

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

RECEIVED
SEP 15 2017
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KEVIN TYRONE BRYANT,

APPELLANT

APPELLATE CASE NO 2016-002490

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

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

DONALD J. ZELENKA
Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)

2015-GS-26-01708

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

December 5-8, 2016

KEVEN TYRONE BRYANT,)

Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

Joshua D. Holford, Esquire
Seth A. Oskin, Esquire
Attorneys for State

Kia T. Wilson, Esquire
Attorney for Defendant

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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VOIR DIRE

16

1 **(DECEMBER 5, 2016 - DAY ONE)**

2 (REPORTER'S NOTE: Jury Venire enters courtroom.)

3 VOIR DIRE:

4 THE COURT: All right. Ladies and gentlemen, we are
5 going to pick the jury in the case of State of South Carolina
6 v. Kevin Tyrone Bryant.

7 Now, the State of South Carolina has charged the
8 Defendant with the crime of murder. Now, I'm gonna read to
9 you the -- some information or allegations that are contained
10 in the indictment. Now, the indictment is merely the charging
11 document, the document which brings the matter to court. It
12 is not evidence, cannot be considered by anyone as evidence in
13 the case. The only reason I'm reading this charging document
14 to you is to see if you happen to have any information, know
15 any information about this particular case and obviously then
16 you would need to bring that up to the Court's attention.

17 So the State has charged in the indictment to which the
18 Defendant has pled not guilty that the Defendant, Kevin Tyrone
19 Bryant, did in Horry County on or about February 15th, 2015
20 willfully, feloniously and intentionally kill the victim,
21 Saequan Vereen, with malice aforethought, either expressed or
22 implied by means of lying in wait for the victim in a public
23 place and did shoot the victim multiple times and the victim
24 did die as a proximate result thereof, again, or about
25 February 15, 2015 all in violation of the Code of Laws for the

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VOIR DIRE

17

1 State of South Carolina, 1976, as amended.

2 / Is there any member of the jury panel that knows anything
3 about this particular case, has any information about this
4 case, anything they need to bring to the Court's attention at
5 this time?

6 (REPORTER'S NOTE: No response.)

7 THE COURT: All right. The next thing I'm going to do is
8 read to you a potential list of witnesses. I do not expect
9 all of these individuals to be called as witnesses in this
10 case, but there is a possibility, the potential, that any one
11 of them or any number of them can be called as witnesses. I'm
12 gonna read the list out to you and it's gonna be a good number
13 of them. After I read that out to you, if you know any of
14 them, you're related by blood or marriage, close personal
15 friends, acquaintances of, know any of these possible or
16 potential witnesses, then I'll be asking you to stand and
17 identify yourself and tell us who that particular witness is
18 that you know in some capacity.

19 Detective Hugh Jones, Myrtle Beach Police Department. I
20 tell you what, I'm gonna read to you a number of individuals
21 and if their employment with the Myrtle Beach Police
22 Department changes, I'll let you know, but all these names I'm
23 gone read to you are employed with the Myrtle Beach Police
24 Department. Detective Hugh Jones; Detective Jeremiah Beam;
25 Officer John G. Cardona; Patrolman First Class, Daniel J.

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18

VOIR DIRE

1 Eddy; Officer Glen Porter; Officer Michael S. Householder;
2 Officer Jeffrey Thomas; Detective Jody Sutton; Officer M.C.
3 Hearon; Detective Paul Morrell; Vincent Dorio; PFC Michael
4 Merfert, M-E-R-F-E-R-T; Officer Troy Spivey; and Officer S.
5 Donovan, all of the Myrtle Beach Police Department.

6 The next individuals are associated with Crime Scene
7 Investigators, Crime Scene Specialists: Scott Williamson;
8 David Bailey; Orion Cozene, C-O-Z-E-N-E; K. Matteson, M-A-T-T-
9 E-S-O-N; Tony Humes; and I believe it's Master Corporal -- I'm
10 sorry, I've already did that, Orion Cozene -- and Suzanne, or
11 Susan Crockhan, C-R-O-C-K-H-A-N.

12 The next three individuals are employed by APS Security:
13 Brandon Costello; Sean Pettengill, P-E-T-T-E-N-G-I-L-L; Ronald
14 Poston.

15 The next three individuals are employed by the State Law
16 Enforcement Division, SLED: James Green; Paul Meeh, M-E-E-H;
17 Lieutenant Jennifer Nates; Gerlad or Gerlad, G-E-R-L-A-D,
18 McCray; Dr. Edward Proctor of Grand Strand Regional Medical
19 Center; Deputy Coroner Darius Fowler of the Horry County
20 Coroner's Office.

21 Then these next individuals are all again employed by the
22 Myrtle Beach Police Department: Melinda Shadoan, S-H-A-D-O-A-
23 N; Sergeant Michael Hull; Logan Cooper; Justin Lieberth, L-I-
24 E-B-E-R-T-H; Todd McPherson, Officer Goode, G-O-O-D-E; Douglas
25 Furlong; Officer Shumpert, S-H-U-M-P-E-R-T; Merissa Shuler,

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VOIR DIRE

19

1 Christine Snyder.

2 And then Assistant Solicitor Joshua Holford and Deputy
3 Solicitor Scott Hixson.

4 Is any member of the jury panel that's related by blood
5 or marriage, close personal friends, acquaintances of, know
6 any of these possible or potential witnesses? If so, please
7 stand.

8 All right. Very good. Down here at the end, ma'am.

9 Yes, ma'am, your name and jury number?

10 JUROR 218: 218, I think is my number; my name is Audrey
11 Jordan. I work for the City of Myrtle Beach.

12 THE COURT: Okay.

13 JUROR 218: Officer Long, she brings drug enforcement
14 stuff to me. I'm the -- for the City of Myrtle Beach.

15 THE COURT: All right.

16 JUROR 218: I also know Doug Furlong with the City of
17 Myrtle Beach.

18 THE COURT: All right. Very good. Can you give to the
19 State of South Carolina and to the Defendant a fair and
20 impartial trial; can you be a fair and impartial juror in this
21 case?

22 JUROR 218: Yes, sir.

23 THE COURT: Thank you very much.

24 Yes, ma'am.

25 JUROR 135: Juror 135, Robyn Faiella. I just want to

VOIR DIRE

1 confirm in your first grouping, did you say Paul Sweeney?

2 THE COURT: It's probably -- I think that's the only name
3 I didn't say on behalf of Myrtle Beach.

4 JUROR 135: First group of names?

5 THE COURT: Yes, ma'am, I don't -- I'm looking at the
6 names here.' No, I did not, but you know that individual
7 employed by Myrtle Beach Police Department?

8 JUROR 135: He's a police officer with the City of Myrtle
9 Beach and he's friends with my son.

10 THE COURT: All right. Very good. Well, let me just ask
11 you the qualification question. Can you give to the State of
12 South Carolina and to the Defendant a fair and impartial
13 trial; can you be a fair and impartial juror in this case?

14 JUROR 135: Yes, I can.

15 THE COURT: Thank you very much, ma'am.

16 Yes, sir?

17 JUROR 192: My name is Aaron Hocin. I don't remember my
18 juror number.

19 THE COURT: All right. Hold on one second.

20 JUROR 192: H-O-C-I-N.

21 CLERK: 192.

22 THE COURT: 192. All right. Very good. Yes, sir?

23 JUROR 192: Officer Shumpert is mutual friend of mine or
24 acquaintance.

25 THE COURT: Okay. All right. Can you give to the State

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21

VOIR DIRE

1 of South Carolina and to the Defendant a fair and impartial
2 trial; can you be a fair and impartial juror in this case?

3 JUROR 192: Yes, sir.

4 THE COURT: Thank you very much, sir. All right. Very
5 good.

6 All right. Is there any member of the jury panel, either
7 you yourself, or a member of your immediate family has never
8 had any matters of any kind handled or touched or worked on in
9 any way by the Fifteenth Circuit Solicitor's office? Now that
10 is the prosecuting office that covers Horry and Georgetown
11 Counties. If so, please stand.

12 Is there -- yes, ma'am, again and just so that we know
13 every time, even if you have stood once before, you do have to
14 say your name and juror number again. All right.

15 JUROR 192: 192, Aaron Hocin.

16 THE COURT: Yes, sir? And was it yourself or a family
17 member?

18 JUROR 192: I didn't hear the question.

19 THE COURT: Okay. Well let me ---

20 JUROR 192: If you could repeat the question, so I
21 understand.

22 THE COURT: Yes, sir. It's whether you yourself or a
23 member of your immediate family has ever had any kind of
24 matter in any way handled, worked, touched, just in any way
25 the Fifteenth Circuit Solicitor's office was involved in it

1 and they cover Horry and Georgetown Counties and was it
2 yourself or a family member?

3 JUROR 192: Myself.

4 THE COURT: All right.

5 Can you give to the State of South Carolina and to the
6 Defendant a fair and impartial trial; can you be a fair and
7 impartial juror in this case?

8 JUROR 192: Yes, sir.

9 THE COURT: Thank you very much. All right. Is there
10 any member of the jury panel that is related by blood or
11 marriage, close personal friends or acquaintances of anybody
12 employed at the Fifteenth Circuit Solicitor's office. Again,
13 either in Horry County or Georgetown County? If so, please
14 stand.

15 Yes, sir. Your name and jury number, please?

16 JUROR 394: Bobby Taylor, 394.

17 THE COURT: All right, sir. And you know somebody
18 employed?

19 JUROR 394: I know Seth.

20 THE COURT: All right, sir. So one of the Assistant
21 Solicitors.

22 JUROR 394: Yes, sir.

23 THE COURT: All right, sir. Can you give to the State of
24 South Carolina and to the Defendant a fair and impartial
25 trial; can you be a fair and impartial juror in this case?

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VOIR DIRE

1 JUROR 394: In all likelihood.

2 THE COURT: All right, sir. Well, and I appreciate that
3 and understandably we might have questions in our minds, but
4 my questions require an absolute yes or an absolute no. If
5 you have any doubt in your mind, then we need to talk about
6 it. So, can you give to the State of South Carolina and to
7 the Defendant a fair and impartial trial; can you be a fair
8 and impartial juror in this case?

9 JUROR 394: Yeah.

10 THE COURT: Thank you very much. All right, sir.

11 Is there any member of the jury panel that either you
12 yourself or a member of your immediate family has ever had any
13 matters handled, touched, worked on in any way by the
14 Fifteenth Circuit Public Defender's office, either in Horry
15 County or Georgetown County? If so, please stand.

16 (REPORTER'S NOTE: No response.)

17 THE COURT: Is there any member of the jury panel that's
18 related by blood or marriage, close personal friends,
19 acquaintances of, anybody employed in the Fifteenth Circuit
20 Public Defender's office either in Horry County or Georgetown
21 County?

22 (REPORTER'S NOTE: No response.)

23 THE COURT: All right. Gentlemen from the Solicitor's
24 Office, if you would stand and identify yourself, please?

25 MR. HOLFORD: My name is Josh Holford and I'm an

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1 Assistant Solicitor here in Horry County.

2 MR. OSKIN: My name is Seth Oskin and I'm an Assistant
3 Solicitor also in Horry County.

4 THE COURT: All right. Ms. Wilson?

5 MS. WILSON: My name is Kia Wilson and I'm an attorney
6 with the Horry County Public Defender.

7 THE COURT: Is there any member of the jury panel that's
8 related by blood or marriage, close personal friends,
9 acquaintances of any of these individuals that have just
10 identified themselves to you? If so, please stand.

11 (REPORTER'S NOTE: No response.)

12 THE COURT: Very good. Is there any member of the jury
13 panel that you believe that you have any kind of personal,
14 political, religious, philosophical belief that you believe
15 would prevent you from being a fair and impartial juror? If
16 so, please stand.

17 (REPORTER'S NOTE: No response.)

18 THE COURT: Is there any member of the jury panel that
19 you yourself were a former law enforcement officer or you have
20 a current family member who is now in law enforcement or was
21 in the past in law enforcement? If any of that applies to
22 you, please stand.

23 All right. We'll start up here in the front. Yes,
24 ma'am, your name and juror number please, ma'am?

25 JUROR 154: Joann Galvez, juror number 154. My son in-

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VOIR DIRE

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1 law is a DE agent in Camden.

2 THE COURT: All right. Can you give to the State of
3 South Carolina and to the Defendant a fair and impartial
4 trial; can you be a fair and impartial juror in this case?

5 JUROR 154: Yes, sir.

6 THE COURT: Thank you very much.

7 Yes, ma'am?

8 JUROR 417: Marjorie Vanfossen, Number 417. I was
9 Community Organizer for the Charles County Sheriff's Office in
10 Maryland and a member of the Cop's (spelled phonetically) Unit
11 for Charles County Sheriff's office.

12 THE COURT: All right. Very good. Can you give to the
13 State of South Carolina and to the Defendant a fair and
14 impartial trial; can you be a fair and impartial juror in this
15 case?

16 JUROR 417: Yes.

17 THE COURT: Thank you very much.

18 Yes, sir?

19 JUROR 12: Vincent Arena, Juror Number 12. I have an
20 uncle who is a past Police Chief and my cousin was a detective
21 in Massachusetts.

22 THE COURT: All right, sir. Can you give to the State of
23 South Carolina and to the Defendant a fair and impartial
24 trial; can you be a fair and impartial juror in this case?

25 JUROR 12: Yes, sir.

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1 THE COURT: Thank you very much.

2 Yes, ma'am, right next to him?

3 JUROR 438: 438, Laura Woelkers. I have a son-in-law
4 that just graduated as police officer in Michigan.

5 THE COURT: All right. Can you give to the State of
6 South Carolina and to the Defendant a fair and impartial
7 trial; can you be a fair and impartial juror in this case?

8 JUROR 438: Yes, I can.

9 THE COURT: Thank you very much.
10 Yes, ma'am, in the middle?

11 JUROR 114: Yes, 114, Josephette Dotson. Previous
12 probation and parole officer of Beaufort County, South
13 Carolina.

14 THE COURT: All right, ma'am. Can you give to the State
15 of South Carolina and to the Defendant a fair and impartial
16 trial; can you be a fair and impartial juror in this case?

17 JUROR 114: Yes, I can.

18 THE COURT: Thank you very much, ma'am.

19 And, yes, sir, again right behind her?

20 JUROR 192: 192, Aaron Hocin. I was public safety
21 officer with North Myrtle Beach Department of Public Safety in
22 2005. I was medically retired in 2011.

23 THE COURT: All right, sir. Can you give to the State of
24 South Carolina and to the Defendant a fair and impartial
25 trial; can you be a fair and impartial juror in this case?

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1 JUROR 192: Yes, sir.

2 THE COURT: Thank you very much.

3 Yes, ma'am?

4 JUROR 35: Arland Blackburn, Juror Number 35. My husband
5 was a North Myrtle Beach Public Safety Officer.

6 THE COURT: All right, ma'am. Can you give to the State
7 of South Carolina and to the Defendant a fair and impartial
8 trial; can you be a fair and impartial juror in this case?

9 JUROR 35: Yes, sir.

10 THE COURT: Thank you very much, ma'am.

11 All right. Is there any member of the jury panel either
12 you yourself, a member of any kind of victim's rights or law
13 enforcement support organization? Let me give you a couple of
14 examples now. This is not an exhaustive list of any kind, I'm
15 just trying to give you some examples here. Mother's Against
16 Drunk Driving, The Citizens Against Violent Crime, The South
17 Carolina Law Enforcement Officer's Association, South Carolina
18 Sheriff's Association, just some kind of victim's rights or
19 law enforcement support organization, if you yourself or
20 member of your immediate family are members? If so, please
21 stand.

22 THE COURT: All right. Yes, ma'am, your name and juror
23 number again, please?

24 JUROR 417: Marjorie Vanfossen, Number 417, I was a board
25 member of the State of Maryland for CAV and -- Citizens

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VOIR DIRE

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1 Against Violence, and also probably about eight boards, three
2 of which were victim's rights.

3 THE COURT: All right. Very good. Can you give to the
4 State of South Carolina and to the Defendant a fair and
5 impartial trial; can you be a fair and impartial juror in this
6 case?

7 JUROR 417: Yes.

8 THE COURT: Thank you very much, ma'am.

9 Yes, ma'am, your name and juror number?

10 JUROR 154: Joann Galvez, Juror 154. I'm a current
11 member of an organization in Connecticut called Standard of
12 Justice.

13 THE COURT: All right. Very good. Can you give to the
14 State of South Carolina and to the Defendant a fair and
15 impartial trial; can you be a fair and impartial juror in this
16 case?

17 JUROR 154: Yes, sir,

18 THE COURT: Thank you very much.

19 All right. Ladies and gentlemen, the -- the next
20 question I'm gonna ask is whether you yourself or a member of
21 your immediate family has ever been the victim of a crime.
22 Now, I am not going to ask you what occurred. I do not want
23 you to volunteer any information to me about what occurred.
24 The question is going to be straightforward, Was it yourself
25 or a family member? And then I'll ask the qualification

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VOIR DIRE

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1 question. So is there any member of the jury panel either you
2 yourself or a member of your immediate family has ever been
3 the victim of a crime? If so, please stand.

4 All right. Very good. Let's start at the end, ma'am,
5 your name and juror number, please.

6 JUROR 390: Sandra Szarek, 390.

7 THE COURT: And was it yourself?

8 JUROR 390: Myself.

9 THE COURT: Yourself? Can you give to the State of South
10 Carolina and to the Defendant a fair and impartial trial; can
11 you be a fair and impartial juror in this case?

12 JUROR 390: Yes.

13 THE COURT: Thank you very much.

14 Yes, ma'am?

15 JUROR 37: Joan Blakeslee, Juror Number 37.

16 THE COURT: Yourself or family member?

17 JUROR 37: Family member.

18 THE COURT: Can you give to the State of South Carolina
19 and to the Defendant a fair and impartial trial; can you be a
20 fair and impartial juror in this case?

21 JUROR 37: Yes, sir.

22 THE COURT: Thank you very much, ma'am.

23 Yes, ma'am?

24 JUROR 148: Kristi Franklin, Juror Number 148 and it was
25 myself.

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1 THE COURT: Can you give to the State of South Carolina
2 and to the Defendant a fair and impartial trial; can you be a
3 fair and impartial juror in this case?

4 JUROR 148: Yes, sir.

5 THE COURT: Thank you very much, ma'am.

6 Yes, sir?

7 JUROR 107: Frederick Digregorio, Juror Number 107;
8 family.

9 THE COURT: Can you give to the State of South Carolina
10 and to the Defendant a fair and impartial trial; can you be a
11 fair and impartial juror in this case?

12 JUROR 107: Yes.

13 THE COURT: Thank you very much.

14 Yes, ma'am?

15 JUROR 177: Debra Hanley, 177.

16 THE COURT: Yourself?

17 JUROR 177: Myself.

18 THE COURT: Yourself,, all right. Can you give to the
19 State of South Carolina and to the Defendant a fair and
20 impartial trial; can you be a fair and impartial juror in this
21 case?

22 JUROR 177: Yes.

23 THE COURT: Thank you very much.

24 Yes, ma'am?

25 JUROR 323: Kim Poston, Juror, excuse me, 323; myself.

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1 THE COURT: Can you give to the State of South Carolina
2 and to the Defendant a fair and impartial trial; can you be a
3 fair and impartial juror in this case?

4 JUROR 323: Yes, sir.

5 THE COURT: Thank you very much.

6 Yes, ma'am, again?

7 JUROR 417: Marjorie Vanfossen, 417; myself.

8 THE COURT: Can you give to the State of South Carolina
9 and to the Defendant a fair and impartial trial; can you be a
10 fair and impartial juror in this case?

11 JUROR 417: Yes.

12 THE COURT: Thank you very much.

13 All right. Ladies and gentlemen, I'm gonna ask you my
14 general or what I call my catchall question. Do you know of
15 any reason, have any question in your mind, any doubt in your
16 mind that you believe you cannot give to the State of South
17 Carolina and to the Defendant a fair and impartial trial, that
18 is for any reason whatsoever you believe you cannot be a fair
19 and impartial juror in this case? If so, please stand.

20 (REPORTER'S NOTE: No response.)

21 THE COURT: Further questions from the State?

22 MR. HOLFORD: Nothing further, Your Honor.

23 THE COURT: Further questions from the Defense?

24 MS. WILSON: Your Honor, I would like to approach
25 briefly?

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JURY SELECTION

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1 (REPORTER'S NOTE: A bench conference was held off the record
2 in the presence of but out of hearing of the Jury Venire.)

3 THE COURT: Ms. Galvez, Juror Number 154, could you come
4 up for just one second, please, ma'am? Come around please;
5 thank you, ma'am.

6 (REPORTER'S NOTE: A sidebar conference was held on the record
7 in the presence of but out of hearing of the Jury Venire.)

8 THE COURT: The organization that you belong to in
9 Connecticut, could you fill us in a little bit as to what it
10 is or its purpose?

11 JUROR 154: Sure, it is an advocacy group for sex
12 offenders that they shouldn't be all lumped into one category.

13 THE COURT: Okay. Thank you. Good deal. Thank you,
14 ma'am. I appreciate it. You can go back and have a seat.

15 (REPORTER'S NOTE: End of sidebar.)

16 THE COURT: All right. Thank you. Very good. With
17 that, any further questions from the Defense?

18 MS. WILSON: Nothing, Your Honor.

19 JURY SELECTION:

20 THE COURT: All right. Very good. All right. Ladies
21 and gentlemen, what we're going to do is the Clerk and a
22 representative or a -- representing the Clerk of Court is the
23 Clerk's representative, is going to use a list of jurors that
24 we have drawn up in a random order and with that, the Clerk is
25 going to call out a name of a juror. If and when your name is

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1 called, the juror will come forward, stand up and come around,
2 you'll come to a place basically right here in front of the
3 Court Reporter, Ms. Dixie, right -- sitting right there.
4 You'll come to a place right there, you stand, and you turn,
5 you face to the back of the courtroom. At that point in time,
6 the Clerk will inquire, ask of the State to present or excuse
7 the juror. If you are presented by the State, then the Clerk
8 will inquire or ask of the Defense to seat or excuse the
9 juror. Obviously, if you're excused either by the State or
10 the Defense, you go back and have a seat from whence you came.
11 If you're presented by the State and you are seated by the
12 Defense, the Clerk will instruct you to go over to the jury
13 box over there and have a seat in the jury box as a member of
14 the jury in this particular case. If you happen to have any
15 personal item with you, you know, purse, or book, coat,
16 whatever it is, please bring that along with you in case you
17 are presented by the State and seated by the Defense, you can
18 go directly to the jury box.

19 All right. Madam Clerk?

20 CLERK: Kimberlyn Poston, Juror Number 323.

21 What say the State?

22 MR. HOLFORD: Please present the juror.

23 CLERK: Defense?

24 MS. WILSON: Please seat this juror.

25 THE COURT: Have a seat in the jury box over there.

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1 Thank you.

2 CLERK: Eric Engelke, Juror Number 127.

3 What say the State?

4 MR. HOLFORD: Please present the juror.

5 CLERK: Defense?

6 MS. WILSON: Please excuse this juror.

7 CLERK: You are excused from this particular case.

8 417, Marjorie Vanfossen.

9 What say the State?

10 MR. HOLFORD: Please present this juror.

11 CLERK: Defense?

12 MS. WILSON: Please excuse this juror.

13 CLERK: You're excused from this particular case.

14 230, James Klein.

15 What say the State?

16 MR. HOLFORD: Please present this juror.

17 CLERK: Defense?

18 MS. WILSON: Court's indulgence, please.

19 THE COURT: Yes, ma'am.

20 MS. WILSON: Please excuse this juror.

21 CLERK: You're excused from this particular case.

22 210, Melissa Johnson.

23 What say the State?

24 MR. HOLFORD: Please present this juror.

25 CLERK: Defense?

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JURY SELECTION

1 MS. WILSON: Please seat this juror.
2 CLERK: Please be seated in the jury box.
3 288, Michelle Mishoe.
4 What say the State?
5 MR. HOLFORD: Please present this juror.
6 CLERK: Defense?
7 MS. WILSON: Please seat this juror.
8 CLERK: Please be seated in the jury box.
9 154, Joann Galvez.
10 What say the State?
11 MR. HOLFORD: Please present this juror.
12 CLERK: Defense?
13 MS. WILSON: Please excuse this juror.
14 CLERK: You're excused from this particular case.
15 370, Cheyanne Small.
16 What say the State?
17 MR. HOLFORD: Please excuse this juror from this
18 particular case.
19 CLERK: You're excused from this particular case.
20 278, Gregory Melvin.
21 What say the State?
22 MR. HOLFORD: Please present this juror.
23 CLERK: Defense?
24 MS. WILSON: Please seat this juror.
25 CLERK: Please be seated in the jury box.

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1 162, Dawn Gibson.

2 MS. WILSON: I'm sorry, I missed that number?

3 CLERK: 162.

4 What say the State?

5 MR. HOLFORD: Please present this juror.

6 CLERK: Defense?

7 MS. WILSON: Please excuse this juror.

8 CLERK: You're excused from this particular case.

9 258, Courtney Magill.

10 What say the State?

11 MR. HOLFORD: Please present this juror.

12 CLERK: Defense?

13 MS. WILSON: Please seat this juror.

14 CLERK: Please be seated in the jury box.

15 148, Kristi Franklin.

16 What say the State?

17 MR. HOLFORD: Please present this juror.

18 CLERK: Defense?

19 MS. WILSON: Please excuse this juror.

20 CLERK: You're excused from this particular case.

21 197, Joann Hough.

22 What say the State?

23 MR. HOLFORD: Please excuse this juror from this case.

24 CLERK: You're excused from this particular case.

25 390, Sandra Szarek.

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JURY SELECTION

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1 What say the State?

2 MR. HOLFORD: Please excuse this juror from the case.

3 CLERK: You're excused from this particular case.

4 289, Joann Montesano.

5 What say the State?

6 MR. HOLFORD: Please excuse this juror from this case.

7 CLERK: You're excused from this particular case.

8 68, Henry Carter.

9 What say the State?

10 MR. HOLFORD: Please present this juror.

11 CLERK: Defense?

12 MS. WILSON: Please excuse this juror.

13 CLERK: You're excused from this particular case.

14 218, Audrey Jordan.

15 What say the State?

16 MR. HOLFORD: Please present this juror.

17 CLERK: Defense?

18 MS. WILSON: Please excuse this juror.

19 CLERK: You're excused from this particular case.

20 114, Josephette Dotson.

21 What say the State?

22 MR. HOLFORD: Please present this juror.

23 CLERK: Defense?

24 MS. WILSON: Please seat this juror.

25 CLERK: Please be seated in the jury box.

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1 36, Tara Blackburn. What say the State?
2 MR. HOLFORD: Please present this juror.
3 CLERK: Defense?
4 MS. WILSON: Please seat this juror.
5 CLERK: Please be seated in the jury box.
6 373, Paul Smith.
7 What say the State?
8 MR. HOLFORD: Please present this juror.
9 CLERK: Defense?
10 MS. WILSON: Please excuse this juror.
11 CLERK: You're excused from this particular case.
12 387, Matthew Svejkovsky.
13 What say the State?
14 MR. HOLFORD: Please present this juror.
15 CLERK: Defense?
16 MS. WILSON: Please seat this juror.
17 CLERK: Please be seated in the jury box.
18 303, Steven Nunn.
19 What say the State?
20 MR. HOLFORD: Please present this juror.
21 CLERK: Defense?
22 MS. WILSON: I'm sorry, Court's indulgence?
23 THE COURT: Yes, ma'am.
24 MS. WILSON: Please seat this juror.
25 CLERK: Please be seated in the jury box.

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JURY SELECTION

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1 394, Bobby Taylor.
2 What say the State?
3 MR. HOLFORD: Please present this juror.
4 CLERK: Defense?
5 MS. WILSON: Please seat this juror.
6 CLERK: Please be seated in the jury box.
7 283, Robert Miller.
8 What say the State?
9 MR. HOLFORD: Please present this juror.
10 CLERK: Defense?
11 MS. WILSON: I apologize.
12 THE COURT: That's all right.
13 MS. WILSON: Please excuse this juror
14 CLERK: You're excused from this particular case.
15 136, Christopher Farrell.
16 What say the State?
17 MR. HOLFORD: Please present this juror.
18 CLERK: Defense?
19 MS. WILSON: Please seat this juror.
20 CLERK: Please be seated in the jury box.
21 177, Debra Hanley.
22 What say the State?
23 MR. HOLFORD: Please present this juror.
24 CLERK: Defense?
25 MS. WILSON: Please seat this juror.

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1 CLERK: Please be seated in the jury box.

2 THE COURT: All right. We'll have two alternates in this
3 matter. It will be one and two on each alternate.

4 CLERK: 107, Frederick Digregorio.

5 What say the State?

6 MR. HOLFORD: Please present this juror.

7 CLERK: Defense?

8 MS. WILSON: Please excuse this juror.

9 CLERK: You're excused from this particular case.
10 35, Arland Blackburn.

11 What say the State?

12 MR. HOLFORD: Please present this juror.

13 CLERK: Defense?

14 MS. WILSON: Please seat this juror.

15 CLERK: Please be seated in the jury box.

16 THE COURT: You are one of the alternates please, ma'am.
17 Thank you.

18 CLERK: 63, Antonio Caraballo.

19 What say the State?

20 MR. HOLFORD: Please excuse this juror from this case.

21 CLERK: You're excused from this particular case.

22 134, John Everette.

23 What say the State?

24 MR. HOLFORD: Please present this juror.

25 CLERK: Defense?

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BY THE COURT

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1 MS. WILSON: Please excuse this juror.

2 CLERK: You're excused from this particular case.

3 186, Dimotheus Hawes.

4 What say the State?

5 MR. HOLFORD: Please present this juror.

6 CLERK: Defense?

7 MS. WILSON: Please seat this juror.

8 CLERK: Please be seated in the jury box.

9 THE COURT: Sir, you're an alternate in this case.

10 All right. Any objections to the jury as impaneled by

11 the State?

12 MR. HOLFORD: No objection, Your Honor.

13 THE COURT: From the Defense?

14 MS. WILSON: Nothing, Your Honor.

15 THE COURT: Very good.

16 I find the jury has been properly paneled pursuant to

17 *Batson v. Kentucky* and *JEB v. Alabama*.

18 BY THE COURT:

19 THE COURT: All right. Ladies and gentlemen, I'm gonna
20 send you to your jury room in just a few moments. I'm gonna
21 ask that you do one thing for the Court and that's going to be
22 select your foreperson for this particular jury. So let me
23 tell you what the foreperson's duties and responsibilities
24 are.

25 If we are here in the courtroom and the jury needs

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BY THE COURT

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1 attention to some matter, the witness needs to speak up or the
2 lawyers need to speak up or whatever the issue is, the
3 foreperson will raise their hand and gets the Court's
4 attention. We'll handle the matter, whatever it is. If you
5 are back in the jury room and some matter comes up, you will
6 take the pad and pen provided to you, you will write out a
7 note, you'll sign it, you'll hand it to the Bailiff. It'll
8 come to me and, again, we'll handle that matter whatever it
9 might be. When we have gone through the evidentiary portion
10 of the trial, we have heard the witnesses come before you and
11 testify under oath, you might have received certain
12 documentary or other type of physical evidence. When the
13 evidentiary portion of the trial has concluded, we have the
14 closing arguments of the attorneys and then the charge on the
15 law that I will give you that you will apply to the facts and
16 evidence you find to be true in this case. Then I will submit
17 the case to you, give the case to you for your deliberations
18 and your unanimous decision in this particular matter.

19 In that regard, the foreperson's duties and
20 responsibilities change in this regard. The foreperson is
21 gonna act like the chairperson at a meeting, guide the
22 discussions, if necessary. An important duty and
23 responsibility that the foreperson has is to make sure that
24 everyone that wants to has an opportunity to speak,
25 everybody's voice has an opportunity to be heard. The

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BY THE COURT

1 foreperson's voice and vote carries no more weight than any
2 other member of the jury. Everybody's equal in that regard,
3 but the foreperson remains in charge, again, guide the
4 discussions if necessary. Again if some question or some
5 matter comes up, the foreperson again takes the pad and pen
6 provided, write out the note, sign it, give it to the Bailiff
7 and again we'll handle that matter, whatever it is. The final
8 duty and responsibility of the foreperson is once the jury has
9 well and truly deliberated, you have reached your unanimous
10 verdict in this particular matter, the foreperson will take
11 the verdict form that the Court will provide to you, check the
12 appropriate block or write out the appropriate word,
13 thereafter sign your name as the foreperson indicating to the
14 Court that each and every member of the jury agrees that is
15 their verdict.

16 So, with that, I'm gonna ask that you retire to your jury
17 room, select your foreperson. Now, the two alternates, Ms.
18 Blackburn and Mr. Hawes, y'all can vote on the foreperson, but
19 being alternates, you cannot be -- cannot be the foreperson in
20 this particular case. So with that, everybody else is
21 eligible. Please go to the jury room, select your foreperson,
22 knock on the door and let the Bailiff know who it is, please.

23 Thank you very much.

24 (REPORTER'S NOTE: Jury exits courtroom. The following takes
25 place outside the presence of the jury.)

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BY THE COURT

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1 THE COURT: All right. Ladies and gentlemen, of the
2 panel that were not selected for this particular case, I am
3 going to excuse you for the balance of the day. I'm gonna ask
4 that you call back that Juror Information Line tomorrow after
5 12:00 noon. Call that Juror Information Line tomorrow after
6 12:00 noon. Follow those instructions whatever they may be.
7 It might be to call back, it might be to report, but follow
8 those instructions. But with that, you are now excused.

9 Thank you very much.

10 (REPORTER'S NOTE: Remaining jury venire exits courtroom.)

11 THE COURT: All right, Counsel, the Court's gonna take a
12 plea in another matter. We're gonna -- y'all are gonna break
13 for lunch. I'm gonna have you come back to start the motions
14 at 2:30, please. Come back at 2:30 to start the motions.

15 Now, before we do that, knowing the motions and the
16 matters that need to be decided before we start the trial this
17 afternoon, when would the State suggest the jury to report
18 back knowing we're starting at 2:30? And Ms. Wilson, I'll be
19 asking you the same question?

20 MS. WILSON: Yes, sir.

21 MR. HOLFORD: Your Honor, the only motions that we have

22 ---

23 THE COURT: I don't have a problem starting tomorrow
24 morning if that -- if you believe that or if you need them --
25 if you want them to come back later on this afternoon, I'm

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BY THE COURT

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1 fine with that; either one of them.

2 MR. HOLFORD: The State will be prepared to proceed this
3 afternoon ---

4 THE COURT: All right.

5 MR. HOLFORD: --- if necessary.

6 THE COURT: How -- what do you expect?

7 MR. HOLFORD: I expect the motions to take probably an
8 hour and a half.

9 THE COURT: So at the earliest, 4 o'clock. Coming back
10 at 2:30, the earliest would be at 4 o'clock then, right?

11 MR. HOLFORD: Tomorrow morning might be best, Your Honor.

12 THE COURT: All right. I was thinking that would
13 probably be the best just so that we don't -- we inconvenience
14 the jury as little as possible; do you agree with that, Ms.
15 Wilson?

16 MS. WILSON: Absolutely, Your Honor.

17 THE COURT: All right. Very good. So what we'll do as
18 soon as they select their foreperson, I'll have the Bailiff
19 let them know to report back tomorrow morning.

20 All right. Very good. So we'll have the jury report
21 back -- I'll tell them to be back like at 9:15 so we can start
22 tomorrow morning at -- well, I'm gonna say 9:30. I might not
23 be exactly at 9:30, but we're gonna start at 9:30 or as close
24 thereto as we can. Okay. Thank you.

25 MR. HOLFORD: Thank you, sir.

1 MS. WILSON: Thank you, Your Honor.

2 THE COURT: All right. So, with that, ya'll are excused
3 until 2:30 then.

4 MS. WILSON: Thank you.

5 THE COURT: All right. Thank you.

6 **(RECESS.)**

7 *******OFF THE RECORD*******

8 **(On the Record.)**

9 THE COURT: All right, Solicitor. Be glad to hear from
10 you.

11 NEIL V BIGGERS HEARING:

12 MR. HOLFORD: Yes, Your Honor, the State's ready to
13 proceed on *Neil v. Biggers* hearing. The State would call
14 Officer Heron.

15 THE COURT: All right. Please come around and be sworn.
16 Please come around and meet the Clerk right up here, please,
17 sir. Over there behind the microphone.

18 MICHAEL HEARON, HAVING BEEN DULY

19 SWORN TESTIFIES AS FOLLOWS:

20 THE COURT: Go and have a seat and ---

21 CLERK: State your full name and spell your last name.

22 MR. HEARON: It's Michael Hearon, H-E-A-R-O-N.

23 THE COURT: Go ahead, Solicitor.

24 DIRECT EXAMINATION OF MICHAEL HEARON BY MR. HOLFORD:

25 Q: Officer Hearon, where are you currently employed?

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MICHAEL HEARON - DIRECT BY HOLFORD

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- 1 A: The City of Myrtle Beach Police Department.
- 2 Q: And how long have you been with the Myrtle Beach Police
3 Department?
- 4 A: About four years.
- 5 Q: So were you with Myrtle Beach back February 15th of 2015?
- 6 A: I was.
- 7 Q: And what was your capacity as an officer back then?
- 8 A: I was a Police Officer 1st Class assigned to patrol
9 nightshift.
- 10 Q: And did you have a chance to respond to a crime scene on
11 the 15th?
- 12 A: I did.
- 13 Q: And around what time was that?
- 14 A: Approximately 2:30 in the morning.
- 15 Q: And what were you responding to?
- 16 A: It was to a shooting.
- 17 Q: Where was that shooting?
- 18 A: It was at Club Levels.
- 19 Q: After you responded -- did you have an in-car video at
20 the time?
- 21 A: I did.
- 22 Q: Was it activated?
- 23 A: It was.
- 24 Q: Did you have a chance to meet with any witnesses while
25 you were on the scene?

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1 A: I did.

2 Q: Did you have a chance to meet with Sean Pettengill.?

3 A: I did.

4 Q: And what was the nature of this -- of your interaction
5 with Mr. Pettengill?

6 A: I was asked to take him over to another location where a
7 suspect had been located to do a show-up.

8 Q: And where was that location?

9 A: It was over at the Human Resources building.

10 Q: Where is that -- where is the Human Resources building in
11 relation to where you responded?

12 A: It's approximately two blocks north.

13 Q: And so did you take Pettengill over to the Human
14 Resources?

15 A: I did.

16 Q: And what was the purpose of that?

17 A: It was to do a show-up to see if he could identify the
18 person that was over there.

19 Q: And why -- why would Pettengill be able to identify him?

20 A: He was one of the persons that returned fire on the
21 suspect.

22 Q: About how long after the call out did you take Pettengill
23 over to Human Resources?

24 A: It was just a couple minutes.

25 Q: And you took him to the suspect?

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- 1 A: I did.
- 2 Q: Where -- and the show-up took place -- where was that?
- 3 A: At the Human Resources building, in the parking lot?
- 4 Q: And was the Defendant in custody at that time?
- 5 A: They were trying to give him medical attention.
- 6 Q: Okay. Why were they trying to give him medical
- 7 attention?
- 8 A: He had sustained at least one gunshot wound.
- 9 Q: What did the witness tell you before you took him over
- 10 there to the Human Resources building?
- 11 A: He had just said the shooter was wearing all black and
- 12 there was only one shooter.
- 13 Q: Did you advise him while he was in the car how to -- how
- 14 to answer any questions or what to say?
- 15 A: I just explained to him not to say anything to him, just
- 16 make sure he got a good look at him to see if he could
- 17 positively identify him.
- 18 Q: And so tell me what happened when you arrived at the
- 19 Human Resources building?
- 20 A: We arrived and the suspect was, like I say, getting
- 21 medical attention from officers and EMS since he had sustained
- 22 a gunshot wound, and I just asked Mr. Pettengill if he could
- 23 ID the suspect and he said that he was the shooter, that he
- 24 was wearing all black, and there only one shooter.
- 25 Q: Did the description that Pettengill gave you before match

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1 the description of the same person he ID'd at Human Resources?

2 A: It did.

3 Q: And did you suggest that -- did you suggest to Pettengill
4 that the person you had in custody or the suspect was in fact
5 the shooter?

6 A: No.

7 Q: Did, did the Defendant have to do anything, did you make
8 him walk or pose or anything like that?

9 A: No, like I say, he had sustained a gunshot wound and he
10 was receiving medical attention at the time.

11 Q: And how certain was Pettengill of his identification?

12 A: He was -- said he was 100 percent sure.

13 Q: No further questions.

14 THE COURT: Cross examination.

15 MS. WILSON: Thank you, Your Honor.

16 CROSS EXAMINATION OF MICHAEL HEARON BY MS. WILSON:

17 Q: Officer Hearon, the ID that was given to you by
18 Pettengill wasn't exactly as simple as you said, correct?

19 A: Yeah, he said he was wearing all black.

20 Q: He also said that he had dreads, didn't he?

21 A: I don't recall him saying that to me, no.

22 Q: So, in your statement, you don't recall that Pettengill
23 specifically told you that it was a male with dreadlocks --
24 with dreads, I think is the phrase that was used, in your
25 recorded statement?

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1 A: I do not recall anything about dreads, no.

2 Q: Do you recall anything about a black jacket and black
3 pants?

4 A: He just said it was all black.

5 Q: Okay. Did you recall that he said he wasn't sure if he
6 even had on a hat?

7 A: No.

8 Q: Do you recall that he said that the whole thing took
9 maybe only twenty seconds and that he wasn't really sure about
10 who the shooter was?

11 A: I don't recall him saying anything to me about how long
12 it took.

13 Q: Okay. And do you further recall any conversation about
14 the fact that, that Pettengill -- when -- you took Pettengill
15 to the Human Resources building that the suspect was already
16 in custody, because I think earlier you said he wasn't, but he
17 was in custody, wasn't he?

18 A: He was receiving medical attention and he was officers
19 and EMS, yes.

20 Q: And so well let me ask it this way. If someone is
21 cuffed, they are in custody, correct?

22 A: Correct.

23 Q: And I believe that at that time Mr. Bryant had been
24 cuffed or there was an attempt to cuff him, correct?

25 A: They may have tried to cuff him. There was so many

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1 people around dealing with him, I didn't get in, I just asked
2 him to ID him.

3 Q: But we do agree that if there's an attempt to cuff or if
4 you're cuffed, that's in custody, correct?

5 A: Correct.

6 Q: And I believe that other than -- and I know you were
7 saying that you don't recall whether or not that Mr.
8 Pettengill said that there were dreads, but do you remember
9 anything else specific that he said about the shooter other
10 than he was just wearing all black?

11 A: No, I don't. Just that there was one person and he was
12 wearing all black.

13 Q: And he didn't tell you that he was able to identify any
14 facial features, was he -- did he?

15 A: He didn't tell me.

16 Q: Okay. All right. No further questions, Your Honor.

17 THE COURT: Redirect?

18 MR. HOLFORD: No, Your Honor.

19 THE COURT: You may step down.

20 MR. HOLFORD: Your Honor, I'd ask that Officer Hearon be
21 released from his subpoena?

22 THE COURT: Any objection to that?

23 MS. WILSON: Your Honor, I would ask at this moment that
24 he -- that he not be excused and there is a reason for that.

25 THE COURT: All right. Very good. Thank you. Have a

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1 seat in the courtroom.

2 Go ahead, Solicitor.

3 MR. HOLFORD: The State would call Sean Pettengill --
4 Pettengill.

5 THE COURT: All right, sir, come all the way around and
6 meet the Clerk right up here, sir, all the way around up here.
7 Stand up, sir.

8 SEAN DOUGLAS PETTENGILL, HAVING BEEN
9 SWORN TESTIFIES AS FOLLOWS:

10 THE COURT: And you can have a seat please, sir.

11 CLERK: Please state your full name and spell your first
12 and your last name.

13 MR. PETTENGILL: Sean Douglas Pettengill, Sean, S-E-A-N,
14 Pettengill, P-E-T-T-E-N-G-I-L-L.

15 DIRECT EXAMINATION OF SEAN PETTENGILL BY MR. HOLFORD:

16 Q: Mr. Pettengill, where are you currently employed?

17 A: J. Reuben Long Detention Center.

18 Q: And how long have you been at J. Reuben Long?

19 A: August 15th.

20 Q: Where were you employed February 15th, 2015?

21 A: Advance Protection Services.

22 Q: And what is Advance Protection Services?

23 A: It's a security company in Myrtle Beach.

24 Q: And do you remember what you were doing February 15th,
25 2015?

- 1 A: Yes.
- 2 Q: What was it?
- 3 A: I was at Club Levels from 11:00 to 6:00 in the morning.
- 4 Q: Okay. And tell me what happened that night that relates
- 5 to this case?
- 6 A: There was a shooting on the sidewalk in front of Levels.
- 7 Q: Where were you when this shooting took place?
- 8 A: The front door of Levels outside.
- 9 Q: You were outside?
- 10 A: Yes, sir.
- 11 Q: And where did the shooting take place?
- 12 A: In front of the Art Gallery, I believe.
- 13 Q: All right. And how many shooters were there?
- 14 A: One.
- 15 Q: And what was your reaction to the shooting?
- 16 A: We turned, drew our weapons, assessed the situation and
- 17 fired back.
- 18 Q: Did you have a chance to get a look at the shooter?
- 19 A: We got a general description.
- 20 Q: And what was that general description?
- 21 A: Approximately six feet, black male wearing black pants,
- 22 black hoodie.
- 23 Q: And did you give that description to anybody that night?
- 24 A: To the detective that I gave my statement to.
- 25 Q: Was there any time that you were -- did you have to do a

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1 -- did you identify somebody later that night?

2 A: Yes, we identified.

3 Q: And tell me the purpose of that; why -- why did they want
4 you to do that?

5 A: To make sure that they had the right person in the
6 shooting.

7 Q: Okay. Tell me who they is?

8 A: Myrtle Beach.

9 Q: And so were you taken anywhere to identify someone?

10 A: We were taken two or three blocks up the street in front
11 of the HR building.

12 Q: About how long after the shooting were you taken to the
13 HR building?

14 A: Twenty to thirty minutes, I'd say.

15 Q: And then so when you got to the HR building, what
16 happened; what did you do?

17 A: They -- they -- they took me out of the vehicle and
18 brought me to the suspected shooter and had us identify -- had
19 me identify.

20 Q: And did you identify the person they had in custody as
21 the shooter?

22 A: Yes.

23 Q: How certain were you?

24 A: I was 100 percent sure?

25 Q: And why was that?

1 A: Based on height, weight, a bullet in his arm.

2 Q: And did you -- did Myrtle Beach Police Department tell
3 you how to answer or suggest how you should answer?

4 A: No.

5 Q: What was your -- what was your level of attention to the
6 shooter right after it happened?

7 A: Level to the shooter, I would say we were pretty positive
8 that it was this person.

9 Q: All right. Let me ask this another way. You're outside
10 at Levels right after the shooting happens. Walk me through
11 what you did in regards to the shooter?

12 A: Directly after the shooting happened, I went into the
13 street and recovered the weapon to make sure it was untampered
14 until Myrtle Beach Police got there and relieved me of that.

15 Q: And after you identified the person in custody as being
16 the shooter, did you, did you meet with anyone else from
17 Myrtle Beach Police Department?

18 A: I met a detective and gave a statement.

19 Q: And is that statement the same as you're giving today?

20 A: Yes.

21 Q: No further questions.

22 THE COURT: Cross examination?

23 MS. WILSON: Thank you, Your Honor.

24 CROSS EXAMINATION OF SEAN DOUGLAS PETTENGILL BY MS. WILSON:

25 Q: Mr. Pettengill, you told the officer, I believe it was

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1 Officer Hearon, that the shooter had dreads, didn't you, when
2 you gave your description?

3 A: I don't remember saying that he had dreads.

4 Q: If I were to replay your statement for you, would you
5 recognize it?

6 A: Yes.

7 Q: And your statement that I plan to replay for you says
8 that not only was the shooter a black male, it says
9 specifically that it was a 5'10" to 6 foot tall black male
10 with short dreads, all black clothes, black jacket, black
11 pants.

12 A: All right.

13 Q: And more specifically, you're then saying, yes, that that
14 would have been your statement, correct?

15 A: Yeah.

16 Q: There's no reason that you would want to change that at
17 this point, correct?

18 A: No.

19 Q: You also said that the shooter had on a hoodie?

20 A: Possibly, he had something over his head.

21 Q: So you're not certain that it was a hoodie is what you're
22 telling me now, correct?

23 A: Some type of coat or jacket, hoodie possibly, something
24 with a hood.

25 Q: All right. And if I were to tell you there is no hoodie

1 as a part of this evidence, you would say that that was just a
2 mistake on your part, correct?

3 A: Yes.

4 Q: And let's see, twenty to thirty minutes later is when you
5 showed up at the Human Resources building with the officer,
6 correct?

7 A: Approximately.

8 Q: And at that point in time, you had given your original
9 statement to Officer Hearon, correct?

10 A: I believe so.

11 Q: About what you thought you observed, right?

12 A: Yes.

13 Q: And when you thought you observed the shooting, you said
14 that it happened in about a twenty second timeframe, right?

15 A: It was fast, yes.

16 Q: So twenty seconds, really fast, everybody's running,
17 you're in a rush, adrenaline's pumping, correct?

18 A: Yes.

19 Q: And you misidentify the hair, you misidentify some of the
20 clothing, correct?

21 MR. HOLFORD: Objection.

22 THE COURT: It's cross examination, he doesn't have to
23 agree. It's cross examination, she can ask the question.

24 A: To the best of my ability, I identified what I seen to
25 the officer.

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1 BY MS. WILSON:

2 Q: And you admit that that some of that was apparently
3 mistaken, correct?

4 A: To my information, no, that's what I've been -- that's
5 what I seen; that's what I said.

6 Q: Okay. Your Honor, could we approach?

7 THE COURT: Sure.

8 (REPORTER'S NOTE: A bench conference was held off the
9 record.)

10 MS. WILSON: Your Honor, I have a few other questions
11 while we're waiting. Apparently, Mr. Holford, does not have
12 that zip drive as well and it's from a body cam so there's a
13 lot of stuff on there.

14 THE COURT: All right. Go ahead.

15 MS. WILSON: All right. Thank you.

16 BY MS. WILSON:

17 Q: Mr. Pettengill, initially you did evidence to the officer
18 obviously when he interviewed you that you were somewhat
19 unsure, correct?

20 A: I mean, it was dark out that night. I mean, I couldn't
21 be completely positive.

22 Q: Absolutely. And in being unsure, I believe that your
23 statement was that you believed that the person that they
24 caught was the shooter, correct?

25 A: Yes.

1 Q: You believed it, but you weren't 100 percent certain?

2 A: No.

3 Q: All right. And did you tell and I believe -- I need to
4 rephrase that. You then told Officer Hearon after he pressed
5 you that you were certain, correct?

6 A: I don't believe I was pressed, no.

7 Q: Did he ask you again after you told him that you believed
8 the person was the shooter to be sure or to be certain?

9 A: Maybe, I'm not sure exactly.

10 Q: And did you not -- when he asked you if there was any
11 doubt, because there was not just the second question about
12 are you certain about the identity, when he the third time
13 asked you, was there any doubt that the detainee and the
14 shooter are the same that you answered him no at that point,
15 correct?

16 A: I don't think -- can you say the question again, please?

17 Q: Sure. After being questioned the third time, after
18 Hearon asked you the third time about whether or not you were
19 certain about the identity of the shooter at the show-up,
20 okay, he asked you if there was any doubt. Initially, you
21 told him you believed that the man detained was the shooter,
22 then you said, when you were pressed to say yes or no, you
23 then told him yes. You say you're not certain about that.
24 There was a third question by Hearon to you asking if you if
25 there was any doubt that the detainee and the shooter were the

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SEAN DOUGLAS PETTENGILL - REDIRECT BY HOLFORD

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1 same person and your statement was no; do you recall that?

2 A: To the best of my ability, I identified the subject to be
3 wearing the same clothes, had the same build as the person
4 from the shooting.

5 Q: And you understand though that his question wasn't were
6 they wearing the same clothing. The question is, were they
7 the same person? And my question to you is can you be 100
8 percent sure about that?

9 A: No, I didn't see his face.

10 Q: Thank you. No further questions.

11 THE COURT: Redirect?

12 MR. HOLFORD: Yes, Your Honor.

13 REDIRECT EXAMINATION OF SEAN DOUGLAS PETTENGILL BY MR.

14 HOLFORD:

15 Q: Does a toboggan cover someone's head?

16 A: Yes.

17 Q: And so if the suspect was wearing a toboggan, could you
18 confused that for a hoodie?

19 A: Yes.

20 MR. HOLFORD: No further questions.

21 THE COURT: Anything on those questions?

22 MS. WILSON: Yes, sir.

23 RECROSS EXAMINATION OF SEAN DOUGLAS PETTENGILL BY MS. WILSON:

24 Q: Did you tell the officer that it was a toboggan or did
25 you say it was a hoodie?

1 A: I might have said hoodie, because it -- I mean, a coat
2 with a hat, it's very easy to misinterpret.

3 Q: To misinterpret or misidentify?

4 A: Misidentify.

5 Q: Thank you. No further questions.

6 BY THE COURT:

7 THE COURT: All right. Mr. Pettengill, let me ask you
8 some questions. When the shots were fired exactly where were
9 you?

10 A: In front of the furthestest door away from the shooting at
11 the club.

12 THE COURT: The furthestest door from the shooting?

13 A: Levels has two doors. There's the one furthestest from
14 where the shooting took place.

15 THE COURT: All right. Now, when the shots were fired,
16 were you facing the direction of where the shots were fired or
17 were you facing a different direction?

18 A: I was facing the door; I had to turn left.

19 THE COURT: You were facing what?

20 A: I was facing the door of the club.

21 THE COURT: You're facing the door.

22 A: And I had to turn left.

23 THE COURT: All right. And so you had to turn left to
24 see where the shots were fired; is that correct?

25 A: Yes.

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1 THE COURT: Tell me exactly, as best you can, exactly
2 what you saw when you turned left?

3 A: I saw a black male wearing all black clothing standing
4 over the victim and shooting.

5 THE COURT: What did you do next?

6 A: Drew our -- me and my partner drew our weapons and
7 returned fire.

8 THE COURT: You fired at who?

9 A: At the suspected shooter.

10 THE COURT: At the person that was doing the shooting?

11 A: Yes.

12 THE COURT: All right. What happened next?

13 A: The shooter ran into the street. We followed, the
14 shooter dropped his weapon in the street. I recovered the
15 weapon in the street and my partner went to the victim.

16 THE COURT: Okay. Now, when you did that, how soon
17 thereafter did the police arrive, as best you can tell me?

18 A: A couple of minutes, five to seven, maybe.

19 THE COURT: Okay. As best you can, give me the
20 description you first gave the police when they arrived.

21 A: A black male approximately six-foot, 185 to 200 pounds,
22 I'd say, wearing all black clothing.

23 THE COURT: Wearing, I'm sorry, what; wearing?

24 A: All black clothing.

25 THE COURT: Okay. All right. So from the time that you

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1 gave that description to the time that an officer came to take
2 you to the HR building, how long was that?

3 A: Maybe twenty to thirty minutes.

4 THE COURT: Okay. And was that Officer Hearon that came
5 to get you?

6 A: I believe so.

7 THE COURT: All right. Whoever it was that came to get
8 you, when they first came to you to apparently take you to the
9 HR building, what did they say?

10 A: They said that they had a suspect in custody and that we
11 had to take a ride a couple blocks to see if it was the person
12 involved in the shooting.

13 THE COURT: Okay. All right. You arrived at the HR
14 building. During that ride over, did the officer talk to you
15 or say anything to you about the situation or the matter or
16 what you were doing in any way?

17 A: No, I don't believe so.

18 THE COURT: Okay. You arrive at the HR building. Does
19 the officer say anything to you at that point in time?

20 A: We stepped out of the vehicle and he asked me if this was
21 the person that committed the shooting?

22 THE COURT: Okay. When you stepped out of the vehicle,
23 describe the scene where that individual was, what was going
24 on?

25 A: A couple of officers around, possibly an ambulance. The

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SEAN DOUGLAS PETTENGILL - BY THE COURT

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1 victim or the shooter's arm was possibly in a splint.

2 THE COURT: Okay. So when you get out of the vehicle and
3 you see this and you see the person that's there with the
4 officers and medical personnel and something's going on with
5 his arm, what came into your mind immediately at that point in
6 time?

7 A: This is the guy that just committed the shooting.

8 THE COURT: Had the officer that had driven you over
9 there, other than saying is this the person who committed the
10 shooting, did he say anything else at all to you?

11 A: He asked me two, three times, be sure if it was that
12 person, but besides that, I don't think he said anything else
13 to me.

14 THE COURT: All right. So he asked you two to three
15 times to be sure. When you first saw the person, you get out
16 of the car and you first see them, how certain were you that
17 that was the person you saw at the club standing over the
18 other person shooting them?

19 A: I didn't have a doubt.

20 THE COURT: Okay. Did the officers' questions reinforce
21 that in any way or change your feeling about your level of
22 certainty?

23 A: I don't believe so.

24 THE COURT: Okay. Questions, Solicitor?

25 MR. HOLFORD: Just one, Your Honor, as to that.

1 REDIRECT EXAMINATION OF SEAN DOUGLAS PETTENGILL BY MR.

2 HOLFORD:

3 Q: You mentioned you were at the furtherest door. About how
4 far away from the shooter were you back in front of Levels;
5 about how far away were you from where the shooting occurred?

6 A: At first it was probably between 25 and 30 yards.

7 Q: About this far?

8 A: Maybe a little further.

9 Q: Okay. And then what direction did you move, away or
10 towards the shooter?

11 A: Towards the shooter.

12 MR. HOLFORD: No further questions.

13 THE COURT: Cross examination?

14 MS. WILSON: Thank you, Your Honor.

15 RECROSS EXAMINATION OF SEAN DOUGLAS PETTENGILL BY MS. WILSON:

16 Q: I'm sorry. You expressed that you were 100 percent
17 certain when the officer took you to the show-up at the Human
18 Resources building of the identity of the shooter; when you
19 saw him you were certain, correct?

20 A: I didn't have a doubt, yes.

21 Q: Then when he asked you whether or not you could identify
22 the person, you told him you believed that was the person?

23 A: Yes.

24 Q: Is the belief and 100 percent certain the same to you?

25 A: Believing is 100 percent to me.

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1 Q: So you had no question when you said I believe?

2 A: No.

3 Q: So when the officer then pressed you because you said
4 believe instead of I am certain, you then said yeah, I'm 100
5 percent sure, correct?

6 A: You believe in God don't you, but you're not 100 percent
7 sure that he's there.

8 Q: I'm asking questions.

9 THE COURT: All right. I took that as an answer, ma'am.

10 MS. WILSON: Thank you.

11 THE COURT: Not a question.

12 BY MS. WILSON:

13 Q: Do you have -- you don't have any -- you can't be 100
14 percent certain because as you said before, you did not see
15 the face of the shooter, correct?

16 A: Yes.

17 MS. WILSON: No further questions.

18 THE COURT: Anything else, Solicitor, on this witness?

19 MR. HOLFORD: Not from this witness, Your Honor.

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

21 Further witnesses on behalf of the State?

22 MR. OSKIN: Yes, Your Honor. At this time the State
23 would call Michael Merfert.

24 THE COURT: All right. All right, sir, if you'd come all
25 the way around up here and meet the Clerk right up here at the

1 corner up here, sir.

2 MICHAEL MERFERT, HAVING BEEN SWORN

3 TESTIFIES AS FOLLOWS:

4 CLERK: If you'll state your full name and spell your
5 first and last.

6 MR. MERFERT: Michael Merfert, M-E-R-F-E-R-T.

7 THE COURT: Go ahead, Solicitor.

8 MR. OSKIN: Thank you, sir.

9 DIRECT EXAMINATION OF MICHAEL MERFERT BY MR. OSKIN:

10 Q: Mr. Merfert, who is your employer?

11 A: Myrtle Beach Police Department.

12 Q: Okay. And how long h you been employed with them?

13 A: About three years.

14 Q: What is the nature of your work?

15 A: I'm a Patrol Officer. I respond to calls for service and
16 enforce state and local criminal law.

17 Q: Okay. And how long have you been employed in that
18 capacity?

19 A: Three years as well.

20 Q: Were you employed on February 15th, 2015 with Myrtle
21 Beach Police Department?

22 A: Yes, sir.

23 Q: Under the same capacity you just mentioned?

24 A: Yes, sir.

25 Q: Okay. On that -- on that date, did you respond to a

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MICHAEL MERFERT - DIRECT BY OSKIN

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1 crime scene?

2 A: Yes, sir.

3 Q: Okay. What time did you respond?

4 A: About 2:36 in the morning.

5 Q: You remember where you responded to?

6 A: Club Levels right outside.

7 Q: Okay. Did you have video in your car?

8 A: Yes, in-car.

9 Q: Was it activated?

10 A: Yes, sir.

11 Q: All right. What did you do once you arrived on the scene

12 at Club Levels?

13 A: First and foremost we secured the scene. There was a

14 couple of officers rendering aid to the victim, so we wanted

15 to secure the scene. After the scene was secured, I looked

16 for possible witnesses or parties involved.

17 Q: And how quick did you get to the scene after you were

18 called to it?

19 A: A minute-and-a-half maybe.

20 Q: Okay. Did you meet with witnesses once you got there?

21 A: Once the scene was secure, I met with Officer Poston.

22 Q: Okay. What were you able to gather from Mr. Poston at

23 first, anything?

24 A: That he directly witnessed the shooting and that he was

25 involved in returning fire to the shooter.

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MICHAEL MERFERT - DIRECT BY OSKIN

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1 Q: Did you conduct a show-up with Mr. Poston?

2 A: I did.

3 Q: Okay. How long after the incident -- did he tell you how
4 long after the incident occurred that you conducted the show-
5 up?

6 A: The show-up, once I got in contact with Officer Poston
7 within 5, 10 minutes.

8 Q: Okay. Was the witness taken to the suspect, or was the
9 suspect brought to the scene?

10 A: He was taken to the suspect.

11 Q: Okay. And where was he taken?

12 A: Outside of the Human Resources building.

13 Q: Okay. Where -- is that far from Club Levels?

14 A: It's about a couple of blocks north.

15 Q: Okay. And at that -- is that where the show-up took
16 place?

17 A: Yes, sir.

18 Q: Who all was present at that show-up?

19 A: There was a few officers. I know Sergeant Hall was
20 there. I know now Corporal Thomas was there. An ambulance
21 was there with EMS rendering aid to the male on scene.

22 Q: All right. And where was the witness at the time of the
23 identification?

24 A: The witness was standing at the back of the ambulance to
25 identify.

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MICHAEL MERFERT - DIRECT BY OSKIN

1 Q: Okay. What did you say to him before the show-up,
2 anything?

3 A: I just told him that there was a male that was outside
4 the old HR building that matched the description and brought
5 him over there to see if he could identify him.

6 Q: And what did he say during the show-up?

7 A: He said that the clothing and description matched and he
8 was, from what he could tell, that was him.

9 Q: Clothing and description. Did you or anyone influence or
10 suggest to him that he should pick out this specific suspect?

11 A: No, sir.

12 Q: And what did the -- we talked about what you said to the
13 witness. What did the witness say to you before the show-up,
14 anything?

15 A: Just told me his involvement in the incident.

16 Q: Okay. And once he got there, what happened?

17 A: He said that the clothing description matched and from
18 what he could tell, that was him.

19 Q: So, that would be the same description that he gave to
20 you before?

21 A: Tall, skinny, black male wearing all black.

22 Q: Okay.

23 A: And he was last seen limping, running away north.

24 Q: All right. What did the suspect at the time, what did he
25 look like at the time of the show-up?

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MICHAEL MERFERT - DIRECT BY OSKIN

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1 A: I think he was already on the stretcher being loaded into
2 the ambulance, but it was a black male wearing all black,
3 skinny.

4 Q: Do you recall any injuries?

5 A: Yeah, he had a wound to his right arm.

6 Q: Okay. And what was the condition of the Defendant at
7 that time, by that I mean was he in handcuffs?

8 A: I'm not sure. I know he had an injury to his arm, so I'm
9 not sure if they detained him in handcuffs or not.

10 Q: Okay. You mentioned he was in the stretcher, was the
11 Defendant asked to do anything during the show-up or just
12 simply sit still?

13 A: No.

14 Q: Okay. And do you recall how sure the witness was of his
15 identification of the suspect at the time?

16 A: He said that -- like I said, the clothing and description
17 matched and from what he could tell that was him.

18 Q: All right. How long did it take him to make that
19 identification?

20 A: Within a few seconds.

21 Q: What occurred next with this witness?

22 A: He was -- we went back to my patrol car and we went back
23 to the initial crime scene where I sat with him until
24 Detective Morrell did take him and interview him.

25 Q: And Private Merfert, if your patrol car says that the

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MICHAEL MERFERT - CROSS BY WILSON

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1 show-up occurred around 2:48, would that be accurate?

2 A: Yes, sir.

3 Q: Nothing further at this time. Please answer any
4 questions from Ms. Wilson.

5 THE COURT: Cross examination?

6 MS. WILSON: Thank you, Your Honor.

7 CROSS EXAMINATION OF MICHAEL MERFERT BY MS. WILSON:

8 Q: Officer Merfert, Poston didn't actually say that the
9 suspect was injured in his right arm, did he?

10 A: No; no, ma'am.

11 Q: Matter of fact, what he said was that the suspect was
12 limping, correct?

13 A: Yes, ma'am.

14 Q: And didn't he also tell you that he never saw the face of
15 the shooter?

16 A: I don't recall.

17 Q: If I were to refresh you with your statement and play it
18 for you, would you recognize it or the recording rather?

19 A: Possibly.

20 Q: And if I were to tell you that specifically in the
21 recording it says that, I never saw the shooter's face, would
22 you believe that that's correct?

23 A: If that's what it said. I don't recall, ma'am.

-24 Q: Do you recall him saying that the shooter was wearing a
25 black hat or black and a hat or something?

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MICHAEL MERFERT - REDIRECT BY OSKIN

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1 A: I don't recall.

2 Q: Did you not take any notes of this night for this -- of
3 the interview that you did with Poston?

4 A: I did a supplemental report.

5 Q: Okay.

6 A: Once the identification was made, I didn't ask any
7 questions because the detective was coming over to speak with
8 him.

9 Q: Okay. But you were the person that did question Poston
10 prior to the show-up?

11 A: He provided me a description of the shooter.

12 Q: And you don't recall the nature of that description in
13 totality is what you're telling me?

14 A: Tall, skinny black male wearing all black.

15 Q: But you don't recall about the injury, him saying he
16 never saw the shooter's face or about some specific clothing
17 that was being worn, correct?

18 A: I don't recall.

19 Q: Okay. All right. No further questions, Your Honor.

20 THE COURT: Redirect?

21 MR. OSKIN: Briefly, Your Honor.

22 REDIRECT EXAMINATION OF MICHAEL MERFERT BY MR. OSKIN:

23 Q: Private Merfert, did Mr. Poston tell you that he returned
24 fire ---

25 A: Yes, sir.

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MICHAEL MERFERT - RECROSS BY WILSON

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1 Q: --- at the shooter, initial shooter?

2 A: Yes, sir.

3 Q: When he was found and there was an injury to his arm, it
4 stands to reason if he fired at him then there would be --
5 there could very possibly be an injury to that arm, right?

6 A: Yes, sir.

7 Q: Okay. Nothing further at this time.

8 THE COURT: Anything on that question?

9 MS. WILSON: Yes, sir.

10 RECROSS EXAMINATION OF MICHAEL MERFERT BY MS. WILSON:

11 Q: Would an injury to the arm cause limping?

12 A: I guess it, all depends how much an impact the injury
13 would be.

14 Q: Let me rephrase that question then. There wasn't a shot
15 to the leg was there?

16 A: No, ma'am.

17 Q: Thank you. No further questions.

18 MR. OSKIN: Nothing further, Your Honor.

19 THE COURT: You may step down, sir.

20 Do you wish the witness to be excused?

21 MR. OSKIN: Yes, sir, Your Honor.

22 THE COURT: Any objection?

23 MS. WILSON: No objections, Your Honor.

24 THE COURT: You can back to your regular duties, sir.

25 Next witness.

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1 MR. OSKIN: Yes, sir, Your Honor. At this time, the
2 State would call Mr. Ronald Poston.

3 THE COURT: All right, sir, come all the way around and
4 come up here and meet the Clerk right up here, all the way
5 around.

6 CLERK: Raise your right hand and place your left hand on
7 the Bible.

8 RONALD THOMAS POSTON, II, HAVING BEEN
9 SWORN TESTIFIES AS FOLLOWS:

10 CLERK: Please state your full name and spell your last
11 name.

12 MR. POSTON: Ronald Thomas Poston, II. First name is
13 Ronald, R-O-N-A-L-D, last name P-O-S-T-O-N.

14 THE COURT: You may proceed.

15 MR. OSKIN: Thank you, Your Honor.

16 DIRECT EXAMINATION OF RONALD THOAMS POSTON II BY MR. OSKIN:

17 Q: Mr. Poston, how old are you, sir?

18 A: I'm thirty-six years old.

19 Q: And are you currently employed?

20 A: Yes, sir.

21 Q: And by whom?

22 A: Advance Protection Services.

23 Q: Okay. Were you employed on February 15th, 2015?

24 A: Yes, sir.

25 Q: And by whom were you employed on that night?

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- 1 A: Advance Protection Services.
- 2 Q: All right. Have you ever testified in court before, Mr.
- 3 Poston?
- 4 A: Yes, sir.
- 5 Q: How many times?
- 6 A: Once.
- 7 Q: What is your educational background?
- 8 A: Some college, graduated high school.
- 9 Q: Where were you working -- I know you said you were
- 10 employed by ETS -- where were you specifically working on the
- 11 night of February 15th, 2015?
- 12 A: I had done a neighborhood patrol off of Burcale Road
- 13 beforehand and then I was at Club Levels.
- 14 Q: At Club Levels in Myrtle Beach?
- 15 A: Yes, sir.
- 16 Q: Okay. Was there a shooting that night at the club?
- 17 A: Yes, sir.
- 18 Q: All right. What were you doing before the shooting?
- 19 A: I was outside running armed security out on the sidewalk
- 20 watching the entrance.
- 21 Q: Who was with you?
- 22 A: Officer Pettengill.
- 23 Q: Can you describe to us the incident location, the
- 24 proximity of Club Levels?
- 25 A: It's right past the -- it was in front of the next store

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1 front down.

2 Q: And when did you first notice the suspect; how, how --
3 what brought you in -- when did you first notice the shooting
4 itself?

5 A: The first gunshot.

6 Q: Okay. How did you respond to that?

7 A: I was facing away from where it occurred because it had
8 occurred behind me.

9 Q: All right.

10 A: I spun and drew my weapon, saw a black male wearing all
11 black clothing about six-foot tall, slender to medium build,
12 literally shooting another victim.

13 MS. OSKIN: Your Honor, may I approach the witness,
14 please?

15 THE COURT: Yes, sir.

16 BY MR. OSKIN:

17 Q: Mr. Poston, I'm showing you what's been marked as State's
18 Exhibit Number One. Are you able to recognize this at all?

19 A: Yes, sir.

20 Q: Where on this map for the Court, where would Club Levels
21 be?

22 A: Right here.

23 Q: Okay. When you say you were standing, where were you
24 standing before you heard ---

25 A: Approximately, right here, right here at the curb.

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RONALD THOMAS POSTON, II - DIRECT BY OSKIN

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1 Q: And where, just further down the curb did the shooting
2 occur?

3 A: Right about here I would say.

4 STATE'S EXHIBIT NUMBER ONE

5 MARKED FOR IDENTIFICATION

6 MR. OSKIN: Your Honor, this is for identification
7 purposes only.

8 THE COURT: All right, sir.

9 MR. HOLFORD: Did you get it?

10 MS. WILSON: Yeah, I'm so sorry. I missed what he said.

11 BY MR. OSKIN:

12 Q: Would you please restate it for Ms. Wilson where you were
13 before the shooting?

14 A: (Indicating) Right there.

15 Q: All right. Mr. Poston, after you heard the first
16 shooting, how did you respond?

17 A: I turned in that direction and drew my weapon.

18 Q: Okay. Were you able to notice the suspect?

19 A: I saw ---

20 Q: Notice the shooter?

21 A: Yes.

22 Q: And when did you first notice him?

23 A: When I turned around and I saw him standing over the
24 victim with a firearm.

25 Q: Okay. Are you able to see -- were you able to see at all

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1 where he came from ---

2 A: No.

3 Q: --- or where the shooter was?

4 A: No.

5 Q: Okay. What did you notice about the suspect?

6 A: Approximately six-foot tall, black male, wearing all
7 black clothing, black hat or hoodie of some kind.

8 Q: How long did the initial shooting last, that is the
9 suspect firing into the victim?

10 A: A couple of seconds.

11 Q: All right. How quickly did you respond to that?

12 A: When I heard the first shot and turned, I saw the victim,
13 I immediately moved.

14 Q: All right. Did you give any sort of verbal command?

15 A: Yes, I did.

16 Q: What did you say during that?

17 A: Drop the gun, drop the gun.

18 Q: All right. And what happened then?

19 A: He didn't; he continued shooting.

20 Q: All right. At that time did you fire at the suspect?

21 A: As soon as I had a clear shot.

22 Q: All right. After you returned fire, what did the suspect
23 do?

24 A: He staggered as if he was hit and then immediately took
25 off running between the cars parked on the curb.

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- 1 Q: Okay. And which direction did he go?
- 2 A: Back towards Broadway and Oak Street.
- 3 Q: All right. Just with regards to that, how is your
- 4 eyesight, Mr. Poston?
- 5 A: With my contacts probably 20/30.
- 6 Q: Were you wearing them that night?
- 7 A: Yes.
- 8 Q: All right. What about your hearing?
- 9 A: Good.
- 10 Q: Your state of mind during that time, you work at a bar,
- 11 no alcohol?
- 12 A: None.
- 13 Q: How about fatigue? You work late nights. Any fatigue at
- 14 that time?
- 15 A: I've worked nights for 10 years.
- 16 Q: Okay. Had you ever been in any situations like that or
- 17 would a situation like this cause too much fear for you to be
- 18 able to react or not see what you're responding to?
- 19 A: I've been in situations like that before.
- 20 Q: You weren't on any medications or drugs that would impair
- 21 what you were doing that day?
- 22 A: No.
- 23 Q: What did you focus on during the incident?
- 24 A: The subject and making sure that I had a clear shot.
- 25 Q: All right. And how close were you to him when you first

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RONALD THOMAS POSTON, II - DIRECT BY OSKIN

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1 noticed him?

2 A: I'm sorry?

3 Q: How close were you to the Defendant or the suspect when

4 he was initially shooting?

5 A: I'd say probably 30/35 yards.

6 Q: All right. And you said this was during the shooting, so

7 this was during the crime?

8 A: Yes.

9 Q: What was your line of sight?

10 A: What was my line of sight? Straight down the sidewalk.

11 Q: Were you on the ground standing up?

12 A: Yeah, standing up.

13 Q: Was there anything in your way to impair your vision?

14 A: Other than a couple of people moving, that was it.

15 Q: All right. Was there any lighting on the sidewalk

16 itself?

17 A: Street lamps and the lights off the building. They're

18 really bright as far as the lights on the building.

19 Q: And who'd you first report this incident to?

20 A: Our dispatcher.

21 Q: That's the ---

22 A: I'm sorry?

23 Q: The APS Dispatcher?

24 A: Yes.

25 Q: APS Dispatcher, okay.

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- 1 A: Yes, APS Dispatcher.
- 2 Q: And then from there did you -- did you meet -- did the
3 Myrtle Beach Police respond within the timeframe of that?
- 4 A: Yes.
- 5 Q: What was -- did you meet with the police, initially?
- 6 A: Yes.
- 7 Q: What was your initial description of the suspect to the
8 police?
- 9 A: Six-foot tall, black male, wearing all black, slender to
10 medium build wearing a hat or hoodie.
- 11 Q: Notice any other distinguishing factors about him?
- 12 A: No, sir.
- 13 Q: Were you able to see the suspect holding a weapon?
- 14 A: Yes.
- 15 Q: To your knowledge, had you seen the suspect before?
- 16 A: No.
- 17 Q: At any time -- were you asked to identify the suspect at
18 any time?
- 19 A: Yes.
- 20 Q: Do you recall what procedure that was?
- 21 A: After Myrtle Beach had gotten there and they had taken
22 over the victim, they had separated me and Pettengill. And I
23 was standing there and they said we think we have somebody,
24 can you look at him and identify him? I said yeah, I never
25 saw his face, but I can, you know, identify what he was

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1 wearing and his general, you know, description.

2 Q: Right. And what occurred next, were you driven anywhere
3 or were just interviewed on the sidewalk there?

4 A: I was driven over to where they found him at, which as
5 right beside the Human Resources building.

6 MR. OSKIN: Your Honor, if I may approach the witness
7 again with what's been marked as State's Exhibit One?

8 THE COURT: Certainly. All right.

9 BY MR. OSKIN:

10 Q: Mr. Poston, are you able to recognize or are you able to
11 tell this Court where the Human Resources building is?

12 A: Yeah.

13 Q: You're pretty positive of that?

14 A: Yes, sir.

15 MR. OSKIN: Are you able to see that, Ms. Wilson?

16 MS. WILSON: I am. Thank you.

17 BY MR. OSKIN:

18 Q: How long after the shooting itself did the identification
19 process -- show-up occur?

20 A: Not long, not long, a couple of minutes.

21 Q: Give me just a little bit more specific timeline?

22 A: I'd say 5, 10 minutes tops.

23 Q: Okay. Who all was present at the show-up?

24 A: Various police officers, EMS.

25 Q: Okay. And how was it conducted?

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RONALD THOMAS POSTON, II - DIRECT BY OSKIN

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- 1 A: When I got there the suspect was on -- was on the gurney
2 and was getting ready to be loaded into the ambulance.
- 3 Q: Did you hear that anyone else had identified the
4 Defendant, the Defendant as a suspect before or after the
5 identification?
- 6 A: No.
- 7 Q: Okay. Did you identify this Defendant as the suspect or
8 -- scratch -- withdraw that. How long did it take for you to
9 pick him out?
- 10 A: By the description that I had given, almost
11 instantaneously as soon as I saw him.
- 12 Q: All right. What was your reaction to seeing him?
- 13 A: That was him.
- 14 Q: You felt how sure that that was him?
- 15 A: Pretty confident. If I had to give a percentage I'd say
16 99 percent.
- 17 Q: How -- was there any difference in the description you
18 originally gave the police as compared to the description that
19 you saw the suspect in?
- 20 A: I don't think he was wearing the hat at the time.
- 21 Q: Okay. That's the only thing that had changed appearance-
22 wise in his initial description?
- 23 A: That and he was laying on a gurney.
- 24 Q: Mr. Poston, is there a video of these events as you've
25 described them here today?

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RONALD THOMAS POSTON, II - DIRECT BY OSKIN

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1 A: Yes, sir.

2 Q: Have you had a chance to view that video?

3 A: Yes, sir.

4 Q: Does it accurately reflect the events as they've
5 occurred?

6 A: Yes, sir.

7 MR. OSKIN: Your Honor, at this time, I'd like to enter
8 State's Exhibit Number Two for the purpose of this hearing.

9 THE COURT: All right, sir. Any objection to that,
10 ma'am?

11 MS. WILSON: No, nothing, Your Honor.

12 THE COURT: All right.

13 STATE'S EXHIBIT NUMBER TWO

14 MARKED FOR IDENTIFICATION

15 MR. OSKIN: Your Honor, may the witness come off the
16 stand to identify the video?

17 THE COURT: Certainly. You're gonna have to stand next
18 to a microphone though.

19 MR. OSKIN: Okay.

20 (REPORTER'S NOTE: State's Exhibit Two played for the Court.)

21 BY MR. OSKIN:

22 Q: Mr. Poston, were you able to accurately view this video
23 here?

24 A: Yes, sir.

25 Q: Were you able to recognize yourself in this video?

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RONALD THOMAS POSTON, II - CROSS BY WILSON

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1 A: Yes, sir.

2 MR. OSKIN: Court's indulgence, Your Honor.

3 THE COURT: Yes, sir.

4 BY MR. OSKIN:

5 Q: Mr. Poston, you stated this is what happened at that
6 time. Would you point on that screen where you were?

7 A: When the video is playing, yeah, I can definitely tell
8 where I am. Channel 16, I was up next to the street lamp
9 towards the streetlamp and then I moved down the sidewalk. I
10 was the one closest to the street.

11 Q: And that video shows you returning fire?

12 A: Yes, on Channel 15.

13 Q: That is the events as you described here on the stand
14 today, correct?

15 A: Yes, sir.

16 Q: Nothing further at this time. I'd ask you to return to
17 the witness stand please and ask any -- answer any questions
18 that Ms. Wilson has.

19 THE COURT: Cross examination?

20 MS. WILSON: Thank you, Your Honor.

21 CROSS EXAMINATION OF RONALD THOMAS POSTON, II BY MS. WILSON:

22 Q: Mr. Poston?

23 A: Yes, ma'am.

24 Q: Now you had, and based on what we saw on this video just
25 on this State's Exhibit, you had a very limited amount of time

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1 to actually see the shooter, correct?

2 A: Yes, ma'am.

3 THE COURT: You need to answer yes or no, I'm sorry.
4 Instead of uh-huh, you have to answer yes or no.

5 A: I had said yes, ma'am.

6 THE COURT: All right. I couldn't hear you.

7 A: I'm sorry.

8 THE COURT: How about scoot behind the microphone so I
9 can hear you.

10 A: I'm sorry, sir.

11 THE COURT: That's all right. Great. That's better.

12 BY MS. WILSON:

13 Q: And prior to -- so you had a very limited timeframe in
14 which to actually view the shooter, correct?

15 A: Yes, ma'am.

16 Q: And you weren't actually looking that way or paying
17 attention in that direction initially, correct?

18 A: No, ma'am, I was not.

19 Q: Right. You guys were actually, you and Pettengill were
20 actually on the far end of the sidewalk from where the
21 shooting occurred, correct?

22 A: Yes, ma'am.

23 Q: And I believe it was a little bit shaded down there,
24 maybe out of the glare a little bit of lights from the club,
25 the sidewalk, there was an incident down there, correct, and

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- 1 you guys were assisting with that?
- 2 A: There was not an incident there, there were people that
3 were involved in the incident were brought out there.
- 4 Q: Yes, sir. Okay. That's correct. And now I believe also
5 prior to going out for the show-up identification, you gave a
6 very general description, would you say, yes?
- 7 A: Yes.
- 8 Q: Black clothes?
- 9 A: Black clothes, yes, ma'am.
- 10 Q: General height and weight?
- 11 A: Yes, ma'am.
- 12 Q: That's about it, correct?
- 13 A: Yes, ma'am.
- 14 Q: You don't recall saying anything about dreads, do you?
- 15 A: No, ma'am.
- 16 Q: But ---
- 17 A: I saw a hat or a hoodie.
- 18 Q: A hat or a hoodie?
- 19 A: Yes, ma'am.
- 20 Q: And I think you specifically said that a hat or
21 something, correct?
- 22 A: Yes, ma'am.
- 23 Q: You also very clearly said that you never saw the
24 shooter's face, correct?
- 25 A: Yes, ma'am.

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1 Q: Never saw it?

2 A: Never saw his face.

3 Q: So how long do you think it was on that video when,
4 between the time that you heard shots, turned and ran down the
5 sidewalk?

6 A: It was a very short period.

7 Q: Would you say five seconds?

8 A: At most.

9 Q: And in five seconds that was the only timeframe in which
10 you would've had to consider this being the shooter, getting
11 -- I guess sort of taking stock at who the shooter is and what
12 the shooter looks like, correct?

13 A: Yes, ma'am.

14 Q: That's all you got?

15 A: Yes, ma'am.

16 Q: Now, when you're taken -- taken out to the Human
17 Resources building by Officer Merfert, I believe, you tell him
18 that you believe it's the same person, correct, that it was
19 the same person?

20 A: Yes, ma'am.

21 Q: And my question here is, You can't really be certain of
22 that -- you can't really be sure of that when you know you
23 never saw the person's face, can you, after five seconds of
24 viewing?

25 A: I was certain of the description that I gave and he

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1 matched those items.

2 Q: So then you're telling me that you're certain that the
3 clothing looked similar?

4 A: To my knowledge, yes, ma'am, the clothing was the same.

5 Q: But that you can't say with 100 percent certainty what
6 the person looked like?

7 A: No, ma'am, I never claimed to.

8 Q: All right. Thank you. No further questions.

9 THE COURT: Cross examination?

10 MR. OSKIN: Court's indulgence, Your Honor.

11 REDIRECT EXAMINATION OF RONALD THOMAS POSTON BY MR. OSKIN:

12 Q: Mr. Poston, you're confident that the person you
13 identified at the show-up was the shooter that we saw in that
14 video, correct?

15 A: Yes, sir.

16 Q: All right. Thank you. Nothing further.

17 BY THE COURT:

18 THE COURT: All right. Let me ask you a couple of
19 questions. You -- at the shooting, you turned toward the
20 shooting, correct?

21 A: Yes, sir.

22 THE COURT: And was your attention drawn to a particular
23 scene when you turned?

24 A: When I turned I saw a muzzle flash.

25 THE COURT: Okay.

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1 A: And that's what drew my attention to that point.

2 THE COURT: Okay.

3 A: And that was when I saw the shooter shooting the victim.

4 THE COURT: All right. And tell me exactly again how the
5 victim was and how the shooter was when you saw the shooting?

6 A: The victim was in the process of falling to the ground.
7 The shooter was standing over him continuing to fire.

8 THE COURT: All right. And you said something to the
9 shooter at that point in time?

10 A: Yes, sir.

11 THE COURT: And what was that?

12 A: Drop the gun.

13 THE COURT: Did that person drop the gun?

14 A: No, sir.

15 THE COURT: What did you do?

16 A: I advanced until I had a clear shot and then I returned
17 fire.

18 THE COURT: All right. Now, this period of time that you
19 just described and including returning fire on the shooter?

20 A: Yes, sir.

21 THE COURT: How long a period of time are we talking
22 about as best you can tell me?

23 A: If I had to guess I would say 5 to 10 seconds.

24 THE COURT: All right. Now, you fired shots. What did
25 the shooter do?

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1 A: He staggered as it looked like he had been hit, then he
2 immediately turned and started running in-between the vehicles
3 parked at the curb.

4 THE COURT: All right. So when he turned, did he turn
5 away from you and started running?

6 A: Yes.

7 THE COURT: Okay. Very good. All right. So at that
8 point in time, until you got to the HR building, did you see
9 that individual again?

10 A: I did not go all the way to the HR building running after
11 him.

12 THE COURT: Okay. So when I talking about the HR
13 building, wherever the individual was that the police were
14 there, the EMS and the persons giving the treatment, between
15 the time the person turns and runs or staggers or goes away
16 until you got to that point where you saw him with the EMS and
17 the police, did you ever see him again?

18 A: I saw him all the way when he crossed the street and then
19 he cut around the corner of the shoe shop across the street
20 from Levels.

21 THE COURT: All right. Very good.

22 A: And that was where I lost him.

23 THE COURT: Okay. Now, from the last time you saw him

24 ---

25 A: Yes, sir,

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1 THE COURT: --- until the time that you were there with
2 the police officer and seeing a person there that's being
3 treated by EMS and other police officers are around,
4 approximately what length of time was that?

5 A: I would say 5 to 10 minutes.

6 THE COURT: All right. The police officer is there to
7 take you to that scene. What does the police officer say to
8 you?

9 A: Really and truly I didn't really talk to him a whole lot.
10 He just asked me a description.

11 THE COURT: Okay. And to get to that place where the
12 person is that's being treated by EMS and the other police
13 officers are there, a police officer took you, correct?

14 A: Yes, sir.

15 THE COURT: Did that officer talk to you?

16 A: Not a whole lot. Like I said, he just asked me a
17 description.

18 THE COURT: Okay. And what description did you give him?

19 A: Six-foot tall, slender to medium build, wearing all
20 black, black male, wearing a black hat or hoodie.

21 THE COURT: All right. And what did the officer say
22 about why you were being taken to this place?

23 A: He says we think we have somebody.

24 THE COURT: All right. So you get there and get out of
25 the vehicle?

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BY THE COURT

1 A: Yes, sir.

2 THE COURT: What do you see?

3 A: I see somebody wearing the same clothes, same
4 description on the gurney getting ready to be loaded into an
5 ambulance.

6 THE COURT: So in your mind, when that happened, what did
7 you think?

8 A: That's him.

9 THE COURT: That's what came to your mind immediately
10 when you saw that?

11 A: Yes, sir.

12 THE COURT: And had the officer suggested that to you in
13 any way at all?

14 A: No, sir.

15 BY THE COURT:

16 THE COURT: All right. Thank you.

17 Further questions from the State?

18 MR. OSKIN: No, sir, Your Honor.

19 THE COURT: Further questions from the Defense?

20 MS. WILSON: No, sir, Your Honor.

21 THE COURT: You may step down.

22 Do you wish the witness to be excused?

23 MR. OSKIN: No, sir, not at this time.

24 THE COURT: All right. So if you'll just go back and
25 have a seat in the courtroom, please.

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1 All right. Next witness, please?

2 MR. HOLFORD: Your Honor, that would conclude the State's
3 showing as -- as to those to identification. We do
4 have one other, but it doesn't relate to a show of ID.

5 THE COURT: All right. It doesn't relate to the show of
6 ID?

7 MR. HOLFORD: No, Your Honor.

8 THE COURT: It's a different matter?

9 MR. HOLFORD: Yes, Your Honor.

10 THE COURT: All right. Very good. All right.

11 Ms. Wilson, do you have witnesses you wish to bring forth
12 to the Court regarding the *Neil v. Biggers* hearing?

13 MS. WILSON: Your Honor, if I could have the Court's
14 indulgence for just one second because I may need to recall
15 Hearon. Thank you.

16 THE COURT: Officer Hearon?

17 MS. WILSON: Yes, sir.

18 THE COURT: All right. Very good.

19 MS. WILSON: Thank you.

20 All right. Your Honor, I will not have any witnesses to
21 go forward.

22 THE COURT: All right.

23 MS. WILSON: And I will not recall Officer Hearon.

24 THE COURT: All right. Very good.

25 MS. WILSON: Thank you.

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1 THE COURT: Can Officer Hearon then be excused to go back
2 to his regular duties now?

3 MS. WILSON: Yes, please. Thank you.

4 THE COURT: All right. Officer, you may go back to your
5 regular duties then. Thank you, sir.

6 MOTIONS:

7 THE COURT: All right. Any motions from the Defense at
8 this point in time regarding the *Neil v. Biggers* hearing?

9 MS. WILSON: Your Honor, I do. I would ask the Court to
10 find that this ID is not reliable, neither of them. The basis
11 for my motion, Your Honor, is simply this: Show-up ID's are
12 per se considered suggestive by the Courts, and I think that's
13 a very well established fact, which means I'm gonna go ahead
14 and just get into the meat of the second prong of *Neil v.*
15 *Biggers*, which I think is really what we're talking about
16 here.

17 The first being, you know, to determine reliability, you
18 have to show that the witnesses had an opportunity to view the
19 -- the suspect or the, the person of interest at the time of
20 the crime. Both of them, Your Honor, are not paying
21 attention. They are actually turned away from where the
22 actual shooting is occurring, it's nighttime. They are, by
23 one statement, at least 25 to 30 yards away from where the
24 shooting actually takes place. They -- the entire incident
25 of the shooting happens very quickly and they have a very

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1 limited opportunity in which to observe the actual shooter.
2 They both have very general descriptions, which could probably
3 fit just about anybody that shows up at a club anywhere in the
4 country wearing black clothes, wearing a hoodie, which is not
5 even something that's in evidence that, that was taken off of
6 Mr. Bryant, or a hat. There certainly were no dreads, but
7 that's also in the statement of Officer -- I mean, not Officer
8 Pettengill -- Mr. Pettengill to Officer Hearon. There are
9 inconsistencies in the descriptions which show that whatever
10 they thought they saw wasn't -- either it wasn't accurate or
11 they're now just recanting it and changing it. Clearly, no
12 dreads. There were no dreads of Mr. Bryant's arrest, but
13 Pettengill definitely identified the shooter as having
14 dreadlocks. That's a very distinctive hair feature. That's
15 not something that you're gonna be confused about and there's
16 no question that he said it.

17 In addition, Your Honor, we're talking about the degree
18 of attention of the witnesses. As I already stated, their
19 backs were turned. Pettengill says he was facing the door,
20 but from what I've seen on the video, it looks like both of
21 them are actually facing the situation that they were dealing
22 with as security officers on the far end of the sidewalk,
23 which means that their backs were to the shooting.

24 Now they both recanted as to how certain they were when I
25 asked both of them today, could they be certain when they know

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1 they both said they didn't see the shooter's face, and each of
2 them testified today they never saw the shooter's face. They
3 gave that statement at the time that they were interviewed and
4 both of them said today that they could not be certain. Then
5 they subsequently turned around and said we are 99 percent or
6 100 percent certain that this is the person. I find that
7 problematic. Wearing clothing is very general. Being able to
8 say the person who has on the black robe -- well, if there's a
9 bunch of judges lined up, all of them would have on a black
10 robe and not knowing a face would make a very big difference
11 and that's my argument to this Court today. It makes a
12 difference when you don't see any facial features, you haven't
13 had time to observe any facial features, and you haven't had
14 time to actually pay attention or see what's going on right in
15 front of you, and that's what occurred here. It happened very
16 quickly. It's a very high adrenaline moment. They don't know
17 what they saw and even their descriptions are somewhat suspect
18 as a result.

19 Now, I understand that the amount of time between the
20 crime and then their confrontation or their, their arrival at
21 the show-up location, I think Pettengill said 15 to 20 minutes
22 and Poston says 5 to 10 minutes. I don't -- my argument isn't
23 really about the amount of time there and I understand that's
24 one of the prongs. Certainly, it's within a reasonable amount
25 of time. My problem is that no amount of time is reasonable

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1 if you haven't had actual sufficient time to observe and then
2 recognize a person. And, what we've got here is a person who
3 has been injured who is has been -- is being loaded onto a
4 gurney after being basically put into custody by the police
5 because he fits the description because he's wearing all
6 black. I think it's a very suggestive situation. I think
7 that that's why they are both 100 percent certain they say
8 once they see him they had no doubt that it was him because
9 he's the only one out there. There's nobody to compare it to
10 and it's right in line with everything that we're warned about
11 with a show-up ID. I'm asking the Court to suppress these
12 identifications.

13 THE COURT: All right.

14 Solicitor?

15 MR. HOLFORD: Thank you, Your Honor. As to *Neil v.*
16 *Biggers*, the State would note the two-prong test, whether it's
17 unduly suggested, whether the identification procedure is
18 unduly suggested and, if so, if the procedure was so
19 suggestive that it gives rise to the very substantial
20 likelihood of irreparable misidentification. The State does
21 concede that show-ups are disfavored and that they could be
22 suggestive by nature. However, in *Neil v. Biggers*, as well as
23 *State v. Moore*, 343 S.C. 282, the Court says that an
24 identification may be reliable under the totality of the
25 circumstances even if the procedure was suggestive if the

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1 State shows that the identification was nevertheless so
2 reliable that no substantial likelihood of misidentification
3 existed. That's what the State would rely on in this case is
4 that, although it was a show-up ID, although those are
5 disfavored by the Court, that the factors that *Neil v. Biggers*
6 goes into for identification based on reliability under
7 totality of the circumstances, the witnesses' opportunity to
8 view the criminal at the time of the crime. Here, we have
9 Poston and Pettengill, two independent witnesses, both had the
10 same opportunity to view the shooter at the time of the crime.
11 The witnesses' degree of attention, they both testified that
12 they heard a shooting, they turned and approached. You were
13 also able to see it on video. They start taking a tactical
14 stance, weapons drawn to return fire at a single individual.
15 Their intention would have to be so direct that they were
16 returning fire at one individual. They were zeroed in on that
17 individual. I know that the video shows 5 to 10 seconds and
18 that's the time they had but, Your Honor, at that time, their
19 degree of attention was 100 percent on the shooter. They
20 followed him into the street, and Poston said in his testimony
21 that he saw the shooter continue to flee northbound until he
22 went around the corner. So their attention, their degree of
23 attention was 100 percent on the shooter. The accuracy of the
24 witnesses' prior description, it matches the same description;
25 all black clothing, slender male, about six-feet tall. Sure,

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1 Pettengill may've said hoodie, may've said hat, may've said
2 something else; something was on his head. The State would
3 disagree with the Defense that he definitely said dreads or
4 that dreads is even in evidence. The only suggestion about
5 dreads is Defense Counsel's statement as to it. There's no
6 evidence that that was actually a description that was given.
7 The description that they gave, both Poston and Pettengill,
8 matched the description of the Defendant, who was the suspect
9 at the HR building. The witnesses' level of certainty, both
10 of them independently say they're very certain. One said he
11 was near 100 percent; the other said 99 percent. Both of
12 them, when questioned by Defense, State and Your Honor, said
13 that they were certain within seconds that the same person who
14 was in police custody at the HR building, who is the
15 Defendant, was the shooter. They're both certain of that.
16 The length of time between the crime and confrontation, Your
17 Honor, it was, according to Pettengill, 20 to 30 minutes;
18 according to Poston, 5 to 10; according to the officers and
19 the in-car videos, it was 12, maybe 12 minutes after -- after
20 the call came out. Your Honor, there's certainly a very
21 limited amount of time between both APS security guards
22 viewing a shooting, viewing a suspect, viewing him fleeing,
23 and then showing up and actually identifying, yeah, that's the
24 same person I saw 10 to 15, maybe at most 20 minutes before.
25 Your Honor, a show-up can be proper if it occurs shortly

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1 after the crime. These are factors stated in *State v.*
2 *Mansfield*, 343 S.C. 66, also noted in *State v. Brown*, 589
3 S.E.2d 781. It occurred shortly after the crime. It was near
4 the scene of the crime as shown by State's One for this
5 hearing. Witnesses show that Levels is here on 9th Avenue and
6 a couple of blocks away the HR building on 10th Avenue is
7 where the suspect was located. So we have not only a short
8 amount of time, but a short distance from when the suspect was
9 seen to when he was identified as the shooter. The witnesses'
10 memory was still fresh. Certainly, both of their memories
11 were still fresh. He didn't have time to alter his looks, at
12 least not that much. He was still in the same black clothing,
13 black pants. I don't know if at that time he had taken his
14 toboggan off or not. The Defense stated correctly, that's not
15 in evidence for this hearing. It's certainly in evidence for
16 the trial, his clothing is.

17 The fact that an identification in this sort, this police
18 did not suggest that he was the shooter. They had someone a
19 couple of blocks away who had been shot and were trying to
20 ascertain is this the person who was involved in this shooting
21 or is it not. He was seeking -- they were seeking to get him
22 medical attention. The -- by bringing both Poston and
23 Pettengill over there, they could've said, no, that's
24 definitely not him and he would've been ruled out as a
25 suspect. However, independently, they both said yes, that's

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1 the person; that's the shooter. They both ID'd him and that
2 enabled the police to determine that they didn't need to
3 continue searching, that this person they had a short -- a
4 couple of blocks away within 12 minutes after the crime was in
5 fact the shooter at Club Levels.

6 Your Honor, based on that, I would submit that the
7 identification is reliable. That based on the totality of the
8 circumstances, it was not unduly suggestive. The police did
9 not suggest in any manner. The witnesses had the ability to
10 make up their mind and make the identification on their own
11 independent of any law enforcement involvement. And for those
12 reasons, the State would request that both identifications be
13 allowed.

14 THE COURT: All right. Very good.

15 We'll take a very short break for about five minutes.

16 Okay? Thank you.

17 **(RECESS.)**

18 *******OFF THE RECORD*******

19 **(On the Record.)**

20 RULING OF THE COURT:

21 THE COURT: All right. Under U.S. Supreme Court case
22 *Neil v. Biggers*, the Court has to first determine whether the
23 identification process was unduly suggestive. Because of the
24 inherently suggestive nature of single person show-ups, I do
25 believe that this prong has been met. Especially the disfavor

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1 that the Appellant Courts, State and Federal, have shown to
2 single person show-ups. That does not end the process. If
3 the Court does find or it does appear that it was unduly
4 suggestive, then the Court has to look at whether or not the
5 out-of-court identification was nevertheless was so reliable
6 that no substantial likelihood of misidentification
7 exists, and only if that procedure used was suggestive need
8 the Court consider it, but I'm saying here it does.

9 Now, in this particular matter, the Court finds that
10 there was a single person show-up with two witnesses
11 independent of each other. They did not cooperate in their
12 statements, they did not compare their statements ahead of
13 time, they were treated separately, they acted separately and
14 independently of each other. Now, and I find under the facts
15 and circumstances that here that even though it was a single
16 person show-up and hence less desirable than a lineup, that
17 circumstances existing in this particular matter argue that
18 the single person show-up was proper.

19 I do find that single person show-up for both of these
20 individuals occurred very shortly after the alleged crime.
21 Both of the witnesses testified as to the amount of time and
22 it was a very short period of time. It did occur near the
23 scene of the crime. Both witnesses' memories were still very
24 fresh with the short period of time that had occurred. Both
25 witnesses had given a description. Even though a facial

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1 description was not given, there was a very distinct
2 description given by both witnesses, which independently of
3 each, agreed with each other. The -- when both witnesses
4 appeared at the scene of the show-up, in response to the
5 Court's questioning, both of them immediately had in their
6 mind the answer not being suggested to them by the police in
7 any way, that that was the person they saw at the scene. This
8 was a dramatic event. This wasn't an everyday event. This
9 was a dramatic event to which their attention was immediately
10 drawn. They saw a shooting. They saw a person standing over
11 another person continuing to shoot. Even doing so when being
12 told to drop the weapon. And in response, they fired their
13 weapons, a dramatic event. Their attention is immediately
14 drawn to what is going on. The -- how the individual at the
15 show-up was dressed was the same as indicated by the
16 witnesses, disregarding the fact whether or not there was a
17 hat or a hoodie, that being present, the clothing was the
18 same, the build was the same, the race of the individual was
19 the same, height the same, and both of them were either in
20 their mind immediately upon seeing the person either 100
21 percent certain or 99 percent certain that was the individual
22 that they saw shooting the other individual. Again a dramatic
23 event to which their attention was immediately drawn.

24 Therefore, I do find that, though it was a short period
25 of time, the events caused their minds to focus on what was

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1 happening and they had more than sufficient opportunity to
2 view the person at the time of the crime. As I've indicated,
3 their degree of attention was sharply drawn to the event and
4 the person. The accuracy of their description, basic
5 description that they gave to police at the scene,
6 independently, matched the person the police stopped and the
7 police -- and the witnesses then in their mind said they saw
8 the same person. I do believe that their level of certainty
9 at the time of the confrontation, as indicated by their
10 testimony and the Court's questioning of them, gives more than
11 sufficient reliability to that aspect. And again, the time
12 between the event, the crime, and the single person show-up
13 was a very short period of time and did occur within basically
14 about two blocks of where the crime event happened, a very
15 short distance away. Therefore, I do not find or rather am
16 finding that the out-of-court identification, because it was a
17 single person show-up has the unduly suggestive nature, I do
18 so find that the identification by both witnesses, independent
19 of each other, was nevertheless so reliable that no
20 substantial likelihood of misidentification exists.
21 Therefore, I'm gonna allow it into evidence.

22 Next matter, Solicitor.

23 MR. HOLFORD: Yes, Your Honor. I believe the Defense
24 also challenges by will be an in-court ID by Gerald McCray.

25 THE COURT: All right. Ms. Wilson, I'll be glad to hear

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1 you on that.

2 BY THE COURT:

3 MS. WILSON: Your Honor, actually I have not and I did
4 not discuss with Josh any challenge against Mr. McCray's
5 identification.

6 THE COURT: All right.

7 MS. WILSON: And at this point, I'm not certain that I am
8 prepared to go forward on his. If the Solicitor intends to
9 call him, maybe that's something we can deal with at that
10 time.

11 THE COURT: Okay. So, what's the State's intention
12 regarding this particular individual?

13 MR. HOLFORD: Yes, Your Honor, Gerald McCray was a
14 witness at the scene. He was an individual walking with the
15 victim. He did not identify the Defendant until after -- it
16 wasn't even by police custody. Gerald ended up getting
17 arrested on other charges, he was in J. Reuben Long along with
18 the Defendant, noticed him in jail. He later came to the
19 police, had an interview, and said yeah, the Defendant, that's
20 the guy who was at the club, that is the shooter, and that's
21 what -- that's what his testimony during his interview was
22 that's been turned over and that's what his testimony in court
23 will be is that the Defendant was in fact the shooter that he
24 saw that night.

25 THE COURT: All right. So how he saw the Defendant in

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1 jail was not orchestrated in any way by police; they didn't
2 know about him and tell him go by and look at this fellow or
3 anything like that?

4 MR. HOLFORD: No, Your Honor. It was not orchestrated by
5 law enforcement. He did come later and give an interview to
6 law enforcement, but it was not six pack, it wasn't an ID, it
7 wasn't a lineup. And, so the State would ---

8 THE COURT: It just occurred because they both happened
9 to be incarcerated at the J. Reuben Long Detention Center and
10 he sees him and then later on he comes to police and says,
11 look, the guy that did the shooting is in jail with me.

12 MR. HOLFORD: Yeah. Yes, Your Honor.

13 THE COURT: All right. So based -- do you challenge that
14 fact scenario? Do you think that there was some police
15 orchestration behind it in any way?

16 MS. WILSON: I do not have any reason to believe there
17 was some police orchestration there. You know, when I
18 received this, this is not something we've long had in the
19 discovery. When this case was scheduled to go for trial back
20 at the beginning of -- end of October, beginning of November,
21 that's when I received the information. I do not have any
22 reason to believe that it's not exactly as they claim, but I
23 also don't want to resolve that issue right now. Number one
24 reason, I don't know -- I don't know exactly when or if Mr.
25 Holford intends to actually call him.

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1 THE COURT: Okay.

2 MS. WILSON: And I don't want to waste that argument. I
3 have other things I feel are personally more pressing and I'd
4 like to leave the opportunity open to address it if it becomes
5 an issue.

6 THE COURT: Right. So, I guess in the general
7 presentation of the State's evidence, if you call that
8 individual would it come in the beginning, the middle, the
9 end?

10 MR. HOLFORD: It would likely be at the end.

11 THE COURT: All right. So how about why don't, if you
12 expect that you're going to call him, why don't you try and
13 anticipate that so that at some appropriate break, you would
14 need to tell the Court that you're gonna do that and we have
15 some extra time at lunch to resolve the issue or when we broke
16 for the evening, so that if he needed to come testify as to
17 that particular incident outside the presence of the jury,
18 that could be done before he gets called. So I'll just leave
19 that to you, Solicitor, to number one, let the Court know who
20 you're gonna call and then try to arrange it such that we have
21 some sufficient break to cover the matter. You know,
22 obviously what I'm saying is don't -- don't be where you're
23 calling witnesses and the next one is this McCray fellow.
24 Okay? Let's not do that.

25 MR. HOLFORD: Yes, Your Honor. May he be excused but

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1 remain under subpoena for today?

2 THE COURT: That's fine.

3 MR. HOLFORD: Thank you, Your Honor.

4 THE COURT: That's fine. So you remain under subpoena,
5 sir.

6 All right. Next matter?

7 MOTIONS:

8 MS. WILSON: Your Honor, at this time, I have my
9 suppression motion.

10 THE COURT: Okay.

11 MS. WILSON: And I have a case I'd like to hand over to
12 you and to the Solicitor ---

13 THE COURT: All right. Very good.

14 MS. WILSON: --- in support of my motion. Did I give you
15 a copy of the motion; I don't know, do you have a copy?

16 THE COURT: I don't have a copy of the motion. I know
17 you filed it but I never was given a copy of it. You told me
18 about it this morning.

19 MS. WILSON: Yes, sir.

20 THE COURT: But I never received a copy of the motion.

21 MS. WILSON: Your Honor, basically my motion is to
22 suppress letters and I'm going to add in phone calls from J.
23 Reuben Long that were taken from my client or taken while my
24 client was incarcerated or has been incarcerated and handed
25 over to police for prosecution.

MOTIONS

1 The case that I've handed up is, is called *State v.*
2 *Ellefson*, Duane Ivan Ellefson. My understanding this is still
3 very good law. *Ellefson* deals with letters that are taken in
4 the course of normal security routine procedure at the jail
5 and that are then turned over to police for prosecutorial
6 purposes. And *Ellefson* speaks directly to that issue and
7 speaks against it. I want to make clear I understand that the
8 jail has a very clear right for security purposes to review
9 mail, to record phone calls and those things are -- we're not
10 questioning that at all. I actually did procure a copy of the
11 procedures for J. Reuben Long as far as how they deal with
12 mail and things of that nature, and I understand their policy.
13 However, where their policy deviates from what is good law, is
14 where this case comes in. And this case is very specific as
15 to the point that information taken from a pre-conviction
16 detainee at a jail is privilege -- it's not privileged
17 information, but certainly it is not to be used for
18 prosecution against a Defendant where it's taken by the jail
19 and turned over for the prosecution specifically and that is
20 what we have here. There is a series of letters from my
21 client to someone that he refers to as Little B. And I'm just
22 going by that so that the Court knows there's some frame of
23 reference from which letters, and those letters are all
24 included in the discovery. And my understanding is that they
25 were sent to -- I want to say to Mr. Jones, I could be wrong

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1 about that. My belief is that it came from someone at the
2 jail by the name of Christine Snyder but -- and my
3 understanding also is that she is the person who is -- has
4 been appointed by the jail to oversee review of certain mail
5 items. But frankly my concern isn't about who gave it as much
6 as the fact that it was given and is now a product of
7 discovery in this file and I don't believe that it should be,
8 and I'm asking the Court to suppress it based on what this
9 case says.

10 THE COURT: All right. Well, okay. I guess I need to
11 know a couple of things.

12 MS. WILSON: Yes, sir.

13 THE COURT: You said you had a copy of the procedure.
14 I'd like to get a copy of the procedure.

15 MS. WILSON: Yes, sir.

16 THE COURT: I'd also like to, to know exactly, because I
17 know that in some manner, the -- anyone who is incarcerated at
18 J. Reuben Long Detention Center, that they are warned in some
19 manner, I don't know if it's writing, by signs, they're told
20 when they're booked, there's some process that exists that
21 they are told that all their phone calls are recorded and will
22 be listened to by law enforcement agencies, that all their
23 writings will be examined before they are sent on so that --
24 as I understand it now, and that's why I want the procedure to
25 be laid out to the Court, that anyone who's incarcerated at J.

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1 Reuben Long Detention Center knows clearly without a doubt
2 that anything they say or write will be viewed by law
3 enforcement. At any time that they do that, they know that's
4 going to occur. So I want to know that procedure. I want to
5 know if that is correct. If that is the procedure, I want to
6 know it.

7 MS. WILSON: Yes, sir.

8 THE COURT: Then I also want to know and I need to have
9 copies of the documents. I don't know what -- you know, we're
10 talking about letters, I don't know what they say.

11 MS. WILSON: Yes, sir.

12 THE COURT: And I'll need, Solicitor, from you what is
13 your intention -- once I have them, what's your intention?
14 What is it that you intend to do? Do you intend to publish
15 the whole letter, do you intend -- there is a statement in
16 there that you want to publish to the jury -- what is your
17 intention regarding the documentation so that we know exactly
18 what it is that you intend to do and then we can address that
19 issue specifically as far as what Ms. Wilson may or may not
20 object to? All right?

21 MR. OSKIN: Yes, sir.

22 THE COURT: Go ahead.

23 MR. OSKIN: Thank you, Your Honor. The State would seek
24 to introduce portions of the letter specifically with regards
25 to his statements with his involvement in the crime.

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1 THE COURT: Okay. All right. So, we're gonna have to --
2 we're gonna have to develop -- you know, I'm assuming through
3 witnesses, okay, how this came about, how they procured the
4 letters, how they know they came from the Defendant, exactly
5 what is the procedure. Again, what I just said about what
6 each individual booked at the J. Reuben Long Detention Center
7 is either told or if there's a written policy or there are
8 signs out there, whatever it is, whatever their policy is, so
9 we're gonna have to have people to testify to that.

10 MR. OSKIN: Yes, sir, Your Honor. The State is prepared
11 for that.

12 THE COURT: All right. So you want to go ahead and go
13 forward then?

14 MR. OSKIN: Your Honor, when would you like copies of the
15 letters?

16 THE COURT: If you've got them, I can take them right
17 now.

18 MS. WILSON: And, Your Honor, I'm having copies made of
19 the procedural manual for handling of mail and correspondence.

20 THE COURT: Okay.

21 MS. WILSON: As well as, I think I said something else --
22 so we just need the Court's indulgence for a second.

23 THE COURT: Yes, ma'am.

24 MS. WILSON: Thank you.

25 MR. OSKIN: Your Honor, if I may approach?

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1 THE COURT: All right. Why don't you have those marked
2 as State's Exhibits so that it's clear for the purpose of the
3 motion. Okay.

4 STATE'S EXHIBIT NUMBERS THREE AND FOUR

5 MARKED FOR IDENTIFICATION

6 MS. WILSON: Your Honor, may I approach?

7 THE COURT: Yes, ma'am.

8 Solicitor, you want to look at this and make sure it's
9 the Detention Center policies that would apply?

10 Mark this as a Defendant's exhibit in that motion:

11 DEFENDANT'S EXHIBIT NUMBER ONE

12 MARKED FOR IDENTIFICATION

13 THE COURT: All right. Solicitor, whenever you want to
14 proceed as far as the calling of the witnesses.

15 MR. HOLFORD: The State calls Christine Snyder.

16 THE COURT: All right. Please come around and be sworn.

17 CHRISTINE SNYDER, HAVING BEEN SWORN
18 TESTIFIES AS FOLLOWS:

19 CLERK: Please have a seat and please state your full
20 name and spell your last name for the Court.

21 MS. SNYDER: Christine Snyder, S-N-Y-D-E-R.

22 COURT REPORTER: First name?

23 MS. SNYDER: Christine, C-H-R-I-S-T-I-N-E.

24 COURT REPORTER: Thank you.

25 DIRECT EXAMINATION OF CHRISTINE SNYDER BY MR. HOLFORD:

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CHRISTINE SNYDER - DIRECT BY HOLFORD

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- 1 Q: Officer Snyder, where are you employed?
- 2 A: J. Reuben Long Detention Center.
- 3 Q: And what's your job title there?
- 4 A: Gang Intelligence Officer.
- 5 Q: And what involvement do you have in this case
- 6 specifically?
- 7 A: I came across some letters that were incriminating.
- 8 Q: And how did you come across those letters?
- 9 A: During an investigation into a threat against Mr. Bryant.
- 10 Q: And, and so what did you do once you heard about a threat
- 11 against Mr. Bryant?
- 12 A: I monitored his mail for three or four days and phone
- 13 calls for three or four days.
- 14 Q: Did you turn any of those phone calls over to Myrtle
- 15 Beach Police Department?
- 16 A: No.
- 17 Q: And so specifically in this case, did you turn any
- 18 letters over to Myrtle Beach Police Department?
- 19 A: Yes.
- 20 Q: And who were those letters from?
- 21 A: Mr. Bryant.
- 22 Q: And why would you turn those over to Myrtle Beach Police
- 23 Department?
- 24 A: It had information in the letter about the case.
- 25 Q: Okay. Were you -- did Myrtle Beach request that you

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CHRISTINE SNYDER - DIRECT BY HOLFORD

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1 search his mail?

2 A: No, they did not.

3 Q: And what's the J. Reuben Long department policy on
4 detainees' mail?

5 A: We are allowed to open and check their mail if we have
6 reason for safety and security of the facility.

7 Q: Okay. And what was the reason for opening his mail in
8 this case?

9 A: I had gotten word about threats being made towards Mr.
10 Bryant and that he had made comments about handling it
11 himself.

12 Q: Okay. Was that related to this case?

13 A: Yes.

14 Q: Okay. And what -- so when you turned these letters over
15 -- would you recognize a copy if I showed them to you?

16 A: Yes.

17 MR. HOLFORD: May I approach, Your Honor.

18 THE COURT: Yes, sir.

19 BY MR. HOLFORD:

20 Q: I'm gonna hand you what's been marked as State's Three
21 and Four for this purpose. Can you identify what State's
22 Three is?

23 A: It's an outgoing letter from Kevin Bryant to Brandon
24 Bryant.

25 Q: And how do you know it's from Kevin Bryant?

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CHRISTINE SNYDER - DIRECT BY HOLFORD

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- 1 A: His name is on the return.
- 2 Q: And where did you see -- did you seize this letter?
- 3 A: I copied it. I checked it and copied it.
- 4 Q: Okay. Where is the original?
- 5 A: It was sent out.
- 6 Q: Okay. Is that standard procedure?
- 7 A: Yes.
- 8 Q: And who is it addressed to?
- 9 A: Brandon Bryant.
- 10 Q: Okay. And then State's Four, can you identify it?
- 11 A: It's an outgoing letter from Kevin Bryant to Ms. Chief
- 12 (spelled phonetically).
- 13 Q: Okay. And how are -- how did you know it was from Kevin
- 14 Bryant?
- 15 A: Again, it's got his name in the upper left-hand corner.
- 16 Q: And were these letters when you -- when you copied them?
- 17 Were they in his cell or were they in the outgoing mail or
- 18 where?
- 19 A: They were in the -- at the movement center with the
- 20 outgoing mail.
- 21 Q: Okay. And they were from Kevin Bryant addressed to
- 22 someone?
- 23 A: Yes.
- 24 Q: And was -- were these the only pieces of mail that you
- 25 observed and copied?

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CHRISTINE SNYDER - DIRECT BY HOLFORD

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1 A: Yes.

2 Q: Were there any others from Kevin Bryant?

3 A: There were only a few that I looked at but didn't have
4 anything in it.

5 Q: Did you turn over to Detective Jones anything that you
6 thought was pertinent to this case?

7 A: Yes.

8 STATE'S EXHIBIT NUMBER FIVE

9 MARKED FOR IDENTIFICATION

10 MR. HOLFORD: May I approach?

11 THE COURT: Yes, sir.

12 BY MR. HOLFORD:

13 Q: And I'm handing you what's been marked as State's Five.
14 Can you identify what that document is?

15 A: It's an outgoing letter from Kevin Bryant to Ms. Chief.

16 Q: Okay. And, and again the reason for copying that letter?

17 A: It had information in it regarding his case.

18 Q: Okay. And then once you copied it, you sent it to
19 Detective Jones, the copy?

20 A: I handed it to him.

21 Q: And you sent the original in the outgoing mail?

22 A: Yes.

23 Q: Okay. And then Detective Jones, he turned them over to
24 us?

25 A: Yes.

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CHRISTINE SNYDER - DIRECT BY HOLFORD

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1 Q: And we provided them to Defense?

2 A: Yes.

3 Q: Can you explain -- do you know much about J. Reuben Long
4 Detention Center's policy on outgoing mail or incoming mail?

5 A: Yes.

6 Q: Can you explain it to me and to the Court?

7 A: All incoming mail is opened by myself and inspected for
8 contraband. Outgoing mail, depending on the circumstances can
9 be opened and read at any given time.

10 Q: And what are the circumstances that are necessary to
11 check outgoing mail?

12 A: Anything in the best interest of the safety and security
13 of the facility.

14 Q: And do you tell detainees at J. Reuben Long that their
15 mail can be searched?

16 A: Yes.

17 Q: How are they made aware of that?

18 A: They're given an inmate handbook.

19 Q: And in their inmate handbook, it tells them that all
20 their mail can be searched, some of it, or what does it state,
21 do you know?

22 A: It states that a designee of the director can open the
23 mail and sensor it and read it.

24 Q: And is there a way, if a detainee didn't want his mail to
25 be searched, could he mark an envelope with something specific

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CHRISTINE SNYDER - DIRECT BY HOLFORD

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1 or is any mail that he sends out subject to search?

2 A: The only mail that we cannot open and read is legal mail.

3 Q: Were any of these letters sent to his attorney?

4 A: No.

5 Q: Were any of these letters sent to a co-defendant?

6 A: No.

7 Q: Were the letters sent for purposes of developing a
8 defense?

9 A: I'm not sure why he sent them out.

10 Q: Okay. But they weren't sent legal mail?

11 A: No.

12 Q: Do you remember in those letters the reason why you
13 copied those and turned them over in this case; do you
14 remember?

15 A: I don't remember.

16 Q: I know that, that you said you didn't do anything with
17 the phone calls, but I want to talk about that for a second
18 for J. Reuben Long Policy on phone calls. Are detainees given
19 notice that all their phone calls are recorded?

20 A: Yes.

21 Q: How are they given that notice?

22 A: When they make the phone call, it's a recording that they
23 have to listen to before the call is connected.

24 Q: Okay. So they know that every call that they make out
25 there is recorded?

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CHRISTINE SNYDER - DIRECT BY HOLFORD

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- 1 A: Yes.
- 2 Q: What happens once a phone call is recorded?
- 3 A: It's stored on our database for over -- up to a year,
4 sometimes longer.
- 5 Q: And then how's that database accessed?
- 6 A: Detectives and other personnel can pull up a phone number
7 and access it that way?
- 8 A: Okay. Do they need a search warrant to do that?
- 9 A: No, they do not.
- 10 Q: I'm gonna go back just a second because I just reminded
11 myself of something. Did you need a search warrant to make
12 copies of these letters?
- 13 A: No, I did not.
- 14 Q: And that's based on J. Reuben Long's mail policy?
- 15 A: Yes.
- 16 Q: How long has that policy been in place?
- 17 A: Not needing a warrant? For as long as I've been there
18 doing the mail.
- 19 Q: Did you do anything against policy in making copies of
20 these?
- 21 A: No, I didn't.
- 22 Q: Did you do anything against policy in sending them to
23 Detective Jones?
- 24 A: No, I did not.
- 25 MR. HOLFORD: No further questions, Your Honor.

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CHRISTINE SNYDER - CROSS BY WILSON

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1 THE COURT: Cross examination?

2 MS. WILSON: Thank you, Your Honor.

3 CROSS EXAMINATION OF CHRISTINE SNYDER BY MS. WILSON:

4 Q: Officer Snyder?

5 A: Yes, ma'am.

6 Q: There is a difference in how the jail handles outgoing
7 versus incoming mail, correct?

8 A: As far as?

9 Q: As far as what you're allowed to do with it?

10 A: We can open and read any of the mail as long as it's not
11 legal mail.

12 Q: So in your jail policy, would you be surprised to hear
13 that the actual requirements on outgoing mail says that for
14 inspection there has to be an -- this is Number 7(b)
15 inspection of outgoing mail. It says, general mail, the
16 designated officer may inspect all collected outgoing general
17 mail for contraband. You said earlier that you were reading
18 it for evidence, correct?

19 A: I was reading it in reference to a threat being made to
20 Mr. Bryant.

21 Q: You were reading Mr. Bryant's outgoing mail to someone
22 else for a threat against him?

23 A: Yes.

24 Q: Did you -- I'm confused. Are you saying that you thought
25 he was writing a threat to himself in his own mail out to

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CHRISTINE SNYDER - CROSS BY WILSON

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1 someone else?

2 A: No, ma'am.

3 Q: So then I'm trying to understand then. Again, were you
4 looking for contraband in this letter from, from Mr. Bryant to
5 someone outside of the jail?

6 A: No, ma'am.

7 Q: And that is the stated basis under which you are allowed
8 to read outgoing mail according to the jail policy and
9 procedure, correct?

10 A: If there is reasonable -- a reason to think that there is
11 something going on that's gonna violate the safety and
12 security of the facility, I am allowed to read the mail.

13 Q: Okay. So then you thought that there was a threat
14 against the facility and not Mr. Bryant in his mail?

15 A: There was a threat against Mr. Bryant, and I was informed
16 that he was gonna counter that threat and not inform our staff
17 of it, which would mean that there would be a fight.

18 Q: A fight at the jail you mean?

19 A: Yes, ma'am.

20 Q: So it was about jail security then, not just about Mr.
21 Bryant's safety?

22 A: Yes, ma'am.

23 Q: And in keeping the jail safe, you thought that by reading
24 his letter, which did not -- and you admit that there was no
25 contraband in this letter, correct?

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CHRISTINE SNYDER - CROSS BY WILSON

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1 A: Yes, ma'am.

2 Q: So when you went through the letters, you were
3 specifically going through because you felt that there was
4 going to be an incident at the jail and you were worried about
5 jail security?

6 A: Yes, ma'am.

7 Q: Is that the extent to what you were concerned about?

8 A: Yes, ma'am.

9 Q: When you went through those letters?

10 A: That's why I only did it for three or four days.

11 Q: Okay. So it's just three or four days. Now, you have --
12 you had just three or four days' worth of letters that you
13 called Detective Jones about?

14 A: I didn't call him. I brought them to a meeting.

15 Q: To a meeting with Mr. Jones?

16 A: To a Gang Meeting at the Myrtle Beach Annex.

17 Q: So and he became aware of them through the meeting,
18 correct?

19 A: Yes, ma'am.

20 Q: And when you had the meeting, did you -- well, let me
21 take it back -- and I'm sorry, I'm jumping around a little
22 bit. You interviewed -- you reviewed the letters looking for
23 something that you thought might happen, but did you file a
24 report at the jail that you were concerned about an incident?

25 A: Yes.

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CHRISTINE SNYDER - CROSS BY WILSON

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1 Q: You did file a report? And what did you -- who did you
2 file that with?

3 A: It was an incident report.

4 Q: You filed an incident report with whom?

5 A: At the jail.

6 Q: Do you have someone specific to whom you have to turn
7 that in or you just ---

8 A: Classification.

9 Q: Okay. So you filed a report with Classification that you
10 felt he was gonna be the subject of an incident or that he was
11 gonna cause one?

12 A: Yes.

13 Q: And after you got the letters -- you filed that report
14 before or after reading the letters?

15 A: After.

16 MS. WILSON: Court's indulgence for one second?

17 THE COURT: Yes, ma'am.

18 BY MS. WILSON:

19 Q: What was the -- was there some resolution after you filed
20 the incident report as far as the incident you were concerned
21 about happening?

22 A: I never heard anything more about it.

23 Q: Did you follow up with it?

24 A: Yes.

25 Q: And they told you there was nothing?

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CHRISTINE SNYDER - CROSS BY WILSON

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1 A: In my research I determined there was nothing. I talked
2 to Mr. Bryant and he said that he had no concerns of being
3 threatened. And I talked to my other sources and they said
4 they hadn't heard anything further.

5 Q: So let me make sure I understand. You're telling me that
6 you filed a report, an incident report about something that
7 you expected to happen to Mr. Bryant based on something you
8 heard that you then subsequently went through his outgoing
9 mail, which is basically something that only happens under a
10 more extreme circumstance when you expect there to be an
11 issue, correct?

12 A: Yes.

13 Q: And that subsequently nothing happened as a result of any
14 of your investigation, correct?

15 A: Correct.

16 Q: But then you did subsequently turn around and take that
17 information to a Gang Intelligence meeting?

18 A: Yes.

19 Q: And you received permission from the jail to do that,
20 correct?

21 A: Yes.

22 Q: And who gave you that permission?

23 A: Captain Mureddu.

24 Q: Captain Mureddu gave you permission. And when you are
25 reviewing -- and I'm sorry, I didn't offer you a copy of this

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CHRISTINE SNYDER - CROSS BY WILSON

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1 policy; would you like a copy to refresh yourself?

2 A: No.

3 THE COURT: How about here, this policy that you gave me,
4 how about ask her and ask her if that is the policy?

5 MS. WILSON: Yes, sir. Thank you, Your Honor.

6 BY MS. WILSON:

7 Q: I have Defendant's Exhibit One here. And I'd like to
8 approach, Your Honor?

9 THE COURT: Yes, ma'am, please.

10 Q: Is this the policy from J. Reuben Long Detention Center
11 on incoming and outgoing mail and other publications?

12 A: It's the new policy, yes.

13 Q: And this would be the policy that you would adhere to at
14 any point in time when you are ---

15 A: This came afterwards.

16 Q: After what?

17 A: After this.

18 Q: Is this substantially different from the policy you had?

19 A: It's minor differences.

20 Q: What minor difference would it be?

21 A: They have added a few things to it. I don't remember
22 specifically which ones they added.

23 Q: Would there be a difference in the incoming and outgoing
24 mail?

25 A: I don't believe so.

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CHRISTINE SNYDER - CROSS BY WILSON

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1 Q: And my, my understanding is that you are appointed by the
2 director at the jail to be the person who reviews mail when
3 it's necessary, correct?

4 A: Yes.

5 Q: It's not always necessary to review mail, is it?

6 A: If there's a threat, yes.

7 Q: But it's not always necessary. Is there always a threat?

8 A: No, ma'am.

9 Q: So your job is to review mail when there is a security
10 concern?

11 A: Yes, ma'am.

12 Q: Thank you.

13 Court's indulgence?

14 THE COURT: Yes, ma'am.

15 Q: I do have another question.

16 COURT REPORTER: Ms. Wilson, please return the exhibit.

17 MS. WILSON: Oh, I'm so sorry. Yes, ma'am, I will.

18 BY MS. WILSON:

19 Q: You had additional correspondence with various people
20 about Mr. Bryant, did you not?

21 A: Yes, ma'am.

22 Q: And all of that you're saying to this Court today was in
23 the course of your trying to protect the security of the jail,
24 correct?

25 A: No, ma'am.

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CHRISTINE SNYDER - CROSS BY WILSON

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1 Q: So you admit then that there was correspondence that was
2 strictly for the purpose of turning over information for the
3 prosecution?

4 A: No, ma'am.

5 Q: Well, it's gonna need to be one or the other, correct? I
6 mean, you either had information that you reviewed strictly
7 for the purpose of turning over to the State or for at least
8 to the police for prosecution or it would have to be that it
9 was totally for security the entire time, and you just said it
10 wasn't.

11 A: I am the Gang Intelligence Officer and so I have to do
12 investigations into gang activity as well.

13 Q: Okay. So that -- let me rephrase my question then. You
14 gave additional information to the police for prosecution
15 purposes that had nothing to do with jail security, correct?

16 A: Yes.

17 Q: Thank you. Do you recall an email that you sent?

18 A: There's been many emails.

19 Q: This one would be to Hugh Jones dated March 26th.

20 Your Honor, may I approach?

21 THE COURT: Yes, ma'am.

22 Q: Does this email look familiar to you?

23 A: Yes, ma'am.

24 Q: And in this email, can you tell us briefly what it is
25 you're discussing with Mr. Hugh Jones that you wanted him to

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CHRISTINE SNYDER - CROSS BY WILSON

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1 be made aware of?

2 A: He had asked me about deposits that were made onto Mr.
3 Bryant's account.

4 Q: Okay. And is there any other information there about
5 what he was asking of you that you told him in that email?

6 A: There's information about his visitation and the car that
7 they were driving when they came outside to make deposits.

8 Q: And I would enter this Defense Exhibit Two, Number Two
9 and this is an email to Hugh Jones from
10 ChristineSnyder@horrycounty.org. It's dated March 26th, 2016.

11 DEFENDANT'S EXHIBIT NUMBER TWO

12 MARKED FOR IDENTIFICATION

13 MS. WILSON: Court's indulgence for just one more second.

14 THE COURT: Yes, ma'am.

15 BY MS. WILSON:

16 Q: Now I want to ask you about the handbook. Is that
17 something that is handed out when inmates are booked in?

18 A: When they do the orientation.

19 Q: And they receive an actual copy, physical copy of some
20 paperwork ---

21 A: Yes.

22 Q: --- or they're just informed about it?

23 A: They receive a copy.

24 Q: Do they sign for this copy?

25 A: That's not my department, I'm not sure.

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CHRISTINE SNYDER - REDIRECT BY HOLFORD

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1 Q: So you're not actually certain that they receive it; you
2 are under the belief that they receive a copy?

3 A: I'm told that Classification gives them a copy when
4 they're orientated.

5 Q: Okay. All right.

6 Your Honor, I think I have no further questions at this
7 time.

8 THE COURT: Redirect?

9 MR. HOLFORD: Briefly.

10 REDIRECT EXAMINATION OF CHRISTINE SNYDER BY MR. HOLFORD:

11 Q: Before you opened those letters, did you -- did you know
12 what was in them?

13 A: No, I did not.

14 Q: You know now that there's not a security threat, right?

15 A: That's correct.

16 Q: Did you know that prior to opening the letters?

17 A: No, I did not.

18 Q: How would you have found that out?

19 A: By checking them.

20 MR. HOLFORD: No further questions, Your Honor.

21 BY THE COURT:

22 THE COURT: All right. So that I understand it, ma'am.
23 You were informed about a threat. So based upon procedure,
24 you examined outgoing mail of the Defendant, correct?

25 A: Yes, sir.

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BY THE COURT

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1 THE COURT: All right. Now, in the outgoing mail, did
2 you find any information that related to a threat on Mr.
3 Bryant or that would cause concerns regarding the safety of
4 the facility in any way?

5 A: No, Your Honor.

6 THE COURT: All right. You did recognize in looking at
7 the letter that there was information in the letter that
8 pertained to the case that he was in J. Reuben Long Detention
9 Center for pretrial detention, correct?

10 A: Yes, Your Honor.

11 THE COURT: And you made the decision then to turn that
12 information over to the Myrtle Beach Police Department?

13 A: Yes, Your Honor.

14 THE COURT: All right. All right.

15 Questions on that, Solicitor?

16 MR. HOLFORD: No, Your Honor.

17 THE COURT: All right. Do you wish the witness to step
18 down?

19 MR. HOLFORD: Yes, Your Honor.

20 THE COURT: Be excused?

21 MR. HOLFORD: For today.

22 THE COURT: All right. Any objection with that?

23 MS. WILSON: No, Your Honor.

24 THE COURT: All right. Ma'am, you are excused for the
25 purposes of this hearing. You remain under subpoena. Thank

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1 you, ma'am.

2 MR. HOLFORD: The State calls Detective Hugh Jones.

3 DETECTIVE HUGH JONES, HAVING BEEN SWORN

4 TESTIFIES AS FOLLOWS:

5 CLERK: If you will, state your full name and then spell
6 your last.

7 MR. JONES: Hugh Jones, J-O-N-E-S.

8 DIRECT EXAMINATION OF HUGH JONES BY MR. HOLFORD:

9 Q: Detective Jones, where are you employed?

10 A: City of Myrtle Beach.

11 Q: And how long have you been employed there?

12 A: City of Myrtle Beach approximately 16 years.

13 Q: What's your involvement with this case?

14 A: I work in Violent Crimes. I was one of the co-lead
15 investigators on the case.

16 Q: What was your involvement with -- did you ask Officer
17 Snyder to -- to go through Mr. Bryant's mail?

18 A: No, sir. I don't think I'd ever met Officer Snyder
19 before this. I might've sent emails because our gang units
20 have spoke to her. But she came over to -- to Myrtle Beach
21 Annex for a gang meeting and basically going through gang
22 ties. She had letters belonging to Mr. Bryant she said she
23 observed that had information on the shooting and basically --
24 ties.

25 COURT REPORTER: I'm sorry, what was the end of your

1 answer?

2 A: She had -- the letters had information on the shooting as
3 well as gang ties, I believe.

4 Q: And, and what did you do when she gave you copies of the
5 letters?

6 A: When she got -- when she gave them to me, I read them and
7 saw letters to Momma Chief basically saying that he had shot
8 the person. There was also another letter basically stating
9 that he shot somebody in self-defense. Upon receiving them, I
10 scanned them into our J drive, which is basically is our
11 investigative secured drive, and forwarded them to the
12 Solicitor's office. I believe I informed you by text or
13 phone call.

14 Q: So you turned over what Officer Snyder gave to you?

15 A: Yes; yes, sir.

16 Q: And then would you know if I turned them over to Defense?

17 A: I would have no idea.

18 Q: You would assume that's why we're having this, though?

19 A: Yes, sir. I submit everything. I believe I may've sent
20 an initial transmittal of the case and then maybe a
21 supplemental, but yeah, I know I submitted them.

22 Q: And let's go to phone calls just a second.

23 A: Yes, sir.

24 Q: Did Officer Snyder turn any phone calls over to you?

25 A: No, I don't believe so. We have access to Jail -- I

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1 believe it's Securus, which is the jail phone call system. I
2 have access -- Detective Beam is a little bit better with the
3 system and he downloaded the phone calls while I -- me and him
4 both listened to them.

5 Q: And approximately how many phone calls were downloaded?

6 A: That we listened to, I would say well in excess of a
7 hundred. There's -- there as three, four, possibly five phone
8 calls a day for over a year. It, it was impossible to listen
9 to them all. There was hundreds.

10 Q: What was the reason for that?

11 A: We believe this murder was basically a murder-for-hire.
12 We were listening to phone calls to get information on the
13 person who hired him.

14 Q: So, is this trial just a portion of the larger
15 investigation?

16 A: Yes, sir. Yes, sir, it's -- it's -- it was extensive.

17 Q: And Mr. Bryant's involvement is what?

18 A: He was the -- he was believed the person who shot the
19 victim.

20 Q: But this business with account transactions, why was that
21 important?

22 A: We received information or I listened to jail phone
23 calls, I have them broken down, where he's basically asking if
24 Robbie Buffkin (spelled phonetically), I believe she refers to
25 him as the Old Boy, deposited money into his account. I

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1 believe they make specific reference to certain amounts. I
2 was asking Ms. Snyder if she could correspond what was
3 transmitted because he was basically saying Old Boy is,
4 supposed to submit this amount of money into my account these
5 days. Those transactions helped form the probable cause on
6 the murder for hire.

7 Q: And so based on this bigger investigation, was -- was
8 another individual arrested?

9 A: Yes, sir, Robbie Buffkin.

10 Q: Was he alleged to be the shooter?

11 A: No, Robbie Buffkin was believed to have paid money for
12 this.

13 Q: But that's not necessarily important in this trial, is
14 it?

15 A: No, sir, just with respect to if you want to know why
16 we're listening to the phone calls and listening to hundreds
17 of phone calls. That was the reason.

18 Q: And let me go back to make sure I covered this, did you
19 direct Officer Snyder to -- to obtain any letters?

20 A: No, sir.

21 Q: And when they came in your possession, you turned them
22 over to the State?

23 A: Right, when they came into my possession, I turned them
24 over. There's references to Momma Chief which we learned was
25 a voodoo priest for lack of better words, but there was phone

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1 calls in reference to her dismissing charges. So we didn't
2 know what we were dealing with. It was basically going to pay
3 her money and the charges would go away, which led us to
4 believe that this was involving a lot more than it was.

5 MR. HOLFORD: I have no further questions.

6 THE COURT: Cross examination?

7 MS. WILSON: Thank you.

8 CROSS EXAMINATION OF DETECTIVE HUGH JONES BY MS. WILSON:

9 Q: Detective Jones, you said that you did not request
10 anything from Christine Snyder?

11 A: Not at the time she gave those initial letters. I
12 believe I asked for vouchers and she basically said -- I may
13 have asked if she came across anything else to give it to us,
14 but not at the time she submitted the initial -- off the top
15 of my head, I truly can't remember.

16 Q: And you, you -- I'm sorry. You weren't present at this
17 gang meeting where she said brought all those letters?

18 A: I wasn't really invited. It was at our annex in our
19 hall, I mean in our conference room; it's literally right down
20 from my office. I believe I stopped in. I believe she was
21 one of the only ones to attend. It was something they had on
22 a monthly basis. I introduced myself and she asked who was
23 working Kevin Bryant's and I said I was.

24 Q: So she contacted you about the letters?

25 A: She was at the meeting, she had a folder and basically

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HUGH JONES - CROSS BY WILSON

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1 asked me if -- who was working it. She may have asked
2 somebody else, but I spoke up and said I was.

3 Q: All right. And about the phone calls that were brought
4 up, I know that's a process at the jail to record those calls.
5 You said that you all have access, you and Beam have access
6 through Securus?

7 A: Yeah, the -- several of our officers, do; yes, ma'am.

8 Q: So you just -- you can listen at any point in time to any
9 ---

10 A: The jail gives us access to it. I went through somebody
11 at the jail. I couldn't tell you off the top of my head, but
12 every single -- partly from this, I remember every single
13 phone call goes, Welcome to Securus. These subjects are --
14 these phone calls are subject to recording and monitoring.

15 Q: And that's not really my question but the jail is
16 monitoring for their own security, correct?

17 A: I, I have no idea the reason they're monitoring. I know
18 that jail phone calls are recorded and we have access for
19 investigation.

20 Q: Okay. All right. Thank you.

21 No further questions, Your Honor.

22 THE COURT: Anything further?

23 MR. HOLFORD: No, Your Honor.

24 THE COURT: All right. You may step down.

25 A: Thank you, sir.

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ARGUMENT OF COUNSEL

1 THE COURT: Further witnesses?

2 MR. HOLFORD: Not on this motion, Your Honor.

3 THE COURT: Ms. Wilson, any witnesses?

4 MS. WILSON: Your Honor, I do not have any witnesses. I
5 do have an argument.

6 THE COURT: I'd be glad to hear from you.

7 MS. WILSON: Thank you, Your Honor.

8 ARGUMENT OF COUNSEL:

9 MS. WILSON: Your Honor, certainly Officer Snyder has
10 specifically stated that, you know, for security purposes they
11 are allowed to go through mail. My understanding is that the
12 procedure is different and I think for outgoing mail versus
13 incoming mail and that is borne out by their own policy at J.
14 Reuben Long, which I've also handed into the Court's reading
15 and made an exhibit. What is problematic to me here and goes
16 -- this is what the *Ellefson* case that I've handed up to the
17 Court goes to the heart of. It does not matter that it is the
18 normal policy of the jail to record calls or in this case to
19 review mail if they know that there's a security issue. The
20 problem becomes when they take that information that they're
21 using for jail security and then hand it over to the
22 prosecution for prosecution in a criminal matter. That
23 changes the scope of what they were originally allowed to do
24 or what they should be allowed to do. And certainly the jail
25 ---

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ARGUMENT OF COUNSEL

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1 THE COURT: While I'm thinking about it, let me ask you a
2 question. What is it that you would've wanted the State to do
3 or you believe *State v. Ellefson* would have required the State
4 to do once the -- Officer Snyder, as she testified, was
5 looking for information that involved threat for the Defendant
6 or involved the safety and security of the facility. She
7 looked at it, she didn't see any of that, but she saw evidence
8 pertaining to another crime. What is it that you believe, if
9 anything, the State was required to do at that point in time?

10 MS. WILSON: Other than not use it? I mean, I'm saying
11 to the Court that it is not -- it's not usable by the State
12 because it is evidence of an unlawful search and seizure. And
13 why I'm saying that is because *Ellefson* very clearly states,
14 Your Honor, that it's -- the fact that it is seized in the
15 process of going through mail for jail security purposes, does
16 not mean that there's a carte blanche by the jail on the
17 jail's part to turn it over for prosecution.

18 THE COURT: Right, to turn it over. So, what I'm getting
19 at is, what should they have done? When they see this
20 information, what should they have done rather than
21 immediately run over and turn it over to the Myrtle Beach
22 Police Department?

23 MS. WILSON: What they should have done, Your Honor, is
24 either gone out and gotten a search warrant ---

25 THE COURT: Bingo.

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ARGUMENT OF COUNSEL

1 MS. WILSON: And there's not one and my problem here is
2 that as in as Ellefson says -- and my position is that this
3 case is on point for the letters, even if the Court isn't
4 willing to extend the same logic in argument to the phone
5 calls, which I think still would apply, but it's on point for
6 the letters as a pre-conviction detainee, he's already -- Mr.
7 Bryant is already disadvantage because he has to use the
8 phones out there to communicate to someone. He's got to write
9 letters in order to communicate. And when the jail has ---

10 THE COURT: Because he's in this situation, he does not
11 waive all of his constitutional rights ---

12 MS. WILSON: Exactly.

13 THE COURT: --- including the fact that the State must
14 under proper circumstances, ask for a search warrant even when
15 the initial procedure might have been proper.

16 MS. WILSON: Yes, sir.

17 THE COURT: Thank you very much.

18 What do you say to that, Solicitor?

19 MR. HOLFORD: Your Honor, since we've moved -- Your
20 Honor, as the State would agree that the initial procedure and
21 process was proper by Officer Snyder.

22 Moving to the Court's point about getting a search
23 warrant, the State would argue under the circumstance, the
24 exigent circumstance exception to the search warrant
25 requirement based on at the time, although it did not bear

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RULING OF THE COURT

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1 out, at the time the security to the jail as well as to Mr.
2 Bryant, allowed those documents to be seized and turned over
3 to the State. The State would allow upon the exigent
4 circumstances exception to the search warrant requirement.

5 RULING OF THE COURT:

6 THE COURT: Well, I would disagree. I don't see --
7 certainly the State was allowed based on proper procedure,
8 based upon if there's correct or information that they believe
9 is reasonable that there is a threat to the safety of the
10 facility or a threat to the safety of an inmate, that they are
11 allowed to examine the mail, examine the phone calls to try
12 and protect the inmates, the health and safety of all the
13 people that work there, the security of the facility, they are
14 well within their rights to do so. When they discover
15 evidence of another crime in doing so, the Constitution does
16 not get thrown out. There was no information, there was
17 nothing testified to that there was an immediate circumstance,
18 that if you did not act immediately, turn over this
19 information to a police agency to stop an immediate threat, a
20 murder, an armed robbery, some crime. There was more than
21 sufficient time to go through the proper procedure, secure a
22 search warrant if such could be had through proper
23 presentation through a judicial officer and to seize the
24 information. The State having failed to do that, those
25 letters are suppressed. Thank you very much.

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RULING OF THE COURT

1 MR. HOLFORD: Thank you, Your Honor.

2 MS. WILSON: Thank you, Your Honor.

3 THE COURT: Further matters?

4 JACKSON V. DENNO:

5 MR. HOLFORD: Your Honor, I just want to clarify as to
6 *Jackson v. Denno* voluntariness of Defendant's statements.

7 THE COURT: Okay. In which -- what manner now? *Jackson*
8 *v. Denno* on what statements?

9 MR. HOLFORD: I apologize. There are several officers
10 which questioned the Defendant at the time he was a suspect.
11 He made various statements like I just heard shots and I was
12 running. He gave his name Verdell Bryant. He said he was in
13 a lot of pain, things of that nature, while he was being
14 treated and taken to EMS.

15 THE COURT: All right. Well, then first, Ms. Wilson,
16 you're objecting to those statements coming into evidence?

17 MS. WILSON: Your Honor, I would -- I think that
18 certainly my client was already in custody. I believe that
19 the testimony would reflect that Officer Eddy attempted to
20 cuff him by telling him to get down on the ground and it was
21 in the process of cuffing him that he realized that Mr. Bryant
22 was injured. Certainly custody was in effect at that moment.
23 So, I think there's some problems with the voluntariness of
24 that statement.

25 THE COURT: All right. Very good. So let's -- do we

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DANIEL EDDY - DIRECT BY HOLFORD

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1 have any officers here to testify as to the factual situation?

2 MR. HOLFORD: Yes, Your Honor.

3 THE COURT: All right. Very good.

4 MR. HOLFORD: Officer Eddy, Daniel Eddy.

5 THE COURT: Okay.

6 THE COURT: I'm sorry, she didn't hear you?

7 MR. HOLFORD: Eddy.

8 THE COURT: All right, sir. If you'd come all the way
9 around and meet the Clerk right up here and be placed under
10 oath.

11 OFFICER DANIEL EDDY, HAVING BEEN SWORN

12 TESTIFIES AS FOLLOWS:

13 CLERK: If you'll seat and state your full name and spell
14 your last name for the Court.

15 THE COURT: Go ahead, sir.

16 MR. EDDY: My name is Daniel Eddy, E-D-D-Y.

17 DIRECT EXAMINATION OF DANIEL EDDY BY MR. HOLFORD:

18 Q: Officer Eddy, where are you employed?

19 A: City of Myrtle Beach Police Department

20 Q: And how long have you been employed there?

21 A: Just a little over five years.

22 Q: How did you become involved in this case?

23 A: I was close by when the call came out. I was in the area
24 of 21st Avenue North and Robert Grissom Parkway.

25 Q: And so on February 15th, 2015, where did you respond?

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DANIEL EDDY - DIRECT BY HOLFORD

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- 1 A: I started heading to the call which was Levels, which was
2 a nightclub, and when I got to the area of Joe White and Oak
3 Street, I saw a possible suspect in the area.
- 4 Q: And is the suspect in the courtroom?
- 5 A: Yes, he is
- 6 Q: Is that the Defendant?
- 7 A: Yes.
- 8 Q: Okay. For purposes of this hearing, we're talking about
9 his statements. What questions did you ask him when you saw
10 the Defendant?
- 11 A: Do you mind if I have the sheet just so I don't misquote
12 him or you just want basically what he said.
- 13 Q: Just in general what types of questions were you asking?
- 14 A: I asked where he came from and if he had been shot at?
- 15 Q: And why did you ask that?
- 16 A: Because he matched the description and he was in very
17 close proximity and a short time from when the actual incident
18 happened.
- 19 Q: And did you arrest him at that time?
- 20 A: I went to detain him in handcuffs, once backup arrived --
21 however, I couldn't put the handcuffs on him because his right
22 arm was injured.
- 23 Q: Why did you go to detain him?
- 24 A: For my safety.
- 25 Q: What type of call were you responding to?

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DANIEL EDDY - DIRECT BY HOLFORD

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- 1 A: For a shooting.
- 2 Q: And did you know whether he had a gun on him or not?
- 3 A: At that time, I did not.
- 4 Q: You said you were unable to handcuff him. So, was he
- 5 handcuffed or not?
- 6 A: I believe I put the handcuff on his left arm and when I
- 7 pulled it behind him to grab his right arm, I couldn't. At
- 8 that time, I did do a pat down to make sure he didn't have any
- 9 weapons on him, which he didn't.
- 10 Q: And so what types of questions did you ask him?
- 11 A: I asked him if he had been shot, I believe is the
- 12 question I asked him.
- 13 Q: And what did he say?
- 14 A: He said that he heard the shooting or got shot. In other
- 15 words, I think he just said he heard the shooting or heard the
- 16 shots, something along that line.
- 17 Q: And what did you do as a result of seeing his arm?
- 18 A: Oh, at that time? I just knew that he had been shot once
- 19 I saw the injury on his arm.
- 20 Q: And did you call anybody?
- 21 A: We called EMS so he could get transported to the
- 22 hospital.
- 23 Q: And what other questions did you ask him?
- 24 A: I asked him what his name was, too.
- 25 Q: Did he provide a name?

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DANIEL EDDY - CROSS BY WILSON

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1 A: He did.

2 Q: And what name was that?

3 A: I don't remember off the top of my head but it was given
4 out I believe over the air and added into the notes.

5 Q: Did you do an interview with him?

6 A: I didn't interview him or anything like that, no.

7 Q: Did you have him write his statement or anything like
8 that?

9 A: No, not at that time, no.

10 Q: So you just asked him general questions about where he
11 had been and what his name was?

12 A: Correct. At that time I didn't know what his
13 involvement, I just asked him general question what I got out
14 of them.

15 Q: And did you -- did you give him Miranda?

16 A: I did not because like I said, at that time he wasn't
17 under arrest. I thought he was just being detained as a
18 suspect. At that time, he wasn't known to be the offender.

19 MR. HOLFORD: No further questions.

20 THE COURT: Go ahead, ma'am.

21 MS. WILSON: Thank you, Your Honor.

22 CROSS EXAMINATION OF DANIEL EDDY BY MS. WILSON:

23 Q: You were on the be-on-the-lookout-for, right, at the time
24 that you were circling?

25 A: At the time, I was actually responding to the call, but

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1 on the way, I mean, that was my area so, yes.

2 Q: And specifically you had gotten a radio stating that the
3 suspect left on foot and was headed northbound from the
4 location and was looking for him, correct?

5 A: Correct.

6 Q: And so you -- when you saw the black male wearing all
7 black, unsteady on his feet, you pulled over, correct?

8 A: Correct.

9 Q: And at that point in time, you ordered the male to get
10 down?

11 A: Uh-huh (affirmative response).

12 Q: Does that sound right?

13 A: I believe I asked him to just sit down.

14 Q: To sit down?

15 A: Uh-huh (affirmative response).

16 Q: And once he sat, you approached and you attempted to cuff
17 him, correct?

18 A: Not right away, no. Back up was arriving at that -- not
19 until that point. At that time, I honestly didn't know if he
20 was a victim or an offender or suspect or what. At that time,
21 I wanted him to sit down. He looked like he was injured, he
22 was kind of like favoring his right arm, so I didn't know if
23 he was injured or not, so I wanted him to sit down. And
24 that's when I checked him for injuries and then also for my
25 safety, I wanted to detain him in case he was a suspect.

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1 Q: So he wasn't free to leave, correct?

2 A: At that point?

3 Q: Right?

4 A: No.

5 Q: Okay. So, he was in custody because he wasn't free to
6 go. You attempted to cuff him after you -- am I not correct
7 -- actually, let me rephrase that. When did you attempt to
8 cuff him? I'm not clear about that. You're saying it wasn't
9 immediately?

10 A: Not immediately. I had him sit down and then as backup
11 was arriving, then I moved in because I didn't want to be, you
12 know, hands on with him necessarily by myself. I wanted
13 another officer there with me.

14 Q: So, you're saying you were there on scene with him alone
15 for how long prior to someone else arriving?

16 A: Maybe thirty seconds or less than a minute, I would say.

17 Q: And you gave the call out saying that you had found a
18 suspect?

19 A: I said I was getting out with a male that matched the
20 description wearing all black.

21 Q: Okay. Court's indulgence?

22 And I want to make sure I'm correct about this part, and
23 I hate to repeat, but you did say that when you went to cuff
24 him, you realized he was injured?

25 A: Well, during and before, because when I came up he was

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1 actually favoring his right arm. So, at that time, I thought
2 he was injured and I went to handcuff him then I knew he was
3 injured because I got his blood all over my hand.

4 MS. WILSON: Okay. No further questions, Your Honor.

5 THE COURT: Redirect?

6 MR. HOLFORD: No, Your Honor.

7 BY THE COURT:

8 THE COURT: All right. Let me ask questions so I
9 understand the situation please. You see the individual that
10 matches the description that was broadcast over your police
11 communication, correct?

12 A: Yes, sir.

13 THE COURT: All right. You see him, you ask him to stop
14 or sit down?

15 A: Correct.

16 THE COURT: All right. When is it that you asked him
17 where he came from or was he shot at? At what point in time
18 did you start asking him questions?

19 A: Basically, I pull up on scene, I, you know, faced my
20 patrol car towards him and he started walking towards my
21 patrol car kind of quickly. That's when I told him to sit
22 down just so he wasn't coming directly at me.

23 THE COURT: Okay.

24 A: And as he was sitting down, I said, you know, where you
25 coming from, you know, and then that's when I -- you know,

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1 because his arm, he was holding his arm and stuff. That's
2 when I asked him, hey, have you been shot or were you shot at
3 and he answered that question.

4 THE COURT: Okay. So when you asked him where are you
5 coming from, did he give you an answer?

6 A: Yes.

7 THE COURT: And what was the answer as best you can
8 recall?

9 A: I think I asked him two questions right in a row. I
10 said, where are you coming from and were you shot, and he said
11 they started shooting, and I believe that's all he said. He
12 never said directly where he came from. He just said they
13 started shooting and I ran.

14 THE COURT: Okay. They started shooting and I ran. All
15 right. So after that, when did you ask him what his name was;
16 was that later?

17 A: I can't recall. I mean, it was like I said, maybe a
18 minute or two before everyone else came on scene and I went to
19 handcuff him. During that time, I kind of ---

20 THE COURT: That's when you asked him ---

21 A: All three questions, kinda one after another if I
22 remember correctly.

23 THE COURT: Okay. Well, it's important. You arrive, you
24 see him, he's coming to the car, you tell him to sit down.

25 A: Uh-huh (affirmative response).

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1 THE COURT: I'm assuming as you're getting out of the
2 car, that's when you asked him, where you coming from, were
3 you shot at?

4 A: Correct, that definitely is when I asked him that
5 question.

6 Q: All right. And so after that, is then when you moved to
7 detain him, put a handcuff on and find, well, he's shot in
8 this other arm?

9 A: I believe honestly I asked him what his name was because
10 I was just trying to keep conversation going.

11 THE COURT: Okay.

12 A: Like when he sat down, because I was waiting for my
13 backup to come because they were coming from down the street.

14 THE COURT: Okay.

15 A: I believe I asked him what his name was then before I
16 even tried to detain him because I just wanted to kind of keep
17 a conversation going because it usually keeps people, less,
18 you know, you know stressed and that kind of stuff.

19 THE COURT: Okay. So that's when you asked him where did
20 you come from; were you shot?

21 A: No, that was immediately when I got out with him.

22 THE COURT: Okay. That was -- all right. So that's what
23 I'm trying to decipher because there's a point there. All
24 right. Thank you.

25 Go ahead, Solicitor. Anything?

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DANIEL EDDY - RECROSS BY WILSON

1 MR. HOLFORD: Nothing further, Your Honor.

2 THE COURT: Anything, Ms. Wilson?

3 MS. WILSON: I, I have one other question.

4 THE COURT: Sure.

5 MS. WILSON: And I'm sorry for the breakup here, but I
6 want to make sure I'm understanding correctly, too.

7 RECROSS EXAMINATION OF DANIEL EDDY BY MS. WILSON:

8 Q: You're saying that when you arrived on scene and he was
9 walking towards you and you said sit down on the ground that
10 you then recognized you were on the -- you said you were on
11 the be-on-the-lookout, correct, but you were aware of his
12 description?

13 A: I was responding to the call, but I was aware of the
14 description of a possible suspect.

15 Q: Okay. And so before you got out of the car, you radioed
16 that you had a suspect, correct, somebody who matched the
17 description?

18 A: I believe I just -- I don't think I said I'm out with
19 somebody that matched the description, I think I said I'm
20 gonna be out with a black male wearing all black and this is
21 the location I believe is what I said.

22 Q: Okay. And you didn't notice anybody else in that area,
23 correct?

24 A: There was no one else out on foot in that area.

25 Q: But when you told him to sit down, you did ask him where

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DANIEL EDDY - RECROSS BY WILSON

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1 he was coming from?

2 A: Correct.

3 Q: And you asked specifically if he had a weapon, correct?

4 A: I don't think I ever asked him if he had a weapon. I
5 think I asked him if he had been shot or shot at because of
6 his injury. I don't believe -- I just had him down obviously
7 because he was a possible suspect so he could've had a weapon,
8 but I don't believe I ever asked him if he had a weapon.

9 Q: Okay. And the cuffing attempt happened after you
10 questioned him those couple of times or before?

11 A: After I believe all the questions is when I actually
12 handcuffed him because I was still -- I was waiting for my
13 backup to arrive.

14 Q: And you're -- you're saying you're 100 percent certain
15 that you asked him name and information prior to the cuffing?

16 A: I wouldn't say 100 percent, but I would say that I'm
17 pretty sure that he -- I asked those questions before. I know
18 I asked where he was coming from and if he had been shot at or
19 shot and I'm pretty sure that I asked the name also before
20 because I was just trying to keep the conversation going. I
21 think I asked him his name a couple of times, honestly, more
22 than once.

23 Q: No further questions, Your Honor.

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

25 MR. HOLFORD: The State calls Officer Thomas.

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JEFFREY KENNETH THOMAS - DIRECT BY HOLFORD

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1 THE COURT: Is this a different statement?

2 MR. HOLFORD: No, same statement.

3 THE COURT: Same statement?

4 MR. HOLFORD: Yes, Your Honor.

5 THE COURT: All right. Very good. All right. Go ahead.

6 CLERK: Raise your right hand.

7 JEFFREY KENNETH THOMAS, HAVING BEEN SWORN

8 TESTIFIES AS FOLLOWS:

9 CLERK: Please state your full name and spell your last
10 name for the Court.

11 MR. THOMAS: My name is Jeffrey Kenneth Thomas. Last
12 name T-H-O-M-A-S.

13 DIRECT EXAMINATION OF JEFFREY KENNETH THOMAS BY MR. HOLFORD:

14 Q: Officer Thomas, where are you employed?

15 A: City of Myrtle Beach.

16 Q: And how long have you been with Myrtle Beach Police
17 Department?

18 A: About eleven and a half years.

19 Q: On February the 15th, 2015, where did you respond that
20 night?

21 A: I responded to the Human Resources building. I was at
22 the Police Department at the time so I was only about a block
23 away.

24 Q: Approximately what time did you respond?

25 A: I do not recall. I'd have to check my notes.

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1 Q: What -- was anyone else there when you responded?

2 A: There were a couple of other officers there. I believe
3 PFC Eddy was there on the scene at the time.

4 Q: And what was your involvement with this case
5 specifically?

6 A: Well, as soon as I got there, we were trying to make
7 heads or tails out of everything that was going on, but later
8 on I ended up riding up with the one that got shot and the one
9 that was on scene at the time.

10 Q: And the one who got shot, is he in the courtroom today?

11 A: I can't see. He's -- yes. He had a water pitcher in
12 front of him.

13 Q: Is he the Defendant?

14 A: Yes.

15 Q: He was the suspect at the HR building?

16 A: He was the person at the HR building. I didn't know at
17 that point if that was the victim from a stray round or a
18 suspect not at the time when we first got there. It was -- it
19 had just occurred within moments.

20 Q: Okay. And do you ask him any questions?

21 A: Not at first. I asked him name, information, basic
22 information when we got in the ambulance.

23 Q: And why were you asking him those questions?

24 A: Typically, I ask everybody that kind of stuff, everybody
25 I come into contact with, victim, offender, witness, anything

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1 because anything we can get helps us to try to investigate.

2 Like at that time, like I said, I didn't know if he was a
3 suspect, a victim, anything, I didn't know, because like I
4 said the situation was still rapidly devolving or evolving.

5 Q: And -- and so who were you on the scene with when you
6 were with the ---

7 A: I was on the scene with Eddy, the detective that just
8 left, and I believe my sergeant was there and a couple of
9 other officers.

10 Q: And was there anyone else other than Myrtle Beach Police
11 Department? Was EMS present?

12 A: They came later.

13 Q: Okay. And what did you do with EMS?

14 A: I rode up with them in the back of the ambulance.

15 Q: Okay. Was he -- was the Defendant handcuffed at the
16 time?

17 A: I don't believe so.

18 Q: Was EMS attending to him?

19 A: Yes.

20 Q: And why were they attending to him?

21 A: He said he had just gotten shot and he was clearly
22 bleeding and when they cut his jacket off, a bullet did fall
23 out of his jacket.

24 Q: And what else did he say to you, the Defendant?

25 A: The only thing he kept really telling me was that he was

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1 shot for nothing; that's about all he kept telling me.

2 Q: And when you asked him his name, what did he say?

3 A: He told me his name was Verdell Bryant.

4 Q: No further questions.

5 THE COURT: Cross examination?

6 MS. WILSON: Just briefly, Your Honor.

7 CROSS EXAMINATION OF JEFFREY KENNETH THOMAS BY MS. WILSON:

8 Q: Officer Thomas, you rode in -- you say you rode in the
9 back of the ambulance with Mr. Bryant to the hospital,
10 correct?

11 A: Yes.

12 Q: And you rode with him because he was not free to leave,
13 correct?

14 A: No, I've ridden in the back of the ambulance with many,
15 many a person over the years. I rode with him at the time
16 because had he been hit by a stray round, we might want to try
17 to find out and be able to get some more information out of
18 him, who he might've been shot by. Which I was trying to ask
19 him when he was in there, who was seen doing the shooting,
20 because at the time I didn't know if he was a victim from the
21 scene or a possible offender. I did not know, so I'm trying
22 to get all the information I can.

23 Q: So when you arrived on scene, you didn't speak to Eddy,
24 Officer Eddy, or anyone else?

25 A: I'm sure I did. We were all just trying to gather as

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1 much information as we could so we could all try to get a good
2 picture of what's going on.

3 Q: Okay. And you weren't aware of the description of the
4 person that they were looking for either, correct?

5 A: I believe the description came out over the radio. I
6 believe it was somebody wearing all black that was limping
7 away from the scene, but like I said, information is coming in
8 so quickly and they're trying to get it out, but ---

9 Q: Absolutely. And my final question is that while he may
10 not have been named as the person that was believed to be the
11 shooter, you were under the impression though, correct, that
12 he actually was somebody who was a person of interest as the
13 potential shooter, right?

14 A: In a situation like that, everyone is a person of
15 interest. We had no idea who was actually -- at that point, I
16 didn't know who had actually done the shooting, who had been
17 shot. I had no idea. I never made it to Club Levels that
18 night so I never actually knew exactly what happened on scene.
19 So I didn't know ---

20 Q: And ---

21 A: --- I'm sorry, I didn't mean to cut you off. I didn't
22 know if that had been hit from a stray round from somebody
23 else or had he been doing the shooting; I did not know.

24 Q: And I understand that, but my question is really
25 specific. Was he somebody who was being looked at as a person

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1 who was a suspect?

2 A: I would say everybody I came into contact was.

3 Q: Specifically ---

4 A: I mean ---

5 Q: --- Mr. Bryant?

6 A: He was the only one that I saw, basically. I mean,
7 that's ---

8 Q: Thank you. No further questions.

9 THE COURT: Redirect?

10 MR. HOLFORD: No, Your Honor.

11 BY THE COURT:

12 THE COURT: All right. Officer, let me see if I
13 understand the timeline here. You arrived and Officer Eddy is
14 already in contact with an individual; is that correct?

15 A: Yes, sir.

16 THE COURT: All right. And did you know that Officer
17 Eddy had tried to handcuff the individual?

18 A: I think I found that out later. At the time when I was
19 on scene, I did not know that.

20 THE COURT: Okay. All right. Did -- when you asked him
21 about -- or ask him any questions, had EMS arrived when you
22 first asked him a question, had EMS arrived at that point in
23 time?

24 A: No, when I first arrived on scene, they were not there,
25 no, sir. They got there within a minute or two after me.

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1 THE COURT: Okay. But so when you first arrived, you
2 asked Mr. Bryant a question or questions, correct?

3 A: I did not. I don't think -- I don't believe I asked him
4 any questions until we were in the back of the ambulance.

5 THE COURT: Okay. So and that's when EMS was treating
6 him for his injury?

7 A: Yes, sir.

8 THE COURT: All right. So you saw them undo the -- or
9 take off his jacket or cut off the jacket, however -- whatever
10 they did and you saw a bullet fall out?

11 A: Yes, sir.

12 THE COURT: Okay. Were you aware at that point in time
13 of any show-ups by potential witnesses to identify this
14 individual? Were you aware that those were taking place at
15 that point in time?

16 A: I did not because I was dealing with what I had on this
17 scene. I had no idea what was occurring over there.

18 THE COURT: All right. But so -- but at that scene with
19 EMS, were you aware that show-ups were taking place at that
20 point in time while EMS was treating Mr. Bryant?

21 A: Not at the moment. I found out immediately afterwards.

22 THE COURT: Okay. So after they occurred?

23 A: Yes, sir.

24 THE COURT: Okay. All right. As best you can, he's in
25 the ambulance being treated. Exactly what did you ask him?

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1 A: I had asked him what happened, if he saw who shot him,
2 did he see which direction the shots were coming from, I had
3 asked him his name and date of birth, I believe that was it.

4 THE COURT: Okay. And the answers that he gave to you
5 were what?

6 A: As far as his name, he gave me Verdell Bryant. His date
7 of birth, I don't recall the exact figures he gave me. For as
8 far as who shot him, he said he didn't see. Could he tell
9 what direction they were coming from, I believe he said toward
10 the front of the parking lot. He said they were just leaving
11 the club and that's -- that's pretty much all. He kept
12 repeating to me just that his arm hurt and stuff like that.

13 THE COURT: All right. Very good.

14 Questions, Solicitor?

15 MR. HOLFORD: Nothing further, Your Honor.

16 THE COURT: Ms. Wilson?

17 MS. WILSON: Nothing further.

18 THE COURT: All right. Very good.

19 You may step down, sir. Thank you.

20 Further witnesses?

21 MR. HOLFORD: Not on the Defendant's statement, Your
22 Honor.

23 THE COURT: All right. Very good.

24 Any witnesses, Ms. Wilson?

25 MS. WILSON: No, Your Honor.

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ARGUMENT OF COUNSEL

1 THE COURT: All right. I'll be glad to hear you.

2 MS. WILSON: Thank you, Your Honor.

3 ARGUMENT OF COUNSEL:

4 MS. WILSON: Your Honor, certainly ---

5 THE COURT: Let's take these separately. Okay?

6 MS. WILSON: Yes, sir. Okay..

7 THE COURT: We'll talk about Officer Eddy first and then
8 we'll deal with that and then we'll talk about Officer Thomas.

9 MS. WILSON: All right. Thank you, Your Honor.

10 Your Honor, Officer Eddy clearly intended to detain Mr.
11 Bryant. When he arrives on scene, I understand that he says
12 that he was not on a be-on-the-lookout, but did know of the
13 description, knowing where, you know, that there was somebody
14 that was possibly out there. He was actively searching. My
15 understanding is that when he arrives on scene, he tells him
16 to sit down. And then at some point in between that and EMS
17 or the ambulance showing up, asked questions and attempts to
18 handcuff Mr. Bryant, which suggests that he is in custody,
19 that he is not free to go, and that he's being questioned with
20 benefit of a Miranda.

21 I don't know that there's a bigger issue there or bigger
22 problem there than the fact that he is basically not free to
23 leave, he is in custody, and I believe that he was in custody.
24 I think that the lack of saying it doesn't change the fact
25 that when you trying to handcuff somebody, they're not free to

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ARGUMENT OF COUNSEL

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1 go, you're trying to keep them there on the spot, and the
2 reason he was trying to keep him there is because he believed
3 he was a suspect.

4 And the same thing basically applies with the statements
5 given to Officer Thomas. Certainly, he's doesn't -- he's not
6 the first person on the scene, but when he does come there, he
7 is asking a series of questions. Questions that if you
8 believe you've just got some random person who may have been
9 passing through, who's got an injury, you're not asking those
10 questions of, of a, of a, of a potential just victim of a, of
11 a shooting. These are very pointed questions by his own
12 admission. And again, any answers that he receives as a
13 result of those questions, I think is problematic, and I think
14 should be suppressed simply because, again, he says that he's
15 riding in the ambulance with her because he just takes those
16 rides. But I suspect also, Your Honor, I mean it's not a big
17 reach to say he's not free to go. He's being accompanied by
18 the police because they want to keep tabs on him and because
19 he is being detained. He has to go to the hospital;
20 otherwise, they probably would've just taken him straight to
21 the jail. So I would ask the Court to suppress any statements
22 by Mr. Bryant to the police where there was not benefit of any
23 kind of Miranda while he was in their custody.

24 THE COURT: All right. Thank you, ma'am.
25 Solicitor?

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1 MR. HOLFORD: Yes, Your Honor. The State would argue
2 that Miranda was not necessary. Although at the time, Mr.
3 Bryant was a suspect. He did match the physical description
4 as noted before. At the time he was -- he was just a
5 questioned person. He did become a suspect and later became
6 the Defendant but, at that time, they were trying to figure
7 out who he was, where he was coming from, doing normal police
8 investigation, not taking him into custody. This was not a
9 situation where they brought him to the police station. They
10 weren't interrogating him about the crime itself. They were
11 asking what his name was and, and where he was coming from.

12 Your Honor, further there wasn't any police coercion.
13 There wasn't any misrepresentation. It wasn't a fact where
14 the police were -- had him sat down and were asking him a long
15 line of questions. They're basic questions about who he was
16 and where he was coming from.

17 Your Honor, the State would, would argue that the
18 Defendant was not entitled to Miranda based on that limited
19 line of questioning, and that Miranda did not apply because he
20 was subjected to lengthy interrogation and was not subjected
21 to any coercion by police.

22 Your Honor, the State would further argue separately if
23 Officer Eddy's questions are found to be while he was in
24 custody and interrogation, which the State would again argue
25 they weren't, further as to Officer Thomas' questions and what

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RULING OF THE COURT

1 Officer Thomas heard Mr. Bryant say were the same things, what
2 his name was. He was riding in back of EMS. Mr. Bryant was
3 responding to EMS as to an injury as well as to what his name
4 is and what his date of birth is. These statements were made
5 to EMS for purpose of medical diagnosis. They're statements
6 that an officer heard while he was traveling in the same car.
7 Again, it was not a lengthy interrogation. He was not asking
8 specifics about the crime that had just happened and at the
9 time he was merely a suspect. These are normal questions that
10 police officers ask people to determine whether someone is a
11 suspect or is not -- should not be a suspect in the crime. As
12 the officers identified, this was shortly after the shooting.
13 They were still developing what happened at the Levels crime
14 scene, what was happening at Human Resources and what was
15 gonna be happening later.

16 Your Honor, there was no testimony and there is none that
17 the Defendant ever asked for an attorney. I think that these
18 were voluntary statements given by the Defendant that Miranda
19 was not necessary. And even if Miranda was necessary, that
20 the statements were still voluntary and do not -- do not
21 require suppression under *Jackson v. Denno*.

22 RULING OF THE COURT:

23 THE COURT: Thank you. All right. The initial contact
24 by Officer Eddy with the Defendant where he comes upon the
25 Defendant, Defendant is approaching the police car, and

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RULING OF THE COURT

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1 Officer Eddy tells Mr. Bryant to sit down, and at the same
2 time, he asks him where did he come from or was he shot or
3 injured, Mr. Bryant was not in custody at the time. He was
4 not being detained such that Miranda Warnings were necessary
5 for those particular questions. It was not an extensive
6 questioning of any kind and merely to evaluate the situation
7 and that did not require Miranda, and I'm gonna allow him to
8 so testify as to that.

9 When he then attempted to handcuff the Defendant, which
10 indicates he intends to detain the individual, placing him in
11 handcuffs though he was physically unable to do so because of
12 the injury to Mr. Bryant, then the dictates of Miranda, since
13 he was being detained, he was not free to go came into play.
14 So, any questions or answers by Officer Eddy after that, I
15 will not allow him to testify. Now he can testify as to his
16 observations of the Defendant, the -- you know, that he had
17 stopped him, that he was obviously injured because when he
18 detained him, blood came on his, his hands, the things that he
19 saw that took place in his presence. It was just if the
20 Defendant -- the question, pointed question he asked after he
21 tried to handcuff him and any response, if there was any, I'm
22 not gonna allow that.

23 Now, as to Officer Thomas, I have to say his testimony is
24 somewhat confusing as to when he was asking the questions, but
25 it appears -- how he clarified it, that he was asking the

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RULING OF THE COURT

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1 questions after EMS arrived and they were treating him for his
2 injury. Now, that is the point in time when according to at
3 least the testimony of Mr. Pettengill that he is being brought
4 for the single purpose show-up. That's the point in time that
5 they're bringing him to see if that is the person who Mr.
6 Pettengill observed shooting the other individual. Now,
7 whether or not Officer Thomas knew that or not, that's not on
8 point. It's clearly Mr. Bryant had then become the focus of
9 the investigation. The focus of being a suspect as to the
10 shooter at this point in time. And whether or not that was
11 communicated to Officer Thomas or not, that's not the issue.
12 Clearly, the police had focused at that point in time on Mr.
13 Bryant to be the suspect and Miranda was required. So he was
14 required to give the Miranda Warnings before he questioned
15 him.

16 Now, again, as to his observations, he's free to testify
17 about that, free to testify that, you know, EMS was treating
18 him. When they opened his coat, a bullet falls out of the
19 jacket from where he was shot. So all his observations as to
20 the wounds, the injuries, all that, he's cleared -- he's free
21 to testify about all of the things that he observed in his
22 presence at that point in time but not the conversations he
23 had with Mr. Bryant when, at that point in time, it's clear
24 Mr. Bryant had become the focus of the investigation to be a
25 suspect in this matter.

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MOTIONS

1 Thank you very much.

2 MR. HOLFORD: Thank you, Your Honor.

3 MS. WILSON: Thank you, Your Honor.

4 THE COURT: All right. Further motions on behalf of
5 Defense?

6 MOTIONS:

7 MS. WILSON: Your Honor, just the basic usual. We ask
8 that the witnesses to be sequestered. I know that there's
9 been a lot of them today, but generally we just ask that they
10 be sequestered.

11 THE COURT: Is there a representative of the victim's
12 family here or ---

13 MR. HOLFORD: Yes, Your Honor. Everyone on this side is
14 victim's family.

15 THE COURT: All right. Who is it that -- and I'm not --
16 are any of them going to be witnesses in this case?

17 MR. HOLFORD: No, Your Honor.

18 THE COURT: All right. Well, if they're not gonna be
19 witnesses then they're all free to stay and observe all the
20 proceedings at all points in time.

21 MR. HOLFORD: Yes, sir.

22 THE COURT: Now, if there -- if there was going to be --
23 somebody was going to be a witness and they were not "the
24 victim's representative" then they would need to be
25 sequestered, but if they're not gonna be witnesses, they're

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MOTIONS

1 free to stay and observe everything.

2 Who is your main detective or Chief Investigating
3 Officer?

4 MR. HOLFORD: Detective Hugh Jones and Jeremiah Beam are
5 co-lead detectives in the case.

6 THE COURT: All right. Is the State gonna be relying on
7 both of them to help in the presentation of the, the case?

8 MR. HOLFORD: After, after the Court's ruling as to the
9 letters, we're gonna have to reevaluate whether Detective
10 Jones is gonna testify or not.

11 THE COURT: All right. Well, if -- I'm gonna allow them
12 to -- I'm gonna allow them to stay even if they are going to
13 be witnesses. I'm gonna allow both of them to stay as the
14 Chief Investigating Officers of the -- of the case and the
15 assistance they lend to the State in the prosecution of the
16 matter, so I'm gonna allow them. So you just need to take
17 care of sequestering your other witnesses, Solicitor.

18 All right. Anything else?

19 MS. WILSON: Your Honor, I think the other matters are
20 things that we would address at the time of their presentation
21 or an attempt to admit them into evidence or as exhibits.

22 THE COURT: Okay. What might that be?

23 MS. WILSON: For example, there was a -- there was some
24 written documentation or paperwork in the file that maybe
25 might need to be redacted prior to it becoming evidence or an

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1 exhibit. I certainly -- there's things that are written that
2 I might not want the jury to have in front of them.

3 THE COURT: How about, can you -- so that we don't delay
4 it as -- or we delay it as little as possible, if you could
5 identify those to the State ---

6 MS. WILSON: Yes, sir.

7 THE COURT: --- in the exhibits that the State intends to
8 introduce and say, you know, here's this particular sentence
9 or this word or whatever it is that you object to and see if
10 there's an issue.

11 MS. WILSON: Yes, sir.

12 THE COURT: And if the State doesn't have an issue, then
13 fine; y'all can redact it and we'll just move along. If
14 there's gonna be a problem, please let me know so that I can
15 take care of it. I'm having the jury come so that we'd start
16 at 9:30. If y'all get here by 9:15 at the latest, please.

17 MS. WILSON: Yes, sir.

18 THE COURT: And if there are any issues, you know,
19 regarding evidentiary matters that you, you discover, how
20 about let me know so we can try and deal with them ahead of
21 time before we get started so we can have as little delay as
22 possible. Okay?

23 MR. HOLFORD: Your Honor, I would assume one of the first
24 witnesses we encounter tomorrow, we'll be discussing the video
25 that the State intends to introduce. At that time, the

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1 Defense has noted that there's a portion of the tape there
2 might be an objection to that, but ---

3 THE COURT: Okay. So is that more than what we saw
4 today?

5 MR. HOLFORD: Yes, Your Honor, there are two other clips.

6 THE COURT: Okay. By the same witness or someone else?

7 MR. HOLFORD: Different witnesses, Your Honor.

8 THE COURT: All right. So -- well, all right. Do you
9 know what those portions are that you object to, Ms. Wilson?

10 MS. WILSON: Yes, sir. Basically my problem is that it's
11 not a complete video in the sense that there is and I want to
12 hope I'm saying this correctly. There's -- let's say there's
13 three camera segments ---

14 THE COURT: Okay.

15 MS. WILSON: --- per angle.

16 THE COURT: Okay.

17 MS. WILSON: So, if there is an angle to the left and an
18 angle to the right, from the club front, there is three
19 videos, one, two and three, that run -- it's supposed to show
20 a solid period of time.

21 THE COURT: Right.

22 MS. WILSON: There is a break in each video.

23 THE COURT: Okay.

24 MS. WILSON: Approximately some seconds, but they're
25 unexplained seconds. I don't ---

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1 THE COURT: So that's the one, Solicitor, that you
2 indicated that whatever videos you have, when they came into
3 your possession, they came into the police's possession, they
4 had those deletions or blanks or unexplained portions where
5 there just isn't a video in them?

6 MR. HOLFORD: Yes, Your Honor, and the State acquired and
7 turned over approximately 660 gigabytes of data that includes
8 16 different camera angles for hours and hours for each
9 camera. There is on all of those cameras a break of
10 approximately a minute-and-a-half which occurs right before
11 2:30 in the morning. The shooting happens at 2:34 and change.

12 THE COURT: All right. Well, I don't find that to be a
13 reason to suppress the video.

14 MS. WILSON: Yes, sir.

15 THE COURT: I do want that to be -- I'm sure Ms. Wilson
16 will be talking about it. State, you can handle it however
17 you want to. I would assume you will be exploring it with the
18 witness ahead of time, but if you want to wait until Ms.
19 Wilson to bring it up then, you know, handle it however you
20 want to. But I don't find that to be a reason to suppress the
21 videos because I don't believe there's any evidence that it
22 was as the result of any State action or in examination of the
23 videos they, you know, accidentally deleted something. It's
24 the way it came to the police and, you know, that's
25 unfortunate, but that's -- that's just the, you know, you have

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1 to find a bullet casing or you don't, that's just the way the
2 evidence happens in this particular case. But it would seem
3 to be proper to explain that to the jury as to how it occurred
4 just to -- so there isn't any confusion on their part, but I'm
5 not gonna suppress it based on that factual presentation.

6 All right.

7 MS. WILSON: And, Your Honor, the final matter is I know
8 that the Court did rule to suppress the letters. I did not
9 hear the Court make a ruling on the phone calling?

10 THE COURT: I never understood from the testimony or the
11 presentation that the State was intending to use phone calls
12 and I certainly didn't hear anything -- nothing was presented
13 to me about there was something in a phone call where the
14 Defendant admits the crime or something about it. I just
15 didn't hear anything. I heard it about they got apparently
16 relevant information on some other crime that was good in
17 their prosecution of somebody else, but not in Mr. Bryant's.
18 Solicitor, was there something in the phone calls?

19 MR. HOLFORD: Your Honor, the State is gonna go back and
20 re-examine whether those phone calls are necessary or not
21 based on today's hearings.

22 THE COURT: Okay. Well, I'd appreciate that. Before we
23 do that then, I, I just didn't understand and I guess I would
24 have to hear, or if you got a transcript of it, something so
25 that I can understand the procedure. Now just because I

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1 suppressed letters, doesn't mean I'm suppressing the phone
2 calls. It's -- they're under a different factual basis. You
3 know, because of the warnings that are given to each
4 individual that makes a phone call every single time they make
5 a phone call at the J. Reuben Long Detention Center. The
6 explicit instructions and/or warnings that are given to a
7 person making a phone call. So I don't -- because I ruled one
8 way, doesn't mean I'm gonna rule that on the phone calls, but
9 I just never understood any testimony that there was anything
10 in there that impacted the prosecution of this particular
11 case. So I need that part to be made clear to me if there's
12 something in a phone call that you think impacts the
13 prosecution and you want to play that portion of the phone
14 call for this case, then I need to know what that is. All
15 right, sir?

16 MR. HOLFORD: Yes, Your Honor.

17 THE COURT: All right?

18 MS. WILSON: Thank you, Your Honor.

19 THE COURT: So whatever -- I don't know if I made that
20 clear as mud or what probably, but give me some information on
21 that because how I ruled on something else doesn't mean that
22 in the phone calls. Okay?

23 All right. So anything else, Ms. Wilson?

24 MS. WILSON: Nothing else from the Defense right now,
25 Your Honor.

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1 THE COURT: All right. From the Solicitor at this point
2 in time?

3 MR. HOLFORD: No, Your Honor.

4 THE COURT: All right. Very good. Y'all be here
5 tomorrow morning by 9:15. Please make sure that y'all, Ms.
6 Wilson and Solicitor, y'all go over the exhibits. Make sure
7 you've got those out there and if you've got problems let me
8 know about it in the morning so maybe we can resolve that
9 ahead of time. Okay.

10 MS. WILSON: Yes, sir. Thank you.

11 THE COURT: Thank y'all very much.

12 MR. HOLFORD: Thank you, Your Honor.

13 **(RECESS.)**

14 *******OFF THE RECORD*******

15 **END OF DAY ONE.**

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BY THE COURT

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1 DECEMBER 6, 2016 - DAY ONE

2 (On the Record.)

3 (REPORTER'S NOTE: The following takes place outside the
4 presence of the jury.)

5 BY THE COURT:

6 THE COURT: Thank you very much. All right.

7 Can you get the Defendant out, please?

8 (REPORTER'S NOTE: Defendant enters courtroom. Juror 136 is
9 also present in courtroom.)

10 THE COURT: Just right there is fine, sir. Thank you.

11 All right. You're Juror Number 136, Mr. Farrell; is that
12 correct, sir?

13 JUROR 136: Yes, sir.

14 THE COURT: All right, sir. You wrote a note to the
15 Court indicating that -- I'm assuming from the note, through
16 business, but anyway in some capacity, you know Solicitor Seth
17 Oskin's father, Robert Woody Oskin; is that correct, sir?

18 JUROR 136: Yes, sir.

19 THE COURT: From the contents of your note, you
20 apparently are good friends with him?

21 JUROR 136: Yeah.

22 THE COURT: All right. So you indicated it just didn't
23 click until apparently you heard Mr. Oskin's last name to know
24 the, the context or the -- that the two were related; is that
25 correct?

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1 JUROR 136: That's correct.

2 THE COURT: All right, sir. All right. Let me ask you a
3 couple of questions. First go over with you so that we're on
4 the same page as to your job as a juror. You have to decide
5 this case solely and completely on the facts and evidence
6 presented in the courtroom and from no other source. You
7 can't let anything outside of the courthouse or anything
8 that's occurred in your life in the past affect your decision
9 in any way; you understand that?

10 JUROR 136: Yes, sir.

11 THE COURT: The fact that you know Mr. Oskin's father,
12 that can't affect your decision, even subconsciously it cannot
13 affect your decision. It can't make the State's case more
14 believable or less believable because you are friends with his
15 father; you understand that?

16 JUROR 136: Yes, sir.

17 THE COURT: All right, sir. And when I ask you a
18 question about this, I need to know basically with absolute
19 certainty that you can follow those instructions and you can
20 do that. And if you have any question, hesitation, any kind of
21 doubt, you need to let me know. All right.

22 JUROR 136: Yes, sir.

23 THE COURT: All right. So understanding the job of the
24 juror as I have explained it to you and the fact that you know
25 Mr. Oskin's father as you have described it in your note, can

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1 you give to the State of South Carolina and to the Defendant a
2 fair and impartial trial; can you be a fair and impartial
3 juror and not let that association affect your decision in any
4 shape, manner or form?

5 JUROR 136: Yes, sir.

6 THE COURT: Without hesitation or question you can do
7 that?

8 JUROR 136: Without hesitation or question.

9 THE COURT: All right. Further questions from the State?

10 MR. HOLFORD: Nothing further, Your Honor.

11 THE COURT: Defense?

12 MS. WILSON: Yes, sir, Your Honor.

13 THE COURT: What question would you like me to ask?

14 MS. WILSON: Your Honor, can we approach briefly?

15 THE COURT: Certainly.

16 (REPORTER'S NOTE: A bench conference was held off the
17 record.)

18 THE COURT: Okay. All right. Mr. Farrell, if you'd just
19 go back to the jury room for a just a little bit. Okay?

20 JUROR 136: Absolutely.

21 THE COURT: Thank you, sir, I appreciate it.

22 All right. Ms. Wilson, as I understand, you didn't have
23 any further questions, you just were concerned about making
24 any objections in the face of the juror which obviously I
25 wasn't gonna do. I just wanted to make sure that I had asked

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1 all the questions that y'all wanted me to ask.

2 MS. WILSON: I'm sorry; yes, sir, Your Honor.

3 THE COURT: All right. Be glad to hear your argument at
4 this point in time.

5 MS. WILSON: Thank you, Your Honor. Certainly, I
6 understand that he is Mr. -- and I want to make sure I say his
7 name correctly, Mr. Farrell, Juror 126; is that correct?

8 THE COURT: I think it's 136.

9 MS. WILSON: 136?

10 THE COURT: What's his number, Madam Clerk?

11 CLERK: 136.

12 THE COURT: 136, yes, ma'am.

13 MS. WILSON: Thank you. Certainly, he said very
14 succinctly on yesterday that he did not know any, any of the
15 prosecutors, that he didn't have any family relationship or
16 any association with anyone. Overnight he has come back
17 saying -- well, obviously he's had a chance to think about it
18 or he recognized Seth or at least heard his name at some other
19 point and recognized that he had a relationship with Seth's
20 father. My understanding, based on what we heard today both
21 in camera and here in court in the courtroom is that he has
22 more than just a passing association. He goes off with, hangs
23 out with, spends time at the home of Seth's father. If -- and
24 I'm not saying that he's not being truthful today in what he's
25 saying, I am suggesting that to the Court however that the

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1 very fact that he denied or did not admit to any kind of
2 awareness of who Seth was on yesterday, but today is saying,
3 you know, I recognize him and, oh, I do hang out with his
4 father, which is basically what he's telling us. I don't
5 believe that it is the most trustworthy statement that he is
6 going to be able to fair and impartial despite the association
7 that he has a member of the prosecution's family. On that
8 basis, Your Honor, I would ask the Court to relieve Mr.
9 Farrell from jury duty and allow an alternate to take his
10 place.

11 THE COURT: All right. Solicitor, let me hear your
12 argument.

13 MR. HOLFORD: Yes, Your Honor. Based on the questions
14 yesterday, I think it's clear that Juror 136 doesn't know Seth
15 personally. He didn't answer up at that time. I think he's
16 done exactly what the Court would expect a juror to do is when
17 they realize they know someone who may be related, then he
18 came forward and gave that information. It doesn't change the
19 fact that he can be fair and impartial. He stated that.
20 There were other jurors that were seated yesterday that knew
21 or had some knowledge or answered up to some of the Court's
22 questions that could still be fair and impartial. Your Honor,
23 that doesn't change the fact that his answers should be taken
24 at his word, that he can be fair and impartial just because he
25 knows Seth's father.

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1 THE COURT: All right. Thank you.

2 All right. I did want to -- I did look to see where in
3 the striking of the panel, Mr. Farrell came to the attention
4 of the State and the Defense. In looking at the strike sheet,
5 the Court finds that Mr. Farrell's name came up immediately
6 after the Defense had exercised all of its 10 peremptory
7 strikes. So the State -- the Defense would not have had an
8 opportunity to have struck Mr. Farrell for reasons good to the
9 knowledge of the Defense because all their strikes had already
10 been used at that point in time. The only opportunity for the
11 Defense would've been to ask to strike the juror for cause
12 should -- when his name was called based upon if the
13 information had been available to the Defense prior to today.
14 I understand your argument, Ms. Wilson, but looking at the
15 juror's note, it does not indicate that he is very familiar
16 with the Solicitor, but good friends with his father. I don't
17 find any nefarious purpose here. I think the juror did
18 exactly what came to the juror. He didn't make the connection
19 at the time. Sometimes all our minds work, things occur to us
20 at a later time that don't occur to us immediately in the
21 moment and I feel certain that's what has happened here, but I
22 guess I'm concerned with the level of connection that this
23 juror has with Mr. Oskin's father. It's not -- they are both
24 realtors and apparently had some business dealings together at
25 some point in time and that could be a lot of people in this

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1 county. But, he goes on to indicate that he's been to the
2 house, indicates where the house is located, that he has had
3 other social activities with the -- Mr. Oskin's father and I
4 think it would place this juror in a difficult position should
5 he come to a place in time where if this would occur, he has
6 some doubt as to the State's case, it would seem to me it
7 would be hard to eliminate subconsciously at least the benefit
8 of the doubt that he would give to Mr. Oskin based upon his
9 being good friends, as he's indicated, good friends with his
10 father. So more out of an abundance of caution than anything
11 else, I'm going to remove Mr. Farrell from this particular
12 case.

13 Now, we have two alternates. So having made that
14 decision, Deputy, if you would, I think we better call him
15 back in just so I explain to him. I think it would be better
16 to have him -- call him back in so I can explain it and then
17 I'll ---

18 MR. HOLFORD: Your Honor, if we could just have its
19 objection noted for the record.

20 THE COURT: Yes, sir, I understand. I think it falls
21 within the category of the Court's duty and obligation to make
22 sure that there is an absolutely fair and impartial jury that
23 makes the decision in this matter and that there's not even a
24 hint of an outside influence of any kind.

25 (REPORTER'S NOTE: Juror 136 enters courtroom.)

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1 THE COURT: Mr. Farrell, I've discussed the matter with
2 the attorneys and they've made their position, but this is the
3 Court's decision, it's not their decision. I'm in a position
4 where I must make sure that the panel makes a decision solely
5 and completely on the facts and evidence. And I'm not
6 assigning any, you know, ill purpose to you at all and I'm
7 very glad you brought it to the Court's attention now rather
8 than later on when it would be, you know, much more
9 problematic at that point in time. But just so that there
10 can't be any question, whatever the verdict is at the end of
11 the day, so there can't be anybody can question it at all, I'm
12 gonna remove you from this case so that there just isn't any
13 doubt in anybody's mind. Whatever the twelve jurors come up
14 with, they did that based on the facts and evidence in the
15 courtroom and there couldn't have been any other reason for
16 how they came about and that's the only reason I'm doing this.
17 All right? So, with that, I'm gonna set you aside from this
18 particular case.

19 What did we tell the panel?

20 CLERK: Call back.

21 THE COURT: If you would, call back that juror
22 information line today after 12:00. My expectation is more
23 than likely than not, we'll be telling you to call back again,
24 but if you would, please call that information line after
25 12:00 today. Okay?

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BY THE COURT

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1 JUROR 136: Okay.

2 THE COURT: Thank you, sir. With that you are excused.
3 Thank you very much.

4 JUROR 136: Thank you.

5 (REPORTER'S NOTE: Juror 136 exits courtroom.)

6 THE COURT: All right. Therefore, substituting in the
7 alternate juror, there is a different process in civil and
8 criminal court. In civil court, the alternate jurors,
9 pursuant to Rule 47(b) South Carolina Rules of Civil Procedure
10 alternate jurors are replaced in the order in which they are
11 called. In criminal court, General Sessions, the alternate
12 jurors are replaced by the drawing of lot or drawing of names,
13 and that's pursuant to Section 14-7-1340, Code of Laws for the
14 State of South Carolina, 1976, as amended. So, what I'm
15 requiring the Clerk of Court to do is to take a small piece of
16 paper and place the name of the alternate, both the alternates
17 on a separate piece of paper. I want you to write their full
18 names as indicated on the juror card and the strike sheet,
19 write out their name on a separate small piece of paper, fold
20 that up so there's no possibility of you knowing which one of
21 the two they are. When you've accomplished that, let me know.

22 Understanding that's the process the Court's gonna use,
23 any objection to that from the State?

24 MR. HOLFORD: No, Your Honor.

25 THE COURT: From the Defense?

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1 MS. WILSON: No, Your Honor. Thank you.

2 THE COURT: Thank you very much.

3 All right. Madam Clerk, have you placed the names on two
4 separate sheets of paper, folded them up and you can't see
5 what the names are, correct?

6 CLERK: Correct.

7 THE COURT: Put them in the cup, shake it up, pull one
8 out. Read the name, please, ma'am.

9 CLERK: Arland M. Blackburn, Number 35.

10 THE COURT: All right. The Court hereby substitutes Mr.
11 Arland M. Blackburn, Juror Number 35 as a juror in this
12 particular matter.

13 Oh, I'm sorry. Oh, that's it. I'm sorry. It's a woman.
14 Okay. I didn't see that. You're right. I see that. So,
15 it's Mrs. or Ms. Arland M. Blackburn.

16 MOTIONS:

17 THE COURT: All right. Solicitor, y'all worked on with
18 the Defense trying to agree on some exhibits and I understand
19 there's some issue as to some exhibits. Do we need to cover
20 that now with the witnesses that you intend to call first or
21 can it be done at a later time?

22 MR. HOLFORD: Your Honor, there are three exhibits that
23 we disagree on that would come up this morning.

24 THE COURT: All right. Very good. Can you tell me which
25 those are, please?

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1 MR. HOLFORD: They have not yet been marked.

2 THE COURT: Okay. Well, go ahead and mark them, so we're
3 clear on what we're talking about.

4 COURT REPORTER: State's Fifteen, Sixteen and Seventeen.

5 STATE'S EXHIBIT NUMBERS FIFTEEN, SIXTEEN AND SEVENTEEN

6 MARKED FOR IDENTIFICATION

7 THE COURT: All right. For identification purposes those
8 are State's Fifteen, Sixteen and Seventeen.

9 MR. HOLFORD: Yes, Your Honor. There are other exhibits,
10 but they will come up at a later time. State's Fifteen,
11 Sixteen and Seventeen, if I can hand them up to the Court?

12 THE COURT: Yes, sir. They're all three photographs?

13 MR. HOLFORD: They're all three photographs. They're
14 photographs of the scene at the time. They show the victim,
15 Saequan Vereen lying on the ground and he's covered by a
16 sheet.

17 THE COURT: All right. Very good. All right, Solicitor.
18 I'll be glad to hear from you, ma'am?

19 MS. WILSON: Thank you, Your Honor.

20 THE COURT: You want to look at these so when you say the
21 exhibit number of Fifteen, Sixteen, Seventeen, you know which
22 ones or how they're marked.

23 MS. WILSON: Yes, sir. Your Honor, I think it's very
24 well established that the admission of photographic evidence
25 when it's very graphic in nature and it's unnecessary can be

1 used to inflame the passions of the jury and my position on
2 these photos and some of the other ones that we're not talking
3 about at this moment, is that these photographs would 'do just
4 that. Color photographs, body is on the ground, there is part
5 of the body actually not covered in one of the photographs,
6 substantially uncovered on the side. You can see blood on the
7 hands. Certainly, Your Honor, information about where the body
8 was, the fact that there was a body, all those things are
9 gonna be a part of the evidence, the testimony evidence that's
10 gonna be presented. I don't believe that these photographs
11 are necessary in their current state. Certainly the vivid
12 color photograph is not necessary. And I, outside of asking
13 the Court just to exclude these photographs as being I think
14 unnecessarily insightful of the passions or, or the emotions
15 of the jury, I would ask the Court that if you are going to
16 allow them, to at least have these be in black-and-white.
17 Certainly in the two photographs it's just a picture of the
18 body itself. In the one photograph and I believe it's -- when
19 I say the two, I mean State's Exhibit Fifteen and Sixteen. In
20 State's Exhibit Seventeen, there are at least markers and I
21 assume that they want it in because of the markers about
22 bullets or bullet fragments or things of that nature and that
23 would be understandable, but I don't understand why a color
24 photo is necessary for that. I'm just -- I believe that -- I
25 believe that there is nothing more in these photographs other

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1 than an attempt to inflame the passions of the jury. I don't
2 see any other purpose for these photographs. There's going to
3 be testimony and I'm making an assumption here, but I, I have
4 to believe there will be testimony from the doctor who did the
5 autopsy. I have to also believe that there's gonna be
6 testimony from the officers on scene who were there at the
7 time that they located the body. I'm gonna have to assume
8 that there's gonna be forensic evidence about the bullets and
9 the fragments that were found. There are other ways to get
10 this information in. I don't understand the purpose for these
11 particular photos.

12 THE COURT: All right. You want to hand those to the
13 Solicitor?

14 All right, Solicitor, I'll be glad to hear your arguments
15 about the necessity of those.

16 MR. HOLFORD: Thank you, Your Honor. As to Exhibit
17 Fifteen, what we have in this case is the Defense and State
18 have agreed to State's Six, and so you have along 9th Avenue,
19 you have Club Levels to the right as you're facing it and then
20 to the left is where the victim was shot. And so I have a
21 picture that shows Levels, but then I don't have a picture
22 that shows where the crime actually occurred. State's Fifteen
23 is certainly a continuation of Six. It's just a little
24 further down the sidewalk to show the proximity to where the
25 events occurred.

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1 The jury is gonna be -- well, the State would, would
2 later seek to introduce a video. However, Your Honor, these
3 are not inflammatory. They show the scene as it occurred.
4 The jury has to have a full picture of what's going on. We're
5 trying to show the jury the scene as it was at the time except
6 for the fact that we did take the, the care to cover Mr.
7 Vereen's body at least from the waist up.

8 Fifteen doesn't show any blood. It's not a close up. It
9 shows shattered glass on the storefront. It shows where the
10 victim was shot and, and that he's laying on the ground. It's
11 a continuation of the scene. The State thinks it's necessary
12 for the jury to get a picture of what actually is going on.
13 The Defense would have us enter exhibits that don't show the
14 crime that actually occurred. Yet, they want to keep from the
15 jury pictures that actually show a crime that the State's
16 alleging happened.

17 Your Honor, State's Sixteen is a closer up video. The
18 Defendant is still covered. It doesn't show all the gunshot
19 wounds, it doesn't show -- there is some blood on his hand.
20 In a case like this where the victim was gunned down in the
21 street, it was a violent crime. There's gonna be some blood,
22 but it's not overly inflammatory. It's not meant to sway the
23 prejudice and passion of the jury. It's meant to show a
24 complete picture of what actually happened in this case.

25 And as to State's Seventeen, the Defense is correct, it

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1 has the item markers listed out and so we can show where the
2 shell casings were in relation to the victim in this case.
3 All these pictures also show broken glass. The State would
4 allege that shows that bullets were flying at a certain angle
5 from the road to the victim as opposed to coming from any
6 other source. They were coming from where the Defendant was
7 towards the victim, striking the victim and also striking the
8 glass behind him. The State feels they're not prejudicial;
9 certainly not overly prejudicial and they would be helpful to
10 the jury in determining the facts and evidence in this case.

11 THE COURT: All right. Could I have the exhibits,
12 please? Thank you, sir.

13 All right. Regarding the exhibits in this matter, I'm
14 going to allow State's Exhibits Fifteen and Seventeen. I find
15 Sixteen to be duplicative of the information contained in
16 Exhibit Fifteen and gives no added value or information to aid
17 the jury. I do find that -- and I'm saying this based upon
18 the State's assurances. Now, Ms. Wilson, if this does not
19 turn out to be true, I'll allow you to bring it back to my
20 attention, but I believe as indicated by the State, that the
21 photographs will support the testimony of witnesses that the
22 State will call in this matter. And further that it's
23 relevant to the nature of the crime to be described by the
24 witnesses and, therefore, would allow the jury to more fully
25 understand the facts and nature of this case and to

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1 potentially, again depending on the testimony, corroborate,
2 based upon what we heard in the motions, corroborate the
3 testimony of one or more witnesses of the deliberate and
4 calculated act of the Defendant regarding the shooting and it
5 would allow the jury to more fully understand that nature and
6 the testimony in this case. Obviously, if the testimony does
7 not back up those assurances made by the State, then I'll hear
8 you again on State's Fifteen and Seventeen. But I, at the
9 present time, I will allow the State to use Fifteen and
10 Seventeen. I'm not gonna allow Sixteen. It's just a close-up
11 view of Fifteen, exact same information, in fact, less
12 information in Sixteen than Fifteen and anything that is
13 necessary for the State can be garnered out of Fifteen. I do
14 not believe Sixteen to be necessary and I'm not gonna allow
15 Sixteen. All right.

16 MS. WILSON: Yes, sir, and Your Honor, if I might, could
17 I ask the Court to consider making those black-and-white
18 photos?

19 THE COURT: I appreciate that. I do not believe that
20 that is going to ---

21 MS. WILSON: I mean, certainly ---

22 THE COURT: --- lessen the, lessen the -- and I want to
23 be clear that I have looked at the prejudicial value of the
24 evidence.

25 MS. WILSON: Yes, sir.

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1 THE COURT: Clearly all evidence tends to have a
2 prejudicial nature to someone. But, in this particular
3 matter, I've looked at the prejudicial value to the Defendant
4 and I do find that the probative value outweighs any prejudice
5 to the Defendant based upon what the Court indicated, the aid
6 of the jury, the corroboration, the potential establishment of
7 the deliberate and calculated act as presented by witnesses by
8 the State. But I, I don't see that making them black-and-
9 white would help or change the nature of the Court's decision
10 in this matter. And matter of fact, in Seventeen, I think the
11 color nature definitely aids the jury in that all the markers
12 are yellow and are highlighted. If you turned it into black-
13 and-white, I don't think it will be as descriptive to the
14 jury. So I think it aids the, the jury in, in that manner.

15 MS. WILSON: Yes, sir.

16 THE COURT: So I will respectfully decline to make the
17 State make them black-and-white.

18 MS. WILSON: Thank you, Your Honor, and I would just ---

19 THE COURT: Obviously, your objections are noted for the
20 record.

21 MS. WILSON: Thank you.

22 MR. HOLFORD: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 MR. HOLFORD: And the State has agreed on State's -- or
25 the State and Defense have agreed on Six through Fourteen.

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BY THE COURT

1 THE COURT: All right. So is that correct, Ms. Wilson?

2 MS. WILSON: Let me make sure, I have seen them. I'm
3 sorry.

4 THE COURT: All right.

5 MS. WILSON: And I'm sorry.

6 COURT REPORTER: This is ID only?

7 MR. HOLFORD: No, that one is not allowed.

8 COURT REPORTER: And that is ID only. Okay.

9 THE COURT: Now just to be clear, Fifteen and Seventeen
10 you will need to move to introduced those into evidence at the
11 appropriate time through the appropriate witness.

12 MR. HOLFORD: Yes, Your Honor.

13 THE COURT: All right.

14 MS. WILSON: No objection to those, Your Honor, Six
15 through Fourteen.

16 THE COURT: All right. Six through Fourteen. So State's
17 Exhibits Six through Fourteen, the Court is gonna allow those
18 into evidence without objection in this particular case. So
19 they are in evidence in this particular case.

20 STATE'S EXHIBIT NUMBERS SIX THROUGH FOURTEEN

21 ADMITTED INTO EVIDENCE

22 BY THE COURT:

23 THE COURT: All right. So with that is the State ready
24 for the jury to come in?

25 MR. HOLFORD: Yes, sir, Your Honor.

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1 THE COURT: And the Defense?

2 MS. WILSON: Yes, sir.

3 THE COURT: All right. Very good. Ask the jury to come
4 in, please.

5 (REPORTER'S NOTE: Jury enters courtroom.)

6 THE COURT: Y'all can take that extra chair out now.

7 Thank you. Have a seat right there, sir. Thank you.

8 All right. Ms. Arland Blackburn, would you raise your
9 hand, ma'am? All right. And Mr. Dimotheus Hawes. All right.
10 So, Ms. Blackburn and Mr. Hawes, y'all switch seats.

11 Mr. Hawes, you remain as the lone alternate in this case.
12 You will always occupy that particular seat when you come back
13 to the jury room. Okay?

14 Now, now, Ms. Blackburn, I have substituted you in from
15 being an alternate to being a regular member of the jury
16 having removed another juror for reasons that were stated in
17 open court. So you are now one of the twelve members of the
18 jury in this case and Mr. Hawes remains as the lone alternate
19 in this particular matter.

20 So, with that substitution and to make sure we have
21 everybody here properly, I'm gonna have the Clerk of Court
22 representative call the roll. When she calls your name, just
23 indicate by raising your right hand so we make sure we have
24 everybody properly here. Okay? Thank you.

25 CLERK: Juror Number 323, Kimberlyn Poston; 210, Melissa

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1 Johnson; 288, Michelle Mishoe; 278, Gregory Melvin; 258,
2 Courtney McGill; 114, Josephette Dotson; 36, Tara Blackburn;
3 387, Matthew Svejkovsky; 303, Steven Nunn; 394, Bobby Taylor;
4 177, Debra Hanley; 35, Arland Blackburn; 186, Dimotheus Hawes.
5 Thank you.

6 THE COURT: All right. Very good. If you want to just
7 stand there, Madam Clerk.

8 So the very first thing that's gonna happen in this case
9 then is, as I understand it, the jury selected you, Ms.
10 Poston, as the foreperson for this jury; is that right?

11 JUROR 323: Yes, sir.

12 THE COURT: And so you know you always occupy that
13 particular seat when you come back from the jury room.
14 Everybody else just kind of fills in except for Mr. Hawes, who
15 always occupies that seat. All right.

16 The Clerk of Court is now gonna administer your oath to
17 you. So, if you would all please stand at this time.

18 CLERK: Please raise your right hand.

19 (REPORTER'S NOTE: Jury is duly sworn.)

20 CLERK: Thank you. If you agree with this statement,
21 please be seated.

22 THE COURT: All the jurors having taken their seat, the
23 Court finds the jury properly sworn in this particular matter.

24 I'm sure you're sitting there wondering what is your job;
25 what are you gonna be doing in this trial? You will be the

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1 judges of the facts of this particular case. The Court will
2 not indicate to you in any way what I believe the facts of
3 this case are. It's not gonna be my job or my responsibility.
4 It's going to be your job and your responsibility to listen to
5 the testimony of the witnesses presented to you under oath,
6 examine any documentary or physical evidence that comes to you
7 and to make your decision based upon that of the facts and the
8 evidence you find to be true in this particular case.

9 You'll be called upon to judge the credibility and that
10 is the believability of the witnesses that come before you and
11 testify under oath. And if you're thinking, How am I gonna
12 judge somebody's credibility and believability? You do it
13 every single day of your life. When somebody tells you
14 something, you are automatically judging in your own mind
15 whether or not you believe them. You use your good common
16 sense. You use your good judgement that you use in conducting
17 your own affairs to make that decision and that's what we're
18 gonna be asking you to do. Use your good common sense.
19 Listen to the facts and the evidence you hear in this case and
20 find that evidence that convinces you it's true. Now that
21 evidence you find to be true, then you have to take that
22 evidence and weigh it against the State's burden to prove the
23 Defendant guilty beyond a reasonable doubt. The State always
24 has the burden to prove the Defendant guilty beyond a
25 reasonable doubt in all matters. I tell juries all the time,

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1 the Defendant has nothing to prove to you. The Defendant has
2 nothing to show to you. The Defendant need not even show up
3 for trial because they don't have anything to prove to you.
4 The State of South Carolina must prove its case to you beyond
5 a reasonable doubt. That is based on upon the evidence you
6 find to be true in this particular case.

7 I read to you when you were part of the panel and all,
8 and we were picking the -- this jury. And I read the
9 indictment, the charging document which brings the matter to
10 Court. I will remind you again, that wasn't evidence and
11 can't be considered by you as evidence, but it was the charge.
12 It brought the matter to court. To that indictment, to that
13 charge, the Defendant pled not guilty. At that point in time,
14 when that charge was levied or brought against the Defendant,
15 he was presumed innocent of the crime for which the State has
16 brought that charge. That presumption of innocence has not
17 ended now. It does not end at any point in time unless and
18 until you believe the State has proved the guilt of the
19 Defendant of the crime charged beyond a reasonable doubt based
20 upon the facts and the evidence you collectively find to be
21 true in this particular case.

22 How the trial will proceed? When I get done with these
23 brief statements to you, we'll have the opening statements of
24 the attorneys. It will be their initial presentation to you
25 of what they believe the facts and evidence will show to you

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1 during the course of the trial. Understanding that that's not
2 evidence. It's their belief as to this is what we think the
3 witnesses are gonna testify to or we think the evidence is
4 gonna show you X, Y and Z. It's their way of introducing the
5 matter to you, but it's not evidence.

6 The evidentiary portion comes next. That's when the
7 witnesses come before you. They testify under oath about what
8 they know about this matter. There may be the receipt of
9 certain documentary, photographic evidence and maybe some
10 other kind of physical evidence through those witnesses. We
11 will then, when that's all concluded, we'll have the closing
12 arguments of the attorneys. It's their summation of what has
13 occurred. The summation of their opinion about the facts;
14 what they believe the facts as shown to you. Remembering, of
15 course, that you collectively are the judges of the facts, the
16 facts and evidence you find to be true. And again, what they
17 tell you in their closing arguments; that's not evidence.
18 That would've already happened. After that, I will give you
19 the law that you will apply to the facts and evidence you find
20 to be true and then I'll submit the case to you for your
21 deliberations and your unanimous decision in this particular
22 matter.

23 Now, during the course of the trial, the attorneys may
24 raise certain matters to the Court. Objection, some issue
25 that they want the Court to make a decision about and that

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1 would be one of my jobs and duties and responsibilities,
2 guiding the trial. If I make a ruling in your presence and I
3 don't send you back to the jury room, so I can discuss it more
4 fully with the attorneys, please remember, again, I'm not
5 making any comments on the facts. I'm not making any comments
6 on credibility or believability. That's your job. That's
7 your responsibility. What I would be doing is saying this is
8 proper for the jury to hear or it's not proper for the jury to
9 hear, and then it's up to you to give it the consideration or
10 weight you think it deserves, if any at all.

11 We understand that we are asking you to do a task that
12 you didn't come to court to do and that is to serve on jury
13 service. We appreciate your service. We appreciate the fact
14 that you are available.

15 I am going to be asking you, it's your job to judge the
16 evidence in this matter, so I need for you, and I know you
17 will, pay attention to the witnesses when they testify. Pay
18 attention to the exhibits and documents and those types of
19 things, those type of physical evidence. You may see them
20 when you're sitting there in the jury box or you may not
21 understand when you go to deliberate, all those exhibits that
22 were properly introduced that I allowed into evidence, you're
23 gonna have them there. You're gonna have them all the time
24 you deem necessary to look at them at that point in time. And
25 that brings me to the point of I don't want you to discuss

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1 this case before I give it to you at the end. If you would
2 discuss it after a certain exhibit came in or you would
3 discuss it after one or a couple of witnesses, you'd be maybe
4 making decisions based on incomplete information. It might
5 very well be the next exhibit, the next witness, completely
6 and totally changes your mind as to what you're thinking about
7 this particular matter. So I don't want you to discuss it.
8 As best you can, I don't want you to come to any kind of firm
9 conclusions as to what you believe or don't believe until
10 you've heard all the evidence, until you know the law that you
11 have to apply to the facts and evidence you find to be true.
12 You can talk about anything you want to in the jury room other
13 than this case until I give it to you at the end.

14 With that, I'm gonna turn it over to the lawyers for
15 their opening statements.

16 Solicitor?

17 MR. OSKIN: Yes, sir, may it please the Court, Your
18 Honor?

19 THE COURT: Yes, sir.

20 OPENING STATEMENT BY OSKIN:

21 MR. OSKIN: Good morning, ladies and gentlemen. Lying in
22 wait, armed and ready, dressed in all black on a cold February
23 night in Myrtle Beach, 9th Avenue, outside Club Levels. The
24 Defendant, Kevin Bryant, was waiting for his victim, Saequan
25 Vereen, to leave the club. Where he walked down the sidewalk,

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1 approached from the vehicle that he was hidden behind, fired
2 into him, shot multiple times, made sure that he killed him.

3 The case before you is not only a murder, it was an
4 execution and, after that, it's a story of great police work,
5 that quickly apprehended the suspect, who later became our
6 Defendant. How they found him, how they made a visual
7 identification of him, and why he's before you today facing
8 this trial. To tell the story, I wanted to tell it from three
9 perspectives. It's gonna be from the Defendant himself, Kevin
10 Bryant, and the victim in this case, Saequan Vereen and from
11 the security guards who were eyewitnesses at the club.

12 We'll start with Mr. Bryant. Club Levels in on 9th
13 Avenue in Myrtle Beach, if you're familiar with the area.
14 It's a nightclub, late night club. They had a red and white
15 party that night. He was in there and you'll see that he was
16 in there. He left, you'll see what he was wearing; wearing
17 all black, he left the club and goes -- he exits down the
18 street, he goes away and then he comes back. He comes back to
19 the sidewalk. Once he's there, he talks to some people
20 outside the club, but he's focused. He makes a move to the
21 vehicle where he stands beside that. He stands there for some
22 time, for a few minutes. Through that progression, he stands
23 there and crouches down in between the vehicle and the truck
24 he was standing behind. He stays there so focused, so intent
25 on what he's there to do. The people who are coming to the

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OPENING BY OSKIN

1 club, literally almost trip over him as they're walking up the
2 sidewalk. It's at this time that our victim, Saequan Vereen,
3 was coming in from the club, he jumps out, he immediately
4 fires into our victim multiple times, security guards come at
5 him, they tell him to drop his weapon, he doesn't, in fact he
6 continually shoots into the victim until he runs away. As he
7 runs, he leaves, he drops his gun, he runs off, security
8 guards follow him. He's later found at the Human Resources
9 building. It was not far from the club, not far from the
10 police department. He's found, he's injured and he is
11 detained there because they think that they've found the
12 suspect that matches the description that was given to them.
13 He's held there a moment, he's identified and he's sent to the
14 Grand Strand Hospital to have his injuries treated.

15 To that second perspective, Saequan Vereen, a young man
16 from Myrtle Beach is leaving the club, two men are ahead of
17 him. I want you to remember where our Defendant is crouched.
18 Saequan is walking down the sidewalk, hands in his pockets;
19 it's a cold night in February. The Defendant jumps out in
20 front of him, fires into him, he's immediately knocked down.
21 He fired into him multiple times. He doesn't die instantly,
22 but he dies shortly thereafter.

23 The third perspective, the security guard eyewitnesses.
24 First, they're at the club, the door is here. They're
25 handling another incident; there's a fight in the club. They

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1 hear the shots fired. The immediately respond. They tell
2 the Defendant to drop his weapon, freeze; he does not follow
3 those commands. They return fire. They see the Defendant
4 stumble as he runs across the street. Two security guards,
5 one sees where the gun is dropped, he stays with the gun. The
6 second security guard follows the witness until he loses him.
7 He'll tell you that he sees him going in the direction of what
8 is the Human Resources building. They return, they phone it
9 into their dispatch, to their security employer who then
10 notifies that to the Myrtle Beach Police Department. Myrtle
11 Beach Police Station is very close to where this club is at
12 and where this murder occurred. They arrive on scene and they
13 get their description from the security guards and at the same
14 time, we have our Defendant at the Human Resources building
15 detained as I told you from the first perspective. They say
16 that they -- they give the description; it matches. They
17 drive those security guards separately to where the Defendant
18 is at. Almost instantaneously they say that's the guy.
19 That's the guy that they fired at, that's the guy that they
20 saw shooting our victim on the ground, and they identified him
21 by his clothes and by his build. Once they got there, they
22 knew that that was him.

23 From there we learn that Mr. Bryant had injury to his arm
24 that would prove to be the bullet that he was shot with. I
25 want you to remember this bullet. I want you to treat it as

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OPENING BY OSKIN

1 -- you've heard the statement, follow the money; well, in this
2 case, let's follow that bullet. It might as well be a GPS
3 tracker that puts the Defendant getting hit at the scene after
4 shooting our victim in the case, running to the Human
5 Resources building, where he was found.

6 That's the story part. Let's talk about what you're
7 gonna hear during this trial. Most times I have to stand up
8 here before the jury and I have to tell you that it's not like
9 on T.V. shows, it's not like a movie, that I don't have all
10 this evidence for you, that I'm gonna have to ask you to use
11 your common sense, which I will still greatly rely on, because
12 we all have that. I usually have to say there's not videos,
13 there's not this or there's not that. Well, in this case we
14 do have a video. We have a video of the shooting itself where
15 everything I told you from those three perspectives will merge
16 together and make sense of everything I'm telling you here
17 today and why Kevin Bryant is our Defendant. You'll hear
18 testimony from police officers who responded, and there will
19 be a lot, but as I said earlier, the police station is so
20 close, no choice but to respond. There's gonna be a lot of
21 officers involved. They'll tell you they interviewed the
22 security guards and what those security guards told them, the
23 events that happened that night, what they heard, what they
24 saw, who they fired at and why the fired at them. You'll hear
25 from them why Kevin Bryant is our Defendant here today.

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1 You'll see pictures of the scene, you'll see the weapon that
2 our security guard used to fire at Mr. Bryant. You'll see the
3 bullet that matches that I told you about. It's that GPS
4 tracking device, right, you're gonna see that. You'll see
5 pictures of that. It'll be that evidence that we present to
6 you today and throughout this week that we'll be using to
7 prove his guilt beyond a reasonable doubt.

8 What is a reasonable doubt? Reasonable doubt is the
9 proof that leaves you firmly convinced that the Defendant
10 committed the crime that he's charged with today.

11 Mr. Bryant is charged with murder. The statutory
12 definition to that, I believe, as the Judge will later define
13 for you and if anything -- if I miss anything that he says,
14 you certainly rely on him. Murder is the intentional killing
15 of another with malice aforethought whether expressed or
16 implied. Intentional killing, that means it's a killing
17 without excuse, just cause, without a reason. Killing, we
18 have the death of Mr. Saequan Vereen. Dr. Proctor from Grand
19 Strand who performed his autopsy will tell you the cause of
20 death is multiple gunshot wounds and that it was a homicide.
21 With malice aforethought, malice that's wicked spirit at the
22 time -- you know, again like I said, with no excuse, it's the
23 doing of a wrongful act without just cause or excuse. And
24 with malice aforethought, there's several ways to get malice
25 aforethought. One here before you today, obviously, is

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OPENING BY WILSON

1 premeditation. That's the lying in wait. That's when he was
2 waiting by the vehicle. This was no accident. He knew what
3 he was there to do. He knew he was there to kill. He knew
4 who he was there to kill. He made sure he did that. Kevin
5 Bryant and only Kevin Bryant fired that weapon into Saequan
6 Vereen and killed him.

7 So, at the end of this trial, we'll stand back in front
8 of you and we'll ask that you return a verdict, the only
9 verdict that the evidence will allow. You'll see it, because
10 like I say, it will be cumulative. You'll have more than
11 enough. The State will meet its burden and we're confident
12 that when you return you will return the verdict of guilty.

13 Please give Ms. Wilson your attention.

14 I thank you.

15 THE COURT: Ms. Wilson?

16 MS. WILSON: Thank you, Your Honor.

17 OPENING STATEMENT BY WILSON:

18 Good morning, ladies and gentlemen of the jury. My name
19 is Kia Wilson and I represent Mr. Kevin Bryant. Now, as the
20 State has just laid a lot of information on you, I want to
21 remind you that none of what you just heard is actually
22 evidence. The evidence will come from the testimony that gets
23 presented on this stand. Okay?

24 I'm asking very little of you, two phrases. One, to keep
25 in mind that the phrase beyond a reasonable doubt is at the

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OPENING BY WILSON

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1 heart of what you are required to find. Everything that
2 you've heard them present, everything that you just heard in
3 that opening statement, has to actually be supported by people
4 that you find credible when they take the stand. If you don't
5 believe it, if you find that there's some part of it that you
6 don't like or don't believe, you get to toss it out. And
7 certainly anything that I say that's not in accordance with
8 what the Judge instructs you to do, I would ask you to
9 disregard. But that is how this process will work when it's
10 time for you to deliberate.

11 The other two things -- beyond a reasonable doubt, I want
12 you to remember that. It's not enough for them to just get up
13 there and say it. You need to find it believable and
14 credible.

15 The second thing that I'm gonna ask of you and the final
16 thing, is just to remember that he is innocent and he wears
17 that innocence throughout the entirety of this trial until
18 such time as deliberations begin and you then believe that he
19 must be found guilty. He is innocent and it is their job and
20 it is a high threshold for them to prove that he is guilty.

21 I thank you for your time this morning.

22 THE COURT: All right. Solicitor, your first witness
23 please?

24 MR. HOLFORD: The State calls John Cardona.

25 THE COURT: All right, sir, if you'd come all the way

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1 around and meet the Clerk's representative right up here
2 please.

3 JOHN GABRIEL CARDONA, HAVING BEEN DULY
4 SWORN TESTIFIES AS FOLLOWS:

5 CLERK: Please have a seat and state your full name and
6 spell your last name for the Court.

7 MR. CARDONA: John Gabriel Cardona, C-A-R-D-O-N-A.

8 THE COURT: All right, Solicitor.

9 DIRECT EXAMINATION OF JOHN GABRIEL CARDONA BY MR. HOLFORD:

10 Q: Officer Cardona, I want you to focus your attention on
11 the jury when you give me your answers.

12 Where are you currently employed?

13 A: Myrtle Beach Police Department.

14 Q: And how long have you been employed there?

15 A: Approximately three years.

16 Q: Okay. So, back February 15th, 2015, what was your
17 position with Myrtle Beach?

18 A: Patrol Officer.

19 Q: And did you have a chance to respond to the scene that
20 night?

21 A: Yes, sir.

22 Q: Or early that morning?

23 A: Yes, sir.

24 Q: And tell the jury where that was?

25 A: It was on 9th Avenue North in Myrtle Beach, South

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1 Carolina in Horry County.

2 Q: And would you recognize if I showed you a map of the
3 location?

4 A: Yes, sir.

5 Q: How long have you been in Myrtle Beach?

6 A: For about six years now.

7 Q: Okay. What kind of training do you go through as an
8 officer?

9 A: You go through some pre-service training, you go to the
10 Academy which covers different areas and then you have
11 different training courses that you take while you're with the
12 Police Department, just a lot of variety of things.

13 Q: And before I show you this, what was your -- what's your
14 involvement with this case?

15 A: I was the reporting officer.

16 Q: And what's that mean?

17 A: Usually whenever you come on scene, just people take
18 different roles. Some people take care of the crime scene,
19 other people take care of the report, just everyone takes
20 different roles.

21 Q: And so what did you do specifically?

22 A: I wrote the report, sir.

23 MR. HOLFORD: Your Honor, may I approach ---

24 THE COURT: Yes, sir.

25 MR. HOLFORD: --- with State's One.

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1 BY MR. HOLFORD:

2 Q: Can you identify what State's One is? What is this
3 entire exhibit?

4 A: This is Myrtle Beach. That's Kings Highway, 9th Avenue
5 North, Broadway.

6 Q: Does this accurately reflect a map of that area?

7 A: Yes, sir.

8 MR. HOLFORD: The State would move to -- move State's One
9 in evidence.

10 THE COURT: Any objection?

11 MS. WILSON: No objection, Your Honor.

12 THE COURT: All right. It's into evidence without
13 objection.

14 STATE'S EXHIBIT NUMBER ONE

15 ADMITTED INTO EVIDENCE

16 BY MR. HOLFORD:

17 Q: All right. I'm gonna turn this to the jury so they can
18 see. Now, I want you to point out where is Levels? Where did
19 you respond on this map?

20 A: Right around here, sir.

21 Q: Okay.

22 THE COURT: You need to speak up if you're gonna stand
23 up.

24 A: I apologize. Right around here, sir.

25 BY MR. HOLFORD:

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- 1 Q: Right in here?
- 2 A: Yes, sir.
- 3 Q: Okay. And show us where the Myrtle Beach Police
- 4 Department is? Joe White is to the left.
- 5 A: 10th Avenue. (Indicating) Right there.
- 6 Q: Okay. So it's pretty close?
- 7 A: Yes, sir.
- 8 Q: And can you show me on this map -- this is Myrtle Beach
- 9 Police Department?
- 10 A: Yes, sir.
- 11 Q: And can you show me on the map where the Human Resources
- 12 building is?
- 13 A: Right here, sir.
- 14 Q: Right here. Okay. So, this is where you responded to
- 15 Levels?
- 16 A: Yes, sir.
- 17 Q: And then this is the Human Resources building?
- 18 A: Yes, sir.
- 19 Q: Did you get a -- what time were you called out to the
- 20 scene?
- 21 A: I arrived on the scene at around 2:40 A.M.
- 22 Q: And is there any record of when officers arrived on
- 23 scene?
- 24 A: Yes, sir, it's in our Event log. It's logged.
- 25 Q: Tell us what -- what's an Event log?

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- 1 A: Any incident that happens whether it be a shoplifting or
2 anything like that, it generates an Incident Log where it's
3 the address, the amount of officers that are responding and
4 their arrival times and stuff like that.
- 5 Q: And do you typically review these logs?
- 6 A: Yes, sir.
- 7 Q: Was one generated in this case?
- 8 A: Yes, sir.
- 9 Q: Do you know exactly what the location of Levels is?
- 10 A: I can go off the top of my head, but I would prefer to
11 see the paper.
- 12 Q: Well, would the Event Report show you where that is?
- 13 A: Yes, sir.
- 14 Q: Would an Event Report show you exactly what time the call
15 was received?
- 16 A: Yes, sir.
- 17 Q: Do you know off the top of your head what time it was
18 received?
- 19 A: 2:35.
- 20 Q: Okay. And do you know exactly what time you were
21 dispatched?
- 22 A: I don't.
- 23 Q: Would it help you if you saw the Event Report?
- 24 A: Yes, sir.
- 25 MR. HOLFORD: Your Honor, may I approach?

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1 THE COURT: Yes, sir.

2 BY MR. HOLFORD:

3 Q: What did I just hand you?

4 A: This is the Event log.

5 Q: Okay. So what time did you respond?

6 A: I was dispatched at 2:36 and I arrived on scene at 2:40.

7 Q: Okay. So the call came out at 2:35?

8 A: Yes, sir.

9 Q: Was that A.M. or P.M.?

10 A: A.M.

11 Q: On February 15th?

12 A: Yes, sir.

13 Q: And you were dispatched at 2:36?

14 A: Yes, sir.

15 Q: And arrived at 2:40?

16 A: Yes, sir.

17 Q: Were there multiple locations, can you tell from this

18 Event log if there were multiple locations that officers were

19 dispatched to?

20 A: Looks like the Levels building itself and also the HR

21 building.

22 Q: Okay. And what's the address of that Levels building?

23 A: 515 9th Avenue North.

24 Q: And what city is that in?

25 A: Myrtle Beach.

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- 1 Q: And county?
- 2 A: Horry.
- 3 Q: Okay. And then the HR building you pointed out on the
4 map, why were officers -- why did officers respond there if
5 there was a shooting at Club Levels?
- 6 A: While -- when I arrived on scene, I could hear over the
7 radio that some other officers were getting out with a
8 potential suspect in front of the Human Resources building.
- 9 Q: Okay. So, so we've got two different locations at the
10 time?
- 11 A: Yes, sir.
- 12 Q: And, and where did you respond, did you respond to Levels
13 on 9th or did you respond to Human Resources building?
- 14 A: I responded to Levels.
- 15 Q: Okay. And what did you do after you responded?
- 16 A: Just whenever you go to a major call, you're trying to
17 secure the scene, secure any evidence, get medical out there,
18 just put out as much information as you can.
- 19 Q: And who was the suspect that was stopped at the Human
20 Resources building?
- 21 A: Mr. Kevin Bryant.
- 22 Q: And is he in the courtroom today?
- 23 A: Yes, sir.
- 24 Q: Is he the Defendant?
- 25 A: Yes, sir.

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1 Q: Did you respond out there to the HR building?

2 A: No, sir.

3 Q: Okay. But you wrote the report for this case, didn't
4 you?

5 A: Yes, sir.

6 Q: And so you would know who the Defendant is?

7 A: Yes, sir.

8 Q: Is there anything I haven't asked you? I wanted you to
9 kind of lay this scene of what's going on at the time. Is
10 there anything else you were involved in at the time?

11 A: There was -- there was a weapon that was found in the
12 middle of 9th Avenue North which I watched over.

13 Q: Okay. And so 9th Avenue North, was that -- that was back
14 near Levels?

15 A: Yes, sir.

16 Q: Point about where that gun was found?

17 A: Right around this median area right here, sir.

18 Q: Okay. Out in front of the club?

19 A: In the middle of the street, yes, sir.

20 Q: And the victim in this case, Saequan Vereen, where was
21 he?

22 A: He was laying in front of the club.

23 Q: No further questions.

24 THE COURT: Cross examination?

25 MS. WILSON: Thank you, Your Honor.

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JOHN GABRIEL CARDONA - CROSS BY WILSON

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1 CROSS EXAMINATION OF JOHN GABRIEL CARDONA BY MS. WILSON:

2 Q: Officer Cardona, there was no additional search for other
3 suspects, was there?

4 A: I'm not sure to be honest with you, ma'am.

5 Q: Was it in the log?

6 A: I don't see it.

7 Q: So that would suggest there was no additional search for
8 any other suspect, correct?

9 A: Are you talking as soon as I got on scene or ---

10 Q: At any point in time after you received the call -- I
11 think you answered to Mr. Holford that the log would show any
12 calls out that were made and there were two locations,
13 correct?

14 A: Yes, ma'am.

15 Q: Did you have another call say that there might be another
16 suspect or was there any call to look for another suspect in
17 that log?

18 A: No, ma'am.

19 Q: And so what you're saying is that after the call to go to
20 Human Resources where there was a potential suspect -- I think
21 is the phrase you used, correct?

22 A: Yes, ma'am.

23 Q: There was no other call to look for anyone else?

24 A: Well; there's a description of a suspect that goes out
25 whenever you go to calls like that and you kind of try to kind

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1 of look for anybody fitting the description.

2 Q: But was there any additional call to look for a suspect
3 outside of what was found -- the person that was found at the
4 Human Resources building?

5 A: I don't believe so, ma'am.

6 Q: All right. And just for clarification, you didn't see
7 the commission of this crime, correct, of this murder?

8 A: Did I?

9 Q: You did not see it, did you?

10 A: No, ma'am.

11 Q: So you would not be able to identify Mr. Bryant as the
12 person who committed this crime, correct?

13 A: No, ma'am.

14 Q: Okay. Thank you.

15 No further questions, Your Honor.

16 THE COURT: Redirect?

17 MR. HOLFORD: Nothing further, Your Honor.

18 THE COURT: You wish the witness to be excused?

19 MR. HOLFORD: Yes, Your Honor.

20 THE COURT: Any objection?

21 MS. WILSON: No objection, Your Honor. Thank you.

22 THE COURT: All right, sir. You're released from your
23 subpoena, you can go back to your regular duties. Thank you.

24 THE COURT: Next witness?

25 MR. OSKIN: Yes, sir, Your Honor, the State at this time

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MICHAEL HOUSEHOLDER - DIRECT BY OSKIN

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1 would call Officer Householder, Michael Householder.

2 THE COURT: All right, sir. If you'd come all the way
3 around and meet the Clerk's representative up here please,
4 sir.

5 CLERK: Raise your right hand.

6 MICHAEL HOUSEHOLDER, HAVING BEEN

7 SWORN TESTIFIES AS FOLLOWS:

8 CLERK: Have a seat and please state your full name and
9 spell your last name for the Court.

10 MR. HOUSEHOLDER: Officer Michael Householder, H-O-U-S-E-
11 H-O-L-D-E-R.

12 THE COURT: Go ahead, Solicitor.

13 MR. OSKIN: Thank you, sir.

14 DIRECT EXAMINATION OF MICHAEL HOUSEHOLDER BY MR. OSKIN:

15 Q: Mr. Householder, who is your employer?

16 A: The City of Myrtle Beach.

17 Q: How long have you been employed with them?

18 A: I've been employed for them for five years.

19 Q: Is that the Police Department through the City?

20 A: Yes, sir.

21 Q: Okay. Do you have any previous law enforcement
22 experience before Myrtle Beach?

23 A: No, sir, I do not.

24 Q: Please describe to this jury the nature of your work?

25 A: Right now I am actually assigned to the Canine Unit. I

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MICHAEL HOUSEHOLDER - DIRECT BY OSKIN

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1 run a Belgian Malinois. We -- before that, during this I was
2 assigned as a Patrol Officer. We responded to calls for
3 service which came in through the 911 through dispatch. We do
4 anything from domestic violence to incidents that are more
5 violent like the shootings or anything like that.

6 Q: All right. So in that capacity you just described, is
7 that the capacity you were employed in on February 15th of
8 2015?

9 A: Yes, sir.

10 Q: Okay. Did you respond to a call that night in regards to
11 an incident?

12 A: Yes, while out patrolling we were patrolling the area of
13 9th Avenue North and Oak Street, which is within the City
14 Limits of Myrtle Beach. We were dispatched to a shots fired
15 call in the area of Club Levels. At that time, they knew
16 there was at least one person struck.

17 Q: All right. After you received that call, what became
18 your role in this case, were you one of the first responding
19 officers or what was your role?

20 A: Yes, we were -- I was riding with a sergeant and we were
21 one of the first ones on scene. As we were riding on scene,
22 we saw a crowd of people running from the area of Club Levels.
23 I was directed to an area just to the east of Club Levels on
24 the sidewalk where there was a male laying face down on the
25 sidewalk.

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1 Q: I'm showing you what's been marked as State's Exhibit
2 Numbers Six, Fifteen and Seventeen, Officer Householder, take
3 a look at those please. Are you able to recognize those?

4 A: Yes, Number Six would be Club Levels, it would be just to
5 the west of the location of Fifteen and Seventeen. They're
6 gonna be the victim that, when I arrived on scene, was laying
7 face down. I actually rolled him over noticing several
8 gunshot wounds to his chest and body area.

9 Q: That's with regards to all those photos there?

10 A: Yes, sir.

11 MR. OSKIN: Let the record reflect, I'm showing Defense
12 Counsel what's been marked as State's Exhibit Six, Fifteen and
13 Seventeen.

14 Your Honor, at this time the State would move State's
15 Exhibit Six, Fifteen and Seventeen into evidence?

16 THE COURT: Any objection?

17 MS. WILSON: Your Honor, just as previously stated.

18 THE COURT: All right. So as I understand there's no
19 objection to State's Number Six; is that correct?

20 MS. WILSON: That's correct.

21 THE COURT: So State's Six is in evidence without
22 objection. State's Fifteen and Seventeen are in evidence over
23 the objection of the Defense. You may proceed.

24 STATE'S EXHIBIT NUMBER FIFTEEN AND SEVENTEEN

25 ADMITTED INTO EVIDENCE

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MICHAEL HOUSEHOLDER - DIRECT BY OSKIN

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1 BY MR. OSKIN:

2 Q: Officer Householder, let me show you Exhibit Number
3 Fifteen again. If you will hold it where the jury can see it,
4 please. Will you hold it up for the jury to see, please. Is
5 that the scene that you responded to?

6 A: Yes, sir.

7 Q: How far is that down from Club Levels?

8 A: I would say it was approximately maybe 15 to 20 feet from
9 Club Levels.

10 Q: Okay. I believe you stated that you responded to the
11 victim and you actually rolled him over.

12 A: Yeah, when I arrived on scene and we got down to the
13 victim, there was a crowd of people around, but he was still
14 face down. At that time, I rolled him over, felt for a pulse
15 to see if he had a pulse and I felt just a slight pulse and
16 then I started CPR on the victim.

17 Q: Okay. How long did you perform CPR?

18 A: I performed CPR for probably seven or eight minutes until
19 I was tired and then another officer took over at that time,
20 we switched off, and then Medic 30 arrived on scene.

21 Q: Okay. Officer Householder, to your knowledge, did the
22 victim die at the scene that night?

23 A: He was called Medic 30. He was pronounced dead.

24 Q: He was pronounced dead where?

25 A: On the sidewalk.

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1 Q: Okay. That same sidewalk you've shown this jury here
2 today?

3 A: Yes, sir, he was never moved from the spot.

4 Q: Through your involvement in this case, were you able to
5 find out who the victim was?

6 A: While I was performing CPR, his cousin came over and she
7 started shout ---

8 Q: Without telling me what anyone said, were you able to
9 figure out who the victim was?

10 A: Yes.

11 MR. OSKIN: If I may approach again, Your Honor?

12 THE COURT: Yes, sir, I'm sorry. Go ahead.

13 BY MR. OSKIN:

14 Q: Officer Householder, I'm gonna ask you if you'll hold up
15 to this jury this picture to give this jury a better idea of
16 the scene with relation ---

17 A: Okay.

18 Q: --- to where Club Levels is to your knowledge.

19 A: You want me to hold all three of them up together or ---

20 Q: No, sir, the two.

21 THE COURT: Tell him which ones, please, sir, and what
22 were the numbers?

23 Q: What are those numbers, sir?

24 A: It's gonna be Number Six and Number Fifteen.

25 THE COURT: Go ahead.

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MICHAEL HOUSEHOLDER - CROSS BY WILSON

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1 Q: Officer Householder, is that the scene that night that
2 you responded to?

3 A: Yes, sir.

4 Q: All right. If you'll -- if the jury is able to see that.
5 With proximity of that scene there, where is Club Levels? You
6 can set the pictures down.

7 A: Like the pictures show, it's pretty much gonna be within
8 a -- Club Levels is going to be west of the -- where the
9 victim was laying like probably 15 to 20 feet.

10 Q: Thank you, Officer Householder. Please answer any
11 questions that Ms. Wilson may have for you.

12 THE COURT: Cross examination?

13 MS. WILSON: Thank you, Your Honor.

14 CROSS EXAMINATION OF MICHAEL HOUSEHOLDER BY MS. WILSON:

15 Q: Officer Householder, it is Officer, correct?

16 A: Yes, sir -- ma'am.

17 Q: Now you said that you saw a lot of people running when
18 you arrived on scene?

19 A: Yes, ma'am.

20 Q: And so it's a chaotic night, isn't it?

21 A: Yes, for the most part.

22 Q: And it's still -- it's dark still, correct, 2 o'clock in
23 the morning, 2:30?

24 A: There's a lot -- that area is pretty well lit with the
25 street lights.

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MICHAEL HOUSEHOLDER - CROSS BY WILSON

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1 Q: So there's no pockets of, of shadow?

2 A: Yeah, there's gonna be pockets.

3 Q: All right. So it's dark, it's chaotic, shadowy and
4 there's people running around everywhere, correct?

5 A: Yes.

6 Q: All right. And you did not see any crime happen, did
7 you?

8 A: No, we were dispatched after it had taken place.

9 Q: No further questions.

10 THE COURT: Redirect?

11 MR. OSKIN: Nothing further, Your Honor.

12 THE COURT: Do you wish the witness to be excused?

13 MR. OSKIN: Yes, sir, Your Honor.

14 THE COURT: Any objection?

15 MS. WILSON: No objection, Your Honor.

16 THE COURT: All right, sir, you're released from your
17 subpoena. You may go back to your regular duties. Thank you.
18 Just leave the exhibits there. Did you take them back?

19 MR. OSKIN: I did not, Your Honor.

20 THE COURT: Okay. So just leave those there then.

21 Solicitor, if you'd collect those and give them to the
22 Court Reporter, please.

23 MR. OSKIN: Yes, sir.

24 MR. HOLFORD: The State calls Daniel Eddy.

25 CLERK: Raise your right hand.

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DANIEL EDDY - DIRECT BY HOLFORD

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1 DANIEL EDDY, HAVING BEEN SWORN

2 TESTIFIES AS FOLLOWS:

3 CLERK: Please state your full name and spell your last
4 name for the Court.

5 MR. EDDY: My name is Daniel Eddy, last name is E-D-D-Y.

6 THE COURT: Go ahead, sir.

7 DIRECT EXAMINATION OF DANIEL EDDY BY MR. HOLFORD:

8 Q: Officer Eddy, where are you currently employed?

9 A: City of Myrtle Beach Police Department.

10 Q: And how long have you been with Myrtle Beach?

11 A: Just a little bit over five years.

12 Q: Okay. So what was your position back in February 15th,
13 2015?

14 A: I was a Senior Patrol Officer, Field Training Officer.

15 Q: In the early morning hours, did you respond to a crime
16 scene?

17 | A: I did.

18 Q: What was the nature of that call?

19 A: It came out as a shots fired call?

20 Q: Okay. And where were the shots fired?

21	A: Levels Club.

22 Q: Where is that?

23 A: I believe it's on the corner of 8th Avenue North and Oak
24 Street.

25 Q: Okay. I've got a map here. This is State's One. Can

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DANIEL EDDY - DIRECT BY HOLFORD

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1 you show us on this map -- would you be able to recognize
2 where Levels is?

3 A: It's right here (indicating). It's on the corner of 9th
4 Avenue North.

5 Q: Okay. And where were you coming from?

6 A: I was in the area of 21st Avenue North and the Robert
7 Grissom Parkway.

8 Q: And that night, did you respond to Levels?

9 A: I did. I was gone blue lights and sirens in code
10 response to that incident location.

11 Q: And did you go to 9th Avenue North first?

12 A: I was heading that way. However, as I approached 10th
13 Avenue North and Oak Street, I saw a male in the parking lot
14 of the Human Resources building.

15 Q: All right. So, show me on the map where, where is 10th
16 Avenue and Oak?

17 A: Right here and right here (Indicating).

18 COURT REPORTER: Excuse me, you're on the microphone.

19 THE COURT: You're on the microphone so she couldn't hear
20 a word you said. Neither could the jury.

21 A: Sorry. It's gonna be right here is Human Resource on the
22 10th Avenue North and Oak Street, and Levels is right here at
23 9th Avenue North and Oak Street about a block away.

24 Q: And so you had -- you actually went to the Human
25 Resources building?

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DANIEL EDDY - DIRECT BY HOLFORD

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1 A: Correct.

2 Q: Why did you go there?

3 A: As I stated, as I was passing by heading to Levels, I
4 observed a male matching the description that had been given
5 out for a possible suspect in the shooting.

6 Q: How do you get a description if you're in the car by
7 yourself?

8 A: We -- both on the radios we had somebody call out that
9 the male was seen fleeing on foot northbound from the location
10 and also we have laptops in our car, and as people call 911
11 they put notes in there, so it's kind of like you're reading
12 it like a message.

13 Q: And I'm gonna refer back to this one more time, State's
14 One. There's a compass at the bottom left, which way is this
15 map -- what's the orientation?

16 A: North is gonna be going that way. So, it's actually
17 gonna be northeast is the way. In the City we actually refer
18 to north as if you're going up Oak Street like running as the
19 ocean, so east is to the ocean, west is away from the ocean,
20 north is towards the north end of city limits, south is to the
21 south end of city limits. So, when we get directions, it's
22 not necessarily like correct to the compass. So referring to
23 the compass he would have been fleeing northeast from the
24 location, but for us it's north -- referred to as north.

25 Q: Okay. So show -- show us -- show the jury north from

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1 Levels?

2 A: North from Levels is here, so north is gonna be headed
3 north as if you're going from 9th Avenue North to 10th Avenue
4 North because you're traveling northbound and as you count up
5 the streets, so northbound is actually gonna be going up the
6 street north of Oak.

7 Q: Okay. So over the radio, you get a call that the shooter
8 is fleeing north ---

9 A: Correct.

10 Q: --- from Levels. Where did you encounter the suspect?

11 A: North of Levels in the area of 10th Avenue North and Oak
12 Street.

13 Q: And who was it that you stopped there?

14 A: He was later identified as the Defendant and it was last
15 name, I actually -- I never got his name so I didn't ask him
16 his name, but he was identified as the Defendant.

17 Q: Okay. So let's go back. So how many people are out
18 there that night at the HR building walking around?

19 A: He was actually the only person I saw whole time I was
20 going to the call and the only person in that area. It was
21 very cold night; there wasn't a lot of people out and walking.

22 Q: And did he match the description that you were looking
23 for?

24 A: Yeah, the description was a black male wearing all black,
25 heading northbound from Levels and he was wearing all black

1 that night and he was a black male.

2 Q: Now when you stopped the Defendant, did you know for a
3 fact that he was the shooter?

4 A: I did not at that time. He definitely matched the
5 description. When I was getting out with him, though, I
6 wasn't 100 percent sure, so I didn't know if he was another
7 victim that was fleeing or he was a suspect, but he did match
8 the description of the suspect.

9 Q: Okay. So what did he do when you stopped him?

10 A: I got out and tried to keep a little bit casual just so
11 he didn't get heightened, I just got out and said, hey, what's
12 up. He started approaching me very quickly like walking
13 towards me at which time I told -- you know, I ordered him to
14 sit down. I said sit down and he kept coming towards me. I
15 said sit down. He finally just kind of plopped down and sat
16 down on the ground. I asked him, Where are you coming from?
17 And he said, They started shooting and I ran. And then I
18 asked him -- I asked him, Did they shoot at you? And he said,
19 Yeah.

20 Q: Okay. And so what did you do as a result? Are you out
21 there by yourself at this time?

22 A: I'm by myself, correct. We ride one person to a car.

23 Q: Okay. So what did you do?

24 A: At that point, for my safety and I didn't know if he had
25 a weapon or not. I asked him to put his hands behind his back

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DANIEL EDDY - DIRECT BY HOLFORD

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1 when he was sitting on the ground and I kind of pulled his
2 left hand behind him and I grabbed his right arm. When I
3 grabbed his right arm, it appeared he had been shot. The
4 blood and his arm was limp like maybe the bone had been broken
5 inside his arm. So his arm kind of twisted around itself and
6 I grabbed his right arm. So I was unable to handcuff him, but
7 I held his hands behinds his back and then did a pat-down to
8 make sure he didn't have a weapon on him and -- as my backup
9 was arriving. And once we knew he didn't have a weapon on
10 him, we just kind of, you know, stood by him so he could go
11 anywhere, but he never actually got put in the handcuffs.

12 Q: Did he have a weapon on him?

13 A: He did not at that time.

14 Q: And did any other officers respond to where you were?

15 A: Yes.

16 Q: Would you have let someone know that you were at HR -- so
17 you get called out to Levels, right?

18 A: Correct.

19 Q: But you end up at HR?

20 A: Yes.

21 Q: Would you have let someone know that?

22 A: I did. As I basically when I saw him when I was heading
23 to Levels, I did a U-turn and I made sure I had gotten out on
24 the radio and I basically told them, I said, I'm gonna be out
25 with a black male wearing all black at Human Resource, on the

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1 north side of Human Resources.

2 Q: And what time was that? What time did you encounter the
3 Defendant?

4 A: It was approximately two minutes after the call had came
5 out, after I had gotten -- when in route to the call.

6 Q: Okay. Have you seen event logs before?

7 A: Yes, sir.

8 Q: Do you know what an event log is?

9 A: Yes, sir; uh-huh (affirmative response).

10 Q: What's it do?

11 A: Basically anytime a call is created, like somebody calls
12 911, our dispatchers input that information into our computer
13 system and it kind of tells the location, the time that the
14 first person called and then that's updated. So it updates
15 every time an officer goes in route, it shows when we start
16 heading to the call, it shows when we arrive on the call,
17 shows if we change our location on the call, and it also shows
18 as people are giving information on 911, it updates with the
19 time and date stamp when and what they're saying to the note
20 section and we have immediate access to that in our computer
21 and as fast as they type it in, we get it on our computer in
22 our vehicle.

23 Q: And would you know exactly what time you responded or
24 changed your location to the HR building?

25 A: I would if I saw the event log.

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DANIEL EDDY - DIRECT BY HOLFORD

1 MR. HOLFORD: Your Honor, may I approach?

2 THE COURT: Yes, sir.

3 BY MR. HOLFORD:

4 Q: What am I handing you right now?

5 A: This is our -- one of our event logs here.

6 Q: And how do you know where you are and where the other
7 officers are? How do you know who's putting in the
8 information?

9 A: We're assigned call numbers or badge numbers. It also
10 has our employee number, so it's actually two different
11 numbers. It's individual for each person and that's your ---

12 Q: What's your call number?

13 A: My call number at that time was 382.

14 Q: Okay. And so on that log, when does it say you showed up
15 at the HR building or changed your location?

16 A: Let's see, it says 2:40 -- 2:40 in the morning.

17 Q: Okay. And what time did the call go out?

18 A: It looks like the call was received on 2:35, which is
19 almost 2:36, and that's when the person would have called 911.
20 And then I went in route at 2:38, so about two minutes between
21 when I went in route and when I arrived at Human Resources.

22 Q: So 911 gets a call at 2:35?

23 A: Correct.

24 Q: You go on route at 2:38?

25 A: Correct.

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1 Q: And at 2:40 you're with the Defendant at HR?

2 A: Correct, so a total of five minutes.

3 MR. HOLFORD: May I approach with State's Nine, Ten,
4 Eleven, Twelve, Thirteen and Fourteen. May I approach?

5 THE COURT: Yes, sir, please.

6 BY MR. HOLFORD:

7 Q: I'm gonna hand you some pictures here. Just flip through
8 those and tell me what you're looking at.

9 A: The first picture is gonna be the Human Resources parking
10 lot and it looks like the crime scene photos. Some of the
11 items he had in his possession are on the ground marked.

12 Q: Who is he?

13 A: The Defendant. It looks like a cell phone, a bullet
14 fragment and maybe a piece of clothing.

15 Q: Okay. And, and where are these pictures taken?

16 A: At the Human Resources building on the corner of 10th
17 Avenue North and Oak Street.

18 Q: And that's where you responded?

19 A: Correct.

20 Q: But that's not where the shooting happened?

21 A: No.

22 Q: Okay. Do these pictures clearly and accurately reflect
23 what you saw that night?

24 A: Yes.

25 Q: When were -- when were these pictures taken?

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1 A: A short time after I -- after I'd arrived on scene after
2 the Defendant had been transported to the hospital.

3 Q: Okay. Yeah, let's back up just a second. So, after you
4 arrived, you noticed that there's something wrong with his
5 arm; you think it's shot?

6 A: Correct.

7 Q: And so what did you do as a result?

8 A: Like I said, I knew he was shot. He had blood on his arm
9 and it looked like his arm was broken. I immediately stepped
10 away and had another officer stand with him. I called for the
11 ambulance and then I also popped my trunk for another officer
12 to grab a first aid kit so he could try to render some aid to
13 him before EMS got there.

14 Q: But these are taken of the scene after the people left?

15 A: Correct.

16 Q: And State's Nine, is the -- that's the HR building?

17 A: Yes.

18 Q: And then State's Ten looks like a close up; it's got some
19 markers A, B, C?

20 A: Correct, that's actually where he sat on the ground.
21 When I told him to sit down, that's where that stuff was.

22 Q: Okay. Whose stuff was that?

23 A: The Defendant's.

24 Q: And then State's Eleven is like ---

25 A: A close-up of the same items.

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1 Q: A close-up of the same items. And then Twelve, we're
2 getting a little closer, right, what does A look like?

3 A: It looks like a cell phone from here.

4 Q: A cell phone. So really these pictures are just getting
5 closer and closer to the, to the things?

6 A: Correct.

7 Q: You've got an outside view and then we're zooming in?

8 A: Correct.

9 Q: State's Thirteen, what does B mark?

10 A: It looks like a bullet fragment.

11 Q: All right. Explain to -- explain to me what's a bullet
12 fragment? What's the difference between a bullet, bullet
13 fragment, a jacket?

14 A: Basically like a bullet fragment, sometimes when a bullet
15 goes through something, whether it's a person or a building,
16 it sometimes will break apart, especially if it's like a
17 hollow point it tends to break apart. So, you might not have
18 a whole intact bullet, always; sometimes it breaks apart when
19 it hits something hard such as a bone, which I think is what
20 it hit in this case, or if it like concrete.

21 MS. WILSON: Objection, Your Honor, if we could approach?

22 THE COURT: Yes, ma'am.

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of but out of hearing of the jury.)

25 BY MR. HOLFORD:

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DANIEL EDDY - CROSS BY WILSON

1 Q: State's Fourteen?

2 A: It looks like a piece of clothing.

3 Q: Okay. And again that's just a closer up of the items
4 that were laying there?

5 A: Correct.

6 Q: And all of those were the Defendant's items?

7 A: Correct.

8 Q: What's the -- did you notice any of these when you were
9 out there on scene?

10 A: Yes, I did; uh-huh (affirmative response).

11 MR. HOLFORD: Court's indulgence?

12 THE COURT: Yes, sir.

13 MR. HOLFORD: No further questions.

14 THE COURT: Cross examination?

15 MS. WILSON: Thank you, Your Honor.

16 CROSS EXAMINATION OF DANIEL EADDY BY MS. WILSON:

17 Q: Officer Eddy ---

18 THE COURT: Before you start, I know that I allowed them
19 into evidence before. Just so the record is clear, Nine, Ten,
20 Eleven, Twelve, Thirteen and Fourteen, those were the ones --
21 pictures he looked at; is that correct, just to make sure?

22 MR. HOLFORD: Yes, Your Honor, Nine through Fourteen.

23 THE COURT: All right. They're in evidence without
24 objection. You may proceed, ma'am.

25 STATE'S EXHIBITS NUMBER NINE THROUGH FOURTEEN

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DANIEL EDDY - CROSS BY WILSON

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1 ADMITTED INTO EVIDENCE

2 MS. WILSON: Thank you, Your Honor.

3 BY MS. WILSON:

4 Q: Officer Eddy, you went out -- you said you were on your
5 way to Club Levels because of the call about the shooting,
6 correct?

7 A: Correct.

8 Q: And you actually had gotten a description, correct?

9 A: Yes, correct.

10 Q: Prior to stopping at the Human Resources building,
11 correct?

12 A: Correct.

13 Q: So you stopped because you were looking for someone to
14 match that description, correct?

15 A: On the way to the call the description came out so we're
16 trained to just look and see, so, I saw a person that was
17 wearing similar clothing to the description, yes.

18 Q: All right. And so the answer is yes?

19 A: Yes.

20 Q: And while you're out there, you come upon someone and you
21 stop and you're out there because of the fact that you believe
22 this person matches the description?

23 A: Yes.

24 Q: Which is -- what is the description again, you said it
25 was black clothing?

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DANIEL EDDY - CROSS BY WILSON

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- 1 A: Black male wearing all black.
- 2 Q: Okay. And this is a night club that you were called out
3 to, correct?
- 4 A: Correct.
- 5 Q: And there probably would have been a lot of people
6 wearing black clothing, wouldn't they?
- 7 A: Correct.
- 8 Q: And so you, you happened to see this one person and you
9 stop. You then call dispatch and tell them you got somebody,
10 don't you?
- 11 A: I tell them I'm gonna be out with somebody, yes.
- 12 Q: I'm so sorry?
- 13 A: I tell them I'm gonna be out with somebody.
- 14 Q: Okay. And when you say you're gonna be out with
15 somebody, you mean that you're out with somebody who was --
16 somebody you believed matches the description, correct?
- 17 A: Yes. Uh-huh (affirmative response).
- 18 Q: And I think you also answered Mr. Holford that your call
19 results in many other police officers showing up on scene,
20 correct?
- 21 A: Correct.
- 22 Q: And they're all there because you all believe that this
23 is the potential suspect, right?
- 24 A: It could be a possible suspect. At that time we didn't
25 know if it was a suspect or a victim.

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DANIEL EDDY - CROSS BY WILSON

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1 Q: Well, you believed he was a suspect because you radioed
2 it in, correct?

3 A: I didn't radio in that it was a suspect. I just radioed
4 out that I was gonna be out with somebody matching the
5 description in the area.

6 Q: So you were looking for someone and you found someone
7 that you thought matched, so you called other officers in,
8 correct?

9 A: I don't think I called other officers, they just
10 automatically responded to me because I was by myself.

11 Q: Okay. So they're responding to you because you're alone?

12 A: Correct.

13 Q: But you are all looking for someone who matches the
14 description, right?

15 A: At that time, everyone was really going to the call. I
16 just happened to see somebody matching the description, but
17 the description was given out.

18 Q: Okay. All right. So you're not really looking for
19 anybody, you just happened upon someone and everybody shows up
20 is what you're telling me?

21 A: Honestly, I was driving to, to Levels and I happened to
22 see somebody matching the description. I was looking for him,
23 but I wasn't specifically just looking for him; I was still
24 going to the call.

25 Q: Okay. And in this instances, did you leave and look

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DANIEL EDDY - CROSS BY WILSON

1 anywhere else?

2 A: I was going ---

3 Q: You stopped at Human Resources -- I'm so sorry.

4 A: I was going straight to Levels. I happened to see him on
5 the way. After I got done, I had the blood on my hands so I
6 had to go clean it off and then I stopped by the main incident
7 location, Levels.

8 Q: Okay. So the answer to my question is no, you did not
9 look for anyone else at any point in time after you stopped at
10 the Human Resources building, correct?

11 A: Correct, because I had to go clean my hands.

12 Q: All right. And let me -- let me ask one more question.
13 You didn't -- you didn't actually see any crime get committed,
14 did you, by Mr. Bryant?

15 A: At that time, no. However, Human Resources is marked as
16 T which is a no trespassing thing for the City of Myrtle
17 Beach, so the local -- that's my normal beat area, my working
18 area, my patrol area, and all the people that live around
19 Booker T. Washington neighborhood know not to go through that
20 parking lot because it's no trespassing in that parking lot.

21 Q: So he's not on trial for a no trespass. You didn't see
22 him commit a murder, did you?

23 A: I did not, not.

24 MS. WILSON: Court's indulgence?

25 All right. No further questions, Your Honor.

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DANIEL EDDY - REDIRECT BY HOLFORD

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1 THE COURT: Any redirect?

2 MR. HOLFORD: Briefly.

3 REDIRECT EXAMINATION OF DANIEL EDDY BY MR. HOLFORD:

4 Q: Officer Eddy, no question the Defendant is the person you
5 stopped at the HR building?

6 A: No question, 100 percent.

7 Q: Approximately five minutes after the call out for the
8 shooting at Club Levels?

9 A: Correct.

10 Q: And he was the only one matching the description of the
11 shooter?

12 A: He's the only person matching that description and the
13 only person out on foot that night that I saw him on the way
14 to the call.

15 Q: And he had a gunshot wound to his right arm?

16 A: Correct.

17 Q: And there was a bullet fragment at the scene where he
18 was?

19 A: Correct.

20 MR. HOLFORD: No further questions.

21 THE COURT: Anything on those questions?

22 MS. WILSON: Yes, sir.

23 RECROSS EXAMINATION OF DANIEL EDDY BY MS. WILSON:

24 Q: To be clear, you are saying and you did say that you were
25 on your way to Club Levels?

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DANIEL EDDY - RECROSS BY WILSON

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1 A: Correct.

2 Q: And in that timeframe, you didn't actually make it there,
3 correct?

4 A: No, I didn't go to Club Levels the first time.

5 Q: So, you didn't go very far before you actually go to the
6 Human Resources building, correct?

7 A: I came up 21st Avenue North and went all the way the
8 10th, so about 11 streets.

9 Q: Right. So in that timeframe, in that space, you wouldn't
10 have been able to see anybody anyway because you weren't in
11 proximity to the club, right?

12 A: As far as on Oak Street?

13 Q: Were you near where the scene of the crime allegedly
14 occurred?

15 A: About a block away when I got out with this Defendant.

16 Q: Right. So when you drove up to Human Resources, you
17 weren't where the activity was; if anything, people would've
18 been coming your way, but you said that you left there,
19 correct, after you stopped Mr. Bryant?

20 A: Correct.

21 Q: And that is the only person that you came across because
22 you weren't looking for anyone else, correct?

23 A: On my way, I was looking to see if anybody was out on
24 foot and that was the only person I saw.

25 Q: Well, that's interesting, because that actually

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DANIEL EDDY - RECROSS BY WILSON

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1 contradicts what you already told us. You said that after you
2 left the scene, you went to wash the blood off your hands.

3 A: You just asked me if on the way to the call if I saw
4 anyone else out.

5 Q: I'm sorry. Maybe I'm not being clear. I was asking if
6 after you left ---

7 A: Correct.

8 Q: Did you look for anyone else?

9 A: No.

10 Q: And so that would be consistent then. So, you admit that
11 there was no further searching for anyone?

12 A: I did not search for anyone else.

13 MS. WILSON: No further questions.

14 THE COURT: Anything else, Solicitor?

15 MR. HOLFORD: Nothing further, Your Honor.

16 THE COURT: Do you wish the witness to be excused?

17 MR. HOLFORD: Yes, Your Honor.

18 THE COURT: Any objection?

19 MS. WILSON: No objection, Your Honor. Thank you.

20 THE COURT: All right, sir. You are released from your
21 subpoena and may go back to your regular duties.

22 Next witness, please.

23 MR. HOLFORD: Officer Cozene.

24 THE COURT: Solicitor, Ms. Wilson, can y'all come up here
25 for just one second.

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ORION BOAZ COZENE - DIRECT BY HOLFORD

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1 (REPORTER'S NOTE: A bench conference was held off the record
2 in the presence of but out of hearing of the jury.)

3 ORION BOAZ COZENE, HAVING BEEN DULY SWORN,
4 TESTIFIES AS FOLLOWS:

5 CLERK: Please state your full name and spell your last
6 name for the Court.

7 THE COURT: You'll need to spell your first name and your
8 last name, sir.

9 MR. COZENE: My name is Orion Boaz Cozene. First name is
10 O-R-I-O-N, last name is C-O-Z-E-N-E.

11 COURT REPORTER: Spell your middle name, please.

12 MR. COZENE: B-O-A-Z.

13 THE COURT: Go ahead.

14 DIRECT EXAMINATION OF ORION BOAZ COZENE BY MR. HOLFORD:

15 Q: Officer Cozene, what's your title, actually?

16 A: I'm a Master Corporal.

17 Q: Master Corporal Cozene, where are you currently employed?

18 A: The City of Myrtle Beach Police Department.

19 Q: And how long have you been employed there?

20 A: January will be 18 years.

21 Q: Okay. And what's your position with Myrtle Beach?

22 A: I'm the supervisor over the Crime Scene Unit.

23 Q: And in this case specifically, what involvement did you
24 have?

25 A: In this case, the only involvement I had was the

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ORION BOAZ COZENE - DIRECT BY HOLFORD

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1 scanning, using a FARO scanner, a 3D scanner, for this crime
2 scene. I also extracted data and conducted the forensics on
3 the cellular phones and I backed up the data from DVR that was
4 obtained the nightclub Levels.

5 Q: Now, did you obtain the DVR from Levels yourself?

6 A: No, sir, I did not.

7 Q: Okay. How did it come into your custody?

8 A: It came into my custody was I believe Detective Sutton
9 might've got it through a search warrant. And it was placed
10 in the Crime Scene evidence room at the Annex to be processed.

11 Q: And did you, did you do the search warrant?

12 A: No, sir, I did not.

13 Q: Tell me about a search warrant. After you do the search
14 warrant, what kind of document is attached to it?

15 A: When the search warrant is signed by generally a
16 detective, once they get the search warrant signed by the
17 Clerk's office, it's handed over to one of the people in Crime
18 Scene or myself to conduct whatever processing that is going
19 to be needed for the items that they're requesting. In this
20 case, it was on -- or for this item, it was a DVR from the
21 camera system.

22 MS. WILSON: Your Honor, might we approach?

23 THE COURT: Certainly.

24 (REPORTER'S NOTE: A bench conference was held off the record
25 in the presence of but out of hearing of the jury.)

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ORION BOAZ COZENE - DIRECT BY HOLFORD

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1 BY MR. HOLFORD:

2 Q: So, you would've done a search warrant return after the
3 search warrant, right?

4 A: Yes, sir. Once I get the search warrant that was for the
5 backup or the data that was supposed to be taken out of the
6 DVR, once that's taken, I then do a search warrant return and
7 turn it into the Clerk's office and -- showing the data that
8 was requested was taken out of the DVR.

9 THE COURT: Would you move a little closer to the
10 microphone, please. Thank you, sir.

11 Q: And would you recognize a copy of that search warrant if
12 I showed it to you?

13 A: Yes, sir.

14 Q: And would you recognize the return that was attached?

15 A: Yes, sir.

16 Q: I'm gonna hand you what's been marked for ID at this
17 point as State's Eighteen. What did I just hand you?

18 A: You handed me a search warrant that was signed by
19 Detective H. Jones on February 16, 2015. It was for a QCHD, I
20 believe it's a model QC9016 16-channel HD DVR, a 2 terabyte
21 analogue digital recorder. And the search warrant return that
22 I signed, which was dated February 19th is when I turned it in
23 to the Clerk's office.

24 Q: Okay. And so, what did you do when you got that search
25 warrant?

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ORION BOAZ COZENE - DIRECT BY HOLFORD

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1 A: When I got the search warrant, I review the search
2 warrant to make sure that it's valid and it appears to be
3 valid and that it was signed by the Clerk's office and the
4 officer that, that actually sought the warrant, which would've
5 been Detective Hugh -- or Hugh Jones.

6 Q: So, he gave you the search warrant, and then what did you
7 do? Why would you have done a return?

8 A: I did a return because I actually got data or evidence
9 off the DVR itself.

10 Q: Okay. And what does your return state?

11 A: My return states that I -- it says the following is an
12 inventory of the property taken pursuant to the search
13 warrant. Number one, photographs of the DVR with the serial
14 number of WCC4M2189706, and the second one is extracted date
15 from the DVR.

16 Q: And so you actually had a physical DVR?

17 A: Yes, sir. The physical actual digital video recorder.

18 Q: Would you recognize if I showed you a piece of evidence
19 whether the DVR would be the same?

20 A: Yes, sir. It should have the same serial number, which
21 is also the same serial number that is actually on the search
22 warrant, I'm sorry, I didn't add that in there but that's also
23 in the description.

24 Q: Does the search warrant or does the serial number on your
25 return match the serial number from the search warrant?

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ORION BOAZ COZENE - DIRECT BY HOLFORD

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1 A: Yes, sir, it does.

2 MR. HOLFORD: Your Honor, the State would seek to
3 introduce State's Eighteen in evidence.

4 THE COURT: Any objection?

5 MS. WILSON: No objection at this moment, Your Honor.

6 THE COURT: All right. State's Eighteen, not receiving
7 any objection, is in evidence without objection.

8 STATE'S EXHIBIT NUMBER EIGHTEEN

9 ADMITTED INTO EVIDENCE

10 BY MR. HOLFORD:

11 Q: I'm approaching you with what's been marked as State's
12 Nineteen. Describe for the record and for the jury what I
13 just handed you.

14 A: You handed me it looks like a cardboard box that has been
15 sealed with evidence tape.

16 Q: Okay. And can you tell what's inside that box?

17 A: I can go by the description on the outside of it.

18 Q: Okay.

19 A: Which is -- gives a file number, which is 15-002479 and
20 the description of a QC -- or 9016 16-channel HD DVR and the
21 Group Number 114 and Item 1, which is our -- our labeling that
22 we use -- system that we use for our property and evidence.

23 Q: And if I hand you back State's Eighteen, that search
24 warrant, the serial number, is the same DVR in this search
25 warrant?

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ORION BOAZ COZENE - DIRECT BY HOLFORD

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1 A: On the outside of the package, it's showing that it's the
2 same model number. The serial number was not written on the
3 outside of this package, so it would be on the inside DVR.

4 Q: Okay. Is that the DVR that you extracted data from?

5 A: It should be, yes, sir.

6 Q: And tell the jury what -- it's been a long process to get
7 to this obviously. What was the importance of that?

8 A: The importance of the DVR was the video showing the
9 incident that occurred the night of the -- I believe it was
10 the 15th, the morning of the 15th.

11 Q: Okay. And, so what you did is you took this physical DVR
12 and you took everything that was on it?

13 A: Yes, sir. I was requested to take the -- or to backup,
14 because that's what it is, it's not really a download, it's
15 called backup through the system on here. But, I was asked to
16 back up the video from the 14th at 5:00 P.M. through the 15th
17 at 8:00 A.M. which would encompass the whole night that the
18 club was open and would give us all the data that that
19 specific DVR had showing all 16 cameras. I believe it was a
20 total of roughly 650 gigabytes of data, which is over a half
21 of terabyte.

22 Q: And so you downloaded all that video?

23 A: Yes, sir.

24 Q: And then did you send it to me?

25 A: No, sir. What I did on it with that is, once I get the

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ORION BOAZ COZENE - DIRECT BY HOLFORD

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1 data off there, it was too big to put on like a blu ray or a
2 DVD disc. And we needed to -- obviously, the USB drive that I
3 was using, so all that data is -- was then transferred to the
4 Investigation's drive, which is secure drive that we have the
5 police department for our Investigative Unit so the detectives
6 would be able to cull through all the videos, the hours of
7 videos that were on each camera to get any -- glean any
8 information off there in reference to the crime.

9 Q: And so I don't have to plug this actual DVR in to see
10 what's on it, right?

11 A: No, sir. You didn't. No, we kept it just in case, so we
12 would have it for reference for later if we absolutely needed
13 it, that way we know it wasn't tampered with, there was
14 nothing gone or anything from it. It also would corroborate
15 the data that I downloaded to the Investigation's drive so
16 they knew it was everything that we had off the video
17 recorder.

18 MR. HOLFORD: The State would move State's Nineteen in
19 evidence.

20 THE COURT: Any objection?

21 MS. WILSON: Your Honor, I do have an objection.

22 THE COURT: All right.

23 Madam Forelady and ladies and gentlemen of the jury, if
24 you'd go to the jury room for a few moments, please. Thank
25 you.

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BY THE COURT

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1 (REPORTER'S NOTE: Jury exits courtroom. The following takes
2 place outside the presence of the jury.)

3 BY THE COURT:

4 THE COURT: All right. Be glad to hear from you, Ms.
5 Wilson.

6 MS. WILSON: Your Honor, I'm sorry, you said ---

7 THE COURT: Yes, ma'am. I'll be glad to hear from you.

8 MS. WILSON: Your Honor, I don't -- I don't think that
9 there is a clear chain here connected to this DVR and I'm
10 concerned about that. I understand that -- I'm sorry, is it
11 Corporal?

12 MR. COZENE: Master Corporal.

13 MS. WILSON: --- Master Corporal Cozene retrieved it at
14 some point and downloaded it. What I don't understand is who
15 had it before that and where he got it from. That's what I'm
16 missing here and I heard him say something about Hugh Jones
17 signing on the search warrant but we don't know who had it
18 before he came into custody of it, at least I haven't heard
19 any evidence to that effect.

20 THE COURT: All right. Okay. As to where he got it
21 from, I think he said he got it from the Crime Scene evidence
22 room, but that's not your point.

23 MS. WILSON: Right. I mean, certainly it didn't just
24 miraculously appear there. He very clearly said that he
25 thought maybe it was somebody named Sutton, Detective Sutton,

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BY THE COURT

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1 but certainly, he is unclear about where it came from.

2 THE COURT: All right. So, we're talking about -- well,
3 let me hear from you first, Solicitor.

4 MR. HOLFORD: Yes, Your Honor. We're talking about a DVR
5 system that is non-fungible as to the chain. It has an
6 identifiable serial number, model number. It's the same
7 serial number that was shown the search warrant, that the
8 return was done on. And, so, the ---

9 THE COURT: Well, we actually haven't done that because
10 you haven't opened it up and he hasn't looked at the serial
11 number in -- on the DVR to match it to the search warrant.
12 So, he hasn't done that yet.

13 MR. HOLFORD: Yes, Your Honor.

14 THE COURT: Assuming he's able to do that, what's your
15 argument?

16 MR. HOLFORD: Your Honor, if the serial number matches,
17 it's non-fungible, the chain does not need to be -- a chain of
18 evidence shows that it's the same piece of evidence, the same
19 type of evidence. That's the reason a chain of evidence is
20 necessary in most cases. In this case, it shows that it is
21 the exact same DVR that he downloaded information from. The
22 serial number would corroborate that.

23 THE COURT: All right. So, the situation regarding non-
24 fungible item, which this is, DVR is a non-fungible item.
25 It's not like blood or something like that, right. There --

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BY THE COURT

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1 when you have non-fungible evidence, evidence that is unique
2 and identifiable, a strict chain of custody is not required if
3 the offered item possesses characteristics which are fairly
4 unique and readily identifiable, and if the substance of which
5 the item is composed of is relatively impervious to change,
6 then the item can be admitted merely on the basis of testimony
7 that is the item in question and that it is in a substantially
8 unchanged condition.

9 Now, are you challenging the authenticity of the search
10 warrant document and the return? Are you saying that is not a
11 proper copy of the search warrant and return issued in this
12 matter, Ms. Wilson?

13 MS. WILSON: No, sir, I'm not.

14 THE COURT: All right. So, you are admitting that that
15 is a proper copy of the records and the search warrant in this
16 particular matter regarding whatever item is located on the
17 face of the search warrant, whatever that is?

18 MS. WILSON: Yes, I believe that's correct.

19 THE COURT: All right. Assuming that Master Corporal
20 Cozene is able to match the DVR inside the cardboard container
21 to the description, the complete description set forth on the
22 search warrant and the return, which he authored, then I would
23 find that there would be sufficient testimony that it is the
24 item in question along with some testimony that it is
25 substantially unchanged from the time that he saw it till now

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BY THE COURT

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1 when he opens it up, it is the same item and it is the same
2 item that is reflected in the search warrant document and the
3 return document, but he'll have to so testify and, as at the
4 current time, he's not looked at it, so none of that testimony
5 is present. All right?

6 MS. WILSON: Yes, sir.

7 MR. HOLFORD: Yes, sir.

8 THE COURT: All right. I'm sure the jury is taking a
9 break. We'll take a short breach for about five minutes.
10 After this, Solicitor, tell me who might be the next
11 state witness.

12 MR. HOLFORD: Jody Sutton, Your Honor, and it would get
13 into video that would be lengthy.

14 THE COURT: All right. So, it might be an appropriate
15 time to go to lunch. We'll discuss that. But right now,
16 we're gonna take about a five-minute break or so.

17 MS. WILSON: Yes, sir.

18 THE COURT: Thank you very much.

19 You may step down, sir, but you cannot talk to the
20 Solicitor at the present time.

21 **(RECESS.)**

22 *******OFF THE RECORD*******

23 **(On the Record.)**

24 THE COURT: All right. Ms. Wilson, I understand you have
25 some matters for the Court?

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BY THE COURT

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1 MS. WILSON: Yes, sir, I wanted to add to my previous
2 motion or my objection, I think I need to flush out in a
3 little more detail what it is that is also part of my concern.

4 THE COURT: All right.

5 MS. WILSON: I did state to the Court that certainly I
6 feel that it's not established where this came from or how it
7 came into Master Corporal Cozene's possession, but what I also
8 am trying to get to here is that it's not just the instrument
9 itself. We don't know that what he has -- what is supposed to
10 be contained in there is an accurate depiction of what has
11 occurred and I understand that there are many, many -- I think
12 you said terabytes -- it's a really voluminous amount of
13 information that's supposedly on here, but they did not submit
14 all those things into evidence. I certainly don't have it in
15 its entirety. My understanding is that the State did not
16 receive it in its entirety.

17 THE COURT: All right.

18 MS. WILSON: And I certainly am also looking for
19 information that would support that it is an accurate
20 depiction of what it says -- what he's saying it is.

21 THE COURT: All right. So what you want is somebody that
22 is associated with the club that says that's their DVR system,
23 and then you want the person that executed the search warrant,
24 went to the club, seized it, took it to the evidence locker.

25 MS. WILSON: I think that's what would be necessary, Your

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BY THE COURT

1 Honor.

2 THE COURT: Solicitor?

3 MR. HOLFORD: Your Honor, I think that it's sufficient
4 and if necessary, I can wait until the next witness which is
5 Detective Sutton. He's the one who actually did the search
6 warrant and seized it. I think it's sufficient to get to the
7 fact that we have the data that Corporal Cozene downloaded off
8 of a DVR to show that it was the same DVR that was seized. It
9 has the same serial number and that is the data that he
10 downloaded off the DVR and, and has submitted it.

11 THE COURT: Well, you might need two people to do that.
12 This witness can look at the search warrant and the return and
13 open up the cardboard box and match up the information in the
14 search warrant and the return to the item in the cardboard
15 box, and then he can say what he did with it. I got it from
16 the evidence, you know, lock up room where it's locked up, you
17 know, and whatever access, you know, limited access there is
18 to it and the work he did on it, and I extracted it and then
19 put it back in the, you know, sealed it back up and put it
20 back in the evidence room and didn't see it until now, and now
21 I'm, you know, cutting it open and it hadn't changed at all.
22 And then you'll need the other person that can look at the
23 item and says okay, here's the search warrant, here's the
24 item. Yep, this is what I seized from Club Level -- I took it
25 from Club Level and took it over to the Myrtle Beach Police

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1 Department and stuck in their evidence lock up room, from
2 where this Master Corporal took it out of. So that there
3 aren't any holes in that. So, I don't know that it's of
4 necessity to have anybody else other than those individuals
5 because the one would say I went to the place, seized it, took
6 it to the Police Department. The other one says, I got it and
7 took the information from it.

8 Now, you know, there might be some argument that -- that
9 -- that you want to make, Ms. Wilson, about you don't have
10 anybody from the club that says, yeah, that's our DVR, but it
11 being a non-fungible item, I think all requirements to allow
12 it into evidence would be seized. It may leave you some door
13 open to question its authenticity to the jury, but not for the
14 receipt of evidence.

15 MS. WILSON: Well, and Your Honor, I would add and ask
16 this of the Court, because I certainly understand the Court's
17 ruling about the item itself given that the Solicitor does
18 supplement what he's put into evidence thus far. However, my
19 issue would still be the same about the nature of the video
20 itself and maybe I'm mixing issues here and I certainly don't
21 want to do that, but the fact that they can substantiate that
22 one of them got it from the club and that one of them opens it
23 here and it's the same is not gonna deal with the issue of
24 whether or not that video evidence is an accurate
25 representation of what was -- what actually occurred and they

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1 don't have a way to support that.

2 THE COURT: No, what they've got is we seized it from the
3 club, this is what it purports to show, and this is what was
4 on it. Okay? Now if they want to back that further up, that
5 would get it into evidence. If they want to back it further
6 up to, that's up to the State, to have somebody from the club
7 to say we've got a DVR camera system and this is what it does
8 and, you know, the police came with a search warrant and
9 seized it from us and we hadn't seen it since. But whether or
10 not it, you know, what it shows, that's being up for the jury
11 to determine and for you to ask proper questions, but it'll
12 come into evidence.

13 MS. WILSON: Okay. I would ask the Court to please note
14 my objection for the record.

15 THE COURT: Yes, ma'am.

16 MS. WILSON: Specifically on the issue of my argument
17 that there is no -- there is no evidence to support that it is
18 -- that the material on it, that the video or the camera
19 information is an appropriate or proper representation of what
20 occurred on that night. You don't have that in evidence and
21 that's what I'm getting at here.

22 MR. HOLFORD: And, Your Honor, if I may?

23 THE COURT: Yes, sir.

24 MR. HOLFORD: By the time we get to actually showing the
25 video, there are gonna be witnesses available to corroborate,

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1 yes, this is what happened; this is an accurate reflection of
2 what happened. As to the video, whether it shows what it
3 shows, it's video. We'll be able to see and we can certainly
4 play for the Court the fact that it's video inside the club,
5 it's video outside the club, it is the video. Getting to the
6 actual DVR is -- and the State had to do it this way, I
7 could've called Detective Sutton who seized it and then Master
8 Corporal Cozene, who downloaded the data, and then gone back
9 to Sutton is gonna testify ---

10 THE COURT: Well, it doesn't matter. I mean, you can do
11 it the way you're doing it, it just won't come into evidence
12 until the next one says, you know, I got the search warrant,
13 this item right here matches the search warrant. It's what I
14 seized from Club Level and I took it to the Police Department
15 and stuck it in the evidence locker. So, you match that with
16 what apparently Master Corporal is gonna testify to, you match
17 those two together, it comes into evidence and then showing it
18 to the jury comes later when you've got witnesses that say
19 that's me on the video and that's what I am doing, like one of
20 the security guards that says that's me on the video and
21 that's me running or whatever it is I'm doing. So then that
22 goes to the issue of whether or not it actually shows what
23 happened or not. Okay?

24 MR. HOLFORD: Yes, Your Honor.

25 MS. WILSON: Thank you, Your Honor.

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1 THE COURT: All right. So let's -- we'll call the jury
2 back in and you finish up with the, -- Master Corporal Cozene
3 and then we'll break for lunch at that point in time.

4 MR. HOLFORD: Your Honor, may I provide him with a knife
5 to cut the box open?

6 THE COURT: Yeah, or you need some scissors, knife;
7 that's great. Whatever you want to do. Thanks.

8 All right. Ask the jury to come in, please.

9 THE COURT: And when I say finish up, Ms. Wilson,
10 obviously I mean your cross examination, obviously, not just
11 the Solicitor finishes up.

12 MS. WILSON: Yes, sir. I understand. Thank you.

13 THE COURT: Just so it's clear. When we're completely
14 done with this witness and then we'll break for lunch.

15 MS. WILSON: Yes, sir.

16 THE COURT: Thanks.

17 (REPORTER'S NOTE: Jury enters courtroom.)

18 THE COURT: Go ahead, Solicitor.

19 BY MR. HOLFORD:

20 Q: Master Corporal Cozene, I'm gonna approach you with
21 what's been marked as State's Nineteen. And hand you a knife
22 and ask you to open that box up for me here. All right. What
23 are you pulling out of the box?

24 A: A QC DVR.

25 Q: Okay. Anything else in there?

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- 1 A: It had a mouse and the power supply.
- 2 Q: Okay. Is there a serial number on that DVR?
- 3 A: Yes, sir, there is.
- 4 Q: I'm gonna hand you State's Eighteen. Can you -- can you
- 5 verify that that's the same DVR that you did the return on
- 6 based on the serial number?
- 7 A: Yes, sir.
- 8 Q: And how can you tell that?
- 9 A: The serial number on the bottom of this unit right here
- 10 matches the serial number that was on the search warrant and
- 11 subsequent search warrant return that I returned it.
- 12 Q: Okay. So, that's the actual physical DVR?
- 13 A: Yes, sir.
- 14 Q: And then you downloaded video off of that?
- 15 A: Yes, sir.
- 16 Q: Did you alter the video in any way?
- 17 A: No, sir.
- 18 Q: And approximately how much video was there?
- 19 A: For the dates that I was able to backup it was
- 20 approximately 650, I think it's 653 gigabytes of data.
- 21 Q: Okay. So this DVR was recording multiple angles?
- 22 A: Yes, sir. It's a 16-channel DVR and I believe there were
- 23 16 cameras that were hooked up to it.
- 24 Q: And you didn't change what the footage was on there, did
- 25 you?

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1 A: No, sir. All I did is went in through the system itself,
2 clicked on where it said backup and backed it up to a external
3 hard drive.

4 Q: Would there have been a feature you could go in and
5 change what a camera saw a couple of days prior?

6 A: No, sir.

7 Q: You couldn't add a person or take a person out?

8 A: No.

9 Q: You couldn't change what the events show on the camera?

10 A: No, sir.

11 Q: Not by accessing the DVR?

12 A: No, sir, that's all I did was just access directly
13 through the management system on the, the unit itself and then
14 download everything to the drive.

15 Q: And you downloaded what that system had recorded over a
16 certain period of time?

17 A: Yes, sir, from it was 8 o'clock on the 14th through or
18 I'm sorry, 5 o'clock on the 14th at 5:00 P.M. through 8:00
19 A.M. on the 15th.

20 MR. HOLFORD: No further questions.

21 THE COURT: Cross examination?

22 MS. WILSON: Just very briefly, Your Honor.

23 CROSS EXAMINATION OF ORION BOAZ COZENE BY MS. WILSON:

24 Q: Master Corporal Cozene?

25 A: Yes, ma'am.

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ORION BOAZ COZENE - CROSS BY WILSON

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1 Q: You say that you, you went through, I'm certain that you
2 didn't watch all of what was on the DVR, correct?

3 A: I didn't -- at the time it was given to me, I didn't
4 watch the DVR. All I was asked that I download those or
5 backup the data through the management system from that
6 specific timeframe and that's what I did.

7 Q: And again, you said the specific timeframe that you were
8 looking for was what?

9 A: It was I believe the -- about 5 o'clock, I'm sorry -- 8
10 o'clock -- it's in my report but 8 o'clock on the 14th, 8:00
11 P.M. to -- or I'm sorry -- 5 o'clock on the 14th to 8:00 A.M.
12 on the 15th.

13 Q: Okay. So you went through there and you only retrieved a
14 specific portion for download, correct?

15 A: It's -- yes, ma'am.

16 Q: All right. And that was turned over to which person?

17 A: That was for the Investigative Network Drive so all the
18 detectives that were working on the case have access to that
19 and at the time it was advised -- I advised Detective Jones,
20 since he's the one that signed the search warrant for it that
21 it was completed and it was being transferred.

22 Q: Okay. All right. Thank you. No further questions.

23 THE COURT: Any redirect?

24 MR. HOLFORD: Nothing further.

25 THE COURT: All right. Do you wish the witness to be

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1 excused?

2 MR. HOLFORD: Yes, Your Honor.

3 THE COURT: Any objection?

4 MS. WILSON: Actually, Your Honor, if I could just ask
5 one more question?

6 THE COURT: Certainly.

7 BY MS. WILSON:

8 Q: Final question -- and I'm sorry for this. You were not
9 present on scene to witness any, any murder or any shooting,
10 were you?

11 A: No, ma'am, I was not present on scene at the time of the
12 incident.

13 Q: So you didn't see Kevin Bryant commit this murder?

14 A: I was not on scene at the time of the incident, ma'am.

15 Q: Thank you. No further questions.

16 THE COURT: Anything else?

17 MS. WILSON: Nothing, Your Honor. Thank you.

18 THE COURT: Solicitor?

19 MR. HOLFORD: No, Your Honor.

20 THE COURT: You may step down.

21 You wish the witness to be excused, Solicitor?

22 MR. HOLFORD: Yes, Your Honor.

23 THE COURT: Any objection to that, Ms. Wilson?

24 MS. WILSON: Nothing, Your Honor. No objection.

25 THE COURT: You're released from your subpoena and may go

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1 back to your regular duties, sir. Just leave all the items
2 there?

3 A: Leave it there?

4 THE COURT: Yes, sir, just leave it right there. Thank
5 you.

6 BY THE COURT:

7 THE COURT: All right. Ladies and gentlemen, we're going
8 to break for lunch. I would ask that you be back in your jury
9 room at 1:50, please, be back in your jury room at 1:50.
10 Please note that -- I certainly don't have a problem if any
11 number of you want to go to lunch together, you can, but
12 obviously remember my instructions not to be talking about
13 this case. You cannot talk about the case until I give it to
14 you at the end. I'm not saying for y'all to have to go to
15 lunch together, but if you happen to do so, obviously know you
16 cannot talk about this case until I give it to you at the very
17 end. Obviously, it's not proper for anyone to approach you
18 about this particular case in any shape, manner or form. If
19 somebody would do that, if you can do so in relative safety,
20 knowing who -- find out who that person is, you report that to
21 the Court, obviously report anything that happens, but if you
22 know who it is and report that to the Court and we will handle
23 that particular matter. All right? So, with that, 1:50 back
24 in your jury room. Thank you very much.

25 (REPORTER'S NOTE: Jury exits courtroom. The following takes

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1 place outside the presence of the jury.)

2 THE COURT: Anything at this point in time, Solicitor?

3 MR. HOLFORD: No, Your Honor.

4 THE COURT: From Defense?

5 MS. WILSON: Nothing else, Your Honor.

6 THE COURT: And you did indicate there were some other
7 exhibits that we needed to talk about. Obviously, before
8 whatever witness comes up that those exhibits pertain to, you
9 know, make sure that we discuss that ahead of time. All
10 right?

11 MR. HOLFORD: Yes, sir.

12 MS. WILSON: Yes, sir.

13 THE COURT: All right. Thank y'all.

14 MS. WILSON: Thank you.

15 THE COURT: 1:50. Thank you.

16 **(RECESS.)**

17 *******OFF THE RECORD*******

18 **(On the Record.)**

19 THE COURT: Thank you very much. You may be seated.

20 Thank y'all.

21 All right. Solicitor, you ready for the jury to come in?

22 MR. HOLFORD: Your Honor, one brief matter.

23 THE COURT: Okay.

24 MR. HOLFORD: The State recognizes that it's in the
25 Court's discretion to allow recalling of witnesses. In trying

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1 to get this DVR in, we have to show the chain of custody. CSS
2 Bailey went with Jody Sutton, picked it up and put it into
3 Crime Scene. In order to get that testimony out, the State
4 would like to be able to call CSS Bailey to that but be
5 allowed to recall him at a later time to talk about the entire
6 crime scene and all the ballistics without having to go into
7 an hour-long discussion about ballistics and bullet recovery
8 and all those matters just to get to the fact that he secured
9 the DVR.

10 THE COURT: Do you have a problem with that, Ms. Wilson?

11 MS. WILSON: I want to make sure I'm understanding. He
12 wants to call him once just for the issue of the server and
13 then recall him later for bullets?

14 THE COURT: For the -- the basic or the real reason that
15 he's on the witness list to recall him later for his testimony
16 that -- of importance to this particular matter. So, yes,
17 that's what he's asking to do.

18 MS. WILSON: I don't think I have an objection to that,
19 Your Honor.

20 THE COURT: All right. Thank you. I'll allow you to do
21 so.

22 MR. HOLFORD: Thank you, Your Honor.

23 THE COURT: You ready for the jury, Ms. Wilson?

24 MS. WILSON: Yes, sir, I am.

25 THE COURT: Thank you. All right. Ask the jury to come

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1 in please.

2 (REPORTER'S NOTE: Jury enters courtroom.)

3 THE COURT: All right. Solicitor, your next witness,
4 please, sir?

5 MR. HOLFORD: Officer Bailey.

6 THE COURT: All right, sir. If you come all the way
7 around up here and meet the Clerk's representative right over
8 there. Thank you, sir.

9 DAVID BRIAN BAILEY, HAVING BEEN SWORN

10 TESTIFIES AS FOLLOWS:

11 CLERK: State your full name and spell your last name for
12 the Court.

13 MR. BAILEY: My full name is David Brian Bailey. Bailey
14 is B-A-I-L-E-Y.

15 THE COURT: Go ahead, sir.

16 DIRECT EXAMINATION OF DAVID BRIAN BAILEY BY MR. HOLFORD:

17 Q: Officer Bailey, where are you employed?

18 A: City of Myrtle Beach Police Department.

19 Q: And how long have you been there?

20 A: Eighteen years.

21 Q: What position do you hold?

22 A: I'm a Crime Scene.

23 Q: I'm gonna show you what's been marked for ID at this
24 point as State's Nineteen. Do you recognize?

25 A: Yes, sir, I do.

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DAVID BRIAN BAILEY - CROSS BY WILSON

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1 Q: And what is that?

2 A: It's a DVR.

3 Q: How are you familiar with the DVR?

4 A: I retrieved it the night of the incident along with Jody
5 Sutton.

6 Q: Okay. What did you do with it?

7 A: I put it in our Crime Scene storage, storage room.

8 Q: And is that storage unit secured in any way?

9 A: Yes, it's secured. Only Crime Scene personnel has access
10 to it.

11 Q: And did you have anything to do with the DVR after that
12 point?

13 A: No, sir, I did not.

14 MR. HOLFORD: No further questions.

15 THE COURT: Cross examination?

16 CROSS EXAMINATION OF DAVID BRYAN BAILEY BY MS. WILSON:

17 Q: You said you retrieved it along with Jody Sutton,
18 correct?

19 A: Detective Sutton, yes, ma'am.

20 Q: From where was that?

21 A: From Levels, Levels Club, ma'am.

22 Q: You got it from the club?

23 A: Yes, ma'am.

24 Q: All right. And approximately what time did you get it?

25 A: I'm sorry, ma'am?

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1 Q: What time did you retrieve it?

2 A: It was later that evening. I'm not sure of the exact
3 time, ma'am, if I -- Jody Sutton would probably have the time
4 wrote down. I just don't recall off the top of my head.

5 Q: Okay. And this would have been the same day of the
6 incident?

7 A: This would've been the -- I think it was the next day of
8 the incident, the next day.

9 Q: So some time had elapsed?

10 A: Yes.

11 Q: Okay. Thank you. No further questions.

12 THE COURT: Anything else, Solicitor?

13 MR. HOLFORD: Your Honor, the State would ask that this
14 witness be excused, but remain under subpoena.

15 THE COURT: Any objection?

16 MS. WILSON: No objection, Your Honor.

17 THE COURT: All right, sir, you remain under subpoena.
18 You are excused for the present time. Thank you very much.

19 A: Thank you, sir.

20 THE COURT: Next witness please?

21 MR. HOLFORD: The State calls Jody Sutton.

22 THE COURT: All right, sir, come all the way around up
23 here and meet the Clerk's representative right up here,
24 please.

25 JODY GENE SUTTON, HAVING BEEN SWORN

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1 TESTIFIES AS FOLLOWS:

2 CLERK: Please have a seat and state your full name, and
3 spell your last for the Court.

4 MR. SUTTON: My name is Jody Sutton, J-O-D-Y, Gene, G-E-
5 N-E, Sutton, S-U-T-T-O-N.

6 THE COURT: Go ahead, Solicitor.

7 DIRECT EXAMINATION OF JODY GENE SUTTON BY MR. HOLFORD:

8 Q: Tell me where you work, Mr. Sutton.

9 A: I work now for a Corporate Security Officer for a major
10 pharmaceutical company in Keningsburg, Pennsylvania.

11 Q: How long have you been there?

12 A: Since September.

13 Q: Where you back on February 15th, 2015?

14 A: I was a Detective with the City of Myrtle Beach Police
15 Department.

16 Q: And that's how I know you as a detective, right?

17 A: Yes, sir.

18 Q: How long were a detective with Myrtle Beach Police
19 Department?

20 A: Almost three years.

21 Q: Okay. On February 15th, 2015, did you have an occasion
22 to respond to a crime scene?

23 A: Yes, sir.

24 Q: And where was that?

25 A: It was at the Levels Night Club on 9th Avenue North.

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1 Q: Okay. Tell me what -- what prompted you being called out
2 to the nightclub?

3 A: I had overheard radio traffic of a shooting that occurred
4 at that night club and typically, at that point, detectives
5 are normally called to those scenes. So, I took the
6 initiative and started heading that way. In route to the
7 scene I determined or it was brought to our attention that
8 there was a deceased person there. And once we arrived, we
9 got a brief from the patrol officers that were already on
10 scene and then, at that point, I went in and started reviewing
11 video.

12 Q: Okay. Reviewing video, tell me about that; where was
13 that video?

14 A: It was in a private office in the back of the club. It
15 had -- it was a DVR that had I think 16 different camera
16 angles. And what I did was just reviewed the camera angles
17 that depicted the incident in front of the -- in front of the
18 club.

19 Q: So you hadn't taken the DVR anywhere at that point, had
20 you?

21 A: No, sir.

22 Q: Approximately, what time was this?

23 A: Oh it was about two-something, 3:00 in the morning. I'm
24 not certain of the times.

25 Q: So you respond to Club Levels?

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1 A: Yes, sir.

2 Q: And they have a camera system?

3 A: Yes, sir.

4 Q: How about how many cameras did you say it was?

5 A: I think 16.

6 Q: And what were you looking for?

7 A: I was looking for the crime that occurred of the
8 shooting. We knew when I arrived on scene, they pointed out
9 the victim and where he was located and the, the basics of, of
10 the incident and then I used that information to go in, review
11 the video from the timeframe that was given to me of when the
12 incident occurred and was able to see where the incident was
13 captured on video.

14 Q: How many of these 16 cameras -- where all do they point,
15 inside, outside?

16 A: Yes, sir, inside and outside. The ones I really relied
17 upon were the ones that were actually in front on the outside
18 that faced eastbound on 9th Avenue North that captured the
19 shooting, and westbound, it captured the victim and two other
20 subjects that we were looking at walking toward the shooting
21 incident.

22 Q: And in reviewing all those videos, would you be able to
23 see you actually going in there and looking at the video?

24 A: Oh, yes, sir. Yes, sir.

25 Q: That would be captured on the DVR?

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1 A: Yes, sir.

2 Q: Did the club owners have a problem with you looking at
3 that video that night?

4 A: No, sir, not at all.

5 Q: Did you actually take any video that evening?

6 A: Yes, I transferred some video from the DVR to a portable
7 thumb drive, USB drive.

8 Q: And did you get a search warrant to do that?

9 A: No, sir, I used a Consent to Search form through the
10 department.

11 MR. HOLFORD: Your Honor, may I approach with State's
12 Twenty?

13 THE COURT: You may do so.

14 BY MR. HOLFORD:

15 Q: Just identify, don't tell us what that is, but identify
16 what -- what are you looking at?

17 A: A Consent to Search form.

18 Q: Okay. And is that the same one you were telling me
19 about?

20 A: Yes, sir.

21 Q: You signed that?

22 A: Yes, sir.

23 MR. HOLFORD: Your Honor, the State moves Twenty into
24 evidence?

25 THE COURT: Any objection to that?

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1 MS. WILSON: Without objection, Your Honor.

2 THE COURT: All right. State's Twenty is in evidence
3 without objection.

4 STATE'S EXHIBIT NUMBER TWENTY

5 ADMITTED INTO EVIDENCE

6 BY MR. HOLFORD:

7 Q: So, what does this Consent to Search say?

8 A: It basically allows -- the club owner is allowing me to
9 extract video from their DVR at their club onto my USB drive
10 in the absence of search warrant.

11 Q: Now, when we're talking about a USB drive, it's just
12 something like this big, right?

13 A: Right.

14 Q: So did you take all 16 angles?

15 A: No, sir.

16 Q: Did you take a number of hours from one camera or two?

17 A: No, sir, probably to be honest with you, I couldn't even
18 tell you the length of time. It wasn't that long.

19 Q: But you did review that video?

20 A: Yes, sir.

21 Q: And you would recognize the same video if you saw it
22 again?

23 A: Yes, sir.

24 Q: Did you later go back and, and take more video or take
25 the DVR?

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1 A: I went back and took the DVR.

2 Q: And what process did you go through to do that?

3 A: I obtained a search warrant that was signed by the City's
4 Clerk and submitted a copy of that to the, the club owner and
5 then at that point seized the DVR.

6 Q: Did anyone go with you?

7 A: Yes, Officer Bailey.

8 MR. HOLFORD: Your Honor, may I approach?

9 THE COURT: Yes.

10 BY MR. HOLFORD:

11 Q: I'm handing you State's Twenty-one, can you identify what
12 that document is?

13 A: It's a search warrant.

14 Q: Is that the search warrant you were just talking about?

15 A: Yes, sir.

16 Q: And who obtained this search warrant?

17 A: I did, sir.

18 MR. HOLFORD: State moves State's Twenty-one into
19 evidence.

20 THE COURT: Any objection?

21 MS. WILSON: Without objection, Your Honor.

22 STATE'S EXHIBIT NUMBER TWENTY-ONE

23 ADMITTED INTO EVIDENCE

24 BY MR. HOLFORD:

25 Q: And so what did you do after you got that search warrant?

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JODY SUTTON - DIRECT BY HOLFORD

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1 A: I obtained the search warrant ---

2 THE COURT: It's in evidence without objection. Go
3 ahead.

4 MR. HOLFORD: Thank you, Your Honor.

5 THE COURT: That's all right. Go ahead.

6 A: I took a copy of the search warrant with me to the, the
7 incident location at Levels at 515 9th Avenue North, gave a
8 copy of it to the club owner and then at that point,
9 disconnected the DVR and Officer Bailey took the DVR from the
10 club.

11 BY MR. HOLFORD:

12 Q: I'm gonna show you what's been marked as State's
13 Nineteen. Does this look familiar?

14 A: Yes, sir.

15 Q: What does this appear to be?

16 A: It appears to be the DVR that was seized from the club.

17 Q: Pursuant to that search warrant?

18 A: Yes, sir.

19 Q: And then who took this?

20 A: Officer Bailey.

21 MR. HOLFORD: Your Honor, the State would seek to admit
22 State's Nineteen into evidence.

23 THE COURT: Any objection?

24 MS. WILSON: Yes, sir, Your Honor.

25 THE COURT: Anything further than what you've already

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BY THE COURT

1 placed on the record with the Court?

2 MS. WILSON: Yes, sir. If we could approach for a
3 second?

4 BY THE COURT:

5 THE COURT: Well, if you need to place other matters on
6 the record then -- Madam Forelady, ladies and gentlemen of the
7 jury, go to the jury room, please.

8 (REPORTER'S NOTE: Jury exits courtroom. The following takes
9 place outside the presence of the jury.)

10 THE COURT: Yes, ma'am, I'll be glad to hear from you.

11 MS. WILSON: Your Honor, my objection is substantially
12 the same as it was before, but I want to make sure I am being
13 very clear about the fact that my objection still stands
14 because he, Detective Sutton, still cannot -- he's not the
15 originator of this device. I understand that he did get a
16 search warrant to get the device, but -- and I'm gonna get
17 into this in my line of questioning -- but he's still trying
18 to enter in something that we don't know about the validity of
19 what's on it. So the fact that -- I mean, if we're just
20 talking about it coming in, but we're -- I think he's trying
21 to legitimize the video through this witness and that's my
22 entire point, that he can't do it through Detective Sutton,
23 through the material that comes from this device.

24 THE COURT: Is your intention, Solicitor, to have this
25 witness publish certain portions of the video?

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1 MR. HOLFORD: Yes, Your Honor.

2 THE COURT: And are they the ones that he put on his
3 thumb drive or are they ones that -- that were copied by -- it
4 was Master Corporal ---

5 MS. WILSON: Cozene.

6 THE COURT: --- Cozene?

7 MR. HOLFORD: Both, Your Honor.

8 THE COURT: I don't have a problem with what he took from
9 the thumb drive because he observed that and he copied those.
10 Now, what is it that you intend to play that he didn't copy
11 onto his thumb drive?

12 MR. HOLFORD: Well, Your Honor, he was the detective at
13 the time. He reviewed more than what he just copied. There
14 are 16 channels. I mean, it's kind of a circular argument.
15 We can watch the video that came from the DVR that shows him
16 actually sitting there watching it, but we can't watch that
17 until it's actually -- we can certainly do an in camera
18 hearing and show that it is what it purports to be. It is the
19 video that shows him watching the video. It is the video of
20 Levels. Without watching that video, it's difficult to
21 support that. The State is certainly willing to play the
22 video for Your Honor, and show you that it is the video of
23 Levels.

24 THE COURT: I, I don't think that's the point that Ms.
25 Wilson is trying to make.

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1 MS. WILSON: It's not, and, Your Honor, and what I'm
2 getting at is not circular. There has to be established that
3 the video is what it's supposed -- that there is the video,
4 that the video is untampered with, and they cannot show that
5 through this witness. They haven't been able to show it
6 through the witnesses they've presented.

7 My understanding is, based on what he said that when he
8 goes back to the office, they're back there with the video. I
9 believe in his -- in the discovery, his statement is that they
10 are reviewing it prior to him arriving, which means that he
11 cannot substantiate the veracity of what ---

12 THE COURT: Who is doing that?

13 MS. WILSON: The owners of the club. So, the video is
14 not retrieved and they go off with it into the night without
15 it ever having been touched or reviewed or anything change --
16 they can't show what happened to it, but they don't know and
17 that is my point to the Court.

18 THE COURT: Well, what you're arguing is that someone
19 other than the Police Department could have altered it before
20 they got it. That doesn't mean they can't get into evidence
21 what they seized. If they show properly what they seized,
22 they can show that. You can argue, now weren't their some
23 people looking at this thing beforehand. Couldn't they have
24 erased parts, couldn't they have taken parts out, whatever
25 questions you want to ask them. But the point is the State

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1 doesn't have to prove the veracity of it beforehand. They
2 have to prove what it is that the police seized, what happened
3 to it thereafter, that it contains probative information that
4 the Court finds outweighs any prejudice to your Defendant.
5 And these other ancillary arguments are arguments you can
6 cover through cross examination, but it doesn't mean you can't
7 get it into evidence.

8 MS. WILSON: All right. Well, Your Honor, I would just
9 note my objection for the record. I believe that it would be
10 necessary for someone from the club to verify that they turned
11 over that video in its entirety to the police and the police
12 are saying they got it. We don't know what ---

13 THE COURT: That's a fine question for cross examination.

14 MS. WILSON: Yes, sir.

15 THE COURT: And he may not be able to answer it, but it
16 doesn't mean you can't get it into evidence.

17 MS. WILSON: Yes, sir.

18 THE COURT: And it may poke a hole in the State's case
19 and if they don't want to fill it with the witness, then
20 that's their choice.

21 MS. WILSON: Yes, sir. Your Honor, I would also ask are
22 you -- am I allowed to bring this argument back at the time of
23 the admission of the actual video?

24 THE COURT: What the time -- you've made your argument,
25 but if there's something that when -- let's say one of the

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1 security guards is viewing the video, and he's saying yeah,
2 that's what was happening, that's me, that's an accurate
3 representation of what was occurring at the time. If you have
4 an objection to that, I'll be glad to hear from you.

5 MS. WILSON: Yes, sir. Well, I just preserve my
6 objection for the record. Thank you.

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

8 All right. Ask the jury to come in, please.

9 (REPORTER'S NOTE: Jury enters courtroom.)

10 THE COURT: All right, Solicitor?

11 MR. HOLFORD: Your Honor, the State would seek to
12 introduce State's Nineteen into evidence?

13 THE COURT: All right. Over the objection of the
14 Defense, I'm gonna allow it into evidence.

15 MR. HOLFORD: Thank you, Your Honor.

16 STATE'S EXHIBIT NUMBER NINETEEN

17 ADMITTED INTO EVIDENCE

18 BY MR. HOLFORD:

19 Q: Detective Sutton, that evening you reviewed a lot of
20 video, correct?

21 A: Yes, sir.

22 Q: Sorry. Let me get back on track.

23 A: That's fine.

24 Q: Have you reviewed the video since then prior to trial?

25 A: Yes, sir.

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1 Q: Have you reviewed video of, of the victim in this case?

2 A: Yes, sir.

3 Q: And have you reviewed -- how many angles are there?

4 A: In totality there's 16 camera angles, but I think was
5 relevant was about eight. I'm not certain.

6 Q: Okay. So there are portions of this video that are taken
7 from the DVR that doesn't include the entire 10 hours times 16
8 camera angles?

9 A: Correct.

10 Q: And have you reviewed relevant portions of that?

11 A: Yes, sir.

12 Q: And in those relevant portions, does it include where the
13 victim is?

14 A: Yes.

15 Q: Does it also capture the crime on video?

16 A: Yes, sir.

17 Q: And did it capture the shooter or the suspect at the
18 time?

19 A: Yes, sir.

20 Q: And are they the same or do they appear the same as what
21 you watched that evening?

22 A: Yes, sir.

23 Q: Have you altered them in any way?

24 A: No, sir.

25 Q: The video that you saw, did it appear to be the same that

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1 you watched on the actual system at Club Levels that night?

2 A: Yes, sir.

3 Q: And there's no way -- did you tamper with the DVR?

4 A: No, sir.

5 Q: Did you insert any video footage into it?

6 A: No, sir.

7 Q: Did you delete the video footage from it?

8 A: No, sir.

9 Q: Did you alter the video to capture something?

10 A: No, sir.

11 Q: Does the video show what happened that night?

12 A: Yes, sir.

13 Q: As you observed it 10 minutes or 15 minutes after the
14 crime?

15 A: Yes, sir.

16 MR. HOLFORD: Your Honor, the State -- may I approach?

17 THE COURT: Yes, sir.

18 BY MR. HOLFORD:

19 Q: I'm handing you State's Twenty-two, can you identify what
20 that is, just generally?

21 A: It's just a DVD.

22 Q: A DVD?

23 A: Yes, sir.

24 Q: And have you reviewed this DVD before trial today?

25 A: If it captures the images over on the ---

1 THE COURT: I'm sorry, sir, you need to get behind the
2 microphone. I can't hear a word you're saying.

3 A: Oh, I'm sorry. If it captures the information that was
4 on that DVR, then yes.

5 Q: Did I play a DVD for you yesterday morning?

6 A: Yes, sir.

7 Q: And does that appear to be the DVD -- would you actually
8 need to see the video in order to say if it is or isn't?

9 A: Yes.

10 MR. HOLFORD: Your Honor, the State would seek to
11 introduce State's Twenty-two into evidence?

12 THE COURT: Ms. Wilson?

13 MS. WILSON: Your Honor, could we approach?

14 THE COURT: Sure.

15 (REPORTER'S NOTE: A bench conference was held off the record
16 in the presence of but out of hearing of the jury.)

17 BY THE COURT:

18 THE COURT: All right. Madam Forelady, ladies and
19 gentlemen of the jury, go to the jury room for a little bit
20 please. Thank you.

21 (REPORTER'S NOTE: Jury exits courtroom. The following takes
22 place outside the presence of the jury.)

23 THE COURT: Go ahead, Solicitor.

24 BY MR. HOLFORD:

25 Q: Detective Sutton, State's Twenty-two -- I'm gonna show

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1 you a video and will you be able to identify if it's the video
2 you saw yesterday?

3 A: Yes, sir.

4 (REPORTER'S NOTE: State's Exhibit Twenty-two played outside
5 the presence of the jury.)

6 Q: Can you clearly see what's playing on the T.V.?

7 A: Yes, sir.

8 Q: Is there any sound?

9 A: No, sir.

10 Q: What is it; what are we watching right now?

11 A: It appears the inside of the Levels Club.

12 Q: Okay. And do you recognize anyone in it?

13 A: Yes, sir.

14 Q: Who?

15 A: The victim.

16 Q: Is that him?

17 A: Yes, sir.

18 Q: What time was this?

19 A: The video shows 2:32 A.M. on 2/15/2015.

20 Q: And how do you know that?

21 A: Based on what's time stamped on the video.

22 COURT REPORTER: Please move up to the microphone.

23 A: I'm sorry?

24 COURT REPORTER: Please move up to the microphone.

25 THE COURT: Move up in front of the microphone. You need

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1 to concentrate of being right in front of the microphone.
2 A: Okay.
3 BY MR. HOLFORD:
4 Q: Now what are we seeing?
5 A: It appears the back end of Levels Night Club.
6 Q: And is this a different camera angle?
7 A: Yes, sir.
8 Q: How can you tell?
9 A: It's an angle from outside.
10 Q: Does it give you a different channel number?
11 A: Yes, sir, it does.
12 Q: Is that something that you put on there?
13 A: No, sir.
14 Q: Is this similar to what you viewed that night?
15 A: Yes, sir.
16 Q: All right. How about now?
17 A: That's a different channel of the same Levels DVR.
18 Q: And what channel are you watching?
19 A: We're watching Channel 16 now.
20 Q: And the time?
21 A: It's time stamped 2:33 in the morning.
22 Q: And did the channel change?
23 A: Yes, sir.
24 Q: Why is that?
25 A: It's a different camera angle.

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1 Q: Is it following the victim?

2 A: Yes, sir.

3 Q: And is this what you watched that night?

4 A: Yes, sir.

5 Q: Let me play out for another 12 seconds. Does that truly
6 and accurately reflect the video that you saw both that night
7 and yesterday morning?

8 A: Yes, sir.

9 Q: While the jury is out, I'm gonna hand you what's been
10 marked as State's Twenty-three. Did I show you another video
11 clip yesterday?

12 A: Yes, sir.

13 Q: And what was that video clip of?

14 A: I believe it was of the Defendant.

15 Q: And other multiple angles?

16 A: Yes, sir.

17 Q: Does it accurately -- well -- I'm gonna put State's
18 Twenty-two in the DVD player, see if you can tell me ---

19 THE COURT: Twenty-two?

20 MR. HOLFORD: Twenty-three. That was Twenty-two, Your
21 Honor.

22 THE COURT: Okay.

23 BY MR. HOLFORD:

24 Q: I'm inserting State's Twenty-three into the DVD player.

25 (REPORTER'S NOTE: State's Exhibit Twenty-three played outside

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1 the presence of the jury.)

2 Q: The jury is not in here. We're gonna watch the video to
3 see if that what ---

4 A: Okay.

5 Q: All right. What do we see now?

6 A: Another angle, Channel 10, inside Levels Club.

7 Q: And what time?

8 A: It shows 2:20 A.M.

9 Q: Okay. How do you know it's Channel 10?

10 A: On the bottom left corner of the -- it shows Channel 10.

11 Q: Did it switch camera angles?

12 A: Yes, sir.

13 Q: To what channel?

14 A: Channel 15.

15 MR. HOLFORD: It's a little bit longer, Your Honor, it's
16 about nine minutes.

17 THE COURT: Okay.

18 BY MR. HOLFORD:

19 Q: In reviewing this video yesterday, what's -- what's the
20 difference in this video and the one we watched?

21 A: The time.

22 Q: This video switches different channels at different
23 times; why is that?

24 A: As far as like it did just there?

25 Q: Yeah, so the clip we just watched was multiple camera

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- 1 angles?
- 2 A: Right. It was just showing ---
- 3 Q: What's the difference between this one?
- 4 A: This one is showing the Defendant in the club.
- 5 Q: What channel are we on now?
- 6 A: Channel 15.
- 7 Q: We've seen a portion of 15 already, but this is a longer
- 8 portion?
- 9 A: Right.
- 10 Q: All captured from the same DVR?
- 11 A: Yes, sir.
- 12 Q: All appears to be substantially the same to what you
- 13 viewed that night on February 15th?
- 14 A: Yes, sir.
- 15 Q: Or that morning?
- 16 A: Yes, sir.
- 17 Q: What's the time stamp right there?
- 18 A: The time shows 2:25 A.M.
- 19 Q: Can you tell where the Defendant is right now?
- 20 A: I cannot.
- 21 THE COURT: Okay.
- 22 Q: About how long do you think you stood there that night
- 23 and watched video?
- 24 A: At least three hours.
- 25 Q: Do you remember where the Defendant was before -- or the

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- 1 suspect was before he shot the victim?
- 2 A: Yes, sir.
- 3 Q: Where?
- 4 A: In between that blue pickup truck and that silver car.
- 5 It looks like there's a shadow or an image right there.
- 6 Q: Right here?
- 7 A: Right.
- 8 Q: And that's based on?
- 9 A: Based on what I observed that night in the club reviewing
- 10 the DVR.
- 11 Q: Someone just come between that car and truck?
- 12 A: Yes, sir.
- 13 Q: Who is that?
- 14 A: That's the shooter.
- 15 Q: The shooter. What's he wearing?
- 16 A: All black; black cap, black jacket, black pants.
- 17 Q: Did it just jump in time there?
- 18 A: Yes, sir.
- 19 Q: Did you do that?
- 20 A: No, sir.
- 21 Q: Did you alter the video at all?
- 22 A: I'm sorry?
- 23 Q: Did you alter the video at all?
- 24 A: No, sir.
- 25 Q: Have you viewed the other camera angles?

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- 1 A: Yes, sir.
- 2 Q: Do they do a similar thing?
- 3 A: Yes, sir.
- 4 Q: I'm just gonna ask you to tell us when it gets to 2:33 in
- 5 the morning so we have a record?
- 6 A: Okay. Okay. We're now at 2:33 A.M.
- 7 Q: Are we still on Channel 15?
- 8 A: Yes, sir.
- 9 Q: Does this look familiar?
- 10 A: Yes, sir.
- 11 Q: And what just happened?
- 12 A: The incident -- the shooting incident just occurred.
- 13 Q: So it's a different series of videos from the same DVR
- 14 but it ultimately captures ---
- 15 A: Yes, sir.
- 16 Q: --- that night?
- 17 A: Yes, sir.
- 18 Q: As you remember it?
- 19 A: Yes, sir.
- 20 Q: As you remember watching it that night?
- 21 A: Yes, sir.
- 22 MR. HOLFORD: Your Honor, the State would seek to
- 23 introduce State's Twenty-two and Twenty-three into evidence?
- 24 THE COURT: Objections?
- 25 MS. WILSON: Yes. And, Your Honor, I have a few

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JODY SUTTON - CROSS BY WILSON

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1 questions.

2 THE COURT: All right. Go ahead.

3 CROSS EXAMINATION OF JODY GENE SUTTON BY MS. WILSON:

4 Q: This isn't actually the video you watched that night, is
5 it, not in this format, correct?

6 A: Fairly close.

7 Q: No, I'm not asking you if the -- if it looks like what
8 you saw that night, I'm asking you if the way that it was just
9 presented on that DVD ---

10 A: Okay.

11 Q: --- is what you watched in that order that night?

12 A: Not all of it, no.

13 Q: Correct. And the reason it's not in that order on the
14 night of is because it's actually been edited, correct?

15 A: The content has not been edited, maybe the length of time
16 has been edited.

17 Q: It's been edited to show a specific series of events,
18 correct?

19 A: Correct.

20 Q: And you did not do that editing, did you?

21 A: No, ma'am.

22 Q: And this wouldn't be the format that you watched the
23 night that you watched the video?

24 A: No, ma'am.

25 Q: You would watch multiple camera angles at different times

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1 showing that location?

2 A: Right.

3 Q: The left and right of the club?

4 A: Right.

5 Q: And, and furthermore, you don't know who did do the
6 editing, do you?

7 A: No, I don't.

8 Q: It was just shown to you yesterday in preparation,
9 correct?

10 A: Yes, ma'am.

11 MS. WILSON: Your Honor, I don't have any further
12 questions. I do have a motion.

13 THE COURT: Let me ask you a question. What you just saw
14 on State's Twenty-two and Twenty-three, what you actually saw,
15 is it any different than what you watched the night of
16 February 15, 2015?

17 A: No, ma'am -- no, sir; it isn't.

18 THE COURT: What you see in Twenty-two and Twenty-three,
19 is it exactly the same as what you saw, what's appearing on
20 the screen, exactly what you saw on the night of February 15,
21 2015?

22 A: It's exactly as I saw it on February 15, 2015.

23 THE COURT: Thank you.

24 Your motion?

25 MOTIONS:

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1 MS. WILSON: Your Honor, my motion is simply that again,
2 we're not talking about just what's on the DVR, we're talking
3 about an edited copy that's been presented. Again, my problem
4 is that that is not able to be substantiated through this
5 witness. If the Court sees fit, certainly, you know, I'd just
6 preserve my motion for the record and I know that the Court
7 has ruled as to the admissibility of the information on the
8 DVR. My position is this is not that basic information. I've
9 watched video as well from the DVR that was presented as a
10 part of the evidence in this case. That is not the format of
11 it. This is edited content. That is not something that
12 Detective Sutton or the former Detective Sutton had any
13 contact with or any ability to do nor did he do it. He says
14 he watched this in preparation for trial, so somebody did it.
15 My point is, we don't have a foundation for this.

16 THE COURT: Solicitor?

17 MR. HOLFORD: Yes, Your Honor. The content has
18 unchanged. The content is the same. The content is video
19 ranging from 8:00 P.M. to approximately 5:00 A.M. on 16
20 different channels the night of February 15th, 2015. The
21 content is the same. The content is the same the Defense has
22 seen. The content is the same that I have, 160 hours of
23 video. And so when Detective Sutton says that the content is
24 the same, it's the same that he watched; that's true. When he
25 says that he was there for three hours watching video, he has

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1 watched that video. Did he watch each clip in that exact
2 sequence as it was shown, no. But has he watched the content;
3 is the content the same, absolutely. The State would rely on
4 -- on Rule 1006 for summaries. I think it would be a
5 tremendous waste of time for the jury to play Channel 10 in
6 its entirety and then Channel 15 in its entirety and have the
7 jury piece together, okay, now it's 2:33 so we've got to
8 switch to Channel 15 when that's already been done.

9 THE COURT: Ms. Wilson?

10 MS. WILSON: Yes, sir. And, Your Honor, I think that the
11 State kinda is missing my point here. I'm not saying that the
12 jury should have to sit nor that the Court should have to
13 suffer through all those hours of video. I think we have
14 suffered enough watching that. What I would say is that
15 again, this is not about the content of the DVR. He's seeking
16 to introduce specific DVD's that he has crafted or that
17 someone in his office and he has not laid a foundation for
18 those. I don't know -- I mean, clearly we've got somebody who
19 Detective Sutton is saying that yes, it came, it looks like
20 the stuff he watched that night, but my point is ---

21 THE COURT: He doesn't say it looks like, he says it is
22 the same information that he watched last night or that he
23 watched that night. So, it's not just that it looks like.

24 MS. WILSON: And I don't have a problem with that, Your
25 Honor, but my argument is still the same and I think it's one

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1 that holds some merit. He's bringing in edited content or
2 he's attempting to bring in edited content through someone who
3 had no part in editing or creating it.

4 THE COURT: Solicitor, who did the editing?

5 MR. HOLFORD: Your Honor, Tonya Root with our office took
6 the clips and put them together in one fluid motion.

7 THE COURT: Okay.

8 MR. HOLFORD: Your Honor, again, the content has not
9 changed.

10 THE COURT: I appreciate the content has not changed and
11 the witness has so testified to that.

12 MR. HOLFORD: The Defense wants me to present the
13 evidence the way she wants it in the order she wants it.

14 THE COURT: No, no, that's not the point nor what the
15 Court would require. What the point is -- what was the
16 individual's name?

17 MR. HOLFORD: Tonya Root.

18 THE COURT: All right. Have that person come and say
19 State's Twenty-two and Twenty-three, I took the 160 hours
20 under the direction of the Solicitor's office and the
21 information pointed out to me by Detective Jody Sutton and put
22 them in this format. I didn't change them, I didn't edit
23 them, but I took what was on the DVR and put it in this
24 format. And Detective Sutton says I looked at stuff that
25 night, I'm looking at Twenty-two and Twenty-three, it's the

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1 same. That's what -- is there something else, Ms. Wilson?

2 MS. WILSON: No, sir, that's exactly it.

3 THE COURT: Where's that witness? Find them so you can
4 solve the problem very easily. We'll take a short break, five
5 minutes, we'll come back in, we'll call the jury in, we'll
6 have Detective Sutton stand down and you can call the other
7 witness and then we'll put Detective Sutton back on the stand.

8 MS. WILSON: Thank you, Your Honor.

9 THE COURT: Thank you very much.

10 **(RECESS.)**

11 *******OFF THE RECORD*******

12 **(On the Record.)**

13 (REPORTER'S NOTE: Jury enters courtroom.)

14 THE COURT: All right. Solicitor, based on matters
15 presented to the Court, I've had the witness step down
16 temporarily. Do you wish to call another witness?

17 MR. HOLFORD: Yes, Your Honor, the State calls Tonya
18 Root.

19 THE COURT: All right. Please come around to be sworn,
20 ma'am.

21 CLERK: Please raise your right hand.

22 TONYA ROOT, HAVING BEEN SWORN

23 TESTIFIES AS FOLLOWS:

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

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TONYA ROOT - DIRECT BY HOLFORD

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1 MS. ROOT: Tonya Root, R-O-O-T.

2 DIRECT EXAMINATION OF TONYA ROOT BY MR. HOLFORD:

3 Q: Hey, Ms. Root; how are you today?

4 A: Fine.

5 Q: Where do you work?

6 A: Solicitor's Office.

7 Q: How are you involved in this case?

8 A: I took some video that you had given me and edited it for
9 time.

10 Q: And when you say, all right. What did I give you?

11 A: You gave me a hard drive with over 600 gigabytes of video
12 on there.

13 Q: And tell us about what that video consisted of.

14 A: Shooting at Club Levels.

15 Q: Okay. Now, was it one solid video?

16 A: No, sir.

17 Q: Okay. What was it?

18 A: Sixteen different camera angles.

19 Q: Okay. Was it -- was it a 10-hour clip, so were there 10
20 different videos on the hard drive?

21 A: No, sir.

22 Q: How was it broken up?

23 A: They were broken up by time, an hour at a time.

24 Q: So you had an hour clip ---

25 A: Yes, sir.

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TONYA ROOT - DIRECT BY HOLFORD

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- 1 Q: --- an hour clip ---
- 2 A: From camera -- from Channel 1 to Channel 2, from 2:00 to
- 3 3:00 A.M., 3:00 to 4:00 A.M. from each different angle.
- 4 Q: Were there also multiple -- was there a main and an
- 5 extra?
- 6 A: Yes.
- 7 Q: Did you review those?
- 8 A: Yes.
- 9 Q: What was the difference?
- 10 A: I did not see any difference.
- 11 Q: Was one clearer?
- 12 A: Yes.
- 13 Q: But it showed the same thing?
- 14 A: Yes.
- 15 Q: Did you alter this video in any way?
- 16 A: No, sir.
- 17 Q: You took my hard drive?
- 18 A: Yes, sir.
- 19 Q: You viewed the video?
- 20 A: Yes, sir.
- 21 Q: And then at my direction, what did you do?
- 22 A: I shortened it.
- 23 Q: Okay. So, so you took what was from 12:00 A.M. to 1:00
- 24 A.M., 1:00 A.M. to 2:00 A.M., 2:00 A.M. to 3:00 A.M, 3:00 A.M.
- 25 to 4:00 A.M. for 16 different channels and you found -- you

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1 took what I told you was the relative part?
2 A: Yes, sir.
3 Q: I'm gonna hand you what's State's Twenty-two and Twenty-
4 three; do you recognize these?
5 A: Yes, sir.
6 Q: What are those?
7 A: The copies of the video I produced.
8 Q: Okay. And so that accurately shows -- did you change the
9 video itself in any way?
10 A: No, sir.
11 Q: Did you change the content in any way?
12 A: No, sir.
13 Q: Did you edit the video in any way?
14 A: No, sir.
15 Q: Do you know how to do that?
16 A: No, sir.
17 Q: What did you do specifically, I know we're kind of
18 getting over and over, but what specifically did you do
19 because the Defense is saying edited, but what did you do?
20 A: I took short clips from different channels showing
21 different camera angles and just pieced them together almost
22 copy and paste together to create one shortened video.
23 Q: And approximately how long are those two videos?
24 A: I believe one is almost three minutes and one is almost
25 10 minutes.

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TONYA ROOT - CROSS BY WILSON,

1 Q: And why would you do that, why would I ask you to do
2 that?

3 A: One follows the victim and one follows the shooter.

4 Q: Okay. Does that save the jury from watching every single
5 angle one at a time to try and piece together the ---

6 A: Yes, sir. Yes, sir.

7 Q: But just to be clear, you didn't change the video at all?

8 A: No, sir.

9 Q: It came to you like that on a hard drive?

10 A: Yes, sir.

11 Q: You just put the clips together?

12 A: Yes, sir.

13 Q: No further questions.

14 THE COURT: Cross examination?

15 MS. WILSON: Thank you.

16 CROSS EXMAINATION OF TONYA ROOT BY MS. WILSON:

17 Q: Hi.

18 A: Hi.

19 Q: Just to be clear, I understand that what you did when you
20 said it was just a copy and paste and I appreciate that,
21 because we all don't want to have to watch the entirety of
22 they say they took. But, that is the process of editing,
23 correct, when you are taking from a whole and creating
24 something that is different in presentation?

25 A: To some degree. I did not change the content of the

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JODY SUTTON - DIRECT BY HOLFORD

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1 video.

2 Q: No, ma'am, no, and I'm not suggesting you did.

3 A: Yeah.

4 Q: You just -- but you did edit in the sense that you reduced
5 the overall timeframe and put it into a certain sequence, yes?

6 A: Yes, ma'am, I reduced the timeframe.

7 Q: No further questions.

8 THE COURT: Any redirect?

9 MR. HOLFORD: No, Your Honor.

10 THE COURT: You may step down, ma'am.

11 A: Thank you.

12 THE COURT: You may recall Detective Sutton.

13 MR. HOLFORD: Jody Sutton.

14 THE COURT: All right. Mr. Sutton, you remain under
15 oath.

16 Go ahead, Solicitor.

17 MR. HOLFORD: Thank you, Your Honor.

18 DIRECT EXAMINATION OF JODY GENE SUTTON BY MR. HOLFORD:

19 Q: Mr. Sutton, you have in front of you State's Twenty-two
20 and Twenty-three. Were you able to watch them on the break?

21 A: During this break?

22 Q: Before the jury came back in?

23 A: No, sir. Oh, I'm sorry, yes. Yes. I'm with you now.

24 Q: I know you just went out there.

25 A: Gotcha.

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- 1 Q: But before you left the stand, did you watch those
2 videos?
- 3 A: Yes, sir, I did.
- 4 Q: And is it the same thing I showed you yesterday morning?
- 5 A: Yes, sir.
- 6 Q: And is it the same thing that you viewed on February 15
7 ---
- 8 A: Yes, sir.
- 9 Q: --- 2015?
- 10 A: Yes, sir.
- 11 Q: Are they in the exact same order that you viewed them?
- 12 A: Not really, but I mean it shows the sequence of events
13 that I witnessed on the 15th of February.
- 14 Q: Okay. Is the content different?
- 15 A: No, sir.
- 16 Q: The cameras switch ---
- 17 A: Yes, sir.
- 18 Q: --- and how would you have been viewing those cameras
19 that night? Do they have a screen like this in Levels?
- 20 A: More or less, it's a little larger.
- 21 Q: And this one isn't big enough. Could you see all the
22 screens at the same time?
- 23 A: Yes, sir.
- 24 Q: And could you focus in on one?
- 25 A: If I wanted to, sure.

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1 Q: And did you do that?

2 A: Yes, sir.

3 Q: About how long did you watch the video?

4 A: During the whole time I was there about three hours of
5 watching video, different angles.

6 Q: And so these videos in front of you, do they accurately
7 and truly depict what happened that night captured by that DVR
8 system that you watched that night?

9 A: Yes, sir.

10 MR. HOLFORD: Your Honor, the State seeks to introduce
11 Twenty-two and Twenty-three in evidence?

12 THE COURT: Any objection to Twenty-two and Twenty-three
13 at this time?

14 MS. WILSON: No objection, Your Honor.

15 THE COURT: All right. Twenty-two and Twenty-three are
16 in evidence without objection.

17 STATE'S EXHIBIT NUMBERS TWENTY-TWO AND TWENTY-THREE

18 ADMITTED INTO EVIDENCE

19 THE COURT: You may proceed.

20 MR. HOLFORD: May I publish, Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. HOLFORD:

23 Q: I'm going to play State's Twenty-two.

24 (REPORTER'S NOTE: State's Exhibit Twenty-two being played for
25 jury.)

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JODY SUTTON - DIRECT BY HOLFORD

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1 BY MR. HOLFORD:

2 Q: Can you see that?

3 THE COURT: If you need to step down you can.

4 A: Thank you, sir.

5 THE COURT: You'll have to go next to -- you see that
6 microphone, you'll have to stand right next to it.

7 A: Right here?

8 THE COURT: Yes, sir.

9 BY MR. HOLFORD:

10 Q: Okay. What are we watching right now?

11 A: That appears to be the inside of Levels Club.

12 Q: And can you tell what time it is?

13 A: It's showing 2:32 in the morning on February 15th.

14 Q: And why is this video captured right here?

15 A: Because it's showing the victim.

16 Q: Where is the victim? Can you point on there?

17 A: Certainly. He is right here (indicating).

18 THE COURT: If you ---

19 Q: What channel is this?

20 THE COURT: All right. Hold on a second. . If you want to
21 go to stand in front of Solicitor's table and stand next to
22 that microphone; you see that microphone? If that helps you,
23 you can do that. Stand next to the microphone.

24 BY MR. HOLFORD:

25 Q: We're good.

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JODY SUTTON - DIRECT BY HOLFORD

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1 A: The channel we're looking at is Channel 7.
2 Q: All right. Now what just happened?
3 A: It switched to a different channel at 2:32 in the
4 morning.
5 Q: And who just exited?
6 A: The victim.
7 Q: What channel is this?
8 A: Channel 13.
9 Q: And where are we -- where is this?
10 A: This is on the outside back of the Levels nightclub.
11 Q: What channel are we now?
12 A: We're on Channel 16 now.
13 Q: And which way is the camera facing?
14 A: It is facing westbound on the front of the Levels
15 nightclub.
16 Q: And who's walking?
17 A: The victim.
18 Q: Is this just pointed at the other angle?
19 A: This is facing eastbound, Channel 15.
20 Q: Where did that guy come from?
21 A: In between the blue pickup truck and the silver car.
22 Q: And which way is he running?
23 A: He is now running westbound on 9th Avenue North.
24 Q: Who's standing in the middle of the street there?
25 A: Those are APF security guards.

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JODY SUTTON - DIRECT BY HOLFORD

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1 Q: Are they Myrtle Beach Police?
2 A: No, sir.
3 Q: Are they private security at the club?
4 A: Yes, sir.
5 Q: Was that the entirety of State's Twenty-two?
6 A: Yes, sir.
7 Q: Just that video clip?
8 A: Yes, sir.
9 Q: And again, that's -- that's like the video you watched,
10 maybe not in that order, but is that the same content that you
11 watched of February 15th, 2015?
12 A: Yes, sir, it is.
13 Q: And did you relay that information to other detectives
14 with Myrtle Beach Police?
15 A: Yes, sir.
16 Q: Is that how you were able to tell what happened that
17 night?
18 A: Yes, sir.
19 Q: Now I know the jury just saw it and they know what
20 happened but explain, while we're loading the next video, what
21 you saw on that and what you did as a result?
22 A: What I did was once I saw the -- once I saw the incident
23 occur, I, I backed up the video to determine how the shooter
24 got to where he was and what direction he came from toward the
25 incident location that would determine which direction I

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JODY SUTTON - DIRECT BY HOLFORD

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1 needed to go further and this was relayed to the detectives,
2 other detectives that were on the scene and Crime Scene
3 officers to check the area for any physical evidence.

4 Q: So that's -- when I asked you where it came from, you
5 were able to say -- what did you say -- where did the shooter
6 come from right then?

7 A: Right, I saw on the video where the shooter had come from
8 a building in adjacent to 9th Avenue North across from Levels
9 Club.

10 Q: And have you seen State's Twenty-three; did you view that
11 at the break also?

12 A: Yes, sir.

13 Q: Is that the same as what I showed you yesterday morning?

14 A: Yes, sir.

15 Q: And does that accurately reflect the content that you
16 witnessed February 15th, 2015?

17 A: Yes, sir.

18 MR. HOLFORD: Your Honor, the State seeks to introduce
19 Twenty-three and publish to the jury?

20 THE COURT: You may publish; it's already in evidence
21 without objection.

22 MR. HOLFORD: Yes, Your Honor. Thank you.

23 (REPORTER'S NOTE: State's Exhibit Twenty-three being played
24 for jury.)

25 BY MR. HOLFORD:

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- 1 Q: Is this a different angle?
- 2 A: Yes, sir.
- 3 Q: What's the importance of this video?
- 4 A: This video shows the, the Defendant inside the club.
- 5 Q: Did it just switch?
- 6 A: Yes, sir, it did.
- 7 Q: And who's walking across the street?
- 8 A: The Defendant.
- 9 Q: Now just -- just to be clear, the night of, you didn't
- 10 know he was the Defendant, right?
- 11 A: No, I did not.
- 12 Q: You tracked back the shooter?
- 13 A: Yes, sir.
- 14 Q: Is there a long period in between this video where we
- 15 don't really see him a whole lot?
- 16 A: Yes, sir.
- 17 Q: Why is that?
- 18 A: It's -- there is a -- a moment in time where he's over
- 19 there in the building across the street and then eventually
- 20 he's seen coming across.
- 21 Q: Okay. I apologize. You and I have watched this a lot,
- 22 haven't we?
- 23 A: Yes, sir, we have.
- 24 Q: Will you show when he comes back across the street where
- 25 he is?

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JODY SUTTON - DIRECT BY HOLFORD

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- 1 A: Sure.
- 2 Q: Because I know -- where is the shooter right now?
- 3 A: He is right up in this area. That's the shooter that's
- 4 walking.
- 5 Q: Where?
- 6 A: Toward.
- 7 Q: Toward us. And where did he go?
- 8 A: He stopped in between the blue pickup truck and the
- 9 silver vehicle that just pulled in.
- 10 Q: And what time is it right now?
- 11 A: The time stamp on the video shows 2:26 A.M.
- 12 Q: Do you remember what time the shooting was?
- 13 A: Approximately 2:33 A.M.
- 14 Q: It's 2:27, has he moved?
- 15 A: No, sir, he has not.
- 16 Q: It's 2:28, where is the shooter?
- 17 A: Still in the same position as he was a minute ago. The
- 18 shooter is now seen leaving that area and walking toward the
- 19 club. He goes out of camera view for a moment.
- 20 Q: What's he wearing?
- 21 A: He's wearing a black winter cap, black jacket, black
- 22 pants, dark shoes. That's when he goes under the awning at
- 23 the club.
- 24 Q: Count the time for me real quick?
- 25 A: 2:28:55.

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JODY SUTTON - DIRECT BY HOLFORD

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- 1 Q: All right.
- 2 A: A.M.
- 3 Q: And what just happened?
- 4 A: It went to 2:30:26 A.M.
- 5 Q: Did you do that?
- 6 A: No, sir, I did not.
- 7 Q: Have you seen the other camera angles?
- 8 A: Yes, sir.
- 9 Q: Is there a jump at every single camera angle at the same
- 10 time?
- 11 A: Yes, sir.
- 12 Q: Did Myrtle Beach Police Department cut anything out?
- 13 A: No, sir.
- 14 Q: Where is the Defendant right now?
- 15 A: The Defendant is back in between the blue pickup truck
- 16 and the silver vehicle right here.
- 17 Q: So there was a jump in the video?
- 18 A: Yes, sir.
- 19 Q: Is that anything you did?
- 20 A: Nothing I did.
- 21 Q: Is that how it came to you?
- 22 A: Yes, sir.
- 23 Q: Is that what you observed that night?
- 24 A: Yes, sir.
- 25 Q: 2:20-- or February 15th, 2015?

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1 A: Yes, sir.

2 Q: When you were watching it, when you later got there after
3 this, was there a gap in the video?

4 A: Yes. At this point, the shooter has now ducked in
5 between the blue truck and the silver vehicle. He's kind of
6 crouched down right in this area.

7 Q: What time is it now?

8 A: It's showing 2:31:52 A.M.

9 Q: So how long has he been there now?

10 A: At least five minutes.

11 Q: And aside from coming up for a little bit, has he been in
12 the same spot?

13 A: Pretty much.

14 Q: Is he talking to anyone?

15 A: He wasn't at that time, no, sir.

16 Q: I mean right now ---

17 A: No.

18 Q: No one else is near him?

19 A: No, sir.

20 Q: There appear to be some people crossing the street. What
21 can you note about them that might be helpful for the jury?

22 A: Yes, there are people crossing the street. If you
23 notice, some go in between the truck and the silver vehicle
24 and they jump over the shooter that was crouched down over
25 there.

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JODY SUTTON - DIRECT BY HOLFORD

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- 1 Q: So he's still crouched in between those vehicles?
- 2 A: Yes, sir.
- 3 Q: Now, who do we see at the bottom of the screen?
- 4 A: At the bottom of the screen is the victim.
- 5 Q: What time is it now?
- 6 A: It shows 2:33:58 A.M.
- 7 Q: And which way did he run?
- 8 A: The suspect ran westbound on 9th Avenue North with
- 9 private security chasing him.
- 10 Q: So the shooting happened a little after 2:33?
- 11 A: Yes, sir.
- 12 Q: And what time did the Defendant start sitting in between
- 13 the blue truck and the silver car?
- 14 A: 2:26.
- 15 Q: And before you return to your seat, on the -- was that
- 16 the entirety of that video?
- 17 A: Yes, sir.
- 18 Q: Was that the similar same -- the same content that you
- 19 viewed the night, February 15th, 2015?
- 20 A: Yes, sir.
- 21 Q: Will you show the jury what westbound is when you say the
- 22 Defendant ---
- 23 A: Certainly.
- 24 Q: --- or the shooter ran westbound?
- 25 A: Here's 9th Avenue North. This is Levels here. When I

1 said the shooting occurred here, westbound from the ocean
2 would be in this direction and over in this area.

3 Q: On your thumb drive, did you -- did you download any --
4 take any still photos that night?

5 A: No, sir.

6 Q: You didn't stop the video at any point?

7 A: Not that I'm aware of. I may have, but ---

8 MR. HOLFORD: Your Honor, I have no further questions.

9 THE COURT: All right. Cross examination?

10 MS. WILSON: Thank you, Your Honor.

11 CROSS EXAMINATION OF JODY SUTTON BY MS. WILSON:

12 Q: Detective Sutton, I think we established that this video
13 came from the club and you say that this is the one that you
14 watched the night of the incident?

15 A: Yes, ma'am.

16 Q: But you weren't on scene at the time of the commission of
17 this crime, were you?

18 A: Say that again, ma'am; I'm sorry.

19 Q: I say you were not on the scene at the time of the
20 commission of this crime ---

21 A: No, ma'am.

22 Q: --- correct?

23 A: No, ma'am.

24 Q: And you were not a witness to the murder?

25 A: No, ma'am.

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JODY SUTTON - CROSS BY WILSON

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- 1 Q: So you did not see Kevin Bryant and you can't say that
2 Kevin Bryant committed this murder because you were a
3 firsthand witness, can you?
4 A: No, ma'am.
5 Q: And the video that we just watched does show a murder,
6 yes?
7 A: Yes, ma'am.
8 Q: But we don't know who that is right now, do we?
9 A: I do not, no, ma'am.
10 Q: And you can't say that you know?
11 A: Correct.
12 Q: Now, the jumps in time on this video?
13 A: Yes, ma'am.
14 Q: Now my understanding is -- I know you say you did nothing
15 to alter it, isn't that correct?
16 A: No, ma'am, I did not.
17 Q: That's correct?
18 A: That's correct.
19 Q: But you also can't count for that time, can you?
20 A: No, ma'am.
21 Q: You have no idea why it's not there?
22 A: No, I don't.
23 Q: And you also have no idea what it may have shown?
24 A: No, I don't.
25 Q: Now, also on the video, I believe that we just watched,

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JODY SUTTON - REDIRECT BY HOLFORD

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1 you saw people running around after the shooting, right before
2 the shooting. Those people would have been somewhere in the
3 vicinity after the shooting, correct, if they were fleeing the
4 location?

5 A: Yes, ma'am.

6 Q: And any of those people would have been within some
7 proximity to the club within minutes of the shooting, correct?

8 A: Yes, ma'am.

9 Q: If they fled?

10 A: If they fled, yes, ma'am.

11 Q: All right. Okay. Thank you. No further questions.

12 THE COURT: Redirect?

13 MR. HOLFORD: Briefly, Your Honor.

14 REDIRECT EXAMINATION OF JODY SUTTON BY MR. HOLFORD:

15 Q: Mr. Sutton, you said at that time you did not know that
16 the shooter was the Defendant?

17 A: That's correct.

18 Q: You were talking about at that time?

19 A: At that time.

20 Q: That night?

21 A: That night.

22 Q: Do we know -- do we now know who the shooter was?

23 A: Yes, sir.

24 Q: And who is that?

25 A: The Defendant.

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JODY SUTTON - RECROSS BY WILSON

1 MR. HOLFORD: No further questions.

2 THE COURT: Ms. Wilson?

3 MS. WILSON: Thank you, Your Honor, on redirect.

4 RECROSS EXAMINATION OF JODY SUTTON BY MS. WILSON:

5 Q: You say that you now know who the shooter was?

6 A: Yes, ma'am.

7 Q: But in reality what you're saying is I now know who we
8 believe the shooter to be based on what we think our
9 investigation has shown us, correct?

10 A: I know who the shooter is based on the investigation.
11 There's no belief about it.

12 Q: Based on your investigation. And your investigation
13 didn't include any look into anyone else, did it?

14 A: That part of the investigation I wasn't privy to. All I
15 -- my part of the investigation was collecting the evidence of
16 the video that night.

17 Q: Right. So your investigation then you're saying is based
18 only on the video?

19 A: My investigation was the collection of the video,
20 correct.

21 Q: And that's the extent of it. Did you get video that you
22 could confirm actually had something to do with anyone else or
23 did you just settle on this one person?

24 A: I just settled on the incident of itself.

25 Q: Okay. Thank you. No further questions.

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JODY SUTTON - RECROSS BY WILSON

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1 THE COURT: Anything else, Solicitor?

2 MR. HOLFORD: No, Your Honor.

3 THE COURT: You wish the witness to be excused?

4 MR. HOLFORD: Yes, Your Honor.

5 THE COURT: Any objection?

6 MS. WILSON: No objection, Your Honor, thank you.

7 THE COURT: All right, sir, you're released from your
8 subpoena; you may go back to your regular activities.

9 A: Thank you, sir.

10 THE COURT: All right, Solicitor, your next witness,
11 please.

12 COURT REPORTER: Please bring the exhibits back here.

13 THE COURT: The exhibits go back to the Court Reporter.
14 Thank you.

15 MR. HOLFORD: I apologize, Your Honor.
16 Court's indulgence?

17 THE COURT: Yes, sir.

18 MR. HOLFORD: The State calls Mr. Pettengill.

19 THE COURT: All right, sir, if you'd come all the way up
20 and meet the Clerk right up here at the corner, sir.

21 CLERK: Please raise your right hand.

22 SEAN DOUGLAS PETTENGILL, HAVING BEEN SWORN
23 TESTIFIES AS FOLLOWS:

24 CLERK: Have a seat. Please state your full name and
25 spell your last name for the Court.

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SEAN DOUGLAS PETTENGILL - DIRECT BY HOLFORD

1 MR. PETTENGILL: Sean Douglas Pettengill, P-E-T-T-E-N-G-
2 I-L-L.

3 THE COURT: Go ahead, Solicitor.

4 DIRECT EXAMINATION OF SEAN DOUGLAS PETTENGILL BY MR. HOLFORD:

5 Q: Mr. Pettengill, where are you currently employed?

6 A: J. Reuben Long Detention Center.

7 Q: And how long have you been employed there?

8 A: Five months.

9 Q: Where were you employed February 15th, 2015?

10 A: Advance Protection Services.

11 Q: All right. And tell us what -- what is Advance
12 Protection Services?

13 A: A private security company on the beach.

14 Q: Okay. Where were you working that night?

15 A: Club Levels.

16 Q: And where is Club Levels?

17 A: I believe it's on 9th Avenue, Myrtle Beach.

18 Q: All right. So explain to us, what were your duties that
19 night?

20 A: Personal protection of persons and property.

21 Q: Okay. And, and what happened that night out of the
22 ordinary?

23 A: There was a shooting.

24 Q: And around what time was that shooting?

25 A: 2:25, 2:30.

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SEAN DOUGLAS PETTENGILL - DIRECT BY HOLFORD

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- 1 Q: Okay. And where were you when the shooting occurred?
- 2 A: Front door of Levels.
- 3 Q: Front door of Levels, inside or outside?
- 4 A: Outside.
- 5 Q: Did you see the shooting?
- 6 A: Yes.
- 7 Q: You actually witnessed it?
- 8 A: I witnessed it and returned fire.
- 9 Q: Okay. Returned fire, do you carry a gun?
- 10 A: Yes, sir.
- 11 Q: And do you have training to carry that gun?
- 12 A: Yes, sir.
- 13 Q: What kind of training?
- 14 A: I've been in the military six years and SLED III
- 15 certification with Advance Protection Services.
- 16 Q: And so have you seen a video of the events?
- 17 A: Yes.
- 18 Q: Does it accurately reflect and portray what you remember
- 19 actually happening that night?
- 20 A: Yes.
- 21 Q: Does the video capture you on it?
- 22 A: Yes.
- 23 Q: And have you seen State's Two -- what's marked as State's
- 24 Exhibit Two; what is this?
- 25 A: That's the video of that night.

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BY THE COURT

1 Q: Okay. And have you watched it?

2 A: Yes.

3 Q: And is it a true and accurate reflection of what
4 happened?

5 A: Yes.

6 MR. HOLFORD: Your Honor, the State seeks to introduce
7 State's Two?

8 THE COURT: Any objection?

9 MS. WILSON: Your Honor, there is an objection.

10 BY THE COURT:

11 THE COURT: All right. Madam Forelady and jury, please
12 go to the jury room please. Thank you.

13 (REPORTER'S NOTE: Jury exits courtroom. The following takes
14 place outside the presence of the jury.)

15 THE COURT: Yes, ma'am, Ms. Wilson?

16 MS. WILSON: Thank you, Your Honor. Your Honor, it's the
17 same thing as last time. Again, we need a foundation. This
18 was not in the group of two. Honestly I didn't think about
19 it, maybe we can just put them all in there together. I need
20 a foundation. I just need something.

21 THE COURT: All right. Solicitor, how was State's Two
22 produced?

23 MR. HOLFORD: Your Honor, I apologize. It was produced
24 in the same manner. Ms. Root, she took two video clips and
25 put them together so they'd play at the same time. It's what

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BY THE COURT

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1 we watched yesterday during the *Neil v. Biggers* hearing.

2 THE COURT: All right. So, you called -- if you called
3 Ms. Root, she would be able to say that the video on State's
4 Two, she took that from the ---

5 MR. HOLFORD: Hard drive.

6 THE COURT: --- DVR hard drive and reduced it in the same
7 manner she did for Twenty-two and Twenty-three?

8 MR. HOLFORD: Yes, Your Honor.

9 THE COURT: All right. Very good.

10 All right. We just sent them out so we'll break five
11 minutes, we'll bring them back in and we'll have this witness
12 step down temporarily. We'll call -- you'll call Ms. Root, go
13 over through that information and then we'll call Mr.
14 Pettengill back.

15 So, sir, if you'd just go have a seat in the -- out there
16 and then we'll recall you. All right. Thank you.

17 MR. HOLFORD: I apologize, Your Honor.

18 THE COURT: That's all right. Not a problem.

19 MR. HOLFORD: This is the last video.

20 THE COURT: That's okay.

21 **(RECESS.)**

22 *******OFF THE RECORD*******

23 **(On the Record.)**

24 THE COURT: All right. You may sit down. Thank you.

25 All right, Solicitor, you ready for the jury to come back

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TONYA ROOT - DIRECT BY HOLFORD

1 in?

2 MR. HOLFORD: One moment, Your Honor.

3 THE COURT: All right.

4 All right, Solicitor, you ready for the jury to come in?

5 MR. HOLFORD: Yes, Your Honor.

6 THE COURT: Defense?

7 MS. WILSON: Yes, sir, thank you.

8 THE COURT: Ask the jury to come in, please.

9 (REPORTER'S NOTE: Jury enters courtroom.)

10 THE COURT: Go ahead, Solicitor.

11 MR. HOLFORD: The State calls Tonya Root.

12 THE COURT: All right. Please come around to be sworn,
13 ma'am. Different matter, I want her re-sworn. Thank you.

14 CLERK: Please raise your right hand.

15 TONYA ROOT, HAVING BEEN SWORN

16 TESTIFIES AS FOLLOWS:

17 CLERK: Please have a seat and state your full name and
18 spell your last name for the Court:

19 MS. ROOT: Tonya Root, R-O-O-T.

20 THE COURT: Go ahead, Solicitor.

21 DIRECT EXAMINATION OF TONYA ROOT BY MR. HOLFORD:

22 Q: Ms. Root, we talked about two videos earlier. Did I ask
23 you to do a third?

24 A: Yes.

25 Q: Anything else?

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TONYA ROOT - DIRECT BY HOLFORD

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1 A: No, sir.

2 Q: So, we've viewed the two videos. I'm gonna approach you
3 with State's Two. What is that?

4 A: That's a copy of the third video.

5 Q: Okay. And how do you know it's the third video?

6 A: Because I produced it.

7 Q: Okay. And what does this show that's different?

8 A: It takes two camera angles, puts them side-by-side of the
9 security's reaction at the shooting at Club Levels.

10 Q: Did I ask you to do that?

11 A: Yes, sir.

12 Q: Do you know why? Did I want you to show 15 and 16 at the
13 same time?

14 A: Yes, sir.

15 Q: And how were you able to do that for me?

16 A: I put it into a Power Point to put the videos side by
17 side.

18 Q: Okay. So did you change the content of the video at all?

19 A: No, sir.

20 Q: You just made it so we're able to watch 15 and 16 at the
21 same time?

22 A: Yes, sir.

23 MR. HOLFORD: No further questions.

24 THE COURT: Cross examination?

25 MS. WILSON: No cross, Your Honor.

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SEAN DOUGLAS PETTENGILL - DIRECT BY HOLFORD

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1 THE COURT: All right. You may step down, ma'am.

2 MR. HOLFORD: The State would call Pettengill.

3 THE COURT: All right. All right, Mr. Pettengill, if
4 you'll resume the stand, you remain under oath please, sir.

5 Thank you.

6 Go ahead, Solicitor.

7 DIRECT EXAMINATION OF SEAN DOUGLAS PETTENGILL BY MR. HOLFORD

8 CONTINUED:

9 Q: Mr. Pettengill, in front of you is State's Exhibit Two.
10 Have you reviewed that?

11 A: Yes.

12 Q: And can you tell me generally what's on it?

13 A: Two different clips of the same thing at two different
14 angles of us responding to the shooting and the shooting.

15 Q: And did you alter the video at all?

16 A: No.

17 Q: Did you know that Club Levels had video?

18 A: No.

19 Q: But you've seen this video?

20 A: Yes.

21 Q: And it's, it's what happened that night?

22 A: Yes.

23 MR. HOLFORD: Your Honor, State moves State's Exhibit Two
24 in evidence.

25 THE COURT: Any objection.

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1 MS. WILSON: No objection, Your Honor.

2 THE COURT: All right.

3 MR. HOLFORD: Your Honor, may I publish?

4 THE COURT: You may. So State's Two is in evidence
5 without objection.

6 STATE'S EXHIBIT NUMBER TWO

7 ADMITTED INTO EVIDENCE

8 MR. HOLFORD: Your Honor, may Mr. Pettengill come stand
9 over here where he can ---

10 THE COURT: Certainly if you want to go down and stand
11 next to that microphone on the Solicitor's table.

12 (REPORTER'S NOTE: State's Exhibit Two being played for the
13 jury.)

14 BY MR. HOLFORD:

15 Q: There's a mic over there. All right.

16 What's on the screen right now?

17 A: That would be the victim and the two people in front of
18 him were to the -- ran in front of him before he got shot.

19 Q: Okay. And come to the T.V. and point out to the jury,
20 where are you; can we see you?

21 A: Here (indicating).

22 Q: Okay. So we actually see you on the video?

23 A: Yes.

24 Q: And, and who is this?

25 A: That's the victim.

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- 1 Q: Okay. All right. Let's watch this.
- 2 So what's happening on the right side on Channel 15?
- 3 A: Two men in front of the victim ran forward. The shooter
- 4 jumped out in-between the two cars and started shooting the
- 5 victim and ---
- 6 Q: And then what did we just say on 16 and subsequently 15?
- 7 A: How we turned left and responded to the shooter.
- 8 Q: And where is the shooter going now?
- 9 A: Into the street.
- 10 Q: Where are you?
- 11 A: We are in between the two yellow lines on the street
- 12 covering the weapon and ensuring the integrity, that nobody
- 13 touched it or it was moved, replaced or tampered with.
- 14 Q: All right. Tell, tell the jury and make sure the mic's
- 15 close. What weapon?
- 16 A: The weapon of the shooter. We were in between the yellow
- 17 lines making sure that it wasn't tampered with, moved,
- 18 replaced.
- 19 Q: Can we see you on both 16 and 15?
- 20 A: Yes.
- 21 Q: Where are you now?
- 22 A: In between the yellow lines on the street.
- 23 Q: And what's the time stamp?
- 24 A: 2:34 A.M.
- 25 Q: Is that the end of that video?

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- 1 A: Yes, I think so.
- 2 Q: Is that what you reviewed yesterday?
- 3 A: Yes.
- 4 Q: Okay. So you were there. Talk me through that; talk me
- 5 through what happened. Were you facing where the shooter was?
- 6 A: I was facing the front-door on the sidewalk of Levels.
- 7 Q: Okay. So if Levels is here and the streets where the
- 8 jury was, which way are you facing?
- 9 A: Left toward Levels.
- 10 Q: This way?
- 11 A: Yes.
- 12 Q: And you're outside?
- 13 A: Yes.
- 14 Q: If I'm where you are, where was the shooter?
- 15 A: To the left of me.
- 16 Q: To where you are?
- 17 A: Yes.
- 18 Q: Okay. And so what happened, you heard shots?
- 19 A: We heard shots, turned left, drew our weapons, cited
- 20 verbal commands to drop the weapon and then we returned fire.
- 21 Q: Okay. Did -- when you say returned fire, did he shoot at
- 22 you?
- 23 A: No.
- 24 Q: How many shooters were there?
- 25 A: There was one shooter.

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SEAN DOUGLAS PETTENGILL - DIRECT BY HOLFORD

1 Q: And what did -- what did you observe when you turned
2 towards where the shots were being fired?

3 A: One shooter, black male, approximately six-foot tall
4 wearing all black clothing, medium build.

5 Q: And what was he doing, was he already running across the
6 street?

7 A: He was standing over the victim shooting.

8 Q: Okay. And then which direction did he run?

9 A: He ran left into the street.

10 Q: Okay. And if I showed you what's been entered as State's
11 One, if this is Levels, which way did he run?

12 A: He ran into the street and up and then hit this corner.

13 Q: Okay. Did you follow him after that?

14 A: No, we went into the street and that was it.

15 Q: And that where you saw him fleeing?

16 A: Yes.

17 Q: Now you said you stood by this gun. What -- did he drop
18 it, throw it?

19 A: He dropped it when he ran into the street.

20 Q: And what did you notice about that gun; did you notice
21 anything?

22 A: We noticed that the slide of the gun was pulled to the
23 rear indicating that all the bullets from the magazine had
24 been discharged.

25 Q: Do you remember about how many times you saw him shoot

1 the victim?

2 A: I'd say eight times.

3 Q: So that -- so then what happened? You go out -- did you
4 call the police?

5 A: I did not radio the police. My partner, Captain Poston,
6 did.

7 Q: Okay. And so they showed up, right?

8 A: Yes.

9 Q: And then what did they do?

10 A: They relieved me of guarding the weapon and separated
11 everyone that was involved, me, Captain Poston, and one other
12 officer.

13 Q: And did they want to know what happened?

14 A: Yes, they interviewed us separately in police vehicles.

15 Q: Did you give them a description of the shooter?

16 A: Yes.

17 Q: And then was there a time you were taken for, for a
18 possible identification?

19 A: Yes.

20 Q: And tell me about that. Do you remember who took you?

21 A: I don't remember the officer exactly, no.

22 Q: Were you taken alone?

23 A: Yes.

24 Q: And what did he say to you? What did he want you to do?

25 A: He wanted me to positively ID the person on the ground as

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SEAN DOUGLAS PETTENGILL - DIRECT BY HOLFORD

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- 1 the suspected shooter.
- 2 Q: Okay. And so where did he take you? Walk me through
- 3 this?
- 4 A: We got into the police vehicle and we went, on that map,
- 5 it's up -- it's from 9th Avenue right here, we went up this
- 6 way and to this spot here, which is the Human Resources
- 7 building across the street from the police station.
- 8 Q: Okay. Not too far from where you were?
- 9 A: No, two blocks, I think it is.
- 10 Q: And, and what did you see when you showed up there?
- 11 A: The same black male in all black clothing laying on the
- 12 sidewalk with cops and EMS around him.
- 13 Q: And did you tell officers that that was the same guy as
- 14 the shooter?
- 15 A: Yes.
- 16 Q: So you arrive, the police have someone, a black male, all
- 17 black clothing. Did the police tell you what to say or what
- 18 to do?
- 19 A: No.
- 20 Q: But you walked up and you said that's the shooter?
- 21 A: Yes.
- 22 Q: How certain were you?
- 23 A: I was positive.
- 24 Q: Why?
- 25 A: It had just happened. It was fresh in my memory and you

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1 don't forget something like that happening in front of you,
2 not that quickly.

3 Q: Right after the shooting, we see you on the video
4 advancing toward him. Where's your focus, who's your focus
5 on?

6 A: My focus was toward the shooter. I know he doesn't have
7 a gun anymore because it's on the ground, but I was making
8 sure he wasn't gonna turn around and maybe fire back at us
9 with a secondary weapon.

10 Q: Now, let's cover this. Did you see his face?

11 A: No.

12 Q: Would you able to identify him by his face?

13 A: No, not by his face.

14 Q: Approximately, how long after the shooting did they take
15 you to where the suspect was?

16 A: Twenty minutes maybe.

17 Q: Okay. So 20 minutes after it happened on February 15th,
18 2015, you said the guy you got is the guy who's the shooter?

19 A: Yes.

20 Q: And you're sure?

21 A: Yes.

22 Q: Are you still sure?

23 A: Yes.

24 Q: If I can just cover one more thing, procedurally. You
25 said you work at J. Reuben Long, right?

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1 A: Yes.

2 Q: Do you have any reason for bias against the Defendant?

3 A: No.

4 Q: Do you have any -- let me just go back, I'm sorry. The
5 same thing you're telling us today, is that what you told the
6 police the night of February 15th, 2015?

7 A: Yes.

8 MR. HOLFORD: I have no further questions.

9 THE COURT: Cross examination?

10 MS. WILSON: Thank you, Your Honor.

11 CROSS EXAMINATION OF SEAN DOUGLAS PETTENGILL BY MS. WILSON:

12 Q: Mr. Pettengill, what you're saying now isn't exactly what
13 you told the police that night, is it?

14 A: To my memory it is.

15 Q: Didn't you also tell the police that the person that you
16 saw had dreadlocks?

17 A: I don't believe that I did, no.

18 Q: So you don't recall saying that the person was wearing
19 all black, black male with dreads?

20 A: I don't -- not -- I don't remember saying dreads, no.

21 Q: So it's possible you did say dreads, yes?

22 A: It is possible, but I do not remember saying it.

23 Q: And you admitted briefly that you never saw the face of
24 the shooter even though you say you were zeroed in on the
25 shooter, correct?

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SEAN DOUGLAS PETTENGILL - REDIRECT BY HOLFORD

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1 A: Yes.

2 Q: And so any subsequent identification is based solely on
3 clothing, correct?

4 A: Clothing, height, weight, yes.

5 Q: Clothing, height, weight and it's reasonable to believe
6 that -- well, you worked in the club, how many people do you
7 think were at that club that night?

8 A: Between 4' and 500.

9 Q: And so out of 4' to 500 people, it's more than plausible;
10 it's believable that there were lots of people that height,
11 that weight, in those clothes?

12 A: Yes.

13 MS. WILSON: No further questions.

14 THE COURT: Redirect?

15 MR. HOLFORD: Yes, Your Honor. May I approach?

16 THE COURT: Yes.

17 REDIRECT EXAMINATION OF SEAN DOUGLAS PETTENGILL BY MR.

18 HOLFORD:

19 Q: I'm gonna show you what's been marked as State's Eight,
20 that's a picture; what's that a picture of?

21 A: The Defendant.

22 Q: Did you take that picture?

23 A: No.

24 Q: How do you know?

25 A: I've seen the video and it's been pointed out to me.

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SEAN DOUGLAS PETTENGILL - REDIRECT BY HOLFORD

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1 Q: Is that -- all right. So, where is that picture taken?

2 A: Between the two doors at Levels out front.

3 Q: And that's where you were that night?

4 A: Yes, I'm in this photo.

5 MR. HOLFORD: Your Honor, the State moves to enter Eight
6 into evidence.

7 THE COURT: Any objection?

8 MS. WILSON: No objection, Your Honor.

9 THE COURT: All right. State's Eight is in evidence
10 without objection.

11 STATE'S EXHIBIT NUMBER EIGHT

12 ADMITTED INTO EVIDENCE

13 BY MR. HOLFORD:

14 Q: This person right here, is that the shooter?

15 A: Yes.

16 Q: How are you sure?

17 A: I've reviewed the videos and matched that description to
18 the description of the Defendant.

19 Q: All black clothing, black something on his head; that's
20 the description you gave?

21 A: Uh-huh (affirmative response).

22 THE COURT: Was that a yes?

23 A: Yes.

24 Q: And that matched the same description of the person
25 police had at the HR building?

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SEAN DOUGLAS PETTENGILL - RECROSS BY WILSON

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1 A: Yes.

2 Q: And it was the same person?

3 A: Yes.

4 Q: That we saw on the video shoot the victim?

5 A: Yes.

6 MR. HOLFORD: No further questions.

7 THE COURT: Recross?

8 MS. WILSON: Yes, sir.

9 RECROSS EXAMINATION OF SEAN DOUGLAS PETTENGILL BY MS. WILSON:

10 Q: Mr. Pettengill -- permission to approach, Your Honor?

11 THE COURT: Yes, ma'am.

12 Q: This Exhibit Eight that you just said you identified as
13 the Defendant, what facial features do you see there?

14 A: None.

15 Q: Why don't you see any facial features there?

16 A: Poor resolution on the cameras.

17 Q: Because what?

18 A: Poor resolution on the cameras.

19 Q: And if you don't see facial features here, correct?

20 A: Correct.

21 Q: And you didn't see the face that night, correct?

22 A: Correct.

23 Q: Then how can you say that it's any person? You don't
24 know, do you? You can't be 100 percent certain about who this
25 face is because you can't see any facial features, correct?

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SEAN DOUGLAS PETTENGILL - RECROSS BY WILSON

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1 A: Yes.

2 Q: Thank you. No further questions.

3 THE COURT: Solicitor?

4 MR. HOLFORD: Nothing further from this witness.

5 THE COURT: All right. You wish the witness to be
6 excused?

7 MR. HOLFORD: Yes, Your Honor.

8 THE COURT: Any objection?

9 MS. WILSON: No objection, Your Honor. Thank you.

10 THE COURT: All right, sir, you are released from your
11 subpoena. You may go back to your regular duties. Thank you.
12 Your next witness please?

13 MR. OSKIN: Yes, sir, Your Honor. At this time, the
14 State would call Mr. Ronald Poston.

15 THE COURT: All right. All right, sir, please come
16 around and meet the Clerk's representative up here please,
17 sir.

18 CLERK: Please raise your right hand and put your left
19 hand on the Bible.

20 RONALD THOMAS POSTON, HAVING BEEN SWORN
21 TESTIFIES AS FOLLOWS:

22 CLERK: Please state your full name and spell your last
23 name for the Court.

24 MR. POSTON: Ronald Thomas Poston, last name, P-O-S-T-O-
25 N.

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1 THE COURT: All right. Go ahead, Solicitor.

2 DIRECT EXAMINATION OF RONALD THOMAS POSTON BY MR. OSKIN:

3 Q: Mr. Poston, how old are you, sir?

4 A: Thirty-six years old.

5 Q: All right. Are you currently employed?

6 A: Yes.

7 Q: By who?

8 A: Advance Protection Services.

9 Q: What type of company Advance Protection Services?

10 A: Private security.

11 Q: Were you employed on February 15th, 2015?

12 A: Yes.

13 Q: By who?

14 A: Advance Protection Services.

15 Q: Have you ever testified in court before?

16 A: Yes, I have.

17 Q: All right. What's your educational background, Mr.
18 Poston?

19 A: I graduated high school, some college.

20 Q: All right. On that night of February 15th, 2015, was
21 there a shooting at Club Levels that night?

22 A: Yes, sir.

23 Q: Did you have the opportunity to see the shooting occur --
24 what brought you -- let me rephrase that. What alerted you
25 that the shooting was going on?

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RONALD THOMAS POSTON - DIRECT BY OSKIN

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1 A: Gunshots behind me.

2 Q: All right.

3 And, Your Honor, if I may approach the witness?

4 THE COURT: Yes, sir..

5 Q: I'm showing you what's been entered into evidence as
6 State's Exhibit One. Will you point to the jury where Club
7 Levels is?

8 A: (Indicating.)

9 Q: And with regards to the time of the time of the shooting,
10 where were you standing?

11 A: Right on -- right on the sidewalk here.

12 Q: Okay. You said you heard shots fired, what were you
13 doing before that incident?

14 A: The internal security guards had brought two individuals
15 out in handcuffs and I was going back and forth between
16 finding out what had happened inside and talking with the
17 manager.

18 Q: Okay. Who was with you that night? Who was working with
19 you?

20 A: Officer Pettengill was the other armed officer outside
21 with me. Inside we had five or six other guys.

22 Q: You say the guys were armed, just give us a little
23 further clarification on how you would have been armed that
24 night?

25 A: The two officers that were working outside were certified

1 by SLED to carry firearms and we were both armed with side
2 arms.

3 Q: Okay. So you stated that you heard the shooting and at
4 that time -- if I'm being repetitive, I apologize -- how did
5 you react at that time when you first heard the shooting?

6 A: I was facing away from where the shots were coming from.

7 Q: Uh-huh (affirmative response).

8 A: I turned and drew my weapon at the same time.

9 Q: All right. What, what did you witness at that time? Did
10 you, did you witness the shooting occurring?

11 A: Yes.

12 Q: Did you see the suspect?

13 A: Yes.

14 Q: Okay. So, elaborate on that a little bit for the jury,
15 please.

16 A: I saw a six-foot-tall black male wearing all black
17 clothing, slender to medium build, wearing a hat or hoodie,
18 did not see his face.

19 Q: Okay. And did you give any sort of verbal commands?

20 A: Yes, sir, I yelled drop the gun.

21 Q: Did he drop the gun?

22 A: No.

23 Q: Did he, by chance, continue firing?

24 A: Yes, he did.

25 Q: At any point during this event, did you fire at the

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RONALD THOMAS POSTON - DIRECT BY OSKIN

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1 suspect?

2 A: Yes, I did. As, as he was firing, I was moving closer
3 and I -- when he continued to fire, I fired.

4 Q: Mr. Poston, have you see a video of the incident that
5 night?

6 A: Yes.

7 Q: Did you witness that in our office yesterday?

8 A: Yes, sir.

9 Q: And then later. What is it -- tell us about that video
10 real quick, just the setup of that video.

11 A: The video showed where myself and Officer Pettengill
12 started out towards the end of the sidewalk away from the
13 shooting, showed us turning and approaching, drawing weapons
14 and showed him shooting the victim.

15 Q: Okay. You didn't do anything to alter that video, you
16 had no -- did you have anything to do with the production of
17 that video?

18 A: No.

19 Q: Let me back up real quick, I apologize. After you fired
20 at the suspect in that shooting, what did you do next? Did he
21 go anywhere?

22 A: He appeared to stagger as if he'd been hit and then he
23 took off running in-between cars parked at the curb. Myself
24 and Officer Pettengill chased after him until he dropped the
25 gun in the middle of the street.

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RONALD THOMAS POSTON - DIRECT BY OSKIN

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1 Q: Okay.

2 Your Honor, if I may re-approach please?

3 THE COURT: Yes, sir.

4 Q: Again, showing you what's been entered into evidence as
5 State's One, I believe you just said that he staggered and he
6 dropped his weapon.

7 A: He dropped the weapon as he was running across the
8 street.

9 Q: Would you point and show the jury where he dropped that
10 weapon, roughly?

11 A: I'd say about here (indicating).

12 Q: And what did you do as he was running?

13 A: We followed him until he dropped the weapon here and then
14 we stopped chasing him. He went around the corner. I told
15 Pettengill to stay with the weapon and I went over to the
16 victim.

17 Q: Okay. Did you happen to see what direction he went?

18 A: Once he ran around that corner, I did not see where he
19 went. It looked like he had gone back this way.

20 Q: Okay.

21 May I approach the witness, Your Honor?

22 THE COURT: Yes, sir.

23 Q: Mr. Poston, I'm showing you what's been marked as
24 exhibits, State's Number Twenty-four and Twenty-five. Are you
25 able to recognize that?

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RONALD THOMAS POSTON - DIRECT BY OSKIN

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1 A: That appears to be the firearm that was dropped.

2 Q: By the shooter in this incident?

3 A: Yes.

4 Q: Okay.

5 MR. OSKIN: At this time, Your Honor, the State would
6 wish to move State's Evidence Number Twenty-four and Twenty-
7 five into evidence.

8 THE COURT: Any objection to Twenty-four and Twenty-five?

9 MS. WILSON: No objection, Your Honor.

10 THE COURT: All right. Into evidence without objection.

11 STATE'S EXHIBITS NUMBER TWENTY-FOUR AND TWENTY-FIVE

12 ADMITTED INTO EVIDENCE

13 BY MR. OSKIN:

14 Q: All right. Mr. Poston, if you will, show the jury the
15 weapon that you said you and your partner were near and if
16 you'll show the next picture with proximity to the road that
17 you described.

18 A: (Indicating.)

19 MR. OSKIN: Court's indulgence, Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. OSKIN:

22 Q: As you've just shown, after you saw the weapon was
23 secured, what happened next? I know you said you returned to
24 the scene. What did you do next?

25 A: Tried to render aid to the victim.

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RONALD THOMAS POSTON - DIRECT BY OSKIN

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1 Q: Okay. At any time did you call the police in this
2 incident?

3 A: As I was going back to the victim, I used the APS radio
4 and called our dispatcher who called the police.

5 Q: Okay. And how long until then did Myrtle Beach Police
6 respond to the scene?

7 A: I wouldn't say it was much more than four or five
8 minutes, most.

9 Q: I think we've described the incident location, you stated
10 when you first noticed him. By chance, were you able to see
11 where the suspect came from, where the shooter came from?

12 A: No, I was facing the other way.

13 Q: Was there lighting on or near the sidewalk where the
14 shooting occurred?

15 A: Streetlamps were on and there were florescent lights on
16 the front of the building in front of Club Levels. It was
17 pretty well lit up.

18 Q: And again, I apologize if I'm being repetitive. What did
19 you focus on during the incident itself?

20 A: The person shooting.

21 Q: Give me an estimate maybe in yardage if you can, how
22 close were you to the suspect when he was firing?

23 A: Started out probably 35, 40 yards and moved in closer
24 probably about the 30-yard range.

25 Q: Okay. And what was your line of sight during the

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RONALD THOMAS POSTON - DIRECT BY OSKIN

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- 1 shooting?
- 2 A: It was clear.
- 3 Q: Was it eye level; was it on the ground?
- 4 A: Yes.
- 5 Q: Which one?
- 6 A: It was on the ground.
- 7 Q: You were on the ground?
- 8 A: No, no, I'm sorry. Eye level, I was standing up on the
- 9 ground.
- 10 Q: Was there anything in your way to impair your vision?
- 11 A: No.
- 12 Q: Did you discuss the incident with any officers?
- 13 A: The detective.
- 14 Q: Okay. At any time did the officers ask you to become
- 15 involved in any sort of identification?
- 16 A: They said that they had caught somebody matching that
- 17 description and took me over to the HR building for the City,
- 18 said that was where he was at and they took me over there to
- 19 identify him.
- 20 Q: To see if you could identify the person that they found
- 21 matching the description?
- 22 A: Yes.
- 23 Q: And please repeat your initial description of the suspect
- 24 to police?
- 25 A: Six-foot tall, black male, slender to medium build,

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1 wearing all black clothing, hat or hoodie.

2 Q: Are you aware -- so they drove you from the club Levels
3 to where they had the suspect?

4 A: Yes, sir.

5 Q: Okay. What was your reaction to seeing the suspect
6 again?

7 A: He completely matched my description.

8 Q: So you identified the suspect as the Defendant?

9 A: Yes or as the description I gave, yes.

10 Q: That description, as you said, was clothes and build; you
11 never said you saw a clear view of the face.

12 A: No.

13 Q: How long did it take you to do that?

14 A: Almost instantaneously.

15 Q: And at that time, how sure were you that it was the same
16 man that was in fact shooting just minutes before?

17 A: 99.9.

18 Q: And how sure are you today?

19 A: 99.9.

20 Q: All right. Let's talk about that. How long from the
21 shooting until you were driven to identify this man?

22 A: I'd say maybe 5, 10 minutes.

23 MR. OSKIN: Madam Court Reporter, if I may get this pre-
24 marked, please.

25 Mr. Poston, during the course of this investigation, were

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1 you required to turn over your firearm that you used that
2 night?

3 A: Yes.

4 MR. OSKIN: Your Honor, may I approach the witness
5 please?

6 THE COURT: Yes, sir.

7 BY MR. OSKIN:

8 Q: I'm showing you what's been marked as State's Exhibit
9 Number Twenty-six, Twenty-seven and Twenty-eight. Are you
10 able to recognize those, Mr. Poston?

11 A: This would be my firearm.

12 Q: And how are you able to tell that?

13 A: Model and serial number.

14 Q: Are you familiar with the serial number of your weapon?

15 A: Yes, sir.

16 MR. OSKIN: Your Honor, at this time, the State would ask
17 to move Exhibits Twenty-six, Twenty-seven and Twenty-eight
18 into evidence, please.

19 THE COURT: Any objection?

20 MS. WILSON: No objection, Your Honor.

21 THE COURT: All right. Into evidence without objection.

22 STATE'S EXHIBITS TWENTY-SIX, TWENTY-SEVEN AND TWENTY-EIGHT

23 ADMITTED INTO EVIDENCE

24 BY MR. OSKIN:

25 Q: Mr. Poston, if I could have you look at Exhibit, I

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1 believe it's Twenty-Eight, that's the clip to your weapon,
2 correct?

3 A: Yes, sir.

4 Q: Are you able to see how many rounds you fired that night?

5 A: Yes, sir.

6 Q: How many is that?

7 A: Two.

8 Q: Mr. Poston, if I were to show you the video, the video we
9 were talking about earlier in your testimony ---

10 A: Yes, sir.

11 Q: --- would you be able to recognize yourself in that
12 video?

13 A: Yes, sir.

14 MR. OSKIN: Your Honor, at this time, the State would
15 request to play State's Exhibit Number Two for the jury.

16 THE COURT: Any objection?

17 MS. WILSON: No objection, Your Honor.

18 THE COURT: All right. Go ahead. You may do so.

19 If you go stand down there, you see that microphone; just
20 stand right next to that microphone over there.

21 (REPORTER'S NOTE: State's Exhibit Two is being played for the
22 jury.)

23 BY MR. OSKIN:

24 Q: All right. Mr. Poston, is this the video that you seen
25 yesterday?

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- 1 A: Yes.
- 2 Q: In the afternoon?
- 3 A: Yes.
- 4 Q: All right. What is this video of?
- 5 A: It shows two different angles of the front of Club Levels
- 6 that night.
- 7 Q: Okay. Are you in this video anywhere?
- 8 A: Yes.
- 9 Q: Where are you?
- 10 A: I'm in 16.
- 11 Q: About whereabouts in frame 16?
- 12 A: Top left corner.
- 13 Q: Are you able to recognize the victim at this point?
- 14 A: Yes.
- 15 Q: Where was he?
- 16 A: Channel 15, he's moved up to the side.
- 17 Q: Are you in this left frame here?
- 18 A: Yes, sir. I was the one closest to the street.
- 19 Q: Now during the shooting, I see that people left the club
- 20 since then, but during the shooting, was there anyone else on
- 21 the sidewalk?
- 22 A: There were people in line up under the awning over here
- 23 on the right-hand side of Channel 15.
- 24 Q: But out of the way?
- 25 A: Yes.

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- 1 Q: Was that the third security guard you mentioned there?
- 2 A: Yes, that's Costello there.
- 3 Q: So, it was you and Pettengill that ran across the street?
- 4 A: Yes, sir.
- 5 Q: Who secured the weapon.
- 6 A: Pettengill.
- 7 Q: You can return to your seat.
- 8 After you identified the suspect as the Defendant, did
- 9 you talk to police officers or investigators after that?
- 10 A: Yes, sir, I talked to the detective.
- 11 Q: And where did you talk to him at?
- 12 A: In his car.
- 13 Q: Okay. Was that at ---
- 14 A: In front of -- in front of Levels.
- 15 Q: Okay. And you said you turned your gun over?
- 16 A: Yes, sir.
- 17 Q: You recognized it by the serial number, correct?
- 18 A: Yes, sir.
- 19 Q: Mr. Poston, at this time, I have no further questions.
- 20 Please answer anything Ms. Wilson may have for you?
- 21 THE COURT: Cross examination?
- 22 MS. WILSON: Thank you, Your Honor.
- 23 CROSS EXAMINATION OF RONALD THOMAS POSTON BY MS. WILSON:
- 24 Q: Mr. Poston?
- 25 A: Yes, ma'am.

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- 1 Q: Now again you say you were focused on the shooter,
2 correct?
- 3 A: Yes, ma'am.
- 4 Q: But you admit freely that you also saw no face?
- 5 A: Yes, ma'am.
- 6 Q: And you gave a general description ---
- 7 A: Yes, ma'am.
- 8 Q: --- of clothing?
- 9 A: Yes, ma'am.
- 10 Q: And colors?
- 11 A: Yes, ma'am.
- 12 Q: And you subsequently say that even though I didn't see a
13 face and I'm giving you very general descriptions about what
14 this person was wearing, I'm 100 percent certain this is the
15 person?
- 16 A: No, ma'am. What I said was that I verified what I -- my
17 description.
- 18 Q: I'm so sorry?
- 19 A: I said I verified my description.
- 20 Q: Okay. So you freely admit then that you can't be 100
21 percent certain because you didn't see a face, correct?
- 22 A: I never said that I saw his face, ma'am.
- 23 Q: Right. So you can't be 100 percent certain about an
24 identity when you didn't see the face, correct?
- 25 A: I'm 100 percent certain about what I described.

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- 1 Q: Which is the clothes only?
- 2 A: Clothes, build, height.
- 3 Q: Right, but no face?
- 4 A: Yes, ma'am.
- 5 Q: And you're telling me and you're telling this Court today
- 6 that you were 30 to 40 yards away?
- 7 A: Initially, yes.
- 8 Q: Initially, and at no point in time were you better able
- 9 to describe then generally this is what this person's wearing
- 10 and approximate height and weight?
- 11 A: Yes.
- 12 Q: And in addition to that, you really only had a very
- 13 limited time in which to view the shooter, correct?
- 14 A: Yes, ma'am.
- 15 Q: Because from what we watched and what you just pointed
- 16 out to the jury, this happened very quickly, didn't it?
- 17 A: Yes, it did.
- 18 Q: Matter of seconds?
- 19 A: Yes, ma'am, correct.
- 20 Q: And when you actually are out there, you're not even
- 21 facing where the incident took place, correct?
- 22 A: No, I wasn't.
- 23 Q: Actually, your back is to the incident, right?
- 24 A: Yes, when it initially started.
- 25 Q: Right, when it started. So you're not at the door,

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1 you're actually on the far end of the sidewalk, as you said,
2 in the upper left corner, correct?

3 A: Yes, ma'am.

4 Q: And this incident took place on the far end, not in front
5 of Club Levels at all, but actually down in front of a
6 different storefront past both Club Levels, correct?

7 A: In front of the next storefront, yes, ma'am.

8 Q: Now, the Solicitor brought up the fact that there were
9 lots of people out there, correct?

10 A: Yes, ma'am.

11 Q: And there's people on the sidewalk, correct?

12 A: They were lined up alongside of the building under the
13 awning.

14 Q: Yes, and there are people on the street, correct, or did
15 you not notice?

16 A: There was a few people on the street, yes.

17 Q: And so there was -- there was a lot of people milling
18 around and especially after the shooting happens, correct?

19 A: Well, the shooter kind of stood out because it was a red-
20 and-white themed party. Most of the people dressed there were
21 wearing red-and-white and the shooter was wearing all black.

22 Q: Okay. But my question is, there's a lot of people out
23 there in the street, correct?

24 A: At the time there wasn't a whole lot of people standing
25 around in the middle of the street, no.

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- 1 Q: No, I'm not -- I'm not -- I'm sorry, maybe I'm not being
2 clear and I apologize. I'm not asking you if there were
3 people milling around in the street, I'm asking if there was
4 traffic from the club out into the street on the sidewalk at
5 the time of the shooting?
- 6 A: Not a whole lot.
- 7 Q: But there was some, correct?
- 8 A: Very few.
- 9 Q: There were some, yes?
- 10 A: Very few.
- 11 Q: Very few. Okay. So very few people meaning that there
12 was less in your estimation than what, 10, 5, 3?
- 13 A: Going across the sidewalk at the time?
- 14 Q: Outside in the street, in the sidewalk outside the club
15 in the area where the incident took place?
- 16 A: I'd say there were 20 people max.
- 17 Q: So 20, 20 people in the area?
- 18 A: Max.
- 19 Q: Okay. Fair enough. And ---
- 20 A: But all of them were lined up down the side of the
21 building.
- 22 Q: Well, at the time of the shooting, you just showed us --
23 we just watched you point out on the video where you were
24 running down the sidewalk, correct?
- 25 A: Yes, ma'am.

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1 Q: And there were people crossing that street, weren't
2 there?

3 A: Yes, ma'am.

4 Q: At the time of that shooting?

5 A: Yes, ma'am.

6 Q: So they weren't all lined up on the sidewalk, were they?

7 A: No, ma'am.

8 Q: Thank you.

9 A: No, ma'am.

10 MS. WILSON: Court's indulgence for one second?

11 THE COURT: Yes, ma'am.

12 BY MS. WILSON:

13 Q: I do have a couple more questions and I'm gonna make them
14 brief. I know you said that there were people dressed in
15 varying colors that evening. Is it your -- it's not your
16 statement is that there was nobody else dressed in black?

17 A: No, ma'am; I didn't say that.

18 Q: So, you're definitely not claiming that there was only
19 one person all night dressed in black?

20 A: No, I'm not saying that at all.

21 Q: Okay. All right. No further questions. Thank you.

22 THE COURT: Redirect?

23 MR. OSKIN: Very briefly, Your Honor.

24 Your Honor, if I may approach the witness, please?

25 THE COURT: Yes, sir.

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1 REDIRECT EXAMINATION OF RONALD THOMAS POSTON BY MR. OSKIN:

2 Q: Mr. Poston, I'm showing you what's been entered into
3 evidence as State's Exhibit Number Eight. Do you recognize
4 the individual in that photo?

5 A: I ---

6 Q: What's that individual wearing?

7 A: All black.

8 Q: In your opinion, is that the same person that became the
9 shooter?

10 A: Yes, sir.

11 Q: Okay. Once you responded, did you ever shoot towards the
12 storefront or the glass that was further down the street or
13 ---

14 A: No, sir.

15 Q: Okay. And when they mentioned the next storefront over,
16 how close is that next store over, is it directly connected?

17 A: Yeah, they're directly connected.

18 Q: All right. And most importantly, are you sure that the
19 guy that you identified at the Human Resources building is the
20 same guy that was firing and shot our victim outside Club
21 Levels?

22 A: Yes.

23 Q: One more time, how sure?

24 A: 100 percent.

25 Q: You're as sure now as you were then?

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1 A: Yes.

2 Q: All right. Thank you. No further questions.

3 THE COURT: Recross?

4 MS. WILSON: Thank you, Your Honor.

5 If I might approach?

6 THE COURT: Yes, ma'am.

7 RECROSS EXAMINATION OF RONALD THOMAS POSTON BY MS. WILSON:

8 Q: I want to ask you the same question I had asked of
9 Pettengill. State's Exhibit Eight, this does match the
10 clothing description that you described, correct?

11 A: Clothing description, body description and approximate
12 height.

13 Q: Do you have any facial features that you can determine
14 there?

15 A: No, ma'am.

16 Q: And these -- this lack of facial features, you also did
17 not see a face, correct?

18 A: Yes.

19 Q: So any identification that you make isn't based on what
20 this person actually looks like other than a general
21 description of clothing and color and height and weight?

22 A: Yes.

23 Q: No face?

24 A: I never said I saw a face.

25 Q: Thank you. No further questions.

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1 THE COURT: Anything else, Solicitor?

2 MR. OSKIN: No, sir, Your Honor. May I approach to
3 retrieve the exhibits?

4 THE COURT: Certainly. Do you wish the witness to be
5 excused?

6 MR. OSKIN: Yes, Your Honor.

7 THE COURT: Any objection?

8 MS. WILSON: No objection, Your Honor.

9 THE COURT: All right, sir, you're released from your
10 subpoena and you may go back to your regular activities.

11 All right. Solicitor and Ms. Wilson, y'all come over
12 here and talk to me.

13 (REPORTER'S NOTE: A bench conference was held off the record
14 in the presence of but out of hearing of the jury.)

15 BY THE COURT:

16 THE COURT: All right. Ladies and gentlemen, we're going
17 to stop for the evening. We're gonna resume tomorrow morning.
18 As with this morning, the Clerk's office will have something
19 for you. I appreciate it if y'all arrive by 9:15 so we can
20 get started at 9:30. Obviously, if you want to show up at
21 9:30 that's fine, you know, whatever the Clerk has provided,
22 I'm sure will be all gone by the time you get here at 9:30,
23 but that will be your choice, but I would really appreciate it
24 if you got here by 9:15 so we can get started at 9:30,
25 assuming there are no other delays that crop up.

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1 Remember, don't talk about the case. Don't allow anybody
2 to talk to you about it. You go home, you see your husband,
3 wife, boyfriend, girlfriend, person down the street, you may
4 not talk about this case. Intentionally, or unintentionally,
5 they'll give you an opinion about it. They don't have one.
6 You shouldn't have an opinion about this particular case at
7 this point in time. If for some reason there is some kind of
8 news brief or something that happens to come on the news of
9 any kind about this particular case, you'll ignore that and
10 not listen to it. That, again, is not a part of this case.
11 So with that, I'll see you back tomorrow morning 9:15.

12 Thank you very much.

13 (REPORTER'S NOTE: Jury exits courtroom.)

14 THE COURT: All right, Solicitor, is there any issue
15 about exhibits that we could cover tonight that would help
16 speed up anything or is there, is there a necessity to do so?

17 MR. HOLFORD: Your Honor, I do have a stack of pictures
18 which the State would seek to introduce..

19 THE COURT: Have we -- have you had them marked for
20 identification already?

21 MR. HOLFORD: I have not, Your Honor.

22 THE COURT: All right. How about get them marked for
23 identification so when we talk about them, we know what the
24 numbers are.

25 MR. HOLFORD: Your Honor, there are probably 60 or 70.

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1 THE COURT: Okay. All right. Well, before you leave
2 here tonight -- Madam Court Reporter, I'm gonna impose on you
3 -- get all those marked for identification that you intend --
4 it would be the State's intention to introduce them into
5 evidence.

6 Ms. Wilson, you will look at all of them and identify by
7 number the ones that you object to and if y'all will be here
8 tomorrow morning by 9 o'clock so that we can review that
9 matter and see what issues, if any, remain at that point in
10 time.

11 Is there anything else that we could cover now at this
12 point in time from the State?

13 MR. HOLFORD: I don't believe so, Your Honor.

14 THE COURT: From the Defense?

15 MS. WILSON: Your Honor, at this time, I'm not aware of
16 anything.

17 THE COURT: All right. Very good. So, if y'all will get
18 that accomplished and I'll see you back tomorrow morning at 9
19 o'clock.

20 MS. WILSON: Yes, sir. Thank you.

21 THE COURT: Thank you very much.

22 (RECESS.)

23 *****OFF THE RECORD*****

24 END OF DAY TWO

25

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1 DECEMBER 7, 2016 - DAY ONE

2 (On the Record.)

3 BY THE COURT:

4 (REPORTER'S NOTE: The following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. Counsel, I understand that y'all
7 have looked over the photographs that the State had, and I
8 understand there are some issues about some of them. I'll be
9 glad to hear from you.

10 MS. WILSON: Your Honor, there's -- and I don't have the
11 pictures handy. I did take pictures of it on my phone.

12 THE COURT: Okay. Let's see if we can't pull them out.
13 We need to look at the ones that we have the problem with.

14 MS. WILSON: Yes, sir. Your Honor, there are ---

15 THE COURT: I'm sorry. Just hold on one second.

16 COURT REPORTER: I haven't had a chance to mark them.

17 THE COURT: Oh, you haven't marked those. Okay. All
18 right. Well, let's mark those.

19 MS. WILSON: I'm sorry.

20 COURT REPORTER: That's okay. How many are there?

21 MS. WILSON: I believe there are five. There are five.

22 MR. HOLFORD: Your Honor, we did go through last night
23 and -- and gave Madam Court Reporter, Ms. Dixie, approximately
24 50 or 60 that the State and Defense had agreed on, pictures.
25 The State and Defense would also agree -- or the State has

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1 agreed with the Defense not to enter another set and then we
2 have five today that are being marked, as we speak. The State
3 seeks to introduce, but Defense would have an objection.

4 COURT REPORTER: These last few, Judge, five of them, are
5 marked State's Ninety through Ninety-four. 9

6 THE COURT: And there's five of them?

7 COURT REPORTER: Yes.

8 THE COURT: They are Ninety-three what?

9 COURT REPORTER: Ninety through Ninety-four. I think
10 there are four instead of five. Ninety through Ninety-four.

11 THE COURT: Okay. Correct.

12 MS. WILSON: Your Honor, we the five photos here. Again
13 these are closer photos of something that's already in --
14 allowed into evidence five photographs which are the markers
15 surrounding the body. This is a close-up of the body. There
16 is a blood stain on one, but it shows parts or portions of the
17 body lying there.

18 THE COURT: What number is that?

19 MS. WILSON: I'm sorry. These would be numbers Ninety,
20 Ninety-one -- and Number Ninety-four in particular I find
21 egregious because it's a shot -- a photograph from the -- from
22 the head of the body with part of the torso out. It shows the
23 shirt bloody and it literally just shows the body lying there.
24 I, you know, I personally just think this picture is pretty
25 horrific. I don't know -- there's no markers on it, there's

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BY THE COURT

1 nothing on it to show anything of any evidentiary value. I
2 think it is strictly to inflame the passions of the jury.
3 There's nothing here that shows anything that would be
4 specific to the State's presentation. Bullets -- it doesn't
5 show that any scene, anything. It just shows the body. Then
6 we move to Ninety-two and Ninety-three. It's a front and back
7 photo of the t-shirt or the t-shirts that the victim was
8 wearing and I understand that it's showing entry and exit
9 wounds or entry and exit points for bullets, and I don't have
10 a problem with that per se. My problem is that it's bloody,
11 the markers -- the white t-shirt that it's lying on top of to
12 show the entry and exit is also bloody. I don't know that
13 these in black-and-white because it's literally a white t-
14 shirt, a black t-shirt and white markers on top of the black
15 t-shirt. A black-and-white photo would certainly serve the
16 same purpose and not be as, again, as inflammatory as these
17 color photographs are. I just think there is a better way and
18 I think that the State has already presented in a better way,
19 the markers on the scene of this crime. So I'm just asking
20 the Court to exclude these. If I could hand these up?

21 THE COURT: All right. Yes, Solicitor?

22 MR. HOLFORD: I believe ---

23 THE COURT: Do you need to look at them while you're ---

24 MR. HOLFORD: Let me just be able to reference the
25 numbers.

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1 THE COURT: Yes, sir. Go ahead and you can take them
2 while you're making your argument.

3 MR. HOLFORD: Your Honor, as to Exhibits Ninety and
4 Ninety-one, State's Exhibits Ninety and Ninety-one, they show
5 close-up of fragments at the scene. While there is a, a ,
6 larger picture that shows markers with shell casings, these
7 actually zoom in on the fragments. What's also important, and
8 we'll hear testimony from Crime Scene Specialist Bailey, is
9 the -- what appears to be directionality of the shots based on
10 the way the projectile from the bullets struck the ground.
11 There's not a picture in evidence that shows these fragments
12 the way that they've struck the ground underneath the victim.
13 Ninety and Ninety-one, they -- while a portion of the victim
14 is in it, you can't tell -- I mean if you looked at that
15 picture and didn't know, you wouldn't be able to tell if that
16 person is alive or dead. Obviously we do, but the picture
17 itself is not so prejudicial. It's not egregious in nature,
18 it's not inflammatory. It shows a portion of boxers and
19 pants, but it's focused in not on the -- not on the victim,
20 it's focused in on the marker and the projectile left at the
21 scene of the crime before it was collected. It also shows how
22 it impacted the ground underneath the victim.

23 As to Ninety-two and Ninety-three, there has been
24 testimony and there has been offered by the State the number
25 of times the Defendant shot the victim -- shot towards the

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1 victim. However, based on the video, you can't see how many
2 of those shots actually hit the victim. These shirts,
3 pictures of the shirt, front and back, show the number of
4 holes in the victim, in the victim's shirt at least, showing
5 the number of times, Your Honor. The State would argue that
6 goes to show the malice that what we saw on the video was not
7 multiple shots and he missed him and so you just make sure he
8 shot him once, but it was an intentional shooting that shows
9 the number of times the victim was actually struck and showing
10 malice on the Defendant's part. Not only did he shoot the
11 victim once or twice or three times, but at least five. Your
12 Honor, there -- and then the back of the shirt will show exit
13 wounds as well or holes in the shirt. We don't see the actual
14 bullet wounds. The shirt underneath might have some remnants
15 of blood. Certainly, the victim bled out. That's -- I think
16 that's the nature of the shooting.

17 As to Ninety-four, the State was seeking to introduce
18 that for the same reason, to show the malice, to show the
19 victim as he lay, the number of times you actually see the
20 gray sweatshirt and you can tell that he had actually been
21 shot a number of times, not just one or two. This wasn't an
22 accident; this was actually trying to kill someone. And the
23 State would argue that those photos should be introduced or we
24 would seek to introduce them to show the intentional nature
25 and the malice behind the shooting.

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1 THE COURT: All right. All right. Regarding Ninety and
2 Ninety-one, I'm gonna allow the State to use those. I do find
3 that probative value of the photographs far outweighs any
4 prejudicial value to the Defendant. I would say that without
5 explanation it would be really somewhat or really difficult in
6 Ninety-one to tell that that is actually a person in the
7 portion that is shown in Ninety-one; it's so close up, it
8 would be -- I think, you'd have to be explained that that
9 actually is the victim laying there to, to know that that
10 portion of body that is shown is that of the victim. I just
11 don't -- I see that it focuses on the fragment and I do find
12 the State's argument persuasive as to, to show the trajectory,
13 tie it in with the testimony. The same with Ninety, while it
14 is more clear, there is a victim there, I do find it is
15 important to -- has more evidentiary value than prejudicial
16 effect. I'm gonna allow Ninety and Ninety-one into evidence.

17 STATE'S EXHIBIT NUMBER NINETY AND NINETY-ONE

18 ADMITTED INTO EVIDENCE

19 THE COURT: Ninety-four, I am not going to allow that one
20 in evidence at this point in time. I do find that the
21 prejudicial value of it far outweighs the probative value and
22 can be explained as far as the intentional act, the malice can
23 be explained through other photographs and testimony. And in
24 that regard, I am gonna allow Ninety Two and Ninety-three in
25 that regard to show the number of times, the argument about

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1 malice, intentional act, the limited tinting of the white T-
2 shirt with blood is not of any kind of outrageous nature or
3 inflammatory nature of any kind. I just don't see that and
4 certainly the evidentiary value to be shown to the jury by the
5 number of times, the positioning of the entrance and exit is
6 much more important for the jury to understand the nature of
7 this matter and far outweighs any prejudicial effect that may
8 be had through the photographs and I do find any prejudicial
9 effect is minimal at best.

10 Thank you.

11 MS. WILSON: Thank you, Your Honor.

12 MR. HOLFORD: Thank you, Your Honor.

13 STATE'S EXHIBIT NUMBERS NINETY-TWO, NINETY-THREE

14 ADMITTED INTO EVIDENCE

15 STATE'S EXHIBIT NUMBER NINETY-FOUR

16 MARKED FOR IDENTIFICATION

17 THE COURT: All right. So I'll give you these back,
18 Solicitor, so that you have those. The ones that y'all have
19 agreed upon, could you tell me the numbers?

20 COURT REPORTER: Twenty-nine through Eighty-nine.

21 THE COURT: I'm sorry, tell me again. I'm sorry.

22 COURT REPORTER: Twenty-nine through Eighty-nine.

23 THE COURT: Twenty-nine through Eighty-nine then are in
24 evidence without objection.

25 MS. WILSON: Your Honor?

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BY THE COURT

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1 THE COURT: I'm sorry.

2 MS. WILSON: I've got a ---

3 THE COURT: That's not correct?

4 MS. WILSON: Well, this is my position. We went over the
5 exhibits and as far as State's Exhibits, I don't have a
6 problem with them generally speaking provided that there is no
7 -- that there is a proper foundation laid ---

8 THE COURT: All right.

9 MS. WILSON: --- at the time they go into evidence.

10 THE COURT: All right. So then you'll have to introduce
11 Twenty-nine through Eighty-nine each time that you move or
12 wish to use that photograph, Solicitor.

13 MR. HOLFORD: Yes, sir.

14 THE COURT: Thank you very much.

15 MS. WILSON: Thank you, Your Honor.

16 STATE'S EXHIBIT NUMBER TWENTY-NINE THROUGH EIGHTY NINE

17 MARKED FOR IDENTIFICATION

18 THE COURT: All right. We'll resume at 9:30.

19 Thank you.

20 MS. WILSON: Thank you, Your Honor.

21 MR. HOLFORD: Thank you, Your Honor.

22 **(RECESS.)**

23 *******OFF THE RECORD*******

24 **(On the Record.)**

25 THE COURT: All right, Solicitor, you ready for the jury?

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1 MR. HOLFORD: Yes, Your Honor.

2 THE COURT: Defense?

3 MS. WILSON: Yes, sir, Your Honor. Thank you.

4 THE COURT: Ask the jury to come in please.

5 (REPORTER'S NOTE: Jury enters courtroom.)

6 THE COURT: All right, Solicitor, your next witness
7 please.

8 MR. OSKIN: Thank you, Your Honor. At this time, the
9 State would call Detective Paul Morrell.

10 THE COURT: Just meet the Clerk right over here, please.
11 Thank you.

12 CLERK: Please raise your right hand and place your left
13 hand on the Bible.

14 PAUL MORRELL, HAVING BEEN SWORN TESTIFIES
15 AS FOLLOWS:

16 CLERK: Please state your full name and spell the last
17 name for the Court.

18 MR. MORRELL: Paul Morrell. M-O-R-R-E-L-L.

19 THE COURT: Go ahead, Solicitor.

20 DIRECT EXAMINATION OF PAUL MORRELL BY MR. OSKIN:

21 Q: Mr. Morrell, who is your employer?

22 A: City of Myrtle Beach.

23 Q: How long have you been employed with them?

24 A: Since August of 2007.

25 Q: You have any previous law enforcement experience before

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1 that?

2 A: Yes, sir, I came to them with eight years of law
3 enforcement experience.

4 Q: Would you please for the jury briefly describe the nature
5 of your work?

6 A: Sure. My current assignment is a detective primarily
7 assigned to work anything from retail theft all the way up to
8 and including murder. We're assigned cases that are generated
9 through our calls for service.

10 Q: All right. How long have you been employed in that
11 capacity, sir?

12 A: Since March of 2014.

13 Q: Okay. So then that would've been the same capacity on
14 February 15th, 2015?

15 A: Yes.

16 Q: Were you on duty that night?

17 A: Yes, I was on shift.

18 Q: Did you respond to a call with regards to the shooting?

19 A: I did.

20 Q: Where was that shooting at?

21 A: It was at the Club Levels on 9th Avenue North.

22 Q: Did you respond to the scene or where did you respond to,
23 if you did respond?

24 A: I did respond. I heard the radio call for shots fired
25 incident at the club location. And while we're on shift, we

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1 always monitor the radio and began to respond to the scene.

2 Q: Detective Morrell, what did you learn once you got on the
3 scene?

4 A: Upon my arrival, I met with the on-scene supervisor who
5 was a sergeant at the time. He gave me a quick brief and a
6 walk through of the scene, which included the, the deceased
7 and where he was located and then he directed me towards
8 potential witnesses and that's where we opened our
9 investigation.

10 Q: And was the scene secure at this time?

11 A: For the most part. I was, I mean would consider myself
12 one of the initial first responders. It was -- there was a
13 lot of people in the club that were still being exited out of
14 the club. Cars were being removed from the crime scene. It
15 was -- the entire block was pretty much locked down and
16 they're in the process of completing and getting it secured.

17 Q: Would you please tell this jury what responsibility or
18 responsibilities you were tasked with once you got there?

19 A: As initial responding detective, we're tasked with
20 locating potential witnesses, collecting and identifying
21 evidence and, this particular incident, my assignment was to
22 locate and interview potential witnesses.

23 Q: At any point, did you learn that there was a male who
24 sustained a gunshot in addition to the victim at Club Levels?

25 A: Not initially, no, I did not.

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1 Q: You said you met with witnesses, you tried to identify
2 witnesses. What witnesses did you identify?

3 A: I was directed to the two APS security officers that were
4 on scene and it was explained to me initially that they had
5 discharged their weapons in response to the shooting that
6 occurred.

7 Q: Do you remember who those security guards were?

8 A: Yes, Pettengill and Poston.

9 Q: Without telling me what either one of them specifically
10 said, what were you able to learn from them?

11 A: Could I review my Investigative Report?

12 Q: Yes, sir.

13 A: All right. I interviewed both of them and my encounter
14 with them had occurred after they had done a show-up to
15 identify the potential suspect, the Defendant, and Pettengill
16 stated he was 100 percent ---

17 MS. WILSON: Your Honor, I object.

18 THE COURT: All right. You cannot relay what they told
19 you. You can do -- you can say you spoke to them and what you
20 did as a result of it.

21 A: Yes, sir.

22 BY MR. OSKIN:

23 Q: So again, like I said before that, and as Your Honor just
24 mentioned, without what they verbally said, just tell us very,
25 you know, briefly but efficiently and thoroughly what you

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1 learned from them; you said there was a show-up
2 identification?

3 A: Correct.

4 Q: Did they identify the suspect at that identification?

5 A: Yes.

6 Q: Okay. And where was that man found?

7 A: Over by our HR building, which is at Oak Street and 10th
8 Avenue/9th Avenue, in that area.

9 Q: To your knowledge, did that suspect have a wound, a
10 gunshot wound?

11 A: Yes, at that time, that's when I learned he did.

12 Q: All right. You said you had Mr. Poston and Mr.
13 Pettengill do a show-up; is that correct?

14 A: They had done them prior to ---

15 Q: Were you there when they conducted the show-up?

16 A: They did a show-up prior to meeting with them.

17 Q: All right. And they were able to identify the male?

18 A: Yes.

19 Q: What occurred next with regards to Mr. Poston and
20 Pettengill?

21 A: Like I said, I interviewed both of them and at the
22 conclusion of each of the interviews, I was provided their
23 weapons that they used when they were involved in the shooting
24 incident. From Mr. Pettengill, Officer Pettengill, I
25 collected a Smith & Wesson Model SW9VE with the serial number

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1 of DJ814; it's a 9mm Smith & Wesson.

2 MR. OSKIN: Your Honor, if I may approach the witness
3 please?

4 THE COURT: Yes, sir.

5 BY MR. OSKIN:

6 Q: I'm showing you what's been marked in evidence as State's
7 Twenty-nine, Thirty and Thirty-one. Are you able to recognize
8 those?

9 A: Yes, this -- this is my handwriting and this is the --
10 this is the Smith & Wesson from Sean Pettengill that I
11 collected, and this is all -- this is -- this is my
12 handwriting.

13 Q: Does the serial number match the number that you just
14 gave to the jury?

15 A: Yes, it does.

16 Q: One second.

17 Court's indulgence, Your Honor?

18 THE COURT: Yes, sir.

19 Q: What about State's Exhibit Number Thirty, are you able to
20 recognize that as well?

21 A: Yes, this is the magazine that was later taken out of the
22 gun. When I packaged the weapon, I put on gloves and I
23 packaged it as is, as not to destroy the integrity of the
24 weapon. So, it was packaged as is. I didn't remove the
25 magazine, but this is the magazine from the well of this gun.

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1 Q: This is the same weapon from Exhibit Twenty-nine?

2 A: Yes, sir.

3 Q: Okay. And last, the Exhibit Number Thirty-one, are you
4 able to recognize that, sir?

5 A: These are 9mm rounds and these are the same rounds that
6 match coming out of this magazine.

7 MR. OSKIN: Your Honor, at this time, the State would
8 wish to move State's Exhibit Twenty-nine, Thirty and Thirty-
9 one into evidence please?

10 THE COURT: Any objection.

11 MS. WILSON: No objection, Your Honor.

12 THE COURT: They're in evidence without objection.

13 STATE'S EXHIBITS NUMBER TWENTY-NINE, THIRTY AND THIRTY-ONE

14 ADMITTED INTO EVIDENCE

15 BY MR. OSKIN:

16 Q: So that was Mr. Pettengill's weapon. Did you also -- was
17 Mr. Poston's weapon also released to your custody?

18 A: Yes, it was.

19 MR. OSKIN: Your Honor, if I may again approach?

20 THE COURT: Yes, sir.

21 BY MR. OSKIN:

22 Q: Mr. Morrell, I'm showing you what's been entered into
23 evidence as Twenty-six, Twenty-seven and Twenty-eight?

24 A: Okay.

25 Q: If you could please describe this to the jury and what

PAUL MORRELL - DIRECT BY OSKIN

1 those are?

2 A: And once again this is Mr. Poston's weapon. My report
3 identified it as a Glock Model 22 Gen 4, Generation 4, with
4 the serial number of WPH644. It's a .40 caliber Glock. This
5 is -- this is all my handwriting and the same process again
6 with a separate pair of gloves. I packaged the weapon at the
7 conclusion of our interview as is, not to destroy the
8 integrity of the weapon, in this paper bag.

9 MR. OSKIN: Madam Court Reporter, if I could have you
10 mark this for me?

11 STATE'S EXHIBIT NUMBER NINETY-FIVE

12 MARKED FOR IDENTIFICATION

13 MR. OSKIN: May I approach the witness, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. OSKIN:

16 Q: Detective Morrell, I'm showing you what's been marked as
17 State's Exhibit Ninety-five for ID purposes only. Can you
18 tell me what that is?

19 A: It's marked as a Glock 22, .40 caliber, serial number
20 WPH644.

21 Q: Are you able to recognize the handwriting on that box?

22 A: No, that's not mine. I'm sure it's one of our Evidence
23 Tec's.

24 Q: Okay. What's the -- does the serial number on that box
25 match this -- the serial number on the photo?

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- 1 A: Yes, it does.
- 2 Q: And what security guard was that weapon from?
- 3 A: This one is from Poston.
- 4 Q: All right. With regards to the chain of custody, is your
5 name on that box?
- 6 A: Yes, it is. It says it was collected from me.
- 7 Q: Detective Morrell, what did you do with the weapons after
8 you collected them once they were packaged for evidence?
- 9 A: Right, they were packaged in these brown paper bags
10 initially and, at the conclusion of each packaging, they were
11 secured and they were transferred to the custody of the Crime
12 Scene Specialist, Dave Bailey, who was -- who was on scene.
- 13 Q: Mr. Bailey?
- 14 A: Yes, sir.
- 15 Q: All right. And to round up this part, were you able to
16 view any video surveillance of the initial incident?
- 17 A: Yes, I was.
- 18 Q: Okay. And were you -- was this video surveillance able
19 to corroborate what you learned from Mr. Pettengill and Mr.
20 Poston throughout your investigation?
- 21 A: Yes, sir, to a tee.
- 22 Q: To back up real quick, when you interviewed Poston and
23 Pettengill, did you interview them separately?
- 24 A: Yes.
- 25 Q: They were separate from each other?

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PAUL MORRELL - CROSS BY WILSON

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1 A: Yes.

2 Q: Did their stories match up?

3 A: Yes, they did.

4 Q: I believe you said to a tee; is that what they said is
5 what you saw on the video surveillance?

6 A: Well, my initial walkthrough, I got a description of the
7 scene, which in my mind while I'm listening to them --
8 interviewing them is matching what they're telling me. And
9 then after I interviewed them, I went and saw it and linked up
10 with Detective Sutton, who was overseeing the video collection
11 and I was watching the video and that matched up, the video
12 matched up to what the Poston and Pettengill had told me also.

13 Q: Detective Morrell, that concludes my questions at this
14 time. If you would please answer any questions Ms. Wilson has
15 for you, sir.

16 A: Certainly.

17 THE COURT: Cross examination?

18 MS. WILSON: Thank you, Your Honor.

19 CROSS EXAMINATION OF PAUL MORRELL BY MS. WILSON:

20 Q: Good morning, Detective?

21 A: Yes, ma'am, good morning.

22 Q: Detective, correct?

23 A: Yes, ma'am.

24 Q: Yes, sir. So you're telling me that what actually
25 matched up was a general description of clothing and height

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1 and weight?

2 A: Correct.

3 Q: Is what you're saying?

4 A: Yes.

5 Q: And you didn't actually witness anything happen, did you?

6 A: No, ma'am.

7 Q: And when you got there, the scene was actually still
8 pretty chaotic as you in your words, you said that it was sort
9 of locked down I believe is what you said or something to that
10 effect?

11 A: I think -- you have to understand, 3 o'clock in the
12 morning, it's a club. You know we're coming with -- at 3
13 o'clock in the morning we're on a limited shift. So whatever
14 officers we had available we're using to close the roads down,
15 and get potential people out of the scene while still trying
16 to identify a suspect, identify potential witnesses. So,
17 there's a lot of moving parts at that time. So, we're doing
18 all of that at one time. So, did you see anything; no; okay,
19 you can go. That kind of thing takes place. So, we're
20 locking down the block, the club and securing evidence,
21 securing the witness and making sure that it's safe, all at
22 the same time.

23 Q: And again, my question though is that you came onto a
24 scene and you said it wasn't actually completely locked down;
25 is that not correct?

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PAUL MORRELL - REDIRECT BY OSKIN

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- 1 A: Correct.
- 2 Q: That is what you said?
- 3 A: Yes.
- 4 Q: Not completely locked down. Lots of activity, correct?
- 5 A: Probably was a lot more probably prior to my arrival.
- 6 Q: You said you arrived there and you came as quickly as you
7 could, correct? ✓
- 8 A: Yes, ma'am.
- 9 Q: So, when you got there, still a lot of activity?
- 10 A: Yes.
- 11 Q: Cars being moved?
- 12 A: Yes.
- 13 Q: People running, fleeing the club?
- 14 A: Yes.
- 15 Q: And again, you did not witness any crime happen and you
16 did not see Kevin Bryant commit this crime, did you?
- 17 A: No, I did not.
- 18 Q: All right. No further questions.
- 19 THE COURT: Redirect?
- 20 MR. OSKIN: Very briefly, Your Honor.
- 21 REDIRECT EXAMINATION OF PAUL MORRELL BY MR. OSKIN:
- 22 Q: Detective Morrell, very briefly, as you stated, you
23 respond to situations or crimes after they occur, right?
- 24 A: Yes.
- 25 Q: As rapidly as you can, as quickly as you can?

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PAUL MORRELL - RECROSS BY WILSON

1 A: Yes, sir.

2 Q: Myrtle Beach is your beat, Club Levels was in your beat?

3 A: Yes, sir.

4 Q: You didn't see the crime initially happen, but you did
5 see that crime occur on video surveillance, correct?

6 A: I did.

7 Q: And that story was matched up and corroborated by the two
8 witnesses you interviewed, correct?

9 A: Yes, it was.

10 Q: And those two witnesses, to your knowledge, went and
11 identified the suspect at the Human Resources building very
12 close to Club Levels, correct?

13 A: Yes, they did.

14 Q: All right. Thank you. No further questions.

15 THE COURT: Anything on those questions just asked?

16 MS. WILSON: Yes, sir.

17 RECROSS EXAMINATION OF PAUL MORRELL BY MS. WILSON:

18 Q: And again, to reiterate, the identification is based on
19 clothing, colors, black clothing, yes?

20 A: Yes.

21 Q: Thank you. No further questions.

22 THE COURT: You may step down.

23 MR. OSKIN: Your Honor, the State has nothing further for
24 Detective Morrell.

25 THE COURT: All right. Do you wish the witness to be

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1 excused?

2 MR. OSKIN: Yes, sir, Your Honor.

3 THE COURT: Any objection?

4 MS. WILSON: No objection, Your Honor. Thank you.

5 THE COURT: All right, sir, you are released from your
6 subpoena and may go back to your regular duties.

7 A: All right. Thank you, sir.

8 THE COURT: Next witness, please.

9 MR. HOLFORD: The State calls Officer Troy Spivey.

10 THE COURT: Please come around and meet the Clerk's
11 representative right up here, sir.

12 CLERK: Please raise your right and place your left hand
13 on the Bible.

14 TERMAYNE SPIVEY, HAVING BEEN SWORN

15 TESTIFIES AS FOLLOWS:

16 CLERK: State your full name and spell your last name for
17 the Court, please.

18 MR. SPIVEY: Termayne Spivey, S-P-I-V-E-Y.

19 COURT REPORTER: Spell your first name, please.

20 MR. SPIVEY: T-E-R-M-A-Y-N-E.

21 THE COURT: Go ahead, Solicitor.

22 DIRECT EXAMINATION OF TERMAYNE SPIVEY BY MR. HOLFORD:

23 Q: Officer Spivey, where are you currently employed?

24 A: Myrtle Beach Police Department.

25 Q: And how long have you been with Myrtle Beach?

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TERMAYNE SPIVEY - DIRECT BY HOLFORD

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- 1 A: Twenty years.
- 2 Q: Okay. What was your position with Myrtle Beach back in
3 February 15th, 2015?
- 4 A: Assigned to the Traffic Division within the police
5 department.
- 6 Q: Okay. And did you have a chance to respond to a crime
7 scene that night?
- 8 A: Yes, sir.
- 9 Q: Where did you respond?
- 10 A: I responded to the area of Levels around 9th Avenue North
11 and Broadway.
- 12 Q: And do you remember about what time that was?
- 13 A: Approximately 2:35 in the morning.
- 14 Q: And did you stay at Club Levels?
- 15 A: No, I never arrived on scene.
- 16 Q: Okay. Where did you go?
- 17 A: As I got to the intersection of 9th North and Broadway,
18 additional information came out as far as an offender to the
19 crime. I then turned and went to attempt to locate that
20 subject.
- 21 Q: Okay. Did you eventually locate someone?
- 22 A: Yes, sir.
- 23 Q: And where were they?
- 24 A: They were at the City's Human Resources building right on
25 the corner of 10th Avenue North and Oak Street.

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- 1 Q: I'm gonna show you what's been entered as State's One.
2 Can you just show the jury where the Human Resources building
3 is on here; this is 9th Avenue and Joe White?
4 A: It is ---
5 COURT REPORTER: Excuse me.
6 A: --- would be this building right here.
7 Q: And so is that where that you responded?
8 A: Yes, sir.
9 Q: Do you remember what time you got there?
10 A: No, sir, it was a few minutes after the original call
11 came out.
12 Q: Are you familiar with an event log or an event report?
13 A: Yes, sir.
14 Q: How are these created?
15 A: They're created with through our dispatcher.
16 Q: And do you have a badge number?
17 A: Yes, my badge number is 6043.
18 Q: Do you remember what it was back then?
19 A: It's still -- it's an employee number.
20 Q: Okay.
21 A: My badge number at that time was 267.
22 Q: If I handed you an event report, would it show what time
23 you arrived?
24 A: Yes, sir, it should.
25 MR. HOLFORD: Your Honor, may I approach?

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TERMAYNE SPIVEY - DIRECT BY HOLFORD

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1 THE COURT: Yes, sir.

2 BY MR. HOLFORD:

3 Q: On the second page, can you find your, your employee,
4 your badge number and see what time you arrived there?

5 A: According to this log, I arrived on the scene at 2:39
6 A.M.

7 Q: Okay. Were you one of the first to arrive to that HR
8 building?

9 A: No, sir, Officer Eddy was the first to arrive on the
10 scene.

11 Q: Okay. Were you shortly thereafter?

12 A: Yes, sir.

13 Q: And I'm gonna show you what's been entered as State's
14 Nine. Does that look familiar, that picture?

15 A: Yes, sir.

16 Q: Is that the location you responded to?

17 A: Yes, sir.

18 Q: Okay. And what are these -- what are these markers?

19 A: Evidence markers of -- from the Crime Scene officer. It
20 looks like a flip phone, a battery, looks like a projectile
21 and clothing.

22 Q: And do you know where these --- where these pieces of
23 evidence came from?

24 A: The subject that we had detained on in front of the Human
25 Resources building.

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TERMAYNE SPIVEY - DIRECT BY HOLFORD

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1 Q: And how do you know that?

2 A: I was on scene at the time that it was on the, the
3 projectile marked as B was -- fell out of the Defendant's
4 clothing at the time that he was lifted up onto the gurney.

5 Q: Okay. So, State's Thirteen, you've got something marked
6 B and it's a projectile. What's a projectile?

7 A: It's a -- it's like basically a bullet.

8 Q: Okay. And where did that projectile come from?

9 A: It fell out of the subject's right-side clothing around
10 his -- between his arm and his side.

11 Q: And did you notice it when it fell?

12 A: Yes, sir.

13 Q: And what, what was happening at the time?

14 A: At the time, we were getting the Defendant secured. At
15 the time, we were not able to get him secured with his right
16 hand because we were giving him verbal commands to put his
17 right hand behind his back so we could get him detained and
18 handcuffed and he was not able to move it at the time. As I
19 grabbed his right arm, I noticed some deformities in his arm
20 and he had stated that he had been shot. At that time ---

21 MS. WILSON: Objection, Your Honor.

22 THE COURT: All right. Madam Forelady, ladies and
23 gentlemen, go to the jury room.

24 (REPORTER'S NOTE: Jury exits courtroom. The following takes
25 place outside the presence of the jury.)

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BY THE COURT

1 BY THE COURT:

2 THE COURT: Before I hear from Ms. Wilson, Solicitor, why
3 don't you cover with the witness regarding that statement from
4 the Defendant that he was shot, that -- you know, how that
5 came about. Did the officer ask the question? Did the
6 Defendant just volunteer the information to him without a
7 question? How about ask him some questions so we can figure
8 out how that happened, please.

9 BY MR. HOLFORD:

10 Q: Officer Spivey, what led to, to the Defendant saying he
11 had been shot?

12 A: When I attempted to grab his right arm and felt the
13 deformity in it, he just made a spontaneous or an utterance
14 that he was shot.

15 Q: Did you ask him the question?

16 A: No.

17 Q: Was he handcuffed at the time?

18 A: His left arm -- his left arm was handcuffed.

19 Q: And so his left arm had a handcuff and you were trying to
20 attempt to handcuff his right arm?

21 A: Yes, sir.

22 Q: But you did not ask him specifically or did you ask him
23 specifically what had happened to his arm?

24 A: No, sir.

25 THE COURT: All right. Any objection?

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TERMAYNE SPIVEY - CROSS BY WILSON

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1 MS. WILSON: Yes, sir.

2 THE COURT: And what might that be, please?

3 MS. WILSON: Your Honor, it's the same -- I mean,
4 certainly it's the same issue that I had before with the
5 exception here that I understand that this officer is claiming
6 spontaneous utterance, but again, they were taking Mr. Bryant
7 into custody. They had already cuffed him, were attempting to
8 cuff him, and in the course of the cuffing, the statement was
9 made. I have a problem with it because certainly they already
10 knew they were taking him into custody, this was not -- in my
11 understanding, I don't even understand some of his testimony
12 because my understanding is that it was Officer Eddy. Officer
13 Eddy said that he was the one who attempted to cuff him. So
14 I'm trying to figure out if they're cuffing together, if the
15 cuffing ---

16 THE COURT: Well, certainly you can ask him that
17 question, but other than that, it seems pretty clear, but go
18 ahead and ask him the question if you want to.

19 MS. WILSON: Yes, sir. I'm sorry. So what?

20 THE COURT: If you want to ask him that question, I'll be
21 glad for you to ask him?

22 CROSS EXAMINATION OF TERMAYNE SPIVEY BY MS. WILSON:

23 Q: Officer Spivey, were you assisting ---

24 A: Yes, ma'am.

25 Q: --- Officer Eddy in cuffing?

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1 A: Yes, ma'am. Officer Eddy was the first on scene. He was
2 already attempting to cuff the Defendant. And at the time
3 that I arrived on scene, he was telling him to put his right
4 hand behind his back but the Defendant didn't respond. So, at
5 that time, that's when I attempted to assist him with grabbing
6 his right arm to cuff his right arm.

7 Q: Well, I'm having some issues with this and I'm gonna ask
8 you this question. You say you attempted to assist Officer
9 Eddy, but I -- it's unclear how that could happen. My under
10 -- let me ask a question. You could not have cuffed him
11 simultaneously with Officer Eddy, could you?

12 A: Officer Eddy was the initial officer on scene. Officer
13 Eddy was -- initially was able to get the left handcuff on him
14 and he was giving him verbal commands to put his right hand
15 behind his back as I was approaching both of them.

16 Q: So again, my question is, as Officer Eddy is attempting
17 to cuff, you could not also be attempting to cuff, correct?

18 A: I was assisting Officer Eddy with, with getting him
19 cuffed.

20 Q: So, your hands and Officer Eddy's hands were on the
21 Defendant's right hand trying to cuff him at the same time is
22 what you're telling me?

23 A: I can't remember what Officer Eddy was doing at the time,
24 but I know when I approached on scene, Officer Eddy was giving
25 him verbal commands to put his right hand behind his back and

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BY THE COURT

1 that's when I came up to grab his right arm and noticed he had
2 deformities in his right arm.

3 MS. WILSON: All right. Your Honor, I don't have any
4 more questions. I do have a problem.

5 THE COURT: Okay.

6 MS. WILSON: This obviously directly contravenes what
7 Officer Eddy said.

8 BY THE COURT:

9 THE COURT: No, ma'am, it does not. It's -- they're
10 perfectly consistent from what the officer is saying. Officer
11 Eddy is putting the left handcuff on, he gives verbal commands
12 to the Defendant to put his right arm behind his back to match
13 the left arm. This officer arrives on the scene, sees the
14 problem, grabs the Defendant's right arm to assist in the
15 detention, the Defendant volunteers without question,
16 prompting of any kind, that he was shot.

17 MS. WILSON: Actually, Your Honor ---

18 THE COURT: It's not inconsistent at all.

19 MS. WILSON: Well, it is. Officer Eddy actually said on
20 the stand that he reached -- he cuffed the, the left hand,
21 reached for the right, and when he reached for it to cuff, Mr.
22 Bryant, he said that his hand came away bloody and that had to
23 go do a cleanup because he ---

24 THE COURT: Later on he had to go do the cleanup.

25 MS. WILSON: He did, but he said he reached for the hand,

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1 it came away bloody.

2 THE COURT: That's right and Eddy removed his hand, so
3 that would be consistent with the giving of the verbal
4 commands and this officer assisting. It's not inconsistent at
5 all.

6 MS. WILSON: Well, Your Honor, I, I ---

7 THE COURT: If that's your objection, I overrule your
8 objection.

9 MS. WILSON: Well, that's part of my objection. The
10 other part of my objection is I do believe that a Miranda or
11 something would've been necessary at that point. They --
12 neither of them had given one. Certainly, he was being taken
13 into custody. I think it's problematic but I certainly would
14 ask the Court to rule on that issue.

15 THE COURT: Well, Miranda would have been necessary if
16 they had tried to question the Defendant in any way. He
17 didn't try to question him in any way. The Defendant
18 volunteers a statement without prompting of any kind.

19 MS. WILSON: And, Your Honor, my understanding is that,
20 at this point, Officer Eddy had already asked questions and my
21 position would also be that if those statements are excluded
22 under Eddy, they would also be excluded under any officer that
23 comes on scene after the fact in the effort to cuff or to
24 detain Mr. Bryant.

25 THE COURT: Solicitor?

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BY THE COURT

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1 MR. HOLFORD: Yes, Your Honor. Three different parts.
2 First, in your initial ruling as to Eddy and I'll try and
3 backtrack from Ms. Wilson's arguments. The initial questions
4 of sit down, where's he coming from and was he shot were okay
5 because he was not yet in custody.

6 Second, this was a spontaneous utterance. It's clear
7 that when the officers were trying to cuff the Defendant, in
8 trying to do so, they probably hurt him because he had been
9 shot and he says I'm shot, so they stopped trying to cuff his
10 right arm.

11 And finally, so to that -- that was not an answer to a
12 question, he was not being questioned while in custody. There
13 wasn't interrogation; it was a spontaneous utterance uttered
14 by the Defendant. And finally, this would be the statement
15 of, I was shot, would fall under inevitable discovery. A
16 bullet fragment falls, his arm is shattered, he's later taken
17 by EMS to the hospital, and it's determined the Defendant was
18 shot. I don't think there's a problem with the jury knowing
19 that the Defendant had been shot and they will find that out
20 when they -- I can't remember if they already know that.

21 THE COURT: All right. Thank you.

22 MS. WILSON: Beg the Court ---

23 THE COURT: Yes, ma'am.

24 MS. WILSON: I was gonna say, Your Honor, I think that
25 certainly at this point, I, I believe that they are aware that

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TERMAYNE SPIVEY - DIRECT BY HOLFORD

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1 there has been many statements that the person detained at the
2 Human Resources building had been injured, but I still would
3 ask the Court to leave out that statement to suppress that
4 statement. And if the Court is not in agreement, I would
5 certainly ask that my objection be noted for the record.

6 THE COURT: Well, your objection is certainly noted for
7 the record. I do not find that at this point time that there
8 is any reason to remove the testimony from the record or the
9 jury's consideration based upon the facts and circumstances of
10 how it came about. I agree with the both prongs of the
11 arguments set forth by the State and I'm gonna allow it.
12 Thank you very much.

13 MS. WILSON: Thank you, Your Honor.

14 MR. HOLFORD: Thank you, Your Honor.

15 THE COURT: Ask the jury to come in, please.

16 THE COURT: Now, if there is a situation where you ask
17 him questions and he responded then you can't go into that.

18 MR. HOLFORD: Yes, sir.

19 (REPORTER'S NOTE: Jury enters courtroom.)

20 THE COURT: All right. You may continue, Solicitor.

21 MR. HOLFORD: Thank you, Your Honor.

22 BY MR. HOLFORD:

23 Q: Officer Spivey, as you and Officer Eddy were attempting
24 to cuff the Defendant, what did he say?

25 A: As I grabbed his right arm to get him handcuffed, he did

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TERMAYNE SPIVEY - DIRECT BY HOLFORD

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1 make the spontaneous utterance that he was -- he was shot.

2 Q: And did you elicit that testimony from him?

3 A: No, sir.

4 Q: It was as you grabbed his right arm to put it behind his
5 back ---

6 A: Yes.

7 Q: --- he said he had been shot?

8 A: Yes.

9 Q: And were you able to determine, you said -- was it at
10 that point or a little bit later that a bullet projectile fell
11 from his clothing?

12 A: It was at the time that EMS arrived to -- we stood him up
13 to place him on the -- sit him on the gurney. At the time
14 that he sat down, the -- that's when the bullet fragment or
15 the projectile fell from his clothing.

16 Q: And then was EMS there to treat a wound to him?

17 A: Yes.

18 Q: What was that wound?

19 A: It appeared to be a gunshot wound to his upper right arm.

20 Q: So that confirmed his statement?

21 A: Yes, sir.

22 Q: All right. And so after the Defendant's taken in the
23 ambulance, what do you do?

24 A: I stood by with the, the items that were on the ground
25 there until Crime Scene could arrive to process the scene.

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TERMAYNE SPIVEY - CROSS BY WILSON

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1 Q: This is State's Eleven. You stood by these?

2 A: Yes, sir.

3 Q: Okay. Why would you do that?

4 A: To preserve the evidence.

5 Q: And then who collected those items?

6 A: Crime Scene Officer Bailey.

7 MR. HOLFORD: No further questions, Your Honor.

8 THE COURT: Cross examination?

9 MS. WILSON: Thank you, Your Honor.

10 CROSS EXAMINATION OF TERMAYNE SPIVEY BY MS. WILSON:

11 Q: Officer Spivey, you didn't actually witness Mr. Bryant
12 being shot, did you?

13 A: No, ma'am.

14 Q: And you didn't witness him shoot anyone, did you?

15 A: No, ma'am.

16 Q: You rode in the ambulance?

17 A: No, ma'am, I remained on the scene for the collection of
18 the evidence in front of the HR building.

19 Q: Okay. And you're certain you were not in the EMS with
20 Mr. Bryant?

21 A: I am certain, correct.

22 Q: Who -- you were instructed to wait with the evidence by
23 whom?

24 A: I just -- I volunteered to remain on scene.

25 Q: Okay. And again, you didn't witness Mr. Bryant commit a

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TERMAYNE SPIVEY - CROSS BY WILSON

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1 crime?

2 A: No, ma'am.

3 Q: And you can't confirm the circumstances under which Mr.
4 Bryant was injured?

5 A: No, ma'am.

6 Q: Thank you. No further questions.

7 THE COURT: Any redirect?

8 MR. HOLFORD: No, Your Honor.

9 THE COURT: Do you wish the witness to be excused?

10 MR. HOLFORD: Yes, Your Honor.

11 THE COURT: Any objection?

12 MS. WILSON: No objection, Your Honor. Thank you.

13 THE COURT: All right, sir, you're released. You may go
14 back to your regular duties, sir.

15 Your next witness please, Solicitor?

16 MR. OSKIN: Yes, sir, Your Honor. At this time, the
17 State would call Officer Donovan.

18 THE COURT: All right. All right, sir, if you'd come all
19 the way around and meet the Clerk's representative right up
20 here please, sir.

21 CLERK: Please raise your right hand and place your left
22 hand on the Bible.

23 SEAN DONOVAN, HAVING BEEN SWORN TESTIFIES

24 AS FOLLOWS:

25 CLERK: Have a seat and state your full name and spell

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SEAN DONOVAN - DIRECT BY OSKIN

1 your last name for the Court?

2 MR. DONOVAN: I'm Officer Sean Donovan, S-E-A-N, D-O-N-O-
3 V-A-N.

4 THE COURT: Go ahead, Solicitor.

5 DIRECT EXAMINATION OF SEAN DONOVAN BY MR. OSKIN:

6 Q: Officer Donovan, who is your employer, sir?

7 A: I'm currently employed with the City of Myrtle Beach
8 Police Department.

9 Q: All right. And how long have you been employed with
10 them?

11 A: I've been employed with them since 2013.

12 Q: And what's the nature of your job?

13 A: Currently, I'm assigned to our Street Crimes Unit.

14 Q: Okay. Were you employed in that capacity on February
15 15th, 2015?

16 A: At that point in time, I was assigned to our Waterfront
17 Unit.

18 Q: With the Myrtle Beach Police Department?

19 A: With the City, yes, sir.

20 Q: Okay. On that day, did you have the chance to become
21 involved in an incident with regards to a shooting?

22 A: Yes, sir.

23 Q: Do you remember where that shooting was or where it
24 occurred?

25 A: The shooting occurred at Club Levels.

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SEAN DONOVAN - DIRECT BY OSKIN

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1 Q: Okay. How were you brought into the investigation of
2 this case?

3 A: I heard a radio call for a shooting go out and I
4 responded to a Officer Eddy, who said he was out with a person
5 of interest over near the Human Resources building.

6 Q: In what area did you respond to, sir?

7 A: Over by the Human Resources building, which is just off
8 of 10th Avenue North in Myrtle Beach.

9 Q: I'm showing you what's been entered into evidence as
10 State's Exhibit One.

11 A: Sure.

12 Q: Are you able to recognize where the Human Resources
13 building is on that map and point to the jury, please?

14 A: It would be like it was right here in this area. This is
15 the building itself.

16 Q: Okay. Officer Donovan, once you arrived and once you got
17 on the scene ---

18 A: Excuse me, what was the question?

19 Q: What did you observe once you got on the scene at the
20 Human Resources building?

21 A: Officer Eddy and I believe Officer Spivey were on scene
22 with a male who was lying on the ground. It was a black male
23 wearing all black clothing. I walked up to them and noticed
24 an obvious disfigurement to the male's right arm.

25 Q: All right. With regards to, to his arm, did you notice

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SEAN DONOVAN - DIRECT BY OSKIN

1 anything else?

2 A: As far as his arm was concerned?

3 Q: Uh-huh (affirmative response).

4 A: It just looked like it was like backwards, I guess. It
5 just didn't look normal.

6 Q: Okay. So do you -- at that time, he was waiting on EMS
7 to your knowledge?

8 A: To my knowledge, yes.

9 Q: Okay. Did anything else occur from the time he was with
10 those officers until EMS arrived?

11 A: As far as what's concerned?

12 Q: That's what I'm asking you.

13 A: I just engaged him in conversation, asking him basic
14 things like his name, what happened, where he was coming from,
15 things like that just to kinda gain a knowledge of the case.

16 Q: Without telling me what anyone said -- I certainly don't
17 want you to tell me what the suspect said at the time -- did
18 EMS arrive while you were there?

19 A: Yes.

20 Q: Was he on a gurney or was he transported to that EMS?

21 A: Yeah, we picked him up and got him onto the gurney.

22 Q: Did anything occur while he was being loaded up to EMS?

23 A: They started to like cut his clothes off and a bullet had
24 fell, like an expanded bullet fell from his jacket.

25 Q: Okay. Please explain to the jury what you mean when you

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SEAN DONOVAN - DIRECT BY OSKIN

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1 say the bullet expanded?

2 A: Before a bullets fired, it's in a conical shape ---

3 MS. WILSON: Objection.

4 THE COURT: And what would be the grounds?

5 MS. WILSON: Your Honor, he is not an expert on what
6 happens to bullets when they're fired.

7 MR. OSKIN: Your Honor, the officer ---

8 THE COURT: If you would -- if you would like to go into
9 his experience or rephrase the question.

10 BY MR. OSKIN:

11 Q: Officer, you said you'd been employed with Myrtle Beach
12 Police Department for how long?

13 A: Since 2013.

14 Q: And throughout your course of employment, are you
15 involved with the firing of weapons?

16 A: Yes, sir.

17 Q: Okay. Do you ever see those weapons hit targets?

18 A: Yes, sir.

19 Q: Are you aware of what happens to the weapons when they
20 hit targets?

21 A: When a bullet hits a target?

22 Q: Yes, sir, or if it were to hit a bone, if it were to hit
23 an object, or if it were to hit concrete.

24 A: Yes, sir.

25 Q: Does that change the shape, size, the figurement of the

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SEAN DONOVAN - DIRECT BY OSKIN

1 bullet?

2 A: Yes, sir.

3 Q: Is there a police term for that or basic term if the
4 bullet expanded during that?

5 A: Yes, sir.

6 Q: Pretty common to know for police?

7 A: Yes, sir.

8 Q: Thank you.

9 THE COURT: Further objection?

10 MS. WILSON: No objection.

11 THE COURT: You may proceed.

12 MR. OSKIN: If I may approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. OSKIN:

15 Q: Officer Donovan, I'm showing you what's been entered into
16 evidence as State's Exhibit Number Thirteen, are you able to
17 recognize that?

18 A: Yes, sir, this looks like the bullet that fell from the
19 Defendant's jacket.

20 Q: Okay. I'm gonna show you State's Exhibit Number Eleven
21 as well. Do you recognize that photo?

22 A: Yeah -- yes, sir. This was -- I was actually standing at
23 this spot during the incident.

24 Q: That's at the Human Resources building?

25 A: Yes, sir.

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SEAN DONOVAN - CROSS BY WILSON

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1 Q: The place you just described?

2 A: On the ground and yes, sir.

3 Q: Okay. So, State's Exhibit Thirteen is the bullet you
4 just told this jury that expanded?

5 A: Yes, sir.

6 Q: That same bullet that fell out of the person who is
7 getting on the EMS ---

8 A: Yes, sir.

9 Q: Okay. Officer Donovan, what else did you do -- I know
10 you said you stood with the bullet itself; did you do anything
11 else at that time with regards to this investigation?

12 A: No.

13 Q: To your knowledge, who was the bullet turned over to?

14 A: Troy, and then Crime Scene would have taken it from
15 there.

16 Q: Help us a little bit; who's Troy?

17 A: I'm sorry, Corporal Spivey.

18 Q: Okay.

19 A: Sorry.

20 MR. OSKIN: Thank you. No further questions at this
21 time. Please anything Ms. Wilson has for you.

22 THE COURT: Cross examination?

23 MS. WILSON: Thank you, Your Honor.

24 CROSS EXAMINATIN OF SEAN DONOVAN BY MS. WILSON:

25 Q: Very briefly. Again, we're talking about a bullet that

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SEAN DONOVAN - REDIRECT BY OSKIN

1 fell out of Mr. Bryant's arm, okay? You didn't see Mr. Bryant
2 get shot, did you?

3 A: No, ma'am.

4 Q: And you can't confirm the circumstances under which he
5 was shot, correct?

6 A: What circumstances are we referring to?

7 Q: Did you watch him get shot?

8 A: No, ma'am.

9 Q: Okay. And you did not witness him commit any crime, did
10 you?

11 A: No, ma'am.

12 Q: Okay. No further questions.

13 THE COURT: Redirect?

14 MR. OSKIN: Nothing further on that, Your Honor.

15 THE COURT: Y'all come up here for just one second
16 please.

17 (REPORTER'S NOTE: A bench conference was held off the record
18 in the presence of but out of hearing of the jury.)

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

20 Solicitor?

21 MR. OSKIN: Yes, sir.

22 THE COURT: Yes, sir.

23 REDIRECT EXAMINATION OF SEAN DONOVAN BY MR. OSKIN:

24 Q: Very briefly, Officer Donovan.

25 A: Yes, sir.

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SEAN DONOVAN - RECROSS BY WILSON

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1 Q: The male you saw that was on that gurney that night that
2 you saw a bullet fall from his person, from his jacket, do you
3 recognize that Defendant in court today?

4 A: Yes, sir.

5 Q: And where is he, sir?

6 A: He's sitting next to the Defense.

7 Q: Thank you.

8 Nothing further, Your Honor.

9 THE COURT: Any re -- re-cross?

10 MS. WILSON: Just very briefly on this one issue, Your
11 Honor.

12 THE COURT: Yes, ma'am.

13 RECROSS EXAMINATION OF SEAN DONOVAN BY MS. WILSON:

14 Q: Again, you did not witness the circumstance under which
15 Mr. Bryant was injured, correct?

16 A: I did not witness him get shot.

17 Q: Thank you. No further questions.

18 THE COURT: Do you wish the witness to be excused?

19 MR. OSKIN: Yes, sir, Your Honor, at this time, the State
20 would request it.

21 THE COURT: Any objection?

22 MS. WILSON: No objection, Your Honor. Thank you.

23 THE COURT: All right, sir, you're released from your
24 subpoena and you may go back to your regular duties.

25 A: Thank you, sir.

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GLEN WILLIAM PORTER, JR. - DIRECT BY OSKIN

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1 THE COURT: Next witness, Solicitor?

2 MR. OSKIN: Yes, sir, Your Honor, at this time the State
3 would call Officer Porter.

4 THE COURT: All right. All right, sir, if you'd just
5 meet the Clerk's representative right up here, please, sir.

6 CLERK: Please raise your right hand and place your left
7 hand on the Bible.

8 GLEN WILLIAM PORTER, JR., HAVING BEEN

9 SWORN TESTIFIES AS FOLLOWS:

10 CLERK: Please be seated and state your full name and
11 spell your last name for the Court.

12 MR. PORTER: Glen William Porter, Jr., last name, P-O-R-
13 T-E-R.

14 THE COURT: Go ahead, Solicitor.

15 DIRECT EXAMINATION OF GLENN WILLIAM PORTER, JR. BY MR. OSKIN:

16 Q: Good morning, Officer Porter. Who's your employer, sir?

17 A: City of Myrtle Beach Police Department.

18 Q: All right. How long have you been employed with them?

19 A: A little over two years.

20 Q: Do you have any previous law enforcement experience
21 before that job?

22 A: I do.

23 Q: If you could please -- for the jury please describe the
24 nature of your work?

25 A: Right now I'm assigned as a Juvenile Officer and School

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GLEN WILLIAM PORTER, JR. - DIRECT BY OSKIN

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1 Resource Officer.

2 Q: Okay. And how about on the night of February 15th, 2015;
3 what was your job capacity then?

4 A: I was working nighttime patrol duties.

5 Q: In what area of Myrtle Beach at that time?

6 A: That particular night, I think I was just assigned just
7 general patrol, if I'm not mistaken and I kinda went -- tried
8 to stay in towards the middle area of the city.

9 Q: Okay. Did you have an opportunity to respond to a call
10 or did you hear a call about an incident with a shooting?

11 A: Yes, I did.

12 Q: And where was that shooting?

13 A: Club Levels.

14 Q: Okay. To what area did you then respond?

15 A: I was, I believe towards about 40-something North and
16 Kings Highway when it came out, if I'm not mistaken.

17 The call came out, shooting at Club Levels. I was originally
18 on my way to that location. The officer that was with me said
19 there's too many units there and they're out with someone in
20 front of the Human Resources building; let's go there. So,
21 that's where I responded to was the Human Resources.

22 Q: Okay. And what did you observe once you got to the Human
23 Resources building?

24 A: When I got there, I'm not sure if EMS got there right
25 before me or right after me, but by the time I got out of my

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GLEN WILLIAM PORTER, JR. - DIRECT BY OSKIN

1 patrol car, I observed a black male on the ground. Other
2 officers were around and then EMS was beginning to cut his
3 clothing off.

4 Q: Okay. You said they were beginning to cut his clothing
5 off -- just to remind you, without telling me what anybody
6 said, certainly don't tell me anything the suspect said at
7 that time -- what occurred next as his clothes were getting
8 cut off?

9 A: They were cutting, I believe, his right sleeve, his
10 clothing off. I remember hearing the sound of metal hit the
11 ground and without telling you what I heard from any other
12 officers ---

13 Q: Right. Okay. Yeah, so you said you heard metal hit the
14 ground?

15 A: Correct.

16 Q: Were you able to see what that object was?

17 A: I did see it on the ground at the time. It was dark, I
18 couldn't exactly tell exactly what it was.

19 Q: Okay. What did you do next after he got on -- did the
20 suspect at that time, did he get loaded on to EMS, did he get
21 transported anywhere?

22 A: Correct. At that time, EMS took him to the ambulance. I
23 was in a two-man patrol car, so the officer that was with me
24 then rode in the ambulance with him to the hospital and I
25 followed the ambulance in the patrol car to the hospital.

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GLEN WILLIAM PORTER, JR. - DIRECT BY OSKIN

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1 Q: And what hospital was that?

2 A: Grand Strand Regional Medical Center.

3 Q: Okay. What did you do once you got to Grand Strand
4 Hospital?

5 A: Once I got there, I walked into the emergency room and
6 stood by and a nurse brought me a couple bags of clothing from
7 the suspect.

8 MR. OSKIN: Court's indulgence, Your Honor?

9 THE COURT: Yes, sir.

10 MR. OSKIN: If I may approach the witness, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. OSKIN:

13 Q: Officer Porter, I'm showing you what's been marked as
14 State's Exhibits Numbers Seventy-seven through Eighty-six. If
15 you could please, individually, I'll ask you what they are and
16 if you're able to recognize them and how you're able to
17 recognize them. Okay?

18 A: Okay.

19 Q: State's Exhibit Number Seventy-seven, what is that?

20 A: It looks to be a hooded sweatshirt.

21 Q: Was that the sweatshirt in the bag of clothing you
22 received?

23 A: I'm not sure.

24 Q: Let me rephrase the question here. Do you recognize that
25 as the clothes the Defendant or the suspect was wearing when

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1 you saw him at the HR building?

2 A: I'm not sure.

3 MR. OSKIN: If I may approach the witness, Your Honor?

4 THE COURT: Yes, sir.

5 STATE'S EXHIBIT NUMBER NINETY-SIX

6 MARKED FOR IDENTIFICATION)

7 BY MR. OSKIN:

8 Q: Mr. Porter, I'm showing you what's been marked as State's

9 Exhibit Ninety-six?

10 A: Okay.

11 Q: Are you able to recognize that; is that the bag you

12 received that night?

13 A: It's the type of bag I received that night, yes.

14 Q: And what does that bag say?

15 A: The bag has a case number 15-002479, suspect Bryant,

16 black jacket, 49 Item 9.

17 Q: And Officer Porter, what did you do with the bags that

18 you received that night?

19 A: They were already in paper bags when I received them.

20 Q: Okay.

21 A: I just held on to the bags. I didn't go through them
22 until a Crime Scene Specialist arrived to the hospital, Kelly
23 Madison. I then surrendered the bags to her. I did not go
24 through the bags.

25 Q: Okay. All right. And you received those bags, where at,

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GLEN WILLIAM PORTER, JR. - CROSS BY WILSON

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1 you said Grand Strand Hospital?

2 A: Grand Strand Hospital, yes.

3 Q: Nothing further at this time. Please answer anything Ms.
4 Wilson has.

5 Your Honor, if I could briefly approach with Ms. Wilson?

6 THE COURT: All right.

7 (REPORTER'S NOTE: A bench conference was held off the record
8 in the presence of but out of hearing of the jury.)

9 CROSS EXAMINATION OF GLENN WILLIAM PORTER, JR. BY MS. WILSON:

10 Q: Officer Porter?

11 A: Yes.

12 Q: Just very briefly and, excuse me, I've lost my train of
13 thought again. There were many different officers out at the
14 Human Resources building that night, weren't there?

15 A: Yes.

16 Q: You would estimate maybe four, five or six cars?

17 A: I'm not sure exactly how many were there.

18 Q: Definitely more than a couple?

19 A: I believe so, yes.

20 Q: And it was a pretty chaotic scene as far as flashing
21 lights and things I would say, yes?

22 A: There were flashing lights, yes.

23 Q: And you think that you were probably the third or fourth
24 person to arrive on scene?

25 A: I don't know what order I was. There was already

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GLEN WILLIAM PORTER, JR. - REDIRECT BY HOLFORD

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1 officers there by the time I arrived.

2 Q: Okay. All right. And you did not see Mr. Bryant commit
3 any crime, did you?

4 A: No.

5 Q: Thank you. No further questions.

6 THE COURT: Any redirect?

7 MR. OSKIN: Very briefly, Your Honor.

8 REDIRECT EXAMINATION OF GLENN WILLIAM PORTER, JR. BY MR.

9 OSKIN:

10 Q: Forgive me if I'm being repetitive. The suspect you saw
11 that night, is he in court today?

12 A: Yes.

13 Q: Do you recognize him?

14 A: Yes, I do.

15 Q: Where is he, please?

16 A: Sitting right there.

17 Q: Thank you. Nothing further.

18 THE COURT: Anything on that question, Ms. Wilson?

19 MS. WILSON: Yes, sir.

20 RE CROSS EXAMINATION OF GLENN WILLIAM PORTER, JR. BY MS.

21 WILSON:

22 Q: The person that you are identifying as the suspect, you
23 didn't see how he was injured, did you?

24 A: Excuse me.

25 Q: You didn't see how he became injured?

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1 A: I did not see how he became injured.

2 Q: Thank you. No further questions.

3 THE COURT: Do you wish to excuse the witness?

4 MR. OSKIN: Yes, sir, Your Honor.

5 THE COURT: Any objection?

6 MS. WILSON: No objection, Your Honor.

7 THE COURT: All right, sir, you're released from your
8 subpoena; you're excused to go back to your regular duties.

9 MR. HOLFORD: Your Honor, may we approach?

10 THE COURT: Certainly. You're excused, sir.

11 (REPORTER'S NOTE: A bench conference was held off the record
12 in the presence of but out of hearing of the jury.)

13 THE COURT: All right, ladies and gentlemen, if you would
14 go to your jury room for a short break for about 5/10 minutes
15 and we'll resume. Thank you.

16 (REPORTER'S NOTE: Jury exits courtroom.)

17 THE COURT: All right. We'll take a short break for
18 about five minutes or so. Thank you very much.

19 MR. HOLFORD: Thank you, Your Honor.

20 (RECESS.)

21 *****OFF THE RECORD*****

22 (On the Record.)

23 THE COURT: All right. Solicitor, you ready for the jury
24 to come in?

25 MR. HOLDFORD: Yes, Your Honor.

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1 THE COURT: All right. Defense?

2 MS. WILSON: Yes, sir, Your Honor. Thank you.

3 THE COURT: Ask the jury to come in, please.

4 (REPORTER'S NOTE: Jury enters courtroom.)

5 THE COURT: Solicitor, your next witness.

6 MR. HOLFORD: The State calls Officer Bailey.

7 THE COURT: Please come around and be sworn, sir, if
8 you'll meet the Clerk right up here.

9 CLERK: Please raise your right hand and place your left
10 hand on the Bible.

11 DAVID BRYAN BAILEY, HAVING BEEN SWORN

12 TESTIFIES AS FOLLOWS:

13 CLERK: Have a seat and please state your full name and
14 spell your last name for the Court.

15 MR. BAILEY: My full name is David Bryan Bailey, Bailey
16 is B-A-I-L-E-Y.

17 THE COURT: Go ahead, Solicitor.

18 DIRECT EXAMINATION OF DAVID BRYAN BAILEY BY MR. HOLFORD:

19 Q: Officer Bailey, where are you currently employed?

20 A: City of Myrtle Beach Police Department.

21 Q: And what's your position there?

22 A: I'm a Crime Scene Officer.

23 Q: How long have you been a Crime Scene Officer?

24 A: I've been a Crime Scene Officer about 12 years been with
25 the police about 18 years.

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1 Q: Okay. What kind of special training have you gone
2 through for Crime Scene?

3 A: Photography, collection of evidence, processing for
4 fingerprints, there's so many I could hardly list them all.

5 Q: Do you do special classes, or what's that training
6 consist of?

7 A: We do continued training, continued education training;
8 some on ballistics, fingerprinting, collection of evidence,
9 how to process for DNA, different things like that.

10 Q: Do you have any special certifications?

11 A: I have, as far as the certifications, in fingerprinting,
12 just like a Crime Scene Certification as a Crime Scene
13 Officer, there's an actual certification for that, which I
14 have, amongst other ones, mainly a lot in photography and
15 things like that.

16 Q: And what type of things do you do as a Crime Scene
17 Officer?

18 A: I basically collect evidence, photograph the scene,
19 document the scene, process evidence once we collect it, send
20 evidence to SLED, a multitude of things.

21 Q: Okay. And back in February 15th, 2015, were you in the
22 same position you are now?

23 A: Yes, sir, I am.

24 Q: And did you respond to an incident that night?

25 A: Yes, sir, I did.

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1 Q: In what capacity did you respond?

2 A: I was the Crime Scene Officer for the scene that night.

3 Q: Okay. And so generally what did you do at that crime
4 scene?

5 A: Generally, when I go there, I arrive on scene, I speak
6 with the investigators who are on the scene to give me a
7 little bit of information about what happened, what took
8 place, and I will just sort of size it up and do overall
9 photographs and then slowly work my way in and collect
10 evidence as I get, you know through the scene.

11 Q: Okay. We're about to go through a lot of photographs and
12 I'm trying to break these up. I'm gonna show you what's been
13 entered as State's Twenty-six, Twenty-seven and Twenty-eight.
14 Did you take those pictures?

15 A: Yes, sir, I did.

16 Q: Okay. And, and can you tell what that is, what that gun
17 is?

18 A: That is a Glock semi-automatic. As far as by looking at
19 it, you can't really tell the caliber, but it was a, I'm
20 sorry, I don't have my glasses with me and I can't read the
21 numbers they're so small, but it's a Glock .40 semi-automatic
22 with a magazine.

23 Q: And who, who gave that to you?

24 A: This -- Detective Morrell ---

25 Q: Okay.

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1 A: --- on the scene that night.

2 Q: And then what did you do after Morrell gave it to you?

3 A: I took the weapon, secured it, secured it in my crime
4 scene van, which was in my sight the whole time and secured
5 the van while I finished processing.

6 Q: And then what did you do with the gun after that?

7 A: After that, I responded -- once I collected all the
8 evidence, I responded back to our Crime Scene office and went
9 inside, documented the weapon, took photographs of it and then
10 locked it in our crime scene vault.

11 Q: Okay.

12 COURT REPORTER: Excuse me, sir. Move over to the
13 microphone, please.

14 A: I'm sorry.

15 COURT REPORTER: Or pull the microphone to you.

16 A: Okay. Do you need me to repeat anything, ma'am.

17 COURT REPORTER: No, thank you.

18 A: Okay.

19 BY MR. HOLFORD:

20 Q: And how many bullets seem to be in that clip, can you
21 tell?

22 A: I can't tell exactly, it looks about three quarters of
23 the way full, but I can't tell exactly how many without my
24 reading glasses. I'm sorry. Looks approximately like 10 or
25 so. I can't -- I can't read the writing on the magazine.

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1 Q: And you collected this from, from Paul Morrell, Detective
2 Morrell?

3 A: Yes, sir, I did.

4 Q: And then you -- what did you do with it after that?

5 A: I took it back to our Crime Scene office, documented the
6 weapon and wrote down the -- everything about it; the model
7 number, serial number, how many magazines were in the weapon,
8 I mean, how many cartridges were in the magazine, there was a
9 round in the chamber, and then photographed and documented it.

10 Q: Okay. Same thing with State's Twenty-nine, Thirty and
11 Thirty-one, can you tell us what those are?

12 A: Yes, sir, these are photographs I took of the scene that
13 night.

14 Q: Who turned that over to you?

15 A: This was the security guards, the security guards'
16 weapons and they were also turned over. It was I think
17 Detective Morrell gave them to us.

18 Q: Okay.

19 A: Yes, sir.

20 Q: So Detective Morrell gave you this gun as well?

21 A: Yes.

22 Q: You didn't -- you remember, I just took it from you, do
23 you remember what caliber this gun is?

24 A: I'm pretty sure it was a .40 caliber. I'm not 100
25 percent sure on it. A nine -- it looks like a 9mm.

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1 Q: Yes.

2 A: Okay.

3 Q: Let me see if we can find ---

4 A: That would be great. I left mine in the truck. I'm so
5 sorry.

6 MR. HOLFORD: Court's indulgence?

7 THE COURT: Yes, sir.

8 BY MR. HOLFORD:

9 Q: I'm gonna show you different pictures now. These have
10 been entered as State's Twenty-four and Twenty-five. Can you
11 identify what those are? Did you take those pictures?

12 A: I took these pictures, yes, sir, I did. That is a Glock
13 semi-auto, laying in the middle of the street, marked marker Y
14 with a magazine and a slide lock back indicating it was empty.

15 Q: Okay. And why was that gun important?

16 A: That was the weapon used in the actual assault, homicide.

17 Q: Okay. And did you collect that gun?

18 A: Yes.

19 Q: And what did you do with it?

20 A: It was locked in the crime scene vault as well.

21 Q: All right.

22 A: It was photographed, documented and locked in the crime
23 scene vault.

24 Q: And then who did you turn that gun over to?

25 A: That gun was turned over to -- everything was sent, all

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1 the evidence was sent to SLED and SLED did their processing on
2 the firearm.

3 Q: Okay. I'm gonna show you what's been entered as State's
4 Six, Fifteen and Seventeen.~ Did you take those pictures?

5 A: Yes, sir, I did.

6 Q: And what are those pictures of?

7 A: Photographs of the scene, close-up photographs of the
8 scene and the victim lying on the sidewalk and with the
9 markers laying all around the victim indicating cartridge
10 casings, different pieces of evidence and things like that.

11 Q: Who laid those markers out?

12 A: I did.

13 Q: Okay. Why would you lay the markers out?

14 A: Just to document where I find a piece of evidence like
15 shell casings, document where the -- document its location and
16 all the shell casings to show a pattern where they're all
17 located.

18 Q: Why would you take a picture facing, facing this way in
19 State's Seventeen?

20 A: Because it shows a majority of the scene. I was able to
21 capture basically the entire -- well, not the entire scene,
22 but most of the scene along with the victim and what's
23 directly associated with the victim like close to his body.

24 Q: Okay. Do you notice anything about the glass in that
25 picture?

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1 A: It's been -- it's been broken out.

2 Q: And so why would that be important?

3 A: Just to show that the -- with the victim laying like this
4 and the way they got the cartridge casings, it appeared the
5 shooter was facing towards the building when the rounds were
6 shot. If he would have been facing any other direction, the
7 rounds more than likely wouldn't have hit the windows. So
8 whoever shot appeared to be facing that building when they
9 were shooting.

10 Q: And I know I'm moving through these pictures fast ---

11 A: That's fine.

12 Q: --- these are already in evidence. They'll go back and
13 the jury will have a change to look at them all.

14 Six is in front of Levels. Are there markers on that
15 one?

16 A: Yes, there is.

17 Q: Now, these markers are separate from the ones we just saw
18 near the victim, right?

19 A: Yes, they are.

20 Q: Do you know what those markers are?

21 A: They appear to be markers that are put down of cartridge
22 cases.

23 Q: Okay. But there's a large grouping in Seventeen and a
24 smaller grouping in Six?

25 A: Yes.

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1 Q: Now, I'm gonna show you some ---

2 A: May I have some water?

3 THE COURT: Yes, sir.

4 A: Thank you.

5 MR. HOLFORD: May I approach?

6 THE COURT: Yes, sir.

7 BY MR. HOLFORD:

8 Q: I'm showing you State's Thirty-nine and Forty that have
9 not entered into evidence yet. Can you identify those; did
10 you take those pictures?

11 A: I did.

12 Q: Where did you take those pictures?

13 A: That is where the broken window was and the pictures you
14 showed, this was the store basically encased inside that
15 window.

16 MR. HOLFORD: Your Honor, the State would offer Thirty-
17 nine and Forty in evidence?

18 THE COURT: Any objection?

19 MS. WILSON: No objection, Your Honor.

20 THE COURT: All right. They're in evidence without
21 objection.

22 STATE'S EXHIBITS NUMBER THIRTY-NINE AND FORTY

23 ADMITTED INTO EVIDENCE

24 BY MR. HOLFORD:

25 Q: Okay. So we just saw that the store front, the window

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1 was broken and then what do these pictures actually show?

2 A: They're -- it's a small fragment of a casing for the lead
3 jacket or the copper jacket for a bullet.

4 Q: Okay. And in your experience as a Crime Scene Officer,
5 do you work with ballistics with bullets?

6 A: Quite a bit. I'm not an expert, but I work with them
7 quite a bit.

8 Q: I generally use the term bullet, but is a -- is a full
9 cartridge made up of multiple parts?

10 A: Yes.

11 Q: And what are those parts?

12 A: You have the projectile, which is the actual bullet
13 you're speaking of. You have the cartridge case, which is the
14 bullet is seated inside, you have powder inside that, which is
15 the propellant, and then on the back of the cartridge, you
16 have a small circle that's called a primer and it ignites the
17 cartridge, I mean, ignites the propellant which sends a
18 projectile out of the end of the gun.

19 THE COURT: All right, sir. You have a tendency to move
20 back from the microphone when you're answering the question.
21 You must stay in front of the microphone when answering the
22 questions. Thank you.

23 A: Yes, Your Honor.

24 BY MR. HOLFORD:

25 Q: So for example, in State's Thirty and Thirty-one?

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1 A: Yes.

2 Q: These are -- what are they?

3 A: Those are full cartridges.

4 Q: Have they been fired?

5 A: Have not been fired.

6 Q: And is that the same thing we're seeing in Thirty-nine
7 and Forty; are we seeing full cartridges?

8 A: No, these are -- on the tip of the cartridge, the
9 projectile, that is the lead -- the copper jacket from the
10 projectile which has already been fired. It -- most of the
11 time when a projectile strikes an object, the ---

12 MS. WILSON: Your Honor?

13 THE COURT: You need to go over ---

14 MR. HOLFORD: Yes, Your Honor.

15 THE COURT: --- his background.

16 BY MR. HOLFORD:

17 Q: Don't talk about striking an object.

18 A: Okay.

19 Q: Is this a complete bullet, has it been fired or unfired?

20 A: It has been fired. It is not a complete bullet.

21 Q: Okay. And, and again where is this?

22 A: That's inside the building directly behind the where the
23 victim was laying.

24 Q: And that's important why?

25 A: Because it, it appears that the shooter was facing the

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1 building when that round was fired, which caused it to
2 penetrate the glass.

3 MR. HOLFORD: May I approach?

4 THE COURT: Yes, sir.

5 BY MR. HOLFORD:

6 Q: I'm gonna hand you what's been marked as State's Thirty-
7 two, Thirty-three, Thirty-four and Thirty-five that have not
8 been entered yet, so if you could just identify them. Did you
9 take those pictures?

10 A: Yes, sir, I did.

11 Q: And what are they pictures of, generally?

12 A: This is a Glock .40 caliber.

13 Q: Okay.

14 A: Semi-automatic.

15 Q: Did you collect that Glock?

16 A: Yes.

17 MR. HOLFORD: Your Honor, the State would move Thirty-two
18 through Thirty-five in evidence?

19 THE COURT: Any objection?

20 MS. WILSON: No objection, Your Honor.

21 THE COURT: In evidence without objection.

22 STATE'S EXHIBITS THIRTY-TWO THROUGH THIRTY-FIVE

23 ADMITTED INTO EVIDENCE

24 BY MR. HOLFORD:

25 Q: I'm gonna hand you State's Twenty-four, does that appear

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- 1 to be the same gun?
- 2 A: Yes, sir, it does.
- 3 Q: And State's Twenty-four, where was this picture taken?
- 4 A: That was taken in the middle of the street just, would've
- 5 have been just north of Club Levels.
- 6 Q: And these pictures, do they show a serial number on the
- 7 gun?
- 8 A: They do show a serial number.
- 9 Q: And what did you do with this gun after you collected it
- 10 and took pictures of it?
- 11 A: I took pictures of it and collected and, of course, it
- 12 was locked in the crime scene van and transported to the Crime
- 13 Scene office where I photographed and documented it in our lab
- 14 and then I moved it to the Crime Scene vault.
- 15 Q: Was there any fired rounds or unfired rounds with that
- 16 gun?
- 17 A: No, sir, there was not.
- 18 Q: Were there any unfired bullets in that cartridge?
- 19 A: In that -- in the magazine you mean?
- 20 Q: In the magazine?
- 21 A: No, sir, there's not.
- 22 Q: All right. Let's stay on this crime scene at Levels.
- 23 Now we saw that wide-out picture of all the markers?
- 24 A: Yes.
- 25 Q: Would you have also taken close-ups?

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1 A: Yes, sir, I would have.

2 Q: Why would you take close-ups?

3 A: Just to -- the way I would photograph a scene, I would do
4 a, an overall photo, which is a wide photo and then I
5 gradually get closer to the evidence just to document that
6 that's the actual evidence I'm photographing close-up.

7 Q: And did you do that in this case?

8 A: Yes, I did.

9 MR. HOLFORD: May I approach?

10 THE COURT: Yes, sir.

11 BY MR. HOLFORD:

12 Q: Let's go through these one at a time. Well, all of them,
13 did you take those pictures? Can you thumb through them and
14 make sure those are pictures you took?

15 A: Yes.

16 Q: And did you take them at that crime scene that night?

17 A: Yes, I did.

18 Q: Do they appear to accurately reflect the scene as it was
19 at the time?

20 A: Yes, they do.

21 MR. HOLFORD: Your Honor, the State would move Thirty-
22 eight, Thirty-six, Forty-seven, Thirty-seven, Fifty-eight,
23 Sixty, Forty-eight, Fifty, Fifty-one, Fifty-two, Fifty-four,
24 Fifty-six, Fifty-seven, Forty-three, Forty-two, Forty-four,
25 Forty-six, Forty-five, Ninety, and Ninety-one into evidence.

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1 THE COURT: Any objection?

2 MS. WILSON: Without objection.

3 THE COURT: All right. They're in evidence without
4 objection.

5 STATE'S EXHIBITS NUMBER THIRTY-SIX, THIRTY-SEVEN,

6 THIRTY-EIGHT, FORTY-TWO, FORTY-THREE, FORTY-FOUR,

7 FORTY-FIVE, FORTY-SIX, FORTY-SEVEN, FORTY-EIGHT, FIFTY,

8 FIFTY-ONE, FIFTY-TWO, FIFTY-FOUR, FIFTY-SIX, FIFTY-SEVEN,

9 FIFTY-EIGHT, SIXTY, NINETY AND NINETY-ONE

10 ADMITTED INTO EVIDENCE

11 BY MR. HOLFORD:

12 Q: Now let's get to -- Thirty-eight, what does that picture
13 show?

14 A: It's fragments. It appears to be the copper jacket from
15 a projectile.

16 Q: Okay. And if we were to look at your overview, how would
17 we know where that copper jacket from the projectile is?

18 A: By the marker I placed on it.

19 Q: Okay. So, if we wanted to go back, we can look at that
20 picture ---

21 A: Yes.

22 Q: --- and then find A and know what was right there?

23 A: Yes, sir.

24 Q: How about Thirty-six?

25 A: That is a deformed projectile with the lead -- I mean,

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- 1 with the copper jacket intact.
- 2 Q: Okay. Deformed projectile, again, is this fired or
3 unfired?
- 4 A: That is a fired bullet.
- 5 Q: Forty-seven?
- 6 A: These are also projectiles and small fragments of
7 projectiles or bullets.
- 8 Q: And is this kind of a little further out?
- 9 A: That's a little bit further out.
- 10 Q: So, we just saw A and B. And what does this show?
- 11 A: That shows just the projectiles laying on the sidewalk
- 12 Q: Okay. And what markers are those?
- 13 A: Those are A, B, C.
- 14 Q: And then you zoomed in on Thirty-seven?
- 15 A: Yes..
- 16 Q: And what is that?
- 17 A: That is a small fragment of a lead bullet.
- 18 Q: Okay. Again, is this a fired bullet?
- 19 A: That's a fired bullet.
- 20 Q: Before we get to the casings -- all right. What's Fifty-
21 eight?
- 22 A: Fifty-eight is a cartridge casing, a spent, fired
23 cartridge case.
- 24 Q: Okay. And what's, what's a cartridge casing?
- 25 A: It's what holds the bullet, holds the powder that propels

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1 the bullet out of the barrel.

2 Q: Sixty?

3 A: This is another cartridge case.

4 Q: Now, it's marked by a different letter, right?

5 A: Yes.

6 Q: So, is that the same cartridge casings we just saw?

7 A: No.

8 Q: That's a different one?

9 A: A different one.

10 Q: So, we have that's at least two ---

11 A: Yes.

12 Q: --- casings?

13 A: Yes.

14 Q: Forty-eight?

15 A: That is another casing.

16 Q: Fifty?

17 A: Same thing, another casing.

18 Q: And then look at Fifty-one, what's the -- what's the

19 letter on there?

20 A: I think it was I.

21 Q: Okay. And but what's that a picture of that's different

22 from this I?

23 A: That's the back of the cartridge case, the casing. It

24 just indicates it has writing on the back to identify the

25 cartridge manufacturer.

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1 Q: Okay. So you picked this up?

2 A: Yes.

3 Q: Took a picture of the back of it?

4 A: Yes.

5 Q: And what does -- what's it show on there?

6 A: It shows RP and it shows you, shows you the .40 caliber
7 Smith & Wesson and it indicates that it was fired by automatic
8 and possibly a Glock.

9 Q: How can you tell all that?

10 A: Due to the primer on the back of the cartridge. There is
11 that little silver circle, which is the primer, and when it's
12 fired out the weapon, it puts pressure on the firing pin and
13 there's a little space around the firing pin, which pushes
14 that casing backwards and leaves an indentation on the -- on the
15 primer and each firearm is different and Glocks are specific
16 to the design that it puts on the back of the primer and looks
17 just like that one.

18 MS. WILSON: Objection, Your Honor.

19 Q: What are ---

20 THE COURT: I'm gonna allow the question and the answer
21 based on his -- the prior questions and answers that have
22 been given by this witness. Thank you.

23 MR. HOLFORD: Thank you, Your Honor.

24 BY MR. HOLFORD:

25 Q: Can a .40 caliber shell casing come out of .9 caliber --

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- 1 I apologize. Can a .40 caliber shell casing come out of a 9mm
2 pistol?
- 3 A: No.
- 4 Q: Fifty-two?
- 5 A: Another casing.
- 6 Q: Fifty-four?
- 7 A: Another shell casing.
- 8 Q: And what letters are these?
- 9 A: That's L and K.
- 10 Q: Okay. So these more shell casings, not the same ones
11 we've already seen?
- 12 A: Yes, sir.
- 13 Q: Now, I'm gonna show you Ninety. What letters are in
14 State's Ninety?
- 15 A: N and M.
- 16 Q: Okay. And then in Fifty-six and Ninety-one, what do
17 those appear to be?
- 18 A: These are copper fragments from a bullet.
- 19 Q: And what, what are the letters?
- 20 A: N and M.
- 21 Q: Okay. So how do they relate to Ninety?
- 22 A: They're the same one, they're just close up to each
23 individual marker.
- 24 Q: So, in State's Ninety we've got again ---
- 25 A: The copper jacket from the bullet, from a fired bullet.

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1 Q: From a fired bullet. And then these are just close-ups
2 to show more detail, right?

3 A: Yes, sir.

4 Q: In looking at those and referring to State's Seventeen,
5 can you tell where those pictures were taken in relation to
6 the victim?

7 A: I was just north of the victim approximately 15 feet away
8 from the victim when I took the photographs.

9 Q: Okay. But where are the markers?

10 A: The markers are -- they're directly beside the victim or
11 just beside his right waistline.

12 Q: Did you move the victim at all?

13 A: No, sir; I did not.

14 Q: What can you tell me about what you noticed when you took
15 the pictures M and N?

16 A: The, the bullet, these -- the bullet that was fired
17 separated from its copper jacket indicating that it hit a hard
18 surface.

19 Q: Okay. Could that have been the ground underneath it?

20 A: Yes, sir; it could have been.

21 Q: What did you note about the pavement in your report as to
22 bullets M and N?

23 A: It had striations on the pavement just below it that
24 appeared it had been -- something had struck the pavement and
25 made scoring on the pavement.

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1 Q: Okay. And based on those pictures, what did that tell
2 you?

3 A: It appeared that the victim had been shot while he was
4 laying down as well.

5 Q: Okay. So if you were to shoot a gun this direction at
6 the pavement, would it have -- would the bullet fragment have
7 stayed like that?

8 A: No, more than likely, if the bullet hit a glancing blow,
9 the jacket -- the copper jacket, the copper part you were
10 showing, would have stayed on the bullet itself.

11 Q: So what's really important about those images?

12 A: It showed that the bullet was more of a -- not an oblique
13 angle, it was more directly downward, like you were pointing
14 your weapon straight down at the ground almost.

15 Q: Towards the pavement?

16 A: Yes.

17 Q: State's Fifty-seven.

18 A: That's a piece of a copper jacket from a bullet.

19 Q: All right. Now I'm gonna ask you to look at the rest of
20 those. Just give me the exhibit number and the, the letter
21 that corresponds and what they are.

22 A: Okay. Forty-three is Marker R, and it's a fired casing;
23 Exhibit Forty-two is Marker S, and it's of a fired casing; and
24 Exhibit Forty-four is Marker T is a fired casing; Exhibit
25 Forty-six, Marker V is a fired casing; Exhibit Forty-five is

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- 1 Marker X and is also a fired casing.
- 2 Q: Similar to the ones we've seen already, right?
- 3 A: Yes.
- 4 Q: Casings?
- 5 A: Casings.
- 6 Q: Meaning that the bullet had been fired?
- 7 A: Had been fired, yes, sir.
- 8 Q: If we wanted to, we could go back and count up how many
- 9 casings there are, right?
- 10 A: Yes, we could.
- 11 Q: Do you know how many casings you collected?
- 12 A: I can't recall off the top of my head at the moment, no,
- 13 sir.
- 14 Q: In your standard course of practice, do you write a
- 15 report?
- 16 A: Yes, sir, I do.
- 17 Q: Why do you write a report?
- 18 A: Just to document the evidence of what I collected and, if
- 19 it's needed at a later date, so I can recall and go back to my
- 20 report.
- 21 Q: Can you recall of all the crime scenes you've been to,
- 22 the number of the casings, number of bullets and specifics
- 23 about those?
- 24 A: No.
- 25 Q: Would it help you to review your report?

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1 A: It would.

2 MR. HOLFORD: May I approach?

3 THE COURT: Yes, sir.

4 BY MR. HOLFORD:

5 Q: I'm gonna hand you your report. Do you note in your

6 report the evidence that you collect?

7 A: Yes, I do.

8 Q: And so can you tell how many casings there were -- or do

9 you described them by letter? How do you ---

10 A: They're ---

11 Q: --- indicate them in your report?

12 A: Indicate by marker.

13 Q: Okay.

14 A: And due to the large amount of evidence, some of the

15 markers were Marker C and then Marker C-2, marker C-3.

16 Q: Did you also respond to a separate scene?

17 A: Yes.

18 Q: And where was that?

19 A: The separate scene was the -- actually, the first scene I

20 responded to, it was at the -- in the parking lot of the Human

21 Resources building. It was directly south of the police

22 department.

23 Q: And did you take pictures there?

24 A: I did.

25 Q: I'm gonna show you what's already in, State's Nine, Ten,

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1 Eleven, Twelve, Thirteen and Fourteen. Did you take those
2 pictures?

3 A: Yes, sir, I did.

4 Q: And what do those appear to be?

5 A: These are pictures of the, the driveway entrance to the
6 Myrtle Beach Human Resources building and they're Markers A, B
7 and C.

8 Q: And what do they show?

9 A: A, B and C show A is a flip phone, cellular flip phone;
10 B is a fired bullet; and C is a black toboggan.

11 Q: Was there a casing there?

12 A: No casings, just the bullet only.

13 Q: And they progressively move closer in?

14 A: Yes, they do.

15 Q: Did you collect these items?

16 A: Yes, sir, I did.

17 Q: And what did you do with them after you collected them?

18 A: I collected them, placed them in each individual bags and
19 locked them in my crime scene van and then responded to the
20 next scene.

21 Q: All right. Now you said -- these are A, B and C, but
22 we've seen A, B and C on the other one and you just mentioned
23 something about that, right?

24 A: Yes. Yes, If we do a large amount of evidence at the
25 scene, some markers are listed A, and then it'll be A-1 or A-2

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1 and A-3, things like that.

2 Q: Okay. So what was -- would that first scene be A, A-1 or
3 A-2?

4 A: That would be A-2. A-2 was at the Levels scene.

5 Q: Okay. And the HR building would have just been a normal
6 A?

7 A: Yes.

8 Q: Okay. So, can you tell -- what did you recover from the
9 Levels scene? All these pictures that we've seen; what did we
10 actually look at?

11 A: Evidence from the scene was cartridge cases or spent
12 casings, you know, and fired bullets, and keys, lighter,
13 miscellaneous items like that.

14 Q: All right. Would you be able to tell us exactly based on
15 your report, exactly what we looked at in all those pictures?

16 A: Yes.

17 Q: All right. Will you tell the jury what we've just looked
18 at?

19 A: Yes, we looked at the -- would you like me to go in
20 order?

21 Q: Yes.

22 A: Okay. Marker A-2 is it was a deformed bullet which was
23 found underneath the victim. Marker B is a .40 caliber
24 bullet. Marker B, which is the plain B which is a .40 caliber
25 bullet that fell from the suspect's arm and into the parking

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1 -- the parking lot there at the Human Resources building and
2 marker B-2 is a bullet found under victim in front of Levels -
3 - Levels Club on the sidewalk.

4 Marker I is a .40 caliber cartridge case with a head
5 stamp of .40 caliber Smith & Wesson R-P. Marker J is a tube
6 of ChapStick which is approximately 10 feet from the victim's
7 head. Marker K is a .40 caliber cartridge case with a head
8 stamp of .40 Smith & Wesson R-P. And marker L is a .40
9 caliber cartridge case with a head stamp also .40 caliber
10 Smith & Wesson RP. Marker M. is a copper fragment -- copper
11 jacket from a fired bullet, which appears to be a .40 caliber
12 due to the diameter of it. Marker N is a small fragment of
13 the copper jacket from a fired bullet. It was approximately
14 two inches north of the victim's waistline. Marker O is a
15 white in color lighter, which was about four inches from the
16 victim's right hand. Marker P, a small fragment of a copper
17 jacket of an unknown caliber bullet. Marker Q, a .40 caliber
18 cartridge case, a spent casing with the head stamp of .40
19 caliber Smith & Wesson R-P. Marker R is a .40 caliber
20 cartridge case with a head stamp of .40 S & W Smith & Wesson
21 R-P. Marker F is nine -- may I continue? Marker S is a 9mm
22 cartridge case with a head stamp of Hornady 9mm Luger
23 appearing to be fired by semi-auto. And Marker T is a .40
24 caliber cartridge case with a head stamp of Federal .40 S&W.
25 Marker U is a 9mm cartridge case with a head stamp of Hornady

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1 9mm Luger. Marker W is a .40 caliber cartridge case with a
2 head stamp of Winchester .40 S&W. Marker X is a .40 caliber
3 cartridge case with a head stamp -- with an unknown head
4 stamp. Marker Y is a .40 caliber Glock 27 with a slide lock
5 back, empty of ammunition with the magazine still -- what
6 holds the bullet still in the weapon. Marker Z is a .40
7 caliber cartridge case with a head stamp of .40 S&W R-P.

8 Q: I'm gonna show you, these have not been entered yet, but
9 it's Fifty-nine, Fifty-five, Fifty-three, Forty-nine, Forty-
10 one and Sixty-one. Did you take those pictures?

11 A: Yes, sir, I did.

12 Q: And where did you take those pictures?

13 A: These pictures were taken on the scene.

14 Q: All right. And we kinda have two scenes, so which scene?

15 A: These scenes were at the Levels scene, I'm sorry, sir.

16 Q: Okay. The State would move Sixty-one, Fifty-nine, Fifty-
17 five, Fifty-three, Forty-nine and Forty-one into evidence?

18 THE COURT: Any objection?

19 MS. WILSON: No objection, Your Honor.

20 THE COURT: All right. They're in evidence without
21 objection.

22 STATE'S EXHIBITS FORTY-ONE, FORTY-NINE, FIFTY-THREE,
23 FIFTY-FIVE, FIFTY-NINE AND SIXTY-ONE

24 ADMITTED INTO EVIDENCE

25 BY MR. HOLFORD:

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1 Q: Now we saw a picture already where, where it was Marker I
2 and you had tilted it up and taken a picture of the back of
3 the casing?

4 A: Yes.

5 Q: Is this the same thing?

6 A: It's the same, yeah, it's the same -- same way I take the
7 photographs, yes.

8 Q: Okay. But are these separate casings?

9 A: Yes, these are -- these are complete different casings.

10 Q: Okay. What's the marking on the back of those two I just
11 handed you; we'll do two at a time?

12 A: .40, they are .40 S&W R-P and both of those are -- had
13 the same head stamp or markings.

14 Q: Okay. What about the next two? Again, are these casings
15 we've already seen?

16 A: Yes.

17 Q: Just a picture of the back?

18 A: Just close-up pictures of the back.

19 Q: To show -- to show what?

20 A: To show the manufacturer of the cartridge and both of
21 these are .40 Smith & Wesson R-P with the writing on the back.

22 Q: Is that the same as the last two we just saw?

23 A: Yes, the same writing.

24 Q: So the same manufacturer of the bullet?

25 A: Same manufacturer, yes, sir.

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- 1 Q: What about those next two?
- 2 A: These are the same, .40 S&W R-P, the same writing, the
3 same manufacturer.
- 4 Q: But different casings?
- 5 A: Different cases.
- 6 Q: I'm gonna re-approach you with State's Thirty-three.
7 You've got some reading glasses on. That's the gun you've
8 already identified you picked up on the street?
- 9 A: Yes.
- 10 Q: What is the serial number?
- 11 A: The serial number is 678326.
- 12 Q: Did you collect that actual gun?
- 13 A: Yes.
- 14 Q: And would you have logged it into evidence?
- 15 A: Yes.
- 16 Q: This serial number on here will speak for itself, right?
- 17 A: Yes.
- 18 Q: And would that serial number match the number that you
19 logged in?
- 20 A: Yes.
- 21 Q: And what did you do after you secured that suspect
22 weapon?
- 23 A: After it was secured -- I secured it first in the Crime
24 Scene van and then transported it to my office, photographed
25 it and then secured it in our crime scene vault and it would

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1 stay there until transported to property and evidence to go to
2 SLED.

3 Q: I'm trying to make sure I'm not reiterating something
4 over, just clearing it up. I know we've talked a lot about
5 bullets and casings. The amount of casings that were there,
6 what would that indicate?

7 A: It would indicate more than one shooter a lot of times
8 just to the total scene.

9 Q: Okay. What would -- when you fire a weapon, so we've
10 seen a clip or a magazine with a full bullet. When you fire a
11 weapon, you've said there's a casing and a projectile?

12 A: Yes.

13 Q: Where does the projectile go?

14 A: The projectile goes out the end of the barrel, which
15 projectile is just another word for bullet.

16 Q: Okay.

17 A: And the casing is kicked out of the side of the weapon,
18 usually the right side of the weapon.

19 Q: Okay. Does it typically stay close to where the shots
20 were fired?

21 A: Not necessarily, no. It all depends on the environment.

22 Q: Does it travel as far as the bullet travels?

23 A: No.

24 Q: Okay. So relatively speaking, when a casing is kicked
25 out, is it close to where a weapon is fired or it could be far

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1 away?

2 A: Usually it's close to where the weapon is fired.

3 Q: And the bullet or the fragment that we've talked about,
4 projectile, is the actual part that comes out of the end of
5 the barrel?

6 A: Yes.

7 Q: And is that --I'm going to approach with State's Seventy-
8 six. This is not in evidence yet. Did you take that picture?

9 A: Yes, I did.

10 Q: Okay. And can you tell, based on that bag -- well, where
11 did you take that picture? Was it at the same place as all
12 the rest of these?

13 A: It's so close I can't tell exactly where it was taken,
14 but it appears that it was taken in the lab in my Crime Scene
15 office or Crime Scene lab.

16 Q: Is there writing on that bag?

17 A: Yes, there is.

18 MR. HOLFORD: Your Honor, State would move State's
19 Seventy-six in evidence.

20 THE COURT: Any objection?

21 MS. WILSON: Your Honor, yes, I do have an objection.

22 THE COURT: Come over here and talk to me for a second.

23 MS. WILSON: Certainly.

24 (REPORTER'S NOTE: A bench conference was held off the record
25 in the presence of but out of hearing of the jury.)

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1 BY MR. HOLFORD:

2 Q: Officer Bailey, will you describe that picture a little
3 more?

4 A: Yes, the picture of the back of a cartridge case that has
5 not been fired and with several bullets laying underneath it.

6 Q: Okay. And now when you're talking about bullets now ---

7 A: Cartridge cases, a cartridge is full, unfired cartridges.

8 Q: Okay. So, was that -- can you tell based on that
9 picture, if that was taken at the scene?

10 A: I can't tell just based on the photograph alone. I don't
11 have enough around it to actual say exactly where it was
12 taken.

13 Q: Okay. What is the bag underneath it; can you read the
14 writing?

15 A: It's a collection bag. It's -- I can't -- the writing is
16 blurred out quite a bit where I closed up -- shot a close-up
17 photograph of the bullets so it blurred the writing out behind
18 it, but it's -- the writing behind it and directly underneath
19 it is the only thing that I can see appears to be .40 caliber
20 and the first three letters of a serial number which appear to
21 be WPH, that's about all I can make out of the writing because
22 it's sort of blurry in the background.

23 Q: Would that serial number -- would that relate to a gun?

24 A: That serial number would relate to a firearm, a gun, yes.

25 Q: Okay. And again, you collected the gun from the scene?

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1 A: Yes.

2 Q: And two guns from Paul Morrell?

3 A: Yes.

4 Q: And who were those guns from Paul Morrell?

5 A: Those were from security guards on the scene.

6 Q: This might be a little clearer. This is Twenty-six, it's

7 already in evidence. What does that show?

8 A: That is a Glock 22 which is a model number .40 caliber.

9 Q: And what's the first -- what's the serial number?

10 A: Serial number is WPHB44.

11 Q: And if the jury were to read this serial number and match

12 it to the gun, they'd be able to tell what that serial number

13 is on the bag and the gun?

14 A: Yes.

15 Q: So if you said WPHB44, but, but it looks like WPH644 ---

16 THE COURT: You want him to look at it again? Can I take

17 a look at it again?

18 MR. HOLFORD: Yes..

19 A: I'm sorry, it is WPH644.

20 BY MR. HOLFORD:

21 Q: And whose gun is that?

22 A: It was Ronald Thomas Poston, II.

23 Q: And where did you take that picture?

24 A: This was taken in my Crime Scene bay at the Crime Scene

25 office.

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1 Q: Oaky. And now let's refer back to Seventy-six. After
2 viewing that you took this picture in your Crime Scene lab of
3 the gun WPH644 with live rounds in the magazine, what does
4 Seventy-six appear to be?

5 A: It appears to be the same setting where I took the
6 photograph.

7 MR. HOLFORD: The State would offer Seventy-six into
8 evidence?

9 THE COURT: Any objection?

10 MS. WILSON: Your Honor, could I see Seventy-six again,
11 please?

12 THE COURT: Certainly. And what was the one that he
13 compared it to?

14 MR. HOLFORD: Twenty-six.

15 MS. WILSON: Without objection, Your Honor.

16 THE COURT: All right, sir. Seventy-six is in evidence
17 without objection. You may proceed.

18 STATE'S EXHIBIT NUMBER SEVENTY-SIX

19 ADMITTED INTO EVIDENCE

20 BY MR. HOLFORD:

21 Q: So, on Seventy-six, you took a picture of the back of the
22 cartridges that came out of that gun?

23 A: Yes.

24 Q: And the jury would be able to look at these two pictures,
25 would they be able to see maybe the writing on the bag?

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1 A: Yes.

2 Q: And if the writing is the same, it'd be taken at the same
3 place?

4 A: Yes.

5 Q: So if they both -- if both bags say Ronald Thomas P on
6 one and then the other says Ronald Thomas Poston, the jury
7 would be able to tell that this is the same thing?

8 A: Yes.

9 Q: Now, can you read on Seventy-six the manufacturer of that
10 bullet?

11 A: Yes, it's a Federal.

12 Q: And is that the same as all those casings out at the
13 scene?

14 A: It's not the same as all of them, but it's a .40 caliber,
15 but some of them were different. It wasn't a Federal.

16 Q: Based on your report, how many casings at the scene were
17 -- have the stamp Federal on them?

18 A: I only found the one case with Federal on the back of the
19 cartridge or casing.

20 Q: At the scene?

21 A: At the scene.

22 Q: Would that make sense if you had a magazine with unfired
23 bullets?

24 A: Yes.

25 Q: That was turned over to you by the security guard?

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1 A: Yes.

2 Q: And would it also make sense that the suspect weapon with
3 the empty magazine, you found a lot of other .40 caliber
4 casings?

5 A: Yes.

6 Q: I'm gonna show you what's been marked as State's Ninety-
7 five for ID. Just tell me about that box generally?

8 A: It's the boxes we use at our Crime Scene office for
9 securing weapons and firearms and all pistols.

10 Q: Would you have secured the firearm in there?

11 A: Yes.

12 Q: How do you know?

13 A: It has my writing on it for one and just mainly from my
14 writing.

15 Q: Okay. And there's a lot of tape on it, I don't want you
16 to open it up, but what's that tape say?

17 A: That tape says it's been processed by SLED Forensic
18 Services.

19 Q: Did you send that gun to SLED?

20 A: Yes.

21 Q: After -- so did you put it in that box?

22 A: I put it in this box.

23 Q: And did you write on it?

24 A: I did write on it.

25 Q: Does it say the serial number?

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- 1 A: Yes, it does.
- 2 Q: What's that?
- 3 A: WPH644.
- 4 Q: And that would -- and what type of gun is that?
- 5 A: That is a Glock 22 .40 caliber.
- 6 Q: Okay. And who did you collect that gun from?
- 7 A: This was -- this was from the security guards. It was
- 8 collected by Paul Morrell. I collected it from Detective
- 9 Morrell.
- 10 Q: Okay. And then after you put it in the box, where would
- 11 you have put it?
- 12 A: I would've put it in the crime scene -- our crime scene
- 13 storage vault, which is where we store evidence, and it's
- 14 transported down to the main police department in our main
- 15 evidence storage area.
- 16 Q: Okay. And then when does it get sent to SLED?
- 17 A: It gets to SLED once it's processed, it goes to our main
- 18 police department Crime Scene storage area and then they
- 19 actually hand deliver it to SLED.
- 20 Q: Okay. And then SLED obviously did something with it?
- 21 A: Yes, SLED processes it and then it comes back to us as
- 22 far as the mailing procedure coming back to the police
- 23 department, I'm not sure on that. I don't pick that up, but I
- 24 know they send it back, but I'm not exactly sure how they
- 25 bring it back.

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1 Q: And have you opened that since the SLED center processed
2 it?

3 A: No.

4 Q: How can you tell?

5 A: The evidence seals are still intact.

6 Q: Okay. But we could look at the pictures from the
7 security guards guns that we've already looked at and note it
8 to the serial number, and if we opened that up, you'd be able
9 to tell if it's the same gun, right?

10 A: Yes.

11 Q: I'm gonna show you what's been marked for ID as State's
12 Ninety-seven. Same thing?

13 A: Yes.

14 Q: Did you collect that gun?

15 A: Yes.

16 Q: How do you know?

17 A: It's my writing on the box.

18 Q: And, and what's the serial number on that gun?

19 A: Serial number on this weapon is GPB326.

20 Q: Okay. Again, if we went back and looked at the same
21 pictures of the guns and the scene where you collected, would
22 we be able to tell what's inside that box?

23 A: Yes, you would.

24 Q: And what gun is that?

25 A: This is a Glock 27 .40 caliber.

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- 1 Q: And was that recovered from the security guard; where was
2 it recovered?
- 3 A: This was recovered from the center median in the right in
4 front of Club Levels, just north of Club Levels.
- 5 Q: So that's the suspect's weapon?
- 6 A: Yes.
- 7 Q: Was that sent to SLED?
- 8 A: Yes, it was.
- 9 Q: Have you opened it since they tested it?
- 10 A: No, I have not.
- 11 Q: How do you know?
- 12 A: Because the evidence seals are still intact.
- 13 Q: And after you collected that, where would you have put
14 that weapon?
- 15 A: I would have put it in the same place, stored it in my
16 Crime Scene van and taken it to my office, documented it, put
17 it in my vault, then transported to the main police department
18 for the main evidence storage.
- 19 Q: Now, do guns have the same serial numbers?
- 20 A: No.
- 21 Q: Okay. So, the serial number is unique to a firearm?
- 22 A: Yes, it is.
- 23 Q: So, if you can know when you take a picture of a gun at a
24 scene and you take a picture of the serial number and it
25 matches the same gun. If we were to look at the actual gun

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1 that has the same serial number, is that the same gun you
2 collected on the scene?

3 A: Yes.

4 Q: And the same one that was sent to SLED?

5 A: Yes.

6 Q: And back to us?

7 A: Yes, sir.

8 Q: How secure is your Crime Scene lab?

9 A: Only Crime Scene personnel have keys for it. No one else
10 at the police department has keys to our crime lab.

11 Q: Would anyone in your Crime Scene change serial numbers;
12 would they even be able to do that?

13 A: No.

14 Q: So, can we be sure that those guns are, are what they
15 appear to be?

16 A: Yes.

17 Q: I'm gonna hand you what's been marked State's Ninety-
18 eight. Now we're not gonna open this up, but tell me about
19 this box. What are all the stickers on it?

20 A: That's from our property and evidence at the police
21 department. This is the stickers they put on it when they
22 take it into their main storage area for the evidence.

23 Q: Okay. So, if we talked to evidence, would they be able
24 to identify what was in there?

25 A: Yes.

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1 Q: And can you tell what's in there?

2 A: Not by looking at the writing, no. It just tells me
3 basically where it was taken from. It has the little bar
4 codes on it, which property and evidence can identify what's
5 inside it.

6 Q: When you collected the shell casings, the bullet
7 fragments, things of that nature, what, what did you put them
8 in?

9 A: They're in small cardboard boxes with a little padding
10 inside, a cloth padding inside them.

11 Q: And did you -- would you have written on those?

12 A: I would've written on those. I would've written the
13 marker number and date and time, things like that.

14 Q: Okay. And so for all those casings, the pictures that we
15 looked at, did you actually collect those and secure those?

16 A: Yes.

17 Q: And what did you do with them?

18 A: I sealed them the same way I secured all the evidence I
19 collected from the scene. Once I have them collected, I take
20 them and store them in my Crime Scene van, lock it, and then
21 once I leave the scene, I transport them and secure them in
22 the Crime Scene vault and then on to the main police
23 department evidence vault.

24 Q: Okay. And has any of that been sent to SLED?

25 A: This has been sent to SLED; yes, sir.

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1 Q: How can you tell?

2 A: Because it has the SLED Forensic Services tape on it and
3 the evidence seals appears to be still intact.

4 Q: Was everything that you collected sent to SLED?

5 A: Not everything.

6 Q: Why would something not be sent to SLED?

7 A: If it's something we'll process in our own lab -- we
8 would only send it to SLED if it's gonna be ballistically --
9 ballistics-wise or DNA processing, things that we can't do at
10 our lab.

11 MR. HOLFORD: May I approach?

12 THE COURT: Yes, sir.

13 BY MR. HOLFORD:

14 Q: I'm gonna show you State's Ninety-nine, what is that?

15 A: This is what I call a bullet box that used to place
16 bullets or small pieces of evidence in and that's the
17 fragment, a bullet fragment.

18 Q: All right. And how do you know that?

19 A: That's because it's got my writing on it and I notated
20 what it was on the box.

21 Q: So did you collect that?

22 A: Yes.

23 Q: Do you know where you collected it from?

24 A: They put a -- they put a sticker over the top of my
25 marker, but fragment C-N, this would be at the right waist of

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1 the victim, marker N.

2 MR. HOLFORD: The State would move Ninety-nine in
3 evidence?

4 THE COURT: Any objection?

5 MS. WILSON: No objection, Your Honor.

6 THE COURT: All right. It's in evidence without
7 objection.

8 STATE'S EXHIBIT NUMBER NINETY-NINE

9 ADMITTED INTO EVIDENCE

10 BY MR. HOLFORD:

11 Q: Now you noted on here N.

12 A: Yes.

13 Q: and that corresponds with the picture N that we saw?

14 A: Yes.

15 Q: So this is the actual piece of evidence?

16 A: Yes.

17 Q: But this wasn't sent to SLED, was it?

18 A: No, sir.

19 Q: Is this what we'd expect to find in similar boxes like
20 this in that big box?

21 A: Yes.

22 Q: Once we open it up?

23 A: Yes.

24 Q: Why, why was this not sent to SLED; why was that fragment
25 not sent to SLED?

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DAVID BRYAN BAILEY - DIRECT BY HOLFORD

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1 A: It's so small, it doesn't have enough detail on it in
2 order for SLED to compare it to anything. It's just a
3 fragment; it's not an actual full bullet.

4 Q: Sorry, I'm working the Court Reporter over. She's got to
5 take down what we say and mark exhibits. All right. I'm
6 gonna show you State's One Hundred and One Hundred One. Did
7 you collect these?

8 A: Yes, sir, I did.

9 Q: Okay. And how do you know that?

10 A: Because it has my writing on them and I also signed the
11 side of the box.

12 Q: And you know what's inside it?

13 A: Yes, bullet fragments, also.

14 Q: And is there also a corresponding letter where it was
15 collected?

16 A: Yes, this box is A-2 and this box is C-2.

17 MR. HOLFORD: The State would introduce Exhibit One
18 Hundred and One Hundred One into evidence.

19 THE COURT: Any objection?

20 MS. WILSON: No Objection, Your Honor.

21 THE COURT: Into evidence without objection.

22 STATE'S EXHIBITS ONE HUNDRED AND ONE HUNDRED ONE

23 ADMITTED INTO EVIDENCE

24 BY MR. HOLFORD:

25 Q: All right. So we know that this is C-2 and A-2?

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- 1 A: Yes.
- 2 Q: And where was the -- where was the -2 again, was that
- 3 Levels?
- 4 A: -2 was at the Levels, yes.
- 5 Q: And these also were not sent to SLED?
- 6 A: No.
- 7 Q: Just one more time. I know I've kind of beat this up,
- 8 but why not?
- 9 A: Because it doesn't have enough identifying
- 10 characteristics to them, they're so small of fragments that
- 11 they can't identify them because they're so small or what
- 12 weapon they were fired from.
- 13 Q: Okay. Well, we've already seen all the pictures, but
- 14 that's the actual evidence that you collected?
- 15 A: Yes, sir.
- 16 Q: And it's secured in a box?
- 17 A: Yes, sir.
- 18 Q: Wrapped up with evidence tape?
- 19 A: Wrapped up with evidence tape and my initials on the side
- 20 of the tape.
- 21 Q: And so can you tell if I would've cut that tape and re-
- 22 tape it?
- 23 A: Yes.
- 24 Q: How?
- 25 A: You can see the evidence seal would be broken on it and

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DAVID BRYAN BAILEY - CROSS BY WILSON

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1 in order to open that box, you would have to cut the tape
2 across my signature line and I would be able to tell.

3 Q: And so if we cut through this big box and cut through
4 SLED's tape, would they be able to tell I cut through there?

5 A: Yes, they would.

6 MR. HOLFORD: Court's indulgence?

7 THE COURT: Yes, sir.

8 BY MR. HOLFORD:

9 Q: Is there anything that I'm leaving out from what you
10 collected that was important at that scene?

11 A: Not that I can recall, no, sir.

12 MR. HOLFORD: No further questions, Your Honor.

13 THE COURT: All right. Cross examination?

14 MS. WILSON: Thank you, Your Honor.

15 CROSS EXAMINATION OF DAVID BRIAN BAILEY BY MS. WILSON:

16 Q: Officer Bailey?

17 A: Yes, ma'am.

18 Q: Correct?

19 A: Yes, ma'am.

20 Q: I want to make sure I get your title, correct?

21 A: Now, when you approach a crime scene, you want it to be
22 as untampered with as possible, correct?

23 A: Yes, ma'am.

24 Q: So, obviously if there is some tampering that might
25 affect your findings or your documentation?

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DAVID BRYAN BAILEY - CROSS BY WILSON

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1 A: Yes, ma'am.

2 Q: And I believe you were very clear that you did not move
3 the victim's body, correct?

4 A: Correct.

5 Q: Now but the, the findings that you made were based on
6 what you saw when you arrived?

7 A: Yes, ma'am.

8 Q: And generally, certainly I understand it was probably a
9 pretty chaotic scene that night. You can only attest to the
10 integrity of that crime scene as of the time that you arrived,
11 correct?

12 A: Yes, ma'am.

13 Q: And now I think you already said it and I'll go back to
14 it, when you collected evidence here, you weren't just
15 collecting it to store it in a lockup or, or some kind of lock
16 box, correct?

17 A: Yes, ma'am.

18 Q: And it's actually being collected because you intend to
19 send it to SLED for testing?

20 A: Yes, ma'am.

21 Q: And I certainly understand what you were saying before
22 about there were items that you did not send out. I
23 understand why you say you didn't send them. But, there were
24 plenty of things that you did send, correct?

25 A: Yes, ma'am.

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1 Q: And generally when you're sending it, you're sending it
2 for different types of testing?

3 A: Yes, ma'am.

4 Q: Bullet testing?

5 A: Ballistics, yes, ma'am.

6 Q: Probably DNA?

7 A: Yes, ma'am.

8 Q: All right. And just to be clear here, you collected lots
9 and lots of bullets, fragments, weapons, you were very busy
10 that night?

11 A: Yes, ma'am; yes, ma'am.

12 Q: And certainly for all that you collected, for everything
13 that you had to, to document, you did not actually witness
14 Kevin Bryant commit a murder, did you?

15 A: No, ma'am, I didn't.

16 Q: And you also don't know the circumstances under which any
17 of the evidence that you collected was actually used?

18 A: No, ma'am.

19 Q: Thank you. No further questions.

20 THE COURT: Any redirect?

21 MR. HOLFORD: No, Your Honor.

22 THE COURT: Do you wish the witness to be excused?

23 MR. HOLFORD: Yes, Your Honor.

24 THE COURT: All right. You may step down, sir. Just
25 leave the exhibits there and you're released to go back to

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1 your regular duties.

2 All right. Solicitor and Ms. Wilson, can y'all come and
3 talk to me for a second, please?

4 MR. HOLFORD: Yes, sir.

5 (REPORTER'S NOTE: A bench conference was held off the record
6 in the presence of but out of hearing of the jury.)

7 COURT REPORTER: You didn't put any exhibits over there,
8 did you?

9 THE COURT: Mr. Oskin will check and make sure that there
10 isn't anything over there.

11 COURT REPORTER: Just check and make sure what you just
12 laid down wasn't exhibits.

13 THE COURT: Who's the next person, Solicitor?

14 MR. OSKIN: Yes, sir; Your Honor. The State would next
15 call Mr. -- Officer Thomas with the Myrtle Beach Police
16 Department.

17 THE COURT: Okay. All right. Just meet the Clerk's
18 representative right here please, sir. Thank you.

19 CLERK: Place your left hand on the Bible and raise your
20 right.

21 JEFFREY KENNETH THOMAS, HAVING BEEN
22 SWORN TESTIFIES AS FOLLOWS:

23 CLERK: Please state your full name and spell your last
24 name.

25 MR. THOMAS: My name is Jeffrey Kenneth Thomas, last

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JEFFREY KENNETH THOMAS - DIRECT BY OSKIN

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1 name, T-H-O-M-A-S.

2 THE COURT: Go ahead, Solicitor.

3 DIRECT EXAMINATION OF JEFFREY KENNETH THOMAS BY MR. OSKIN:

4 Q: Hello Mr. Thomas, who is your employer, sir?

5 A: City of Myrtle Beach.

6 Q: How long have you been with them?

7 A: About eleven and half years.

8 Q: All right. What's the nature of your work, Officer
9 Thomas?

10 A: Right now, I'm a corporal over patrol shift on nighttime.

11 Q: Were you employed in that same capacity on February 15th,
12 2015?

13 A: I was not a supervisor at that time; I was just a regular
14 road officer.

15 Q: Okay. Did you have the opportunity to respond to a
16 shooting incident on that date?

17 A: I did.

18 Q: And where did that shooting occur?

19 A: It occurred at Club Levels.

20 Q: All right. Did you, did you respond to that shooting?

21 A: I did not respond to that scene, I responded nearby where
22 another officer had gotten out with an individual.

23 Q: When you say nearby, where specifically was that?

24 A: It was at the City of Myrtle Beach Human Resources
25 building.

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- 1 Q: Okay. How far is that from Levels?
- 2 A: About a city block or two.
- 3 Q: Okay. So, it's in close proximity to Levels?
- 4 A: Yes, sir.
- 5 Q: What did you observe once you got there without telling
- 6 me what anybody said, what did you see?
- 7 A: As soon as I arrived, there was a male laying on the
- 8 ground and a couple of other officers were already around him.
- 9 He was in pain.
- 10 Q: By chance, do you remember what he was wearing?
- 11 A: Dark clothes.
- 12 Q: Do you remember seeing that -- that male's face?
- 13 A: Yes, I do.
- 14 Q: Do you recognize that male's face in the courtroom today?
- 15 A: Yes.
- 16 Q: Where is he?
- 17 A: He's seated at the table right there (indicating).
- 18 Q: At the Defense table?
- 19 A: Yes, sir.
- 20 Q: All right. You say -- you were on the scene and you saw
- 21 a male and what did you do next, were you assigned any
- 22 responsibilities, did you have any tasks, did you have to go
- 23 anywhere?
- 24 A: Well, as soon as I got on scene, we were trying to make
- 25 heads or tails of exactly what was -- what had occurred. The

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JEFFREY KENNETH THOMAS - DIRECT BY OSKIN

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1 incident had just been freshly committed. I was tasked with
2 riding up in the ambulance with the Defendant.

3 Q: With riding in the ambulance?

4 A: Yes, sir.

5 Q: During that ambulance ride, where did y'all go?

6 A: We went to Grand Strand Regional Medical Center.

7 Q: Did you happen to see what the male was wearing at that
8 time?

9 A: Same dark clothes.

10 MR. OSKIN: If I may approach the witness, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. OSKIN:

13 Q: I'm showing you what's marked as State's Seventy-seven,
14 Seventy-eight, Seventy-nine and Eighty?

15 A: Can I handle these?

16 COURT REPORTER: Excuse me.

17 THE COURT: Yes.

18 COURT REPORTER: Seventy-nine and what?

19 MR. OSKIN: Seventy-seven through Eighty at this time.

20 THE COURT: Seventy-seven, Seventy-Eight, Seventy-nine
21 and Eighty?

22 MR. OSKIN: Yes, sir.

23 THE COURT: All right.

24 BY MR. OSKIN:

25 Q: Are you able to recognize those?

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JEFFREY KENNETH THOMAS - DIRECT BY OSKIN

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1 A: Yes, sir.,
2 Q: What are you looking at right now?
3 A: It looks like the clothes that he was wearing that night.
4 Q: What, what type of specific clothing?
5 A: This looks like a jacket.
6 Q: Okay. What is on that jacket, any marks, any
7 distinguishing marks?
8 A: Well, it looks like it's got a sort of a lightning bolt
9 pattern on the back with a -- it looks like a red stripe on
10 the top part.
11 Q: And that is the jacket you saw the male wearing in the
12 ambulance?
13 A: Yes.
14 Q: And moving on next to Exhibit Seventy-eight, I believe it
15 is?
16 A: Seventy-eight, yes, sir.
17 Q: What are those?
18 A: It looks like a pair of shoes?
19 Q: Did you happen to see the shoes he was wearing that
20 night?
21 A: I did.
22 Q: Are those the same shoes?
23 A: It looks like, yes, sir.
24 Q: Seventy-nine and Eighty I believe are photos of those
25 same shoes; is that correct?

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JEFFREY KENNETH THOMAS - DIRECT BY OSKIN

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1 A: Yes, sir, it looks like just different angles.

2 Q: Different angles but same shoes he was wearing that
3 night?

4 A: Yes, sir, it looks like it.

5 Q: Exhibit Eighty?

6 A: Same one, a pair of shoes.

7 MR. OSKIN: Your Honor, at this time, I'd like to -- the
8 State would like to move State's Exhibit Seventy-seven,
9 Seventy-eight, Seventy-nine and Eighty into evidence?

10 THE COURT: Any objection?

11 MS. WILSON: No objection, Your Honor.

12 THE COURT: All right. It's in evidence without
13 objection.

14 STATE'S EXHIBIT SEVENTY-SEVEN, SEVENTY-EIGHT, SEVENTY-NINE AND

15 EIGHTY ADMITTED INTO EVIDENCE

16 BY MR. OSKIN:

17 Q: Officer Thomas, at this time, I'm gone show you what's
18 been marked as State's Exhibit Eighty-one, Eighty-two, Eighty-
19 three and Eighty-four. Going in order there, are you able to
20 recognize that?

21 A: Yes, sir, it looks like the pants he was wearing.

22 Q: And that's Exhibit Eighty-one?

23 A: Yes, sir.

24 Q: What is Exhibit Eighty-two?

25 A: Same thing, just reverse side.

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JEFFREY KENNETH THOMAS - DIRECT BY OSKIN

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1 Q: How about Exhibit Eighty-three?

2 A: It's just a better picture of the lower part of the legs.

3 Q: Of the same pants, though?

4 A: Yes, sir.

5 Q: Those are the pants the male was wearing in the ambulance
6 that night?

7 A: Yes, sir, it looks like.

8 Q: How about Exhibit Number Eighty-four?

9 A: It's just the very bottom of the same pair of pants?

10 Q: Again, the same pants that ---

11 A: Yes, sir.

12 Q: --- the Defendant was wearing.

13 MR. OSKIN: If I may approach the witness, Your Honor?

14 THE COURT: Yes, sir.

15 MR. OSKIN: Your Honor, at this time, the State would
16 seek to move Exhibit Number Eighty-one, Eighty-two, Eighty-
17 three and Eighty-four into evidence.

18 THE COURT: Any objection?

19 MS. WILSON: I have an objection to Eighty-two, Your
20 Honor.

21 THE COURT: Eighty-two?

22 MS. WILSON: Yes, sir.

23 MR. OSKIN: I believe we can quickly approach, Your
24 Honor?

25 THE COURT: Can I see Eighty-two, please? Come up.

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JEFFREY KENNETH THOMAS - DIRECT BY OSKIN

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1 (REPORTER'S NOTE: A bench conference was held off the record
2 in the presence of but out of hearing of the jury.)

3 THE COURT: All right. Subject to our discussion, I'm
4 gonna allow into evidence all Eighty-one, Eighty-two, Eighty-
5 three and Eighty-four without objection, subject to our
6 discussion. Thank you.

7 MR. OSKIN: Thank you, Your Honor.

8 STATE'S EXHIBITS NUMBER EIGHTY-ONE, EIGHTY-TWO, EIGHTY-THREE

9 EIGHTY-FOUR ADMITTED INTO EVIDENCE

10 BY MR. OSKIN:

11 Q: And lastly, Officer Thomas, I'm showing you what's been
12 marked as State's Exhibit Number Eighty-five and Eighty-six.
13 Are you able to recognize those, sir?

14 A: It looks like the shirt he was wearing.

15 Q: The same shirt the male was wearing in the ambulance that
16 night?

17 A: Yes, sir.

18 MR. OSKIN: Your Honor, at this time, the State would
19 seek to move State's Exhibit Eighty-five and Eighty-six into
20 evidence.

21 THE COURT: Any objection?

22 MS. WILSON: No objection, Your Honor.

23 THE COURT: All right. It's into evidence without
24 objection.

25 STATE'S EXHIBITS NUMBER EIGHTY-FIVE AND EIGHTY-SIX

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1 ADMITTED INTO EVIDENCE

2 BY MR. OSKIN:

3 Q: Officer Thomas, look at State's Exhibit Number Eighty-
4 six. Is there anything that stands out to you about the items
5 in that photo?

6 A: It's been cut up the front and looks the arm -- it looks
7 like the right arm has been cut open on the sleeve.

8 Q: Now, how long were you on the scene -- were you on the
9 scene before the suspect male was loaded in that ambulance?

10 A: Yes, I was. I was there before EMS arrived.

11 Q: Okay. Anything occur -- while he was going on the
12 ambulance, did anything happen? Did you see anything out of
13 the ordinary that might have happened before he got loaded
14 onto the ambulance?

15 A: Before he got loaded onto the ambulance?

16 Q: Yes, sir.

17 A: He was complaining about his arm hurting.

18 MS. WILSON: Objection.

19 Q: Without telling me what anyone said. I apologize. Let
20 me make that clear.

21 A: I saw EMS cut into his -- cut into his shirt and jacket
22 just trying to be able to view his wound.

23 Q: All right. And who were you with in the ambulance?

24 A: It was just myself, EMS and the Defendant.

25 Q: And you said you went to?

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JEFFREY KENNETH THOMAS - CROSS BY WILSON

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1 A: Grand Strand Regional Medical Center.

2 Q: Who was with you at Grand Strand Hospital?

3 A: Office Billy Porter. I was training him at the time.

4 Q: All right. These clothes that we have photos of here
5 today, did you collect those clothes?

6 A: Myself and Officer Porter did, yes, sir.

7 Q: After they were given to you from ---

8 A: Yes, sir.

9 Q: --- the staff? Okay. And who did you turn those clothes
10 over to, sir?

11 A: Our Crime Scene Officer, Kelly Madison.

12 Q: At this time, Mr. Thomas, I have nothing further for you.
13 Please answer any questions Ms. Wilson may have.

14 THE COURT: Cross examination?

15 MS. WILSON: Thank you, Your Honor.

16 CROSS EXAMINATION OF JEFFREY KENNETH THOMAS BY MS. WILSON:

17 Q: Officer Thomas, you, you say you rode in an ambulance
18 with Mr. Bryant, correct?

19 A: Yes.

20 Q: And you arrived on scene prior to EMS, correct?

21 A: Yes.

22 Q: Now, at no point in time did you see Mr. Bryant commit a
23 murder, did you?

24 A: I did not.

25 Q: And you cannot swear or attest to the circumstances under

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BY THE COURT

1 which he was injured, can you?

2 A: I cannot.

3 Q: Thank you. No further questions.

4 THE COURT: Any redirect?

5 MR. OSKIN: Nothing further, Your Honor.

6 THE COURT: All right. You wish the witness to be
7 excused?

8 MR. OSKIN: Yes, sir, Your Honor.

9 THE COURT: All right. Any objection?

10 MS. WILSON: No objection, Your Honor.

11 THE COURT: All right, sir, you're released from your
12 subpoena and may go back to your regular duties.

13 A: All right. Thank you, sir.

14 BY THE COURT:

15 THE COURT: All right, ladies and gentlemen, we're gonna
16 break for lunch. I'm gonna ask that you be back in your jury
17 room at 1:30, please. Be back in your jury room at 1:30.
18 Remember, don't talk about the case, don't allow anybody to
19 talk to you. Everyone else remain seated while the jury
20 retires. Thank you.

21 (REPORTER'S NOTE: Jury exits courtroom.)

22 THE COURT: All right, Solicitor, is there anything that
23 we need to take care of before we break for lunch?

24 MR. HOLFORD: No, Your Honor.

25 THE COURT: From the Defense?

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BY THE COURT

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1 MS. WILSON: Nothing, Your Honor.

2 THE COURT: All right. Very good. I'll see y'all back
3 at 1:30 then.

4 MS. WILSON: Thank you.

5 THE COURT: Thank you.

6 **(RECESS.)**

7 *******OFF THE RECORD*******

8 **(On the Record.)**

9 THE COURT: All right, Solicitor, is the State ready?

10 MR. OSKIN: Yes, sir, Your Honor.

11 THE COURT: Defense?

12 MS. WILSON: Yes, sir, Your Honor.

13 THE COURT: Okay. All right.

14 Ask the jury to come in then, please.

15 Thank you, sir.

16 (REPORTER'S NOTE: Jury enters courtroom.)

17 THE COURT: All right, Solicitor, your next witness,
18 please.

19 MR. OSKIN: Thank you, Your Honor. At this time the
20 State would offer Kelly Matteson to the stand, please.

21 THE COURT: All right. All right, ma'am, you can come
22 all the way around up here and meet the Clerk's representative
23 up here, please, ma'am.

24 CLERK: Raise your right hand and place your left hand on
25 the Bible.

CLERK: Have a seat. Please state your full name and spell your last name for the Court.

MS. MATTESON: Kelly Lynn Matteson, M-A-T-T-E-S-O-N.

THE COURT: Go ahead, Solicitor.

DIRECT EXAMINATION OF KELLY LYNN MATTESON BY MR. OSKIN:

Q: Ms. Matteson, who is your current employer?

A: I'm self-employed.

Q: Okay. Were you employed on February 15th, 2015?

A: Yes.

Q: Who were you employed with at that time?

A: Myrtle Beach Police Department.

Q: And what specific area of Myrtle Beach Police Department?

A: Crime Scene.

Q: All right. How long have you been engaged in that type of work?

A: Approximately three years.

Q: And on this night were you employed in that same capacity?

A: Yes.

Q: What were some of your duties as a Crime Scene Specialist?

A: To respond to scenes, take photographs, collect evidence.

Q: Did you have an opportunity that night to respond to an

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KELLY LYNN MATTESON - DIRECT BY OSKIN

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1 incident that occurred at Club Levels in Myrtle Beach?

2 A: Yes.

3 Q: How did you -- how did you become involved in that case,
4 in that investigation?

5 A: It was approximately 3 o'clock in the morning. I
6 received a phone call from my Master Corporal who requested I
7 respond to the hospital to meet with the Defendant and to
8 collect some clothing and do a GSR Kit.

9 Q: And you say meet with the Defendant, are you able to
10 recognize that Defendant?

11 A: Yes, sir.

12 Q: Is he present today?

13 A: Yes, sir.

14 Q: Is he sitting in the courtroom?

15 A: Yes, sir.

16 Q: Will you point to where at please?

17 A: (Indicating.)

18 Q: I believe, did you say that you met with him -- where did
19 you meet with him at?

20 A: At the Grand Strand Regional Medical Center.

21 Q: Okay. What did you do once you arrived there and once
22 you met with him?

23 A: I went in and I did a GSR, which is a Gunshot Residue Kit
24 and that was -- well, and then afterwards I went and I took a
25 clothing wrap from his head, which was part of his clothing.

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1 Q: Did you receive any other clothing?

2 A: Yes.

3 Q: Who did you receive that clothing from?

4 A: From Officer Thomas and Officer Porter.

5 Q: What did you do with that clothing after you got it?

6 A: I kept the clothing in my possession until I went back to
7 the Crime Scene lab. Then I secured it into our Crime Scene
8 evidence room. Later on, I photographed the clothing.

9 MR. OSKIN: Court's indulgence, Your Honor, briefly?

10 THE COURT: Yes, sir.

11 MR. OSKIN: If I may approach the witness, please, Your
12 Honor?

13 THE COURT: Yes, sir.

14 BY MR. OSKIN:

15 Q: Ms. Matteson, I'm showing you what's admitted into
16 evidence as State's Exhibit Number Eighty-one, Eighty-two,
17 Eighty-three, Eighty-four, Eighty-five and Eighty-six, I know
18 that's a lot in front of you there. Put that together and
19 we'll start with number Eighty-one. Are you able to recognize
20 that photo at all?

21 A: Yes, sir.

22 Q: Did you take that photo?

23 A: Yes, sir.

24 Q: What is that a photo of?

25 A: It's a photo of a pair of jeans with a belt and a red

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1 bandana in the back left pocket.

2 Q: And is that -- that's the clothes you received that were
3 the suspects or the Defendant's at that time?

4 A: Correct.

5 Q: All right. What about Exhibit Number Eighty-three?

6 A: That would be the same pants that I collected.

7 Q: Did you take that photo, ma'am?

8 A: Yes, sir.

9 Q: Okay. How about Eighty-four?

10 A: The same.

11 Q: This is -- what angle is that ---

12 A: This is a photograph of the lower section of the pants.

13 Q: And you said those again were the same pants that you
14 collected that night that you received?

15 A: Yes, sir.

16 Q: I believe I'm at Exhibit Number Eighty-five. Did you
17 take that photo as well?

18 A: Yes, I did.

19 Q: And that is a picture of what?

20 A: A Hanes T-shirt from the Defendant.

21 Q: All right.

22 A: From the clothing.

23 Q: What about Number Eighty-six?

24 A: Also the same shirt.

25 MR. OSKIN: If I may approach again, Your Honor?

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1 THE COURT: Yes, sir.

2 BY MR. OSKIN:

3 Q: Ms. Matteson, I'm showing what's been marked as State's
4 Exhibit Number Ninety-six. Are you able to recognize that?

5 A: Yes.

6 Q: Is that the bag you received that night?

7 A: Yes.

8 Q: Are you aware what the contents are of in that bag, or in
9 that bag? I apologize.

10 A: I labeled it suspect Bryant black jeans, Group 49, Item
11 1.

12 Q: So, it's in fact your handwriting on that?

13 A: Yes.

14 MR. OSKIN: Your Honor, at this time the State would wish
15 to move State's Exhibit Number Ninety -- State's Ninety-six
16 into evidence?

17 THE COURT: Any objection?

18 MS. WILSON: No objection, Your Honor.

19 THE COURT: All right. It's into evidence without
20 objection.

21 STATE'S EXHIBIT NUMBER NINETY-SIX

22 ADMITTED INTO EVIDENCE

23 MS. WILSON: I'm sorry, that was Ninety-six?

24 MR. OSKIN: Ninety-six, yes, ma'am.

25 MR. OSKIN: If I may approach again, Your Honor?

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1 THE COURT: Yes, sir.

2 BY MR. OSKIN:

3 Q: Ms. Matteson, I'm showing you what's been marked as
4 State's Exhibit Number 102 and Number 103. Are you able to
5 recognize these bags?

6 A: Yes

7 Q: What are those bags?

8 A: Suspect Bryant's jeans are in State's Exhibit 102 and
9 suspect Bryant's shoes are in Exhibit 103.

10 Q: Are you able to tell that by the writing on those bags?

11 A: Yes.

12 Q: And again is that, in fact, your writing?

13 A: Yes, it is.

14 Q: Ms. Matteson, I'm gonna show you what's been marked as
15 State's Exhibit 104, I apologize, 105, 106. Start with 104,
16 are you able to recognize that?

17 A: Yes, sir.

18 Q: What is that, ma'am?

19 A: I have it labeled as suspect Bryant do-rag.

20 Q: Was that in the condition -- was that, I believe earlier
21 in your testimony you stated you retrieved a do-rag at the
22 hospital?

23 A: Correct.

24 Q: Is that the same do-rag that would be in that bag there?

25 A: Yes, sir.

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1 Q: With your writing. What is on State's Exhibit 105; what
2 are those contents?

3 A: Suspect's Bryant undershirt.

4 Q: I know I'm being repetitive, but just to have everything
5 covered ---

6 A: Uh-huh (affirmative response).

7 Q: Again, that's the bag you received that night as the
8 contents. Is that your handwriting on the bag?

9 A: It is my handwriting.

10 Q: And one more time, I think we're at 106. What's in that
11 bag, ma'am?

12 A: Suspect Bryant's bandanna.

13 Q: And again you know that that's what's in there because
14 that's how you received it, that's the bag that it was
15 received in?

16 A: Yes, sir and it's my handwriting.

17 Q: Handwriting. Okay. Thank you so much.

18 Ms. Matteson, why is the evidence still sealed up?

19 A: We collect evidence and we place them into the bags.

20 It's our procedure to go ahead write the file number, write
21 what it is, a description of it, take tamper proof tape put it
22 onto the back, sign our initials and put the date onto it.

23 Q: The photos you have to correlate what's in front of you
24 today, that's the same contents of -- let me rephrase that, I
25 apologize. The photos you have are accurate and a true

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1 reflection of what are in those bags, correct?

2 A: That is correct.

3 Q: So, we have the clothes photographed and bagged. What
4 did you do next? Did you return anywhere -- what was your
5 next involvement in this case after the original gathering of
6 these items here?

7 A: After I left the hospital, I then responded to Levels to
8 assist Crime Scene Officer Bailey at the scene.

9 Q: Okay. Did you give any instructions there, did you learn
10 of anything next in the investigation?

11 A: It was -- it was very windy that night and I assisted him
12 with collecting some of the evidence and labeling some of the
13 evidence that he was collecting.

14 Q: Okay. Did you meet with anyone else on the scene that
15 night other than Mr. Bailey?

16 A: There were several people. I briefly spoke with multiple
17 officers.

18 Q: At any point in time, did you return back to Grand Strand
19 Hospital after you were at the scene?

20 A: I did.

21 Q: Why did you return there?

22 A: I attended the autopsy at approximately 7 o'clock in the
23 morning.

24 Q: Of the victim in the shooting outside Club Levels?

25 A: Yes.

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1 Q: Okay. Who performed that autopsy?

2 A: Dr. Proctor.

3 Q: If you could briefly, what did you do? What was your
4 involvement with the autopsy, what did you observe, without --
5 just tell me your role in it. I don't want any -- At this
6 point I don't need you -- don't go through his procedure or
7 what he performed, we're not gonna get into that?

8 A: I went to the autopsy, I took photographs, I -- he
9 removed some bullet fragments; I took possession of them. He
10 ordered an x-ray; I took possession of the CD-R with the
11 photos of the x-ray onto that and I also took possession of
12 the clothing.

13 Q: The clothing of the victim?

14 A: The victim, yes.

15 Q: Okay. Let's go back to, I think you said, bullet
16 fragments. You said -- did you say you took photos of those
17 fragments?

18 A: Yes, sir.

19 MR. OSKIN: If I may approach, Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. OSKIN:

22 Q: Ms. Matteson, I apologize, I know I have a lot in front
23 of you here. I'm showing you what's been marked as State's
24 Exhibit Number Sixty-two and Number Sixty-three. Are you
25 aware of what those are?

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1 A: Yes, I am.

2 Q: What are they?

3 A: State's Exhibit Sixty-two is going to be a bullet
4 fragment that was removed from the tattoo -- well, it's
5 labeled tat, right arm. So there was a tattoo on the victim's
6 arm, right arm, on a tattoo of the letter M.

7 Q: Okay. And that -- that's a picture that you took?

8 A: This is a picture of the box that I packaged it in.

9 Q: Okay. And what about Exhibit Number Sixty-three?

10 A: Number Sixty-three is going to be of a bullet fragment.

11 Q: Is it the same bullet fragment?

12 A: I cannot say for sure because there were one -- more than
13 one bullet fragment, so I don't know what order these pictures
14 are in. So, I would -- it could be the one in this box or it
15 could be the one ---

16 Q: I understand ---

17 A: --- that was removed somewhere else.

18 Q: --- but I think I can clear that up if I may re-approach?

19 THE COURT: Yes, sir.

20 Q: I show you what's marked as State's Exhibit Sixty-six and
21 Sixty-seven, as well as Sixty-eight and Seventy. If you could
22 please explain what those are?

23 A: State Exhibit Sixty-six is a photograph that is labeled
24 autopsy bullet fragment tat, right, money bag.

25 Q: Is that similar format as the other one in the container;

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- 1 it's a separate bullet that has a separate bullet hole?
- 2 A: Yes, it is. This is a different fragment.
- 3 Q: From a separate portion of his arm?
- 4 A: That is correct.
- 5 Q: Okay.
- 6 A: For another segment of the tattoo.
- 7 Q: While you have in your hand there, you recognize that
- 8 photo as well?
- 9 A: Yes, I do.
- 10 Q: Did you take that photo?
- 11 A: Yes, I did.
- 12 Q: All right. Lastly, and I believe is it Sixty-eight and
- 13 Seventy-four? Yes, ma'am. State's Exhibit Sixty-eight and
- 14 State's Exhibit Seventy-four, please, do you recognize those?
- 15 A: Yes, I do.
- 16 Q: What is State's Exhibit Sixty-eight?
- 17 A: Autopsy bullet fragment, right shoulder, back.
- 18 Q: That's the third separate one?
- 19 A: That is correct.
- 20 Q: And you took that photo again?
- 21 A: Yes, I did.
- 22 Q: All right. And lastly with photo Number Seventy-four?
- 23 A: It would be the bullet fragment.
- 24 Q: Retrieved from ---
- 25 A: The back.

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1 Q: --- autopsy?

2 A: Correct.

3 MR. OSKIN: Your Honor, at this time, the State would
4 wish to seek State's Exhibit Number 103, 104, 105 and 106 into
5 evidence?

6 THE COURT: Any objection?

7 MS. WILSON: No objection, Your Honor.

8 THE COURT: And I'm sorry, what about 102?

9 MS. OSKIN: I do not have it in my hand yet. I believe
10 it's right here, Your Honor.

11 THE COURT: Okay. So ---

12 MR. OSKIN: I would enter that as well?

13 THE COURT: All right, sir. So 102 through 106?

14 MR. OSKIN: Yes, sir.

15 THE COURT: And no objection to any of that?

16 MS. WILSON: No objection, Your Honor.

17 THE COURT: It's into evidence without objection.

18 STATE'S EXHIBITS NUMBER ONE HUNDRED TWO THROUGH NUMBER ONE

19 HUNDRED SIX ADMITTED INTO EVIDENCE

20 MR. OSKIN: I apologize. Also, Your Honor, at this time,
21 the State would wish to seek State's Exhibit Number Sixty-two,
22 Sixty-three, Sixty-six, Sixty-seven, Sixty-eight and Seventy-
23 four into evidence.

24 THE COURT: Any objection?

25 MS. WILSON: Your Honor, if we could just approach

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1 briefly on one of those?

2 THE COURT: Sure.

3 (REPORTER'S NOTE: A bench conference was held off the record
4 in the presence of but out of hearing of the jury.)

5 BY MR. OSKIN:

6 Q: Ms. Matteson, if I could have you focus on State's
7 Exhibit Sixty-seven, Sixty-three and Seventy-four. Are those
8 bullet fragments that were retrieved from the autopsy?

9 A: Yes, it is.

10 Q: That you photographed?

11 A: Yes.

12 Q: And are those bullets there contained in the containers
13 in the other exhibits here?

14 A: Yes, they are.

15 Q: Those are Exhibits Sixty-eight, Sixty-six and Sixty-two?

16 A: Correct.

17 MR. OSKIN: Your Honor, at this time, I wish to seek or
18 move State's Seventy-four, Sixty-seven and Sixty-three into
19 evidence?

20 THE COURT: Any objection?

21 MS. WILSON: No objection.

22 THE COURT: All right. It's into evidence without
23 objection.

24 COURT REPORTER: It's Sixty-three, Sixty-seven and
25 Seventy-four?

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1 THE COURT: Sixty-three, Sixty-seven and Seventy-four,
2 correct.

3 STATE'S EXHIBITS SIXTY-THREE, SIXTY-SEVEN AND SEVENTY-FOUR

4 ADMITTED INTO EVIDENCE

5 MR. OSKIN: Yes, sir.

6 Your Honor, at this time, the State would wish to move
7 State's Exhibit Sixty-two, Sixty-six and Sixty-eight into
8 evidence as well?

9 THE COURT: Any objection to those?

10 MS. WILSON: No objection, Your Honor.

11 THE COURT: All right. They are into evidence without
12 objection.

13 STATE'S EXHIBITS SIXTY-TWO, SIXTY-SIX AND SIXTY-EIGHT

14 ADMITTED INTO EVIDENCE

15 BY MR.. OSKIN:

16 Q: While you were at the autopsy, did you retrieve any
17 clothes from the victim in that case?

18 A: Yes, I did.

19 Q: Lastly, I'm showing you State's Exhibit Ninety-two and
20 Ninety-three. Are you able to recognize those exhibits?

21 A: Yes.

22 Q: What are they?

23 A: It's the victim's shirt, his T-shirt that I took
24 possession of at the autopsy.

25 Q: All right. And did you take those photos as well?

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1 A: Yes, I did.

2 MR. OSKIN: Your Honor, at this time, the State would
3 wish to move State's Exhibit Ninety-two and Ninety-three into
4 evidence?

5 THE COURT: Any objection?

6 MS. WILSON: No objection, Your Honor.

7 THE COURT: All right. So State's Ninety-two and Ninety-
8 three are into evidence without objection.

9 BY MR. OSKIN:

10 Q: Ms. Matteson, what does State's Exhibit Number Two show?

11 A: Ninety-two shows a T-shirt with multiple blood stains
12 with adhesive markings that I used to tag the shirt to reflect
13 multiple circular tears or holes in the shirt.

14 Q: Let me ask you, How many markings are there?

15 A: I believe I found at least eleven on the front of the
16 shirt.

17 Q: Is that the same photo you took?

18 A: Yes, it is.

19 Q: Of the victim's shirt. If I could have you look at
20 State's Exhibit Ninety-three as well. What does it contain in
21 that photograph?

22 A: This is the, the photograph I took of the victim's back
23 of the T-shirt which had an additional four circular holes or
24 defects or tears in the shirt.

25 Q: Do you have markings on those as well where the tears

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1 are?

2 A: Yes, I do. On this one, I actually have where I placed
3 little arrows pointing to the holes.

4 Q: Okay. Why would you do that, any particular reason?
5 Just to show where they're at?

6 A: That is correct.

7 Q: So, after you collected all this evidence, what did you
8 do with it after that point, after the autopsy was completed?

9 A: After the autopsy was complete, that's where I went and
10 examined the clothing, made the markings, took additional
11 photographs in the lab, and then I secured all of my evidence
12 into the Crime Scene evidence -- evidence room.

13 Q: And who did you turn that over to?

14 A: I turned it over to Property and Evidence where we have
15 our evidence room which is controlled by Property and
16 Evidence.

17 Q: Nothing further from me at this time, Ms. Matteson.
18 Please answer any questions Ms. Wilson may have for you.

19 THE COURT: Cross examination?

20 MS. WILSON: Thank you, Your Honor.

21 CROSS EXAMINATION OF KELLY LYNN MATTESON BY MS. WILSON:

22 Q: Officer Matteson, again, you weren't just taking these
23 items so that you'd just have them in a lock box somewhere,
24 correct?

25 A: Correct.

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1 Q: They're taken so that you can send them off for testing,
2 at least some of the pieces, correct?

3 A: Correct.

4 Q: And some of that testing might include SLED for analysis?

5 A: Yes, ma'am.

6 Q: And it might include DNA, it could include bullet
7 fragments, bullets, things of that nature, correct?

8 A: Yes, ma'am.

9 Q: And that happened in this case, correct?

10 A: Yes, ma'am.

11 Q: All right. And just to be clear, you were not present
12 and did not witness Mr. Bryant commit a murder, did you?

13 A: No, ma'am, I did not.

14 Q: And in the process of going through all of the evidence
15 and all the hard work you did that night, it sounds like there
16 was quite a bit to go through, you don't know what happened
17 that night?

18 A: No, ma'am, I do not.

19 Q: All right. Thank you. No further questions.

20 THE COURT: Redirect?

21 MR. OSKIN: Nothing, Your Honor.

22 THE COURT: You wish the witness to be excused?

23 MR. OSKIN: Yes, sir, Your Honor.

24 THE COURT: Any objection?

25 MS. WILSON: No objection. Thank you.

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1 THE COURT: All right, ma'am, you're released from your
2 subpoena and you may go back to your regular activities.

3 MR. OSKIN: Your Honor, if I may approach to collect the
4 exhibits?

5 THE COURT: Certainly.

6 MR. OSKIN: Ms. Kia, could you approach?

7 (REPORTER'S NOTE: A bench conference was held off the record
8 in the presence of but out of hearing of the jury.)

9 THE COURT: All right, Solicitor, your next witness,
10 please.

11 MR. HOLFORD: The State calls Melinda Shadoan.

12 THE COURT: All right, ma'am, come all the way around up
13 here to the corner and meet the Clerk, please, ma'am.

14 CLERK: Please raise your right hand and place your left
15 hand on the Bible.

16 MELINDA SUE SHADOAN, HAVING BEEN
17 SWORN TESTIFIES AS FOLLOWS:

18 CLERK: Please have a seat and state your full name and
19 spell your last.

20 MS. SHADOAN: Melinda Sue Shadoan, S-H-A-D-O-A-N.

21 DIRECT EXAMINATION OF MELINDA SUE SHADOAN BY MR. HOLFORD:

22 Q: Officer Shadoan, how are you today?

23 A: Good, how are you?

24 Q: Where do you work with Myrtle Beach?

25 A: The Primary and Evidence room.

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- 1 Q: With the Police Department?
- 2 A: , Yes, sir.
- 3 Q: What's your job there?
- 4 A: I am the Property and Evidence Technician. So I take in
- 5 all evidence and all lost property comes in from the City.
- 6 Q: And so if we heard that people transferred items to P&E
- 7 or Property and Evidence, does that go to you?
- 8 A: That would be me, yes.
- 9 Q: Did you collect certain evidence in this case?
- 10 A: I -- no, I did not collect anything. I processed into my
- 11 room, correct, to secure it.
- 12 Q: Okay. Let me just use the right terminology.
- 13 A: Okay.
- 14 Q: It's collected when you take it from the scene, right?
- 15 A: Correct.
- 16 Q: And you didn't actually do that?
- 17 A: I did not.
- 18 Q: Because you didn't go out on the scene?
- 19 A: Not at all.
- 20 Q: But when detectives collect evidence, then they would
- 21 turn it into you?
- 22 A: Correct.
- 23 Q: Now, and so at that point you would process it?
- 24 A: Right, which means that I would just store it in a bin in
- 25 my room that is in a secured location.

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1 Q: Right. Because you're not processing it like SLED would
2 or checking for anything?

3 A: Right; that's correct.

4 Q: Okay. But you may have an occasion to transfer something
5 to SLED?

6 A: I do.

7 Q: How do you go about that?

8 A: The -- either the detective or the officers would go
9 ahead and request that items be analyzed for SLED. I'll take
10 those items out of that bin location that they are assigned to
11 and then take it by means, of course, of a vehicle to SLED in
12 Columbia to have them logged in and processed over there.

13 Q: And how do we keep track of the evidence that, that comes
14 in to you? How do we know that something picked up from
15 Marker A, put it in a bag, is the same thing as brought back
16 out?

17 A: When it is processed into my room, each one gets a white
18 sticker that has the case number and a group number each item
19 that belongs to that case has its own group number and also a
20 PR number which is our property room number.

21 Q: Is there a list of all the evidence, sorted by case?

22 A: Yes, sir, there is.

23 Q: And is it itemized?

24 A: It is.

25 Q: And then these white stickers, they allow you to tell

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1 what item it is?

2 A: Yes.

3 MR. HOLFORD: May I approach, Your Honor.

4 THE COURT: Yes, sir.

5 BY MR. HOLFORD:

6 Q: I'm gonna show you what's been marked as State's Ninety-
7 eight. This is a box with a bunch of like stickers, right?

8 A: Yes, sir.

9 Q: So, how can you tell, without opening, what's in that
10 box?

11 A: Initially, they all came separated and each one had a
12 label or the officer or detective would write down what was
13 inside that actual envelope and all of these, each one of
14 these stickers represents an item and all of these had gone to
15 SLED.

16 Q: And why is that box still sealed up?

17 A: Once it comes from SLED, I am not to open it up
18 whatsoever. The yellow tag shows -- the yellow sealing means
19 that SLED had taken it at one point.

20 Q: Is it still sealed?

21 A: It is.

22 Q: And so it came back to you from SLED like that?

23 A: Just like that and then I would put the stickers back on
24 there as much as I could being it was a smaller box, to notify
25 everybody that this was what was inside the box.

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1 Q: Now, how do we know who turned something into Property
2 and Evidence?

3 A: We have a chain of custody. Somebody would log it in and
4 then, when I go and process it into my room, it would be
5 notated on the property sheet as such.

6 Q: Would you able to tell me right now who logged each piece
7 of evidence in in this case?

8 A: Not without the paperwork.

9 Q: Would you be able to look at these Property and Evidence
10 Forms and refresh your recollection?

11 A: Yes, sir.

12 Q: Do you have a larger evidence sheet that tracks
13 everything?

14 A: I have one main list that shows, in this particular case,
15 the 118 items.

16 Q: And so if I asked you what item number the, the bullet
17 that came from the Defendant was, would you be able to figure
18 that out?

19 A: Not on that sheet that you're looking at right there.
20 Each individual property sheet might state as such.

21 MS. WILSON: Your Honor, could we approach?

22 THE COURT: Yes, ma'am.

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of but out of hearing of the jury.)

25 THE COURT: Go ahead, Solicitor.

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1 MR. HOLFORD: Thank you.

2 Court's indulgence?

3 THE COURT: Yes, sir.

4 MR. HOLFORD: May I approach?

5 THE COURT: Yes, sir.

6 BY MR. HOLFORD:

7 Q: What did -- what did I just hand you?

8 A: This particular one is every single item that's listed
9 under this case number, every single piece of evidence.

10 Q: Okay. And do those numbers correspond to numbers that
11 are on here?

12 A: They do.

13 Q: Okay. And so if, if a bullet fragment was processed by
14 the detective and he noted on his actual box what letter it
15 came from, we would have to see the box to maybe know?

16 A: You would. Sometimes on the individual property sheets,
17 they would notate that inside the note section of that
18 particular group number. This just shows a quick list and
19 then there's an individual property sheet that might have
20 detailed information as well.

21 Q: So I'm gonna approach you. This has been entered as
22 State's Ninety-nine. For example, what did -- where is that
23 in the Property and Evidence log?

24 A: That would be Group Number 15.

25 Q: Okay.

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1 A: And it's stated -- it is a metal jacket fragment.

2 Q: Okay. Now that's what it states on the evidence log, but
3 what does it say on the box? Where did the detective find it?

4 A: It says small fragment and then looks like an N in
5 parenthesis.

6 Q: So he has a corresponding number?

7 A: He does.

8 Q: Okay. So we may not be able to know exactly which bullet
9 was picked up from a certain location, say N, until we've
10 looked at these boxes?

11 A: Correct.

12 Q: But you would be able to compare it to the evidence list
13 you have, that says it's Group 15, Item 1?

14 A: Correct.

15 Q: And then you'd be able to find out?

16 A: Yes, sir.

17 Q: Okay. That is was actually turned into you?

18 A: Yes, sir. We go by group numbers more than the anything.

19 Q: This red evidence tape, who puts that on there?

20 A: Either the detective, the Crime Scene officer or the
21 responding officer, whoever actually sees it.

22 Q: And then on State's Ninety-nine, we'll use this as an
23 example.

24 A: Okay.

25 Q: Are there letters on there?