.

7 BY SOLICITOR:

8 Q. Do you know what kind of vehicle they drove?

9 A. A burgandy Lincoln.

10 Q. A burgandy Lincoln?

11 A. Yes, sir.

12 Q. Who usually drove that car?

13 A. Fred.

14 Q. How often would he come to your brother's house?

15 A. Uh, four or five times I seen him that summer.

16 Q. Four or five times that summer?

17 A. Yes, sir.

18 Q. Okay. Was Cory usually with him or not usually
19 with him?

20 A. Two times with him.

21 Q. Two times Cory was with him?

22 A. Yes, sir.

23 Q. Including this time?

24 A. Yes.

25 Q. I'm going to show you State's Exhibit 52. Do you

V. PITTMAN ON DIRECT

- 1 recognize that?
- 2 A. Yes, sir.
- 3 Q. What is that?
- 4 A. The Lincoln.
- 5 Q. That's the Lincoln they drove?
- 6 A. Yes, sir.
- 7 Q. Okay. You came home from work, and you said you
- 8 spoke to them?
- 9 A. Yes.
- 10 Q. What did you do then?
- 11 A. I went to lay down for a while.
- 12 Q. What happened next?
- 13 A. I heard gunshots.
- 14 Q. Okay.
- 15 A. So I went outside.
- 16 Q. Do you know about how many gunshots you heard?
- 17 A. I know there were several gunshots.
- 18 Q. More than one?
- 19 A. Yes, sir.
- 20 Q. Okay. All right, and when you heard the gunshots,
- 21 what did you do?
- 22 A. Went outside.
- 23 Q. Were you concerned?
- 24 A. Was I concerned? I was concerned.
- 25 Q. When you got out there did you look up and down

V. PITTMAN ON DIRECT

- 1 the road?
- 2 A. I did. Yes, I did and I ran back inside.
- 3 Q. When you glanced down to your left what did you
- 4 see?
- 5 A. I seen Cory and Fred out there.
- 6 Q. Where was the car then?
- 7 A. Parked down the street.
- 8 Q. Down the street?
- 9 A. Yeah.
- 10 Q. Okay, and you said you ran back inside?
- 11 A. Yes, sir.
- 12 Q. How long did you stay inside?
- 13 A. Until the police came.
- 14 Q. The police came?
- 15 A. Yes.
- 16 Q. And did you go outside then?
- 17 A. Yes, sir.
- 18 Q. Now, at that time, did you speak to anyone with law
- 19 enforcement?
- 20 A. At that time, no, I didn't.
- 21 Q. How about later on?
- 22 A. Yes, sir. There were two of them.
- 23 Q. Two policemen?
- 24 A. Yes.
- 25 Q. And did you notice whether -- when you came back

V. PITTMAN ON DIRECT

1 out and saw the police were there, did you notice where
2 the Lincoln was then?

3 A. Yes, it was kinda like on the side of the house.

4 Q. So when you went inside the house when you came off
5 work and then you came out, did you look down the street to
6 where the shooting was?

7 A. Yes, sir.

8 Q. And then you came out when the police or the Sher-
9 iff's Office was present; where did you see it then?

10 A. On the side.

11 Q. On the side of the house?

12 A. Yes, sir.

13 SOLICITOR: If I could take a minute so I can make
14 sure not to knock all these pictures down?

15 (Brief pause in the proceeding)

16 BY SOLICITOR:

17 Q. I show you what's been marked State's Exhibit 50.

18 What is that?

19 A. On the side of the house.

20 Q. That's on the side of the house. That's where it
21 was?

22 A. Yes, sir.

23 Q. I want to show you State's Exhibit 48. What is
24 that?

25 A. In front of the house.

V. PITTMAN ON DIRECT

- 1 Q. This is the front of the house where you were living?
- 2 A. Yes.
- 3 Q. With your brother?
- 4 A. Yes, sir.
- 5 Q. I show you State's Exhibit 49.
- 6 A. Yes, sir.
- 7 Q. What is that?
- 8 A. Kind of to the side.
- 9 Q. And can you see the car from away down there?
- 10 A. Yes, sir.
- 11 Q. Is that where it was?
- 12 A. Yes, sir.
- 13 Q. Okay. Do you recall whether or not you saw anyone
- 14 with guns when you came home from work?
- 15 A. When I came home from work, I seen Fred with a gun
- 16 or a holster up on his shoulder.
- 17 Q. All right. How about Cory?
- 18 A. ...
- 19 Q. Do you recall seeing him with a gun?
- 20 A. I do recall seeing him with a gun but I wasn't pay-
- 21 ing attention to him.
- 22 Q. All right. You don't recall what kind of gun, do
- 23 you?
- 24 A. No, sir.
- 25 Q. Was that normal for Fred?

V. PITTMAN ON DIRECT

1 A. Yes, I seen him with one before.

2 Q. How about Cory?

3 A. No, I hadn't really seen him with a gun. I really
4 hadn't seen him that many times, but I had seen Fred.

5 Q. Okay. All right. Thank you. Please answer any
6 questions Ms. Parham has for you.

7 THE COURT: Ms. Parham.

8 MS. PARHAM: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MS. PARHAM:

11 Q. Cory and Fred were there with your brother that day?

12 A. Yes.

13 Q. And they were cooking out?

14 A. Yes.

15 Q. And is that what they usually did when they came
16 over there?

17 A. My brother would.

18 Q. And they would cook out and watch the internet
19 with your brother?

20 A. Yes.

21 Q. And that day did they seem as they always did?

22 A. Yes, maam.

23 Q. Was there anything out of the ordinary that day in
24 the way they were acting?

25 A. No, maam. Not at all.

V. PITTMAN ON CROSS

1 Q. Anything that wasn't normal that day?

2 A. No, maam.

3 Q. Did you ever see them whispering in a corner or plan-
4 ning something together?

5 A. I was in the house so I really didn't see them out-
6 side there.

7 Q. How would you describe their demeanor that day?

8 A. They were easy-going, laid back. I ask them how they
9 was doing that day.

10 Q. So nothing significant about that day? Nothing un-
11 usual?

12 A. No, maam.

13 Q. Now, when the first of the shots rang out, how did
14 they sound to you?

15 A. There was one and then more. I really didn't count
16 them.

17 Q. Were they all together in a row?

18 A. Yes.

19 Q. Okay. Do you recall telling law enforcement that they
20 were really fast?

21 A. It was kinda fast.

22 Q. Okay, and you never heard any later shot after the
23 first shots?

24 A. No, maam.

25 Q. All right, how much time had transpired between hearing

V. PITTMAN ON CROSS

- 1 the shots and when you had seen Cory and Frederick?
- 2 A. I saw them after I went back outside. I kinda glanced
- 3 around and to the left.
- 4 Q. Do you know how much time there had been?
- 5 A. No, maam.
- 6 Q. You don't know how much time had expired?
- 7 A. No, maam. I wouldn't know.
- 8 Q. And do you know where the car was on the road at
- 9 the time you heard the shots?
- 10 A. No, maam.
- 11 Q. Okay. Where were you when the shots rang out?
- 12 A. In the house.
- 13 Q. And where was the cookout?
- 14 A. Outside.
- 15 Q. In the front or the back?
- 16 A. Side of the house.
- 17 Q. Okay, and so you went -- when you heard the shots
- 18 where were you in the house?
- 19 A. In the back.
- 20 Q. Okay, so you went straight from the back of your
- 21 house to where?
- 22 A. To the outside.
- 23 Q. Okay.
- 24 A. Sorta to the garage.
- 25 Q. Okay. Where the kids were?

V. PITTMAN ON CROSS

1 A. Yes.

2 Q. And had you looked out the front windows before you
3 did that or was it after you did that?

4 A. I didn't look out the window. I knowed it was out-
5 side so I went outside.

6 Q. Okay, and then after you saw the kids is when you
7 got the kids or when you walked down the street?

8 A. Yes, maam. I was going down there. Yes, I did.

9 Q. Okay, and then a short time later the car was parked
10 back by the side yard?

11 A. That's right.

12 Q. All right, and did you see who came back to the car?

13 A. No, I didn't.

14 Q. All right.

15 A. I was in the house.

16 Q. Did you see my client, Cory, laying in the street by
17 the police?

18 A. Yes.

19 Q. Okay. You saw him down there?

20 A. Yes. I seen him when I came outside down there.

21 Q. Okay. Did you hear Frederick or anyone trying to
22 get my client to leave? To get in the car and go?

23 A. No, I didn't hear that because that was a couple of
24 houses down.

25 Q. You saw the car down there and then you saw sitting in

V. PITTMAN ON CROSS

1 the road?

2 A. Yes.

3 Q. Do you know how long my client had been away from
4 the cookout?

5 A. No, maam. I was in the house and you really can't
6 see anything from inside the house.

7 Q. And was it still light outside when this was going
8 on?

9 A. Yes, it was.

10 Q. And you could still see clearly?

11 A. Yes.

12 Q. And it was a clear, sunny day?

13 A. Yes.

14 MS. PARHAM: One moment, Your Honor.

15 THE COURT: Yes, maam.

16 (Brief pause)

17 MS. PARHAM: That's all I have.

18 THE COURT: Thank you. Any Redirect?

19 REDIRECT EXAMINATION

20 BY SOLICITOR:

21 Q. Mr. Pittman, Ms. Parham asked you about Mr. Allen's
22 car. My understanding is you weren't outside for all of it?

23 A. No, I wasn't outside.

24 Q. And you couldn't see if anybody came by on a moped,
25 could you?

V. PITTMAN ON REDIRECT

1 A. No, sir. I didn't look out.

2 Q. Do you know Edward Windham?

3 A. Who?

4 Q. Edward Jamell Windham -- do you know him?

5 A. No, I never seen him and never heard his name.

6 Q. Okay. You don't know if he was staying in the neigh-
7 borhood at times?

8 A. No, sir.

9 Q. You had only been in the neighborhood for a few
10 months?

11 A. No, sir.

12 Q. All right. You never saw the shooting but you just heard
13 it?

14 A. Yes, from inside the house.

15 Q. All right. Thank you That's all.

16 THE COURT: Recross?

17 MS. PARHAM: Nothing, Your Honor.

18 THE COURT: Okay, thank you. Thank you very much,

19 Mr. Pittman. You may step down.

20 WITNESS: Yes, sir.

21 (Witness excused from stand)

22 THE COURT: Solicitor.

23 SOLICITOR: Your Honor, the next witness we would
24 call is Patrick Woodberry.

25 THE COURT: All right.

1 PATRICK WOODBERRY, being
2 duly sworn, testified as follows:

3 CLERK: Please be seated and state your name.

4 SOLICITOR: May Mr. Pittman be released fro his sub-
5 poena?

6 MS. PARHAM: No objection.

7 THE COURT: You may be released.

8 (Witness Pittman excused)

9 THE COURT: What was the name of the witness?

10 WITNESS: Patrick Woodberry.

11 DIRECT EXAMINATION:

12 BY SOLICITOR:

13 Q. Mr. Woodberry, how you doing?

14 A. Pretty good.

15 Q. Let me ask you a question. Do you know Mr. Cory
16 Allen?

17 A. He's from the neighborhood.

18 Q. All right, so that's a yes?

19 A. Yes.

20 Q. How long had you known him?

21 A. I'm thirty-eight, so maybe twenty years or some-
22 thing along in there.

23 Q. How about Frederick? You know him?

24 A. Yes, sir.

25 Q. Did you know his younger brother, Robert Allen, who

P. WOODBERRY ON DIRECT

1 was killed?

2 A. I don't think I know him.

3 Q. Do you know any of the other brothers?

4 A. Yes.

5 Q. Who else do you know?

6 A. An older brother.

7 Q. What's his name?

8 A. They call him Suliman.

9 Q. Do you know his real name?

10 A. I'm not sure.

11 Q. Okay, and let me ask you this. Have you ever been in
12 trouble with the law?

13 A. Yes, sir.

14 Q. And do you have a conviction?

15 A. Yes, sir.

16 Q. You pled guilty?

17 A. Yes, sir.

18 Q. What was it to?

19 A. Narcotics.

20 Q. And when was that?

21 A. Uh, in 2000, I think.

22 Q. October of 2000?

23 A. Yes, sir.

24 Q. And have you been in any trouble since then?

25 A. No, sir.

P. WOODBERRY ON DIRECT

1 Q. Okay.

2 A. Traffic ticket.

3 Q. Did you know Edward Jamell Windham?

4 A. Yes, sir.

5 Q. What did you call him?

6 A. Littles.

7 Q. How long had you known Littles?

8 A. Maybe about -- since he was about twelve or thirteen
9 years old. Playing ball. I would say twenty-plus years.

10 Q. Was he a friend of yours?

11 A. Yes, sir.

12 Q. Okay. What was his neighborhood or his hood?

13 A. Tara Village.

14 Q. And where did you grow up?

15 A. Tara Village.

16 Q. All right. Where does your mom live?

17 A. At East Candy Lane.

18 Q. East Candy Lane?

19 A. Yes, sir.

20 Q. All right. Let me show you what's been marked as State's
21 Exhibit 3. Do you recognize that?

22 A. Yes, sir.

23 Q. What is that?

24 A. That's Tara Village.

25 SOLICITOR: Your Honor, I would move State's Exhibit

P. WOODBERRY ON DIRECT

1 3 in evidence.

2 MS. PARHAM: No objection.

3 THE COURT: State's 3 in evidence without objection.

4 (Map entered in evidence without objection as State's
5 Exhibit 3)

6 BY SOLICITOR:

7 Q. All right. I'm going to ask you to step down if I
8 may, please, and keep your voice up.

9 If you would stand here beside me, and would you point
10 out for this jury where Candy Lane runs on this map?

11 A. Here.

12 Q. What's the last road that crosses Candy Lane? Leigh
13 Lane?

14 A. Yes.

15 Q. All right. Do you know Debra Coe?

16 A. You know where she lives?

17 A. Yes. Here.

18 Q. That's the corner of Candy Lane and what?

19 A. Leigh Lane.

20 Q. Where does your mom live?

21 A. Right here.

22 Q. The other end of the street?

23 A. Yeah.

24 REPORTER: You need to speak up.

25 Q. So you knew Littles?

P. WOODBERRY ON DIRECT

1 A. Yes.

2 Q. What about Daryl Jones?

3 A. Yes.

4 Q. Did you know him prior to this?

5 A. Yes.

6 Q. What about (inaudible)? Did you know him?

7 A. Yes.

8 REPORTER: Speak up.

9 A. I don't know their real names.

10 Q. Okay. Now, where were you on June 4 of 2014?

11 A. I was at my mom's house.

12 Q. Who was there with you?

13 A. My mom and my sister.

14 Q. Okay. What happened? Did you actually hear the
15 shooting or not?

16 A. I didn't hear the shooting.

17 Q. How did you know about the incident?

18 A. I heard the police.

19 Q. What did you do in response to that?

20 A. I went out to see what happened.

21 Q. Okay. Did you find out there on the street?

22 A. Yes, sir.

23 Q. You can have a seat.

24 When you got down there, was there a big crowd?

25 A. Not when I first got down there. No, sir.

P. WOODBERRY ON DIRECT

- 1 Q. Okay.
- 2 A. It was Cory and Frederick and Miss Debra. Miss Coe.
- 3 Q. And was Ms. Coe on the cell phone?
- 4 A. Yes.
- 5 Q. And everybody started coming out?
- 6 A. Everybody started coming outside.
- 7 Q. Okay. Did you have a chance -- well, let me ask
- 8 you this. Do you know what kind of car Fred and Cory
- 9 Allen had?
- 10 A. A burgandy Lincoln.
- 11 Q. I'm going to show you State's Exhibit 52. Do you
- 12 recognize that?
- 13 A. Yes, sir.
- 14 Q. What is that?
- 15 A. A burgandy Lincoln.
- 16 Q. Whose?
- 17 A. Frederick and Cory's.
- 18 Q. Fred and Cory's?
- 19 A. Yes.
- 20 Q. All right, and when you got down to the scene, was
- 21 that car on Candy Lane at that time?
- 22 A. Yes, sir.
- 23 Q. Where?
- 24 A. At Lou's.
- 25 Q. Is Lou Allen Jones?

P. WOODBERRY ON DIRECT

- 1 A. I don't know his real name.
- 2 Q. Okay, and where does he live?
- 3 A. At this point in time?
- 4 Q. Yeah, at that point in time?
- 5 A. He lived on Candy Lane.
- 6 Q. Do you know what number?
- 7 A. No, I'm not sure.
- 8 Q. Do you know about how far it was from the corner of
- 9 Candy and Leigh?
- 10 A. About three or four houses.
- 11 Q. Three to four?
- 12 A. Yes, sir.
- 13 Q. All right, and did you see this vehicle, State's Ex-
- 14 hibit 52 -- did you see it parked?
- 15 A. Yes, sir.
- 16 Q. Where at?
- 17 A. On the side of Lou's house.
- 18 Q. The side of Lou's house?
- 19 A. Yes.
- 20 Q. Closer to the street or back out of sight?
- 21 A. Kinda like back out of sight.
- 22 Q. Okay. Now, did you point that vehicle out to anyone?
- 23 A. Yes, sir.
- 24 Q. Who?
- 25 A. Detective McFadden.

P. WOODBERRY ON DIRECT

- 1 Q. Okay.
- 2 SOLICITOR: Beg the Court's indulgence.
- 3 (Brief pause)
- 4 Q. Did you know what Littles was driving?
- 5 A. Yes, sir.
- 6 Q. What did he drive?
- 7 A. A moped.
- 8 Q. Were you out during -- were you in Tara Village often
- 9 during the days?
- 10 A. Yes, sir.
- 11 Q. How often was Littles out there riding his moped?
- 12 A. Just about every day.
- 13 Q. About every day?
- 14 A. Yes, sir.
- 15 Q. You were out at Candy Lane a lot?
- 16 A. Yes, sir.
- 17 Q. I'm going to show you what's been marked State's Ex-
- 18 hibit 70. Do you recognize that?
- 19 A. Yes, sir.
- 20 Q. What is that?
- 21 A. The moped.
- 22 Q. Littles' moped?
- 23 A. Yes.
- 24 Q. State's Exhibit 69.
- 25 A. Littles' moped, yes, sir.

P. WOODBERRY ON DIRECT

1 Q. Another picture of it?

2 A. Yes.

3 Q. You got the word in the neighborhood . . .

4 MS. PARHAM: Objection, Your Honor.

5 THE COURT: Yes. Rephrase your question.

6 BY SOLICITOR:

7 Q. When the news traveled down to your end of Candy
8 Lane where you were and you went down Candy Lane to see
9 what happened, did you see -- I will show you another ex-
10 hibit, State's Exhibit 67 -- do you recognize that?

11 A. Yes. Same moped.

12 Q. The same moped.

13 A. Yes, sir.

14 Q. Did you see this moped anywhere?

15 A. Yes.

16 Q. Where?

17 A. On Candy Lane.

18 Q. Was it upright? Was it down on the ground?

19 A. It was laying down on the ground.

20 Q. All right, and did you notice Littles?

21 A. Yes.

22 Q. Where did you see him?

23 A. By it. He was laying across it. His face was face
24 down and the moped was laying down. His face was kinda
25 like by the handle bars and his feet were kinda like between

P. WOODBERRY ON DIRECT

1 the seat and the back of the moped.

2 Q. Was he up on his knees?

3 A. Yes.

4 Q. Where was his rear end?

5 A. In the air.

6 Q. In the air?

7 A. Yes, sir.

8 Q. Was it usual or unusual for him to be in that neigh-
9 borhood?

10 A. He was a friend of ours. He was there every day.^t
11 Just about every day.

12 Q. Had you seen him or been around him recently during
13 that time?

14 A. Had I seen him? Could you . .

15 Q. Had you seen him recently during this time or right
16 before this happened?

17 A. Yes, sir.

18 Q. Where had you seen him?

19 A. He would come by the house or I would see him down
20 the street or at the store.

21 Q. Okay. Riding on his moped?

22 A. Riding on his moped, yes, sir.

23 Q. Please answer any questions Ms. Parham has.

24 THE COURT: Thank you, Solicitor. Ms. Parham.

25 MS. PARHAM: Thank you, Your Honor.

P. WOODBERRY ON CROSS

1 CROSS EXAMINATION

2 BY MS. PARHAM:

3 Q. You had seen Mr. Windham in Tara Village?

4 A. Yes, maam.

5 Q. Where?

6 A. Around and across the street from where he died.

7 Q. Okay, was that next to Ms. Coe or across the street
8 from Ms. Coe?

9 A. Next to Ms. Coe.

10 Q. Did he used to be Ms. Coe's next door neighbor?

11 A. Yes, maam.

12 Q. And how long was he Ms. Coe's next door neighbor?

13 A. Uh, maybe over years.

14 Q. All right, and he was always friendly with Ms. Coe?

15 A. I'm not sure.

16 Q. All right. You knew Ms. Coe?

17 A. I know of her but not in my personal time or anything.

18 Q. But Mr. Windham was someone who lived next door to Ms.
19 Coe?

20 A. Yes, with his grandmomma.

21 Q. When you got down that evening to where the moped was,
22 did you ever -- did you see my client waiting there for
23 the police?

24 A. I think he was standing on the side of the road but
25 the police was already there.

P. WOODBERRY ON CROSS

1 Q. When you got there the police were already there?

2 A. Yes, maam.

3 Q. Okay. So you got there after the police?

4 A. Yes, maam.

5 Q. That's all I have.

6 THE COURT: Redirect, Solicitor?

7 SOLICITOR: Briefly.

8 REDIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Was it unusual or usual to see Cory and Frederick in
11 the neighborhood?

12 A. Um, Frederick maybe, but not Cory.

13 Q. But did you see him earlier that day?

14 A. I did see him earlier that day. I had just came up
15 and I walked down Plantation because I stopped at my friend's
16 house, and while I was there talking to him that's when I
17 observed the burgandy Lincoln coming down Plantation.

18 Q. Do you know about what time that was?

19 A. I can't recall exactly what time it was.

20 Q. All right, and it wasn't usual to see him?

21 A. Like I said, Frederick -- I would see Frederick about
22 every day or every other day. Cory was never with him.

23 Q. All right. No further questions. Please answer
24 any questions Ms. Parham may have.

25 THE COURT: Recross?

1 (Whereupon, the Court stood in recess until March 23,
2 2016, when the case was resumed)

3 THE COURT: Thank you very much. Please be seated.
4 Thank you.

5 I believe we had a juror with a doctor's issue,
6 but I believe that's resolved.

7 All right, anything from the State before we bring
8 our jury in?

9 SOLICITOR: No, Your Honor.

10 THE COURT: From the Defense?

11 MS. PARHAM: No, Your Honor.

12 THE COURT: How many more witnesses have you got,
13 and you don't have to answer that question if you don't
14 want to.

15 SOLICITOR: Your Honor, I've got two or possibly
16 three, but I have a witness that's on my witness list I
17 need to have here in case -- I don't anticipate calling
18 her in my case but in case Ms. Parham needs to call her.

19 She's here pursuant to my subpoena and I will not
20 release her until Ms. Parham tells me if she wants to
21 call her or not.

22 THE COURT: And about what length of time will the
23 witnesses take? I'm trying to give Ms. Parham time to
24 get her witnesses ready.

25 SOLICITOR: Your Honor, we'll be done within an

1 hour, I would think.

2 THE COURT: All right. Thank you very much.

3 (Jury returned to the Courtroom)

4 THE COURT: I hope you all had a pleasant evening.

5 We will continue in the trial of this case by the presenta-
6 tion of evidence and testimony by the State in its case
7 in chief.

8 As you have done throughout the trial, please con-
9 tinue to give the parties your complete and undivided
10 attention.

11 Thank you.

12 Solicitor, you may call your witness.

13 SOLICITOR: Thank you, Your Honor. May it please
14 the Court?

15 We would call Agent Whitney Berry with the State
16 Law Enforcement Division.

17 THE COURT: All right. Come around and be sworn
18 for us, please.

19 WHITNEY BERRY, being
20 duly sworn, testified as follows:

21 CLERK: Please be seated and give us your name for
22 the record.

23 WITNESS: My name is Whitney Berry.

24 DIRECT EXAMINATION

25 BY SOLICITOR:

W. BERRY ON DIRECT

1 Q. Good morning, Ms. Berry. How are you?

2 A. Good, and yourself?

3 Q. I'm fine. I'm going to stand back over here so
4 I can be sure if I hear you that the jurors can hear
5 you.

6 If you'll speak up loudly for me.

7 Ms. Berry, where do you work?

8 A. I work for the South Carolina Law Enforcement
9 Division, also known as SLED.

10 Q. And what do you do for SLED?

11 A. I am a forensic scientist in the Trace Evidence
12 Department.

13 Q. And what does a forensic scientist in the Trace
14 Evidence Department do?

15 A. We perform a variety of different tests, includ-
16 ing glass analysis, fire analysis, gunshot residue analy-
17 sis.

18 Q. How long have you worked for SLED?

19 A. A little over three years.

20 Q. And have you been in the capacity of a forensic
21 scientist for that entire time?

22 A. Yes, sir.

23 Q. Can you tell us what type of training and educa-
24 tion you have?

25 A. Yes, I can. I have a Bachelor of Science degree

W. BERRY ON DIRECT

1 from the University of South Carolina.

2 When I begin working with SLED, I completed a nine
3 month in-house gunshot residue training, which included
4 practical exams as well as actual tests, the theory of
5 gunshot residue, (short portion inaudible).

6 I have also attended the Hope College of Applied
7 Sciences on gunshot residue identification, the electron-
8 microscopy with energy express x-ray type courses.

9 Q. And have you ever been qualified to testify as an
10 expert in State or Federal Courts regarding gunshot resi-
11 due in particular and trace evidence in general?

12 A. Yes, sir.

13 Q. How many times?

14 A. Thirty-one.

15 Q. Thirty-one times?

16 A. Yes, sir.

17 SOLICITOR: Your Honor, we would offer Agent Berry
18 as an expert in the area of gunshot residue and trace
19 evidence.

20 THE COURT: Any objection, Ms. Parham?

21 MS. PARHAM: We stipulate, Your Honor.

22 THE COURT: All right, thank you.

23 Again, Mr. Foreman and ladies and gentlemen of the
24 jury, you have heard this before, but normally a person
25 cannot testify to opinion testimony.

W. BERRY ON DIRECT

1 Normally, when a person testifies they must testify
2 from what they saw, heard, sensed by smell or something
3 of that nature.

4 However, there is an exception for witnesses who by
5 education and training in areas and become expert in a
6 particular field, if the Court qualifies them that way.

7 This witness, Agent Whitney Berry, will be quali-
8 fied in the area of trace evidence generally and gunshot
9 residue specifically, to give her opinions in those areas
10 and the basis of those opinions.

11 That does not mean that you must accept the opinion
12 but it is offered for whatever weight, you, the jury,
13 determine it should be given.

14 Thank you very much.

15 Solicitor, you may continue.

16 BY SOLICITOR:

17 SOLICITOR: Thank you, Your Honor. May I approach
18 the witness?

19 THE COURT: Yes, sir

20 Q. Agent Berry, I'm going to hand you what's been marked
21 as State's Exhibit 21. Tell me, do you recognize that
22 and what that is?

23 A. I do. This is SLED lab number L 14-0653, container
24 C containing three gunshot residue kits.

25 Q. And who were the individuals the gunshot residue

W. BERRY ON DIRECT

1 kits were on?

2 A. The gunshot residue tests -- one was on Edward
3 J. Windham; one on Cory Nettles Allen; one on Frederick
4 Nettles Allen.

5 Q. Are these the same gunshot residue tests that you
6 examined?

7 A. As far as I can tell, yes.

8 Q. All right, and if you'd open that up. Whose initials and
9 date is that on there?

10 A. My initials and the date was the date I opened this
11 package. On the tamper evidence tape I have my initials
12 again and it looks like 11 20 14 as the date that I had
13 opened it.

14 Q. Okay, and this was not tampered with?

15 A. No, sir.

16 Q. This is State's Exhibit 21 that is in evidence, and
17 if I could have these marked as Exhibits 21 A, B and C.

18 (Individual kits marked by Reporter as 21 A, 21 B
19 and 21 C of Exhibit 21 previously admitted in evidence
20 as a closed container)

21 BY SOLICITOR:

22 Q. I show you what's been marked State's Exhibit 21 A.
23 Can you tell us what that is?

24 A. Yes, sir. This is the gunshot residue kit collected
25 from Frederick Nettles Allen.

W. BERRY ON DIRECT

1 Q. Did you examine that kit?

2 A. Yes, sir.

3 Q. Do you have any conclusions regarding whether or
4 not there was gunshot residue on the hands of Frederick
5 Nettles Allen?

6 A. Yes, sir.

7 Q. What is that opinion?

8 A. No gunshot residue was found on either the right or
9 the left hand.

10 Q. I show you what's been marked State's Exhibit 21, B.
11 Can you identify that for me?

12 A. Yes, sir. This is the gunshot residue kit that was
13 collected off of Cory Nettles Allen.

14 Q. And did you examine this?

15 A. Yes, sir.

16 Q. Okay. Did you reach a conclusion as to whether or
17 not there was gunshot residue on the hands of Cory
18 Nettles Allen?

19 A. Yes, sir.

20 Q. What was that conclusion?

21 A. On Cory's right hand particles of gunshot residue
22 were found, and on Cory's left hand particles of gunshot
23 residue were found.

24 The tests were positive for gunshot residue.

25 Q. And what does that positive result mean as far as

W. BERRY ON DIRECT

1 laymen's terms?

2 A. Gunshot residue is the primer that comes out of the
3 gun when it is fired. It consists of three metals, lead
4 barium and antimony. Pressure is applied when the gun
5 is fired so for gunshot residue to be found on somebody's
6 hand that means they have to have fired a firearm or come
7 into contact with a fired firearm.

8 That means they could have potentially touched a
9 gun that was fired, touched ammunition, fired a gun or
10 been near somebody who fired a gun.

11 Q. All right. I show you what's been marked as State's
12 Exhibit 21 C. Can you identify that for me, please?

13 A. Yes, it is the gunshot residue kit taken from Edward
14 Jamell Windham.

15 Q. And did you examine this kit?

16 A. Yes, sir.

17 Q. And did you have a conclusion as to whether there
18 was gunshot residue present or not from Mr. Windham?

19 A. Both of his hands were negative for gunshot residue.

20 Q. Okay.

21 A. No gunshot residue was found.

22 Q. And in laymen's terms, what does that mean?

23 A. For gunshot residue to not be found it means the
24 person did not handle or fire a weapon and were not in
25 vicinity of a firearm, or that the gunshot residue was

W. BERRY ON DIRECT

1 somehow lost.

2 Gunshot residue is very fragile and may be lost when
3 you touch someone or wash your hands or do something that
4 involves your hands.

5 Gunshot residue is microscopic and maybe you cannot
6 see it with the naked eye, and it is very easily transferred
7 from the hands with normal, everyday activity, or with you
8 putting your hands in your pockets or even clapping your
9 hands.

10 It can also be absorbed in the skin or lost in other
11 things such as blood or any kind of liquid present, or in
12 anything that may be touched.

13 Q. Now, what about -- you're talking about with a live
14 person, but what about an opportunity for gunshot residue
15 to be lost when someone is deceased?

16 A. With a deceased person?

17 Q. Yes.

18 A. If a person is deceased typically gunshot residue kits
19 are taken but within eight to twelve hours after a person
20 has gone to autopsy. Typically at autopsy after the decedent
21 is taken from the scene.

22 Q. Okay. All right, I show you what's been marked as
23 State's Exhibit 57, which is a photograph of the victim,
24 Edward Jamell Windham. Can you see his hands in this photo-
25 graph?

W. BERRY ON DIRECT

1 A. Yes, sir.

2 Q. By looking at that, and based on your expertise, would
3 you expect to be able to get a gunshot residue result if
4 gunshot residue was present on those hands?

5 A. Yes, sir. I believe if it was there it could be pro-
6 cessed from what I see there.

7 Q. Okay, and let me ask you this. What about if you have
8 a dead person and they are covered with a sheet? Would you
9 expect that in any way to remove gunshot residue that might
10 be present?

11 A. If I were retrieving gunshot residue, I would find it
12 unlikely that that would remove a large amount of it or all
13 of it.

14 Q. Okay, and what would be required to remove all of it?

15 A. If there is profuse bleeding it could be removed. If
16 someone came to him on the roadway and rolled him over, or
17 if someone tried to resuscitate him.

18 It could be removed by being wiped down or washed or
19 removed randomly when he was lifted.

20 Q. All right, and about if -- asking you about if the de-
21 cedent were covered with a sheet. What would have to happen
22 for a sheet to remove it?

23 A. Um, I would think that pressure would have to be ap-
24 plied through the sheet or it be rubbed against the area to
25 remove gunshot residue.

W. BERRY ON DIRECT

1 Q. And if this body was discovered with the hands under-
2 neath, would that be a protected area for the hands or not?

3 A. I would think so, yes.

4 Q. So with that area being protected, what would be the
5 likelihood of gunshot residue being removed?

6 A. I would not expect very much, if any, gunshot residue to
7 be removed if any were present.

8 Q. And in your test on Cory Allen it was covered with gun-
9 shot residue. Is that correct?

10 A. Yes, sir.

11 Q. And with Edward Jamell Windham, there was no gunshot
12 residue present. Is that correct?

13 A. Yes, it is.

14 Q. Please answer any questions Ms. Parham may have.

15 THE COURT: Thank you, Solicitor.

16 Ms. Parham.

17 MS. PARHAM: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MS. PARHAM:

20 Q. Those particles you mentioned, the lead, the
21 barium and the antimony, those are expelled when the
22 bullet is actually fired?

23 A. Yes, maam.

24 Q. So if a bullet was not fired, those things
25 would not be expelled?

W. BERRY ON DIRECT

1 A. Not if the bullet was of a proper composition or where
2 the metallic elements did not leave the chamber. If some-
3 thing interfered with the pressure and the metal wasn't
4 able to be vaporized.

5 The bullet would not become mobile.

6 MS. PARHAM: May I have a moment, Your Honor?

7 THE COURT: Yes, maam.

8 (Brief pause)

9 MS. PARHAM: I don't have any further questions, Your
10 Honor.

11 THE COURT: Thank you, Ms. Parham.

12 Solicitor, any further questions?

13 SOLICITOR: No, sir. Nothing, Your Honor.

14 THE COURT: All right.

15 SOLICITOR: We would that she be released from her
16 subpoena.

17 THE COURT: Do you have any objection to that, Ms.
18 Parham?

19 MS. PARHAM: No, Your Honor.

20 THE COURT: Thank you very much, Agent Berry.

21 You may step down, and you are released from your sub-
22 poena.

23 (Witness excused)
24
25

1 THE COURT: You may call your next witness.

2 SOLICITOR: Your Honor, we would call Dr. Nick
3 Batalis.

4 THE COURT: All right, Doctor. If you would come
5 up and join us, please?

6 NICHOLAS BATALIS, being duly
7 sworn, testified as follows:

8 CLERK: Please be seated and state your name for
9 the record.

10 WITNESS: My name is Nicholas Batalis.

11 DIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. Sir, can you tell us where you work?

14 A. I'm employed at the Medical University of South
15 Carolina down in Charleston.

16 Q. And what do you do there at MUSC?

17 A. I am an associate professor of pathology, and my
18 specific job is as a forensic pathologist.

19 Q. And can you please explain to the jury just what
20 forensic pathology is?

21 A. Forensic pathology is a sub-specialty within the
22 greater field of pathology. So pathology is the study
23 of disease, and a pathologist would be the doctor that
24 if they took a biopsy at surgery to see if you had can-
25 cer or did not have cancer -- the pathologist would be

DR. BATALIS ON DIRECT

1 the one who looked at it and give them that information.

2 Similarly, a pathologist oversees the laboratory as
3 blood work is done or to come up with a diagnosis.

4 Forensic pathology is again a sub-speciality so
5 there is extra training with that in the field of pathol-
6 ogy that focuses on the legal aspect of medicine, and in
7 particular performing autopsies to determine the cause
8 and manner of death.

9 Q. And you are a forensic pathologist?

10 A. Yes, sir.

11 Q. Can you please tell this jury about your educational
12 background and training?

13 A. Sure. I received my undergraduate degree at Raleigh
14 University in Indianapolis, Indiana. I then went on to
15 graduate medical school at Indiana University School of
16 Medicine and also at Indianapolis.

17 After graduating medical school I came down to MUSC
18 at Charleston for my general training in anatomic and
19 clinical pathology. I did four years of residency and
20 training in general pathology.

21 Upon those four years, I took an exam to become
22 board certified. I passed that and went on to do one
23 year of specialized fellowship training in forensic
24 pathology at the Dallas County Medical Examiner's Office
25 in Dallas, Texas.

DR. BATALIS ON DIRECT

1 After completion of that, I passed another board certifi-
2 cation to become also board certified in forensic pathol-
3 ogy. At that point, I then came back to my current posi-
4 tion at MUSC at that time.

5 Q. And how long have you worked at MUSC as a forensic
6 pathologist?

7 A. It will be eight years the month of January.

8 Q. Do you have to on an annual or a longer basis renew
9 your credentials, say continuing medical education?

10 A. Yes. To maintain a South Carolina licensure you
11 take continuing education credits each year, and then in
12 addition the Medical Board of Pathology -- that is the
13 group that certifies us to be board certified -- they do
14 require more rigorous training qualifications for continu-
15 ing education.

16 Just last year I re-took the testing, which is every
17 ten years. We go through and show all the education we
18 have completed, pass another examination and passed the
19 boards.

20 Q. Have you been qualified in a State or Federal Court
21 to testify as an expert in forensic pathology?

22 A. Yes, approximately fifty times in South Carolina,
23 and and twice in North Carolina; once in Texas.

24 Q. Okay, and about how many autopsies have you performed?

25 A. Probably right around -- somewhere around two thousand

DR. BATALIS ON DIRECT

1 autopsies over the years.

2 SOLICITOR: Your Honor, we would present Dr. Batalis
3 as an expert in the field of forensic pathology.

4 THE COURT: All right.

5 MS. PARHAM: We stipulate, Your Honor.

6 THE COURT: All right. Again, ladies and gentlemen,
7 I will run through the instructions as to expert witnes-
8 ses for you.

9 This witness, Dr. Nicholas Batalis, will be quali-
10 fied as an expert in the field of forensic pathology,
11 and can give opinions and the basis of those opinions in
12 that area.

13 That does not mean you must accept those opinions,
14 but it is evidence for you, the jury, to give whatever
15 weight you deem proper.

16 You may continue. Thank you.

17 BY SOLICITOR:

18 Q. Dr. Batalis, did you have occasion to perform an
19 autopsy on Edward Jamell Windham?

20 A. Yes, I did, on June 5th of 2014.

21 Q. And as a result of that, did you prepare an autopsy
22 report?

23 A. Yes, I did.

24 Q. I'm going to show you what's been marked as State's
25 Exhibit 9 and ask you if you can identify tihs for me?

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1 A. Yes, this is a copy of the autopsy report that I
2 prepared at the completion of the case.

3 Q. And is that something you do in your normal course
4 of business as far as forensic records?

5 A. Certainly. In every autopsy I would produce a sim-
6 ilar report.

7 SOLICITOR: Your Honor, at this time we would move
8 State's Exhibit Number 9 into evidence.

9 THE COURT: Ms. Parham?

10 MS. PARHAM: I would object to the hearsay elements
11 of the report.

12 THE COURT: Okay, I would overrule that. It is ad-
13 mitted in evidence.

14 (Autopsy report admitted in evidence over objection
15 as State's Exhibit 9)

16 THE COURT: You may continue, Solicitor.

17 BY SOLICITOR:

18 Q. As a result of performing the autopsy on Mr. Windham,
19 did you also in that process produce any autopsy photos?

20 A. Yes, during the course of the autopsy.

21 Q. I hand you some exhibits that have been marked for
22 identification. State's Exhibit Number 10. Do you
23 recognize that?

24 A. Yes, I do.

25 Q. Is that a photo that was part of our autopsy?

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1 A. A photograph of evidence I recovered during the
2 course of the autopsy.

3 Q. Same question as to State's Exhibit 11?

4 A. Yes, another piece of evidence that I recovered
5 during the course of the autopsy.

6 Q. State's Exhibit 12?

7 A. State's Exhibit 12 is a photograph of one of the
8 injuries I found during the autopsy.

9 Q. State's Exhibit 13?

10 A. Yes, again State's Exhibit 13 is one of the injuries
11 I encountered.

12 Q. State's Exhibit 14?

13 A. Yes, State's Exhibit 14 is a more significant view
14 of what is in State's Exhibit 12, an injury that I encoun-
15 tered.

16 Q. State's Exhibit 15?

17 A. Yes, again, State's Exhibit 15 is a photograph of
18 another of the injuries I encountered.

19 Q. State's Exhibit 16?

20 A. Again, State's Exhibit 16 is again a photograph I
21 took of another injury that was on the body.

22 Q. State's Exhibit 17?

23 A. Yes, again State's Exhibit 17 is another of the in-
24 juries I encountered on the body.

25 Q. State's Exhibit 18?

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1 A. Yes, State's Exhibit 18 is again a photograph of ad-
2 ditional injuries identified by me on autopsy.

3 Q. State's Exhibit 19?

4 A. Yes, again State's Exhibit 19 shows additional in-
5 juries encountered in the course of the autopsy.

6 Q. And State's Exhibit 20?

7 A. This is -- again, State's Exhibit 20 shows the addi-
8 tional injuries encountered during the course of the
9 autopsy.

10 SOLICITOR: Your Honor, at this time we would move
11 State's Exhibits 10 through 20 into evidence.

12 THE COURT: Ms. Parham?

13 MS. PARHAM: No objection.

14 THE COURT: State's 10 through 20 are admitted into
15 evidence without objection.

16 (Photographs from autopsy admitted in evidence as
17 State's Exhibits 10 through 20 without objection)

18 BY SOLICITOR:

19 SOLICITOR: Your Honor, may I request permission
20 for Dr. Batalis to step down from the witness stand?

21 THE COURT: Yes, you might step down, Doctor, but
22 please keep your voice up

23 WITNESS: Yes, sir.

24 Q. Come and stand right here and face the jury. Speak
25 up for the Court Reporter so she can take down what you

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1 say.

2 I'll start with State's Exhibit 10 and ask, if you
3 would, to explain to the jury what that photograph de-
4 picts and why you all took that photograph?

5 A. Sure. What we have here in State's Exhibit 10, a
6 photograph of a bullet and jacket that I recovered in
7 the course of the autopsy.

8 Q. Where did you recover that from?

9 A. This was recovered from the lower front of the ab-
10 domen, the lower part of the belly.

11 Q. Okay, and when that was recovered was it released
12 to the Florence County Sheriff's Office?

13 A. Yes. The bullet along with the clothing and the
14 other evidence recovered.

15 Q. And you don't know what caliber that was?

16 A. I cannot. I'm not a firearms examine, and there is
17 some distortion to the bullet, so I can't say the exact
18 caliber.

19 Q. All right. State's Exhibit Number 11, the same ques-
20 tion. Please share that with the jury.

21 A. Sure. State's Exhibit 11 is another bullet that we
22 recovered during the course of the autopsy. In the one
23 shown previously the jacket was pulled away. In this
24 one the jacket was still attached to the bullet.

25 Again, this was also recovered from the abdomen or

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1 belly of the decedent.

2 Likewise, it was transferred to the authorities after
3 autopsy.

4 Q. Same question as to State's Exhibit Number 12?

5 A. Sure. During the course of the autopsy, I encountered
6 seven different gunshot wounds. State's Exhibit 12 depicts
7 one of the wounds.

8 I have a tag here with a ruler and it can identify the
9 case. Just above that tag is a certain view of the gunshot
10 injury in the photograph. That is a wound to the back
11 of the neck.

12 Q. Would this have been the wound that resulted in his
13 death?

14 A. Yes. After passing through the back of the neck,
15 this bullet went through the upper part of the spinal where
16 it attaches to the brain; it entered the skull and it re-
17 sulted in injury to the brain, to the neck and to the nos-
18 tril itself.

19 Severing that upper spinal cord would be a fatal
20 injury for sure.

21 Q. And about how quickly would the victim expire from
22 that wound?

23 A. I would be very rapidly. I can't give an exact
24 amount of time but we're talking anywhere from just a
25 couple of seconds to maybe a minute or two.

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1 Q. I show you Number 13 and ask you if you would to
2 please explain -- State's Exhibit 14?

3 A. State's Exhibit 14 showing the same wound that we
4 just saw in Exhibit 12. This is just at a much higher
5 power to show the wound, the circular wound and the size
6 of the injury, and also the tag with the case number sit-
7 ting right there.

8 Q. Now, all of this, does it purport to show how close
9 was the contact or how far away was the weapon that was
10 fired?

11 A. There was something we call soot, and soot is the
12 burned-up gunpowder from the explosion of the bullet that
13 was fired.

14 Soot basically will then be transferred to the
15 skin, depending on the ammunition, the type of weapon;
16 soot will extend out to six inches to a foot from the bar-
17 rel of the gun.

18 Another thing that comes out is the pieces of gun-
19 powder that don't get consumed when the trigger is fired
20 or pieces of gunpowder that is still burning.

21 So these can fly through the air and strike the skin
22 to leave small little scrapes or burns, called stipling.
23 So there is a variance in ammunition and weapon but those
24 will travel anywhere from two to four feet from the bar-
25 rel of the weapon.

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1 So regarding this wound and all of the wounds, we
2 did not see any evidence of any soot or stippling on the
3 body, which would suggest that the gun was at least two
4 to four feet away from the body when it was fired, or
5 there was some sort of intervening object, such as the gun
6 was shot through a window or a mattress that would absorb
7 that soot.

8 Q. But they were not close contact wounds?

9 A. No.

10 Q. Okay, thank you.

11 Now, back to State's Exhibit 13. Please show it to
12 the jury and explain to them why you took that picture and
13 what it depicts?

14 A. Sure. This is State's Exhibit 13, another shot of a
15 gunshot wound. This is another one of the wounds and it
16 again is essentially straight at the midline and you can
17 see the bottom of the picture where the buttocks is, so bas-
18 ically the bullet entered the lower back.

19 Q. And you talked about the wound to the back of the head.
20 Is it possible that this is an exit wound from that or not?

21 A. No, this bullet entered there in the back and it went
22 past the spine and through the aorta, the big blood vessel
23 that takes blood from your heart to the rest of your body,
24 and it passed -- it continued to pass through some of the
25 intestines, the small intestines, and then it was recovered

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1 -- this bullet did not exit but it was one of -- it is one
2 the bullets that we recovered that we showed previously.

3 Q. You say the bullet hit the aorta, so where did the
4 blood collect from that?

5 A. I would assume there likely would have been some blood
6 that came out of the entrance wound, but also we know that
7 quite a bit of exit wounds were in the body. I believe we
8 have about twelve hundred mililiters of blood that was re-
9 covered from the abdomen.

10 So the injury to the aorta and injury to blood vessels
11 from different gunshot wounds resulted in the blood that we
12 found.

13 Q. Okay, I show you State's Exhibit 15. Can you explain
14 that to the jury and what that depicts? What type of wound
15 it was?

16 A. Sure. State's Exhibit 15 is another gunshot
17 wound, a third gunshot wound we've seen here. What we're
18 seeing is a very close picture of the outside of the left
19 thigh.

20 So there is the identifying tag and the circular les-
21 ion right underneath it where the bullet entered.

22 Q. Was there a corresponding exit wound?

23 A. There was not. After this bullet went through the left
24 thigh it entered the pelvis where the bullet damaged another
25 of the big blood vessels that resulted in bleeding in the

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1 abdomen. It then was recovered from the left side of the
2 pelvis. I believe this was the first wound we saw where
3 the bullet did not exit.

4 Q. And this is one of the bullets we have pictures of, from
5 this wound?

6 A. Correct.

7 Q. If you would, please, explain State's Exhibit 16

8 A. Sure. State's Exhibit 16 is another gunshot wound, the
9 fourth gunshot wound that we encountered.

10 This is a wound that seemed to have a lot going on, but
11 essentially the gunshot wound is along the inner aspect of
12 the pinkie side of his forearm, kinda like one hand was up
13 like this. The gunshot wound would be facing you all. So
14 again, we have a gunshot above the wrist, the gunshot en-
15 trance wound above the wrist and just over halfway up the
16 left forearm.

17 Q. I show you State's Exhibit 17, and please explain that
18 to the jury?

19 A. Sure. State's Exhibit 17 is a corresponding entrance
20 wound to State's Exhibit 16 that we just saw. So this pic-
21 ture is of the left arm. You see the tag on the elbow, so
22 it is just above the elbow on the inner surface of the left
23 arm.

24 Essentially the gunshot entered as Exhibit 16 showed
25 the entrance wound and 17 is showing an exit wound also on

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1 the inner surface of the arm but much higher up there and
2 on the arm.

3 Q. State's Exhibit 18, please.

4 A. Okay, State's Exhibit 18 shows an initial gunshot wound
5 and I believe this is the fifth one now. What we are look-
6 ing at here is a picture and both legs are shown.

7 So the left leg is kind of coming off to the side of
8 the picture. Where my tag is what we're look at is the left
9 on the right or the right thigh, more specifically, and so
10 you can see here three different injuries.

11 At the very bottom of the picture you can see -- this
12 is one wound, and a little bit higher up, maybe two inches,
13 the one that is closer to the right side of the photo or on
14 the inner side.

15 This shows the inner side of his right thigh, a gun-
16 shot entry wound, and then, on the outside side of the photo
17 kind of outside of his knee, over here is the gunshot exit
18 wound.

19 So this gunshot entered the inner aspect of the right
20 thigh, passed through the skin and tissues and exited the
21 outer part of the thigh around the knee.

22 Q. Now, what would be characterized as abrasions, would
23 that be consistent or not be consistent with sliding on
24 gravel or asphalt?

25 A. It would be consistent with that.

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1 Q. This is State's Exhibit 19. Would you explain that
2 one to the jury?

3 A. Sure. State's Exhibit 19 depicts the final two gun-
4 shot wounds that we found during the course of the autopsy
5 here.

6 If you are looking at the back of the deceased as he
7 is face down, look first at the very top of the picture
8 where you can see two different wounds separated by a lit-
9 tle bit of skin that is still intact.

10 Kind of focusing up top here, that is a gunshot en-
11 trance and exit but very superficial. It just went through
12 the -- just barely underneath the surface of the skin, al-
13 most a graze wound. I can't really tell from which direc-
14 tion it was traveling, whether it was coming from up to
15 down, or down to up, but it was a bullet injury.

16 Q. All right.

17 A. What we're seeing here and where my tag is located is
18 -- just above that is the seventh gunshot wound, a gunshot
19 entrance wound but essentially right in the middle of his
20 left calf.

21 So in the middle of the back of the leg, just above
22 my tag, a circular entrance wound there to the back of the
23 left calf.

24 So this picture shows two gunshot wounds, a near graze
25 higher up, and then the calf.

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1 Q. Lastly, State's Exhibit 20.

2 A. We are now looking at the front of the decedent and
3 so this would be his left leg here on the left side of the
4 photo where my tag is. There is kind of a triangular, ir-
5 regular wound right above where my tag is. That shows a
6 gunshot exit wound.

7 So in the previous exhibit we saw an entrance wound
8 right in the middle of the left calf, so this wound came in
9 straight through, back to front, of the leg and exited the
10 body on the left shin.

11 Q. A back to front wound?

12 A. Correct.

13 Q. All right, Dr. Batalis. Now, I ask you -- I'm going
14 to hand you the photographs again, and, if you would, begin
15 if you don't mind -- is it true or not that wounds form im-
16 mediately depending on how both the arms and legs move? Is
17 that correct?

18 A. Correct, the path the bullet is traveling. When the
19 gun was fired, the relationship of the gun to the body of
20 the decedent.

21 Q. So if you just look at it all, if he's standing up
22 like that, that would not necessarily be accurate?

23 A. Correct. When I describe things, just to make things
24 easier, I describe it as the standard anatomical position,
25 so the one of the left arm -- I took that one as coming

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1 upward. The entrance is here and as the arm is moved to
2 this position then it is not going upward any more, so, yes,
3 as the gun moves or the decedent moves that can change the
4 trajectory.

5 Q. Okay. I want to ask you some questions about consist-
6 ency -- what would be consistent or inconsistent with the
7 wounds. Okay?

8 A. Yes.

9 Q. Okay, say this chair is the moped.

10 A. Okay.

11 Q. All right, and I'm driving on the moped and you were a
12 shooter, and you say all of these wounds were at least two
13 to four feet away . .

14 A. Right.

15 Q. . . and could have been further. Is that correct?

16 A. Correct. Again, with the possibility of some sort of
17 interference by a material that would absorb the gunshot.

18 Q. Okay. Now, if I ride by on the moped, the wound that
19 entered back here and exited the knee, would that be con-
20 sistent with somebody firing as I'm riding by and getting
21 shot from the side?

22 A. Sure. The position you are riding by currently, that
23 could be achieved and it
could be consistent with someone firing at the moped.

24 Q. Okay. Now, the wound on below the left thigh -- I'm not
25 sure what you said that is.

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1 A. To the -- Exhibit 19.

2 Q. And this grazed the thigh, and would it be consistent
3 with going a little further with the shooter still standing
4 in the same place shooting, and it grazed that thigh and
5 going on through, as the person is riding on the moped.

6 Would that be consistent?

7 A. It would be consistent, yes. It would be consistent
8 with what we saw on the photograph.

9 Q. A person being shot while riding by on the moped?

10 A. Sure.

11 Q. And you went a little further and you are a little bit
12 further from the shooter, and you get shot again and you
13 are hit in the back in the calf and that ends up in the
14 shin.

15 Would that be consistent with what is on that State's
16 Exhibit?

17 A. Yes, that's what happened with Jack Kennedy.

18 Q. Okay, and if you threw your arm up like this while you
19 are riding by and you get shot, would that be consistent
20 with getting shot on the left arm, where that wound is?

21 A. Yes. The same situation with the moped riding by the
22 shooter and seeing the shooter. That is one situation in
23 which you could get the injury we saw there.

24 Q. And that is four wounds we've gotten so far?

25 A. Correct.

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1 Q. And then as you -- still you get shot again and that
2 comes in the head and stops in the abdomen, and would that
3 be consistent as well?

4 A. Correct. It would be coming from the back to front,
5 and also left to right. So it is the right position to be
6 consistent with that.

7 Q. And as the moped continues to try to escape and you
8 get shot right here, would that be consistent with the shot
9 the victim has sustained in the back?

10 A. Yes, that would be consistent.

11 Q. And, finally, right in here, right through the spinal
12 cord and out the left nostril as he's trying to get away,
13 would that be consistent?

14 A. Yes, it would.

15 Q. Thank you. You may sit back down.

16 SOLICITOR: Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 (Short pause)

19 BY SOLICITOR:

20 Q. Let me ask you one more question. You said these be
21 four different ways.

22 A. Correct.

23 Q. You're the shooter and coming by and you get shot be-
24 fore you pass by here. Would that be consistent with the
25 wound in the arm?

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1 A. . .

2 Q. Say this was the first shot and you get shot here and
3 it exits?

4 A. Yeah, the left arm would have to be more straight in
5 order for it to get through here and through the wrist and
6 upward.

7 Q. And when you get shot -- when you keep going and you
8 get shot through the thigh, would that be consistent?

9 A. Yes, I believe that would be consistent.

10 Q. Please answer any questions Ms. Parham may have.

11 THE COURT: Ms. Parham.

12 MS. PARHAM: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MS. PARHAM:

15 Q. Doctor, you went through the order of those pictures,
16 correct?

17 A. Correct.

18 Q. But we do know that the bullet through the neck would
19 incapacitate someone?

20 A. Correct. The bullet to buttocks and lower back, again,
21 those bullets hit the major blood vessels. Those could
22 eventually result in death, and the one in the back of the
23 neck would have incapacitated him in some pretty rapid
24 fashion.

25 Q. And it would have been unlikely for someone to be able

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1 to lift a limb after the spinal cord had been severed?

2 A. To be perfectly concise, there could be some twitching
3 of the body, just kind of naturally flexing, but you would
4 not expect any more than minimal moving or any intentional
5 movement at that point.

6 Q. And the Solicitor asked you about the first injury on
7 the arm. You said it would not be consistent with the arm
8 being bent, is that correct?

9 A. . . .

10 Q. It was more consistent with the arm being straight?

11 A. Correct. In order for the bullet to enter as it did,
12 it would not have to be perfectly straight but it couldn't
13 enter here and exit here if the arm is bent. It would have
14 to be fairly straight out.

15 Q. And so if you would show us where the entrance wound
16 is on that arm?

17 A. All right, let me get the Exhibit. Okay.

18 Q. If you would put a mark or an X where it was?

19 A. . . .

20 Q. And so the bullet would have entered here and exited
21 here. Correct?

22 A. Correct.

23 Q. All right, so that would also be consistent with some-
24 one holding a gun straight out and getting shot here and
25 coming out here. Correct?

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1 A. It would have been. It is one way that this could hap-
2 pen.

3 Q. Consistent with the arm being extended straight?

4 A. If it was somewhat straight, as I said, ninety degrees
5 or somewhere within that ninety degree angle.

6 Q. And, again, the wound on the leg went through here and
7 came out the front knee -- went in the left side of the
8 right knee and came out . .

9 A. Right.

10 Q. . . the right side?

11 A. Right.

12 Q. And then there was a bullet that went into the left
13 buttocks and lodged in the right pelvis?

14 A. The left side of the pelvis.

15 Q. Left side. Excuse me. The groin area?

16 A. Correct.

17 Q. And then the bullet in the middle of the back wound up
18 in the abdomen?

19 A. Correct.

20 Q. And the bullet in the back of the neck went through
21 the left nostril?

22 A. Correct.

23 Q. Now, as far as your autopsy, did you run a comprehen-
24 sive drug panel on the victim?

25 A. We do -- one second. According to the report on the

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1 autopsy, we collected samples for submission to toxicology
2 testing. In this respect it was sent to a national labor-
3 atory that is accredited.

4 Our screen tests for several hundred or a couple hun-
5 dred different drugs, including medications and also other
6 drugs.

7 Q. And what was the result in this case?

8 A. In this case, the results were positive for three sub-
9 stances. One is caffeine which could be from tea, coffee
10 or that sort of stuff.

11 He also had THC which is a drug in marijuana, and then
12 a breakdown product in marijuana.

13 Q. What does it mean to have THC and a breakdown product
14 of marijuana?

15 A. In a breakdown product you wouldn't really know if it
16 was from yesterday. It could have been several hours before
17 he died.

18 The fact that the parent drug was in there, the THC,
19 that it was floating through the system which meant he would
20 have used the drug minutes to an hour before his death.

21 Q. Doctor, tell me about rigor mortis?

22 A. Rigor mortis is a change that happens after the body
23 dies. Rigor mortis is basically the body becoming fixed
24 in whatever position in which it was found. So if the body
25 died like this -- if I died like this and I stay here for

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1 a couple of hours and you roll me over my arm would defy
2 gravity and still stay up like that.

3 Your muscles need energy and if they are not producing
4 any more, but eventually over time bacteria will break the
5 body down and rigor mortis will break.

6 So you find that after death the body will become really
7 strong, sometimes to the point that you have to really work
8 hard to break it down. But then again after some period of
9 time it will relax.

10 Q. When does rigor mortis begin setting in upon someone's
11 death?

12 A. It could differ quite a bit from person to person, but
13 typically we think of a couple of hours after they die the
14 rigor mortis will begin to set in. It can really vary and
15 so we describe it as starting within a couple of hours but
16 it could be fully fixed in twelve hours and gone at twenty-
17 four hours.

18 The temperature could change it quite a bit, but in
19 minutes to hours after a person dies, although there are
20 cases where there is a high period of time before rigor
21 mortis can set in and some where it sets in immediately at
22 death.

23 Q. And does heat cause rigor mortis to set in more quickly?

24 A. Heat would cause it to set in more quickly, and on the
25 back end to disappear more quickly, so it can speed up the

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1. process.

2. Q. Doctor, on your report that is in evidence you have to
3 designate the manner of death, and you designated homicide?

4 A. Correct.

5. Q. What categories do you have to choose from to make the
6 decision?

7 A. Sure. We make two determinations. One is the cause
8 of death, how the person died, and in this case we listed
9 homicide. The second determination we make is a manner of
10 death, which is how that cause of death came about, and in
11 South Carolina we have six choices for manner of death.

12 The first one is that we have to do a toxicology screen
13 and checks things out and we'll get back to you later.

14 We also have undetermined, which means we don't know,
15 and that is used for, you know, skeletal remains where we
16 can't tell what happened any more, or maybe an infant death
17 where we don't have any injuries or anything.

18 But we also can say we're not quite sure. It can be
19 natural which is fairly self-explanatory. Heart disease,
20 cancer, that sort of thing.

21 The next would be accident, and that might be unintentional
22 acts that you may do to yourself or may do to yourself
23 such as drug overdose. It could be involving somebody
24 else or a motor vehicle collision. That is fairly self-
25 explanatory.

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1 Suicide is the next thing and that is an intentional
2 act that leads to death, and then homicide which is what we
3 consider as a death at the hands of another, a voluntary
4 act of another individual.

5 Q. And so with those being your choices, you don't get
6 into areas of self-defense or anything like that?

7 A. . . .

8 Q. It is a homicide if it is a death by gunshot wound?

9 A. The first part of that -- you would need a medical de-
10 finition. There could be an accidental shooting, like where
11 everyone is out hunting and we're shooting at the same bird
12 and someone accidentally trips --it could be an accidental
13 shooting.

14 If someone shoots a weapon that kills another person it
15 would be a homicide.

16 Q. And I believe you were telling me the other day that
17 all police-related shootings you rule as homicide in your
18 reports?

19 A. Correct.

20 MS. PARHAM: That's all I have, Your Honor.

21 THE COURT: Redirect?

22 SOLICITOR: Yes, sir.

23 REDIRECT EXAMINATION

24 BY SOLICITOR:

25 Q. Doctor, what is the definition of homicide?

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1 A. A homicide is a death at the hands of another individ-
2 ual.

3 Q. It doesn't mean anything about justified or unjustified?

4 A. That's not in my role to make any inferences as to
5 how it happened.

6 Q. And if he smoked a little weed and nothing else showed
7 up in the toxicology report ...

8 A. The toxicology report shows what was going on in his
9 body at the time he died.

10 Q. Okay, and Ms. Parham asked you about it being straight,
11 and you said not completely straight like it would be if you
12 were driving a moped?

13 A. If you had your arm bent out, it would be one possible
14 way.

15 Q. Thank you.

16 THE COURT: Recross, Ms. Parham?

17 MS. PARHAM: Thank you.

18 RECROSS EXAMINATION

19 BY MS. PARHAM:

20 Q. So if you are driving a moped, Doctor, and the bullet
21 went in here and came out here, it would likely have to go
22 into the chest. Correct?

23 A. Um, I think that would vary quite a bit after it passed
24 through. After going in the wrist area it could hit one of
25 the big bones and tissue. Going through bone and through

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1 tissue could slow the bullet down but it would not neces-
2 sarily enter the chest.

3 Q. There was no injury to his chest?

4 A. Correct.

5 Q. And, again, if the arm were bent and it entered here --
6 if this arm were bent it would not have exited here, cor-
7 rect?

8 A. It depends on the angles. It could be here or a lit-
9 tle bit bent here and still go there. It really . .

10 Q. All right, and if it passed in the tissues in a line
11 through here, could it come here?

12 A. Correct, after it entered the forearm here then it
13 could have hit the ulna which is one of the two big bones
14 in the forearm.

15 So you would not have a perfect football spiral to
16 that, but it could generate the area in a straight line.

17 Q. And there was no kind of entrance wound or abrasion
18 anywhere on his left chest?

19 A. Correct.

20 Q. That's all I have. Thank you.

21 THE COURT: Thank you.

22 SOLICITOR: We would ask that the Doctor be released
23 from subpoena.

24 THE COURT: Any objection to his being excused?

25 MS. PARHAM: No, sir.

1 THE COURT: You may step down and you may be excused.

2 Thank you.

3 WITNESS: Thank you, Your Honor.

4 (Witness excused)

5 THE COURT: Please call your next witness.

6 SOLICITOR: Your Honor, we'd call Investigator Thomas
7 McFadden.

8 THE COURT: Come around and be sworn for us, please.

9 THOMAS McFADDEN, being duly sworn,

10 testified as follows:

11 CLERK: Please be seated and state your name for the
12 record.

13 WITNESS: My name is Thomas Germane McFadden.

14 DIRECT EXAMINATION

15 BY SOLICITOR:

16 Q. Would you please tell us where you work and what you
17 do?

18 A. Florence County Sheriff's Office, and I'm an investi-
19 gator.

20 Q. And you have worked as a criminal investigator how many
21 years?

22 A. A total of thirteen years.

23 Q. And do you have prior law enforcement experience than
24 those thirteen years?

25 A. I've been in law enforcement since 1997. I worked in

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1 Lake City on patrol and on patrol here in Florence County
2 in early 2000.

3 Q. What type of crimes do you investigate?

4 A. My specialty is homicides. I'm a homicide investiga-
5 tor and I also work property crimes and crimes of violence.

6 Q. All right. Were you on call or were you summoned to
7 a shooting on Candy Lane on the 4th of June of 2014?

8 A. I was. For homicide, I'm on call twenty-four seven.

9 Q. So you got called out to that scene?

10 A. Yes, I did.

11 Q. When you got there, what was the first thing that you
12 did or the first thing you noted?

13 A. I came up on the back side on Tara Drive, and there
14 was a lot of patrol cars, a lot of crime scene tape, a crowd
15 of people on the scene.

16 Q. When you got there what did you do when you exited your
17 car?

18 A. . .

19 Q. What was the first thing you did?

20 A. As I recall, I was stopped by Deputy Harvin and another
21 deputy.

22 Q. Okay, and did you see the suspects anywhere?

23 A. No, Harvin had already took the suspects into the back
24 of the vehicle.

25 Q. Okay, and did you go to speak with them?

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1 A. Yes, I did.

2 Q. Okay. Who did you speak with and where did you find
3 that person?

4 A. Harvin had put the suspect, Cory Allen, in the back of
5 his vehicle. I spoke to Cory Allen.

6 Q. All right, and what did you ask him?

7 A. I asked him did he understand his rights, and he said
8 that -- he said he had read him his rights, and he said he
9 understood his rights. I asked him and he said he did.

10 Q. Did he say anything else?

11 A. Yeah, he said I already told them what happened; the
12 guy shot at me and I shot him back.

13 Q. And tell us any other things you did in this investiga-
14 tion?

15 A. Yes, I talked with several officers.

16 Q. Just briefly tell us anything you did after the shoot-
17 ing?

18 A. I went over the scene and interviewed several witnes-
19 ses. I interviewed the nine one one caller and followed up
20 on other witnesses and things. I located the victim who was
21 shot several times.

22 Q. All right, and other than being redundant I'm going to
23 stop right here and ask you if you would answer any ques-
24 tions Mr. Parham may have.

25 A. Yes, sir.

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1 THE COURT: Thank you, Solicitor.

2 Ms. Parham, Cross Examination.

3 MS. PARHAM: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MS. PARHAM:

6 Q. My client told you that the suspect on the moped had
7 pulled a gun on him first, is that correct?

8 A. Yes, that's correct, and he shot.

9 Q. And as a part of this investigation did you file a
10 report on this case in the case file?

11 A. I believe so, yes.

12 Q. Okay, and the reports are all kept in the case file?

13 A. The majority of them, yes.

14 Q. Okay. All right, isn't it true, Investigator McFadden,
15 that Mr. Windham's call phone was found in his left front
16 pants pocket?

17 A. You're probably correct but I am not sure which pocket
18 it was. You'd probably have to ask someone else that, I
19 think Chamberlain.

20 Q. Do you keep . .

21 SOLICITOR: Your Honor, I think she's asking him about
22 somebody else's paperwork. That would be hearsay.

23 A. I wouldn't know what the different officers filed. I
24 only know what I've said. I didn't mention anything about
25 his pockets.

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1 Q. Do you keep Clendenin's reports in your case file you
2 are supposed to file for the Solicitor's Office to give us
3 in discovery?

4 A. No, they have their own file to add to my files. There
5 is one file that was forwarded to Solicitor Clements.

6 Q. Okay.

7 A. I didn't ask him about that. I didn't go in his file.
8 I've got a file with my stuff in it.

9 Q. Okay. Thank you, that's all I have.

10 THE COURT: Anything further, Solicitor?

11 SOLICITOR: No, sir.

12 THE COURT: You may step down.

13 (Witness excused from stand)

14 SOLICITOR: At this time the State would rest.

15 THE COURT: Thank you.

16 All right, Mr. Foreman and ladies and gentlemen, per-
17 haps now would be a good time to take our morning recess.

18 We'll take a fifteen minute recess. Please do not dis-
19 cuss the case.

20 (Jury excused from Courtroom)

21 (Conference at the bench between counsel and the Court
22 off the record)

23 (Court took brief recess, after which the matter was
24 continued)

25 THE COURT: As to State's 9, if it is hearsay it is an

1 exception to the hearsay rule.

2 All right, any motions, Ms. Parham?

3 MS. PARHAM: Yes, Your Honor. The Defense would move
4 for judgment of acquittal or a directed verdict on the charge
5 of murder.

6 There are insufficient facts from which the jury could
7 conclude that Cory Allen murdered Mr. Windham.

8 THE COURT: All right, thank you.

9 Solicitor?

10 SOLICITOR: Your Honor, we believe it is a jury ques-
11 tion.

12 THE COURT: Anything else, Ms. Parham?

13 MS. PARHAM: No, Your Honor.

14 THE COURT: Anything further on your motion for a di-
15 rected verdict?

16 MS. PARHAM: No, sir.

17 THE COURT: I would respectfully deny your motion for
18 directed verdict. I think there is sufficient evidence in
19 the record based on testimony of the witnesses that was pre-
20 sented.

21 I would deny the motion for directed verdict. It is
22 an issue for the jury to consider.

23 Any other motions, Ms. Parham?

24 MS. PARHAM: Yes, Your Honor. I would just renew all
25 of our objections at this time, and I would move for mistrial

1 on the grounds that the entire nine one one tape that was ad-
2 mitted into evidence -- first, because Ms. Coe did not tes-
3 tify, the first portion of that tape arguably could be con-
4 sidered an excited utterance or present sense impression,
5 but there was a break in the tape, and at that point Ms. Coe
6 began reflecting on past events and that became no longer an
7 excited utterance or present sense impression.

8 She actually made a conclusion that this crime was for
9 an incident that happened the year before when the testimony
10 presented showed that it was eight years earlier.

11 She made conclusions that go to issues in this case,
12 and it is not a present sense impression. It was nothing
13 that was happening at that time, and that portion of the
14 tape should have been redacted.

15 In addition, Your Honor, we would move for a mistrial
16 based on the fact that that tape was entered into evidence,
17 and she was not allowed to be confronted or cross examined
18 regarding her statements on the nine one one tape pursuant
19 to Crawford versus Washington and the confrontation clause.

20 Additionally, Your Honor, we renew our objections to
21 the fact that the victim had crack cocaine on his person
22 which is highly relevant to the case to explain another
23 reason that he would be armed with a gun.

24 THE COURT: All right. Thank you, Ms. Parham. Thank
25 you very much.

1 What, Ms. Parham, is the ultimate issue that Ms. Coe
2 stated on the nine one one tape?

3 MS. PARHAM: She stated that this happened -- this is
4 not word for word but that that this happened because of the
5 incident that happened the year before.

6 THE COURT: And how is that the ultimate issue in this
7 case?

8 The jury never has to determine why or never has to de-
9 termine a motive. The jury determines whether a person is
10 guilty or not guilty, not why someone may have committed a
11 crime.

12 This not an opinion on the ultimate issue here.

13 MS. PARHAM: Well, Your Honor, our position is that
14 the victim pointed a gun at Cory Allen and that's when he
15 shot. The State's position seems to be that this was a mur-
16 der in a revenge killing, and that was his first sentence
17 in the opening statement, that it was a revenge killing for
18 the fact that the victim had killed my client's brother,
19 and so in the case of the nine one one tape she makes the
20 statement that the reason this happened is because the vic-
21 tim had killed his brother.

22 THE COURT: Show me a case that tells me the State has to
23 present a reason why a murder happened.

24 MS. PARHAM: Your Honor, I submit there is no theory
25 under which that statement of hers could be admitted. It

1 is not an exception to hearsay.

2 THE COURT: Your -- specifically your language was on
3 the nine one one tape she expressed an opinion that goes to
4 the ultimate issue in the case.

5 MS. PARHAM: Yes, sir.

6 THE COURT: I'm trying to channel that into an ultimate
7 issue in the case. The State never has to prove motive.

8 They can present it and it may be relevant, but it is
9 not the ultimate issue.

10 All right, any other motions?

11 MS. PARHAM: No, Your Honor.

12 THE COURT: All right, thank you. Thank you very much.

13 SOLICITOR: Thank you, Your Honor. May I say one
14 thing?

15 THE COURT: Yes, sir.

16 SOLICITOR: Ms. Coe is here. I have not released her
17 from her subpoena. She is here available for Ms. Parham if
18 she wants to call her and question her about any of this.

19 We have not -- we have specifically not released her
20 from her subpoena for that reason.

21 The reason I did not put her up is because I'm not
22 sure she's going to tell the truth, and I take the position
23 that if I think she's not going to tell the truth then I'm
24 not going to call her, although she is available for Ms.
25 Parham.

1 THE COURT: Thank you for informing the Court of that.
2 However, my ruling would have to be based on what is in the
3 record now, up to this point.

4 Thank you very much.

5 (Brief pause in the proceeding)

6 THE COURT: All right. Anything further, Ms. Parham?

7 MS. PARHAM: No, Your Honor.

8 THE COURT: Anything further, Solicitor, on the mistrial
9 motions in regard to the nine one one tape?

10 SOLICITOR: No, Your Honor.

11 THE COURT: All right. I didn't time it from its be-
12 ginning to the end. However, I would state for the record
13 that there is no break in the tape. Now, that may be just
14 semantics. I think Ms. Parham uses that to gain some con-
15 trol on the conversation.

16 There is no gap in the conversation or at least in my
17 hearing of the tape. There is no place where anyone could
18 edit the tape, so to speak, which would indicate a break in
19 it or any change in the tone of it, but no missing part of
20 the tape.

21 I looked at Crawford versus Washington and also -- ex-
22 cuse me, Crawford versus Washington and also Davis versus
23 Washington. I also looked at cases addressed by our Supreme
24 Court, State versus Ladder, L A D D E R, at 373 South
25 Carolina 103; 644 Southeast Second 684, a 2007 case.

1 In a discussion by Justice Waller, testimony versus
2 non-testimony, of Crawford versus Washington, and this is a
3 victim's hearsay statement as also with Crawford and also
4 with Davis, although it is a victim, not a witness.

5 They are hearsay statements but as I understand your
6 motion the hearsay statement would be that part of the nine
7 one one tape where Ms. Coe is talking about what had hap-
8 pened the year before which we know happened eight years be-
9 fore, as I understand it, or at least that part of the tape
10 there.

11 Ladder goes on to say that just because the confronta-
12 tion clause guarantees all criminal prosecution -- that the
13 Sixth Amendment confrontation clause guarantees that in all
14 criminal prosecution the accused shall have the right to be
15 confronted with the witnesses against him. It was held the
16 admission of testimony against the accused violates the con-
17 frontation clause if the declarant is unavailable to testify
18 in the trial -- and number two -- the accused has had no
19 prior opportunity to cross examine the declarant.

20 Crawford declined comprehensively to define testimonial
21 here. It did, however, state that the testimonial statements
22 included ex parte in-Court testimony and to say that cus-
23 todial examination in prior testimony that the defendant
24 was able to cross examine on similar pre-trial statements
25 that declarant could reasonably expect to be used prosecutorially.

1 Extra judicial statements contained in formalized tes-
2 timony material such as affidavits that positions the prior
3 testimony are sufficient.

4 Statements that were made under circumstances which
5 would lead an objective witness reasonably to believe the
6 statements would be available for at a later trial and
7 statements by police officers in the course of the investi-
8 gation.

9 Again, following up on Crawford versus Davis and Davis
10 versus Washington, the U. S. Supreme Court held in two dif-
11 ferent domestic violence cases -- held the victim's identi-
12 fication of her abuser in response to initial questions of
13 a non-party emergency operator was not testimony, but where
14 the police responded to a domestic disturbance, found the
15 wife and husband in their home and took the statement from
16 the wife about the husband's abuse while the husband was in
17 another room. The wife's statements were testimony.

18 (Brief pause)

19 Ladder also cited Purvin which is cited at 829 North-
20 east Second 572, indicating that the rationale of the ruling
21 in Crawford is to exclude from evidence statements that had
22 not been cross examined but were gathered for the purpose of
23 use at a later trial.

24 I also reviewed State versus Rottmier which is a more
25 current case. Again, Crawford changed the law and prohibited

1 admission of testimonial out-of-Court statements unless two
2 conditions are met. The witness is available at trial and
3 the Defendant had a prior opportunity to cross examine the
4 witness.

5 (Brief pause)

6 The primary issue in Crawford is determining whether or
7 not a statement is testimonial. Under the primary analysis
8 required by the confrontation clause, where the primary pur-
9 pose of an out-of-Court statement is to serve as evidence,
10 an out-of-Court substitute for trial testimony, the state-
11 ment is considered testimonial. However, when no such pri-
12 mary purpose exists, the admissibility of a statement is
13 the concern, the Federal Rule provides it is not under the
14 confrontation clause.

15 In determining the primary purpose of an out-of-Court
16 statement, relevant inquiry is not a subjective or actual
17 purpose of the individuals involved in the particular en-
18 counter, but rather the purpose the reasonable participant
19 would have had for ascertaining from the individual state-
20 ment the actions and circumstances which were encountered.

21 In this case, the statements were made to a nine one
22 one emergency operator by Ms. Debra Coe who called in to
23 report an emergency, that an individual had been shot; that
24 he was dead in the road in a particular location in Flor-
25 ence County.

1 That the shooter was still in the area, and the nine
2 one one operator was not interrogating Ms. Coe for purposes
3 of future presentation in Court or at trial, but was re-
4 sponding to a citizen emergency complaint.

5 Obviously, in the excited state and stress of the mo-
6 ment, the operator knowing no history whatsoever, Ms. Coe
7 relates that history to the operator and the operator then
8 properly and correctly and professionally follows up on it
9 because law enforcement officers were responding to the
10 scene of a shooting.

11 Now, whether the individual was responsible for the
12 shooting or not, he was still at the scene.

13 So I would find that it is non-testimonial, that Ms.
14 Coe is available, number one, although not presented by the
15 State, and, number two, the Defendant has had the opportu-
16 nity to cross-examine Ms. Coe during the in-camera hearing.

17 So with those two prongs, the clause would not apply.
18 Therefore, it then goes to State evidentiary law, and that
19 evidentiary law, as I ruled previously, under 803 one, a
20 hearsay exception. The availability of declarant -- the
21 following is not excluded by the hearsay rule even though
22 the declarant is available to be a witness.

23 One, present sense impression. A statement describing
24 or explaining an event or condition made while the declarant
25 was perceiving the event or condition or immediately thereafter.

1 Two, excited utterance -- a statement relating to a startling
2 event or condition, and I emphasize a statement relating to
3 a startling event or condition, made while the declarant was
4 under the stress of the excitement following the crime, the
5 event or the matter at issue.

6 A mistrial is a drastic remedy requiring a manifest ne-
7 cessity. I respectfully deny the motion for mistrial.

8 As to the issue of the crack cocaine, that has been be-
9 fore the Court earlier, and from my trial notes in that re-
10 gard, and there is no testimony, no testimony, no testimony
11 in this record that drug dealers carry a gun on them, and a
12 lawyer's statement is not testimony.

13 Number two, there has been no testimony in this record
14 to say that Mr. Windham was under the influence of his crack
15 cocaine. There is no record -- there is no evidence in the
16 record that Mr. Windham was a drug dealer.

17 The evidence in the record was that he had not ingested
18 and was not under the influence of crack cocaine, per the
19 testimony of Dr. Batalis at autopsy or what test results would
20 have been.

21 It is not a part and parcel of this sequence of events,
22 and I would cite State versus Allen -- I think it is George
23 Allen but I don't have the exact cite on that, but there is
24 no nexus between crack cocaine and the alleged murder in
25 this case.

1 All right, anything further?

2 SOLICITOR: No, Your Honor.

3 THE COURT: Ms. Parham?

4 MS. PARHAM: No, Your Honor. I would ask you to put on
5 the record my client's decision.

6 THE COURT: I'd be delighted to, if he would come on
7 around, please.

8 Madam Clerk, would you place him under oath?

9 (Whereupon, the Defendant was sworn by the Clerk for pur-
10 poses of colloquy with the Court)

11 THE COURT: Just a moment, please. Mr. Allen, I have
12 to go over a number of things with you. Whenever an indi-
13 vidual is on trial I always require that they be placed under
14 oath. Do you understand?

15 DEFENDANT: Yes, Your Honor.

16 THE COURT: Give me your full name.

17 DEFENDANT: Cory Nettles Allen.

18 THE COURT: How old are you, Mr. Allen?

19 DEFENDANT: Thirty, Your Honor.

20 THE COURT: How much education do you have?

21 DEFENDANT: High school.

22 THE COURT: Prior to being incarcerated, were you em-
23 ployed?

24 DEFENDANT: No, sir.

25 THE COURT: We have reached a stage in the trial where

1 in evidence)

2 THE COURT: Ms. Parham.

3 MS. PARHAM: The Defense calls Cory Allen.

4 THE COURT: All right. Come around and be sworn
5 for me, please, Mr. Allen.

6 CORY ALLEN, being duly
7 sworn, testified as follows:

8 CLERK: Please be seated and state your full name.

9 WITNESS: Cory Nettles Allen.

10 THE COURT: All right. Ms. Parham.

11 DIRECT EXAMINATION

12 BY MS. ALLEN:

13 Q. Cory, how old are you, and I want you to speak up in
14 that microphone so we can all hear you, please?

15 A. Yes, maam.

16 Q. How old are you?

17 A. Thirty years of age.

18 Q. All right. Cory, how far did you go in school?

19 A. Eleventh grade.

20 Q. Okay, and did you go back and get your diploma?

21 A. Yes, maam.

22 Q. All right, and after that did you take any college
23 courses?

24 A. Um, I took a course or classes at Tech.

25 Q. And did you get a certificate for that course that

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1 you took?

2 A. Yes, maam.

3 Q. And what did that certificate allow you to do?

4 A. To operate heavy equipment such as backhoes, loaders
5 and equipment.

6 Q. All right, and, Cory, how long have you and your fam-
7 ily lived in Florence?

8 A. Since 1994.

9 Q. All right.

10 A. Actually my immediate family was not all there when I
11 came in 1994.

12 Q. All right, and you heard Mr. Farnum testify earlier.

13 Did you work for Mr. Farnum at some point?

14 A. Yes, maam.

15 Q. All right, and when did you work for Mr. Farnum?

16 A. Um, January to October of 2010.

17 Q. Okay, and what did you do for Mr. Farnum?

18 A. Um, I work with him on mechanical work and help him
19 with work in the shop.

20 Q. Okay, and did Mr. Farnum pay you approximately a
21 Hundred and Twenty-five Dollars a week?

22 A. Yes, maam.

23 Q. All right. After you left Mr. Farnum's employment,
24 have you been employed?

25 A. No, maam.

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1 Q. Okay, and what have you been doing during that time?

2 A. I did work to help my father get around the house.

3 He's blind.

4 Q. And so you went and helped your father get around?

5 A. Yes, maam.

6 Q. And where does your father live?

7 A. Right down in Florence, where I been staying.

8 Q. Back when this incident happened, where did he live?

9 A. He was staying in Clarendon County.

10 Q. Okay, and so you went to Clarendon County to help
11 with him?

12 A. Yes.

13 Q. All right. How many siblings do you have, Cory?

14 A. Four.

15 Q. All right, and how many brothers, how many sisters?

16 A. Two each -- two brothers and sisters.

17 Q. Okay, and does that include your brother who passed
18 away or not?

19 A. No, maam.

20 Q. So you did have three brothers and two sisters?

21 A. That's correct.

22 Q. Okay, and are you the baby of the family?

23 A. Yes, maam.

24 Q. Let me ask you, Cory, are you familiar with Tara
25 Village?

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1 A. Yes, maam.

2 Q. And do you have family or friends who live in Tara
3 Village?

4 A. Yes, maam.

5 Q. Tell the jury, please, who are your family and friends
6 who live in Tara Village?

7 A. My brother and sisters lived there at one time. My
8 grandmother. My mother stayed there and two of my aunts
9 and my first cousin stay there. My grandmother passed away.

10 Q. Okay, would you pull that microphone a little bit out
11 away from you. Thank you.

12 Do you have friends who stay in Tara Village?

13 A. I have friends who stay there. I had family there
14 at that time, a cousin who stayed there at that time.

15 Q. Actually did you have family two doors down from
16 Debra Coe's house?

17 A. . .

18 SOLICITOR: Objection to leading.

19 THE COURT: You may answer that. Be careful about
20 leading but that's all right.

21 A. Yes.

22 BY MS. PARHAM:

23 Q. Who was that?

24 A. Johnny Gaskins, Lorell Gaskins.

25 Q. All right. Cory, without trying to embarrass you in

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1 any way, you have some ticks or mannerisms?

2 A. I do.

3 Q. How long has that been going on?

4 A. Since ninth grade. About ninth grade.

5 Q. Do you know what causes that?

6 A. No, maam.

7 Q. Okay, and you have been that way since the ninth

8 grade?

9 A. Yes, maam.

10 Q. Okay, and that has been something you have struggled

11 with?

12 A. Yes, maam.

13 Q. All right. Let me take you back to June 4th of 2014.

14 Do you remember what you were doing on that day?

15 A. Yes, I was going to my friend's house to help him with

16 -- I was at my brother's house and we rode down to a friend

17 of my brother who was having a cook-out at Tara Village and

18 also to go to a friend's house to help him with his car.

19 Q. Okay. Now, that whole day did you have a gun with you?

20 A. Yes.

21 Q. What kind of gun were you carrying?

22 A. A nine millimeter Ruger.

23 Q. Okay, and how long had you been carrying that gun?

24 A. Since about -- I'm not sure. About a year.

25 Q. Did you have a different gun before that?

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- 1 A. Yes.
- 2 Q. What kind of gun did you have prior to that?
- 3 A. (Inaudible)
- 4 Q. And did you carry those firearms pursuant to a con-
- 5 cealed weapons permit?
- 6 A. Yes, maam.
- 7 Q. When did you get your concealed weapons permit?
- 8 A. Since 2007 or about then.
- 9 Q. All right, and did you also carry a gun when you went
- 10 to work for Mr. Farnum?
- 11 A. Yes.
- 12 Q. Why did you get your concealed weapons permit, Cory?
- 13 A. I feared for my life. Some threats were made.
- 14 Q. Why did you fear for your life?
- 15 A. Because my brother was dead and I had received threats.
- 16 Q. And did anyone else in the family get a concealed wea-
- 17 pons permit?
- 18 A. Yes. Threats were made for me and my family.
- 19 Q. Okay, who else got one?
- 20 A. Well, after my brother died I got one and after that
- 21 my brother carried a gun.
- 22 Q. So your brother was killed and you then got a concealed
- 23 weapons permit
- 24 A. Yes.
- 25 Q. And after your brother's death you decided to arm

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1 yourself? You armed yourself from that time?

2 A. Yes.

3 Q. And you had had that weapon with you that whole day?

4 A. Yes, maam.

5 Q. Okay, and is it your practice to keep an extra clip on
6 your person?

7 A. Yes, maam.

8 Q. And do you know how many rounds your Ruger would hold?

9 A. Um, fifteen and one -- sixteen.

10 Q. You said you went to a friend's house and you also went
11 to a cook-out at Tara Village?

12 A. Yes, maam.

13 Q. And was that on Candy Lane?

14 A. Yes, maam.

15 Q. All right. How did you get to that cookout on Candy Lane?

16 A. With my brother.

17 Q. And what kind of car does he drive?

18 A. A Lincoln town car.

19 Q. Okay. Who else was at that cookout?

20 A. The guy who lived there, his brother, his cousin --
21 a lot of people were there.

22 Q. Okay. What time do you remember getting to that cookout?

23 A. Oh, about five o'clock.

24 Q. All right, and this incident happened around eight
25 twenty-five?

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- 1 A. About that.
- 2 Q. And you remained at the cookout that whole time?
- 3 A. Yes, maam.
- 4 Q. Okay, what were you all doing over there?
- 5 A. Cooking out. It was kind of an open house.
- 6 Q. What caused you to leave the house that day?
- 7 A. To leave the cookout?
- 8 Q. Yes.
- 9 A. One of my friends -- he had called me and ask that I
- 10 come to his house. He had an old car he wanted me to
- 11 help him with, so I decide to leave and walk on around
- 12 there.
- 13 Q. Okay, and what is that friend's name?
- 14 A. Roy Abrams.
- 15 Q. So you and he worked on his car and that is one of the
- 16 reasons you went over to Tara Village that day?
- 17 A. Yes, maam.
- 18 Q. Did you ever make it over to Mr. Abrams' house that
- 19 day?
- 20 A. No, maam.
- 21 Q. All right, did something happen as you were walking
- 22 down the street?
- 23 A. Yes, maam.
- 24 Q. Okay. I want you to look at this jury and tell them
- 25 what happened on that day?

C. ALLEN ON DIRECT

1 A. As I was walking -- as I was walking on Candy Lane
2 toward Leigh Lane, I see someone on a moped and he pull a
3 gun on me, and I fired at him.

4 Q. Okay.

5 Q. I was in fear for my life.

6 Q. Okay, where was -- who was it on the moped?

7 A. Edward Windham.

8 Q. Okay, and where did he have the gun on his person?

9 A. In his hand.

10 Q. Okay, I want you to stand up and show the jury where
11 it was?

12 A. In his left hand raised up like that.

13 Q. Okay, you can sit back down.

14 Did you fire your gun at Mr. Windham before he raised
15 his gun up on you?

16 A. No.

17 Q. Okay, how fast did you shoot your gun?

18 A. Right that second.

19 Q. Okay, how many bullets do you think you fired?

20 A. I thought I fired about ten or eleven. I thought.

21 Q. Okay. Did you hear that there were eight shell casings
22 on the ground?

23 A. Yes, maam.

24 Q. And what made you stop firing?

25 A. Well, he went down so I didn't fire any more.

C. ALLEN ON DIRECT

- 1 Q. So you stopped firing when he went down?
- 2 A. Yes, maam.
- 3 Q. And did you have more bullets in your gun at that
- 4 point?
- 5 A. Yes, maam.
- 6 Q. All right. After that happened, what did you do?
- 7 A. After I seen him go down I just stayed around for how-
- 8 ever long it was.
- 9 Q. And did you see a woman at that point?
- 10 A. Yes, maam.
- 11 Q. Who did you see?
- 12 A. Debra Coe.
- 13 Q. Okay, and what did you do or what did you say to Ms.
- 14 Coe?
- 15 A. I asked her to call nine one one.
- 16 Q. And did she?
- 17 A. No, not at first, but then she did.
- 18 Q. And were you standing there with her when she called
- 19 nine one one?
- 20 A. Yes, maam.
- 21 Q. And what did you tell Ms. Coe?
- 22 A. That he had pull a gun on me and I shot.
- 23 Q. Okay. After the shooting, did anyone try to get you
- 24 to leave the scene?
- 25 A. Yes.

C. ALLEN ON DIRECT

1 Q. Who?

2 A. My brother.

3 Q. Okay, tell me about that. How did that happen?

4 A. Uh, he -- he heard the shots and come to see what hap-
5 pen and he said, Cory, come on, let's leave, and I say that
6 I didn't do anything wrong. Then he drove the car away
7 at that point in time.

8 Q. So your brother came and tried to get you to leave
9 in his car?

10 A. Yes, maam.

11 Q. And you didn't go?

12 A. No, maam.

13 Q. All right, and then what -- did your brother park
14 his car?

15 A. Yes, maam.

16 Q. And he came back to where you were staying?

17 A. Yes, maam.

18 Q. All right. Did you stay right there and talk to the
19 police?

20 A. Yes, maam.

21 Q. How long did you -- how long a time did you wait out
22 there?

23 A. It seemed to be hours but I don't know the amount of
24 time it was.

25 Q. The nine one one tape would show the accurate amount

C. ALLEN ON DIRECT

1 of time you waited for the police to arrive?

2 A. Yes, maam.

3 Q. All right. Did you go anywhere between the time Ms.
4 Coe called nine one one and the police got there?

5 A. No, maam. I was just sitting on the ground.

6 Q. Okay. At what -- at some point did you reload your
7 gun?

8 A. Yes, maam.

9 Q. And when did you do that, and why?

10 A. Well, he had a lot of friends that was around, and
11 there was a lot of other people going by or coming down
12 there and stopping, and I didn't know if he had friends in
13 that neighborhood or what. So I thought I had to be ready
14 when the word got around.

15 Q. Okay, so was that after Ms. Coe had called nine one
16 one?

17 A. Yes, maam.

18 Q. Okay, and so people started gathering and you reloaded
19 the gun?

20 A. Yes, maam.

21 Q. All right, and you kept the gun with you until you
22 put it down when the police got there?

23 A. Yes, maam. Then I laid it down.

24 Q. Okay. You know, we saw the pictures of the gun in
25 the burgandy Lincoln. Whose gun was that?

C. ALLEN ON DIRECT

1 A. My brother's gun.

2 Q. And does he have a concealed weapons permit too?

3 A. No, maam.

4 Q. Okay, and that was in the glove box when they found
5 it?

6 A. Yes, maam.

7 Q. All right. Where did you have your gun on your per-
8 son?

9 A. In my right hand side.

10 Q. Are you right-handed or left-handed?

11 A. I'm right-handed.

12 Q. Okay, and when you fired the gunshots were you stand-
13 ing still or were you moving?

14 A. Um, I was kind of moving and kind of standing or
15 moving a little.

16 Q. Okay. Let me show you what's been marked as Defense
17 Exhibits 48 and 49.

18 A. . .

19 SOLICITOR: No objection, Your Honor, to them being
20 admitted in evidence.

21 THE COURT: All right. Then -- what numbers are
22 they?

23 MS. PARHAM: Defense Exhibits 48 and 49, Your Honor.

24 THE COURT: All right. Then 48 and 49 are in evidence
25 without objection.

C. ALLEN ON DIRECT

1 (Photographs admitted in evidence without objection
2 as Defense Exhibits 48 and 49)

3 MS. PARHAM: If I might ask Cory to step down, Your
4 Honor?

5 THE COURT: Yes, you may step down, please, and keep
6 your voice up.

7 BY MS. PARHAM:

8 Q. All right, Cory. I'll put one right here and one
9 right here.

10 A. Yes, maam.

11 Q. Okay, will you show the jury where you were having the
12 cookout that day?

13 A. Right here.

14 Q. Okay, and is that the same house where the burgandy
15 vehicle was parked?

16 A. Yes, maam.

17 Q. Okay, and I want you to show the jury where you were
18 walking?

19 A. Um, down Candy Lane toward Leigh Lane.

20 Q. Okay, and approximately where were you standing when
21 you saw the moped?

22 A. Um, about right here.

23 Q. Okay.

24 A. Somewhere near there.

25 Q. Okay, and tell me where the moped was coming from?

C. ALLEN ON DIRECT

- 1 A. Coming from Leigh Lane and going around here.
- 2 Q. So he was coming this way and making a left turn on
- 3 Candy Lane?
- 4 A. Yes, maam.
- 5 Q. Okay, and approximately where was he when you saw the
- 6 gun?
- 7 A. Um, about right here.
- 8 Q. Okay, and would you show the jury what you did with
- 9 that gun?
- 10 A. . .
- 11 Q. What you did when you saw the moped?
- 12 A. Well, as he was pulling up he pulled a weapon, and I
- 13 shot.
- 14 Q. Okay, how quickly do you think you fired that shot?
- 15 A. Probably a matter of seconds.
- 16 Q. Okay. Now, in what direction were you walking to see
- 17 Mr. Abrams?
- 18 Q. I was walking toward Leigh Lane.
- 19 Q. Uh huh. Just a moment.
- 20 And where is Mr. Abrams' house? In what direction?
- 21 A. Um, down Leigh Lane.
- 22 Q. Okay, and so you would have gotten to Mr. Abrams by
- 23 walking this way or that way?
- 24 A. Yes, maam.
- 25 Q. Okay. You can have a seat.

C. ALLEN ON DIRECT

- 1 A. Yes, maam.
- 2 Q. Cory, when you fired your gun, were you in fear for
3 your life?
- 4 A. Yes, maam.
- 5 Q. All right. Is there any question about that?
- 6 A. No. He had a gun in his hand and I saw it.
- 7 Q. Had you been arrested for anything before that?
- 8 A. No, maam.
- 9 Q. Okay. Please answer any questions Mr. Clements has
10 for you.
- 11 THE COURT: Thank you, Ms. Parham.
- 12 Solicitor.
- 13 CROSS EXAMINATION
- 14 BY SOLICITOR:
- 15 Q. Cory, you got your concealed weapons permit in Septem-
16 ber of 2008?
- 17 A. . .
- 18 Q. Around the 13th, isn't that right?
- 19 A. Um, I would have to look at something to be sure.
- 20 Q. And Mr. Windham was convicted on this gun charge and
21 acquitted on the death of your brother on September 11th,
22 is that right?
- 23 A. I'm not sure about the date.
- 24 Q. All right, but you knew he went to prison, and you
25 knew when he was getting out?

C. ALLEN ON CROSS

1 A. No, sir.

2 Q. You didn't?

3 A. I had no way to know.

4 Q. You had no idea when he was getting out?

5 A. No, sir.

6 Q. You didn't tell Mr. Farnum you knew when he was get-
7 ting out?

8 A. No, sir.

9 Q. You never told Mr. Farham that?

10 A. No.

11 Q. Did you tell Mr. Farnum that you were going to kill
12 him?

13 A. No.

14 Q. You never had that conversation whatsoever?

15 A. He asked me why I had the gun and I told him for my
16 protection.

17 Q. Did you ever tell Mr. Farnum that the guy went to
18 trial for killing your brother but he got off and only
19 got convicted on gun charges?

20 A. No, sir. I may have mentioned something connected
21 with my brother.

22 Q. So Mr. Farnum knew about that but you didn't tell him
23 any more detail about that?

24 A. No, not as far as the charges or nothing like that.

25 Q. He saw the gun on you and asked you about it, and you

C. ALLEN ON CROSS

1 didn't tell him then about the guy killing your brother?

2 A. No.

3 Q. And that you were going to kill him?

4 A. No, sir. I just wanted to be prepared.

5 Q. You wanted to be prepared but you didn't say you were
6 going to get him?

7 A. No, sir.

8 Q. He didn't tell you that your mother didn't need to
9 lose another son at that time?

10 A. No, sir.

11 Q. He never said anything about it?

12 A. No, sir.

13 Q. Did you say something about your dad leaving?

14 A. Yes, I may have.

15 Q. Okay, and he knew your dad was blind. Right?

16 A. I think so, yes.

17 Q. As a matter of fact, during that time you stayed with
18 him in Manning most of the time. Is that correct?

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

20 Q. You weren't?

21 A. No, sir.

22 Q. Okay. Where were you staying then? With your mom?

23 A. Yes, sir.

24 Q. All right, up in North Florence?

25 A. No, sir. (Portion inaudible)

C. ALLEN ON CROSS

1 Q. All right, but you had a nine millimeter during this
2 time?

3 A. Yes, sir.

4 Q. Did you carry that in your waistband?

5 A. I think I did sometimes.

6 Q. You didn't have a holster?

7 A. Yeah, I had a holster but I didn't use it all the
8 time.

9 Q. What kind of holster did you have?

10 A. One that goes on the shoulder.

11 Q. I show you what's been marked for identification as
12 State's Exhibit 26. Do you recognize that?

13 A. Yes, sir.

14 Q. Is that your holster?

15 A. Yes, sir, it is.

16 SOLICITOR: Your Honor, at this time we would move
17 State's Exhibit 26 into evidence.

18 MS. PARHAM: No objection.

19 THE COURT: State's Exhibit 26 in evidence without
20 objection.

21 (State's Exhibit 26 admitted without objection)

22 BY SOLICITOR:

23 Q. So this was your holster?

24 A. Yes, sir.

25 Q. Okay, and it has a magazine in it?

C. ALLEN ON CROSS

- 1 A. Yes, sir.
- 2 Q. So you had three magazines full of nine millimeter?
- 3 A. No, sir.
- 4 Q. How many did you have?
- 5 A. I had two.
- 6 Q. And one was in the holster, wasn't it?
- 7 A. Yes, sir.
- 8 Q. So that made three?
- 9 A. . .
- 10 Q. You had two on you?
- 11 A. No, one on me. One was not full.
- 12 Q. Not full?
- 13 A. No.
- 14 Q. But it had like twelve bullets in it?
- 15 A. Um, I don't remember.
- 16 Q. You don't know?
- 17 A. No, sir.
- 18 Q. You had a partially full clip and then two other
- 19 full clips; one that you shot at Mr. Windham and one that
- 20 was full. Right?
- 21 A. Yes, sir.
- 22 Q. I show you State's Exhibit 64. Is that your holster?
- 23 A. No, that's not it.
- 24 Q. In State's Exhibit 65?
- 25 A. Yes, sir.

C. ALLEN ON CROSS

- 1 Q. With a clip in it?
- 2 A. Yes.
- 3 Q. State's Exhibit 66, is that the clip?
- 4 A. Yes.
- 5 Q. With twelve bullets?
- 6 A. Yes, sir.
- 7 Q. And that was in the Lincoln car, right?
- 8 A. Yes, sir.
- 9 Q. Now, when you there at that party, that was at Mook's
- 10 house. Right?
- 11 A. Yes, sir.
- 12 Q. And your brother was there. Right?
- 13 A. Yes, sir.
- 14 Q. And your brother, he got a concealed weapons permit
- 15 and he got revoked in 2010, didn't he?
- 16 A. I don't know when, other than he got revoked.
- 17 Q. So on this occasion he didn't have a concealed weapons
- 18 permit?
- 19 A. No, sir.
- 20 Q. And he had a forty caliber, didn't he?
- 21 A. Um, yes, sir.
- 22 Q. In the glove box of the car with the holster?
- 23 A. I knew it was in the car but I didn't know where he
- 24 had the gun.
- 25 SOLICITOR: Beg the Court's indulgence.

C. ALLEN ON CROSS

1 THE COURT: Yes, sir.

2 (Brief pause)

3 BY SOLICITOR:

4 Q. I show you State's Exhibit 47. Is that the glove box
5 where your brother's gun was?

6 A. I said I didn't know where.

7 Q. But there's the glove box and you ride in that pas-
8 senger side, don't you?

9 A. Yeah, I do.

10 Q. Is that the same color -- does that look like it,
11 the same color inside of the box?

12 A. Yes.

13 Q. Okay. State's Exhibit 46, that's his gun and his
14 holster. Right?

15 A. Yes, sir.

16 Q. And State's Exhibit 45 is the gun with the clip out
17 there on the scene. Is that correct?

18 A. Yes, sir.

19 Q. And does that look like the seat of his car?

20 A. Yes, sir.

21 Q. Okay. So that is what he had, and you had the nine
22 millimeter with three clips?

23 A. Yes, sir.

24 Q. Were you wearing a holster around that party?

25 A. Yes, sir.

C. ALLEN ON CROSS

1 Q. You were?

2 A. Yes, sir.

3 Q. Okay. So you had that gun at the party, is that
4 right?

5 A. Yes, sir.

6 Q. Okay. Now, you knew who Mr. Windham was, didn't you?

7 A. Yes, sir.

8 Q. And you knew he had killed your brother. Right?

9 A. Yes, sir.

10 Q. You had seen him around a couple of weeks -- around
11 there? You had seen him at the Kangaroo Station. Right?

12 A. I seen him standing in front of it.

13 Q. And you knew he was riding around on that moped? You
14 had seen him riding around on that moped?

15 A. No, sir.

16 Q. You hadn't seen him around on that moped?

17 A. No, sir.

18 Q. You never saw him riding on the moped before?

19 A. No, sir.

20 Q. You didn't see him at Tara Village any other times?

21 A. Prior to that, no.

22 Q. Hadn't seen him in the couple of weeks or so before
23 he got killed?

24 A. No, sir.

25 Q. All right. Did your brother who owns the Lincoln

C. ALLEN ON CROSS

1 -- did he on occasion go over to Tara Village without you?

2 A. I don't know.

3 Q. Did he go over there more often than you?

4 A. I'm not sure.

5 Q. Was Mook our brother's friend or did you just know
6 him, or was he your friend?

7 A. Um, I did know him but he was my brother's friend.

8 Q. Okay. All right, and did you know Niquel Fish is his
9 brother?

10 A. Yes, sir.

11 Q. Did you know him as well?

12 A. No, sir.

13 Q. Now, on that day you were out in the yard the whole
14 time?

15 A. Yes, sir.

16 Q. Cooking out and hanging out?

17 A. Yes, sir.

18 Q. And you talked to Roy Abrams when he called, is that
19 right?

20 A. Yes, sir.

21 Q. You saw Littles, Mr. Windham -- you saw him ride by
22 on the moped in front of the house, and that was Candy
23 Lane where you all were out there?

24 A. I'm not sure where that is.

25 Q. Okay. But it was about four houses off the corner

C. ALLEN ON CROSS

1 of Leigh Lane. Right?

2 A. Yes, sir.

3 SOLICITOR: Would the Court indulge me while I turn
4 these around?

5 (Brief pause)

6 BY SOLICITOR:

7 Q. You're not sure of the address?

8 A. No, sir.

9 Q. But it was the house where your brother pulled the
10 car back down and parked it on the side?

11 A. It was the house where my brother had the car.

12 Q. He moved it or he pulled down there in the car where
13 you were at the shooting and went back again?

14 A. Yes, sir.

15 Q. Okay, and when he came out there did he go out there
16 and -- did you see him go over there and hit Mr. Windham
17 in the head?

18 A. No, sir. I didn't see him go out there.

19 Q. You didn't see it?

20 A. No, sir.

21 Q. You didn't see Mr. Windham ride by first?

22 A. No, sir.

23 Q. You didn't tell anybody else that he came by with a
24 gun and popped off at you all and showed the gun?

25 A. No, sir.

C. ALLEN ON CROSS

1 Q. All right, and you didn't see him go down Leigh Lane,
2 make a right off Candy Lane and go down Leigh Lane?

3 A. No, sir.

4 Q. All right. Well, when he was coming back and you saw
5 him on the moped, did you recognize who he was then?

6 A. Yes, sir.

7 Q. So you knew who he was?

8 A. Yes, sir.

9 Q. On the moped -- he came around that corner and you
10 told Investigator McFadden and other people that he pulled
11 a gun and shot you. Is that right?

12 A. He shot at me. I know he shot at me.

13 Q. He didn't shoot you but he shot at you?

14 A. Yes.

15 Q. So you pulled your gun and shot him. Right?

16 A. Yes, sir. I believed he shot at me.

17 Q. How many times did he shoot you?

18 A. I don't know how many times he shot at me.

19 Q. What now?

20 A. I don't know how many times he shot at me.

21 Q. You don't know how many times?

22 A. I was told he shot one time.

23 Q. I'm not asking you what you were told. You were
24 there?

25 A. Yes, sir.

C. ALLEN ON CROSS

- 1 Q. And you told them he shot at you. Correct?
- 2 A. Yes, sir. I told them.
- 3 Q. And how many times did he shoot at you?
- 4 A. I don't know.
- 5 Q. But he lifted the gun and shot at you but he didn't
- 6 hit you, did he?
- 7 A. No, sir.
- 8 Q. Now, you shot at him eight times?
- 9 A. I don't know.
- 10 Q. You thought it was ten or eleven but it was eight
- 11 times?
- 12 A. Yes, sir.
- 13 Q. And you hit him seven times?
- 14 A. Yes, sir.
- 15 Q. That's pretty darn good shooting, isn't it?
- 16 A. I wouldn't know about that.
- 17 Q. How many times did you practice?
- 18 A. I never really practiced.
- 19 Q. You never really practiced?
- 20 A. No. Not really practice but I had shot my gun a lit-
- 21 tle bit before that. I shot the gun at targets sometimes
- 22 just to see how it would fire.
- 23 Q. You shot the gun at cars sometimes?
- 24 A. No, at targets.
- 25 Q. I'm sorry. At targets.

C. ALLEN ON CROSS

1 A. Yes, sir.

2 Q. You shot him, and do you know where you hit him the
3 first time?

4 A. No, sir.

5 Q. Okay, and he kept making the turn and headed on down
6 Candy Lane?

7 A. Yes, sir.

8 Q. So he came by you and you were standing there on the
9 corner. Right?

10 A. No. I was walking along.

11 Q. You were not on the corner?

12 A. No, I was walking.

13 Q. So you were walking and he's coming around there, so
14 how could he see you?

15 A. One more time?

16 Q. As you were walking down the street and he came down
17 there how could he see you? He hadn't got to the corner
18 yet.

19 A. . .

20 Q. There's a tree, a big tree, there in Mook's yard,
21 isn't there?

22 A. I don't know but if you're standing in the middle
23 of the yard there's not much branches.

24 Q. Not much branches?

25 A. No, sir.

C. ALLEN ON CROSS

- 1 Q. So he must have been looking for you?
- 2 A. I can't say that but he pulled the gun on me.
- 3 Q. So you were looking for him?
- 4 A. No, I wasn't looking for him.
- 5 Q. But, Cory, he came up and he got to the corner and
- 6 he aimed at you?
- 7 A. Yes, sir.
- 8 Q. But yet he had to make a left turn to go down Candy Lane.
- 9 Right?
- 10 A. Yes, sir.
- 11 Q. And when you shot him the first time was he still on
- 12 Leigh Lane?
- 13 A. No, sir.
- 14 Q. He was already turned?
- 15 A. . . .
- 16 Q. He was pointing a gun at you as you were coming down
- 17 and he was on Leigh Lane, and you go ahead and let him
- 18 make his turn before you shoot?
- 19 A. I saw him point a gun at me and I shot. I didn't
- 20 pay attention really to how far he was getting.
- 21 Q. When he got way down Candy Lane -- I mean, you've
- 22 seen these pictures going through this trial and you were
- 23 there. I mean, he got -- he got Candy Lane a good ways.
- 24 Right?
- 25 A. I don't know how far he was but I never seen those

C. ALLEN ON CROSS

1 pictures.

2 Q. Any of them you want to look at?

3 A. No, sir.

4 Q. All right. What about this one? Is that where he
5 was after you finished shooting him?

6 A. . . .

7 Q. State's Exhibit 7.

8 A. Probably so.

9 Q. Okay, and you walked up to him. Right? You walked
10 over to him?

11 A. No, sir.

12 Q. Matter of fact, you walked past him because all the
13 shell casings -- these are way over here on the corner,
14 when he had gone through there and turned. You shot him
15 as he was going down Candy Lane, and you go over.

16 You walk past the moped. The moped is between you
17 where all the shooting took place. Right?

18 A. Yes, sir.

19 Q. So you walked over there to him and checked him out?

20 A. Not really. I didn't go over to him and check him
21 out.

22 Q. All right, and you didn't see your brother kick him in
23 the head?

24 A. No, sir.

25 Q. And you tried to call nine one one but your phone

C. ALLEN ON CROSS

1 didn't work?

2 A. Yes, sir.

3 Q. All right, so you talked with Ms. Coe. Is that
4 right?

5 A. Yes, sir.

6 Q. Told her he had pulled a gun out and shot at you?

7 A. Yes, sir. I may have told her he pulled at gun out
8 and shot at me.

9 Q. Did you know her from prior to this?

10 A. No, sir.

11 Q. But you hung out up there across the street a lot
12 according to what you said. Right?

13 A. Not a lot. I was there some.

14 Q. You weren't there that often at Mook's house?

15 A. I was there some.

16 Q. Did you end up on bad terms with Mr. Farnum?

17 A. Um, not really. I go there sometimes.

18 Q. But he was training you and teaching you a trade.
19 Right?

20 A. Yeah, that's what he said.

21 Q. And you left -- when you left there were you mad with
22 him?

23 A. No, I wasn't mad with him.

24 Q. Was he mad with you?

25 A. Not that I know of.

C. ALLEN ON CROSS

1 Q. Okay. So he wouldn't have any kind of reason to tell
2 something about you that wasn't true, would he?

3 A. Not that I know of, but what he said wasn't true.

4 Q. All right, and when your brother tried to get you to
5 leave you told him, no, that you weren't leaving; that
6 people had seen you out there. Right?

7 A. Yes, sir.

8 Q. So with the reason it was done there was no reason for
9 you to leave. Right?

10 A. No, sir.

11 Q. You talked about you were getting threats. Right?

12 A. Yes, direct threats.

13 Q. But Mr. Windham was in prison, wasn't he?

14 A. Yes, sir.

15 Q. So there could have been threats but he was in prison

16 . . .

17 A. Right.

18 Q. . . and did you report any threats to law enforcement?

19 A. No, sir.

20 Q. Did you figure you would just get you a gun and
21 carry it and handle it all for yourself?

22 A. No, but I wanted to be able to defend myself, protect
23 myself.

24 Q. And who were you protecting yourself from?

25 A. Anybody that come at me.

C. ALLEN ON CROSS

1 Q. You are not saying that Edward Windham threatened you
2 from prison?

3 A. I don't know that he has people who are out there.

4 Q. But he was in prison?

5 A. Yes.

6 SOLICITOR: I beg your patience just a moment.

7 (Brief pause)

8 BY SOLICITOR:

9 Q. Cory, was there any particular person you were afraid
10 of?

11 A. Yes.

12 Q. Who?

13 A. Edward Windham.

14 Q. Why were you afraid of him when he was in prison?

15 A. Because of the threats.

16 Q. I thought you said the threats didn't come from him.

17 A. From someone else.

18 Q. So why were you afraid of him?

19 A. Um, he had other people.

20 Q. But you said the threats didn't come from him and he's
21 in prison, so why were you afraid of him?

22 A. He had killed before.

23 Q. And you knew the person on the moped was him, didn't
24 you?

25 A. Yes.

C. ALLEN ON CROSS

1 SOLICITOR: Court's indulgence, Your Honor.

2 THE COURT: Yes, sir.

3 BY SOLICITOR:

4 Q. This was around eight twenty or something like that
5 in June?

6 A. Yes.

7 Q. And about the time the sun goes down but there is
8 still some daylight. Is that correct?

9 A. The sun was not down.

10 Q. So you're saying it was light?

11 A. Yes, sir.

12 Q. And he's coming down the road. How far could you see
13 him coming down the road?

14 A. How far did I see him?

15 Q. Yes.

16 A. I don't know. I just looked and I seen him and the
17 gun he was pulling.

18 Q. Okay, and you had him close to you when he first had
19 pulled the gun?

20 A. . . .

21 Q. Or was he away from you when he pulled the gun?

22 A. A little away from me.

23 Q. How far away was he at the moment you say you saw
24 the gun?

25 A. I'm not sure. He had to have been -- I'd say fifteen

C. ALLEN ON CROSS

1 feet but I'm not sure.

2 Q. Fifteen feet away?

3 A. I'm not sure.

4 Q. That's kind of a small gun?

5 A. Not really.

6 Q. Tell me how many feet away you see it . .

7 A. About like that.

8 Q. About this far away?

9 A. Yes, something like that, I'd say.

10 Q. And you saw him when he pulled a gun out and pointed it
11 at you and fired?

12 A. I saw him pull it out.

13 Q. But you said he shot it?

14 A. Yes.

15 Q. Did he shoot the gun?

16 A. I don't know. He didn't hit me.

17 Q. So he never shot the gun?

18 A. No, sir.

19 Q. So why did you tell McFadden he shot the gun and
20 other people he pulled the gun and shot at you?

21 A. I don't know if he shot or not but he pulled the gun
22 at me. The gun was pointed at me. I know that.

23 Q. So now you have changed your mind and he didn't shoot
24 at you?

25 A. I don't know. I couldn't say he shot but he pointed,

C. ALLEN ON CROSS

1 Q. You were telling me that you were there and you saw
2 it?

3 A. I saw the man with a gun in his hands.

4 Q. You told Investigator McFadden he pulled a gun and
5 shot it and you returned fire -- I shot back at him. That
6 is what you told the police, isn't it?

7 A. I said I saw the man pull a gun and point it at me.
8 When he pointed a gun at me I didn't wait to be shot. I
9 shot back at him.

10 Q. But now you know there were no empty shell casing\$
11 for the twenty-five and no gunshot resident on Edward
12 Windham's hands, so you now remember he didn't shoot the
13 gun?

14 A. . .

15 Q. Is that correct?

16 A. No. I seen him with the gun pointed at me but I didn't
17 see what happened then. I was told by someone he didn't shoot.

18 Q. Maybe you knew -- were you telling the truth when you
19 told that to Officer McFadden or are you telling the truth
20 now?

21 A. . .

22 Q. It actually had happened, isn't that right, and it was
23 fresh on your mind?

24 A. . .

25 Q. You had just had someone shoot at you and you told

C. ALLEN ON CROSS

1 McFadden you shot him, didn't you?

2 A. Yes, sir.

3 Q. And now you are saying he didn't shoot at you and
4 that someone told you he didn't shoot. Right?

5 A. . . .

6 Q. Is that what you're saying?

7 A. I thought he had shoot.

8 Q. And now you learn he didn't shoot?

9 A. I don't know.

10 Q. You were not walking down there waiting on him to
11 come back by, were you? You weren't doing that, were you?

12 A. No.

13 Q. You weren't walking down there waiting for him and
14 you were ready and you had your nine millimeter ready for
15 him to come by?

16 A. . . .

17 Q. You were going to Roy Abrams. Right?

18 A. Yes.

19 Q. And you were going to help him with his car?

20 A. Yes.

21 Q. And then he came by and pointed the gun at you and
22 didn't shoot but he got shot himself seven times?

23 A. ...

24 Q. He was trying to get away from you on the moped. Is
25 that right?

C. ALLEN ON CROSS

1 A. No, sir.

2 Q. Did you aim at him?

3 A. Yes, I did.

4 Q. Did you aim for his abdomen?

5 A. Something like that. Yes, sir.

6 Q. Okay, and did you follow him at all as he came through?

7 A. Follow him? I was looking at him and I moved . .

8 Q. You're standing on the corner and he's coming by you
9 and pointing a gun at you with his left hand, and he turns
10 the gun and shoots you or points at you, whichever was
11 right from what you told us -- he either shot at you or he
12 didn't -- he's got the left hand out as he makes a left
13 hand turn on Candy Lane?

14 Do you shoot him first on Candy Lane or do you even
15 wait until he gets on Candy Lane?

16 A. I'm not sure. It all was . .

17 Q. He had to make that left turn so you had to follow
18 him and then you move a little bit and shot; and you aim
19 and you hit him dead square in the back of the head and
20 dead square in the lower back, and seven or eight times
21 you hit him. Right?

22 A. Yes, sir.

23 Q. Good shooting. That's all.

24 THE COURT: Redirect? Thank you, Solicitor. Redi-
25 rect, Ms. Parham?

C. ALLEN ON REDIRECT

1 MS. PARHAM: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. PARHAM:

4 Q. You said you were receiving direct threats. What
5 kind of direct threats were you receiving?

6 A. After my brother's death -- that the same thing would
7 happen to me. My brother told me he heard it.

8 SOLICITOR: I would object to hearsay.

9 THE COURT: Sustained.

10 Q. But you do recall receiving threats?

11 A. Yes, maam.

12 Q. All right. Did you see Ms. Coe in the yard that day?
13 Do you remember seeing her?

14 A. No, not until later.

15 Q. Do you remember seeing anyone as you were out walking
16 down the street, anyone in their yard, before the shoot-
17 ing?

18 A. Yeah.

19 Q. Who did you see?

20 A. I saw Glen.

21 Q. You saw Glen in his yard as you were walking?

22 A. Yes.

23 Q. Did you see anyone else that was out there?

24 A. No, maam.

25 Q. Okay.

C. ALLEN ON REDIRECT

1 MS. PARHAM: If I could have a second, Your Honor?

2 THE COURT: Yes, maam.

3 (Brief pause)

4 BY MS. PARHAM:

5 Q. Why did you go to Tara Village that day?

6 A. I was going to work on a car with Roy at his house
7 there.

8 Q. All right, and did you have any intentions of find-
9 ing Mr. Windham that day?

10 A. No, maam.

11 Q. Thank you.

12 MS. PARHAM: That's all I have, Your Honor.

13 THE COURT: Do you have any questions on Recross,
14 Solicitor?

15 SOLICITOR. Nothing further, Your Honor.

16 Thank you.

17 THE COURT: Thank you very much, Mr. Allen. You may
18 step down.

19 (Witness excused from stand)

20 (Brief pause)

21 THE COURT: All right. Perhaps now would be a good
22 time to take our luncheon recess.

23 I would remind you that during the recess you are not
24 to discuss this case with your fellow jurors, with your
25 lunch mates, family, friends or with anyone else.

1 THE COURT: Good afternoon. Thank you. Is the jury
2 back?

3 BAILIFF: Yes, sir.

4 THE COURT: All right. Anything from the State before
5 we bring in our jury?

6 SOLICITOR: No, sir.

7 THE COURT: From the Defense?

8 MS. PARHAM: Nothing, Your Honor.

9 THE COURT: Bring the jury.

10 (Jury returned to Courtroom)

11 THE COURT: Welcome back, ladies and gentlemen. I
12 hope you all had a very pleasant lunch. We will continue
13 in the trial of the case with the presentation
14 of evidence and testimony by the Defense in its case in
15 chief.

16 Please continue to give the parties your complete and
17 undivided attention.

18 Ms. Parham.

19 MS. PARHAM: Thank you, Your Honor. The Defense calls
20 Roy Abrams.

21 THE COURT: All right, Mr. Abrams. Come around
22 ROY ABRAMS, being duly
23 sworn, testified as follows:

24 CLERK: Please be seated and state your name for the
25 record.

R. ABRAMS ON DIRECT

1 WITNESS: Roy Abrams.

2 DIRECT EXAMINATION

3 BY MS. PARHAM:

4 Q. Mr. Abrams, how old are you?

5 A. Thirty-three.

6 Q. And where are you from?

7 A. Florence, South Carolina.

8 Q. And what's your address?

9 A. Hills Lane.

10 Q. Is Hills Lane in Tara Village?

11 A. Yes, maam.

12 Q. How long have you lived there?

13 A. Since ninety-seven.

14 Q. Okay. Mr. Abrams, did you graduate high school?

15 A. Yes, maam.

16 Q. Which high school did you graduate from?

17 A. Mills High school.

18 Q. And did you go to college after that?

19 A. Yes, maam.

20 Q. Did you graduate?

21 A. Yes, maam.

22 Q. What was your degree in?

23 A. Mechanical engineering.

24 Q. All right, and what year did you graduate from college?

25 A. In 2009.

R. ABRAMS ON DIRECT

- 1 Q. Did you take any courses after that?
- 2 A. I took some courses at Tech.
- 3 Q. Here in Florence, the tech school here?
- 4 A. Yes, maam.
- 5 Q. All right. Do you work currently?
- 6 A. Yes, maam.
- 7 Q. Where do you work?
- 8 A. (Inaudible)
- 9 Q. How long have you worked there?
- 10 A. About three years.
- 11 Q. All right, and did you ever serve in the military?
- 12 A. Yes, maam.
- 13 Q. When did you serve?
- 14 A. From 2001 to 2004
- 15 Q. And were you ever deployed?
- 16 A. Yes, maam, in Iraq from 2003 to 2004.
- 17 Q. Okay, and do you have a disability from the military?
- 18 A. Yes, maam.
- 19 Q. What is that?
- 20 A. From a back wound.
- 21 Q. Okay. You were discharged from the military?
- 22 A. Yes, maam.
- 23 Q. Do you know Cory Allen?
- 24 A. Yes, maam.
- 25 Q. How long have you known Cory?

R. ABRAMS ON DIRECT

1 A. Since '97.

2 Q. Okay, and how many streets is your house from -- how
3 many streets over is your street from Candy Lane?

4 A. Just one.

5 Q. Okay, let me take you back to the day that Edward Jamell
6 Windham was shot. That was June 4 of 2014.

7 Do you remember that day?

8 A. Yes, maam

9 Q. And did you know Mr. Windham?

10 A. Yes, maam.

11 Q. How did you know Mr. Windham?

12 A. We were in school together for three years.

13 Q. High school or college?

14 A. High school.

15 Q. Okay. Going back to that day, were you expecting to
16 see Cory Allen on that day?

17 A. Yes, maam.

18 Q. How often did you see Cory Allen?

19 A. About every day.

20 Q. Okay, and would you consider him one of our best friends?

21 A. Yes, maam.

22 Q. All right. Why were you supposed to see Cory Allen on
23 that day?

24 A. There was something wrong with my car. I've got a
25 1981 Chevy Malibu.

R. ABRAMS ON DIRECT

- 1 Q. Okay, and how did you know he would help you with that?
- 2 A. He had worked on cars.
- 3 Q. You knew he previously had worked on cars?
- 4 A. Yes, maam. He worked on a Chevy all the time.
- 5 Q. What kind of Chevy did he work on?
- 6 A. It was a 1989 Chevy Malibu.
- 7 Q. Okay, and on that particular day what was he supposed
- 8 to do on the car?
- 9 A. I think it was that the lights wasn't working right.
- 10 Q. Okay. Did Cory Allen ever get to your house that day?
- 11 A. No, maam.
- 12 Q. Okay, and did you wonder why he didn't get to your house?
- 13 A. Yes, maam.
- 14 Q. And why didn't he get to your house?
- 15 A. Because he was involved with Edward.
- 16 Q. Okay. Was he arrested?
- 17 A. Yes, maam.
- 18 Q. All right. Please answer any questions Mr. Clements
- 19 has for you.
- 20 THE COURT: Thank you, Ms. Parham.
- 21 Solicitor.
- 22 SOLICITOR: Thank you. The State would not have any
- 23 questions.
- 24 THE COURT: Thank you very much. You may step down.
- 25 (Witness excused from stand)

1 THE COURT: All right, Ms. Parham.

2 MS. PARHAM: The Defense rests.

3 THE COURT: All right, thank you.

4 Does the State intend to present any evidence and tes-
5 timony in reply?

6 SOLICITOR: No, sir.

7 THE COURT: Thank you very much.

8 Mr. Foreman and ladies and gentlemen of the jury, you
9 have now heard all the evidence and testimony that you are
10 going to hear from the parties in the trial of this case,
11 both from the State and the Defense.

12 Administratively or procedurally where we are at now is
13 the closing arguments by the parties. The order in which
14 we hear the arguments is the State has the right to open in
15 full, followed by closing by the Defense, followed by full
16 closing by the State.

17 Is that correct, Solicitor?

18 SOLICITOR: Yes, sir, and we would waive opening.

19 THE COURT: But that is the correct order?

20 SOLICITOR: Yes, Your Honor.

21 THE COURT: Is that your understanding, Ms. Parham?

22 MS. PARHAM: Yes, Your Honor.

23 THE COURT: So you waive opening on the law and proce-
24 durally following Ms. Parham presenting her closing argu-
25 ment the State would conclude with your closing.

1 Then thereafter I would instruct the jury on the law
2 and the case would be submitted to you for your delibera-
3 tions.

4 I will give the attorneys about twenty minutes before
5 we begin that procedure although you have only been out here
6 a few minutes. When you return, we will go directly into
7 closing arguments.

8 So if you would step to your jury room and do not dis-
9 cuss the case.

10 (Jury excused from Courtroom)

11 THE COURT: All right, any requests to charge, Ms.
12 Parham?

13 MS. PARHAM: The charge you mentioned earlier about a
14 threat.

15 THE COURT: Yes, maam. I typically charge that. Typ-
16 ically I charge that.

17 (Brief pause)

18 I'll charge that.

19 MS. PARHAM: Thank you, Your Honor.

20 THE COURT: All right, Solicitor, any requests to charge?

21 SOLICITOR: No, Your Honor.

22 THE COURT: All right, we'll take about fifteen minutes
23 then.

24 (Whereupon, the Court took a recess, after which the
25 matter resumed)

1 THE COURT: Anything from the State, Solicitor?

2 SOLICITOR: No, Your Honor.

3 THE COURT: Defense?

4 MS. PARHAM: No, Your Honor.

5 THE COURT: Bring in our jury.

6 (Jury returned to the Courtroom)

7 THE COURT: All right, ladies and gentlemen, you have pre-
8 viously been informed that we will now go into closing arguments
9 by the attorneys.

10 This is the order we will follow. Ms. Parham will close
11 first on behalf of Mr. Allen, thereafter followed by the Soli-
12 citor, and followed by my instructions to you.

13 I would ask you, as you have done throughout the trial of
14 the case, to please give to the attorneys your complete and un-
15 divided attention.

16 I do not allow anyone to go in or out of the Courtroom as
17 the attorneys or while the attorneys are addressing the jury.
18 You may go after Ms. Parham's closing and before the Solicitor's.
19 You may go after the closing arguments and before my instruc-
20 tions begin.

21 I will not allow any movement in or out while the attorneys
22 are addressing the jury. Thank you very much.

23 Ms. Parham.

24 MS. PARHAM: Thank you, Your Honor. May it please the Court?

25 Mr. Clements, ladies and gentlemen.

1 Your service here is very important. Most people in our
2 profession call you the judges without robes, and that is what
3 you are. You're the judges of the facts in this case.

4 Each of you was selected by the State and the Defense be-
5 cause we believe you could be a fair and impartial juror, and
6 your job has been to listen to all of the witnesses and to de-
7 termine their credibility, look at all the evidence that came
8 in, and to apply that to the law that the Judge is going to
9 give you this afternoon after we finish speaking.

10 That then will be time for you to render your verdict, and
11 the word verdict comes from the Latin which means to speak the
12 truth.

13 That is essentially what you are to do, is to render a
14 verdict that speaks the truth in this case.

15 This is an important day for Cory Allen. As I told you
16 in the beginning, he has been waiting for this day for two
17 years, and so it all comes up to today when you will find the
18 truth in the case.

19 Now, this is a very unusual case because there were no
20 eye-witnesses, and in summation what both parties are doing is
21 looking at the evidence and trying to figure out what happened.

22 The State has its idea of what happened, and I would sub-
23 mit to you that is just not consistent with the evidence in
24 the case.

25 Now, I went into all of those photographs for a reason.

1 I will go through some of them with you that you saw on the
2 screen, and I know you hated some of that, but they are im-
3 portant here. The details in those photographs are import-
4 ant.

5 We know that, for example, the nine millimeter shell
6 casings are all lumped there together, and it is consistent
7 with the testimony that this happened fast.

8 You know, we are trying to recreate something that prob-
9 ably happened in a matter of seconds, and I ask you to remember
10 that this happened in a matter of seconds because my client
11 says that Mr. Windham pointed a gun at him and he reacted to
12 that quickly.

13 He had bullets left in his gun that he could have shot
14 more, but we believe he shot until the threat was resolved.

15 So the things that were found out on the road are impor-
16 tant. The State does not want you to believe that Mr.
17 Windham pulled a gun, pointed a gun or attempted to fire the
18 gun.

19 That is not inconsistent with the evidence though. We
20 know the most important -- the most important piece of evi-
21 dence in this case is the autopsy photos and you can go and
22 recreate it in the jury room. That is the the most important
23 evidence in this case.

24 It is the entrance wound here and the exit wound right
25 here, and that is consistent, ladies and gentlemen, with

1 someone pointing a gun, the photograph and the marks on the
2 arm.

3 There is -- Mr. Clements wanted to scoot on this chair
4 and act like he's riding a moped. This is just not consistent
5 with that.

6 That is something that you have to determine, but I'd
7 submit to you that those photographs are the most important
8 piece of evidence in the case.

9 The other important pieces of evidence in this case are
10 the other photographs because they don't you to believe -- I
11 remember in opening statement he said, well, you know, the gun
12 could have just fallen out, you know, when the motorcycle hit
13 the pavement, and the magazine, you know, could have gone to
14 the pavement -- the magazine could have come unlocked from the
15 gun and automatically came out, and that is when the unspent
16 bullets came out.

17 Well, it is not hard for me to believe that magazine did
18 pop out, but it is more difficult for me to believe the bul-
19 lets popped out because you heard the testimony that those
20 feeders in the gun were intact that was there to hold the bul-
21 lets, the feeders that hold the bullets.

22 The most -- the one problem with that is when you look
23 at those photographs, the gun is on the other side from the
24 moped.

25 So they want you to believe that the gun fell on that

1 pavement, the clip came out, three bullets came out. Now,
2 I would submit to you that marker number eight is a good ways
3 off, but the gun wound up on the other side of this moped and
4 the body.

5 It is just not normal for it to happen that way. I'd
6 submit to you that what happened is that Mr. Windham did get
7 a shot off and the gun jammed. It happened, and how do we
8 know that?

9 We know that because Clendenin videotaped himself as
10 he tested the gun. It did not function every time, so Mr.
11 Windham had a gun that malfunctioned.

12 SOLICITOR: Your Honor, I'm going to object, as there is
13 no video evidence regarding that. We only have Mr. Clendenin's
14 testimony as to that video.

15 THE COURT: All right, ladies and gentlemen of the jury,
16 you are the judges of the facts in the case. It is up to you
17 to determine what was presented from the witness stand as you
18 recall it from the individuals who testified.

19 The attorneys are not judges of the facts in the case.

20 With that said, Ms. Parham, you may continue.

21 MS. PARHAM: Thank you, Your Honor.

22 That gun malfunctioned, and you have testimony that the
23 gun malfunctioned. Then you have the bullets from the gun
24 fall off on the side of the roadway. That is another reason
25 that it is consistent with Mr. Windham's trying to fire that

1 gun.

2 As he turned to fire that gun, the gun is going to eject
3 from the right just like both guns do. Both the Ruger and
4 the Lorscien eject -- their ejection points are on the right.

5 If you look at those crime scene photographs, it is con-
6 sistent with that.

7 Everything in those photographs is consistent with what
8 my client said all along, that Mr. Windham pulled a gun and
9 my client shot him. He certainly thought Mr. Windham shot at
10 him, and I submit to you that under stressful situations and
11 when a gun is being pointed at you, you might not remember
12 things accurately.

13 Things can happen so fast that it is hard for someone to
14 recollect it, but I submit to you that what Cory has said to
15 you is the truth of what happened.

16 He is a thirty year old man and by all accounts is a nice
17 man, and he was just out there and going toward a friend's
18 house to fix a car. Then Mr. Windham turns the corner and
19 points a gun at him.

20 The State wants you to believe that my client who has
21 never been arrested before and is law-abiding and had a permit
22 for that gun -- he just, you know, commits a cold-blooded mur-
23 der of someone because of a vendetta.

24 Now, Pete Farnum said, you know, he said he wanted to
25 kill him, and I don't doubt that my client had a conversation

1 with Mr. Farnum. I do not doubt that, but, you know, Mr.
2 Farnum tried to get around the minimum wage law by saying, you
3 know, he was an apprentice and he didn't want my money, but
4 he only wanted to learn stuff -- Mr. Farnum tried to get
5 around all the minimum wage standards by doing that, and he
6 said it was a couple of months before this happened.

7 Then on cross-examination he said it could have, you
8 know, been 2010, five or six years ago -- he acknowledged it.

9 Yes, I'm sure that Mr. Farnum asked my client, why
10 are you wearing a gun, and he said this guy killed my brother
11 and I feel threatened. You know, I'm sure he said something
12 but I am sure it was misinterpreted by Mr. Farnum.

13 If someone told me I'm going to kill someone, and I be-
14 lieved it, as a responsible citizen I have to make a report
15 of it to law enforcement.

16 You know, I knew his father was up in Manning and I was
17 not worried about it, so I didn't leave and go to tell the
18 father of my client or the police about it.

19 Ladies and gentlemen, the State wants you to believe its
20 story about what happened, and I told you all in the beginning
21 that this was not a who-done-it. This was a crime of self-
22 defense.

23 The State has the burden of disproving the self-
24 defense. That is their burden, and they have failed to
25 carry it.

1 As the Judge told you to begin with, we were not
2 called upon to put up any evidence. Mr. Allen did not
3 have to take the stand. He wanted to take the stand.
4 He even waited for the police, despite the fact that a
5 crowd was around him and some of them were his friends, and
6 he was told to get in the car and get out of there.

7 But, no, he didn't. He said I'm going to wait here.
8 I am not going anywhere. I'll wait for the police.

9 Remember, he told all of the police the same day the
10 same thing. The gun shot at me and I shot back.

11 What did he do that? Because the truth is not hard
12 and that was the truth.

13 So the State has this burden of disproving the self-
14 defense beyond a reasonable doubt, and that's what we talked
15 about in opening statement. It is a heavy burden, and it is
16 to protect every citizen in this country from being wrong-
17 fully convicted, whether in this Court or in some other
18 Court.

19 And so when it comes to self-defense, ladies and gen-
20 tlemen, I don't have to prove it to you, the self-defense
21 beyond a reasonable doubt. I don't have that burden of
22 proof but that is what I'm doing.

23 Self-defense means not guilty; likely self-defense means
24 not guilty; probably self-defense, not guilty. Suspected
25 self-defense, not guilty.

1 Perhaps self-defense, not guilty. Maybe self-defense,
2 not guilty. Possibly not self-defense, not guilty. Un-
3 likely self-defense, not guilty. Probably not self-defense,
4 not guilty. Less than likely self-defense, not guilty.
5 Probably unlikely self-defense, not guilty, legally not
6 guilty.

7 The Defendant is not guilty until the State proves to
8 you not self-defense beyond a reasonable doubt; that my
9 client could be found guilty or would be found guilty.

10 That is just not the case here, ladies and gentlemen,
11 because this was self-defense. As he said, he was in fear
12 of his life and he shot Mr. Windham after Mr. Windham had
13 pulled a gun on him.

14 That is consistent with all of the evidence in the case,
15 and I would ask that you find my client not guilty.

16 Thank you.

17 THE COURT: Thank you, Ms. Parham.

18 Solicitor.

19 SOLICITOR: Thank you, and may it please the Court?

20 Ms. Parham.

21 Good afternoon, ladies and gentlemen. You all have been
22 very attentive, and I appreciate that for two reasons.

23 Because Cory Allen deserves your attention in this case.
24 It is an important day for him. It's an important day for
25 the State of South Carolina.

1 I represent the State of South Carolina and I have the
2 burden of proof. I embrace that burden.

3 The burden I have is that I have to remove from Mr.
4 Allen the cloak of innocence that he has. Our law is that
5 everyone is presumed innocent until they are proven to be
6 guilty beyond a reasonable doubt.

7 My burden is to prove that beyond a reasonable doubt,
8 and I embrace that.

9 I believe when you go back in that jury room before you
10 come back to the Courtroom with a verdict that you are
11 going to find that cloak of innocence has been removed;
12 that Mr. Allen has been proven guilty beyond a reasonable
13 doubt.

14 And that it has been proven beyond a reasonable doubt
15 that this is not self defense.

16 Remember when we first started that I got up and
17 the first thing I said to you all was, have you ever heard
18 that old saying that revenge is a dish that's best served
19 cold.

20 I think a lot of you have heard that statement before.
21 I'm not sure exactly where it comes from but it is said,
22 and it has some meaning to it; that if someone plans re-
23 venge or someone seeks revenge, that they wait for the op-
24 portunity and it is best served cold, not responded to
25 hotly.

1 There were many years between the time that Robert
2 Mills Allen was killed and the time that was on the same
3 block, almost on the same spot, that Edward Jamell Windham
4 was killed.

5 Edward Windham went to trial for that and was found
6 not guilty of that, got convicted on other charges and
7 had a probation violation of law with it. You all have
8 those Court documents in evidence and you all can check
9 that out, but he got a long sentence.

10 Now, he eventually got out of jail though, and what
11 happened? Some was going to be waiting on him and they
12 are biding their time.

13 Mr. Allen got a concealed weapons permit and Cory
14 said he was worried about threats. I asked him about that
15 on the stand, and he -- I said, what about Mr. Windham
16 being in prison, and he told me about it, and then he hemmed
17 and hawed about getting out.

18 But I asked him if he had asked law enforcement to
19 check into it. He never did. Never did.

20 Ladies and gentlemen, this is not the wild west, and
21 even though some people may think we can take the law into
22 our own hands and seek our revenge, I want to say to you
23 that as I stand here I am sworn to uphold the laws of the
24 State of South Carolina, and I tell you that you cannot
25 take the law into your own hands.

1 Now, Ms. Parham said that there are a lot of details
2 you need to pay close attention to, and I agree with her
3 one thousand percent. There are several details that she
4 left out.

5 She said I have the burden of proving that it wasn't
6 self-defense, and I agree with her, and I believe that I
7 can prove that.

8 But there are some things she didn't mention, and
9 number one is there is no GSR on Edward Jamell Windham's
10 hands. None whatsoever.

11 He was dead -- I believe someone said he was dead as a
12 door nail.

13 He couldn't wipe his hands off. He couldn't stick
14 them in his pockets, couldn't wash them. Dead.

15 An expert witness from SLED showed a picture with his
16 hands and said there was nothing to prevent anybody from
17 getting GSR off of those hands after he was dead.

18 But there was GSR on Cory Allen's hands. He shot
19 him, and there is no doubt about that. Plenty of GSR on
20 his hands.

21 What was on Edward Jamell Windham's hands? None.
22 Nothing.

23 Ms. Parham would try to get you to believe that the
24 reason there was no GSR on his hands is because he didn't
25 shoot the gun. He didn't shoot the gun. The gun

1 malfunctioned.

2 You didn't hear that from the witness stand. You didn't
3 hear that at all. What you heard was Lieutenant Clendenin
4 talking about test —firing the gun, and that every time
5 he pulled the trigger it fired. It would not re-rack the
6 next bullet but when he would slide it it would go back into
7 place.

8 And he tried it again, and it fired, and it would
9 hang up. Then it would shoot the shell and eject it but the
10 next shell would hang up. Okay, try again. It fired.

11 There was nothing preventing that gun from firing, and
12 it fired every time he put it in the ready position.

13 You can look at the pictures and look at the gun. You
14 will get a chance to examine that, those of you who know
15 about guns, and you can see where it is all beat up as
16 though it got thrown down on the roadway or dropped, slid
17 down the roadway. It gets all scratched up.

18 The magazine comes out and you will see if you look some
19 gouge marks. Clendenin talked about his diagrams, and
20 he was asked a lot about the diagrams when he said, listen,
21 it's not to scale; it's just there for the measurements,
22 and the measurements he recorded was that there was a more
23 than twenty-six feet gouge mark where that moped slid down
24 that highway or slid down Candy Lane after Mr. Windham
25 was dead.

1 The cigarette went out there and rolled a long way over
2 in front of the moped. The bullets -- some of them rolled
3 all the way in front of the moped, and the gun that was
4 heavier was behind the moped.

5 Now, Ms. Parham would ask you to make that into some
6 big issue. That doesn't make sense.

7 The gun falling on the asphalt might skid but it is not
8 going to roll over and roll over. My client had a cigarette
9 on him and that falls out right there close to his side.
10 Imagine that. Bullets come out and they roll over. Nothing
11 big about that. So do not get fooled by that. Okay?

12 Those autopsy pictures are the most important evi-
13 dence. The most important pieces of evidence. I agree
14 with Ms. Parham.

15 But as for what she said those pictures show, I'd
16 disagree with her about that.

17 But you've got these pictures and you can go back to
18 look at them. You all can talk about it then, and use
19 your common sense.

20 She started on this with the guy pulling a gun. Look
21 at the pictures, and she suggested this from the marks on
22 the skin. It comes out here. If he's pointing that gun
23 and shoots at someone and after he pulls the trigger and
24 he's shot in his arm so guess where it's going to land.
25 It's going to land even with his chest.

1 Are there any wounds whatsoever that came from the
2 front? No. There are not.

3 What makes more sense is that if you're driving a
4 moped like this then if you're hit and it goes out here
5 -- you have your arms out like this and you shoot somebody
6 you aren't going to hold your arm out like this. You're
7 going to have it like that if you point at somebody.

8 And if you're riding a moped, you are going to be like
9 that, and it is going to come out there the way it was but
10 that's not the way it was. Mr. Windham never pulled a gun
11 out I don't believe. He never had the opportunity to.

12 But Mr. Allen did, and he knew about self-defense.
13 He knew he could shoot and claim he did it in self-defense.
14 That he had a gun pulled on him and a shot was fired at him,
15 and he thought, just like Edward Windham got found not
16 guilty when his brother was killed -- ladies and gentlemen,
17 that's not going to happen.

18 Use your common sense and look at those pictures. If
19 you look at all of the circumstances -- you know, purposely
20 I asked if he was only trying to protect himself and he said
21 yes, but it didn't happen like that. More likely, it hap-
22 pened when he realized who was going by. That might have
23 been the first shot.

24 He's on that moped and I'm right here, and I can
25 hit him on the moped and pretend he shot at me first, and

1 that's what he did. He shot him through the legs -- look
2 at the pictures, and the angle changes as he goes by. He
3 began falling and then he laid there dead.

4 He gets shot in the right lower hip and that bullet
5 doesn't go through but it stops in his abdomen where his
6 abdomen fills with blood.

7 Then he gets shot right square in the back, and then
8 he gets shot right square in the neck that goes out of his
9 left nostril. That's straight back to front, ladies and
10 gentlemen. Back to front.

11 I don't know which one was first, which one was second
12 or third. I've got the photos and I can figure out that as
13 he goes by on the moped that is completely consistent
14 with his wounds.

15 I will tell you what those wounds are not consistent
16 with. They are absolutely not consistent with self-
17 defense. You don't shoot in self-defense in the back of
18 the head. Being shot in the back, that is not self-defense
19 at all. No way.

20 Shooting someone in self-defense, you don't hit some-
21 body the way Jamell Windham was hit. That's just good old
22 common sense, you know.

23 I'm not scientist. I'm just a country lawyer, but
24 that makes sense to me. It makes complete and total sense,
25 and that is what you need to use back in jury room. Talk

1 about what makes sense.

2 Think about Pete Farnum. Now he's been accused of violat-
3 ing the minimum wage law. He was trying to teach a man his
4 trade, and he gets accused of this.

5 You could tell from his demeanor on that witness stand,
6 which is your responsibility to judge the credibility of
7 the witnesses -- it was evident to me that he cared for
8 Cory Allen. He liked Cory and wanted to help him.

9 He told him not to think about doing this; your momma
10 already lost one son; don't make her lose another one, but
11 he says he was going to kill him, and it doesn't matter
12 how long ago it was. It didn't happen a couple of years
13 ago, but that doesn't matter.

14 He says he saw it on the news. He saw Cory, and he
15 said, oh, my God, I didn't think anything like that was
16 going to happen. He didn't go to Manning to see Cory's
17 dad because he thought nothing was going to happen.

18 But when it did he was a responsible citizen and he
19 called the law and told them what he knew. Why would he
20 lie about Cory?

21 I asked Cory, were you all mad at each other, and he
22 said no. Was he mad at you? No. It was not pleasant
23 for him to come here, and I felt sorry for him, but he
24 had to tell this and be here today or yesterday. But he
25 came and he told the truth.

1 I don't think there was any fabrication whatsoever
2 there with him.

3 Now, on that day in question -- Cory was asked and he
4 testified to you that he was wearing the gun with a shoulder
5 holster, State's Exhibit 26. This was his shoulder holster
6 here.

7 Cory said, this is mine and I had it on and it was
8 loaded with nine millimeter shells in it, twelve in the
9 magazine.

10 His brother Fred's gun was in the glove box but it
11 wasn't a nine millimeter. If you remember, it was a forty
12 caliber, and it was in a holster in the glove box.

13 This was Cory's gun and he had another full magazine
14 for it. My question is why. He had his shoulder holster
15 on right there and you could see it unless he turned away.
16 I submit to you that he took the shoulder holster off and
17 he put it in that car so he could walk down to that corner
18 and have his gun with two magazines on his person where
19 you couldn't see it. He would hide it or have it in his
20 hand the whole time he's walking down there, so when this
21 man came by he could get his revenge for his brother.

22 He said he wanted revenge and this gun was to obtain
23 that revenge. Two magazines.

24 Now, he came there and stood on the corner and he was
25 waiting. Edward Windham went down Candy and turned down

1 Leigh, and Cory was waiting until Littles came back by and
2 then he started shooting.

3 I have a question. If he was going to his buddy
4 Roy Abrams' house, he had a little business to take care
5 of first. He said he came down Candy Lane and he could
6 go this way or this way around in the same direction, either
7 way, but he was just coming down the street on Candy Lane.

8 -- coming down Candy Lane this way, and to
9 go to Roy's house you go this way or this way, either way.
10 What occasion did he have to cross the street and come up
11 and be on this corner right here, on the other side of the
12 street?

13 There is no reason whatsoever for him to do that. He
14 said he came across the street from his cousin's house, I
15 believe, but he was waiting for Littles to come by so he
16 could get his revenge.

17 That's what he was doing. That's why he crossed the
18 street. I don't know of any other reason for that except
19 he was going to get him -- cross the street to get Littles.
20 No other reason whatsoever to do that.

21 I'll tell you something else about his story. I lis-
22 tened to him say how he worked for Pete from nine to six
23 but then all of a sudden he didn't work any more. Does
24 that make sense to you all?

25 He said he had called his friend on his phone earlier

1 but then when he said he went to call nine one one it didn't
2 work any more. Does that make sense to you all?

3 Then Ms. Coe calls nine one one and he couldn't be-
4 cause his phone all of a sudden didn't make the nine one
5 one call; didn't work.

6 Listen to the call, and I want to talk to you about
7 that. Listen to the account.

8 He went to that corner and waited for Edward Jamell
9 Windham. He had waited for him to get out of prison. He
10 got a concealed weapons permit. He was ready. He came
11 ready, with his gun and with all that ammo.

12 Then he was there on the corner of Candy Lane and
13 Leigh Lane, and he waited for the moped to come by. Then
14 he takes him out. Now, I'm going to tell you another one
15 thing that doesn't make any sense whatsoever. That is
16 when he claims that he didn't go there to get him.

17 Now, I don't know if any of you have ever ridden a
18 moped, but a moped is like a platform with a sewing ma-
19 chine motor on it. There's not much to it, but let me ask
20 you this.

21 Did any of you ever try to turn a bicycle or turn a
22 moped to the left with your right hand -- turn to the left
23 with your right hand and do something else with your left
24 hand? It's not going to happen. You're going to fall down
25 right there. It's not going to happen. It doesn't make

1 any sense.

2 But that's what he said. He's going forward and he
3 goes to turn and pulls a gun and shoots, and then he said
4 to everyone who would listen that night that he pulled a
5 gun on me and shot at me and I shot him back.

6 I shot him back -- returned fire. That's what he
7 said that night. Well, today he doesn't know because
8 somebody told him the gun didn't go off. So maybe he didn't
9 shoot at him.

10 Well, nobody found any GSR and there were no spent
11 shell casings from the twenty-five, so now, well, I guess
12 he didn't shoot at me.

13 That's not credible at all, is it? A man is going to
14 come by and intend to shoot, he's going to stop and shoot.
15 He's not going to try to shoot somebody with what I call
16 the weak hand.

17 Like playing basketball -- I can't shoot a basket with
18 a weak hand. Can't do it and it doesn't fit.

19 We don't know if he's right-handed or not. Nobody
20 said that, but I'm going to tell you something. This is
21 in his pocket, and you heard what else was in his pocket.
22 A cigarette lighter and a phone. If he smoked a cigarette
23 with one hand, the cigarette lighter would be in the dom-
24 inant hand.

25 The telephone -- left pocket. Right? You heard
testimony about a phone on the right hand side. He had to

1 grab that with his right hand.

2 Cory's story doesn't make sense. If he went to pull a
3 gun and the thing mis-fired -- in order to make it fire
4 you had to slide the bullet by hand, and he couldn't do
5 that and drive the moped.

6 You're going to have the firearm. It wouldn't fire
7 then and it won't fire at this time.

8 Again, they were on the same street on the same block,
9 and one of them was killed. That's just too much coinci-
10 dence. The odds of that are like of you winning the lot-
11 tery two days in a row. Not believable.

12 There is an exhibit I want you all to pay attention
13 to. That's why she said the pictures are so important --
14 I can shuffle them up -- I know you are about sick of the
15 pictures. I know you don't like to look at them, and we
16 are sorry about it. Lord knows we have plenty of pictures.

17 I want to show you this picture of Mr. Windham and it
18 is very important. I want you to look at this when you go
19 back there. I apologize, ladies and gentlemen. It is in
20 this stack somewhere, and I would ask you to pay close at-
21 tention to it.

22 This is a picture that shows Mr. Windham behind him,
23 and with his rear end up in the air and his legs and his
24 knees and his hands underneath.

25 I had no idea until Dr. Batalis said it, that rigor

1 mortis could set in that quickly, but I want to look at
2 how his hands are there. His hands are like this. Like
3 he's riding a moped. Not like he's firing a gun.

4 Look at this. It's one of the more significant and
5 important pieces of evidence.

6 This whole crime was calculated and planned out, and
7 very simply planned out really. Mr. Windham gets out of prison
8 and I bet this man went to Tara Village where he hangs out.
9 Mr. Windham is known to go over there all the time.

10 Heard Cory Allen say he hung out there all the time.
11 He knew he hung out there all the time, and he's thinking
12 I can shoot him and I can claim self-defense.

13 Ladies and gentlemen, that doesn't add up. It doesn't
14 add up. The guy goes by and he shoots at him and so he
15 shoots at him and gets him. He stood there and sees him
16 coming down the lane. He points a gun at him and he shoots
17 in self-defense.

18 He says he got shot at and there is no evidence of
19 that whatsoever. Mr. Windham made a turn and headed down
20 Candy Lane on his way until he got shot enough times that
21 he fell.

22 You check out the pictures. He skids down the high-
23 way some or the street. He has abrasions on him where he
24 slid -- gun behind him -- makes no sense. It makes no
25 sense.

1 He was trying to get away but he didn't make it. You
2 heard the testimony of his wife. He was murdered. You
3 might have some thoughts otherwise, but think about it and
4 use your common sense.

5 He was in the neighborhood and he was armed to kill.
6 The story about self-defense makes no sense.

7 You all have paid very close attention, and I know you
8 have taken in all the details of this between all of you.
9 You've got all the facts.

10 I ask you please to go back there and take the evidence
11 you have heard, apply it to the law, and come out and de-
12 liver a verdict that speaks the truth. Vere dicto. The
13 truth is that this is not the wild west and we do not take
14 the law into our own hands.

15 We can't seek retribution. We can't seek revenge,
16 and we can't hide behind a concealed weapons permit and
17 claim that he pulled a gun on me. There is no evidence of
18 that whatsoever.

19 There is no evidence whatsoever the gun was shot, and
20 Cory's story that he pulled a gun and shot at him is not
21 true. No doubt whatsoever of that.

22 Consider the facts and listen to the nine one one call.
23 Apply your common sense as to all of these details. He put
24 his gun in the car with the clips. He went out there and
25 waited on him, and he shot him seven or eight times.

1 Good shooting. Darn good shooting. Go back there and
2 come back out with the truth. The State of South Carolina
3 and the County of Florence thanks you.

4 Deliver a verdict of guilty. Thank you.

5 THE COURT: Thank you, Ms. Parham. Thank you, Soli-
6 citor.

7 Mr. Foreman and ladies and gentlemen of the jury, I
8 will now instruct you on the law that you are to apply to
9 the facts as you find them to be in the case.

10 It should take approximately twenty-five minutes., It
11 is not particularly easy to listen to because it is very
12 well scripted, and, you know, sometimes I feel like I'm
13 reading -- just reading it to you which in a sense I am,
14 but the way I instruct it to you is I charge the general
15 criminal law as it applies to all criminal cases in South
16 Carolina.

17 I will move from one subject matter to the next as I
18 give you the caption of the area that I am fixing to
19 cover..

20 After I charge the general criminal law, I will then
21 charge you the specific elements of the offense of murder.
22 I will charge you the defense of self-defense, and, fin-
23 ally, review with you your jury verdict, and I certainly
24 will try to change the tone and inflection of my voice.

25 I thank you very much for your patience and attention.

1 A charge, arrest and indictment is not evidence. The
2 indictment charges the Defendant with murder, and I remind
3 you that the fact that the Defendant was arrested, charged
4 and indicted in this case is not evidence in this case,
5 and it cannot be considered by you as evidence of guilt
6 in this case.

7 Nor does it create any presumption or any inference
8 of guilt.

9 The Indictment is simply the formal, written document
10 which contains the charges brought against the Defendant.
11 It is the formal document by which this case is brought
12 before the Court.

13 Presumption of innocence. The Defendant has pled not
14 guilty to the Indictment, and that plea puts the burden
15 on the State to prove the Defendant's guilt.

16 A person charged with committing a criminal offense
17 in South Carolina is never required to prove himself in-
18 nocent.

19 I instruct you that it is an important rule of law
20 that a defendant in a criminal trial, no matter what the
21 seriousness of the charge may be, will always be presumed
22 to be innocent of the crime for which the Indictment was
23 issued, unless guilt has been proven beyond a reasonable
24 doubt.

25 This presumption of innocence does not end when you

1 begin your deliberations but it accompanies the Defendant
2 throughout the trial until you reach a verdict of guilt
3 based on the evidence satisfying you of that guilt beyond
4 a reasonable doubt.

5 The presumption of innocence is said to be like a
6 robe of righteousness which is placed upon the shoulders
7 of a defendant which remains with the Defendant until it
8 has been stripped from the defendant by evidence satisfy-
9 ing you of the defendant's guilt beyond a reasonable
10 doubt.

11 The presumption of innocence is not a mere legal
12 theory. It is not just a legal phrase. It is a substan-
13 tial right to which every defendant is entitled unless you,
14 the jury, are satisfied from the evidence of the defen-
15 dant's guilt beyond a reasonable doubt.

16 Reasonable doubt. What is a reasonable doubt in the
17 law?

18 A reasonable doubt is the kind of doubt that would
19 cause a reasonable person to hesitate to act. The State
20 has the burden of proving the Defendant guilty beyond a
21 reasonable doubt.

22 Some of you in the past may have served as jurors in
23 civil cases where you were told it was only necessary to
24 prove a fact is more likely true than not true, such as
25 by the greater weight or the preponderance of the evidence.

1 In criminal cases the State's proof must be more
2 powerful than that. It must be beyond a reasonable doubt.
3 Proof beyond a reasonable doubt is proof that leaves you
4 firmly convinced of the Defendant's guilt.

5 Ladies and gentlemen, there are very few things in
6 this world that we know with absolute certainty, and in
7 criminal cases the law does not require proof that over-
8 comes every possible doubt.

9 If, based on your consideration of the evidence, you
10 are firmly convinced that the Defendant is guilty of the
11 crime charged, you must find the Defendant guilty.

12 If, on the other hand, you think there is a real pos-
13 sibility that the Defendant is not guilty, you must give
14 the Defendant the benefit of that doubt and find him not
15 guilty.

16 Jury and trial judge. I remind you that during this
17 trial you and I have certain distinct duties to perform.
18 As the trial judge, it is my responsibility to preside over
19 the trial of the case, and I also have a duty to rule on
20 the admissibility of the evidence offered during the trial.

21 You are to consider only the competent evidence be-
22 fore you. If there was any evidence during the trial or-
23 dered stricken from the record of this case, you must
24 disregard that testimony.

25 You are to consider only the testimony which has been

1 presented from the witness stand, any exhibits which have
2 been made a part of the record, and any stipulations of
3 the attorneys.

4 I have the additional duty to instruct you on the
5 law applicable to this case. As a presiding judge, I am
6 the sole judge of the law in this case, and it is your
7 duty as the jury to accept and apply the law as I now am
8 stating it to you.

9 If you already have any idea as to what the law is,
10 or what the law should be, and it does not agree with what
11 I now tell you, you must abandon, you must set aside, your
12 idea because you are sworn to accept the law and apply the
13 law exactly as I state it to you.

14 In every case tried in this Court before a jury, the
15 jury becomes the sole and exclusive judge of the facts in
16 the case.

17 A trial judge cannot intimate, state, comment on, or
18 make any statements to a trial jury about the facts in a
19 case.

20 Since you, the jury, are the sole judges of the facts
21 in this case, you are not to infer from what I have said
22 during the progress of this trial in ruling upon the ad-
23 missibility of evidence or otherwise, or anything I say
24 now during the course of this instruction to you, that I
25 have any opinion about the facts in this case.

1 The law does not allow me to have an opinion about
2 the facts in the case. This is a matter solely for you,
3 the jury, to determine.

4 As jurors, it is your duty to determine the effect,
5 the value, the weight and the truth of the evidence pre-
6 sented during the trial.

7 Direct and circumstantial evidence. There are two
8 types of evidence which is generally presented during a
9 trial, direct evidence and circumstantial evidence.

10 Direct evidence is the testimony of a person who is
11 claiming to have actual knowledge of a fact, such as an
12 eye-witness, or an ear-witness.

13 It is evidence which immediately establishes the main
14 fact to be proven.

15 Circumstantial evidence is proof of a chain of facts
16 and circumstances indicating the existence of a fact. It
17 is evidence which immediately establishes a collateral fact
18 or facts from which the main fact may be inferred.

19 Circumstantial evidence is based on inferences and
20 not on personal knowledge or observation.

21 The law -- our law makes absolutely no distinction
22 between the weight or the value to be given to either di-
23 rect or circumstantial evidence, nor is there a greater
24 degree of certainty required of circumstantial evidence
25 than of direct evidence.

1 You should weigh all of the evidence in the case, and
2 after weighing all of the evidence if you are not convinced
3 of the guilt of the Defendant beyond a reasonable doubt,
4 you must find the Defendant not guilty.

5 If, on the other hand, after weighing all the evidence
6 in the case if are convinced of the guilt of the Defendant
7 beyond a reasonable doubt, you must find the Defendant
8 guilty.

9 Credibility of witnesses. Necessarily, you must de-
10 termine the credibility of the witnesses who have testi-
11 fied in this case.

12 As you all know, credibility simply means believabil-
13 ity. Who are you going to believe?

14 It becomes your duty as jurors to analyze and evalu-
15 ate the evidence and determine which evidence convinces
16 you of its truth, which evidence convinces you of the truth.
17 In determining the believability of the witnesses who have
18 testified in this case, you use your individual and your
19 collective good judgment and common sense. You may be-
20 lieve one over several witnesses, or several witnesses over
21 one.

22 You may believe a part of the testimony of a witness
23 and reject the remaining part of the testimony of that
24 same witness.

25 You may believe the testimony of a witness in its --

1 entirety or reject the testimony of a witness in its en-
2 tirety.

3 You may consider whether any witness has exhibited to
4 you any interest, any bias, any prejudice or any other mo-
5 tive in the case.

6 You may also consider the appearance and manner of
7 the witness while testifying on the witness stand. You may
8 consider whether or not a witness' testimony is consistent
9 throughout the testimony.

10 You may consider whether the witness' testimony is
11 corroborated by other witnesses, made stronger, or is un-
12 corroborated or made weaker by other witnesses.

13 You may consider anything in this record that will
14 help you determine the believability of the witnesses and
15 decide the facts of the case as you analyze and evaluate
16 the testimony.

17 You may consider if any witness or any witnesses have
18 given prior inconsistent statements, or prior consistent
19 statements, the same thing we use to evaluate peoples'
20 believability in important life decisions.

21 Expert witnesses, and you have heard this during the
22 trial of the case. I am required to tell you at this stage
23 also in my instructions to you.

24 The rules of evidence ordinarily do not permit witnes-
25 ses to testify to their opinions or conclusions. An

1 exception exists with witnesses that we call expert wit-
2 nesses, a witness who by education and experience has
3 become expert in some art, science, profession, craft or
4 calling.

5 An expert witness may state an opinion as to a rele-
6 vant or material matter in which the witness claims to be
7 an expert and may also state the reasons, the basis for
8 holding the opinions.

9 You should consider any expert opinion received in
10 evidence in this case and, like any other evidence, give
11 it the weight, the value, that you might think that it de-
12 serves.

13 If you decide that the opinion of an expert is not
14 based on sufficient education or experience, or if you
15 conclude that the reasons given in support of the opinions
16 are not sound, or that the opinion is outweighed by other
17 evidence, you may disregard the opinion entirely.

18 An expert witness' testimony is to be given no more
19 or greater weight than that of other witnesses simply be-
20 cause we call them an expert.

21 Further, you are not required to accept an expert's
22 opinion even though it is not contradicted.

23 Statement of the Defendant. Statements alleged to
24 have been made by the Defendant have been admitted into
25 evidence in this case. While the Court has determined that

1 the statements are admissible, I instruct you that you
2 make the ultimate decision of whether or not the Defendant
3 made the statements.

4 If the Defendant did make the statements, you must
5 determine whether the statements were made by the Defen-
6 dant voluntarily and of his own free will.

7 This means that the statement was not caused by a
8 threat, force, fear, coercion, intimidation, by promise
9 or hope of leniency or reward of any kind.

10 In determining whether a statement was voluntary,
11 you should consider both the characteristics of the Defen-
12 dant and the details of the questioning.

13 Some of the factors which you must consider are the
14 age of the Defendant, the Defendant's education or lack
15 of education, the Defendant's mental ability or capacity,
16 the Defendant's IQ or intelligence, the Defendant's back-
17 ground and environment, the place and length of detention,
18 the nature of the questioning and the advice or lack thereof
19 to the Defendant of his constitutional rights, including
20 but not limited to the right to remain silent; that any
21 statement given could be used against him in a Court of
22 Law; that he had the right to have a lawyer present; that
23 if he could not afford a lawyer to represent him, one
24 would be appointed without any cost to him; that he could
25 stop making the statement at any time.

1 You must carefully consider all of the surrounding cir-
2 cumstances before you can give any weight to any alleged
3 statements.

4 The State has the burden of proving beyond a reason-
5 able doubt that the alleged statement was voluntary. If
6 you determine that it was, you may give it -- you may give
7 the statement any weight or consideration that you deem
8 proper.

9 You must decide what weight, if any, should be given
10 to the alleged statement, and if you determine that an al-
11 leged statement was not the free and voluntary statement
12 of the Defendant, you should not consider the statement
13 at all.

14 Intent. In order to establish criminal liability,
15 criminal intent is required. For example, the mental
16 state required to be proven by the State for a particular
17 crime might be purpose, intent, knowledge, recklessness
18 or criminal negligence.

19 Criminal intent must be proven by the State beyond a
20 reasonable doubt. Criminal intent is always a matter
21 that must be determined by the jury from the circumstances
22 surrounding the situation.

23 There is no way to prove intent to a mathematical cer-
24 tainty. There is no way medical science can dissect a
25 persons' brain and determine what the person had in mind.

1 So the law says that criminal intent may be inferred
2 from all the surrounding circumstances shown to have
3 existed, and this is how you make your determination of
4 whether or not the element requiring intent was present.

5 It is not necessary to establish intent by direct
6 and positive evidence, but intent may be established by
7 inferences, in the same way as any other fact, by taking
8 into consideration the acts of the parties and all the
9 facts and circumstances of the case.

10 Criminal intent, ladies and gentlemen, is a mental
11 state, a conscious wrongdoing. It is up to you to deter-
12 mine what the Defendant intended to do based on the circum-
13 stances shown to have existed.

14 Ladies and gentlemen, that is the general criminal
15 matters in all criminal cases. Again, charge, arrest,
16 indictment not evidence; presumption of innocence; reason-
17 able doubt; duties of jury and trial judge; direct and
18 circumstantial evidence; credibility of the witnesses;
19 expert witnesses; statement of the Defendant and intent.

20 I am now going to charge you the specific elements of
21 murder and move to self-defense in the elements, the ele-
22 ments of self-defense.

23 The Defendant is charged with murder, and the State
24 must prove beyond a reasonable doubt that the Defendant
25 unlawfully killed another person with malice aforethought.

1 Malice is hatred, ill will or hostility towards
2 another person. Malice is the intentional doing of a
3 wrongful act without just cause or excuse, and with the
4 intent to inflict an injury or under circumstances that
5 the law will infer an evil intent.

6 Malice aforethought. It is not required that mal-
7 ice exist for any particular period of time before the
8 act is committed, but malice must exist in the mind of
9 the Defendant just before and at the time the act is com-
10 mitted.

11 Therefore, there must be a combination of the pre-
12 vious evil intent and the act.

13 Malice aforethought, ladies and gentlemen, may be ex-
14 press or inferred. These terms express and inferred do
15 not mean different kinds of malice but merely the manner
16 in which malice may be shown to exist, and that is either
17 by direct evidence or by inference from facts and cir-
18 cumstances which are proven.

19 Express malice is shown when a person speaks words
20 which express hatred or ill will for another, or when the
21 person prepared beforehand to do the act which was later
22 accomplished.

23 For example, lying in wait for a person or any other
24 acts in combination going to show that the deed was within
25 the Defendant's mind which would be express malice.

1 Malice may be inferred from conduct showing a total
2 disregard for human life. Malice may also arise based
3 on all the facts and circumstances shown to have existed.

4 Self-defense -- and, please, if you would continue
5 to give me your complete and undivided attention. I as-
6 sure you that the end of my instructions is in sight.

7 Self-defense. In this case, the Defendant has raised
8 what is known in the law as the defense of self-defense.

9 The law recognizes the right of every person to de-
10 fend himself or herself or a friend or relative or another
11 from death or from sustaining serious bodily harm.

12 To do this, a person may use such force as is reason-
13 ably necessary, even to the point of taking human life.
14 where such is reasonable.

15 The right of self-defense is founded upon necessity,
16 either actual or reasonably apparent necessity, and it
17 is a complete defense to a charge of an unlawful homicide,
18 should you find that it exists based upon your evaluation of
19 the evidence in this case.

20 The existence of self-defense entitles a person
21 charged with the commission of an unlawful homicide to a
22 verdict of not guilty.

23 Although the Defendant has raised the defense of
24 self-defense, the burden of proof is not on the Defendant
25 to prove the existence of self-defense.

1 As I have already told you, the burden is always upon
2 the State to prove the Defendant's commission of the crime
3 alleged against him beyond a reasonable doubt, and this
4 would therefore necessarily require that the State prove
5 beyond a reasonable doubt the absence of self-defense.

6 Now, in order for you to consider a defense of self-
7 defense, you obviously must know what the elements are,
8 and there are four basic elements that are required before
9 self-defense may be established.

10 First, it must be shown that the Defendant was with-
11 out fault in the bringing on the immediate difficulty
12 which gave rise to the necessity of using deadly force
13 which resulted in the taking of human life.

14 A person cannot provoke, initiate or otherwise through
15 his own fault bring about the difficulty and then claim
16 the right of self-defense in the use of deadly force as
17 against an attack which was caused by that provocation.

18 Second, it must be shown that at the time the fatal
19 act was committed that the Defendant actually believed
20 he was in imminent danger of losing his life or of sustain-
21 ing serious bodily injury, or some other person was, or
22 that the Defendant actually was in such imminent danger,
23 and the term imminent danger means an immediate or present
24 danger, and not a past or future danger.

25 Thirdly, if the self-defense is based upon a belief

1 of imminent danger then it must be shown that the belief
2 was reasonable; that is, a reasonably prudent person of
3 ordinary firmness and courage would have entertained the
4 same belief.

5 If the Defendant actually was in imminent danger then
6 it must be shown that the circumstances were such that
7 it would warn a person of ordinary prudence and courage
8 to inflict the fatal injury or injuries in order to save
9 himself or some other person from death or serious bodily
10 injury.

11 In other words, it must be shown that a reasonably
12 prudent person of ordinary firmness and courage, if acting
13 under the same or similar circumstances, would have reached
14 the same conclusion and entertained the same belief.

15 Deadly force is only appropriate when necessary and
16 may only be exercised where the Defendant entertained the
17 reasonable belief that he or some other was about to sus-
18 tain loss of life or suffer serious bodily harm.

19 The law of self-defense encompasses preventative ac-
20 tions taken to protect one's own life or another when such
21 action is taken in anticipation of imminent danger of
22 losing one's life or sustaining serious bodily injury.

23 A Defendant has a right to act upon appearances. He
24 may be mistaken. The law does not hold someone to a fine
25 assessment of the danger as might be accomplished having

1 an adequate time to reflect, but rather, however, that
2 the Defendant has acted as a person of ordinary reason,
3 firmness and courage would have acted or should have acted
4 in meeting the appearance of danger.

5 In other words, one does not have to wait until his
6 assailant used his advantage. One always has the right
7 under the law of self-preservation to prevent another
8 from getting the advantage.

9 Again, there is, however, a requirement of objectiv-
10 ity. Any such belief must be reasonable; that is, a rea-
11 sonable and prudent person, if acting under the same or a
12 similar circumstance, would have so believed or would
13 have also been warranted in acting as the Defendant did.
14 Objective, a reasonable and prudent person of ordinary
15 firmness and courage.

16 Fourth, it must be shown that the Defendant had no
17 other means of avoiding the danger of losing his life or
18 sustaining serious bodily injury than to act as he did un-
19 der the particular circumstances as existed because, as
20 I have stated, self-defense is founded upon necessity.

21 If the Defendant is justified in defending himself
22 or others and in firing the first shot, then a Defendant
23 is also justified in continuing to shoot until it is
24 apparent that the danger of death or serious bodily in-
25 jury has completely ended.

1 Threats made by the victim may be considered in deter-
2 mining whether the Defendant actually was or believed he
3 was in imminent danger.

4 Ladies and gentlemen, if you have a reasonable doubt
5 as to the Defendant's guilt, as it relates to a proof of
6 an unlawful homicide after considering all of the evidence
7 received during the trial, including any evidence relating
8 to the issue of self-defense, then it would be your duty
9 to resolve that reasonable doubt in favor of the Defendant
10 and find him not guilty.

11 If, on the other hand, you have no reasonable doubt
12 as to the Defendant's guilt, as it relates to the proof
13 of an unlawful homicide after considering all of the evi-
14 dence presented in the case, including the evidence relat-
15 ing to the issue of self-defense, then it would be your
16 duty to resolve that, and it would be your duty to resolve
17 that and find the Defendant guilty.

18 Ladies and gentlemen, as to the elements of self-
19 defense, the four elements, the State has the burden of
20 disproving self-defense beyond a reasonable doubt.

21 If any one of those four elements is disproved by
22 the State, then self-defense fails. There are four ele-
23 ments. The State would not have to prove the four ele-
24 ments but any one of those elements of self-defense. They
25 can prove them all but they only have to prove one because

1 the defense would fail if it does not meet the standards
2 of the law.

3 Finally, ladies and gentlemen, as to the form of the
4 verdict, you will have this form in there along with the
5 exhibits.

6 Mr. Foreman, this is very self-explanatory. It has
7 the caption, it's got the Indictment Number and charge.
8 There are two possible verdicts which you may find in this
9 case, guilty or not guilty.

10 There is actually no significance whatsoever in the
11 order in which I have listed the possible verdicts. It
12 is simply that one must be given first.

13 Ladies and gentlemen, your verdict must be a unani-
14 mous verdict; all twelve of you must agree.

15 Mr. Foreman, when the jury agrees on the verdict, you
16 will please check -- if you find the State has met its
17 burden of proof beyond a reasonable doubt then you find
18 the Defendant guilty, and I would ask you to please check
19 to the left of the word guilty with a check mark, circle
20 the word guilty, and sign the verdict as Foreperson.

21 If you determine that the State has failed to meet
22 its burden of proof in this case beyond a reasonable doubt,
23 then your verdict is not guilty, and I would ask you to
24 please check to the left of the two words, not guilty, and
25 circle the check mark or the two words not guilty. Then

1 sign and date it.

2 If you have any questions during the course of your de-
3 liberations, would you please write out a note for me, Mr.
4 Foreperson, knock on the jury room door, hand it to the
5 bailiff. She will present it to me and I will respond in
6 a timely manner.

7 Once you reach a unanimous verdict, execute the ver-
8 dict form and sign it, I would ask you to knock on the jury
9 room door and inform the bailiff that you have reached a
10 verdict.

11 At that time, we will receive you back into the Court-
12 room.

13 I ask you now to return to your jury room, but do not
14 begin your deliberations until you have been directed to
15 do so by the Clerk. I have to meet with the attorneys one
16 final time out of your presence before the case is submitted
17 to you.

18 I may have mis-stated something and I may have to
19 bring you out here to further instruct you. If I do not,
20 what will happen is -- everybody looks great today and so
21 we will bring our two alternates out. The evidence will
22 be presented to you, along with the verdict form, and you
23 then be instructed to begin your deliberations.

24 With that being said, thank you very much for your
25 patience and attention. You may follow your bailiff to

1 your jury room.

2 (Jury excused from the Courtroom)

3 THE COURT: All right, Solicitor. Do you have any
4 exceptions?

5 SOLICITOR: No, Your Honor.

6 THE COURT: Ms. Parham?

7 MS. PARHAM: No, Your Honor.

8 THE COURT: All right. Thank you very much. I would
9 like you to check the exhibits and the verdict form.

10 (Brief pause)

11 SOLICITOR: Verdict form is fine, Your Honor.

12 THE COURT: Solicitor and Ms. Parham, there is no live
13 ammo to go into the jury room with the firearm.

14 SOLICITOR: Yes, sir.

15 THE COURT: Madam Clerk, as you take them into the
16 jury room, take the guns in there, if they want to see
17 the ammo, the guns will have to come out and then the ammo
18 go in.

19 CLERK: Right.

20 (Brief pause)

21 THE COURT: All right, you all have checked the evi-
22 dence?

23 SOLICITOR: Yes, Your Honor.

24 THE COURT: Are you satisfied, Ms. Parham?

25 MS. PARHAM: Yes, Your Honor.

1 THE COURT: All right, thank you.

2 Bring the alternates out.

3 (Alternate jurors brought out of jury room and separated
4 from jurors)

5 (Jury commenced deliberations at 4:11 P.M.)

6 (The Court stood in recess until the matter was re-
7 sumed)

8 THE COURT: Thank you, and be seated.

9 All right, to those of you who may be in the gallery
10 this evening let me have a word from experiences I have had
11 in the Courtroom.

12 The receiving presentation or the announcement of a
13 verdict can be a very emotional time for one side or the
14 other, or both sides.

15 It is a very difficult task that the jury has in a
16 case such as this.

17 I do not allow any show of emotions whether by way of
18 body movement, body language or vocal language, or anything
19 of that nature.

20 If there is anything of that sort, I would ask the
21 deputies to take into custody anyone who shows some type
22 of conduct.

23 I will thereafter have a contempt of court hearing on
24 those individuals. You are not entitled to a jury trial
25 and I can sentence you for up to six months -- up to six

1 months and fine you up to Fifteen Hundred Dollars.

2 If you do not feel that you can control your emotions,
3 I ask you to please leave out. If you stay I will under-
4 stand and take it that you agree and consent; that you can
5 control your emotions.

6 All right.

7 (Jury returned to Courtroom at 6:23 P.M.)

8 THE COURT: Madam Clerk.

9 CLERK: Mr. Foreman, have you all agreed upon a ver-
10 dict?

11 FOREMAN: Yes, maam.

12 (Verdict form exhibited to the Court)

13 THE COURT: All right, the verdict appears to be in
14 proper form. Madam Clerk, would you publish the verdict,
15 please?

16 CLERK: Yes, sir. State of South Carolina, County of
17 Florence, the Court of General Sessions.

18 State of South Carolina versus Cory Nettles Allen,
19 Indictment Number 2014 GS 21 1340.

20 As to murder, we, the jury, unanimously find the
21 Defendant guilty. Signed by the Foreperson and dated the
22 23rd day of March, 2016.

23 Ladies and gentlemen of the jury, if this be your ver-
24 dict, please raise your right hands.

25 Thank you.

1 has forgiven, and I wish I was man enough -- Ms. Windham
2 is obviously a person who can forgive. It's when you hate
3 somebody that you should just take two drinks, one for you
4 and one for the person you hate.

5 On 2014 GS 21 1340, Cory Nettles Allen, the jury hav-
6 ing returned a verdict of guilty of murder, the Defendant
7 is committed to the State Department of Corrections for a
8 determinant time of forty years, with credit for the long
9 time served.

10 Good luck to you, Mr. Allen.

11 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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WITNESSES

DOCKET NO. 2014-GS-21-01340

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

DECEMBER

TERM

2014

THE STATE

vs.

CORY NETTLES ALLEN

FREDERICK NETTLES ALLEN

E. L. Clements, III

ARREST WARRANT NUMBER

2014A2110200569

2014A2110200568

2014GS2101340A

ACTION OF GRAND JURY

TRUE BILL

For person of Grand Jury
Date:

VERDICT

For person of Petit Jury

Date:

Indictment for

**MURDER,
ACCESSORY BEFORE THE FACT
TO MURDER, AND
ACCESSORY AFTER THE FACT OF
MURDER**

2014 DEC 20 AM 11:40

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

MURDER.

COUNTY OF FLORENCE)

ACCESSORY BEFORE THE FACT TO MURDER,
AND ACCESSORY AFTER THE FACT OF MURDER

At a Court of General Sessions, convened on NOVEMBER 20, 2014 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

CDR: 0116

16-03-0010, 0020, 16-01-0060

That COREY NETTLES ALLEN did in Florence County on or about June 04, 2014, feloniously, wilfully and with malice aforethought kill one Edward J. Windham, by means of shooting him with a handgun, and that the said Edward J. Windham did die as a proximate result thereof, in violation of Sections 16-03-0010, 0020, and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT TWO- ACCESSORY BEFORE THE FACT TO MURDER

CDR: 0002

16-01-0040, 0050

That FREDERICK NETTLES ALLEN did in Florence County on or about June 04, 2014, aid in the commission of, or was an accessory before the fact in the commission of a felony, to wit: Murder, by counseling, hiring, or otherwise procuring the said felony to be committed, to wit: by aiding and abetting his brother, COREY NETTLES ALLEN in the Murder of Edward J. Windham by driving him to the scene, putting him out, and then waiting for him down the road until the shooting occurred; in violation of Sections 16-01-0040, 0050, S.C. Code of Laws, 1976, as amended.

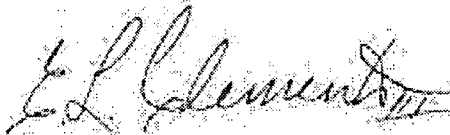
COUNT THREE - ACCESSORY AFTER THE FACT OF MURDER

CDR: 2413

16-01-0055

That FREDERICK NETTLES ALLEN did in Florence County on or about June 04, 2014, render assistance after the fact to a felon, namely COREY NETTLES ALLEN, who, on or about June 04, 2014 committed the felony of Murder, by aiding and abetting the said COREY NETTLES ALLEN by waiting on him and helping him to leave the scene after he shot and killed one Edward J. Windham; in violation of Section 16-01-0055, S.C. 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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

RECEIVED

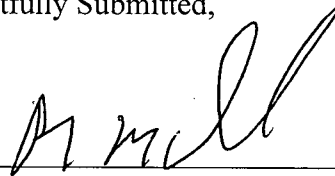
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AUG 23 2017

CERTIFICATE OF COUNSEL FOR APPELLANT
SC Court of Appeals

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



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 23rd day of August, 2017.