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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Lancaster County

MAR 14 2017

Honorable Thomas W. Cooper, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ALLEN WESLEY MASSEY,

APPELLANT

APPELLATE CASE NO 2015-001934

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE'S EXHIBITS #10-13 FROM IMMUNITY HEARING (PHOTOS OF
APPELLANT'S LIP)**

**STATE'S EXHIBIT #24 FROM IMMUNITY HEARING (VIDEO OF APPELLANT'S
STATEMENT)**

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER

4 ~~2014-GS-29-00094~~

5 State of South Carolina

6 vs.

7 Allen Wesley Massey

8 IMMUNITY HEARING

9 Lancaster, South Carolina

10 March 30-31, 2015

11 Before the Honorable Craig Brown

12

13 APPEARANCES

14 For the State: Lisa Collins

15 For the Defendant: Mark Grier

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

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1 THE COURT: All right. State ready to proceed?

2 MS. COLLINS: State is ready, Your Honor.

3 THE COURT: Defense counsel?

4 MR. GRIER: Yes, Your Honor.

5 THE COURT: All right. If you would call your case,
6 Madam Solicitor?

7 MS. COLLINS: Thank you, Your Honor. May it please
8 the Court? I'm Lisa Collins, Deputy Solicitor for
9 Lancaster County. With me is Assistant Solicitor Matt
10 Edgerton for the State of South Carolina. Seated at
11 counsel table is Sergeant Brian Small with the Lancaster
12 Police Department, and Captain Scott Grant with the
13 Lancaster Police Department. The following case is before
14 the Court this morning, 2014-GS-29-94, the State of South
15 Carolina versus Allen Wesley Massey, a true billed
16 indictment for the offense of murder, 2014-GS-29-95, State
17 of South Carolina versus Allen Wesley Massey, a true billed
18 indictment for possession or display of a firearm or knife
19 during the commission of a violent crime. Judge, we're
20 here this morning before you at the request of defense for
21 an immunity hearing claiming immunity from prosecution
22 under the South Carolina Protection of Persons and Property
23 Act, section 16-11-410 etc. And at this time we would
24 invite Your Honor's comments, it's the position of the
25 State that since the defense has the burden of proving by

1 the preponderance of the evidence that he should be
2 protected from prosecution on the murder case and the
3 accompanying charge under that act, that the defense has
4 the burden of proof and therefore should call their
5 witnesses first. We invite your comment in that regard.
6 The defendant is present and represented by Mark Grier of
7 the public defender's office.

8 THE COURT: All right. Mr. Grier, happy to hear from
9 you, sir.

10 MR. GRIER: Yes, sir, Your Honor. Quite frankly the
11 law in this case is kind of unsettled I would say in terms
12 of, you know, how it applies whether -- in terms of who the
13 lead is. It appears from the cases that actually the State
14 presented evidence prior to the defense and I'm aware of
15 that in one occasion in the Curry case that transpired here
16 in this courtroom, I believe, or the one next door, I'm
17 sure it was here. And I understand, you know, that I have
18 the burden of proof or preponderance of the evidence in an
19 immunity hearing, but seek the -- I would -- I am prepared
20 to go first or follow, you know. One concern that I have
21 in terms, you know, of the presentation of the case as most
22 commonly in a criminal matter, the State sets the table by
23 laying the foundation or the basis for the case, I'm
24 prepared to do that if the Court believes that's the proper
25 procedure.

1 THE COURT: Madam Solicitor, my clerk and I have had
2 this discussion quite often on each of these matters that
3 have been before me, whether it be Jackson v. Denno, et
4 cetera, wherein defense filed a motion, the State always
5 puts up its witnesses first, there's nothing within the
6 statute that provides for the manner and method on which is
7 to take place. I'll be happy to hear from you any further
8 with regards to why it should be treated any different than
9 say a Jackson v. Denno or other matter.

10 MS. COLLINS: Your Honor, obviously the case that
11 first set forth the procedure for a pretrial hearing in
12 this case was State v. Duncan, as you know, Judge. The
13 Judge from Greenville, Ned Miller, at that time set forth
14 that it should be a pretrial matter, even though the
15 subsequent case law does reference back to Duncan as to
16 setting forth procedure. I agree with Mr. Grier, it does
17 not specifically say who should call their witnesses first.
18 It would be the position of the State that although the
19 State did have to, as Mr. Grier says, lay the table in
20 terms of establishing probable case under the act to go
21 forward and charge the defendant, which was done with an
22 arrest warrant being issued and subsequent an indictment
23 being true billed, in that the defendant has the burden of
24 proof -- and I think that's, Judge, in my opinion what
25 distinguishes it from Jackson v. Denno, that the defendant

1 in this case has the burden of proving by the preponderance
2 of the evidence that he is entitled to the protections
3 afforded under the act if this Court finds that the act is
4 applicable. So again, we would request respectfully that
5 the defense call their witnesses first to establish why
6 they believe under their motion that they've made that they
7 should be afforded the protection of the act. We are
8 prepared to call witnesses in response to that, but that
9 would be my position as to the distinction. Thank you.

10 THE COURT: Anything further, Mr. Grier?

11 MR. GRIER: No, Your Honor. I think it is all as
12 clear as it's going to get.

13 THE COURT: Well, I'm going to require -- since the
14 burden of proof rests with the defendant, or on the
15 defendant, I am going to require the defense to go first.
16 The difference from these types of hearings as opposed to
17 say a Jackson v. Denno and those matters, the burden is on
18 the State, it's on the State in those particular
19 situations, therefore I am going to require defense counsel
20 put up its case first. All right. Mr. Grier, call your
21 first witness.

22 MR. GRIER: Yes, sir. I'm going to call Renee
23 Robinson. Judge, I apologize, in a pretrial matter, there
24 will be quite a few witnesses in this case and I would move
25 to sequester witnesses.

1 THE COURT: Madam Solicitor?

2 MS. COLLINS: Your Honor, I'm not opposed to that. I
3 would ask that the case agent, Sergeant Smalls, remain in
4 ~~as well as, Your Honor. Ms. Renee Robinson who has just~~
5 been called by the defense as the first witness is the
6 mother of the deceased, Demarcus Robinson, we would ask
7 that she be allowed to remain in under the Victims Rights
8 Act. Also, Your Honor, I don't know what the position is
9 as to -- the fiancée of the deceased is also present, her
10 name is Ebonie Harris, she's present in the courtroom, she
11 shared a child in common with the defendant and they were
12 engaged and lived together for, I think, several years, we
13 would ask your consideration in the charge for her to be
14 treated as a member of the family under the Victims Rights
15 ~~Act, but she is a fact witness and we do acknowledge that.~~

16 THE COURT: Mr. Grier, any objection?

17 MR. GRIER: Yes, Your Honor. You know, she's a fact
18 witness and there are inconsistencies that I think are
19 going to need to get to the heart of in this matter today,
20 Your Honor, and as to Ebonie Harris, Your Honor, I do have
21 an objection. As to Ms. Robinson I most certainly am
22 sympathetic to her and she's testifying first so I don't
23 think she's going to learn anything from these proceedings
24 that would prejudice the defense.

25 THE COURT: Well, while I understand Ms. Harris is the

1 fiancée of the decedent, they are not married, I am going
2 to grant defense counsel's motion for sequestration. I
3 will allow certainly the mother to remain in here, but
4 we'll ask that Ms. Ebonie Harris be out of the courtroom
5 while testimony is taking place. I will leave it to the
6 lawyers, to the lawyers to police this matter as to who
7 needs to be in here and who does not, certainly allow the
8 case agent to remain in here as well as the decedent's
9 mother, but others it is your responsibilities, lawyers, to
10 police that matter and to have those parties excluded that
11 are going to be witnesses or potential witnesses in this
12 case.

13 MS. COLLINS: Absolutely. If you will allow me a few
14 minutes to do that.

15 MR. GRIER: Judge, before doing so, I would just ask
16 you, I have an investigator present who is the essentially
17 my lead investigator and is the equivalent of what the
18 State alludes to in terms of -- and he has the potential
19 for being a witness, an impeachment witness as well, and I
20 believe that what's good for the goose is good for the
21 gander in that the defense should be entitled to have their
22 lead investigator present as well during the proceedings.

23 MS. COLLINS: I'm not opposed to that, Your Honor.

24 THE COURT: All right, very well.

25 The witness, RENEE ROBINSON, was first duly sworn and

RENEE ROBINSON - DIRECT

1 Testified as follows:

2 DIRECT EXAMINATION

3 BY MR. GRIER:

4 Q ~~Ms. Robinson, I'm Mark Grier. I, of course, represent~~

5 Allen Massey, and I offer my sympathies to you and what

6 you've been through with the loss of your son. But Ms.

7 Robinson, you are the mother of Marcus Robinson, correct?

8 A Yes, sir.

9 Q And how old was Marcus at the time that he perished?

10 A He was 30 years old.

11 Q Okay. And what was he doing at the time in terms --

12 was he working?

13 A No, he wasn't working no.

14 MS. COLLINS: I'm sorry, I cannot hear.

15 Q ~~Ms. Robinson, how many children do you have?~~

16 A I had six children.

17 Q Okay. And Marcus was -- what number was he?

18 A He was the second child.

19 Q And he at the time that he passed away, how many

20 children did he have?

21 A Well, in all Demarcus had four children.

22 Q Okay. And, of course, did he and Ms. Harris, did they

23 have a child together?

24 A They have one together.

25 Q And did Demarcus have -- do you call him Demarcus or

RENEE ROBINSON - DIRECT

1 Marcus?

2 A I call him Marcus.

3 Q Did he have a child with a Hough -- did she have a
4 child with Thyze Hough's brother as well?

5 A See, I don't know that name.

6 Q You don't know that name? Okay. Who were the fathers
7 of -- or who were the mother's of his children?

8 A Ebonie Harris, Erica Harris, Tamika Robinson. I
9 can't think of the other young lady's name, but their son
10 is DeMario.

11 Q Her son is what?

12 A Their son is DeMario by the other young lady's.

13 Q Is that kind of a spin off on Demarcus?

14 A No.

15 Q Demario?

16 A No.

17 Q Ms. Robinson, of course, do you know Allen Massey?

18 A Yeah, I know Allen.

19 Q And for the record, Allen Massey is the defendant in
20 the case that's charged with having killed your son.

21 A Yes, sir.

22 Q Now, how long have you known Mr. Massey?

23 A I have been knowing Allen before I knew his sister
24 and his mother. He used to come to the house with my son
25 Tony and Marcus they used to hang together.

RENEE ROBINSON - DIRECT

1 Q And, in fact, they had never had any issue, had they?

2 A No problems, no.

3 Q And not -- he had been to your house many times, did

4 ~~you know what his nickname was, what Allen Massey's~~

5 nickname was?

6 A They called him Urk but I didn't like that name, I

7 called him by his real name.

8 Q Why didn't you like that name?

9 A Huh?

10 Q You say you didn't like that name.

11 A Because the name Urk, people talking like you are

12 Urking and I don't like how that name fit, it don't fit

13 with him.

14 Q Well, are you familiar with the TV character Steve

15 Urkle?

16 A Yes.

17 Q Do you know if Urk had anything to do with that, do

18 you know?

19 A I don't know.

20 Q Do you know how he got his nickname?

21 A No.

22 Q You just didn't like it --

23 A I just don't like the name.

24 THE COURT: Mr. Grier, when she's talking please don't

25 talk over her. Ms. Robinson, when he's talking please

RENEE ROBINSON - DIRECT

1 don't talk over him because my court reporter can't take
2 down when both of you are talking. It makes it extremely
3 difficult for him. I know this is unusual for you but
4 don't talk at the same time. Go ahead, Mr. Grier.

5 MS. COLLINS: Thank you, Your Honor.

6 Q All right. How about your son, did he have a
7 nickname?

8 A Marcus had a nickname as time went on after I had
9 done met Allen. I heard people saying they called him
10 knockout king.

11 Q Do you know why and how he got that name?

12 A And I asked him, "Why they call you knockout king?"
13 He said, "Because I knocked a couple of them out before,
14 they messed with me and I knocked them out." So that's
15 pretty much what I know of it.

16 Q Well, were you aware of your son's reputation for
17 being a scrapper?

18 A I know he will fight.

19 Q How about Urk, was he a fighter?

20 A I've heard a few things about him but not a whole
21 lot.

22 Q All right. Did you -- did your son -- where did he
23 live?

24 A He lived with Ebonie.

25 Q Okay. So did you see him regularly?

RENEE ROBINSON - DIRECT

1 A I probably see him twice a week.

2 Q All right. What do you know about his habits as far
3 as consuming alcohol?

4 ~~A I know he drink and I know he did his drugs, I knew~~
5 of it.

6 Q Was that a problem with him?

7 A It wasn't no big problem but I know he would drug
8 from time to time. But I didn't know it was a big
9 problem, I didn't know myself.

10 Q Okay. Well, as far as you knew they were friends up
11 until the day this happened.

12 A Yes, sir.

13 MR. GRIER: Okay. Thank you. I have no more
14 questions.

15 ~~THE COURT: Cross examination?~~

16 MS. COLLINS: May it please the Court?

17 THE COURT: Yes, ma'am.

18 CROSS EXAMINATION

19 BY MS. COLLINS:

20 Q Ms. Robinson, you said that you have seven children;
21 is that right?

22 A How many?

23 Q You said six and then I thought you said that the
24 deceased, Marcus, was the seventh.

25 A No, I had six children.

RENEE ROBINSON - CROSS

- 1 Q Okay. And where did Marcus fall in that line?
- 2 A He is the second child.
- 3 Q So next to the oldest?
- 4 A Yes.
- 5 Q And you stated that your son was known, had been
- 6 called from time to time the knockout king; is that
- 7 correct?
- 8 A Yes.
- 9 Q Do you know whether or not the defendant knew that
- 10 nickname?
- 11 A Yes, he knew, I'm pretty sure.
- 12 Q Did the -- you said that you asked your son why he was
- 13 called that; is that right?
- 14 A Yes.
- 15 Q And that your son responded he had knocked a couple of
- 16 them out before; is that right?
- 17 A Yes, ma'am.
- 18 Q He said that, "They messed with me," correct?
- 19 A Yes.
- 20 Q "And I knocked them out," correct?
- 21 A Yes.
- 22 Q Now, was your son a professional fighter?
- 23 A No, he wasn't.
- 24 Q Was he a professional boxer?
- 25 A He wasn't.

RENEE ROBINSON - CROSS

1 Q Was he an amateur fighter in terms of did he go in the
2 ring and not get paid for it?

3 A No, not at all.

4 ~~Q Was he an amateur boxer? Did he go in the ring for~~
5 events but not get paid for it?

6 A Never.

7 Q So when he referenced that he had knocked of couple of
8 them out before who had messed with him, did you take that
9 to mean just a regular disagreement with another citizen?

10 A Yes.

11 Q Did you ever witness that?

12 A No.

13 Q Do you know whether or not the defendant, Mr. Massey,
14 ever witnessed that he ever witnessed any of those
15 incidents?

16 A I'm pretty sure they all hung together.

17 Q But do you know if he did?

18 A I don't know for sure.

19 Q You said Mr. Massey had come to your house some times;
20 is that right?

21 A Yes, ma'am.

22 Q A good many times; is that right?

23 A Yes.

24 Q Had Mr. Massey ever indicated to you, "I'm afraid of
25 your son, Marcus?"

RENEE ROBINSON - CROSS

1 A No, ma'am. He never said anything when he came in,
2 he never said anything to me.

3 Q You said that Mr. Massey, the defendant, and your son,
4 Marcus, were friends; is that right?

5 A Yes.

6 Q That they hung out together, correct?

7 A Yes.

8 Q To your knowledge they never had any disagreement,
9 correct?

10 A No, not that I know of.

11 Q Mr. Massey never indicated to you that they ever had
12 any problems; is that right?

13 A No, ma'am.

14 Q I believe you indicated that you knew that the victim
15 drank from time to time; is that right?

16 A Yes.

17 MR. GRIER: I'm sorry, what was the answer?

18 THE WITNESS: Yes.

19 Q I believe you indicated that the victim drank from
20 time to time; is that correct?

21 A Yes.

22 Q And you also stated that you knew from time to time he
23 did some drugs; is that right?

24 A Yes.

25 Q Do you know the type of drugs that he did, do you know

RENEE ROBINSON - CROSS

1 that of your own knowledge?

2 A No.

3 Q Did Mr. Massey ever say to you when he was at your
4 home, "Marcus scares me when he's drinking?"

5 A No.

6 Q Did he ever say to you when he was at your home, "I'm
7 afraid of Marcus when he does drugs?"

8 A No.

9 Q Did he ever call you up when he was coming to your
10 home and say, "I want to come hang with you but is Marcus
11 there because I don't want to be around him?"

12 A No.

13 Q Did Mr. Massey ever bring a gun into your home to your
14 knowledge?

15 A No, ma'am.

16 Q Do you know that he carried a gun in his pocket?

17 A I don't know anything about that.

18 Q Would you have allowed him, Mr. Massey, into your home
19 if you knew he would have had a gun in his pocket?

20 A I wouldn't have allowed it.

21 Q But other than that you did allow Mr. Massey in your
22 home, correct?

23 A Yes, ma'am.

24 Q Because he was a friend, correct?

25 A Yes.

RENEE ROBINSON - CROSS

1 Q He was a friend of you, correct?

2 A Yes.

3 Q He was a friend of your son, Marcus, correct?

4 A Yes.

5 Q And your son said, "They called me the knockout king
6 because I knocked a couple out after they messed with me;"
7 is that right?

8 A Correct.

9 Q And to your knowledge, Mr. Massey, prior to October
10 12th of 2013 never messed with your son, Marcus, right?

11 A Right.

12 Q In fact, as far as you know on the early morning of
13 October 12th of 2013, Mr. Massey himself didn't mess with
14 Marcus before the incident; is that right?

15 A That's right.

16 Q But you weren't there.

17 A I wasn't there. I never knew they had no kind of
18 problem.

19 Q There's some reference in the files to Mr. Massey
20 calling people after the incident to say he was sorry or to
21 describe what had happened.

22 A Yes.

23 Q After the incident, after your son, Marcus, passed
24 away, did Mr. Massey call you and speak with you about the
25 incident?

RENEE ROBINSON - CROSS

1 A No, ma'am.

2 Q So you have not spoken to him since the incident; is
3 that right?

4 A Right.

5 MS. COLLINS: Thank you. Nothing further.

6 THE COURT: Any redirect?

7 MR. GRIER: No, Your Honor.

8 THE COURT: Thank you, ma'am, you may step down.

9 MR. GRIER: I call Allen Massey.

10 The witness, ALLEN MASSEY, was first duly sworn

11 and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GRIER:

14 Q Please state your name.

15 A Allen Massey.

16 Q Mr. Massey, how old are you?

17 A Twenty-eight.

18 Q And who is here from the family today?

19 A My sisters, my father and my mother.

20 Q Okay. And how many sisters do you have?

21 A I had seven, but one of them passed back in 2010.

22 Q Okay. How many brothers have you got?

23 A Four.

24 Q You have got four brothers too?

25 A Uh-huh.

ALLEN MASSEY - DIRECT

1 Q Okay. Does everybody live around Lancaster?

2 A One of them lives down by Edgemore. And my three
3 youngest sisters, they live in Columbia.

4 Q Where do you live?

5 A I live in Lancaster.

6 Q What address do you live at?

7 A [REDACTED] Elm Street.

8 Q And how long have you lived there?

9 A Since '97, so about 18 years.

10 Q All right. Where did you go to high school?

11 A Lancaster High.

12 Q And what kind of student were you?

13 A A/B student.

14 Q All right. What did you do after school, after high
15 school?

16 A Well, I was supposed to go to college but I
17 procrastinated saying it would happen, next semester
18 turned into next year and then on and on. But I got a job
19 working at the bleachery right after I graduated, and I
20 found a job working at McGee Brothers, a brick masonry
21 company. And then I filed taxes for a season. I never
22 did go to college.

23 Q What were you doing at the time, if you were -- were
24 you working at the time that this incident happened? And
25 do you recall what date this was that -- the day that Mr.

ALLEN MASSEY - DIRECT

1 Robinson was killed?

2 A It was October 12th of 2013.

3 Q It was the morning of October 12th of 2013?

4 A Uh-huh.

5 THE COURT: I need a yes or a no please, for the
6 record.

7 THE WITNESS: Yes.

8 THE COURT: Thank you.

9 Q Approximately what time, do you recall?

10 A Around 3:00 in the morning.

11 Q Now, going back to -- what was your job at that time?
12 Were you working at that time?

13 A Yes, but it wasn't a legitimate job. I was working
14 with a friend of one of my cousin's doing a little
15 landscaping job.

16 Q When you're saying you weren't legitimate, was it
17 illegal?

18 A Not illegal, but I didn't get a paycheck for it.

19 Q All right. You got paid cash?

20 A Uh-huh.

21 Q Right.

22 THE COURT: Is that a yes?

23 THE WITNESS: Yes. Sorry.

24 THE COURT: That's all right.

25 MR. GRIER: And I'll try to stay alert to that, Your

ALLEN MASSEY - DIRECT

1 Honor.

2 Q Okay. Mr. Massey -- all right. Well, let's go back
3 to -- let's move on up the calendar here to the events that
4 we're here for today. -- On October 11th of 2013, do you
5 recall what you did during the day, which would be the day
6 before this incident happened?

7 A Well, I had known that there was going to be a party
8 at a relative of mine's house on 16th Street that day.

9 And I actually seen Demarcus earlier on that day, I had
10 gave him a cigarette, and he was telling me that his
11 cousin was having a party as well that night. I was
12 telling him about the party on 16th Street, too.

13 Q Okay. So how many parties were you aware of?

14 A Two.

15 Q One was where?

16 A On 16th Street.

17 Q And one was where?

18 A On Wiley Park Road.

19 Q Did you go to those parties?

20 A I went to the one on 16th Street.

21 Q Well, before you went to any parties, what -- well,
22 what time did you arrive at the party on 16th Street?

23 A Around 11:00.

24 Q So what did you do up until 11:00 that day -- that
25 night basically?

ALLEN MASSEY - DIRECT

1 A I sat at home most of the day.

2 Q Okay. Did you do anything or go anywhere prior to
3 going to 16th Street to that party?

4 A No.

5 Q Okay. So you went to a party at 16th Street. Did you
6 go to the party at Wiley Park or --

7 A No.

8 Q You didn't even go down there?

9 A No.

10 Q Did you see Demarcus at the 16th Street party?

11 A No.

12 Q Did you ever see him there? You did not?

13 A No.

14 Q Okay. All right. Where did you go after you left

15 16th Street? We're going to come back to 16th Street, but
16 right now let's just layout where everybody went.

17 A City Avenue.

18 Q What's going on at City Avenue?

19 A They were having a little gathering I guess you could
20 say, I didn't know anything about it, but as I passed by I
21 saw several cars out there so I stopped in.

22 Q All right. Well, what made you think you were welcome
23 there?

24 A Because I had been there several times before and one
25 of the residents, Malika, she's my cousin.

ALLEN MASSEY - DIRECT

1 Q Okay. And did you speak with anybody on the street
2 prior to going to Malika's house?

3 A No.

4 Q Well, whose house is it? Who owns or who rents or
5 who --

6 A I'm not sure which one, I guess -- or whose house the
7 name is in. But Malika and Shonettia lived there
8 together.

9 Q Okay. And are you related to Shonettia?

10 A No.

11 Q Okay. All right. Well, when you -- this is 3:30 or
12 4:00 in the morning? What time did you get there to the
13 second house?

14 A Around 3:30.

15 Q And so this has actually changed days, this is October
16 12th now, right?

17 A Yes.

18 Q And how did you approach the house? Did you get into
19 the house?

20 A Yes. I knocked on the door and I was let in.

21 Q All right. Who let you in?

22 A Lisa Stratford.

23 Q What is her relationship with Malika and Shonettia, do
24 you know?

25 A Friends.

ALLEN MASSEY - DIRECT

1 Q So was the door locked, or do you even know?

2 A No, the door wasn't open. The screen door was closed
3 so I knocked on the screen door.

4 Q All right. Did you see anybody in the house from the
5 outside before you went in?

6 A Not at first.

7 Q All right. When you -- okay. You went inside. Tell
8 me a little bit about the layout of the house. When you
9 step in the door, what's going on in the house. Can you
10 see what's going on in the house?

11 A There's a hallway -- you stepped into a hallway and
12 the living room is off to the right and the living room
13 was connected to the kitchen.

14 Q All right. Now, are there people in there?

15 A Yes.

16 Q What are they doing?

17 A Some were playing cards and others were just standing
18 around the kitchen talking and drinking.

19 Q Okay. All right. Anybody say anything to you?

20 A I spoke to everybody, you know. I spoke to Shonettia
21 first, she was the first one that I saw.

22 Q To who?

23 A Shonettia.

24 Q Okay.

25 A Well, after Malika let me in I spoke to her first and

ALLEN MASSEY - DIRECT

1 then Shonettia, Malika handed me a beer. They invited
2 me -- well, Navoney was there and he was telling me that
3 he was going to his cousin's house --

4 Q Well, before we get to that I just want to know who is
5 there.

6 A Oh, okay. Well, Malika, Shonettia, Navoney, Thomas.
7 McGriff, Sindarous Wells, Alicia Stratford, Navoney was
8 there, and couple of more people.

9 Q Okay. All right. And you don't know the names of the
10 other people?

11 A No, I don't.

12 Q Okay. Do you know a guy named Orlando Bryant?

13 A No. I saw his name in the entry log.

14 Q So if he was there, he was one of those people you
15 just didn't know.

16 A Yes.

17 Q All right. Now, did you say Ebonie was there when you
18 walked in?

19 A Yeah. She was there when I first got there.

20 Q And did you see her earlier that evening at all?

21 A No, I didn't.

22 Q Did you see Marcus earlier that evening at all?

23 A Well, earlier that day.

24 Q Okay. But you didn't see him at 16th Street.

25 A No.

ALLEN MASSEY - DIRECT

1 Q Let's go back to 16th Street now. Why did you go
2 there?

3 A Because a relative of mine also lives there and I had
4 already known about the party going on and I had already
5 planned on going.

6 Q When did you make that decision?

7 A The day before.

8 Q Okay. Did you have any conversation with Marcus about
9 that party?

10 A Yes, the day of --

11 Q -- I think you said --

12 A -- when I told him there's a party going on at 16th
13 Street and he was telling me about the party on Wiley Park
14 Road.

15 Q I believe you said you got there about 11:00.

16 A Yes.

17 Q How long did you stay there?

18 A Up until 3:30.

19 Q Okay. And how many people were there?

20 A There were around 100 people there.

21 Q Okay. And did you see anybody there that you
22 eventually saw over at Shonettia and Malika's house?

23 A No.

24 Q They weren't there.

25 A No.

ALLEN MASSEY - DIRECT

1 Q Well, did you see -- obviously you saw people you knew
2 there.

3 A Yes.

4 Q And describe what is going on at that party. -- Anything
5 eventful going on at that party up until you -- before you
6 left, right before you left?

7 A Okay. Well, Demarcus's cousin, Rashawd, he showed up
8 and --

9 Q Okay. Demarcus Robinson's cousin.

10 A His cousin.

11 Q Okay.

12 A All right. And back in --

13 Q What's his name?

14 A Rashawd Robinson.

15 Q Okay. He's a Robinson.

16 A Uh-huh. Yes.

17 Q What time does he show up?

18 A He shows up around close to 3:00, right after 3:00.

19 Q Okay. And, you know, don't say what he said, but how
20 was your relationship with Rashawd?

21 A I would say rocky.

22 Q Why is your relationship with Rashawd rocky? Is there
23 a reason?

24 A Because back in October of 2008 we were both involved
25 in an incident where we ended up getting arrested where a

ALLEN MASSEY - DIRECT

1 guy had been robbed and ended up getting shot. And my
2 involvement -- I was the driver in that incident, and
3 after I was arrested, you know, not knowing what was going
4 to happen, I had just been asked to drive and, you know,
5 just basically because of being raised to be honest I did
6 what most would consider the right thing and cooperate.

7 Q Okay. And so what did you do? I mean, did you get a
8 conviction as a result of that? You are a driver in a
9 robbery where a person gets shot?

10 A Yes.

11 Q Did you get a criminal record as a result of that?

12 A No.

13 Q Well, did you do anything wrong during that incident?

14 A In his eyes I did.

15 Q What did you do wrong?

16 A I cooperated.

17 Q And so, did you end up having to be a witness in a
18 trial or anything?

19 A No, there never was a trial.

20 Q Did you give a statement?

21 A Yes.

22 Q And did people go to prison as a result of that?

23 A Yes.

24 Q Who went to prison?

25 A Rashawd did.

ALLEN MASSEY - DIRECT

- 1 Q Okay. So you're a snitch.
- 2 A Yes.
- 3 Q And that's the label they put on you, isn't it?
- 4 A Yes.
- 5 MS. COLLINS: I could not hear the answer.
- 6 THE WITNESS: Yes.
- 7 Q You don't feel good about that, do you?
- 8 A I felt guilty because of, you know, him ending up
- 9 having to serve prison time because of the whole incident.
- 10 Q Okay. Well -- okay. Did something eventually happen
- 11 that night between you and Rashawd?
- 12 A Yes. He was already outside, and as I went outside
- 13 he ended up punching me in the face.
- 14 Q Okay. How hard?
- 15 A It wasn't -- it didn't really affect me. It didn't
- 16 phase me, you know, because I was still standing, it
- 17 hadn't knocked me down or dazed me or anything. And then
- 18 I guess several people, they intervened for their own
- 19 reasons because maybe they felt like if a fight would have
- 20 broken out then the party would have ended so they didn't
- 21 want that to happen.
- 22 Q Okay. So did you retaliate in any way?
- 23 A No, I didn't. Because for me having done so right
- 24 then and there my actions wouldn't have been justified due
- 25 to people intervening, and I wasn't really knocked down or

ALLEN MASSEY - DIRECT

1 dazed or anything. And, you know, I kind of felt bad
2 about him ended up serving prison time, you know. I even
3 told him afterward maybe I did deserve that, you know.

4 ~~Q All right. Well, was that the end of the festivities~~
5 for you at 16th Street or not?

6 A Yeah. I decided it was just best for me to just get
7 away from the situation while I could.

8 Q All right. And that's when you went to where?

9 A I was headed home, but then I saw cars outside on
10 City Avenue so I went there.

11 Q And we've already got you in the door there but I
12 wanted to tie those things together. One other thing.
13 While you were at the 16th Street party, do you hear about
14 anything? Is there any word going around about goings on
15 over at Wiley Park?

16 A Yes. You know, there were around 100 people there so
17 I guess a couple of people -- somebody had gotten a call
18 about there had been a shooting.

19 MS. COLLINS: I'll object to hearsay, Your Honor.

20 THE COURT: Objection sustained.

21 Q Okay. Well, don't say what anybody said. But did you
22 learn of anything that had happened over at Wiley Park?

23 A A shooting.

24 Q Okay. Do you know any details about it?

25 A No.

ALLEN MASSEY - DIRECT

1 Q All right. Did you -- okay. All right. Back to City
2 Avenue. You told us who you saw there, correct?

3 A Yes.

4 Q And who did you interact with the most there?

5 A Demarcus.

6 Q Okay. And do you know Thomas McGriff?

7 A Yes.

8 Q How do you know Thomas?

9 A We were the same age. We had been to school together
10 and I just knew who he was, you know.

11 Q All right. And Demarcus, we already know y'all have
12 just known each forever, right?

13 A Yes.

14 Q And how about Malika, your cousin, how close were
15 y'all?

16 A See -- okay. During the time when they first
17 moved -- they lived on Elm Street right before they moved
18 to City Avenue and Shonettia --

19 Q They being who?

20 A Shonettia and Malika.

21 Q Okay.

22 A And this was November 2nd, 2012 when Shonettia's
23 brother had been released from prison, he had served like
24 nine years. But him and my brother had always been best
25 friends throughout life but Shonettia didn't know that my

ALLEN MASSEY - DIRECT

1 brother was her brother's best friend. So after I
2 attended the party that night that kind of started a
3 friendship. Malika, I had always known her from school
4 ~~and always being in the same grade.~~ And after that time
5 when I started spending time around them, her father had
6 been there one night and being that their last name is
7 Harrison and my father's last name is Harrison, I asked
8 him did he know my father. He said not only did he know
9 him, that they were related.

10 Q Okay. Well, you discovered all of that the night
11 that --

12 A Yes, it was shortly afterwards.

13 Q Okay. Well, where did you learn all of this?

14 A At Shonettia and Malika's house.

15 Q On Elm Street or --

16 A On Elm Street.

17 Q So tell me about that. How often did you visit
18 Shonettia and Malika on Elm Street?

19 A I would say about two or three times a week.

20 Q And they moved over to City Avenue how long before
21 approximately the best you can say?

22 A Around two or three months?

23 Q So they had been living on City Avenue for several
24 months.

25 A Yeah.

ALLEN MASSEY - DIRECT

1 Q And how many times had you been over there?

2 A Probably like twice a week.

3 Q Okay. What would you do over there?

4 A We played cards. And Shonettia, she likes to rap and
5 we rap together and drink.

6 Q And when you say rap, what do you mean by rap?

7 A Someone makes a beat with their hands and you free
8 style.

9 Q All right. And so who all did you have conversations
10 with at City Avenue on the morning of October 12th of 2013?

11 A I spoke with everybody, but me and Shonettia, we
12 rapped for a little minute. I asked to play cards, I was
13 waiting to play next and I was talking to Navoney and he
14 was telling me that he was going to his cousin's house,

15 and I told him, you know, "Okay, well, I'll ride with you,
16 so whenever you're ready to go I'll just ride with you."

17 And then I talked to Demarcus and I told him about what
18 had just happened on 16th Street, you know.

19 Q What had just happened on 16th Street?

20 A Where his cousin had just punched me in the face.

21 Q All right.

22 A You know, I told him what happened and it didn't
23 really hurt me and I wasn't mad about it, I wasn't worried
24 about it because I still felt kind of bad about what
25 happened so I had already let it go. I just told him

ALLEN MASSEY - DIRECT

1 because I knew he would find out anyway.

2 Q Okay. All right. Now, what whapped next?

3 A Well, he was like, "Okay. Well, that's cool." We

4 ~~shook hands and he was~~

5 Q Let me ask you something before you get into that.

6 How long have you been in that house at that time do you

7 believe?

8 A Around ten to 15 minutes.

9 Q Did anybody say anything about you leaving or not

10 being welcome?

11 A No.

12 Q All right. Go ahead.

13 A Well, he was standing off to the right over with

14 Tommy, Thomas McGriff, and I focused well my attention to

15 ~~the left where the table was watching the game waiting to~~

16 play next.

17 Q Doing what?

18 A Watching the game.

19 Q But why were you interested in that game?

20 A Because I was up next to play.

21 Q Okay. Go ahead.

22 A Okay. And about 30 seconds to a minute later the

23 next thing I know I'm being punched in the face.

24 Q Okay. Do you know who's punching you? Did you see it

25 coming?

ALLEN MASSEY - DIRECT

- 1 A I don't see it coming.
- 2 Q Well, how hard a punch was it?
- 3 A It was pretty hard. It dazed me, it knocked me to
- 4 the ground.
- 5 Q Well, do you know where you ended up?
- 6 A On the floor.
- 7 Q Okay. Do you know relative to the layout of the house
- 8 where you end up?
- 9 A Well, the living room has a door to the kitchen, I
- 10 was standing about three or four feet in the kitchen
- 11 towards the living room, it knocked me back close to the
- 12 door, probably about two feet or so from the door to the
- 13 living room.
- 14 Q Okay. And you end up in what room?
- 15 A I was still in the kitchen.
- 16 Q Okay. And did you say anything when you got hit?
- 17 A No.
- 18 Q Okay. What did you do next, or what did you see next?
- 19 A I look up and --
- 20 Q Well, let me ask you, how many times did you get hit?
- 21 A I just remember getting hit once.
- 22 Q Okay. All right. And then what did you see? What
- 23 happens next?
- 24 A I look up and he's coming at me, you know, to hit me
- 25 again. It's kind of like when you watch a professional

ALLEN MASSEY - DIRECT

1 fight and you see someone knock the opponent down and they
2 kind of freeze for a split second to register what's
3 happening and then they immediately lunge in to finish the
4 ~~fight. So I look up and I see him coming at me, he's~~
5 cocking back and about to, you know, reach down and hit me
6 again.

7 Q Okay. Well, what posture is he in when he's coming at
8 you?

9 A He's lunging forward with his fist cocked back.

10 Q Do you know what the mind's eye is, the mind's eye,
11 have you ever heard that term?

12 A Yes.

13 Q Do you know what that means? What does that mean?

14 A When you can look at somebody and tell what's on
15 their mind.

16 Q Do you have a picture in your mind of that?

17 A Yes. I mean, I looked in his face and it kind of
18 reminded me of watching Animal Planet and seeing a lion
19 hunt. You see that fierce look in his face and you see
20 he's determined to, you know, make the kill. And it's
21 like, you know, when you see that look in that face, you
22 know, that lion is not coming at you to lick you or to rub
23 up against your leg, you know, it's coming to do damage.

24 Q Okay. Well, let's stop right there. What problems
25 had you ever had with -- tell the Judge about any problems

ALLEN MASSEY - DIRECT

1 you ever had with Demarcus Robinson before that day.

2 A We hadn't had any.

3 Q But you knew him well, didn't you?

4 A I knew him very well.

5 Q What did you know about his reputation?

6 A That he had knocked quite a few people out, you know,
7 and that was the main thing he was known for. I had
8 witnessed that several times myself. There was an
9 incident at a little night club they called Hole In The
10 Wall where he had punched the guy in the face and his fist
11 actually got lodged in the guy's tooth. He broke his hand
12 from how hard he hit the guy.

13 Q And were you aware of his nickname?

14 A Yes, I was.

15 Q And what was his nickname?

16 A Knockout king.

17 Q Did he have any other nicknames?

18 A One hitter quitter.

19 Q Why do you think you and he had hit it off before?

20 A You know, it was just he -- we had never had any
21 problems, you know. I wasn't the type to --

22 Q He's a little bit older than you?

23 A He's four years older than me.

24 Q He didn't have any beef about his cousin going to --

25 MS. COLLINS: I'm going to object to leading, Your

ALLEN MASSEY - DIRECT

1 Honor.

2 THE COURT: Sustained.

3 Q All right. Well, y'all just got along.

4 A Yes, sir.

5 Q Until that night, that morning?

6 A Yes, sir.

7 Q All right. Let's go back to 16th Street one more
8 time. You were carrying a pistol at 16th Street, right?

9 A Yes, sir.

10 Q And did you use that pistol?

11 A No.

12 Q Okay. Why are you carrying a pistol?

13 A Okay. Well, March 23, 2012, I was at the scene of an
14 incident where two people I knew quite well were killed,

15 you know. And one of those victims, Jonathan Reed, I was

16 actually there with him before an ambulance arrived and

17 saw what essentially became his last breaths. But seeing

18 something like that, that was a reminder like that life is

19 short and how quickly and unexpectedly it can be taken

20 away from you. And even though, you know, the police got

21 there rather quickly, by the time they did get there it

22 was already too late, you know. And being from the

23 neighborhood I'm from, it's pretty rough over there, you

24 never know what could happen.

25 Q Well, I mean, what is the -- what do you know about

ALLEN MASSEY - DIRECT

1 other people carrying guns around that neighborhood? Is it
2 common?

3 A Yes.

4 Q And so how long had you been carrying a gun?

5 A Well, after that night, you know, my sister, she --

6 Q Well, that night being what night?

7 A March the 23rd.

8 Q But what incident are you referring to?

9 A When the two guys got killed.

10 Q After that night what --

11 A After that night, my sister, she gave me her gun and
12 I ended up getting arrested with it the next day.

13 Q Okay. And that was for unlawful carrying of a weapon?

14 A Yes.

15 Q All right. But did you have any other incidents where
16 you needed a gun before October 12, 2013 --

17 A No.

18 Q -- to defend yourself?

19 A No.

20 Q You had your gun when you got to City Avenue, didn't
21 you?

22 A Yes.

23 Q Did you look into the eyes of Demarcus Robinson after
24 he hit you?

25 A Yes.

ALLEN MASSEY - DIRECT

1 Q And what did you see?

2 A Well, it just -- okay. It's like for a football

3 player, their ultimate goal is to win the super bowl and

4 ~~you get the trophy and the fans cheer you, your name is~~

5 all on the news and you get recognized as a champion. And

6 being in that moment where everybody is cheering your name

7 and all of that glory of that moment you ultimately -- you

8 want to win the super bowl every year. And it's like that

9 relationship of you giving people what they want and them

10 in turn giving you that adrenaline rush of cheering you

11 on, it makes you, you know, want to continue on in

12 whatever it is. And like with his reputation there were

13 people who applauded it, who looked up to it and admired

14 his ability to knock people out, and it just looked like

15 ~~he saw that as another opportunity to add to that~~

16 reputation.

17 MS. COLLINS: I'm going to object. The defendant is

18 speculating as to the state of mind of the victim.

19 THE COURT: Objection is sustained.

20 Q Okay. Well, I just want to know what you observed

21 about the look on his face.

22 A Bad intentions.

23 Q Do what?

24 A Bad intentions.

25 Q Okay. That's the way you interpreted it?

ALLEN MASSEY - DIRECT

- 1 A Yes.
- 2 Q Now, how did you feel about what might happen to you?
- 3 What did you think was coming?
- 4 ~~A I was about to get beat pretty bad.~~
- 5 Q All right. What did you feel like that beating might
- 6 result in, or did you?
- 7 A Any amount of significant injuries.
- 8 Q Yeah. Did you really have a chance to think much?
- 9 How quick did it happen?
- 10 A It was around like two or three seconds.
- 11 Q All right. Well, so you had a pistol. What did you
- 12 do with it? Where are you at when you pulled your pistol?
- 13 A On the floor.
- 14 Q Okay. Are you sprawled out? Are you -- describe on
- 15 the floor. Are you --
- 16 A I had been knocked on my back but I had just had time
- 17 to sit up a little bit.
- 18 Q Okay. And where -- and where was Mr. Robinson when
- 19 you used your pistol?
- 20 A By the time I shot he was right at my feet.
- 21 Q Where was the pistol at that you were able to pull it
- 22 out?
- 23 A It was in my front pocket.
- 24 Q Of where, your pants?
- 25 A Yes.

ALLEN MASSEY - DIRECT

1 Q Okay. Why did you use that pistol?

2 A Because I just knew that if I didn't, you know, I
3 would basically become a victim. I really didn't feel I
4 had any choice.

5 Q All right. Well, did you actually draw a picture of
6 what your impressions are of the moment when you fired that
7 pistol?

8 A Yes. Actually it was somebody who is very good at
9 drawing, you know. I gave him a diagram of what, you
10 know, his position and my position and, you know, he drew
11 it out for me.

12 Q Well, do you recognize this document?

13 A Yes, that's it.

14 Q Okay. Well, what is that?

15 A The guy standing represents Demarcus and the guy on
16 the floor, that's me.

17 Q Okay.

18 MS. COLLINS: Your Honor, at this time I'm going to
19 object to any reference to that document, that document
20 coming in. I was given that document this morning, that
21 diagram by Mr. Grier who at that time purported that it had
22 been drawn by the defendant. What the defendant has just
23 testified to is he gave some type of sketch or diagram to
24 someone else that was very good at drawing and that person
25 drew the picture. That person isn't here, I assume. If he

ALLEN MASSEY - DIRECT

1 is here we will be able to question him about it, but at
2 this time that will be hearsay as prepared by another
3 person.

4 ~~THE COURT: Mr. Grier?~~

5 MR. GRIER: Judge, I mean, he can observe a photograph
6 of anything and testify as to whether that's an accurate
7 depiction in his recollection of an event.

8 THE COURT: Over the State's objection I will allow
9 it.

10 MR. GRIER: I would offer it as Defense Exhibit Number
11 1.

12 THE COURT: For purposes of this hearing Defendant's
13 Exhibit 1 over State's objection.

14 (The drawing was received as Defense 1.)

15 Q Okay. Mr. Massey, is there anything in this picture,
16 this drawing, that you believe to be inaccurate?

17 A No, it's pretty accurate, you know. He was a little
18 bit closer and more bent over, but it was just meant to
19 show, okay, well this is where he was at and this is where
20 I was at.

21 Q Okay. All right. How many shots did you fire?

22 A One.

23 Q What did he do? What did Demarcus do?

24 A He stopped and then he just fell.

25 Q Okay. How did he fall, forward, backward, sideways?

ALLEN MASSEY - DIRECT

1 A Just straight down kind of forward.

2 Q How long did you remain on the floor?

3 A For about another two or three seconds.

4 Q Do you recall anybody assisting you?

5 A No.

6 Q All right. When that happened, when the shooting
7 happened, who was in that room?

8 A Sindarous was, McGriff, Navoney was.

9 Q Say the last name too, please.

10 A Navoney Curry.

11 Q Okay. And Sindarous is who?

12 A Sindarous Wells.

13 Q Did you mention somebody else already, Thomas McGriff?

14 A Thomas McGriff.

15 Q Okay. Those three. Who else?

16 A Malika Harris. Shonettia had just walked off right
17 before, and Ebonie had left a couple of minute before.

18 Q Had left the party or the room?

19 A The room, the house.

20 Q Okay. Did you say Malika Harris was in there?

21 A Yes.

22 Q All right. When you -- what did you do next?

23 A After I got up I just -- I ran. But, you know, out
24 of my 28 years that was the single most hardest decision I
25 ever had to make, because I truly considered him a friend.

ALLEN MASSEY - DIRECT

1 It was somebody who I had laughed with, joked with and had
2 many memories with, but it didn't make that decision any
3 less necessary. Because when you see instances of a
4 ~~police officer having to shoot someone and that person end~~
5 up dying, they don't seem happy or proud about it, it
6 hurts them. It stresses them out probably more than
7 anybody.

8 Q Okay. All right. Well, talk about the facts here,
9 Mr. Massey.

10 A Okay. Well --

11 Q Everybody -- how do you feel about it now?

12 A I feel bad about it.

13 Q All right. Where did you go?

14 A I ran towards Elm Street and that's when I called his
15 brother.

16 Q Who is his brother?

17 A Tony Robinson.

18 Q What did you tell his brother?

19 A I told him that I hated what had just happened and
20 especially how it happened, you know, because I never
21 expected anything like that to take place. But I still
22 felt like I didn't have any choice.

23 Q Do you know what the situation is with Demarcus at
24 that time, whether he's -- whether he's going to survive or
25 not?

ALLEN MASSEY - DIRECT

1 A No.

2 Q Okay. Well, how soon after the shooting was your
3 conversation with Tony Robinson?

4 A About three or four minutes.

5 Q Then where did you go? What did you do?

6 A I called somebody up to come pick me up, and I was
7 headed to Pageland.

8 Q To Pageland?

9 A Yes.

10 Q What's up with Pageland?

11 A You know, I kind of figured that the truth would have
12 been told about the incident, because I feel like if the
13 truth had been told in the beginning that things wouldn't
14 have come this far. But I did that because I know it

15 would be easy to say, if things happened like that why
16 didn't you just turn yourself in? But in some circles the
17 Lancaster Police Department doesn't have the best
18 reputation as some people see them as like, okay, well --

19 MS. COLLINS: Object to what other people think.

20 THE COURT: Objection is sustained. Go ahead, Mr.
21 Grier.

22 Q Well, at any rate, why didn't you turn yourself in
23 right there on the spot, you know?

24 A Because I wanted to -- I figured the truth would be
25 told about the situation and I felt that if I turned

ALLEN MASSEY - DIRECT

1 myself in right then that maybe it would be looked at, you
2 know, through everybody's perspective as just being
3 another black on black crime and looked at as another
4 opportunity to get, you know, another common thug off the
5 streets.

6 Q Okay. Well, are you a common thug?

7 A No.

8 Q Are you a thug at all?

9 A No.

10 Q Have you ever been in a situation where you used force
11 before?

12 A No.

13 Q Have you been in any fights before?

14 A A couple.

15 Q Who started the fights you were in?

16 A The other party.

17 Q Okay. Okay. Well, you talked to your family, didn't
18 you, after that at some point?

19 A Yes.

20 Q All right. Tell me about that. How about your -- who
21 did you contact next?

22 A I called my sister then.

23 Q What did she tell you? Well, excuse me, don't answer
24 that question, I'm asking you for hearsay. Well, as a
25 result of that conversation, did you do anything with the

ALLEN MASSEY - DIRECT

1 conversation with your sister?

2 A Not at the moment.

3 Q Okay. All right. Ultimately you -- in fact, the next

4 day, the 13th, did you turn yourself in?

5 A Yes.

6 Q How did that come about? Who did you go with?

7 A Say that again.

8 Q Who did you turn yourself in with? Who went with you

9 to turn yourself in?

10 A My mother and two of my sisters.

11 Q All right. Okay. Was the gun recovered?

12 A Yes.

13 Q As the result of what? How did they get the gun?

14 A Went and picked it up.

15 Q Pardon me?

16 A Went and picked it up.

17 Q They went and picked it up?

18 A Yes.

19 Q How did they find out where it was at?

20 A I told them where it was.

21 Q Was that all right there at the time you got arrested?

22 A Yes.

23 Q Okay. And you gave a statement to the police?

24 A Yes.

25 Q When did you get that statement?

ALLEN MASSEY - DIRECT

- 1 A The day I turned myself in.
- 2 Q You gave one statement; is that correct?
- 3 A Yes.
- 4 Q ~~And a couple of things that I need to backtrack on and~~
- 5 ask you about inside the -- well, did you get any treatment
- 6 for -- any medical treatment for whatever when you got hit?
- 7 Did you get any medical treatment for that?
- 8 A No.
- 9 Q What happened as a result of that hit to you
- 10 physically?
- 11 A Busted up face.
- 12 Q Okay. Well, the whole face?
- 13 A No, just my lips.
- 14 Q How about your teeth, everything all right with that?
- 15 A Yes.
- 16 Q Okay. Did you have any other injuries from when you
- 17 fell or anything?
- 18 A No.
- 19 Q Did you ever -- Demarcus Robinson, did you ever strike
- 20 him?
- 21 A No.
- 22 Q Mr. Curry, let's go back and talk about Mr. Curry for
- 23 a minute. Did y'all have plans for after the City Avenue
- 24 party, in fact?
- 25 A Yes.

ALLEN MASSEY - DIRECT

1 Q And what were those plans?

2 A His cousin, Jamar, that's a good friend of mine, he
3 was planning on going to his house. And I told him that
4 ~~when he left that I would be ready whenever he was.~~

5 Q Okay. But you were waiting to play cards.

6 A Yes.

7 MR. GRIER: All right. All right, Mr. Massey. Answer
8 any questions that Ms. Collins might have, Solicitor
9 Collins might have for you.

10 THE COURT: Cross examination?

11 MS. COLLINS: May it please the Court?

12 THE COURT: Yes, ma'am.

13 CROSS EXAMINATION /

14 BY MS. COLLINS:

15 Q ~~Mr. Massey,~~ do you have a concealed weapons permit to
16 carry a gun, a concealed weapon on your person in South
17 Carolina?

18 A No.

19 Q You've never had a concealed weapons permit to carry a
20 gun in South Carolina concealed on your person; is that
21 correct?

22 A Yes.

23 Q You stated that previously you started carrying a gun
24 on March 23, 2012 because you were at an incident where two
25 people were shot; is that right?

ALLEN MASSEY - CROSS

- 1 A Yes.
- 2 Q And you said that that had quite an impact on you,
3 right?
- 4 A Yes.
- 5 Q It had such an impact on you that you remember the
6 date exactly; is that right?
- 7 A Yes.
- 8 Q And you testified that after that incident your sister
9 gave you a gun and you were caught with it on your person
10 the next day; is that right?
- 11 A Yes.
- 12 Q And you were charged; is that right?
- 13 A Yes.
- 14 Q You were charged for that incident with unlawful
15 carrying of a weapon; is that right?
- 16 A Yes.
- 17 Q And, in fact, you pled guilty to that; is that right?
- 18 A Yes.
- 19 Q And so you knew at that point it's against the law,
20 right?
- 21 A Yes.
- 22 Q And again, you said that's when you started carrying a
23 weapon and you remember that date because you saw those
24 people die, March 23 of 2012, right?
- 25 A Yes.

ALLEN MASSEY - CROSS

1 Q And you said that's when you started carrying a
2 weapon, right?

3 A Yes.

4 ~~Q Well, Mr. Massey, isn't it true that you had another~~
5 conviction for unlawful carrying of a weapon, and that that
6 was in a 2011 incident?

7 A Yes.

8 Q So that was before the March 23rd of 2012 incident you
9 said that started you carrying a pistol, right?

10 A Yes.

11 Q 2011 is before 2012, right?

12 A Yes.

13 Q And that in 2011 you appeared in this court before
14 Judge Goldsmith and pled guilty to unlawful carrying of a
15 ~~pistol, right?~~

16 A I paid a fine for that.

17 Q You paid the fine, but you were convicted, you pled
18 guilty to that, correct?

19 A I don't remember any convictions, I just remember
20 paying a fine.

21 Q You don't remember a conviction? You don't remember
22 signing a plea sheet saying you were pleading guilty to
23 that in 2011, you don't remember that?

24 MS. COLLINS: I ask that be marked as State's Exhibit
25 1, please.

ALLEN MASSEY - CROSS

1 Q Mr. Massey, I show you what's been marked as State's
2 Exhibit 1 for identification, a sentence sheet for
3 indictment 2011-GS-29-754. And I ask you, is that your
4 signature there?

5 A Yes.

6 Q Do you remember signing that?

7 A Yes.

8 Q Do you remember going in front of a judge now in 2011
9 for unlawful carrying of a pistol?

10 A Yes.

11 MS. COLLINS: I would move that into evidence as
12 State's Exhibit 1, Judge, for the purpose of this hearing
13 only.

14 THE COURT: Any objection, Mr. Grier?

15 MR. GRIER: No, Your Honor.

16 THE COURT: Without objection, State's Exhibit Number
17 1 admitted into evidence. You may continue, Ms. Collins.

18 (The sentence sheet was received as State's 1.)

19 Q So in 2011 you knew it was against the law to carry a
20 pistol on your person, correct?

21 A Yes.

22 Q And in 2012, which you've have already shared with us
23 from the March 24th of 2012 incident, you still knew it was
24 against the law, right?

25 A Yes.

ALLEN MASSEY - CROSS

1 Q And you pled to that charge as well, correct?

2 A Yes.

3 MS. COLLINS: Ask this be marked as State's 2 for the
4 purpose of this hearing only.

5 MR. GRIER: Without objection.

6 THE COURT: Admitted.

7 MS. COLLINS: I would move this into evidence at this
8 time.

9 THE COURT: All right.

10 Q I show you what's been marked as State's Exhibit 2.
11 Is that your signature there on the sentence sheet for
12 2012-GS-24-667?

13 A Yes.

14 Q You signed a sentence sheet saying you're pleading
15 guilty to unlawful carrying of a pistol, correct?

16 A Yes.

17 Q And that was for the incident date as you have
18 indicated, the day after the killing, which was March 24th
19 of 2012, right?

20 A Yes.

21 MS. COLLINS: And I believe it's in evidence. But
22 again, I would move that into evidence as well.

23 THE COURT: So admitted without objection.

24 (The sentence sheet was received as State's 2.)

25 Q So in 2012 when you this happened you knew it was

ALLEN MASSEY - CROSS

1 still against the law, correct?

2 A Yes.

3 Q And yet on the date at issue before the Court today on

4 ~~October 12th of 2013, the early morning hours, you still~~

5 carried a pistol on your person, correct?

6 A Yes.

7 Q You had it in your left front pocket, right?

8 A Yes.

9 Q Your left front pants pocket, right?

10 A Yes.

11 Q Because you're left-handed, right?

12 A Yes.

13 Q And when you used your pistol you used it with your

14 left hand, correct?

15 A Yes.

16 Q So backing up to the first party on 16th Street, you

17 said there were about 100 people there; is that right?

18 A Yes.

19 Q And you made a decision that night to go to that

20 party, correct?

21 A Yes.

22 Q You're an adult, right?

23 A Yes.

24 Q You're not a child, right?

25 A Yes.

ALLEN MASSEY - CROSS

1 Q You could have stayed home that night, right?

2 A Yes.

3 Q If you're really worried about the conditions of the
4 streets of Lancaster, you could have stayed home, right?

5 A Yes.

6 Q Safe, right?

7 A Yes.

8 Q Behind closed doors, right?

9 A Yes.

10 Q But you made a decision to go out and see your
11 friends, right?

12 A My relatives, yes.

13 Q You made a decision to go to the party on 16th Street,
14 correct?

15 A Yes.

16 Q And before you walked out of your door -- by the way,
17 you lived on Elm Street, correct?

18 A Yes.

19 Q You lived with your mom?

20 A Yes.

21 Q Before you walked out of your mom's house that day you
22 made another decision, and that decision was to put that
23 gun in your pocket, right?

24 A Yes.

25 Q And the gun was loaded, right?

ALLEN MASSEY - CROSS

1 A Yes.

2 Q The gun was loaded not with just one bullet but five
3 bullets, right?

4 A Yes.

5 Q And you knew it was loaded, right?

6 A Yes.

7 Q And you made that decision to go out of the house on
8 Elm Street with that gun in your pocket as you stated,
9 right?

10 A Yes.

11 Q Did you walk to the party on 16th Street?

12 A Yes.

13 Q How long did that take you?

14 A Around ten minutes.

15 Q So for ten minutes as you are walking on the streets
16 of Lancaster County to the party on 16th Street, at any
17 time you could have stopped and gone back home, right?

18 A Yes.

19 Q If you were afraid you could have stopped and gone
20 back home, right?

21 A Yes.

22 Q Nothing stopped you, right?

23 A Yes.

24 Q And the reality was you were not afraid at that time,
25 right?

ALLEN MASSEY - CROSS

1 A Yes.

2 Q You weren't afraid because you had a gun in your
3 pocket, right?

4 A ~~No, I wouldn't say I was afraid. I had it just in~~
5 case something happened.

6 Q Didn't you tell your attorney that the streets are
7 rough in Lancaster, South Carolina?

8 A Yes.

9 Q Didn't you tell your attorney that it's a rough
10 neighborhood where you are and where you go?

11 A Yes.

12 Q And are you telling the Court that you didn't have the
13 gun in your pocket because you were afraid, just in case
14 something happened; is that right?

15 A ~~Can you say that again?~~

16 Q Are you telling the Court that you didn't have that
17 gun in your pocket because you were afraid, is that what
18 you're saying? You didn't have the gun in your pocket
19 because you were afraid, is that what you're saying?

20 A No. I was saying I was afraid of what could happen.

21 Q You were afraid of what could happen. What could
22 happen from your house on Elm Street to the party at 16th
23 Street, you were afraid that, right?

24 A Yes.

25 Q But not to the point you stayed home, right?

ALLEN MASSEY - CROSS

- 1 A Yes.
- 2 Q And then you get to the party and you said there were
3 about 100 people there, right?
- 4 A Yes.
- 5 Q And you had that gun in your pocket, right?
- 6 A Yes.
- 7 Q The loaded gun in your pocket, right?
- 8 A Yes.
- 9 Q And it was at that party that you saw Rashawd
10 Robinson; is that right?
- 11 A Yes.
- 12 Q But you said you had been there awhile, correct?
- 13 A Yes.
- 14 Q And you said later you see Rashawd and he's outside,
15 right?
- 16 A Yes.
- 17 Q And you knew Rashawd before this, right?
- 18 A Yes.
- 19 Q In fact, you knew Rashawd because he and you had been
20 charged with a 2008 incident involving a robbery where
21 someone got shot, right?
- 22 A Yes.
- 23 Q And you said you were the driver; is that correct?
- 24 A Yes.
- 25 Q And you said you cooperated with law enforcement,

ALLEN MASSEY - CROSS

1 right?

2 A Yes.

3 Q You said you gave them a statement, right?

4 A Yes.

5 Q And you said ultimately that Rashawd went to prison,
6 correct?

7 A Yes.

8 Q You said people went to prison as a result of that; is
9 that right?

10 A It was just him.

11 Q Just him. Okay. You don't remember telling Mr., Grier
12 people went to prison? Just him, is that it?

13 A Just him.

14 Q Okay. And he went to prison not for one year, right?

15 A Yes.

16 Q Not for two years, right?

17 A Yes.

18 Q But for eight years, right?

19 A It was two and a half.

20 Q Okay. I thought you said he got an eight year
21 sentence.

22 A No.

23 Q He went for two and a half years, is that your
24 testimony?

25 A Yes.

ALLEN MASSEY - CROSS

1 Q Was this the first time you'd seen Rashawd out on the
2 streets since he got out of prison?

3 A No.

4 Q So you'd seen him before, right?

5 A Yes.

6 Q But you said on this occasion -- and was this by this
7 time the early morning hours of October 12th of 2013?

8 A Yes.

9 Q I think your testimony was earlier that you went to
10 the party on 16th Street at 11:00 p.m. is that right?

11 A Yes.

12 Q So you walked there in the dark, right?

13 A Yes.

14 Q And you got there about 11:00, right?

15 A Yes.

16 Q And I think you said you stayed there until about 3:00
17 a.m., right?

18 A Yes.

19 Q And you said that shortly before you left is when
20 Rashawd had this encounter with you, correct?

21 A Yes.

22 Q And you said that Rashawd hit you, right?

23 A Yes.

24 Q In fact, you said that Rashawd punched you, right?

25 A Yes.

ALLEN MASSEY - CROSS

1 Q You said he punched you in your face, right?

2 A Yes.

3 Q How many times did he punch you?

4 A Twice.

5 Q You said although he punched you twice, this man that
6 you sent to prison, you say it didn't phase you, right?

7 A Yes.

8 Q You said that it didn't knock you down, right?

9 A Yes.

10 Q And you say that several people intervened, right?

11 A Yes.

12 Q And I imagine you were very glad to see those people
13 intervene, am I right?

14 A Yes.

15 Q Who are they?

16 A I named the main one in particular, his name was
17 Robert Ridley. And people tried to contact him to see if
18 he would make a statement about that but he didn't want to
19 give them.

20 MS. COLLINS: I will object to hearsay and ask that
21 Your Honor disregard that as to what him saying he didn't
22 want to get involved.

23 Q But your attorney has --

24 MR. GRIER: Judge, it was responsive to the question.

25 THE COURT: Restate your question, Ms. Collins. What

ALLEN MASSEY - CROSS

1 was your question?

2 MS. COLLINS: I'll rephrase it.

3 Q Did you ask your attorney to subpoena Robert to come
4 today?

5 A No.

6 Q You know your attorney has the power to subpoena
7 people, right?

8 A Yes.

9 Q You know that. And you told your attorney just now
10 that you didn't retaliate to Rashawd because you felt that
11 his actions were justified; is that right?

12 A No. I didn't feel his actions were justified, I felt
13 bad because of what happened.

14 Q Was it -- I think you said three reasons. You said
15 because people were intervening; is that right?

16 A Yes.

17 Q You said because "I really didn't get knocked down or
18 dazed," right?

19 A Yes.

20 Q And then you said, "And I felt bad because he served
21 prison time," right?

22 A Yes.

23 Q And you say, "I told him afterwards that maybe I did
24 deserve that;" is that right?

25 A Yes.

ALLEN MASSEY - CROSS

1 Q When did you tell Rashawd that?

2 A After people had broken up and stepped in between.

3 Q So right then, right then at the party.

4 A Yes.

5 Q Okay. And when your attorney asked you about your
6 relationship with Rashawd you said it was rocky, right?

7 A Yes.

8 Q You said it was rocky because of that incident, right?

9 A Yes.

10 Q And when your attorney asked you just now if you'd
11 done something wrong regarding that incident you said "In
12 his eyes." Do you remember saying that?

13 A Yes.

14 Q You were talking about in Rashawd's eyes, right?

15 A Yes.

16 Q And I believe you testified that the whole incident
17 involved a robbery where someone got shot, right?

18 A Yes.

19 Q You weren't the shooter, right?

20 A No.

21 Q But you were the driver, right?

22 A Yes.

23 Q You were involved in that, right?

24 A Yes.

25 Q And you're saying "I did something wrong in his eyes,"

ALLEN MASSEY - CROSS

- 1 in Rashawd's eyes by snitching.
- 2 A Yes.
- 3 Q So as to a prior bad act you're not saying you did
- 4 anything wrong with being the driver involved in a robbery
- 5 where someone got shot, you're not saying that.
- 6 A No, I'm not saying that.
- 7 Q You don't feel that way.
- 8 A Yeah, it was wrong.
- 9 Q It was wrong. At the time that Rashawd hit you,
- 10 punched you two times in the face by your testimony, you
- 11 had a loaded gun in your pocket, right?
- 12 A Yes.
- 13 Q The same loaded gun that later you pulled out of your
- 14 pocket and shot at Marcus Robinson with, right?
- 15 A Yes.
- 16 Q But at that time you didn't pull out the gun, right?
- 17 When Rashawd was hitting you, you didn't pull out the gun,
- 18 right?
- 19 A Yes.
- 20 Q You didn't even show him you had a gun, did you?
- 21 A No.
- 22 Q You didn't even pat your pocket and tell people, "Hey,
- 23 I've got a gun," did you?
- 24 A No.
- 25 Q That was your secret at that point, right? Nobody

ALLEN MASSEY - CROSS

1 knew you had a gun in your pocket but you at that point,
2 right?

3 A Yes.

4 Q ~~It was your secret at that point, right? You had it~~
5 just in case, right?

6 A Yes.

7 Q But you did say, "I felt like I should leave the party
8 at 16th Street at that time," right?

9 A Yes.

10 Q I think you testified, "I felt like I should leave
11 while I still could," right?

12 A Yes.

13 Q That "I had to get away from the situation," right?

14 A Yes.

15 Q ~~And you said you headed home, right?~~

16 A Yes.

17 Q And you were walking home, right?

18 A Yes.

19 Q You were walking in the dark, right?

20 A Yes.

21 Q You were walking alone in the dark?

22 A Yes.

23 Q Along these streets of the rough neighborhoods that
24 you described you live in and walk in, right?

25 A Yes.

ALLEN MASSEY - CROSS

1 Q Had you continued on home, how long would it take you
2 to walk from the party on 16th Street to your home on Elm
3 Street had you continued on home that night?

4 A Probably around 10 minutes.

5 Q And you said you left that party about 3:00, right?

6 A Yes, around 3:30.

7 Q You say you left it about 3:30?

8 A Yes.

9 Q So now you're saying you left the party at 16th Street
10 about 3:30?

11 A Yes.

12 Q How long did it take you to walk in the dark from the
13 party on 16th Street to where Malika and Shonettia were
14 living at [REDACTED] City Avenue?

15 A Around six or seven minutes.

16 Q Was that on your way home?

17 A Yes.

18 Q And as you passed by you saw there were numerous cars
19 there, right?

20 A Yes.

21 Q Now, you were a little shaken about what had happened
22 with Rashawd; is that right?

23 A Yes.

24 Q Certainly wasn't a comfortable moment in the evening,
25 right?

ALLEN MASSEY - CROSS

1 A Yes.

2 Q So when you see the cars at [REDACTED] City Avenue where your
3 cousin Malika lives, you decided to go on in there and not
4 to go on home, right?

5 A Yes.

6 Q You felt, I believe by your testimony, welcome there,
7 correct?

8 A Yes.

9 Q You had testified you had come to learn that you were
10 Malika's cousin, right?

11 A Yes.

12 Q And you testified that you had previously been at the
13 house that Malika's and Shonettia Hunter, her female
14 companion lived at, on Elm Street.

15 A Yes, [REDACTED] Elm Street.

16 Q And you say that you had gone there and hung out two
17 or three times a week while they were on Elm Street, right?

18 A Yes.

19 Q And I believe you testified that they had moved from
20 the Elm Street address to the [REDACTED] City Avenue I think you
21 said about two or three months before this incident with
22 Marcus; is that right?

23 A Yes.

24 Q And is it your testimony today under oath that since
25 they had moved to City Avenue, that you continued to go

ALLEN MASSEY - CROSS

1 over to the home of Malika Harris and Shonettia Hunter on
2 City Avenue two to three times a week?

3 A Yes.

4 Q Without fail.

5 A Yes.

6 Q And you were comfortable.

7 A Yes.

8 Q You were comfortable with going over there, right?

9 A Yes.

10 Q And when you went over, would you knock on the door?

11 A Yes.

12 Q Every time?

13 A Yes.

14 Q And when you went over there and you knocked on the

15 door, did you wait for someone to come to the door?

16 A Yes.

17 Q Every time?

18 A Yes.

19 Q So on this event, October 12, 2013, this was now as
20 you said -- you left 16th Street about 3:30 in the morning
21 on October 12th of 2013, right?

22 A Yes.

23 Q And you still had the gun in your pocket, right?

24 A Yes.

25 Q It was still loaded, right?

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1 A Yes.

2 Q Loaded with five rounds, right?

3 A Yes.

4 Q You hadn't shot it at that point, right?

5 A Yes.

6 Q And you knew you had it in your pocket, right?

7 A Yes.

8 Q And no one else knew you had it in your pocket at that
9 point, right?

10 A Yes.

11 Q And you went up to the home of Malika Harris, your
12 cousin, on City Avenue, right?

13 A Yes.

14 Q And the home of Shonettia Hunter, right?

15 A Yes.

16 Q And you walked up on the porch, right?

17 A Yes.

18 Q And it was dark, right?

19 A Yes.

20 Q And you went up to the door and you saw that the
21 wooden door was open; is that right?

22 A Yes.

23 Q But the screen door or the storm door was closed,
24 correct?

25 A Yes.

ALLEN MASSEY - CROSS

1 Q It was your testimony earlier that you knocked on the
2 door, right?

3 A Yes.

4 Q Now, they were playing music you say? Was there some
5 music playing? I know they were doing the rap and we'll
6 talk about that in a minute, but were they playing some
7 music?

8 A No.

9 Q So it was -- would you say it was loud with the people
10 that you've already said were there, or was it relatively
11 quiet on the porch?

12 A It wasn't quiet but it wasn't loud to the point where
13 they didn't hear me knock.

14 Q Was there anyone on the porch at that point?

15 A No.

16 Q And you said you knocked and Malika did not come to
17 the door, right?

18 A Right.

19 Q And Shonettia did not come to the door, right?

20 A Right.

21 Q You said a lady you knew named Alicia came to the
22 door, right?

23 A Yes.

24 Q Alicia who?

25 A Stratford.

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1 Q And Alicia Stratford did not live there at City
2 Avenue, right?

3 A Right.

4 Q And you knew she didn't live there, right?

5 A Right.

6 Q Because you had been over there two or three times,
7 right?

8 A Right.

9 Q Because you had been over there two or three times
10 every week since they had moved there, right?

11 A Right.

12 Q So you knew who lived there was Malika, your cousin,
13 right?

14 A Yes.

15 Q Shonettia, her female companion, right?

16 A Yes.

17 Q And they had some children that lived there too,
18 right?

19 A Yes.

20 Q They had more than one child, right?

21 A Yes.

22 Q And you knew that, right?

23 A Yes.

24 Q When you crossed that threshold, when Alicia opened
25 the door, did you say to Alicia, "By the way, can I come

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- 1 in?"
- 2 A I knocked and she opened the door for me.
- 3 Q And so you entered.
- 4 A Yes.
- 5 Q Did you say to Alicia, "Are the kids around?" Did you
- 6 ask?
- 7 A No.
- 8 Q Did you say to Alicia, "I've got a gun in my pocket,
- 9 and by the way it's loaded, do you think anybody would
- 10 mind?" Did you think to ask her that?
- 11 A No.
- 12 Q You didn't tell her you had a gun, did you?
- 13 A No.
- 14 Q And you entered on into the house. And you've
- 15 described there was a hallway and then the living room and
- 16 then the kitchen in the back, right?
- 17 A Yes.
- 18 Q Did you walk through the living room?
- 19 A Yes.
- 20 Q Anybody in the living room?
- 21 A No.
- 22 Q Nobody at all?
- 23 A No.
- 24 Q Went on back to the kitchen, right?
- 25 A Yes.

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1 Q And you said they were playing cards; is that right?

2 A Yes.

3 Q Were they playing spades?

4 A Yes.

5 Q How long does it take to play a hand of spades?

6 A It can end in two minutes or it can take 20 minutes.

7 Q Just depends on the hands and how fast people play?

8 A Yes.

9 Q How many people can play that? Four?

10 A Four.

11 Q And who were playing at that point, do you remember?

12 A The couple of people I didn't know, they were
13 playing, and Alicia was playing at that point.

14 Q Okay. So Alicia was playing but she had answered the
15 door, right?

16 A Yes.

17 Q So did they go back to a hand that was already playing
18 or did they start a new hand as soon as she walked back
19 there with you?

20 A They went back to playing as soon as she walked back.

21 Q Okay. Who else was playing with Alicia, the card
22 game?

23 A I don't know the names of people.

24 Q Don't remember? But it was full you couldn't
25 immediately say, "Hey, if you need somebody I will sit down

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- 1 and play this hand." It was a full game, right?
- 2 A Yes.
- 3 Q And you said they were doing things like making raps
- 4 with their hands and people would kind of rap along with
- 5 words to that beat; is that right?
- 6 A Yes.
- 7 Q And they were doing that at that time, right?
- 8 A Yes.
- 9 Q Did you immediately see your cousin, Malika?
- 10 A Yes. She handed me a beer as soon as I came in.
- 11 Q Handed you a beer. Was very nice to you, right?
- 12 A Yes.
- 13 Q Let's talk about beer. What had you had to drink
- 14 earlier that day?
- 15 A Couple of beers, you know. I had been drinking at
- 16 the party before.
- 17 Q You had been drinking at the party on 16th Street?
- 18 A Yes.
- 19 Q How many beers had you had there?
- 20 A Around six or seven.
- 21 Q Around six or seven. What kind of beers do you drink?
- 22 A Bud Light.
- 23 Q So you were drinking out of the can or the bottle?
- 24 A Can.
- 25 Q So you had the big cans or regular sized cans?

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1 A No, 12-ounce cans.

2 Q So you had six or seven at 16th Street?

3 A Yes.

4 Q And then you get there and Malika hands you a beer,
5 right?

6 A Yes.

7 Q Was it in a can, too?

8 A Yes.

9 Q Was it a Bud Light, too?

10 A Yes.

11 Q And did you drink it?

12 A I had started to.

13 Q Didn't finish it..

14 A No.

15 Q How about before you went to the party on 16th Street,
16 did you have any beer before you went out for the evening?

17 A What do you mean, before I left?

18 Q Before you left your home on Elm Street to go to the
19 party on 16th Street, did you have any beer?

20 A No.

21 Q Did you have any liquor?

22 A No.

23 Q Did you have any drugs?

24 A No.

25 Q Did you have any prescription drugs?

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- 1 A No.
- 2 Q Did you have any illegal drugs?
- 3 A No.
- 4 Q Didn't have anything other than -- did you eat?
- 5 A Yeah, I ate.
- 6 Q And then you walked to the party at 16th Street and
- 7 you said you had six or seven beers, right?
- 8 A Yes.
- 9 Q Did you have any drugs at 16th Street?
- 10 A No.
- 11 Q Any prescription drugs?
- 12 A No.
- 13 Q Any illegal drugs?
- 14 A No.
- 15 Q Nothing at all?
- 16 A No.
- 17 Q People doing drugs over there?
- 18 A Yeah, they were.
- 19 Q You saw some drugs going on over there?
- 20 A Yeah, people smoking weed.
- 21 Q They were smoking weed, right?
- 22 A Yes.
- 23 Q Marijuana, right?
- 24 A Yes.
- 25 Q Were you in the area of people smoking weed?

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1 A No.

2 Q So when you get to City Avenue Malika hands you a
3 beer, right?

4 A Yes.

5 Q And did you say to Malika, "Malika, where are the
6 kids?" Did you ask her?

7 A No.

8 Q So you didn't know if the children were there in the
9 house in bed or there at all, right?

10 A Yes.

11 Q That's correct. You did not know; is that correct?

12 A I didn't.

13 Q You did not. And did you say to Malika, your cousin
14 whose home this was, did you say, "Malika, I've got a gun
15 in my pocket," did you tell her that?

16 A No.

17 Q Did you say, "Malika, I've got a gun in my pocket and
18 it's loaded," did you tell her that?

19 A No.

20 Q Did you say, "Malika, I've got a gun in my pocket. If
21 that's not okay I'll just leave it outside." Did you tell
22 her that?

23 A No.

24 Q Shonettia Hunter who also lived in that home, did you
25 see Shonettia at that point?

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- 1 A Yeah.
- 2 Q Did you walk over to Shonettia and say, "Shonettia,
3 I've got a gun in my pocket?"
- 4 A No.
- 5 Q Did you tell Shonettia, "I've got a gun in my pocket,
6 and by the way, it's loaded?"
- 7 A No.
- 8 Q Did you say "Shonettia, where are the kids? Because
9 I'm a little worried because I've got a loaded firearm."
10 Did you?
- 11 A No.
- 12 Q Did you tell anybody there at that home in City
13 Avenue, the home of Malika Harris and Shonettia Hunter,
14 that you had a firearm, whether loaded or unloaded, in
15 your pocket at that time?
- 16 A No.
- 17 Q No one knew that but you; is that right?
- 18 A Yes.
- 19 Q At that moment that was your secret, am I right?
20 Nobody knew it, right?
- 21 A Yes.
- 22 Q Nobody knew it but you, right?
- 23 A Yes.
- 24 Q And nobody knew it but you because you didn't tell
25 anybody at that point, am I right?

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1 A Yes.

2 Q So you've testified as to what transpired. You said,

3 "I came in, I spoke to everyone there;" is that right?

4 A Yes.

5 Q Let's talk about what you mean when you say you spoke

6 to everybody. Do you mean you had a lengthy conversation

7 with them or do you mean basically I said "Hey, how are you

8 doing?"

9 A I said hey and shook hands with everybody.

10 Q I've learned a phrase since working on this case and

11 don't understand if I'm saying it right, it's kind of like

12 dep or dapy. Do you know what that is?

13 A Yes.

14 Q Is that where you kind of go like this?

15 A Yes.

16 Q So is that basically what you did to say hey to

17 people, touched their hand lightly?

18 A Yes.

19 Q Not a high five and not a formal handshake, just kind

20 of how are you doing, right?

21 A Right.

22 Q And you did that with everybody there, right?

23 A Right.

24 Q You did that with your left hand?

25 A My right hand.

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1 Q With your right hand. But you are left-handed, right?

2 A Yes. You know, it's -- people see it as a sign of I

3 guess disrespect or whatever to do it with their left

4 hand.

5 Q Sure. So anyway, you're used to doing it with your

6 right hand, right?

7 A Yes.

8 Q You were comfortable there, right?

9 A Yes.

10 Q As far as you knew everybody was comfortable with each

11 other there, right?

12 A Yes.

13 Q You were doing -- is it dap or dep?

14 A Dap.

15 Q Dap. With your right hand, right?

16 A Yes.

17 Q But the gun was still in your left-hand pocket and you

18 are left-handed, right?

19 A Yes.

20 Q Is that correct I should say --

21 A Yes.

22 Q -- instead of right or left. And you said at some

23 point I spoke with Shonettia, right?

24 A Yes.

25 Q You said, "I want to play cards," right?

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1 A Yes.

2 Q You asked -- you said you spoke with Navoney, right?

3 A Yes.

4 ~~Q Found out he was going to Jamar's later, right?~~

5 A Yes.

6 Q Found out he was driving to Jamar's later, right?

7 A Yes.

8 Q So you talked to Navoney about, "Hey, I will catch a
9 ride with you to Jamar's;" is that right?

10 A Yes.

11 Q And you said then you spoke with Marcus, right?

12 A Yes.

13 Q You said you'd been there about ten or 15 minutes at
14 that point; is that right?

15 A Yes.

16 Q You said you told Marcus what had happened at 16th
17 Street, right?

18 A Yes.

19 Q Because you wanted Marcus to know about it, right?

20 A Yes.

21 Q And you said you wanted Marcus to know you were cool
22 about it, right?

23 A Yes.

24 Q That it didn't really hurt you, right?

25 A Yes.

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- 1 Q And you were friends with Marcus, right?
- 2 A Yes.
- 3 Q Y'all had hung out together before this night, right?
- 4 A Yes.
- 5 Q Y'all had hung out together on numerous occasions
- 6 before this night, right?
- 7 A Yes.
- 8 Q You said just the day before you had seen him and gave
- 9 him a cigarette, right?
- 10 A Yeah, the day of.
- 11 Q The day of, earlier that day. So you considered
- 12 Marcus a friend, right?
- 13 A Yes.
- 14 Q You were never afraid of Marcus before, right? You
- 15 were never afraid of Marcus --
- 16 A I never had a reason to be, but I was wary of what he
- 17 could do and what he was capable of.
- 18 Q Do you remember giving a statement to the police? Do
- 19 you remember talking to law enforcement after you turned
- 20 yourself in?
- 21 A Yes.
- 22 Q Did you ever tell them you were wary of Marcus and
- 23 what he could do?
- 24 A I told him he had a reputation to fight people.
- 25 Q Did you tell them that Marcus was known as the

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1 knockout king?

2 A I didn't say that specifically.

3 Q Did you tell them that Marcus is known as the knockout

4 king and "I was there one time when he hit somebody and

5 knocked them out?" Did you tell the police that?

6 A I didn't mention that.

7 Q And you didn't tell the police that because at that

8 point when you were telling them what happened at the

9 party, that wasn't important to you and what you were

10 telling the police about, was it?

11 A I just didn't think to mention it.

12 Q Didn't think to mention it, right?

13 A Yes.

14 Q Because at that time you didn't have an attorney, did

15 you?

16 A Right.

17 Q And at that time you had waived your right to an

18 attorney and agreed to speak with the police, right?

19 A Yes.

20 Q But since then, of course, you have an attorney,

21 correct?

22 A Yes.

23 Q You have Mr. Grier, right?

24 A Yes.

25 Q And you and Mr. Grier have talked about the case,

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1 correct?

2 A Yes.

3 Q And this analogy that you came up with of looking in
4 to someone's eyes and looking like they're all-in ready for
5 the kill, who came up with that?

6 A I did.

7 Q When did you come up with that? After a week in jail?

8 A No. It isn't something I came up with, it's just
9 when I looked in his eyes that's what I saw.

10 Q But you didn't tell the police that on the day you
11 turned yourself in, right?

12 A I didn't think to mention that because I figured what
13 was important was what happened.

14 Q And this analogy about a football player getting
15 cheered on and wanting to do things that you said earlier
16 today, did you come up with that, too?

17 A Yes.

18 Q And you heard Mr. Grier ask you about the term about
19 minds eye. Is that a term you had ever used before meeting
20 Mr. Grier ever in your life?

21 A I had heard it before.

22 Q You had heard it before. Had you ever used it before
23 yourself?

24 A I hadn't said that before myself but I was aware of
25 it.

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1 Q But you hadn't ever said that before yourself, right?

2 A No.

3 Q You certainly didn't say it to law enforcement when
4 ~~they interviewed you the day you turned yourself in, right?~~

5 A Right.

6 Q But you did give a statement to law enforcement after
7 waiving your right to counsel and waiving your right to
8 remain silent, right?

9 A Yes.

10 Q Do you remember testifying earlier here this morning,
11 "When Marcus was coming at me to hit me again it was like
12 when you watch a professional fighter knock down an
13 opponent and then lunge in to finish the fight." Do you
14 remember testifying to that earlier?

15 A Yes.

16 Q You never told that to law enforcement the day you
17 turned yourself in, did you?

18 A I did.

19 Q You did? Do you remember that it was on video?

20 A I did.

21 Q Do you remember that the interview was on video?

22 A Uh-huh.

23 Q And you're saying you did tell law enforcement that
24 that, that that's what it looked like to you?

25 A Yeah. I showed them the motion that he was coming at

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1 me with.

2 Q You showed them the motion, but did you say it was
3 like a professional fighter coming in to finish the fight?

4 Do you remember telling them it was like a professional
5 fighter?

6 A I didn't say the words, but I showed them the motion.

7 Q That's something you thought of later, though, as a
8 professional fighter, right?

9 A That's not something I thought of, it was just that's
10 how I described it. I didn't describe it to them but
11 that's how it was, that is the motion I showed them.

12 Q But you had never had any trouble with Marcus before,
13 right?

14 A Right.

15 Q You and he, y'all were close, right?

16 A Right.

17 Q In comparison to you and Rashawd, who Rashawd hit you
18 twice, right?

19 A Right.

20 Q Rashawd, in your opinion, you were part of him going
21 to prison for two and a half years, right?

22 A Right.

23 Q Marcus, you never had anything to do with him going to
24 prison certainly, right?

25 A Right.

ALLEN MASSEY - CROSS

1 Q In fact, to your knowledge he'd never been to prison,
2 right?

3 A Right.

4 Q ~~You have taken an oath here to tell the truth today,~~
5 right?

6 A Right.

7 Q You understand the requirements of that oath, correct?

8 A Yes.

9 Q I want to ask you about some names, names that you
10 have not yet given. You said, "I called someone up after
11 this happened to come pick me up, we went to Pageland." Do
12 you remember that?

13 A Yes.

14 Q Do you remember telling the police about that you
15 ~~called a girl, I think?~~

16 A Yes.

17 Q But you didn't give them her name right?

18 A Right.

19 Q I'm asking her name. What is her name?

20 A Her name is Brittney.

21 Q Brittney. What's Brittney's last name?

22 A I don't know her last name.

23 Q But you knew her enough to call her, you called her up
24 to come get you?

25 A Yes.

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- 1 Q What's her phone number?
- 2 A It's in my phone.
- 3 Q Have you got your phone with you in your property --
- 4 A No.
- 5 Q -- at the detention center? No?
- 6 A No.
- 7 Q Who has got your phone?
- 8 A My mother does.
- 9 Q You left it with your mom before you turned yourself
- 10 in?
- 11 A Yes.
- 12 Q Where does Brittney live?
- 13 A In Pageland.
- 14 Q What kind of car does she drive?
- 15 A A Honda.
- 16 Q And did Brittney come and get you after you called her
- 17 and said, "Come get me?"
- 18 A Yes.
- 19 Q And did you tell Brittney what happened?
- 20 A No.
- 21 Q You didn't tell her what happened. You just said, "I
- 22 need a ride?"
- 23 A I just said, "Come get me."
- 24 Q And where were you when she came and got you?
- 25 A I was still in Lancaster.

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1 Q Where in Lancaster? Where did she pick you up?

2 A Around an area of my house.

3 Q Was she alone in the car?

4 A Yes.

5 Q And when she got you and got in the car, did you tell
6 them what had happened?

7 A No.

8 Q You didn't think it was important to make her aware in
9 case she might get in trouble that "Hey, by the way, I just
10 shot somebody, you're about to give me a ride somewhere,
11 the police might be looking for me. Just wanted to make
12 you aware in case you wanted to know that." You didn't
13 tell her that?

14 A No.

15 Q You just said, "Give me a ride," right?

16 A Yes.

17 Q Did y'all go to her house?

18 A No.

19 Q Where did you go?

20 A We just went down there and basically rode around for
21 awhile.

22 Q How long did you ride around?

23 A A couple of hours, and then we sat outside her house
24 until the next morning.

25 Q Where is her house?

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- 1 A It's -- I don't know the area down there.
- 2 Q Still had the gun with you at that point?
- 3 A No.
- 4 Q Because you had given the gun to someone else at that
5 point, hadn't you?
- 6 A Yes.
- 7 Q You told the police you gave the gun to a guy a few
8 minutes after it happened, right?
- 9 A Yes.
- 10 Q I'm going to ask you a name. Who did you give the gun
11 to?
- 12 A I didn't want to get him involved.
- 13 Q I'm asking you under oath, who did you give the gun
14 to? What's his name?
- 15 A Called him Hemi.
- 16 Q How do you spell?
- 17 A H-e-m-i.
- 18 Q A-t-m-i?
- 19 A H-e-m-i.
- 20 Q I'm sorry, I'm a little hard of hearing, I'm old.
21 Hemi. What's Hemi's real name?
- 22 A I don't know.
- 23 Q Where does Hemi live?
- 24 A He lives in Lancaster.
- 25 Q He lives in Lancaster where?

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1 A I'm not exactly sure.

2 Q Where did you see him to give him the gun that night?

3 A I saw him in the area.

4 Q ~~Where in the area?~~

5 A Around Cedar Street.

6 Q And that's after you ran out of the home on City

7 Avenue you see Hemi?

8 A Not immediately, later on.

9 Q Was Hemi just walking around?

10 A Yes.

11 Q By himself?

12 A Yes.

13 Q Are you still running or walking by this point?

14 A I had stopped running.

15 Q ~~And you went up to Hemi and you gave him a gun, you~~

16 gave him the only gun you had on you, correct?

17 A Yes.

18 Q A gun that still had four bullets in it according to

19 you, right?

20 A Yes.

21 Q And did you say, "Hemi, keep this gun for me?" What

22 did you tell him when you gave him the gun?

23 A Just hold on to it.

24 Q Did he ask why?

25 A No.

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1 Q You didn't think it was important to tell Hemi, By the
2 way, this gun was just involved in a shooting, " you didn't
3 think that was important?

4 A I didn't think about it at the moment.

5 Q You didn't think Hemi might get in trouble?

6 A I didn't stop to consider that at the moment.

7 Q Hemi was walking on the street when you saw him and
8 gave him your gun, right?

9 A Yes.

10 Q You pled in 2011 to unlawful carrying of a weapon and
11 you knew it was against the law, right?

12 A Yes.

13 Q You pled in 2012 to unlawful carrying of a weapon and
14 you knew that was against the law, right?

15 A Yes.

16 Q But you give -- you consider Hemi a friend?

17 A Yes.

18 Q A friend that you can trust stuff with?

19 A Yes.

20 Q A friend you could entrust a loaded gun with?

21 A Yes.

22 Q And you knew it was against the law for Hemi to walk
23 off holding that gun, right?

24 A Yes.

25 Q As far as you know Hemi doesn't have a CWP, concealed

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1 weapons permit either, does he?

2 A I don't know.

3 Q Didn't bother to ask him either, did you?

4 A No.

5 Q You said, "Hold on to this gun for me," right?

6 A Yes.

7 Q And he took it, right?

8 A Yes.

9 Q And the next day when it came time -- well, let me go
10 back to you riding around with Brittney and you said y'all
11 sat outside her house for awhile in Pageland. How did you
12 end up back at Lancaster. Did Brittney bring you back?

13 A Yeah, she brought me back.

14 Q Where did you go?

15 A I met with my mother.

16 Q Go to mama's house?

17 A No.

18 Q Where?

19 A We were on our way to turn ourself -- to turn myself
20 in.

21 Q Wait a minute. The shooting was about 3:53 a.m. on
22 the early morning of October 12th of 2013, right?

23 A Yes.

24 Q And you turned yourself in October 13, 2013, right?

25 A Yes.

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- 1 Q Approximately noon?
- 2 A Yes.
- 3 Q So you rode around with Brittney for a couple of hours
- 4 and sat outside her house. What time did you meet mom,
- 5 your mother?
- 6 A That was on the 13th.
- 7 Q Okay. So by that time it was already October 13th of
- 8 2013?
- 9 A Yes.
- 10 Q What time?
- 11 A I don't know exactly what time it was.
- 12 Q Was it dark or daylight?
- 13 A Daylight.
- 14 Q So would you say it's the early morning hours of
- 15 October 13th of 2013?
- 16 A It was daylight but not early, early morning.
- 17 Q Okay. And at some point you see your sister and she
- 18 takes a picture of your face; is that right?
- 19 A Yes.
- 20 Q And what is her name?
- 21 A Leeanna.
- 22 Q Where did you see your sister?
- 23 A I saw her that night.
- 24 Q Before you see mama?
- 25 A Yes.

ALLEN MASSEY - CROSS

1 Q So you saw her with Brittney or on your own?

2 A No. I saw her before she picked me up.

3 Q So you were with Brittney awhile and then you see your

4 sister?

5 A Yes.

6 Q She takes a picture of your face?

7 A No.

8 Q Did she take you anywhere?

9 A No.

10 Q Does she tell you at that point that Marcus is dead?

11 A No.

12 Q Had you found out that Marcus was dead?

13 A No, I didn't find out until later.

14 Q But you knew you shot Marcus.

15 A Yes.

16 Q Did your sister come see you in Pageland or back in

17 Lancaster?

18 A She saw me in Lancaster.

19 Q This diagram, the Defense Exhibit 1, you didn't draw

20 that, right?

21 A Right.

22 Q You said someone drew it kind of at your direction; is

23 that right?

24 A Yeah. I gave them a rough model of what it was

25 and -- he actually drew several of them, but that is the

ALLEN MASSEY - CROSS

1 closest one to the --

2 Q Have you got the other ones he drew?

3 A No, he threw them away.

4 Q Is he in jail with you?

5 A He was.

6 Q Who is he? What is his name?

7 A His name is Christopher Graham.

8 Q Did he draw that while he was in jail with you?

9 A Yes.

10 Q You told him about the incident?

11 A Yes.

12 Q You described the incident to him?

13 A Yes.

14 Q Do you have your rough sketch that you showed him so

15 he could draw this better?

16 A It's back in my cell, I didn't bring it with me.

17 Q But you still have it.

18 A Yes.

19 Q Do you remember testifying earlier this evening that

20 when you turned yourself in on October 20th of 2013, do you

21 remember testifying that you didn't bring the gun with you?

22 Do you remember testifying to that?

23 A No. I said I did bring the gun with me.

24 Q You did?

25 A Yes.

ALLEN MASSEY - CROSS

1 Q You don't remember saying, "I didn't bring the gun but
2 I told them where they could find it and the police went
3 and got it?"

4 A ~~No, I never said that.~~

5 Q The truth is you did bring it with you when you turned
6 yourself in, right?

7 A I did.

8 Q It was in the trunk of your mother's car, correct?

9 A My sister's car.

10 Q You came to turn yourself in -- was your mother with
11 you?

12 A Yes.

13 Q You said two sisters were with you, right?

14 A Yes.

15 Q And the gun was in the trunk of the car, right?

16 A Yes.

17 Q And you told the police that when you turned yourself
18 in, right?

19 A Yes.

20 Q Okay. So between the time you ran out of the house at
21 [REDACTED] City Avenue and the time that you turned yourself in on
22 October 13th of 2013 at about noon, you didn't get any
23 medical treatment to your lip, correct?

24 A Right.

25 Q Didn't get any stitches, right?

ALLEN MASSEY - CROSS

1 A No.

2 Q You said your teeth were okay, right?

3 A Yes.

4 Q And after you turned yourself in you didn't get any

5 medical treatment for your lip, right?

6 A Right.

7 Q You didn't ask for it, did you?

8 A No.

9 MS. COLLINS: I ask that this be marked as State's

10 Exhibit 3 for ID at this time.

11 Q Mr. Massey, I'll show you what has been marked as

12 State's Exhibit 3 for the purposes of this hearing and ask

13 you, do you recognize this document?

14 A Yes.

15 Q Is that your signature at the bottom of the document?

16 A Yes.

17 Q Is that where you sign waiving your Miranda rights?

18 A Yes.

19 Q You told law enforcement you had completed the 12th

20 grade in school; is that right?

21 A Yes.

22 Q You told them when you turned yourself in on October

23 13th of 2013 that you were not under the influence of any

24 drugs or alcohol, correct?

25 A Yes.

ALLEN MASSEY - CROSS

1 Q And you told them that you could read and write the
2 english language, correct?

3 A Yes.

4 ~~Q And the time of that was 15:15 hours on 10/13 of 2013,~~
5 correct?

6 A Yes.

7 Q And they went over with you these Miranda rights,
8 correct?

9 A Yes.

10 Q They read them out loud as you had the form in front
11 of you, correct?

12 A Yes.

13 Q You initialed beside each one of them saying that you
14 understood them, correct?

15 A Yes.

16 Q And at that time you signed the waiver that you've
17 read the statement of your rights and that you understand
18 what your rights are, correct?

19 A Yes.

20 Q And you said you were willing to give a statement and
21 answer questions, correct?

22 A Yes.

23 Q You said you did not want a lawyer at this time,
24 correct?

25 A Yes.

ALLEN MASSEY - CROSS

1 Q That you understood and you knew what you were doing,
2 right?

3 A Yes.

4 Q And that no promises or threats have been made to you,
5 correct?

6 A Yes.

7 Q And that no pressure or coercion of any kind had been
8 used against you, correct?

9 A Yes.

10 Q And that's your signature, right?

11 A Yes.

12 Q And Lieutenant Phillip Hall and Captain Scott Grant of
13 the Lancaster Police Department witnessed your signature
14 and then they asked you questions, correct?

15 A Yes.

16 MS. COLLINS: Move that into evidence for the purposes
17 of this hearing only.

18 THE COURT: Any objection?

19 MR. GRIER: No objection.

20 THE COURT: Without objection State's Exhibit 3
21 admitted into evidence.

22 (Miranda Waiver was received as State's 3.)

23 Q Do you remember when you were interviewed by the
24 Lancaster Police by Lieutenant Phillip Hall and Captain
25 Scott Grant, Captain Grant asked you why did you shoot

ALLEN MASSEY - CROSS

1 Marcus. Do you remember him asking you that?

2 A Yes.

3 Q And do you remember telling them at that time, "I
4 didn't feel like fighting," do you remember saying that?

5 A Yes. I wasn't in any shape to fight.

6 Q You said, "I didn't feel like fighting. I'd been
7 drinking and wasn't in any shape to fight," correct?

8 A Yes.

9 Q Do you remember during the first part of your
10 interview you told them about the incident with Rashawd
11 right?

12 A Yes.

13 Q You told them Rashawd hit you two times on the left
14 side of your face, right?

15 A Yes.

16 Q Do you remember telling them regarding Rashawd, "I had
17 been drinking that night, I wasn't in any -- no shape to
18 fight so I just left it alone, you know, I just left?" Do
19 you remember telling them that in terms of Rashawd?

20 A No. I told them that when he hit me it didn't really
21 hurt me, and the fact of he was stepping in, and after
22 that that's when I told them I felt like maybe I deserved
23 it.

24 Q That's what you told us today. But do you deny that
25 you told law enforcement at four minutes into the interview

ALLEN MASSEY - CROSS

1 regarding Rashawd hitting you two times on the left side of
2 the face, do you deny that you told law enforcement on
3 10/13 of 2013, "I had been drinking that night. I wasn't
4 in any -- no shape to fight so I just left it alone, you
5 know, I just left?" You deny that?

6 A No.

7 Q You don't deny it?

8 A No.

9 Q You admit you told law enforcement that?

10 A Yes.

11 Q So you told law enforcement as to Rashawd coming at
12 you and hitting you two times, "I wasn't in any shape to
13 fight," right?

14 A Yes, that was part of the reason.

15 Q That was part of the reason. "I had been drinking
16 that night," right?

17 A Yes.

18 Q And you told them, "I didn't feel like fighting,"
19 right?

20 A Yes.

21 Q Well, no, actually you said that. You said, "I wasn't
22 drinking, I wasn't in no shape to fight," right? Correct?

23 A Yes.

24 Q And do you remember Captain Scott Grant at the end of
25 that interview says, "But you had the gun, the loaded gun

ALLEN MASSEY - CROSS

1 in your left front pants pocket both times with Rashawd and
2 with Marcus," right?

3 A Yes.

4 ~~Q -- Do you remember Captain Scott Grant asking you about~~
5 that?

6 A Yes.

7 Q Do you remember him saying, "Mr. Massey, I am just
8 trying to understand the difference between the two
9 incidents. Why did you use it with Marcus who hit you one
10 time, who you had been friends with for years and had never
11 had any trouble with, why did you use it with Marcus and
12 you didn't use it with Rashawd who had hit you two times
13 and had gone to prison as a result of you cooperating with
14 the police?" Do you remember him asking you about the
15 difference?

16 A Yes.

17 Q And do you remember that you said, "Well, I had
18 snitched on Rashawd and when he hit me it really didn't do
19 anything to me. I felt like I owed him that." Do you
20 remember that?

21 A Yes, that was afterwards.

22 Q And that you told Rashawd afterwards, "I deserved
23 that?"

24 A Yes.

25 Q For being a snitch, right?

ALLEN MASSEY - CROSS

- 1 A Yes.
- 2 Q And do you remember telling them that, "With Marcus we
3 had never had any problems," right?
- 4 A Yes.
- 5 Q Never any bad blood between us, right?
- 6 A Yes.
- 7 Q And that you'd just scene him earlier that day, right?
- 8 A Yes.
- 9 Q And you said, "When he hit me it was a shock," right?
- 10 A Yes.
- 11 Q You told law enforcement, "When he hit me I hit the
12 ground," right?
- 13 A Yes.
- 14 Q And you, by the way, said earlier that everybody was
15 in the kitchen when this happened, right?
- 16 A Yes.
- 17 Q And you said that the hit -- you'd been talking to
18 Marcus in the kitchen, right?
- 19 A Yes.
- 20 Q And you said that Marcus hit you out of the blue one
21 time in your mouth, correct?
- 22 A I just remember being hit once.
- 23 Q And then you fell back to the ground, right?
- 24 A Yes.
- 25 Q And you told your attorney you didn't have any other

ALLEN MASSEY - CROSS

1 injuries, right?

2 A Yes.

3 Q That's what you just told your attorney, right?

4 A Yes.

5 Q You didn't have any bruises on your body, right?

6 A Right.

7 Q Didn't hit your head when you fell on the ground,
8 right?

9 A Yes, right.

10 Q You had the injury to your lip, you fall back on the
11 ground and you said "Marcus was standing at my feet,"
12 correct?

13 A No. He wasn't just standing at the feet, he was
14 coming at me.

15 Q But you're saying all of this happened in the kitchen
16 where everybody was.

17 A Yes.

18 Q That you fell back toward the threshold of the door to
19 the living room, but you were still in the kitchen, is that
20 your testimony?

21 A Yeah. It was still a good 2 feet between me and the
22 living room.

23 Q You said to the police, "I saw him coming with his
24 fist balled up to reach down and hit me again." Do you
25 remember telling the police that?

ALLEN MASSEY - CROSS

1 A Yes.

2 Q You did tell the police because Scott Grant asked you

3 "Did you feel like it was over or was that just the

4 beginning?" You told the police, "I thought that was just

5 the beginning," right?

6 A Yes.

7 Q But you didn't tell the police, "I felt like I was

8 about to get serious bodily injury." You didn't tell the

9 police that, did you?

10 A I didn't feel it was necessary to say that, because

11 if someone is coming at you with their fist cocked back

12 then they obviously had the intent to continue to injure

13 you.

14 Q To continue to hit you, but to inflict serious bodily

15 injury? What did you consider serious bodily injury to be?

16 A I mean, anything. There wasn't any telling what

17 extent he could have taken it to.

18 Q You didn't know. You didn't know what it could be,

19 did you? You didn't know what to expect, right?

20 A Right.

21 Q You didn't know if you might get an arm broken, right?

22 A Right.

23 Q Didn't know if you might get a leg broken, right?

24 A Yes.

25 Q But you didn't tell the police, "I thought he might

ALLEN MASSEY - CROSS

1 break my arm," right?

2 A Yes.

3 Q Is that correct?

~~4 A Yes.~~

5 Q You didn't tell the police, "At that point I was
6 scared of Marcus," do you remember that? You didn't tell
7 them that.

8 A No.

9 Q You didn't tell the police, "At that point I was
10 afraid of Marcus," do you remember that? You didn't tell
11 the police that, did you?

12 A No, I didn't say that.

13 Q You didn't tell the police I was afraid of this person
14 that now you're saying looked like a lion coming in for the
15 kill, you didn't bother telling the police that when you
16 spoke to them, did you?

17 A I didn't -- you know, when anything had happened I
18 didn't think of every little detail at the moment to tell
19 them. I told them what happened, how he was coming at me
20 and I didn't feel like I had any choice, I didn't think
21 that all of the detail was necessary.

22 Q Did you try to get up? Did you try to get up?

23 A If I had time to I would have.

24 Q But you didn't, you didn't have time to is your
25 testimony.

ALLEN MASSEY - CROSS

- 1 A No.
- 2 Q Did you just pull the gun out of your pocket and say,
- 3 "Wo, got a gun, stop?" Did you just show it to him?
- 4 A No. Because if I had waited any longer I would have
- 5 been hit again.
- 6 Q You would have been hit again if you would have waited
- 7 any longer, that's what you're saying. You would have been
- 8 hit again, right?
- 9 A Uh-huh.
- 10 Q You had been hit one time, right?
- 11 A That's all I remember.
- 12 Q You had been hit one time in the lip, correct?
- 13 A That's all I remember.
- 14 Q That's all you remember now. But at the time you
- 15 talked to the police the very next day that's all you said
- 16 you were hit, right?
- 17 A Well, if that's all I can remember that's all I can
- 18 testify to.
- 19 Q But you didn't hit your head, right?
- 20 A Yes.
- 21 Q You said you had six or seven beers, but you
- 22 understood what was going on, didn't you?
- 23 A Yes.
- 24 Q Would you say you were intoxicated?
- 25 A No, I wasn't intoxicated. I might have been impaired

ALLEN MASSEY - CROSS

1 but I wasn't intoxicated.

2 Q Might have been impaired using a firearm, is that your
3 testimony?

4 A Well

5 Q You did use a firearm, did you?

6 A Yeah.

7 Q You had six or seven beers, right?

8 A Yes.

9 Q You discharged a firearm while you had six or seven
10 beers, right?

11 A Yes.

12 Q And you said you might have been impaired, right?

13 A Yes.

14 Q Are you aware that's against the law?

15 A What is?

16 Q To discharge a firearm while under the influence of
17 alcohol, did you know that was against the law?

18 A No.

19 Q But you knew it was against the law to carry one,
20 right?

21 A Yes.

22 Q And you knew you should have told those homeowners to
23 see what their reaction was that you had a firearm on you,
24 right?

25 A I didn't think to.

ALLEN MASSEY - CROSS

1 Q Didn't think to. Even though they had children didn't
2 think that was something they might want it know?

3 A No. Because I didn't go there with any intention to
4 use it.

5 Q They didn't know that. You didn't think that any of
6 these people at the party might want to know that this
7 young man who just walked in the door who has had six or
8 seven beers, has a loaded firearm in his pocket and we're
9 all walking around, you didn't think any of those people
10 who cared about their lives or their loved ones would have
11 wanted to know that?

12 A Not if I didn't come there to use it.

13 Q Do you still feel that way? In hindsight, do you
14 still feel like you shouldn't have told them that for their
15 own information as to their own well-being?

16 A In the context that you put it as if their safety was
17 at danger like I came there to do them any harm then maybe
18 they should have known. But if I was just coming in there
19 to spend time with relatives or friends then I don't see
20 them -- it as a danger to them.

21 Q So you don't think they need to know. You don't think
22 they need to know, is that what you're saying?

23 A I'm not saying that, but I didn't at the time.

24 Q But you didn't come there according to your testimony
25 with the intention of hurting Marcus, did you?

ALLEN MASSEY - CROSS

1 A No ma'am.

2 Q You certainly didn't come there with the intention,
3 according to your testimony, of shooting Marcus, did you?

4 A No.

5 Q According to your testimony you certainly didn't come
6 there with the intention of murdering Marcus, did you?

7 A No.

8 Q And at the time you shot Marcus, isn't it possible
9 that any of the people in this small kitchen could have
10 gotten hit by that bullet? It's possible, isn't it?

11 A I mean, if he's right in front of me then -- there's
12 a possibility of anything, but not if he's right above
13 and -- directly above me.

14 Q Marcus never once indicated to you that he had a
15 weapon, correct?

16 A No.

17 Q You never once thought Marcus might have a weapon, did
18 you?

19 A I didn't know.

20 Q Marcus never said anything to you about "I'm gonna
21 beat you up," did he?

22 A He didn't say that, but --

23 Q I know you said he made his fist, but did he say
24 anything to you at --

25 A Not after he hit me he didn't.

ALLEN MASSEY - CROSS

1 Q Before he hit you did he say anything about hurting
2 you?

3 A No. It was out of the blue, not expected.

4 Q And you did not -- he didn't make any gesture that
5 made you think he might have a weapon. In fact, you saw
6 his hands and said one was balled up, you saw that he
7 didn't have a weapon, correct?

8 A Yes.

9 Q You saw he didn't have a gun, right?

10 A Right.

11 Q You saw he didn't have a knife, right?

12 A Right.

13 Q And you said, "Because I thought I might get hit
14 again" -- that was your testimony just now that you pulled

15 out the gun and shot him. Do you remember that you said
16 that?

17 A Yes.

18 Q Because you thought you might get hit again, right?

19 A Yes.

20 Q And as to using the term that I might face serious
21 bodily injury, since you were interviewed by law
22 enforcement you've had a chance to learn about some of the
23 law in this state, haven't you?

24 A Yes.

25 Q And you've had a chance to learn about the law against

ALLEN MASSEY - CROSS

1 protection of yourself, the Protection of Persons and
2 Property Act, right?

3 A Not much, but some.

4 Q ~~And you've had a chance to learn that if somebody has~~
5 a reasonable belief that they have to meet force with force
6 in order to avoid serious bodily injury or dead --

7 MR. GRIER: Your Honor, I object to her questioning
8 him about the law.

9 THE COURT: Hold on a minute, let her finish the
10 question, please, and then if you have an objection, sir,
11 state it at that point. But let her finish the question.

12 Q Since being interviewed by law enforcement on 10/13 of
13 2013, you've now had a chance to learn some of the language
14 of the Protection of Person and Property Act, correct?

15 A Yes. And I have learned that some of the language
16 applies to the situation I find myself in.

17 Q Such that you now use some of that language in your
18 testimony such as serious bodily injury, correct?

19 A Yes.

20 Q Going back to your prior record, you've been convicted
21 of a crime before that carries more than one year and I
22 know I've asked you about the unlawful carrying of a weapon
23 in terms of your knowledge of the law with that. But in
24 2012, June 11th of 2012 you pled guilty to possession of
25 crack cocaine; isn't that right?

ALLEN MASSEY - CROSS

- 1 A Yes.
- 2 Q What's your date of birth?
- 3 A [REDACTED].
- 4 Q At the time of this incident how old were you? Were
- 5 you 26?
- 6 A Which incident?
- 7 Q The incident where you killed Marcus Robinson, how old
- 8 were you?
- 9 A I was 26.
- 10 Q And on the date you turned yourself into law
- 11 enforcement you were 5 feet 11 inches tall, would you
- 12 agree?
- 13 A Yes.
- 14 Q And your weight on the date you turned yourself into
- 15 law enforcement was 210 pounds, do you agree?
- 16 A Somewhere around that.
- 17 Q Do you agree that's what you told the booking officer
- 18 when he booked you in?
- 19 A Yes.
- 20 Q You agree to that?
- 21 A Yes.
- 22 Q And that your residential address was listed at [REDACTED]
- 23 Elm Street in Lancaster, South Carolina at that time,
- 24 right?
- 25 A Yes.

ALLEN MASSEY - CROSS

1 Q You didn't feel like Marcus Robinson was going to
2 murder you, did you? You didn't feel like he was going to
3 kill you, did you?

4 A ~~I wouldn't say exactly I felt like he was going to~~
5 kill me, but having known what he was capable of and the
6 extent to which he would take it, I felt like it could
7 have been serious.

8 Q But you've never seen him kill anyone, correct?

9 A Right, yeah.

10 Q To your knowledge Marcus Robinson never did kill
11 anyone, correct?

12 A Yes.

13 Q So you didn't feel like you were in danger of losing
14 your life at that point by your friend that you hung out
15 ~~with for years and years and years, you didn't feel like~~
16 you were in danger of loosing your life right at that
17 moment, were you?

18 A Right at that moment you never know what can happen.
19 There have been instances where people have been beaten to
20 death by bare hands. So even though I may have felt that
21 it was serious, I didn't know whether or not it would end
22 up dying from it.

23 Q But you didn't tell law enforcement -- when you were
24 interviewed when you turned yourself in on October 13th of
25 2013, you didn't tell law enforcement "I thought that

ALLEN MASSEY - CROSS

1 Marcus might kill me," did you?

2 A I didn't think --

3 Q Did you tell them that?

4 A No.

5 Q And you didn't tell law enforcement when you turned
6 yourself in October of 2013, waived your Miranda rights and
7 gave a statement to them, you didn't tell them, "I thought
8 I would get hurt seriously, serious bodily injury by Marcus
9 Robinson," did you? Did you tell them that?

10 A I didn't say that because I didn't know it was -- I
11 didn't know it was a factor.

12 Q But you do admit that you testified earlier in this
13 hearing that you shot at Marcus Robinson with a loaded gun
14 in your pocket because you thought he would hit you again,
15 right? That's what you said, right?

16 A Yes.

17 Q And until you pulled that loaded gun out of your
18 pocket and pointed it at Marcus Robinson and pulled the
19 trigger, no one but you knew that you had a loaded firearm,
20 a loaded pistol in your pocket, did they?

21 A No.

22 Q Because you hadn't told anybody right?

23 A Right.

24 Q Including Marcus, right?

25 A Right.

ALLEN MASSEY - REDIRECT

1 MS. COLLINS: Nothing further.

2 THE COURT: Any redirect?

3 MR. GRIER: Just a bit.

4 ~~REDIRECT EXAMINATION~~

5 BY MR. GRIER:

6 Q Solicitor asked you about your testimony about turning
7 the gun in.

8 A Yes.

9 Q Where was the gun at the time you were turning
10 yourself in?

11 A It was in the trunk.

12 Q Of the car that you came there in?

13 A Yes.

14 Q And so what did you tell the police about the
15 whereabouts of the gun?

16 A That I had given it to somebody and we got it back
17 before I turned myself in.

18 Q But about where it was at the time they took
19 possession of it?

20 A What did I tell them?

21 Q Yeah.

22 A I didn't say anything because they came out and got
23 the gun.

24 Q Well, how did they find the gun, though? That's what
25 I want to know.

ALLEN MASSEY - REDIRECT

- 1 A Because we told them it was in the trunk.
- 2 Q So you didn't physically hand them the gun?
- 3 A No.
- 4 Q You just told them where it was at.
- 5 A Yes.
- 6 Q Which it was in the car in which you traveled to the
- 7 police station.
- 8 A Yes.
- 9 Q So you didn't send them off to somebody's house to go
- 10 recover the gun or anything, it was with you or with you
- 11 and the people you were with when you turned yourself in,
- 12 correct?
- 13 A Yes.
- 14 Q Okay. Did you respond at the time you were arrested
- 15 the day after this incident to every question with -- I
- 16 mean, were your answers responsive to the police? Did they
- 17 ask you the details of why you shot?
- 18 A No. They were kind of leading questions.
- 19 Q Okay. Did they ask you anything about what you knew
- 20 about the mental state of Demarcus Robinson at the time of
- 21 the shooting?
- 22 A No.
- 23 Q Did they ask you if you knew anything about him --
- 24 about whether or not he was intoxicated or not?
- 25 A No.

ALLEN MASSEY - REDIRECT

1 Q Did you know anything about that?

2 A Yes.

3 Q What did you know?

4 A ~~That he had been drinking that night.~~

5 Q But what was -- what was his appearance?

6 A Well, his appearance, he wasn't -- it wasn't like he
7 was incoherent or just stumbling drunk, because he was a
8 person, he had a high tolerance for alcohol. He had a lot
9 of the energy and he was more aggressive when he was
10 drinking.

11 Q Did you ever had any expectation that you would get
12 into a confrontation with Marcus prior to that night?

13 A No.

14 Q Did you ever see that coming?

15 A No.

16 MR. GRIER: All right. That's all I have. That's all
17 of the questions I have.

18 THE COURT: Ms. Collins, any further recross?

19 MS. COLLINS: Briefly.

20 RECROSS EXAMINATION

21 BY MS. COLLINS:

22 Q So you're saying you knew Marcus was aggressive when
23 he had something to drink, right?

24 A Yes.

25 Q And you're saying you knew he had had something to

ALLEN MASSEY - RECROSS

1 drink earlier that evening, right?

2 A Yes.

3 Q And yet you chose that moment in time at the party

4 when you had a loaded gun in your pocket, you chose that

5 moment to tell this person who had been drinking, who got

6 aggressive when he'd been drinking that, "Oh, by the way,

7 I've just had a confrontation with Rashawd," right?

8 A Yes. And that's because we had -- like I said, we

9 had never had any problems. We had always been friends

10 and I would never have expected that aggression would turn

11 towards me.

12 Q Because you weren't afraid of him because you were

13 friends with him, right?

14 A Right.

15 Q And so it didn't bother you that he'd been drinking

16 because you were friends with him, right?

17 A Right.

18 Q It didn't bother you that, per what you just said, he

19 was aggressive when he'd been drinking because you were

20 friends with him, right?

21 A Yes.

22 Q And you felt comfortable with telling him even though

23 you could have waited until the next day or the next time

24 when you saw him and told him about the Rashawd thing, you

25 felt comfortable telling him then, right?

ALLEN MASSEY - RECROSS

1 A Yes. Because I had saw him right then and there.

2 MS. COLLINS: Nothing further.

3 THE COURT: All right, sir, you may step down.

4 MS. COLLINS: Your Honor, may we approach about a
5 scheduling matter?

6 THE COURT: Yes.

7 (A bench conference was held.)

8 THE COURT: We'll stand down at this time, we'll
9 resume at 1:30.

10 (A lunch break was taken.)

11 THE COURT: Is the State ready to proceed?

12 MS. COLLINS: State is ready, Your Honor.

13 THE COURT: Defense counsel. Yes, Your Honor.

14 Pursuant to our discussion before lunch at Ms. Collins'
15 request without objection from defense counsel, I am going
16 to recognize you at this time, Ms. Collins.

17 MS. COLLINS: Thank you, Your Honor. I appreciate
18 your willingness to allow me to call this next witness a
19 little bit out of order as I do anticipate the defense
20 might have some additional lay witnesses, but due to her
21 scheduling we would ask that Dr. Janice Ross, who performed
22 the autopsy, come forward at this time.

23 The witness, JANICE ROSS, M.D., was first duly sworn
24 and testified as follows:

25 DIRECT EXAMINATION

JANICE ROSS - DIRECT

1 BY MS. COLLINS:

2 Q Would you please state your name for the record?

3 A Janice Edwards Ross.

4 Q What is your occupation, please?

5 A I'm a forensic pathologist with Newberry Pathology
6 Associates.

7 Q How long have you been so employed?

8 A I've been at Newberry since May of 2000.

9 THE COURT: Hold on a minute. Sir, I do want that
10 flash to go off again. All right. You may continue, Ms.
11 Collins.

12 MS. COLLINS: Thank you, Your Honor.

13 Q Dr. Ross, if you would, speak into the microphone.

14 You like I at times have a somewhat soft voice. How long
15 have you -- can you summarize for the Court your education
16 in the field of medicine?

17 A Yes. I have a Bachelor's of Science in Biology from
18 the University of South Carolina. And I received my M.D.
19 from Upstate Medical Center in Syracuse, New York where I
20 did further study in the field of pathology. I also
21 worked with the medical examiner system there to obtain my
22 board certification in forensic pathology.

23 Q And so, of course, you are licensed as a doctor in
24 South Carolina?

25 A Yes.

JANICE ROSS - DIRECT

1 Q And you have a board certification in the field of
2 forensic pathology?

3 A Yes.

4 Q How long have you had that board certification?

5 A Since 1985.

6 Q Since that time, how many autopsies would you say that
7 you have performed at the request of law enforcement?

8 A Over 6,000.

9 THE COURT: Ms. Collins, hold on a minute.

10 (Break in proceedings.)

11 Q During your years as a forensic pathologist, have you
12 ever been qualified in a court of law to testify as an
13 expert witness in the field of forensic pathology?

14 A Yes.

15 Q How many times?

16 A About 150 in South Carolina.

17 Q Thank you.

18 MS. COLLINS: Your Honor, at this time I would offer
19 Dr. Ross as an expert witness in the field of forensic
20 pathology and medicine.

21 THE COURT: Mr. Grier?

22 MR. GRIER: Your Honor, I would like to ask a couple
23 of questions.

24 THE COURT: Go ahead, sir.

25 EXAMINATION

JANICE ROSS - DIRECT

1 BY MR. GRIER:

2 Q Dr. Ross, as part of your training did you start out
3 dealing with deceased persons in terms of your medical
4 training?

5 A I was a --, had been a hospital pathologist for 38
6 years and at the same time I was a coroner's physician.
7 So I've been doing autopsies for coroners for 38 years.
8 And board certified in forensic pathology in 1985.

9 Q As part of your training did you train with persons
10 that weren't deceased as well?

11 A Yes.

12 Q And how long did you do that?

13 A For 38 years. I'm still doing it.

14 Q So you're a general pathologist and you don't just do
15 autopsies.

16 A I do both, general pathology and autopsies.

17 MR. GRIER: All right. I understand. That's all.

18 Thank you.

19 THE COURT: Any objection?

20 MR. GRIER: No, Your Honor.

21 THE COURT: Go ahead, Ms. Collins.

22 MS. COLLINS: Without objection then will you qualify
23 her as an expert in that field, Your Honor?

24 THE COURT: So granted.

25

JANICE ROSS - DIRECT

1 BY MS. COLLINS:

2 Q Dr. Ross, in the field of your occupation, did you
3 have an occasion to perform an autopsy on the body of the
4 deceased, Demarcus Robinson?

5 A Yes.

6 Q What was the date of that autopsy?

7 A October 13, 2013.

8 Q And do you have a copy of your report from the
9 completion of that autopsy?

10 A Yes, I do.

11 Q I would like to call your attention -- well, first of
12 all let me just offer this up to you what has been marked
13 as State's Exhibit 4 for purposes of identification only at
14 this point. Do you recognize that document?

15 A Yes.

16 Q Is that a copy of the report you prepared at the
17 conclusion of performing the autopsy on Mr. Robinson?

18 A Yes.

19 Q I would like to call your attention to one thing that
20 appears to be a clerical error. The date of death was
21 listed at what date in time?

22 A October 11th. That is a typo.

23 Q Okay. I see the entry date is listed October 12th,
24 2013, correct?

25 A My report I have it -- correct.

JANICE ROSS - DIRECT

- 1 Q Okay.
- 2 A It would have been injured on 10/11, died 10/12.
- 3 Q You have entered 10/11 or 10/12 on the first page of
- 4 your report?
- 5 A On my copy I have injured on October 11th.
- 6 Q Oh, okay. What do you have reflected there on State's
- 7 Exhibit 1 -- or 4?
- 8 A This has injured on 10/12.
- 9 Q All right. In any event, the autopsy was performed on
- 10 10/13 of 2013; is that correct?
- 11 A Correct.
- 12 Q So the reference to the deceased dying the day before
- 13 the injury would be incorrect obviously, correct?
- 14 Incorrect, is that right?
- 15 A Yes.
- 16 Q Turning to the autopsy, certain information was
- 17 reported to you such as the date of birth of the deceased;
- 18 is that right?
- 19 A Correct.
- 20 Q Was that noted as [REDACTED]?
- 21 A Yes.
- 22 Q Did his body seem consistent of that of a 30 year old
- 23 man?
- 24 A Yes.
- 25 Q What was his height at that time as you measured it?

JANICE ROSS - DIRECT

1 A We measured him at 70 inches.

2 Q Would that be 5-feet, 10 inches?

3 A Correct.

4 Q And his weight at that time?

5 A We don't have a scale in the morgue so we estimated

6 it as 220 pounds.

7 Q All right. Can you please tell the Court what you

8 observed regarding the condition of the victim's body when

9 it first arrived for you to perform the autopsy?

10 A He arrived nude.

11 Q Did you observe one injury to him?

12 A Yes.

13 Q I would like to show you what has been marked as

14 State's Exhibits 7 and 8 for identification purposes at

15 this time. Do those appear to be fair and accurate

16 photographs of the injury that you observed on the

17 deceased, Demarcus Robinson?

18 A Yes, sir.

19 Q That being a single bullet wound below the right

20 nipple or right pectoral muscle?

21 A Correct.

22 MS. COLLINS: Your Honor, at this time I would move

23 into evidence for the purposes of this hearing only State's

24 Exhibits 7 and 8.

25 THE COURT: Any objection?

JANICE ROSS - DIRECT

1 MR. GRIER: I have no objection, Your Honor.

2 THE COURT: Without objection so admitted.

3 (The photos were received as State's 7 and 8.)

4 Q Dr. Ross, you had indicated that the body was nude at
5 the time you received it. Was there evidence on the body
6 in terms of efforts by medical personnel to treat the
7 deceased?

8 A Yes.

9 Q And that evidence was what?

10 A He had an oral tracheal tube in place, a nasal
11 gastric tube. He had a chest tube in the right side of
12 the chest. He had EKG leads present, electric converter
13 leads. He had a pulse oximeter present. He had IV lines
14 in both antecubital spaces.

15 Q Would any of that equipment have interfered or
16 affected the trajectory of the bullet path with the
17 entrance wound below the right nipple of his chest as you
18 observed it?

19 A No.

20 Q Please tell the Court -- and it did not appear that he
21 had undergone any surgery after his injury; is that
22 correct?

23 A Well, just the chest tube.

24 Q Okay. Just the chest tube. Please tell the Court,
25 when you performed the autopsy upon the victim as you're

JANICE ROSS - DIRECT

1 trained to do, what did you observe as to the internal
2 condition of his body, the internal condition of his body?

3 A The bullet path went front to back, downward and
4 ~~right to left. It went through the diaphragm, through the~~
5 liver, through the duodenum and through the left kidney
6 and it was found just outside the left kidney. It caused
7 a hemorrhage inside the abdomen of 2000 cc's of blood.

8 Q Dr. Ross, is that a lot of blood?

9 A Yes.

10 Q Is the loss of that amount of blood fatal, or can it
11 be?

12 A Yes.

13 Q In fact, what did you determine the cause of death to
14 be?

15 A ~~He bled out, exsanguination from the laceration of~~
16 the liver and kidney due to the gunshot wound to the
17 chest.

18 Q In addition ultimately to preparing a report after you
19 completed the autopsy, did you later prepare a diagram of
20 what you observed to be the trajectory path of the bullet
21 within the deceased's body?

22 A Yes.

23 Q I would like to hand you what's been marked as State's
24 Exhibit 5 for identification but for purposes of this
25 hearing and ask you, do you recognize that document?

JANICE ROSS - DIRECT

1 A Yes.

2 Q And what is that document?

3 A This depicts the trajectory of the wound as seen on

4 the autopsy of Demarcus Robinson.

5 Q And you prepared that and faxed it to me at my
6 request?

7 A Yes.

8 Q The date in the bottom left-hand corner of that
9 document reflects 10/13/13, which was the date of autopsy.

10 Did you prepare a diagram at the time of autopsy?

11 A Yes, I did. It had all kinds of other things on it.

12 And this present diagram I just did last Friday just to
13 depict the wound by itself.

14 Q All right. And so to eliminate that other stuff and
15 focus on the trajectory path of the bullet?

16 A Yes.

17 Q And Dr. Ross, I know I've asked you this but I didn't
18 frame it in this way so let me do this. Based upon your
19 medical expertise and training, do you have an opinion to a
20 reasonable degree of medical and scientific certainty what
21 is the cause of death to Demarcus Robinson?

22 A Yes.

23 Q And what is that expert opinion?

24 A Exsanguination due to the laceration of the liver and
25 kidney due to the gunshot wound to the chest.

JANICE ROSS - DIRECT

1 Q And exsanguination being the loss of blood caused by
2 that?

3 A Correct.

4 Q You have described the bullet, the path, just
5 reviewing that again. The bullet path entering below the
6 right nipple of the defendant's chest had a bullet path
7 downward; is that correct?

8 A Correct.

9 Q Backward, correct?

10 A Correct.

11 Q And to the left; is that right?

12 A Yes.

13 Q And when you say to the left, would that be to the
14 victim's left?

15 A From the victim's right to the victim's left, yes.

16 Q Okay. And, in fact, did the -- was the bullet still
17 in the body when you performed the autopsy?

18 A Yes.

19 Q Did you retrieve the bullet?

20 A Yes.

21 Q Did you give that bullet to law enforcement?

22 A Yes.

23 Q And the bullet was found within the left kidney, is
24 that correct, or the area around the left kidney?

25 A Just around the left kidney.

JANICE ROSS - DIRECT

- 1 Q What is that term mentioned in your report?
- 2 A Facia. It's just the soft tissue around the kidney.
- 3 Q So that was around the left kidney of the victim,
- 4 correct?
- 5 A Yes.
- 6 Q How much blood does a body of a man that size normally
- 7 contain approximately?
- 8 A It depends on the size. In general his size might be
- 9 15, 16 units of blood that we think of from the Red Cross.
- 10 2000 would be at least five units, so sudden loss of a
- 11 third -- at least a third of the body volume.
- 12 Q So 2000 cc's would be approximately a third of the
- 13 body volume expected in an individual of that size?
- 14 A At least, yes.
- 15 Q The report goes on to mention that you drew specimens
- 16 from the deceased's body for the purposes of forensic
- 17 analysis including toxicology analysis; is that right?
- 18 A Yes.
- 19 Q Did you draw samples of his blood?
- 20 A Yes.
- 21 Q And his ocular fluid?
- 22 A Yes.
- 23 Q And did you give that to a representative of law
- 24 enforcement to be forwarded to SLED?
- 25 A Yes.

JANICE ROSS - DIRECT

1 Q You noted at the conclusion of the report that if the
2 toxicology report is positive that you might amend -- an
3 amended opinion, by yourself might be necessary; is that
4 correct?

5 A Correct.

6 Q I would like to show you what has been marked as
7 State's Exhibit 6 for the purposes of this hearing only.
8 What does that appear to be to you?

9 A This is the report from SLED on the toxicology.

10 Q All right. Now, the final page of that exhibit it
11 says that your office was cc'd a copy of it; is that
12 correct?

13 A Yes.

14 Q Do you recall seeing that before today?

15 A No, I don't.

16 Q All right. Looking at it now since you expressed this
17 in your report that your opinion might have to be amended
18 based upon the results of the toxicology analysis, the
19 ethanol amount as reflected in the blood of the deceased is
20 listed as what level?

21 A .159.

22 Q All right. And would that alter your opinion as to
23 the cause of death of Demarcus Robinson?

24 A No, it would not.

25 Q It would remain your expert opinion as stated

JANICE ROSS - DIRECT

1 previously he died from, in laymen's terms, a loss of blood
2 due to laceration of internal structures including the
3 liver and kidney due to a gunshot wound of the chest?

4 A Correct.

5 Q On page two of the toxicology report from SLED it
6 notes -- and let me ask you, is this a type of report that
7 you would normally rely upon in formulating an expert
8 opinion or whether or not it altered your opinion?

9 A Yes.

10 Q Looking at page two it notes the ocular fluid level
11 for ethanol as being 0.168, correct?

12 A Correct.

13 Q A slight increase over the blood level, correct?

14 A Yes.

15 Q However with that increase does it alter your expert
16 opinion as to the cause of death of the deceased?

17 A No, it does not.

18 Q Your expert opinion remains as stated before as due to
19 a loss of blood due to the laceration of the liver and
20 kidney due to a gunshot wound to the chest?

21 A Yes.

22 Q Finally there were numerous drugs for which the
23 victim's blood was tested, was there not?

24 A Yes.

25 Q None of those drugs as tested for came back positive

JANICE ROSS - DIRECT

1 other than some THC metabolites; is that correct?

2 A Correct.

3 Q And that reflected as on page two of the report showed

4 a THC metabolite level as 7.2; is that correct?

5 A Correct.

6 Q The threshold being 2.0 for that test; is that

7 correct?

8 A Yes.

9 Q Having received that information on the toxicology

10 report from SLED now, does that alter your expert opinion

11 that you formulated as to the cause of death of the

12 deceased?

13 A No, it does not.

14 Q Does it impact it any way?

15 A No.

16 Q And therefore, does it remain your expert opinion to a

17 reasonable degree of scientific and medical certainty that

18 the cause of death of Demarcus Robinson was loss of blood

19 due to laceration the liver and kidney due to a gunshot to

20 the chest?

21 A Yes.

22 Q And that the manner of death was homicide?

23 A Yes.

24 Q Did you observe any other injuries to the body of

25 Demarcus Robinson?

JANICE ROSS - DIRECT

- 1 A No, I did not, nothing recent.
- 2 Q When you examine the body of a victim, do you receive
- 3 a copy of the case report from law enforcement?
- 4 A No, not usually.
- 5 Q Do you look on the body of the deceased for any signs
- 6 of what they call perhaps defensive wounds?
- 7 A Yes.
- 8 Q Did you look at the hands of the deceased?
- 9 A Yes.
- 10 Q Did you see any injuries to the hands of Demarcus
- 11 Robinson?
- 12 A No.
- 13 Q Did you see any marks on the knuckles of Demarcus
- 14 Robinson?
- 15 A No.
- 16 Q No bruising?
- 17 A No.
- 18 Q No cuts?
- 19 A No.
- 20 Q No torn skin?
- 21 A No.
- 22 Q Did you see anything on the hands of the deceased,
- 23 Demarcus Robinson, to indicate that he was involved in a
- 24 fist fight earlier before he died?
- 25 A No, I did not.

JANICE ROSS - CROSS

1 MS. COLLINS: Thank you, Dr. Ross. Please answer any
2 questions of defense counsel.

3 THE COURT: Cross examination?

4 ~~MR. GRIER: Please the Court, Ms. Collins?~~

5 CROSS EXAMINATION

6 BY MR. GRIER:

7 Q Dr. Ross, in reviewing your autopsy I noticed that it
8 states the entrance of the gunshot wound in reference to
9 the top of the head. What was that -- do you remember what

10 that distance is at the top of page three?

11 A Yes. 21 inches below the top of the head.

12 Q You actually removed the bullet?

13 A Yes.

14 Q So you determined precisely -- obviously you found the

15 ~~bullet and removed it so you knew where it was at. Did you~~

16 measure it from the top of the head?

17 A No, I did not.

18 Q So we don't know the distance between the top of the

19 head and where the bullet was found.

20 A No.

21 Q So how did you come up with a diagram of the
22 trajectory that is State's Exhibit 5?

23 A From looking at the pathway of the bullet and where
24 the left kidney would be.

25 Q Where it would be?

JANICE ROSS - CROSS

1 A Yes.

2 Q And it was in the tissue surrounding the left kidney?

3 A Yes.

4 Q And it's fascia, how do you pronounce it?

5 THE COURT: Spell it for my court reporter, please,
6 ma'am.

7 THE WITNESS: F-a-s-c-i-a.

8 Q Is that a generic term for tissue around an organ?

9 A It just means fibrous tissue.

10 Q All right. Thank you. You know, that doesn't give us
11 any distance from the top of the head knowing it was in
12 the -- in that tissue, correct?

13 A Correct.

14 Q So, you know, was -- and was the diagram an educated
15 estimate --

16 A Yes.

17 Q -- of the trajectory then? Is that safe to say?

18 A Yes.

19 Q Could you say within what range it could vary?

20 A Couple of inches. Put it life size it would -- yes,
21 within a couple of inches.

22 Q Okay. So the variance of that -- of where that bullet
23 was in reference to the top of the head could be a couple
24 of inches?

25 A Correct.

JANICE ROSS - CROSS

1 Q Now, the indication that the path was -- the
2 indication was that the path was downward.

3 A Yes.

4 Q ~~That's in reference to an erect body position?~~

5 A That's correct.

6 Q It does not take into account the different body
7 positions we can be in at the time the entrance -- that the
8 projectile enters the body.

9 A Correct.

10 Q So certainly the projectile could be downward to an
11 erect body, but level or even upward or if that body was
12 positioned in a manner where the trajectory was entered.
13 Even from a downward angle you could have a -- if the
14 bullet was fired from a lower position it could actually --
15 ~~to a higher position it could show up as a downward path in~~
16 your autopsy.

17 A Yes. If the victim was bent over for instance, yes.

18 Q Do you know what position the victim was in at the
19 time that the bullet entered his body?

20 A No, I do not.

21 Q I would ask you to examine Defense Exhibit 1. Would
22 that be a potential scenario? Would that represent a
23 potential scenario where you would find a downward path
24 from a bullet from a firearm that was fired from a lower
25 position into an upward position?

JANICE ROSS - CROSS

1 A Yes.

2 Q Now, you treat the living or rather -- as a
3 pathologist you determine what's present, I suppose, is
4 ~~that accurate to say?~~

5 A As a pathologist I look at tissue from living people
6 to identify diseases and cancerous presence.

7 Q Do you have an occasion to examine head injuries as a
8 pathologist?

9 A Well, through autopsies, yes.

10 Q In the living as well?

11 A No.

12 Q Do you know the history of your subjects often times?

13 A Not all of the times.

14 Q But sometimes you do?

15 A Sometimes.

16 Q Have you had occasion to examine a body that has been
17 subjected to an assault and that resulted in death?

18 A Yes.

19 Q And from an instrument or from a fist according to the
20 history?

21 A Yes.

22 Q Have you had a chance to examine bodies that have
23 concussions based on their history and that concussion you
24 conclude was due to an assault with a fist?

25 A Well, what I would look for and see is bruising

JANICE ROSS - CROSS

1 around the head. The concussion itself is a microscopic
2 examination, we don't see anything specifically just
3 grossly looking at it. So what I look for is identifying
4 bruising and evidence of blunt force injury.

5 Q Okay. But you have found bruising that resulted in
6 death from an assault with a fist before?

7 A Yes.

8 Q Now, what is your role -- and Ms. Collins asked you
9 about it -- but your role -- how does toxicology play into
10 your role as a pathologist during an autopsy?

11 A Well, during the autopsy we make sure we collect
12 blood and urine and other items depending on the case for
13 the purpose of finding out -- doing a toxicology. We
14 don't do it at our hospital, so we collect it and seal it,
15 collect it and make sure it's in the proper containers,
16 seal it, sign it and send it to SLED, all of the chain of
17 evidence.

18 Q Does it play a role in interpreting the cause of death
19 sometimes?

20 A Sometimes.

21 Q Can you give me an example of how that would --

22 A Say a contact gunshot wound and somebody who has a
23 tremendously high level of narcotic, in other words, that
24 would make him unable to do it himself. So in that case
25 that would cause me to rethink the cause of death and the

JANICE ROSS - CROSS

1 manner of death. That is an example.

2 Q In terms of whether it was a potential suicide or a
3 homicide?

4 A Correct.

5 Q Are you qualified to interpret SLED reports?

6 A I'm not a toxicologist, but I can see -- I understand
7 a lethal level of, for instance, alcohol.

8 Q What is lethal level of alcohol in a 220-pound man?

9 And that may not be a fair question to ask you cold, but do
10 you have a --

11 A Well, generally over .5, it depends on the tolerance.

12 Q And I would ask you to look at State's Exhibit 6,
13 please. Is that .159 figure, is that a blood alcohol
14 reading?

15 A Yes.

16 Q And that's the same or similar to what we talk about
17 when we talk about people driving under the influence of
18 alcohol?

19 A Correct.

20 Q And the threshold is a .01. Now, what is the
21 significance of a threshold on a report of that nature?

22 A A threshold just means at what point in the machine
23 that measures alcohol the level will start picking it up.
24 So it will start -- it won't pick up alcohol less than
25 .01, but it will start reading it .1 and above.

JANICE ROSS - CROSS

1 Q Okay. But that level of alcohol is almost 16 times
2 higher than the threshold level, correct, on that report?

3 A Correct.

4 Q -- For Mr. Robinson?

5 A Yes.

6 Q Okay. And the THC level, how do you pronounce that
7 word?

8 A Tetrahydrocannabinol, THC. I'm not a toxicologist, I
9 can't interpret that.

10 Q Well, do you understand what the significance of the
11 threshold on the THC reports?

12 A Same thing. That's at what point that machine will
13 start picking it up.

14 Q Okay. Does that have any information, you know, that
15 you can interpret in terms of an affect on someone that it
16 would -- that that would have?

17 A No.

18 Q So, I mean, are you qualified to interpret when
19 someone would have the -- have any affect from the
20 particular level of THC or alcohol?

21 A That's beyond my expertise.

22 Q All right. Fair enough. Was it fair to say, or
23 accurate to say, going back to my question about your
24 observations of autopsies with head injuries that resulted
25 in death, that virtually any head injury could result in a

JANICE ROSS - CROSS

1 serious bodily injury?

2 A A head injury could cause -- it could cause serious
3 damage if it fractures a skull or causes bleeding around
4 the brain.

5 Q Okay. Is there any way to know in advance of being
6 struck what the affect of that impending strike will be to
7 a person?

8 A I'm not sure I understand the question.

9 Q Okay. Can someone that is being assaulted, can they
10 know what the outcome of being struck would be?

11 A I'm not sure. I don't think so. It depends on how
12 hard they're hit.

13 Q Right. They wouldn't know that before being struck
14 though, would they?

15 A I wouldn't think so.

16 Q Do you know anything about the effects of -- and I
17 think I've asked you this and you've answered in another
18 way but just to make sure I'm covering it, do you know
19 anything about the effects of alcohol or marijuana on the
20 behavior of persons, any training that would give you an
21 ability to give an opinion about that?

22 A Some. It all depends on tolerance and how familiar
23 they are with alcohol in their system.

24 Q Well, is there a general rule of thumb in the -- as a
25 medical professional of the effects of high levels of

JANICE ROSS - CROSS

1 alcohol consumption?

2 A Yes. In general it was decrease in reflex activity.

3 Again, it will get up to .4 or .5 that is lethal.

4 ~~Q Is there any general principle of the effects it has~~
5 on aggressiveness or passiveness?

6 A That's beyond my expertise.

7 Q Fair enough.

8 MR. GRIER: Thank you, Dr. Ross.

9 THE COURT: Any redirect?

10 MS. COLLINS: Yes, Your Honor. First a housekeeping
11 matter. I would like this marked as State's Exhibit 9.

12 REDIRECT EXAMINATION

13 BY MS. COLLINS:

14 Q Dr. Ross, I previously showed you State's Exhibit 4

15 ~~for the purposes of this hearing, that was a copy of your~~

16 autopsy report prepared at the conclusion of your

17 examination of the body of the deceased; is that right?

18 A Yes.

19 Q I've handed you now State's Exhibit 9 for purposes of

20 identification for this hearing only. That is also a copy

21 of your autopsy report at the conclusion of the autopsy; is

22 that right?

23 A Yes.

24 Q The difference between the two being State's Exhibit 4

25 has a stamp that covers some of the text of the report

JANICE ROSS - REDIRECT

1 saying it should not be copied, et cetera, without
2 authorization; is that correct?

3 A Right.

4 Q -- Where Exhibit 9 is a clear on without that stamp, is
5 that correct?

6 A Correct.

7 MS. COLLINS: Your Honor, at this time I would move
8 State's Exhibit 9 into evidence for the purpose of this
9 hearing only.

10 THE COURT: Any objection?

11 MR. GRIER: No, Your Honor. I think I -- let me look
12 just make sure I double check. It is as she told me as I
13 understood it. No objection.

14 THE COURT: Without objection State's Exhibit Number 9
15 admitted.

16 (The pathologist report was received as State's 9)

17 MS. COLLINS: And Your Honor, as previously referenced
18 I would also move into evidence at this time for the
19 purposes of this hearing only State's Exhibit 5, which is
20 the diagram prepared by Dr. Ross, and State's Exhibit 6,
21 which is the toxicology report from which she relied in
22 part in concluding that her opinion had not changed.

23 THE COURT: Any objection?

24 MR. GRIER: No objection, Your Honor.

25

JANICE ROSS - REDIRECT

1 THE COURT: Without objection so admitted.

2 (The diagram and toxicology report were received as
3 State's 5 and 6.)

4 ~~Q Dr. Ross, a few questions about your diagram. The~~
5 defense asked you to look at Defense Exhibit 1. Do you
6 recall that?

7 A Yes.

8 Q Is there a date on that exhibit?

9 A I don't see it, no.

10 Q No indication on the front or back when that was
11 prepared; is that right?

12 A Correct.

13 Q And you stated that this diagram, Defense Exhibit 1,
14 could be consistent with the directory of the path. It

15 ~~could be consistent with an action resulting in the~~
16 trajectory of the path of the bullet in the deceased's body
17 as you observed it; is that right?

18 A Yes.

19 Q And, of course, this diagram does not show -- this is
20 a diagram of two individuals at a freeze frame moment in
21 time, correct?

22 A Correct.

23 Q So individuals moving during a tussle or a fight or
24 just an altercation could impact where the bullet enters,
25 correct?

JANICE ROSS - REDIRECT

- 1 A Correct.
- 2 Q Could impact the trajectory, correct?
- 3 A Yes.
-
- 4 Q And so I would like to ask you, the trajectory as
- 5 you've described it and drawn it State's Exhibit 5, your
- 6 diagram, again these are two dimensional diagrams, correct?
- 7 A Yes.
- 8 Q You have got two drawings. The first is the head-in
- 9 flat front of the deceased or the person you're examining,
- 10 and then a flat back, correct.
- 11 A Sideways.
- 12 Q Well, the second page is sideways, correct?
- 13 A Yes.
- 14 Q So first page has the front and back in two
-
- 15 dimensional, correct?
- 16 A Correct.
- 17 Q You've depicted there what appears to be a bullet
- 18 wound under the right pectoral muscle or right nipple,
- 19 correct?
- 20 A Yes.
- 21 Q Going as you've described in your written report
- 22 downward, backward into the left and the body of the
- 23 victim, correct?
- 24 A Correct.
- 25 Q So you drew it on your first page as downward and to

JANICE ROSS - REDIRECT

1 the left, correct?

2 A That's correct.

3 Q Because on that first page you can't show it frontward

4 ~~to backward because it's not from the side, correct?~~

5 A Yes.

6 Q And on page two, is that what you're depicting then on

7 page two that's of a diagram of a body from the side,

8 correct?

9 A Yes.

10 Q And so page two you're showing the entry again below

11 the right nipple, correct?

12 A Yes.

13 Q And you are depicting that going from the front part

14 of the body to the back, correct?

15 A Correct.

16 Q And to the extent possible you're also trying to show

17 it going to the left, right?

18 A Correct.

19 Q That trajectory that you've drawn and that you've

20 described in writing in State's Exhibit 9 and that you have

21 drawn there in State's Exhibit 5, is it also consistent in

22 addition to what's been shown you in Defense Exhibit 1 with

23 a tussle between two individuals where they're both still

24 standing and one pulls out a gun and shoots it at the other

25 such that -- let me describe for the record because you

JANICE ROSS - REDIRECT

1 can't see it on that -- where they're pointing the gun down
2 and the they're both standing. Is that trajectory as
3 you've described it that you observed in the body of the
4 victim consistent with that?

5 A That position is possible, yes.

6 Q Okay. And Defense Exhibit 1, that's also possible,
7 correct?

8 A Yes.

9 Q I asked you earlier about the medical equipment that
10 you removed in the course of performing the autopsy and
11 whether or not that would have affected the path of the
12 bullet. When individuals perform CPR on someone that has
13 been injured or shot, can those efforts of CPR alter the
14 trajectory of a bullet path?

15 A No. Well, depending on if it went through the heart
16 it may have some influence on it, but not generally.

17 Q And that would include even if there were multiple
18 efforts by multiple individuals in the course between the
19 incident and the time the person died?

20 A Correct.

21 Q And would that also depend upon -- and that would be
22 true what you've stated even if some of those persons were
23 not trained medically such as a -- well, let me back up,
24 I'm not wording this well. Would it have any impact upon
25 your opinion as to whether or not CPR efforts would affect

JANICE ROSS - REDIRECT

1 the trajectory path of a bullet in a person's body if
2 someone performed CPR who was not someone who did it
3 routinely as a medical professional?

4 A No, it would not influence it.

5 Q It should not affect that path?

6 A Correct.

7 Q Is that because the path is basically carved by the
8 speed and the force of the bullet as it goes through the
9 body?

10 A Yes.

11 MS. COLLINS: Thank you. One moment.

12 (Break in proceedings.)

13 MR. GRIER: Judge, I would like to ask her one more
14 question.

15 MS. COLLINS: I'm sorry, I'm just checking to make
16 sure I didn't forget anything.

17 (Break in proceedings.)

18 MS. COLLINS: Thank you.

19 THE COURT: Mr. Grier?

20 RE CROSS EXAMINATION

21 BY MR. GRIER:

22 Q Did discern anything in your autopsy that would give
23 you any information about the distance between the weapon
24 that was used and the entry --

25 MS. COLLINS: I'm sorry, I can't hear Mr. Grier.

JANICE ROSS - RECROSS

1 Q I said did you discern anything during your autopsy
2 that you could interpret that would give you any
3 information about the distance from the weapon to the entry
4 point of the body?

5 A On the skin it all appears to be a distant wound,
6 which depending on the weapon could be two feet or beyond.
7 But I didn't have any clothing to look at to see if there
8 was any soot or tattooing or powder on the clothing.

9 Q What would powder on the clothing indicate?

10 A That would indicate a more intermediate range, less
11 than two feet, depending on the size of how the diameter
12 of the area.

13 Q And what evidence would exist if the weapon was
14 discharged against the body?

15 A You could see an imprint of the muzzle on the skin
16 itself and a lot of burning and soot around the edge of
17 the wound.

18 Q Okay. You didn't see any of that?

19 A No, I didn't.

20 Q Okay. And that would be only if there's actual
21 contact.

22 A Correct.

23 MR. GRIER: Thank you.

24 MS. COLLINS: Thank you. No further questions. I
25 would respectfully ask if this witness can be released.

NAVONEY CURRY - DIRECT

1 THE COURT: Any objection.

2 MR. GRIER: No, Your Honor.

3 THE COURT: You may step down, you are free to go.

4 ~~Mr. Grier?~~

5 MR. GRIER: Thank you, Your Honor.

6 The witness, NAVONEY CURRY, was first duly sworn and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GRIER:

10 THE COURT: State your full name for the record
11 spelling your last, please.

12 A Navoney, N-a-v-o-n-e-y. Curry, C-u-r-r-y.

13 Q Mr. Curry, how old are you, sir?

14 A How old am I? I'm 28.

15 Q Okay. Did you go to school with Allen Massey?

16 A Yes, sir.

17 Q How long have you known Allen Massey?

18 A I've known him for awhile, kind of grew up in the

19 same neighborhood.

20 Q Okay. How about Marcus Robinson, did you know Marcus?

21 A Yes. I'm good friends with the victim and the
22 defendant.

23 Q Yes, sir. Do you recall where you were in the wee
24 hours of October 12th of 2012?

25 A What do you mean where I was?

NAVONEY CURRY - DIRECT

1 Q Do you recall being at Shonettia and Malika's house on
2 the night Marcus Robinson was killed?

3 A Yes.

4 Q What were you doing there?

5 A Well, we had left from -- we had been to two prior
6 places. We was at some of Malika's -- I think that's
7 Malika's family, it was at a trailer, and then we went
8 over to --

9 Q Do you know what general area that was?

10 A It was right up the street from Shonettia's house.

11 Q Is that the 16th Street party?

12 A Yes, sir. And we left from there and we went to -- I
13 think it's -- I think -- I'm thinking that's Marcus
14 Robinson's -- I'm thinking that's Marcus Robinson's house

15 that we went to, we left from there and went back to
16 Shonettia's house.

17 Q Did you ever go down to Wiley Park, the party that was
18 going on down there, or were you aware of the party going
19 on down there?

20 A Yes. I'm thinking that's Marcus Robinson's house. I
21 don't know for sure if that was his house or not, I don't
22 know.

23 Q Well, I don't know. If you don't know you can't say,
24 can you? Let me ask you a couple of other things. Where
25 do you work at?

NAVONEY CURRY - DIRECT

1 A I work for Duracell.

2 Q All right. What shift do you work?

3 A I work third shift.

4 Q Did you work last night?

5 A Yes, sir. I'm really tired.

6 Q I understand. And you're under subpoena here today,
7 correct?

8 A Yes.

9 Q Are you under my subpoena?

10 A Yes.

11 Q Okay. Well, returning back to our discussion here, do
12 you know how long approximately you had been at -- do you
13 know -- was it Shonettia's and Malika's, and Shonettia's
14 and Malika was just her friend, or whose house was the City
15 Avenue house?

16 A I don't know whose name the house was in, I couldn't
17 tell you that.

18 Q Who lived there?

19 A Both of them reside there.

20 Q Okay.

21 A As far as I know both of them reside there.

22 Q And did -- were you invited to go there?

23 A Yes. We was all together there at the house. They
24 had -- well, Marcus and his girlfriend, they had came
25 there in a separate vehicle. So, you know --

NAVONEY CURRY - DIRECT

- 1 Q You were already there when they arrived?
- 2 A Yes.
- 3 Q So you left the 16th Street party?
- 4 A Yes. It was me, Shonettia and Malika was together.
- 5 Q Okay. And did everybody go straight over?
- 6 A Not everybody but it was just a select few.
- 7 Q All right. And who was that again?
- 8 A Shonettia, Malika and me, and Marcus. And if I'm not
- 9 mistaken Marcus, he came with his girlfriend, came over
- 10 there with his girlfriend.
- 11 Q Now, did you know his girlfriend?
- 12 A Yes. I grew up with everybody that was there. We
- 13 all grew up in the same neighborhood.
- 14 Q Now, was that everybody that was there?
- 15 A No. That was in the house when the incident
- 16 happened? No.
- 17 Q Who else was in that house?
- 18 A It was three more individuals that I kind of know
- 19 them but I don't know of them.
- 20 Q Yes, sir. Did you give the name of a Craig guy?
- 21 A Yes.
- 22 Q Is he in the courtroom?
- 23 A No.
- 24 Q Did you see him earlier?
- 25 A Yes, he's outside.

NAVONEY CURRY - DIRECT

1 Q Okay. And have you discovered what his real name is?

2 A Since -- no, I still haven't actually -- I just found
3 out that I'm related to him, I just found that out just
4 now.

5 Q Well, do you know Sindarous Wells?

6 A I thought he was a Craig, that's what I thought he
7 was, a Craig.

8 Q All right. And do you know a O'Bryant that may have
9 been there? Does that name ring any bells?

10 A O'Bryant?

11 Q Uh-huh.

12 A No. I don't know nobody by O'Bryant.

13 Q Let me try that again, Orlando Bryant. Do you know
14 Orlando Bryant?

15 A No, I don't know.

16 Q So there were three individuals and you don't really
17 know their names?

18 A No. It was two guys and a female was there.

19 Q Did you see Allen Massey that night?

20 A Yes.

21 Q And how long had you been there when Allen Massey
22 arrived do you suppose?

23 A I'll say roughly -- I'm giving an estimate of
24 about -- I'll say about 30 minutes to an hour I will say
25 roughly.

NAVONEY CURRY - DIRECT

1 Q Did you see any confrontation between Allen Massey and
2 anyone over at 16th Street?

3 A Are you talking about prior to us getting there?

4 Q That night.

5 A No, I didn't.

6 Q Did you become aware of any other shootings in the
7 neighborhood, taking place that night?

8 A No, sir.

9 Q Well, once Allen arrived -- did you see him come in?

10 A Yes.

11 Q Tell me about that.

12 A He came and walked in there and everybody spoke to
13 everybody, he spoke to everybody and everybody was
14 talking. I think they was getting ready to play a card

15 game, they was getting ready to play a card game. And

16 Shonettia and Malika had -- if I'm not mistaken they had
17 to use the restroom or something and that's when I went
18 outside to use the restroom. So I mean, everybody had to
19 have been in there while Allen was in there, everybody was
20 in the house talking and everything.

21 Q Well, you talked with Allen for awhile, didn't you?

22 A Yes.

23 Q Now, how about Tommy McGriff? Do you know Tommy
24 McGriff?

25 A If I'm not mistaken it's another nickname if that's

NAVONEY CURRY - DIRECT

1 the guy that goes by another nickname.

2 Q Tommy Gun?

3 A Yes, if that's him.

4 Q And he was there?

5 A Yes.

6 Q Was he one of the people that you were trying to
7 place?

8 A That was in the kitchen, yes.

9 Q Okay. And how long -- well, did you see Allen and
10 Marcus interact?

11 A No, sir, that's when I was outside.

12 Q Well, I mean, you never saw them speak at all?

13 A I mean, yes, they spoke to each as far as I --

14 THE COURT: Hold on a minute. Let him finish his

15 question and then you answer. Mr. Grier, let him finish

16 his answer, please, before you move forward. You may

17 continue. Thank you.

18 Q I think you said he spoke to everybody?

19 A Yes.

20 Q Did you participate in any conversations with Allen
21 Massey and the individuals at Shonettia's house that night?

22 A Everybody that was in the house?

23 Q Yeah. Were you part of the conversation with Allen
24 and the other folks that he was socializing with?

25 A Yes. Because I have two brothers that are deceased

NAVONEY CURRY - DIRECT

1 now, and Marcus grew up with my brothers also. And that
2 night he was mentioning my brothers and that really
3 touched me to my heart, and that really did bother me.

4 And I have been having really deep thoughts about that,
5 you know, because he kept mentioning my brothers saying
6 how much he missed my brothers that night. I was telling
7 him that I was going to speak with him, I was going to
8 talk to him when I came back. I was going outside to use
9 the restroom.

10 Q Well, but did you have -- were you a part of any
11 conversation between Allen and Marcus and you, the three of
12 y'all?

13 A Not that I recall. I'm not sure, not that I recall
14 of.

15 Q Did you overhear any conversation between Allen and
16 Marcus?

17 A As far as any arguing?

18 Q Just period.

19 A No.

20 Q Did you see whether they talked, though, and how they
21 acted towards each other prior to things going bad?

22 A If it was -- I wasn't really paying it any kind of
23 attention.

24 Q Okay. Now, you say that you left at some point to
25 walk outside.

NAVONEY CURRY - DIRECT

1 A Yes. I had walked outside to use the restroom.

2 Q How long do you suppose that had been from Allen --

3 A I can't give no exact time.

4 Q Okay. -- I don't expect an exact one, but it had been a
5 minute, awhile?

6 A I'm guessing like around like five or ten minutes
7 maybe, I mean, that's a guess. I'm guessing.

8 Q All right. Now, were you drinking?

9 A Yes. But it wasn't nothing -- no heavy drinking.

10 Q Did you observe what Marcus was drinking?

11 A It was some kind of liquor, it was in a big white
12 bottle, I think.

13 Q Okay. So he had a big bottle?

14 A Yes. It was in like a liter, a fifth bottle of
15 liquor that he had.

16 Q Okay.

17 A I think it was given to him, I don't know for sure if
18 it was given or not.

19 Q Well, how about him, did he appear to be feeling the
20 effects of alcohol from your observation?

21 A I wouldn't say he was, because everybody was --
22 everybody was basically chatting with each other that's
23 why --

24 Q All right. So you go out. How do you find out
25 something bad is going down?

NAVONEY CURRY - DIRECT

1 A That's the whole thing, I didn't know that something
2 bad had done went down. As I'm coming back in the house
3 Allen is passing by me going out the door. So, you know,
4 I mean, I'm walking on in the house and I walks in the
5 kitchen and that's when I seen Marcus laying on the floor.

6 Q Well, you saw Allen leave the house?

7 A Yes.

8 Q Okay. Did you notice anything about him, his demeanor
9 or did he say anything?

10 A No. He just walked straight out the house, I mean --

11 Q Did you see his face?

12 A I mean, I wouldn't say I was like looking at his
13 expression or nothing like that. But, I mean, it was like
14 he was walking like at a medium pace going out the door

15 and I'm coming in the house, so --

16 Q Well, had y'all had some discussions about going
17 somewhere together after that party?

18 A Yes.

19 Q Tell me about that.

20 A Well, no, it wasn't a discussion. He asked me what I
21 was doing that night and I told him I wasn't doing nothing
22 really. And I told him that we could go over at this
23 cousin's house of mine's, this cousin named Jamar, and I
24 told him, we will go over there after I use the restroom.
25 So as soon as I go outside, you know, and I come back

NAVONEY CURRY - DIRECT

1 that's when all of this incident had done occurred.

2 Q Okay. So you say you didn't see what actually
3 happened?

4 A No, sir, I was outside.

5 Q Okay.

6 A That's why I don't understand, you know.

7 Q Right. Well, what do you know about the reputation of
8 Marcus? Does he have a reputation for being a tough guy?

9 A I wouldn't say that, I wouldn't say that. But, you
10 know, people say different things about different people,
11 you know. I mean, it's been a lot that's been spoken
12 about the same thing about my brother when the incident
13 that happened with me and my brother.

14 Q Okay. Have you ever observed him to be in any fights
15 or anything, Marcus?

16 A No, sir.

17 Q Well, do you recall whether or not you spoke with Dot
18 Massey on the night that Allen turned himself into the
19 police?

20 A That same night?

21 Q Yeah. Did you call Dot Massey the night that Allen
22 turned himself into police or the next day?

23 A I don't recall. I may have or I may have -- I didn't
24 -- I mean, I can't think back like that like I used to
25 because I have -- I was diagnosed with PTSD.

NAVONEY CURRY - DIRECT

1 Q Okay. Well, do you recall telling her that you were
2 actually present and saw what happened?

3 A I told her I seen everything what happened?

4 Q Right.

5 A I don't recall that I told her that I seen everything
6 what happened because I didn't see exactly what all
7 happened because the people -- whenever -- what the guy
8 name -- when the investigator came to my house and he was
9 talking to me I told him the exact same thing, I didn't
10 see exactly what happened in the house. Because everybody
11 was fine in the house whenever I left to go outside.

12 Q Okay. Well, do you recall telling Dot Massey that
13 people were trying to get you to say that Allen had just
14 walked in and shot?

15 A I mean, that had came to me because they was
16 basically trying to say that he walked in the house --

17 MS. COLLINS: Objection, hearsay.

18 THE COURT: Objection sustained.

19 Q Was there tension between you and some of the folks at
20 the house after the shooting because you wouldn't make a
21 statement that Allen Massey had just come in the house and
22 shot --

23 MS. COLLINS: Your Honor, I'm going to object to
24 leading. This is his witness.

25 THE COURT: Objection overruled. Go ahead.

NAVONEY CURRY - DIRECT

1 MR. GRIER: I declare him as a hostile witness, Your
2 Honor, then if she's got an objection --

3 THE COURT: I said go ahead and ask the question.

4 Q ~~Were there tensions between you and others in the~~
5 house over the fact that you wouldn't make a statement
6 indicating Marcus --

7 THE COURT: Hold on a minute. Ask your first question
8 and then follow-up a second question if he answers it.
9 You're asking him two questions in one. Ask the first
10 question whether or not there was any tension, ask that
11 question, please.

12 Q Was there any tension in the house after -- towards
13 you or between you and anyone after Marcus was shot?

14 A No, sir.

15 Q Okay. Was there any pressure on you to make a
16 statement that Marcus had -- that Allen had just walked
17 into the house and shot Marcus right when he walked in?

18 A No, sir, wasn't no kind of pressure put on me.

19 Q So you didn't tell Dot Massey that?

20 A No. I was telling her that it was said to me it was
21 in my best interest to say that, you know, that that's
22 what happened.

23 MS. COLLINS: I'll object to hearsay again.

24 THE COURT: Objection sustained.

25 Q All right. Did you call Dot Massey and tell her that

NAVONEY CURRY - DIRECT

1 Allen had been hit multiple times and probably only
2 remembered being hit one time?

3 A You say he had been hit multiple times?

4 Q Yeah.

5 A What do you mean by hit multiple times?

6 Q I'm asking you if you told Dot Massey, Allen Massey's
7 mother, that?

8 A Yes. They was talking about he had been jumped on at
9 this get-together party or whatever.

10 MS. COLLINS: Objection to hearsay.

11 THE COURT: Objection sustained.

12 Q I'm asking if you told Dot Massey.

13 A Yeah. Because she was asking me what had happened
14 and I was telling her that must have been the reason why

15 that all of this stuff had led up to the point of that
16 happening. I was telling her what came to me because I
17 told her I would inform her of whatever I find out what
18 had happened.

19 Q Okay.

20 A But I didn't hear that directly from the horse's
21 mouth what had happened.

22 Q Okay. So you deny telling her that you saw it?

23 A No. I didn't tell her that I seen it.

24 Q All right.

25 A Because I didn't see what happened in the house.

NAVONEY CURRY - DIRECT

1 Q Okay. Well, did you tell Dot Massey that Tommy
2 McGriff was egging Marcus on to --

3 A That's what was told to me now.

4 ~~MS. COLLINS:-- Objection then to hearsay.~~

5 THE COURT: Objection overruled at this point. Go
6 ahead.

7 Q I'm not asking you what you were told. I'm asking you
8 if you told Ms. Massey, Allen's mother, that Tommy Gun was
9 egging Marcus on to tell him not to let go what had
10 happened between Allen and Marcus's cousin at 16th Street.

11 A Yes. I told her that's what I was told, I didn't
12 tell her that I heard it, though.

13 Q Well, okay.

14 A I was telling her that's what I was told, which was a

15 ~~bunch of he say, she say. I don't know whether or not --~~

16 whether that was the truth what happened in the house, I
17 don't know. And I also had stated that it was those three
18 people that was in the kitchen, they know more about what
19 happened in the kitchen than what I know.

20 Q Okay.

21 A And I was telling Allen's mother to try and find out
22 the names of those people because I didn't know neither
23 one of those people's names.

24 Q Okay. All right. Did you tell Dot Massey that what
25 Marcus's people were trying to do to Allen was messed up?

NAVONEY CURRY - DIRECT

- 1 A Repeat that again.
- 2 Q Did you tell Dot Massey that what Marcus's people were
3 trying to do to Allen was messed up?
- 4 A What do you mean by messed up?
- 5 Q I'm just asking if you made that statement. Excuse
6 me.
- 7 A No. I didn't give that type of -- I didn't give a
8 statement in that type of form saying they was messed up.
9 I said what had happened, that was a whole messed up
10 situation.
- 11 Q Okay.
- 12 A Because my intention was not for something like to
13 that happen, I was good friends with both of them.
- 14 Q I know that. All right. Mr. Curry, were you familiar
15 with nicknames of Marcus Robinson?
- 16 A No. I just know him by Marcus, Marcus Robinson.
- 17 Q Are you familiar with the nickname for Allen Massey?
- 18 A No. Because -- well, yeah, we call him Urk.
- 19 Q Now, what was Allen's reputation for, you know, as far
20 as being -- why is he call Urkel?
- 21 A I have no idea. That's just a nickname that we
22 always called him.
- 23 Q That's not a reference to Steve Urkel, or do you know?
- 24 A No.
- 25 Q Don't know. Well, what was -- did he have a

NAVONEY CURRY - DIRECT

1 reputation for being a tough guy?

2 A No. No, sir. No.

3 Q What was his representation as far as that goes?

4 A Being a smart person, very book smart person.

5 Because every time we asked him something he always had

6 the answer to it.

7 Q Did he show it off?

8 A Yes.

9 Q All right. Do you know Allen's mom? Have you been

10 over to their house before?

11 A Well, my cousin lives across the street from there

12 so, I mean, we basically have been outside of his house

13 before.

14 Q All right. Ever know Allen to be in any kind of rough

15 situation, who he hung out with?

16 A No, sir, not that I know of.

17 Q Okay. All right. Well, Mr. Curry, do you recall

18 telling Mr. Skidmore and -- do you recognize the fellow

19 over there -- do you see Mr. Massey?

20 A Yes.

21 Q Do you see the fellow to his right, the fellow to his

22 right?

23 A Yes.

24 Q Do you recall speaking with him?

25 A Well, that's the guy that was with Pete Skidmore that

NAVONEY CURRY - DIRECT

1 came to my house, yes.

2 Q So he was present when you talked to Pete Skidmore
3 and --

4 A Yes.

5 Q He heard the conversation, he was present, right?

6 A Yes.

7 Q Do you recall -- did you tell him that Marcus had a
8 reputation for fighting?

9 A I didn't say he had no reputation for fighting, I
10 said he had been in some fights.

11 MR. GRIER: Beg the Court's indulgence one minute.

12 THE COURT: Yes, sir.

13 (Break in proceedings.)

14 Q Last question, Mr. Curry. Did you speak with Allen
15 after the shooting on the phone? Did he call you?

16 A Yes.

17 Q In fact, did you break some news to him?

18 A Yes.

19 Q And what did you tell him?

20 A When I spoke with him he asked me what was going on
21 and I told him that Marcus had done got shot and he was
22 like, "Awe man, are you serious?" And I told him yes.
23 And he was telling me that he didn't mean for that to
24 happen like that. So at that point in time I told him
25 that it would be in his best interest to turn himself in

NAVONEY CURRY - DIRECT

1 with that gun.

2 Q Okay. All right. Did you speak with Allen after
3 Marcus passed away?

4 A Yes. It was that same night, the same night I spoke
5 with him.

6 Q Did you tell Allen? Did you break the news to Allen
7 that Marcus had passed?

8 A Yes. I broke the news to him, yes, because he had
9 called my phone.

10 Q And what was his reaction?

11 A He was -- sounded like he was crying, I mean, that
12 was what it sounded like to me.

13 MR. GRIER: Okay. All right. Thank you, Mr. Curry.
14 Answer any questions the solicitor may have for you, sir.

15 THE COURT: Cross-examination?

16 MS. COLLINS: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MS. COLLINS:

19 Q Mr. Curry, do you know what time you spoke with Mr.
20 Massey on the phone and told him that Marcus had passed
21 away?

22 A No, ma'am, I'm not quite sure what time. It was
23 late, it was late that night while everybody was still out
24 there.

25 Q So the incident happened 3:50 or so in the morning on

NAVONEY CURRY - CROSS

1 October 12th, does that sound about right, early in the
2 morning?

3 A Yes, ma'am. It was late that night, it was late.

4 Q Okay. It was past midnight into the next morning?

5 A Yes, ma'am.

6 Q And it was still dark outside, right?

7 A Yes, ma'am.

8 Q And when you spoke to the defendant on the phone and
9 told him that Marcus had passed away, was it still dark
10 outside?

11 A Yes, ma'am.

12 Q So the dawn -- the sun had not come up into the next
13 day; is that right?

14 A No, ma'am, I don't think so.

15 Q And you told him that you thought it would be good for
16 him to turn himself in with the gun; is that right?

17 A Yes, ma'am.

18 Q Mr. Curry, you said you went to school with the
19 defendant, correct?

20 A Yes, ma'am.

21 Q And that you knew Marcus as well, correct?

22 A Yes, ma'am.

23 Q You've known them both for many years, correct?

24 A Yes, ma'am.

25 Q And you said that you consider both of them friends;

NAVONEY CURRY - CROSS

1 is that correct?

2 A Yes, ma'am.

3 Q And you said that having known Marcus for years you

4 were not aware of any nickname that he had, you just called

5 him Marcus; is that right?

6 A Yes, ma'am.

7 Q And you also said in terms of Mr. Grier asking you

8 about Marcus being someone that fight or did he have a

9 reputation for fighting you said you wouldn't say that he

10 had that reputation, is that what you're saying?

11 A I wouldn't say that about neither one of them,

12 neither one of them.

13 Q And Mr. Curry, I understand you testified that you've

14 lost a brother, a brother who had been shot; is that right?

15 A Yes, ma'am.

16 Q Is his name Eric?

17 A Yes, ma'am.

18 Q When was Eric shot.

19 A You say where?

20 Q When? What year.

21 A This was back in 2010, January -- gosh, I forgot.

22 Q That's okay. But it was 2010?

23 A Yes, ma'am.

24 Q And that was your brother, Eric, who was shot.

25 A Yes, ma'am, and I was shot also.

NAVONEY CURRY - CROSS

- 1 Q And you were there at the time.
- 2 A Yes, ma'am.
- 3 Q And you were shot also?
- 4 A Yes, ma'am.
- 5 Q And Eric passed away from that; is that right?
- 6 A Yes, ma'am. We both had passed away but they revived
- 7 me.
- 8 Q In regard to that then, I imagine you don't like being
- 9 around firearms; is that right?
- 10 A No, ma'am.
- 11 Q Mr. Curry, did you have any idea when you were at the
- 12 house on City Avenue at Malika's, did you have any idea
- 13 that the defendant, Allen Massey, had a gun on him?
- 14 A No, ma'am.
- 15 Q He didn't tell you he had a gun on him?
- 16 A No, ma'am.
- 17 Q Had you known that Mr. Massey had a gun on him, would
- 18 that have concerned you?
- 19 A Yes, ma'am. Because I've been through a lot of pain.
- 20 I'm the last of my mother's -- I'm the last child that my
- 21 mother has.
- 22 Q And -- go ahead, I'm so sorry.
- 23 A And, you know, me having to be brought up here for
- 24 something like this, I mean, it really bothers my nerves
- 25 like really, really bad.

NAVONEY CURRY - CROSS

1 Q And if you would have known Mr. Massey had a gun on
2 him that night and that --

3 A I wouldn't have not let -- I would not have let that
4 ~~situation happen like that, no. And it bothers me every~~
5 single day me sitting back thinking about this that I was
6 outside and that incident happened. Because if I was in
7 that house that would not have happened, it would not, no.

8 Q And if you had known Mr. Massey had a gun on him,
9 would you have asked him to leave, to take that gun home to
10 where it couldn't hurt anybody?

11 A Or either I would have took it away from him to put
12 it in a safe place or turn it in myself because I don't
13 like to see no type of violence. I done been through that
14 with me losing my brothers and I don't like to be around
15 stuff like that, I don't.

16 Q And to your knowledge, no one in that house knew that
17 Mr. Massey had a gun on him at that time, right? Nobody
18 acted like that when he came to the door, right?

19 A No, ma'am.

20 Q And you've already said that you didn't observe any
21 bad feelings or tension between anyone, including Marcus
22 and Allen Massey, up to the point you went outside to use
23 the bathroom, correct?

24 A No, ma'am. I didn't see no kind of tension or
25 anything because Allen spoke to everybody and everybody

NAVONEY CURRY - CROSS

1 spoke back to him.

2 Q And when you went outside to use the bathroom I take
3 it Shonettia and Malika you thought had gone to the
4 bathroom there in the house?

5 A Yes. I thought they was in the restroom also.

6 Q Was it a bathroom house, just one bathroom as far as
7 you know?

8 A As far as I know if it was one bathroom because it
9 was like in the back, whereas you walk into the house it
10 was like in the back left-hand corner of the house. So
11 yes, ma'am, I'm guessing it was one bathroom in there.

12 Q But bottom line is, you're a man, you're at their
13 house and you need to use the restroom so you chose to step
14 outside, correct?

15 A Yes, ma'am. Because they was getting ready to use
16 the restroom.

17 Q Did you go out the front door?

18 A Yes, ma'am.

19 Q And being a man and a gentleman as I see you to be,
20 did you walk around the side of the house to use the
21 restroom?

22 A Yes, ma'am.

23 Q Do you recall which side of the house when you come
24 out?

25 A It was on the left side of the house.

NAVONEY CURRY - CROSS

1 Q And you said you were out there about five to ten
2 minutes; is that right?

3 A Yes, ma'am.

4 Q And while you were out there for about five or ten
5 minutes, was the street relatively quiet around you?

6 A Yes, ma'am. And I didn't even -- I didn't mean to,
7 cut you off -- but I didn't even hear a gunshot, that's
8 what basically shocked me about the whole situation. I
9 didn't even hear a gunshot.

10 Q And that's what I was going to ask you. Did you even
11 hear anybody yelling or raising their voices?

12 A No, ma'am.

13 Q And after you used the restroom, Mr. Curry, did you
14 then go back on the porch to go inside?

15 A Yes, ma'am.

16 Q And it was at that point when you were on the porch
17 that you saw the defendant, Mr. Massey, coming out?

18 A I had to step through the screen door, getting ready
19 to walk up in the hallway, that's when Allen was coming
20 out the door.

21 Q And you said he was walking at a medium pace; is that
22 correct?

23 A Yes, ma'am.

24 Q And you said you didn't notice the expression on his
25 face, do you remember that?

NAVONEY CURRY - CROSS

1 A Yes, ma'am.

2 Q Did you notice whether or not at that point he had any
3 injury to the lip area of his face?

4 A No, ma'am, I didn't. I didn't really look, I surely
5 didn't.

6 Q But nothing called --

7 A I'm thinking that everything was fine. I didn't mean
8 to cut you off.

9 Q No, you're fine. But nothing called your attention to
10 his lip area on his face at that time; is that right?

11 A No, ma'am.

12 Q You didn't notice him having any swelling on his lips
13 at that time, correct?

14 A No, ma'am.

15 Q And you didn't notice him having any blood on his lips
16 at that time, correct?

17 A No, ma'am.

18 Q And as he walked by you, did you notice if he had --
19 the defendant had anything in his hands?

20 A No, ma'am.

21 Q And as he walked by you, did you say, "Hey, I thought
22 we were going to Jamar's?" Because weren't y'all going to
23 ride to Jamar's?

24 A While we was in the kitchen we had discussed that
25 before I went outside. I told him, "When I come back from

NAVONEY CURRY - CROSS

1 using the restroom we will go ahead and leave."

2 Q So does it surprise you to see Mr. Massey walking on
3 by you?

4 ~~A I didn't really look into it like that thinking~~
5 nothing negative because I'm thinking that everything is
6 fine where we are. Everybody is speaking to each other
7 and talking to each other.

8 Q Okay. And so then after Mr. Massey walked by you
9 that's when your attention was drawn to the kitchen; is
10 that right.

11 A Yes, ma'am. That's where we all were because we was
12 getting ready to play a game of spades.

13 Q So again, when everything happened in the kitchen you
14 were not in there, you were outside the house, correct?

15 A Yes, ma'am.

16 Q Do you recall going to the law enforcement agency at
17 the Lancaster Police Department to speak to them about what
18 you had observed?

19 A Yes, ma'am. I told him I needed to talk to him but I
20 never did get the chance to give a written statement.

21 Q Do you recall sitting down with them and Lieutenant
22 Phillip Hall telling you, "We record things in here, Mr.
23 Curry?"

24 A Yes.

25 Q And do you recall telling him you did not want to

NAVONEY CURRY - CROSS

1 speak with the recording going on?

2 A Yes.

3 Q He said, "That's how you do things," and at that point
4 you left; is that right?

5 A Yes.

6 Q Was there a particular reason, Mr. Curry, why you were
7 not comfortable with them doing a recording of what you
8 were saying?

9 A Well, for one thing, you know, I didn't want to go
10 through that with putting my mother in danger and also me
11 from situations like this. Because, you know, I went
12 through the same thing with the situations of my
13 brother -- the situations from me and my brother from us
14 receiving -- well, me still receiving threats from, you
15 know, the other people's family from what happened with me
16 and my brother.

17 Q Okay. From that prior incident?

18 A Yes, ma'am.

19 Q But be that as it may, today you've come in and you've
20 shared with us what you saw happen, correct?

21 A Yes, ma'am.

22 Q And you've told us what you didn't see happen,
23 correct?

24 A Yes, ma'am.

25 Q And everything you've said today has been true and

NAVONEY CURRY - REDIRECT

1 correct to the best of your knowledge?

2 A Yes, ma'am.

3 MS. COLLINS: Thank you, Mr. Curry.

4 THE COURT: Any redirect?

5 MR. GRIER: Yes, Your Honor, just a bit.

6 REDIRECT EXAMINATION

7 BY MR. GRIER:

8 Q Mr. Curry, you didn't see the condition of Allen...

9 Massey's face after he came out of the house?

10 A No, sir. Because I was walking going back in the

11 house and I didn't really pay it much of attention.

12 Q But you did see it before the incident happened.

13 A He was standing beside me.

14 Q There was no -- was there any injury that you

15 observed?

16 A I wasn't really looking at his face.

17 Q Okay. All right. So you don't know whether he had a

18 busted lip or not?

19 A No, sir. I wasn't --

20 Q All right. Mr. Curry, were you wearing a black vest

21 that night?

22 A A black vest?

23 Q Yeah.

24 A I don't own no vest.

25 Q You don't own a vest. So you weren't wearing a black

NAVONEY CURRY - REDIRECT

1 vest? All right. Going back to -- going up to the police
2 department, do you recall telling Dot Massey that you were
3 going to go up and give a statement and straighten things
4 out?

5 A Yes. Because of the simple fact of my name kept
6 coming up in the whole situation and I wasn't there in the
7 house when the incident happened. That's what I keep
8 making the statement about.

9 Q But you talked with Hall, talked with Lieutenant Hall,
10 Phillip Hall?

11 A No. I spoke with the detective that's sitting behind
12 the solicitor's desk.

13 Q Detective behind the solicitor or beside her?

14 A That's beside the solicitor.

15 Q Okay. So you talked with Mr. Small.

16 A Yes.

17 Q Okay. And did you tell him anything about the facts
18 of the case, I mean, what you saw? Did you --

19 A I didn't get the chance to get down into detail about
20 it because he was telling me about I would have to be on
21 record and everything.

22 Q Okay. I know you didn't get it recorded, but you
23 didn't really talk about telling him anything you knew
24 about the facts of the case.

25 A No.

DOROTHY MASSEY - DIRECT

1 MR. GRIER: All right. Thank you.

2 MS. COLLINS: Nothing further.

3 THE COURT: Sir, you may step down. Thank you.

4 ~~(A recess was taken.)~~

5 The witness, DOROTHY MASSEY, was first duly sworn and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. GRIER:

9 Q Please state your name.

10 A My name is Dorothy R. Massey.

11 Q Ms. Massey, what's your relationship with Allen
12 Massey?

13 A He's my son.

14 Q How many kids do you have?

15 ~~A I have six.~~

16 Q All right. Where all do they live?

17 A Three of them went to school and live in Florence and
18 the other three live here in Lancaster. I have two
19 daughters older than Allen, and Allen is the third child.

20 Q What do you do for a living?

21 A I work at the department of social services.

22 Q And how long have you worked there?

23 A 19 years in July.

24 Q Tell me a bit about your parenting of Allen Massey.

25 What was important in parenting as far as you were

DOROTHY MASSEY - DIRECT

1 concerned?

2 A Being respectful of his elders, that was the first
3 thing. I was taught to believe that if you respected your
4 elders that was one of the first things. Being told that
5 if I ask you a question always assume that I know what the
6 answer is and I just want to see how honest you're going
7 to be with me, so always tell me the truth because lies
8 have a way of catching up with you.

9 Q Okay. What was your philosophy on education? What
10 was your parenting philosophy on education?

11 A That was the main thing. I believe that education
12 can take you anywhere you wanted to be.

13 Q Okay. Did you have any issues with Allen as far as
14 education goes?

15 A No. He was always a good student, a very good
16 student, and he did well in school.

17 Q Has Allen got a nickname?

18 A Yes.

19 Q And what's that nickname?

20 A It's Urk.

21 Q Did you give him that name?

22 A No, I didn't.

23 Q How did he get that name?

24 A For those of you who knows what Family Matters is,
25 it's a TV program, and Steve Urkel was one of the

DOROTHY MASSEY - DIRECT

1 characters on there. Allen wore glasses, he got glasses
2 when he was in grade school, but Steve Urkle was -- he
3 wore glasses and he was brainy so they -- kids started
4 calling him Urkle, or Urk, because he was brainy and he
5 wore glasses.

6 Q Okay. Well, how about discipline issues with him
7 being in trouble in school?

8 A No. My biggest disciplinary problem with Allen was
9 not -- taking things apart try to see how they worked and
10 tried to put them back together again. He was just kind
11 of curious.

12 Q I asked you where you worked, but did I ask you what
13 your occupation was?

14 A I'm a social service aide.

15 Q Been that the whole time?

16 A Yes.

17 Q Okay. And Ms. Massey, how did you find out that Allen
18 was in trouble on this particular occasion?

19 A When the police came to my house that Saturday
20 morning.

21 Q Okay. And did they tell you why?

22 A Not at first. It was really early in the morning and
23 I just heard the knocking of the door, or the pounding.
24 So I just got up and ran to the door and the officers were
25 there and they asked me if he was at home.

DOROTHY MASSEY - DIRECT

1 Q All right. When did you first have contact with
2 Allen?

3 A That was later on that evening, because we just kind
4 of started looking for him so that we could get him and
5 take him to the police department.

6 Q And did you manage to do that?

7 A We did.

8 Q Now, did you hear from anyone later on calling you
9 about what had happened that night?

10 A No. Well, my daughter, after she had had come in
11 contact with him she had called us and let us know that he
12 was going to get in touch with us and he was going to turn
13 himself in. And later on she told us that she had been in
14 touch with one of the people who was there and that he had
15 talked with her and told her what happened.

16 Q Well, who did you learn that was?

17 A That was Navoney Curry, he was the only person that I
18 knew a name.

19 Q Did you know Navoney?

20 A No, I didn't, I'd never met him.

21 Q Well, did you end up speaking with him?

22 A I did. I think it was that next night he called
23 me -- I believe -- he called me -- I'm not sure about the
24 time, but it was that Sunday I believe after we got Allen
25 and took him to the police department, he called and

DOROTHY MASSEY - DIRECT

1 basically repeated what he had told my daughter.

2 Q Okay. Well, I've got to ask you specific questions
3 about what your conversation with him was. Okay. Did he
4 say---did he tell you whether he was a witness to the
5 actual incident of the shooting?

6 A He did.

7 Q And what did he say?

8 A He told me that some things had happened earlier,
9 they had been to a party, I believe, and something
10 happened with -- I think he said Rashawd Robinson. They
11 left, they went to Shonettia's house --

12 Q Okay. Pardon to interrupt you, but specifically the
13 questions I need to ask you are in response Mr. Curry's
14 testimony.

15 A Okay.

16 Q So what did he tell you about whether he was present
17 or not?

18 A He said he was there, that there were three people in
19 the room when the shooting occurred; him, another young
20 man and another young woman.

21 Q Okay.

22 A And I didn't recognize the young man's name, and --

23 Q Now, did he say anything about what the response --
24 what the atmosphere was after the shooting in terms of
25 tension and any confrontation that took place between him

DOROTHY MASSEY - DIRECT

1 and the people there?

2 A He said that they had left because he felt like the
3 people at the house were turning on him. And he said he
4 hadn't spoken with the police because he didn't want to
5 say anything in front of anybody, but he told me that he
6 planned to go up and give the police a statement later on.

7 Q Did he tell you -- did he make a specific statement
8 about what the people in the house were trying to get him
9 to do?

10 A They were trying to get him to say that Allen had
11 just walked in and shot Marcus.

12 Q Did he say anything -- did he say anything about being
13 a witness to the physical contact between Marcus and Allen
14 before the shooting?

15 A He did.

16 Q And what did he say?

17 A He described some things that led up to it, and he
18 said that Allen had walked away and someone said something
19 to Marcus, and that he walked up I think he said behind
20 Allen and that he hit him, and he said that Allen didn't
21 see it coming.

22 Q Okay. Did he describe anymore detail about the way
23 Allen was hit?

24 A He said he hit him, Allen went down. And I think at
25 that point I said, "Yeah, Allen said he was hit once."

DOROTHY MASSEY - DIRECT

1 And he told me, he said, "No. He might remember being hit
2 once but that he was beating him."

3 Q Okay. And he beating Allen, being Marcus?

4 A Being Marcus.

5 Q All right. Did he say anything about a guy named --
6 did he say anything about a guy named Tommy Gun, Tommy
7 McGriff?

8 A Yes, he did.

9 Q And what did he say that Tommy McGriff did?

10 A He said that Marcus and Allen were fine. His words
11 were they had squashed whatever they talked about, but
12 that Tommy went to Marcus and told him that he wouldn't
13 let it go like that, that he should go get his man, and
14 that that's when he went after Allen.

15 Q Okay. Did he say what that was in reference to?

16 A I don't know if he heard the conversation, but I
17 believe it was in reference to what had happened earlier
18 with a cousin.

19 Q All right. Okay. Who all was -- that was a phone
20 conversation actually the day after Allen turned himself
21 in?

22 A Yeah. It was late that Sunday evening, I believe.
23 When he called me that was the first time I had talked
24 with him on the phone.

25 Q And who all listened to that conversation?

DOROTHY MASSEY - DIRECT

1 A I believe it was just me. I don't think my
2 daughter's were in the house, I believe it was just me.
3 He had called me to kind of let me know that he was going
4 to go and let the police know what happened and not to
5 believe that was going on on the streets, what was being
6 said on the streets.

7 Q All right. Did he give an explanation for why he
8 didn't give a statement to the police?

9 A He said he was scared. He said they were scared,
10 that they left. He said they were scared so they left
11 because they felt like the people at the house -- he
12 didn't give a name -- he said he felt like the people at
13 the house were turning on him.

14 Q All right. Did you know Marcus?

15 A No, I didn't.

16 MR. GRIER: Thank you, Ms. Massey. Answer any
17 questions that Ms. Collins might have for you.

18 THE COURT: Cross examination?

19 MS. COLLINS: Yes, Your Honor.

20 CROSS EXAMINATION

21 BY MS. COLLINS:

22 Q Ms. Massey, you spoke with Mr. Grier about your
23 beliefs and what's important in parenting, do you remember
24 that?

25 A Yes.

DOROTHY MASSEY - CROSS

1 Q Did you raise your children to obey the law?

2 A To obey the law?

3 Q Yes, ma'am.

4 ~~A I raised them to respect the law, but at a certain~~

5 age sometimes they stray away from that.

6 Q All right. Did you know that your son, Allen Massey,

7 was carrying a loaded firearm on the dates that this

8 happened?

9 A No, I didn't.

10 Q He lived with you in your home, correct?

11 A Uh-huh.

12 Q That's your house, right?

13 A It is.

14 Q You raised him in that house; is that right?

15 ~~A Partially, yes, I did.~~

16 Q And although he lived with you and he's your son, you

17 consider that your house, correct?

18 A Yes.

19 Q And you said that you raised children to be respectful

20 of their elders, correct?

21 A Yes.

22 Q And that you raised him to be truthful with you

23 because lies would catch up with him, correct?

24 A I did.

25 Q Did he ever come to you in your home before October

DOROTHY MASSEY - CROSS

1 12th, 2013 and say, "Mama, I've got a firearm in your
2 home?"

3 A I never asked. I have a firearm in my house, so --

4 Q But you didn't know your son had a firearm, correct?

5 A No. But I also never questioned it.

6 Q Now, certainly he was of age, 26, to come and go as a
7 young man would, correct?

8 A Uh-huh.

9 Q I assume he didn't have a curfew, right?

10 A No, he didn't.

11 Q And did you know that he was going out to parties that
12 night?

13 A I knew he was going out, but I work late a lot of
14 nights and sometimes we kind of pass each other, you know,
15 we're kind of like ships meeting in the night. If I'm
16 working late he might be in when I get there or he might
17 be gone.

18 Q Did you know that your son had previously pled guilty
19 on two separate occasions, once in 2011 and once in 2012,
20 to carrying a firearm unlawfully?

21 A I did.

22 Q Were you home that night when he left your home?

23 A I wasn't.

24 Q Okay. And you said later, early the next morning, you
25 heard a pounding on the door and it was the police,

DOROTHY MASSEY - CROSS

1 correct?

2 A Uh-huh.

3 Q And they were asking you where your son, Allen Massey,
4 was, correct?

5 A Correct.

6 Q At the point they came to the door, did you know if he
7 was in the house or not?

8 A I did not.

9 Q I assume he had his own room?

10 A He did.

11 Q And since he walked and didn't drive it wasn't an
12 issue of you looking for his car; is that right?

13 A No, it wasn't.

14 Q Did you then check and see, "Well, let me see if he's
15 even here?"

16 A I did. I came through his room to get to the front
17 door; so he wasn't in his bed.

18 Q So at that point you knew he wasn't in the there. Did
19 you check the bathroom to see if he perhaps might be in the
20 men's room or restroom?

21 A No. Actually we have a little routine. Whenever he
22 would get in -- I would leave the light on for him,
23 whenever he got in he would always cut that light off.
24 The light was still on so I really didn't believe -- I
25 didn't think he was at home.

DOROTHY MASSEY - CROSS

- 1 Q So at that point you thought he was not at home
2 because the light was still on.
- 3 A Uh-huh.
- 4 Q ~~Did you check the home just to make sure since the~~
5 police were checking on him?
- 6 A No. I was told not to move so I didn't move. I
7 asked to come outside but I was in my night clothes and I
8 didn't step outside, I sat down in the living room with
9 the door open.
- 10 Q You said you were familiar with why your son, Allen
11 Massey, was called Urk, right?
- 12 A Yes.
- 13 Q You told us about the TV show and Steven Urkle, right?
- 14 A Yes.
- 15 Q And you said it's because your son also wore glasses
16 and was brainy or smart as the character, Urkle, wore
17 glasses was brainy; is that right?
- 18 A Yes.. That's when they started calling him Urk.
- 19 Q He certainly wasn't called Urk because he was weak; is
20 that right?
- 21 A Weak?
- 22 Q Your son is not weak, would you agree?
- 23 A He's gentle but -- weak in what way?
- 24 Q Does he have any physical disabilities?
- 25 A None that show, no.

DOROTHY MASSEY - CROSS

1 Q None that show?

2 A Yes.

3 Q He has no disabilities in terms of lifting books or

4 lifting small items in the house, right?

5 A Yeah.

6 Q You had no concerns about this 26 year old son going

7 out and being about in the community, you didn't feel like

8 he was so physically weak that he couldn't do that, did

9 you?

10 A No. Not to go out, no. None.

11 Q And you said later on that evening you had contact

12 with your son. So would that have been later on the

13 evening or the same early morning that the police came and

14 knocked on your door?

15 A It was.

16 Q So if they were knocking on your door the early

17 morning of October 12th of 2013, you had contact with your

18 son later on in the evening of October 12th of 2013; is

19 that right?

20 A Yes.

21 Q And you said you spoke with him so that -- your

22 contact with him was so you could get him and so you could

23 take him to the police department; is that right?

24 A Uh-huh. I told him he needed to go ahead and turn

25 himself in.

DOROTHY MASSEY - CROSS

1 Q Did he call you?

2 A He did, because I didn't know where he was at that
3 point.

4 Q Okay.

5 A He just called and said he was okay and "I'll call
6 you back," or something, that's when I told him he needed
7 to turn himself in.

8 Q Did you know at that point Marcus had died?

9 A I did.

10 Q Did you tell your son that he had died?

11 A I did. He didn't know at that point.

12 Q He did not know?

13 A No. I don't think he knew at that point.

14 Q So you feel like you were the first person to share
15 that with him?

16 A I think I was, I'm not sure. I can't swear to it.

17 Q And you said -- did you, in fact, with perhaps one of
18 your daughters go to get him, Allen, your son, so that
19 y'all could take him to the police department?

20 A Yes. This was later on that next day, we got him
21 that Sunday.

22 Q So you spoke to him later on in the evening of October
23 12th of 2013, right?

24 A Uh-huh.

25 Q And you said you went to get him to take him to the

DOROTHY MASSEY - CROSS

1 police department the next day, Sunday, October 13th of
2 2013; is that right?

3 A Yes.

4 Q ~~And would you agree that y'all went together for him~~
5 to turn himself in. Was it in your car?

6 A No, it was my daughter's car.

7 Q Your daughter's car. And you and two of your
8 daughters and your son, Allen Massey, were all together in
9 the car for him to turn himself in; is that right?

10 A Uh-huh.

11 Q And you said you went to get him the next morning.
12 Where was he?

13 A He was -- I'm not sure of the area, I live in
14 Lancaster. But he was out I want to say off 903 somewhere
15 out there, we went and got him. He was there and we got
16 him and he was ready.

17 Q Y'all had made arrangements where he would be so you
18 could pick him up I guess by phone; is that right?

19 A Yes. I think, if I'm not mistaken, my daughter had
20 talked with him and kind of helped me convince him -- not
21 really convince, but tell him that it would be best if he
22 just went ahead and turned himself in.

23 Q When you spoke with him on the phone the evening
24 before he turned himself in, did you ask your son about
25 where is the gun?

DOROTHY MASSEY - CROSS

1 A No, I didn't.

2 Q Certainly you anticipated that your son would be
3 distraught over Marcus dying, correct?

4 A Yes.

5 Q Did it concern you that perhaps if your son had access
6 to the gun that he might harm himself? You weren't
7 concerned with that?

8 A No.

9 Q So you as a mother didn't say, "Son, where is the
10 gun?"

11 A No, I didn't.

12 Q But when you picked him up the next morning y'all did,
13 in fact, secure the gun at some point; is that right?

14 A Uh-huh.

15 Q Where was the gun, where did you get it?

16 A A young man gave it to us.

17 Q Did y'all go to the young man's house?

18 A We met him, and my daughter -- again, I think my main
19 concern was just getting Allen, and he said that he was
20 going to take the gun in. And I will be honest with you,
21 I had a moment there where I thought, okay, let's think
22 about this. And he said, "No, we're going to do it right.
23 I'm going to take everything -- I'm going to take the gun
24 in, they'll have that and I'll just tell them what
25 happened." So that's what we did.

DOROTHY MASSEY - CROSS

1 Q Did you know the name of the young man that gave y'all
2 the gun?

3 A No, I didn't. I think I called him Gumby or
4 something, I'm not sure.

5 Q Had you seen him before?

6 A I hadn't.

7 Q And who put the gun in the trunk?

8 A I think my daughter did, I think she put it in there.
9 I didn't want it, you know, on the seat or whatever.

10 Q Did your son tell you when you talked to him on the
11 phone after it happened that he had been hurt himself?

12 A He told me that he was beat up a little bit but I
13 didn't -- he said he was okay. He said, "I'm beat up a
14 little bit but I'm okay."

15 Q He was beat up a little bit but okay.

16 A Yeah.

17 Q Did you ask him if he needed medical attention?

18 A I asked him if we needed to take him to the doctor,
19 or I think I asked him if we needed to take him to the
20 doctor or the hospital or something, and he said no. I
21 think I did, I'm pretty sure I did.

22 Q And this is what he told you as you talked to him
23 first on the phone the evening -- later in the evening --
24 the day before he turned himself in, the evening before he
25 turned himself in, right?

DOROTHY MASSEY - CROSS

1 A Yes.

2 Q I imagine that you as a mother were eager to see him,
3 to see for yourself that Allen was okay, am I right?

4 A I was but he wasn't ready.

5 Q He wasn't what?

6 A He wasn't ready.

7 Q Wasn't ready to turn himself in yet?

8 A He wasn't ready. He said he had to figure some
9 things out, and I think -- he sounded like he might have
10 still had some alcohol in his system to be honest, and I'm
11 not sure if that's -- you know, if that played a part in
12 that he wanted to be totally straight when I got him, or
13 when he --

14 Q So he wasn't ready to turn himself in when you spoke
15 with him on the phone the evening before he turned himself
16 in.

17 A No.

18 Q And, of course, you love your son, Allen.

19 A I do.

20 Q And I'm sure it's very hard for you as a mother to see
21 him here today.

22 A It is. It's not what I would have wanted, but --

23 Q Had you seen your son, Allen, and Marcus interact
24 during the years --

25 A I had never met Marcus.

DOROTHY MASSEY - CROSS

1 Q You had never met Marcus?

2 A No.

3 Q So you'd never seen them interact with each other.

4 A No, I hadn't.

5 Q I imagine this has impacted your whole family to have

6 a son be charged with this offense, am I right?

7 A It has.

8 Q Who is with you here today, can you share that with

9 us?

10 A Three of my daughters are here, and there's another

11 in the waiting room, nephew, son-in-law, my nephew's

12 girlfriend, his father.

13 Q Are your three daughters are the three ladies in the

14 first row here?

15 A They are.

16 Q To your right as you look across.

17 A Yes.

18 Q And one of them is in a white shirt, one is in a gray,

19 one is in a black shirt; is that right?

20 A Yes.

21 Q Were any of those young ladies, your daughters, with

22 you when y'all went to get Allen to turn himself in?

23 A The young lady in the gray sweater.

24 Q And what is her name?

25 A Veronica.

DOROTHY MASSEY - CROSS

1 Q And the other daughter that was with y'all, is she the
2 one out in the waiting area?

3 A She is.

4 Q And what is her name?

5 A Leanna.

6 Q Did Mr. Grier talk with you about what's called a
7 sequestration order about witnesses not discussing the case
8 before they come in here to testify?

9 A Well, I don't remember him having that conversation
10 with me. And apparently no one talked with some of the
11 witnesses that have yet to come in, because they were out
12 discussing it, and one person was actually coaching the
13 other person on what to say when she came in here, so they
14 need to have that conversation too.

15 Q Well, that's what I wanted to ask about, and he might
16 not have used the word sequestration, but did he explain to
17 you why you needed to sit outside before you came in and
18 testified?

19 A No, they just told us to stay outside. Mr. Grier
20 didn't actually tell us that, someone from the court came
21 out and told everyone that was supposed to be a witness to
22 stay out front.

23 Q And you knew you were to be a witness, right?

24 A Uh-huh.

25 Q But you didn't understand that to mean that someone

DOROTHY MASSEY - CROSS

1 who was in here couldn't come outside and talk to you about
2 the case? Nobody explained that to you?

3 A Oh, you know, I kind of figured it out that that
4 ~~would be the reason.~~

5 Q Did any of your young ladies, your daughters here in
6 the front row when they came out during breaks or during
7 the lunch break, did they talk to you about the case?

8 A They talked to me about Bo mostly.

9 Q About what?

10 A Bo, that's the dog. He's at the house and he hasn't
11 been walked.

12 Q Oh, y'all have a puppy dog named Bo?

13 A No. My two girls, Nichole and Cheryl, brought Bo
14 home with them, so we were kind of concerned whether or
15 ~~not we would have time to go take him out since he's been~~

16 in the house since this morning. Cheryl was the clock
17 watcher, she was worried that we needed to hurry up and
18 eat and come back, so --

19 Q And you said that's mostly what y'all talked about,
20 right?

21 A That's what we talked about.

22 Q Did you discuss the case at all?

23 A We discussed Allen, how he looked, whether or not he
24 seemed to be okay.

25 Q But y'all didn't discuss the testimony at all?

DOROTHY MASSEY - CROSS

1 A The testimony? I don't even know if there had been
2 any testimony at that point.

3 Q Okay. All right. And you didn't discuss what you had
4 planned to testify to today.

5 A We did. I told them the truth would be enough.

6 Q Okay. But during the lunch break?

7 A During the lunch break, that was mostly clock
8 watching by Cheryl wondering if we should try to get home
9 to get Bo outside, and hoping that the truth came out.

10 MS. COLLINS: Thank you. One moment.

11 (Break in proceedings.)

12 MS. COLLINS: Thank you.

13 THE COURT: Mr. Grier?

14 REDIRECT EXAMINATION

15 BY MR. GRIER:

16 Q While we're talking about your daughters. What all
17 did your daughters grow up to be?

18 A Cheryl is the young lady in the white, she's a
19 teacher, she works with autistic children. Ronnie, that's
20 my senior person, she works with seniors at Morningside
21 and she has also published three books, so I'm proud of
22 that. And my daughter, Nichole, who's sitting on the end
23 is a registered nurse.

24 Q Okay. And you've got Leanna?

25 A Leanna.

DOROTHY MASSEY - REDIRECT

1 Q What does she do?

2 A Right now she's out on medical leave. She was a
3 security guard at Wal-Mart and she'll be a paralegal when
4 she finishes school.

5 Q Okay. And you've got other kids, you've got other
6 children besides Allen?

7 A Just Allen and Shonda. Shonda is in Florence, she
8 works -- she was a biology major so she works with some
9 battery company in the lab, chemistry was her thing.

10 MR. GRIER: All right. Thank you, Ms. Massey. I have
11 no further questions for you.

12 MS. COLLINS: Nothing further.

13 THE COURT: Ma'am, you may step down. Thank you.

14 Call your next witness.

15 MR. GRIER: Scott Grant.

16 The witness, SCOTT GRANT, was first duly sworn and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. GRIER:

20 Q Please state your name for the record.

21 A Thomas Grant.

22 Q Mr. Grant, what's your position with the police
23 department?

24 A I'm a captain and commander over the special
25 operations division.

SCOTT GRANT - DIRECT

1 Q All right. What does the commander of special
2 operations involve?

3 A Oversees investigations, narcotics, SWAT.

4 Q ~~Okay. Captain, do you recall being present for Allen~~
5 Massey's bond hearing back in December?

6 A Not specifically, no.

7 Q Do you recall having a conversation with Dot Massey in
8 the courtroom at some point about encouraging her to get
9 witnesses?

10 A Yes. I've spoken with Ms. Dot several times, yes.

11 Q Do you recall a conversation in the courtroom with her
12 about that?

13 A I don't particularly. But most of our conversations
14 have been pretty much the same. I don't say that one did
15 not happen in the courtroom, it probably did, yeah.

16 Q Do you know her outside of this case?

17 A No.

18 Q Well, do you recall a conversation where I related to
19 you that there was an issue with threats in this case being
20 made to witnesses?

21 A Yes. That has been something that's been brought up,
22 yes.

23 Q I understand. And that Dot Massey had communicated
24 that to me?

25 A Yes.

SCOTT GRANT - DIRECT

1 Q And do you recall what you said about Dot Massey?

2 A I'm sure you're going to tell me.

3 Q Well, do you recall saying, "If Dot Massey said it I
4 believe it?"

5 A No, not particularly. But I could have said that,
6 yes.

7 Q Well, is that true? Do you feel like she -- what do
8 you feel like her reputation is for the truth?

9 MR. GRIER: Your Honor, I'll object as to either
10 bolstering of another witness or a pitting against another
11 witness.

12 THE COURT: Objection sustained.

13 MR. GRIER: Judge, not to argue but I didn't get a
14 chance for any input on that. May I not ask about the
15 veracity of a witness?

16 THE COURT: Can you approach a minute?

17 (A bench conference was held.)

18 Q Did you participate in the interview with Allen
19 Massey?

20 A I did.

21 Q And do you recall how he came to come into the custody
22 of the department?

23 A Yes.

24 Q How did he?

25 A Through contact with his family members, they

SCOTT GRANT - DIRECT

1 basically brought him up there with his sister and his
2 mother.

3 Q Do you recall during the interview with Allen

4 ~~Massey~~ I think who was the principle questionnaire
5 during this interview, do you recall?

6 A Probably Lieutenant Hall, we were both in there
7 during the interview.

8 Q Okay. Do you recall asking about other witnesses that
9 were present during the -- at the time of the shooting?

10 A Yes.

11 Q And did he give you that information?

12 A He did give us some names, yes.

13 Q And you oversee the investigators, correct?

14 A I do.

15 Q And so you -- what efforts were made to locate the
16 witnesses that aren't appearing in court, do you know?

17 A Specifically I couldn't say. I know we do try to
18 locate witnesses. We make phone calls, we put feelers
19 out, we go to certain locations. But sometimes we have a
20 hard time getting someone to actually come up and sit down
21 and speak with us about something.

22 Q That's fairly common actually.

23 A Yes, fairly common.

24 MR. GRIER: That's all of the questions I have for
25 you. Thank you.

SCOTT GRANT - CROSS

1 THE COURT: Ms. Collins?

2 CROSS EXAMINATION

3 BY MS. COLLINS:

4 Q ~~Captain Grant, were you on duty on October 13, 2013~~
5 when the defendant, Allen Massey, turned himself into law
6 enforcement?

7 A We -- Lieutenant Hall and I weren't actually on duty
8 that day, but we were called that that was probably going
9 to happen and we came in. So I guess to answer your
10 question, yes, I was on duty.

11 Q You weren't scheduled to be but you came in.

12 A Correct, yes.

13 Q And when you saw the defendant that day he waived his
14 Miranda rights, correct?

15 A Yes.

16 Q Which were explained to him by Lieutenant Phillip Hall
17 in your presence, correct?

18 A Yes, ma'am.

19 Q And he signed that waiver in your presence as noted on
20 State's Exhibit 3; is that right?

21 A He did, yes.

22 Q And at the conclusion of the interview with Mr.
23 Massey, did y'all take photographs of him?

24 A We did.

25 Q He had described during the course of that interview

SCOTT GRANT - CROSS

1 one hit to his mouth, correct?

2 A Yes.

3 Q And pursuant to his description of such y'all took

4 pictures of his face and his lips; is that correct?

5 A Yes, ma'am.

6 Q Captain Grant, I would like to show you what's been

7 marked for identification purposes for this hearing only as

8 State's Exhibits 10 through 13, and ask you to look at

9 those photographs, please.

10 A Okay.

11 Q What are those photographs on?

12 A Photographs of Mr. Massey, and then close-ups of his

13 lips.

14 Q What's the date on those photographs?

15 A 10/13/2013.

16 Q Is there a time stamp?

17 A 14:57.

18 Q And those four exhibits, 10 through 13, are they true,

19 fair and accurate depictions of the injury to the

20 defendant's lip as you observed them yourself at the time

21 he came in to turn himself in and give an interview to law

22 enforcement on October 13th of 2013?

23 A Yes, ma'am.

24 MS. COLLINS: Your Honor, at this time I would move

25 those four exhibits into evidence for purposes of this

SCOTT GRANT - CROSS

1 hearing only.

2 MR. GRIER: No objection. Without objection State's

3 Exhibits 10-13 admitted into evidence.

4 (Photos were received as State's 10-13.)

5 Q Did Mr. Massey at anytime indicate to you that he had

6 any other injuries whatsoever on his body that he wanted to

7 tell you about?

8 A No.

9 Q Did he indicate that he needed -- had any other

10 injuries he wanted you to take a picture of?

11 A No.

12 Q Did he at anytime indicate that he needed medical

13 treatment?

14 A No.

15 Q Was he still bleeding from the lip at the time that

16 you interviewed him?

17 A No.

18 Q And because he was not at the scene at [REDACTED] City Avenue

19 when law enforcement responded to the call about the

20 shooting, you were not able to observe any injuries to

21 Allen Massey at about 4:00 a.m. on October 12th of 2013,

22 right?

23 A That's correct.

24 Q He had left, correct?

25 A Yes.

SCOTT GRANT - CROSS

1 Q He had left and he didn't come into law enforcement on
2 that day, did he?

3 A No.

4 Q --So this was your first opportunity to observe his
5 physical injuries, if any, correct?

6 A Yes.

7 Q When Mr. Massey came to turn himself into law
8 enforcement, was he in the company of his mother, do you
9 know?

10 A Yes, I believe so, his mother and maybe his sister.

11 Q Was a gun collected from the car in which he pulled up
12 in, do you know?

13 A Yes.

14 Q Was it given to you?

15 A Yes, by Officer Hildreth.

16 Q You put it in evidence.

17 A I did.

18 Q Was that gun later sent to SLED for firearms testing?

19 A Yes.

20 Q I would like to show you what's been marked as State's
21 Exhibits 14, 15 and 16 for the purposes of this hearing
22 only, and ask you, do you recognize what that -- what is
23 purported as photographs of something in that -- those
24 three exhibits?

25 A Yes.

SCOTT GRANT - CROSS

1 Q What are those pictures of?

2 A Pictures of the revolver that Mr. Massey brought with
3 him to the police department.

4 Q And that was the revolver he represented was used on
5 the early morning hours of October 12th of 2013 with which
6 he shot the victim Demarcus Robinson?

7 A Yes, ma'am.

8 MS. COLLINS: Thank you. I move those into evidence.

9 Q Are those fair and accurate depictions of that
10 revolver at the time he turned it into y'all?

11 A Yes.

12 MS. COLLINS: I move those into evidence at this time.

13 MR. GRIER: No objection.

14 THE COURT: Without objection State's 14, 15 and 16
15 admitted.

16 (The photos were received as State's 14-16.)

17 Q Captain Grant, when you responded to the shooting,
18 officers were already interviewing witnesses; is that
19 correct?

20 A That's correct.

21 Q And at that time since your other officers were tied
22 up, did you take it upon yourself to collect evidence and
23 photograph the scene?

24 A I did.

25 Q Captain Grant, I would like to show you what's been

SCOTT GRANT - CROSS

1 marked as State's Exhibits 17 through 20 for the purposes
2 of this hearing only, and ask you, do you recognize those
3 photographs?

4 A Yes.

5 Q Are there time stamps on that photograph, date and
6 time, or just date?

7 A Yes.

8 Q When were those photographs taken?

9 A It says 10-12-2013 at 04:01.

10 Q And what are those photographs of?

11 A Photographs of the house where the shooting took
12 place.

13 Q At [REDACTED] City Avenue?

14 A Yes.

15 Q And are those fair and accurate depictions of the
16 scene as you observed it when you responded to the call
17 that there had been a shooting at [REDACTED] City Avenue on 10/12
18 of 2013?

19 A Yes.

20 MS. COLLINS: At this time I would move those four
21 Exhibits 17, 18, 19 and 20, into evidence.

22 MR. GRIER: No objection, Your Honor.

23 THE COURT: Without objection State's Exhibits 17
24 through 20 admitted into evidence.

25 (The photos were received as State's 17-20.)

SCOTT GRANT - CROSS

1 Q There was a T-shirt on the floor of the kitchen; is
2 that correct?

3 A Yes.

4 Q It appeared to have been cut off cleanly with a
5 cutting utensil by someone, correct?

6 A Yes.

7 Q Did you believe that to be the shirt worn by the
8 victim at the time of the shooting?

9 A Yes.

10 Q And did you take that into evidence?

11 A I did.

12 Q And I would like to show you what has been marked as
13 State's Exhibits 21, 22, 23 for the purposes of this
14 hearing only and ask you, do you recognize these

15 photographs?

16 A I do.

17 Q What are those photographs of?

18 A Of the T-shirt that was in the floor that night.

19 Q Is there a time stamp on those photographs?

20 A Yes.

21 Q What is that?

22 A 10/12/2013, 04:17.

23 Q Are those three photographs fair and accurate
24 depictions of the T-shirts as you observed them on the
25 early morning hours of 10/12/13 when you responded to these

SCOTT GRANT - CROSS

1 allegations?

2 A Yes.

3 MS. COLLINS: At this time I move those three into
4 evidence, Your Honor.

5 THE COURT: Previously stated by Mr. Grier without
6 objection, so admitted.

7 (The photos were received as State's 21-23.)

8 Q One of those pictures is the close-up of the bullet
9 hole; is that correct?

10 A Yes.

11 Q You agree that the T-shirt only appears to have one
12 bullet hole, correct?

13 A That's correct.

14 Q How long have you been in law enforcement, Officer?

15 A Thirty years.

16 Q You received training during the course of your
17 employment as such in the area of firearms and what's known
18 as stippling or gunshot residue.

19 A I have.

20 Q Have you been certified in that area?

21 A No.

22 Q But based upon your work in this area and having been
23 an officer for 30 years, how many cases would you say
24 you've investigated that involved shootings?

25 A I wouldn't even know where to start.

SCOTT GRANT - CROSS

1 Q More than 100?

2 A Definitely more than 100, yes.

3 Q Did it appear to you to be gunshot residue around the
4 bullet hole of that white T-shirt?

5 A Yes.

6 Q And you had that in evidence, correct?

7 A Correct.

8 Q If the Judge or defense wants that here, correct?

9 A Yes, ma'am.

10 Q Now, you were present at the time that defendant,

11 Allen Massey, came in and gave a statement to law

12 enforcement, correct?

13 A Correct.

14 Q We've already established that you were present when

15 he waived his Miranda rights in Exhibit 5, correct?

16 A Yes.

17 Q Lieutenant Phillip Hall and yourself were the two that

18 interviewed Mr. Massey; is that right?

19 A That's right.

20 Q Did you satisfy yourself that the defendant understood

21 the Miranda rights which were made to him?

22 A Yes.

23 Q At any time were any promises made to him for leniency

24 if he gave a statement?

25 A No.

SCOTT GRANT - CROSS

1 Q Were any threats made to induce him to make a
2 statement?

3 A No.

4 Q He told you he had graduated 12th grade?

5 A Yes.

6 Q He told you he understood the English language?

7 A Yes.

8 Q He told you he was not under the influence of drugs?

9 A That's correct.

10 Q He told you he was not under the influence of alcohol?

11 A Correct.

12 Q Y'all advised him of his Miranda rights as set forth
13 in the written statement and he ultimately acknowledged
14 being informed of those rights and he agreed to waive them
15 and give a statement; is that correct?

16 A Yes.

17 Q At no time he requested an attorney, correct?

18 A No.

19 Q Did you record the interview that was given by the
20 defendant on October 13th of 2013?

21 A Yes, we did.

22 Q Did you provide a copy of that interview to the
23 solicitor's office?

24 A Yes.

25 MR. GRIER: Your Honor, at this time I would move into

SCOTT GRANT - CROSS

1 evidence a copy of the interview of Allen Massey taken on
2 10/13/13 at 15:50 hours with Lieutenant Phillip Hall and
3 the witness, Captain Scott Grant at the Lancaster Police
4 Department.

5 THE COURT: Any objection?

6 MR. GRIER: No objection, Your Honor.

7 (The video was received as State's 24.)

8 MS. COLLINS: I would request to publish that at this
9 time.

10 THE COURT: We're going to stop right now and we will
11 resume at 9:30 in the morning. You are not to discuss your
12 testimony at all, all right. I'm going to ask you in the
13 morning when you come back in here if you were able to
14 listen to and follow the Court's instructions on that
15 issue. We'll resume at 9:30 tomorrow morning on this
16 matter. Okay. You may step down. Now, one other thing,
17 When Ms. Massey was on the stand -- excuse me, when this
18 officer was on the stand just now Mr. Grier was asking
19 about Ms. Massey, her, I guess -- asking this officer to
20 testify as to her reputation for truthfulness, the State
21 objected as to bolstering. Under Rule 608 I do not believe
22 it's permissible, under Rule 608 it is not permissible and
23 that is the basis of this Court sustaining that objection.
24 All right. I just wanted to put that on the record. 9:30
25 in the morning.

SCOTT GRANT - CROSS

1 (Court recessed for the evening and resumed at 10:00
2 A.m. on Tuesday, March 31, 2015.)

3 THE COURT: State ready to proceed?

4 ~~MS. COLLINS: State is ready, Your Honor.~~

5 THE COURT: Defense counsel?

6 ~~MR. GRIER: Yes, sir.~~

7 THE COURT: All right. When we broke yesterday
8 afternoon, Captain Grant, I advised you not to talk about
9 your testimony with anyone. Did you abide by this Court's
10 instructions?

11 THE WITNESS: Yes, Your Honor, I did.

12 THE COURT: At this time I'm going to recognize Ms.
13 Collins, you may continue.

14 MS. COLLINS: Thank you, Your Honor. May it please
15 the Court?

16 THE COURT: Yes, ma'am.

17 MS. COLLINS: Your Honor, at this time I would ask to
18 publish the State's Exhibit which is the DVD of the
19 defendant's interview by law enforcement after waiving his
20 Miranda rights on October 13th of 2013.

21 THE COURT: All right.

22 MS. COLLINS: Which is already in evidence.

23 THE COURT: All right.

24 (At this time the DVD was played.)

25 MS. COLLINS: I have a few more questions of Captain

SCOTT GRANT - CROSS

1 Grant.

2 CONTINUED CROSS EXAMINATION

3 BY MS. COLLINS:

4 Q ~~Captain Grant, that deeper voice that we hear such as~~

5 right at the end where you were telling him we're going to

6 take a few more pictures, is that your voice?

7 A Yes, ma'am.

8 Q And as you're sitting down you were in there during

9 the whole interview, although we can't see you, you're out

10 of the range of camera, we can see you when you first sit

11 down, right?

12 A Yes.

13 Q But you did not leave the room during the interview at

14 all, correct?

15 A No.

16 Q And we do hear you ask him several questions,

17 especially toward the end of the interview such as what's

18 the difference between the incident with Rashawd and the

19 incident with Marcus, why you used the gun the second time

20 and not the first; is that right?

21 A Yes.

22 Q Captain Grant, after that interview concluded that

23 we've just watched, the DVD of which is in evidence, was

24 there anymore conversation with the defendant with you or

25 with anyone in your department as far as, you know,

SCOTT GRANT - CROSS

1 regarding what transpired on the early morning of 10/12 of
2 2013?

3 A Not directly. We took some pictures of his mouth and
4 then he went back for processing.

5 Q Okay. So while he was having his pictures made of his
6 mouth, he didn't add anything regarding being afraid of the
7 victim; is that right?

8 A That's correct.

9 Q He didn't add anything regarding feeling like the
10 victim might kill him, correct?

11 A No.

12 Q He didn't add anything regarding feeling like the
13 victim might inflict some level of serious bodily injury,
14 did he?

15 A No, he didn't.

16 Q You took pictures, or were you present when Lieutenant
17 Hall took pictures of the defendant's mouth and lips?

18 A Yes.

19 Q Which? Did you take them or were you just present, do
20 you remember?

21 A Actually I think that maybe we both took them at
22 different times.

23 Q All right.

24 A But I was present during all of that.

25 Q And I asked you yesterday that because the defendant

SCOTT GRANT - CROSS

1 ran after the incident and did not turn himself in the
2 following day you were not able personally to observe his
3 lip immediately after the incident, correct?

4 A That's correct.

5 Q But while y'all were taking pictures of the
6 defendant's mouth and lip, did he indicate to you that
7 there was any other mark whatsoever no matter how minor on
8 his body from the incident that you needed to see and look
9 at and take a picture of?

10 A No.

11 Q And had the defendant indicated such, would you have
12 taken a picture of that?

13 A Absolutely.

14 Q Because the defendant did not turn himself in
15 immediately after the incident, were you able to ascertain
16 with any degree of certainty whether or not the clothes
17 which the defendant was wearing at the time he turned
18 himself in were the same that he wore on the date of the
19 incident?

20 A No.

21 Q So you don't know whether or not he changed clothing
22 before turning himself in?

23 A I don't.

24 Q So you don't know to what extent his lip area bled
25 before he turned himself in, do you?

SCOTT GRANT - CROSS

1 A No.

2 Q Lastly, I asked you yesterday regarding some
3 photographs of the revolver that was taken into evidence at
4 the time the defendant turned himself in. Do you recall
5 what caliber that revolver is?

6 A I believe it's a .32.

7 Q All right. Are you confident of that or do you need
8 to reference the --

9 A Yes. I'm sure as I can be without looking at a piece
10 of paper that it was a .32.

11 Q All right. Thank you.

12 MS. COLLINS: Nothing further.

13 THE COURT: All right. Mr. Grier --

14 MR. GRIER: Thank you.

15 THE COURT: -- anything further?

16 REDIRECT EXAMINATION

17 BY MR. GRIER:

18 Q Captain, I should have stepped up yesterday when you
19 were looking at this and identifying, so I want to ask you
20 about -- do you recognize what State's Exhibit 23 would be?

21 A I do.

22 Q And what was that?

23 A It was a T-shirt that was photographed in the house
24 that night.

25 Q Okay. And you know, I understood you to testify that

SCOTT GRANT - REDIRECT

1 you recognized stippling?

2 A Yes.

3 Q What is stippling?

4 ~~A Stippling is basically partially burned and unburned~~

5 gunpowder that is expelled out of the muzzle of a weapon

6 when it is fired.

7 Q Is there also is it called padding or some felt or

8 something that's ejected?

9 MS. COLLINS: I'm so sorry, I cannot hear Mr. Grier.

10 MR. GRIER: Okay. I'll speak up louder.

11 Q Is there also -- what else is ejected during the

12 discharge of a firearm besides the bullet and powder and --

13 is there anything else that's ejected?

14 A It depends on the type of round. But in this

15 ~~particular round there would have been a projectile and~~

16 them some gunpowder and gunpowder residue that was around.

17 Q Is there any padding or any kind of --

18 A Not in a pistol round, no.

19 Q What type of weapon would eject a wad?

20 A Like a shotgun.

21 Q Okay. Will you take a look at that? What did you

22 indicate -- would you -- and can we write on the exhibit

23 and indicate what the stippling area that you would observe

24 on there would be?

25 A I can.

SCOTT GRANT - REDIRECT

1 THE COURT: Any objection?

2 MS. COLLINS: You said write on the exhibit. Do you
3 want him to just like circle?

4 MR. GRIER: Yeah. What would be the stippling on it?

5 MS. COLLINS: What color pen is that, Mr. Grier?

6 MR. GRIER: This is black.

7 MS. COLLINS: Do you want to use a red one just for
8 the distinction?

9 MR. GRIER: Or a highlighter, yeah.

10 MS. COLLINS: All right. No objection.

11 THE COURT: All right.

12 Q Would you indicate what the stippling would be?

13 A It's the area immediately around the gunshot.

14 Q All right. Now, during the -- you were out on the

15 scene the night of October the -- or the morning I should

16 say of October 12th of 2013. Did you conduct any

17 interviews?

18 A I did not.

19 Q Okay. Did you identify any of the people that were

20 alleged to have been present during the shooting that were

21 not cooperating in giving statements?

22 A Did I?

23 Q Did you identify anybody that was uncooperative and

24 refusing to give statements to the police that night after

25 being asked to?

SCOTT GRANT - REDIRECT

1 A No.

2 Q Were you aware of an incident over and -- and it was a
3 county incident over on park -- Wiley Park Road earlier in
4 ~~the evening or in the morning of October 11th of 2013?~~

5 Were you aware of a shooting incident over on Wylie Park
6 Road?

7 A No.

8 Q --Not at all? Okay. Would you examine something I
9 received in the discovery? Can you identify that document?

10 A No, sir.

11 Q That wasn't a document you prepared, was it?

12 A No.

13 MS. COLLINS: May I see the document, please?

14 MR. GRIER: Yes.

15 Q ~~You can't identify it, correct?~~

16 A No.

17 THE COURT: Do you want to mark it for identification
18 purposes? Mark it for identification purposes, please.

19 MR. GRIER: That would be Defense Exhibit Number 2.

20 THE COURT: For identification purposes only.

21 MR. GRIER: That's right.

22 MS. COLLINS: I'm sorry, was the photo of the shirt
23 not entered in?

24 THE COURT: That was a State's exhibit.

25 MR. GRIER: That one was already in evidence.

SCOTT GRANT -- REDIRECT

1 MS. COLLINS: But not the color one. Is that the one
2 he marked, or he marked State's?

3 MR. GRIER: He marked the exhibit that was in
4 evidence.

5 MS. COLLINS: The State's?

6 MR. GRIER: We can substitute the color one if you
7 want, but he was consistent --

8 MS. COLLINS: That's fine.

9 Q Did you become aware of any threats that were going
10 on, any threatening of witnesses through any of the -- were
11 there any allegations of the --

12 A I was aware of some third party reports that there
13 may have been some threats, yes, but we were not able to
14 ever get anyone to actually say they themselves were
15 threatened by anyone.

16 Q Understood. Okay.

17 A But, yes, sir, I was.

18 MR. GRIER: All right. Thank you.

19 MS. COLLINS: Nothing further.

20 THE COURT: Sir, you may step down. Thank you. Call
21 your next witness.

22 MR. GRIER: I would call Tyzhe Hough.

23 The witness, TYZHE HOUGH, was first duly sworn and
24 testified as follows:

25 DIRECT EXAMINATION

TYZHE HOUGH - DIRECT

1 BY MR. GRIER:

2 Q Please state your name.

3 A Tyzhe Hough.

4 Q All right. Mr. Hough, where do you live?

5 A In Buford.

6 Q And were you in the City of Lancaster on -- or in the
7 area of the City of Lancaster on the night of October 11,
8 2013 or the morning of October 12th of 2013?

9 A Yes, sir.

10 Q Okay. And were you at -- where were you?

11 A Wiley Park area.

12 Q Okay. What were you doing there?

13 A At a kick back.

14 Q What's a kick back?

15 A A party basically, a house party.

16 Q A house party? Okay. And, you know, who all -- well,
17 was Demarcus Robinson present at that kick back?

18 A Yeah.

19 Q All right. Do you know him?

20 A No.

21 Q Does your family have a connection to him, though?

22 A He and my brother supposedly have the same baby
23 mother, I think.

24 MS. COLLINS: Object to anything that's hearsay. He
25 says supposedly have, so unless it's of his own knowledge.

TYZHE HOUGH - DIRECT

1 THE COURT: Objection overruled. Go ahead, Mr. Grier.

2 Q Well, at any rate, did you have an encounter with
3 Demarcus Robinson?

4 A ~~Yeah. Him and my brother did and I was present~~
5 during the words that was exchanged.

6 Q Okay. And what was the nature of the exchange, what
7 was it about?

8 A He was trying to basically jump on my brother.

9 Q He being who?

10 A Marcus.

11 Q Okay. And do you know what that was about, what any
12 kind of --

13 A Not really. I was thinking that it was basically
14 because they was -- it was over a female.

15 Q Well, did you continue to stay at the party after it
16 happened?

17 A No.

18 Q Did you leave immediately? Why did you leave?

19 A Because he was asking someone for a gun, and after we
20 left he started shooting at the car.

21 Q And did you have anymore encounters with Demarcus
22 Robinson that night?

23 A No, we went home.

24 Q Do you know about what time that was? Don't guess but
25 did you know? Did you have a reason to know?

TYZHE HOUGH - DIRECT

1 A No.

2 Q All right. You didn't -- did you know Allen Massey?

3 A No.

~~4 Q Have you ever met him before you met him in jail?~~

5 A No.

6 Q Okay. And did you meet him in jail?

7 A Yeah.

8 Q All right. So you don't know anything about his past

9 or his reputation. Did you know anything about Marcus

10 Robinson's reputation?

11 A I heard about him but I don't know him personally.

12 Q Had you ever witnessed anything prior to that night,

13 any -- had you ever seen anything, any of his doings?

14 A No.

~~15 MR. GRIER: Okay. All right. Answer any questions~~

16 that the solicitor has for you.

17 THE COURT: Cross examination.

18 MS. COLLINS: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. COLLINS:

21 Q So you said you did not know Demarcus Robinson; is

22 that right?

23 A Right.

24 Q So how can you sit here in a court of law having put

25 your hand on the Bible and say that this was Marcus

TYZHE HOUGH - CROSS

1 Robinson that did this?

2 A Because I know his nickname and I know what he looked
3 like, but I don't know him.

4 Q So when you say you don't know him you're saying you don't
5 know him personally.

6 A Yeah. I mean that I never hung around him or
7 nothing.

8 Q But you're saying you knew him enough to know who he
9 was.

10 A Yes.

11 Q And at the time -- you said you can't say exactly what
12 time this was, but was it the early morning hours of
13 October 12th, 2013, or was it still before midnight,
14 October 11th, 2013?

15 A It was before midnight. It was at night, I know it
16 was at night.

17 Q So darkness had fallen but it was before midnight on
18 October 11th of 2013, correct?

19 A Yes.

20 Q And this happened at the party in the Wiley Park area
21 of Lancaster, right?

22 A Yes.

23 Q Was the defendant, Allen Wesley Massey, there?

24 A No.

25 Q You know him by sight, correct?

TYZHE HOUGH - CROSS

1 A No.

2 Q You don't know him?

3 A I know him from being in jail with him.

4 Q ~~Well, having known him from being in jail with him,~~

5 was the defendant, Allen Wesley Massey, there at the time

6 that this supposedly happened with Demarcus Robinson at the

7 Wiley Park area?

8 A No.

9 Q You didn't see him anywhere around; is that correct?

10 A Right.

11 Q And you say that Marcus Robinson got upset and started

12 asking someone for a gun, right?

13 A Right.

14 Q And what's your cousin's name?

15 A It's my brother.

16 Q Is your brother's name, your younger brother?

17 A Raheem.

18 Q How do you spell that?

19 A R-a-h-e-e-m.

20 Q What's his last name?

21 A Hough.

22 Q Where does he live?

23 A Buford.

24 Q And he was there when this happened, right?

25 A Right.

TYZHE HOUGH - CROSS

1 Q And so to protect your baby brother as soon as you
2 heard Marcus asking for a gun y'all left, right?

3 A Correct.

4 Q But then you testified that but then he started
5 shooting at the car.

6 A Correct.

7 Q So he didn't have a gun on him, you're saying he had
8 to ask someone for one, right?

9 A Yes.

10 Q And why is it that you did not come to the police and
11 say -- or call the police and say "Hey, Marcus Robinson
12 just shot at our car?"

13 A I just want it to be an encounter, I just left and
14 went home.

15 Q You didn't want any encounters?

16 A Right.

17 Q You had just had an encounter where someone shot a
18 deadly weapon at you and your younger brother, right?

19 A Right.

20 Q You just had that encounter, right? Correct? You
21 need to answer out loud.

22 A Yes.

23 Q So why didn't you instead of going home go to the
24 police and say, "Y'all need to be aware of this?" Why
25 didn't you report it?

TYZHE HOUGH - CROSS

1 A I don't know.

2 Q Now, you're in jail, correct?

3 A Yes.

4 Q Are you here today under some type of subpoena? I
5 know are in custody.

6 A Yes.

7 Q So were you served with a subpoena by the defense --

8 A Served it? Yeah.

9 Q Did they give you a subpoena?

10 A Yes, ma'am.

11 Q And then they brought you over from the jail, right?

12 A Yes, ma'am.

13 Q And you've been in jail for some time; isn't that
14 right?

15 A Yes, ma'am.

16 Q You've been in the jail at the Lancaster County
17 Detention Center, I believe, since approximately July 31st
18 of 2013; is that right?

19 A Yes, ma'am.

20 Q You've been charged with attempted murder?

21 A Yes, ma'am.

22 Q A serious charge?

23 A Yes, ma'am.

24 Q And your bond has been denied.

25 A Yes, ma'am.

TYZHE HOUGH - CROSS

- 1 Q And you're in M cell; is that right?
- 2 A Yes, ma'am.
- 3 Q M like Mary, right?
- 4 A Yes, ma'am.
- 5 Q And Allen Wesley Massey is in M cell, too, at the
- 6 detention center, isn't he?
- 7 A Yes, ma'am.
- 8 Q He's in the same area of the detention center that you
- 9 are in, right?
- 10 A Yes, ma'am.
- 11 Q And, in fact, you said earlier that's how you got to
- 12 know him since you've been in jail and he's been in jail;
- 13 is that right? Correct?
- 14 A Yes, ma'am.
- 15 Q So y'all have had a good bit of time to talk about
- 16 this case, haven't you?
- 17 A No, ma'am.
- 18 Q You haven't had the time?
- 19 A We haven't talked about the case. We were just
- 20 having a random conversation and it come about.
- 21 Q Okay. So you had a random conversation and it came
- 22 about --
- 23 A On what he was charged with and who was he charged
- 24 for.
- 25 Q And at that point y'all had time to talk about the

TYZHE HOUGH - CROSS

1 case, right?

2 A His case? No.

3 Q So are you saying you never talked to Allen Wesley

4 ~~Massey about his case today? That the first words he's~~

5 heard coming out of your mouth about this is today here in

6 the courtroom?

7 A No. Well, me and him spoke about what he was charged

8 with and it wasn't no discussions about his case in the

9 reference to what you're saying.

10 Q Okay. But again, you're clear that Allen Wesley

11 Massey was not at the Wiley Park area at the time this

12 supposed shooting took place, right?

13 A Of my knowledge, yes.

14 Q And you weren't at City Avenue later on the early

15 ~~morning hours of October 12th, 2013 when Demarcus --~~

16 A Where would you be asking?

17 Q I'm almost through. You weren't on City Avenue on the

18 early morning hours of October 12th, 2013 when Demarcus

19 Robinson was shot, were you?

20 A No, ma'am.

21 MS. COLLINS: Nothing further.

22 THE COURT: Mr. Grier?

23 REDIRECT EXAMINATION

24 BY MS. COLLINS:

25 Q Mr. Hough, in fact, you didn't want to testify, did

TYZHE HOUGH - REDIRECT

- 1 you?
- 2 A No, sir.
- 3 Q Did we have a conversation and I told you I was going
- 4 to bring you out and ask you to testify?
- 5 A Yes, sir.
- 6 Q Okay. Did you tell me initially you were not going to
- 7 testify?
- 8 A Yes, sir.
- 9 Q But you were willing to give a statement?
- 10 A Yes, sir.
- 11 Q Who approached who at the jail about your experience
- 12 with Mr. Robinson on that night?
- 13 A Ask --
- 14 Q I said who spoke about that first, about your
- 15 experience with Demarcus Robinson, your encounter with
- 16 Demarcus Robinson?
- 17 A It was just -- we was talking and he was telling me
- 18 something and I just mentioned what had happened to me
- 19 with the same guy.
- 20 Q Okay. All right. Why were you reluctant to testify?
- 21 A Say that again?
- 22 Q Why didn't you want to testify?
- 23 A Because I just didn't want to be involved in it
- 24 period on his behalf.
- 25 Q Are you getting any benefit from being involved in it?

TYZHE HOUGH - RECROSS

1 A No.

2 MR. GRIER: That's all. Thank you.

3 RECROSS EXAMINATION

4 BY MS. COLLINS:

5 Q Giving a statement to the defense is not getting
6 involved in it?

7 A It just went from a conversation to this.

8 Q Went from a conversation to you signing a written
9 statement, right?

10 A Yes.

11 Q But then you said "But I don't want to testify,"
12 right?

13 A Yes, ma'am.

14 Q Because there's a difference between testifying under
15 oath with the Judge on the bench to simply signing your
16 name to a statement, right?

17 A No, there's no difference.

18 Q There's no difference? Well, then why did you care?

19 A I just didn't want to be involved in it.

20 Q But you were already involved in it, weren't you?

21 A Yeah, but -- I don't understand what you're saying.

22 Q The reality is that testifying is different for a lot
23 of reasons, isn't it, from just signing your name to a
24 statement; isn't that true?

25 A No. Mentioning the truth is the same thing as I am

TYZHE HOUGH - RECROSS

1 writing the statement.

2 Q Well, testifying in court, you have both sides ask you
3 questions, not just one; isn't that true?

4 A Yeah, but still stating the truth.

5 Q And testifying in court, you have a judge or a jury
6 that's able to look at your face as you're talking instead
7 of just signing your name to a statement, right?

8 A Yes.

9 Q So there are differences, true?

10 A Yeah.

11 Q There are differences, right?

12 A I guess.

13 MS. COLLINS: That's all.

14 THE COURT: Sir, you may step down. Call your next
15 witness.

16 MR. GRIER: I would call Leanna Crawford.

17 The witness, LEANNA CRAWFORD, was first duly sworn and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. GRIER:

21 Q Please state your name for the jury.

22 A Leanna M. Crawford.

23 Q Ms. Crawford, what is your relationship to Allen
24 Massey?

25 A That's my brother.

LEANNA CRAWFORD - DIRECT

1 Q Younger? Older? Where are you in the --

2 A Younger. I'm 36, he's 28.

3 Q All right. What do you do for a living?

4 A I am a security guard.

5 Q And have you worked other jobs?

6 A Yes, sir. I've been an office manager at a place

7 called Reeds in Charlotte, for seven years I did that.

8 I've also worked at Duracell, Crenco and the Medicaid

9 Office.

10 Q Okay. How is it your brother got his nickname?

11 A Urk?

12 Q Yeah.

13 A Because of his glasses and his mind, he's very smart.

14 A lot of people make references to him and Steve Urkel,

15 they just shortened it and started calling him Urk.

16 Q But it was in reference to Steve Urkle?

17 A Uh-huh.

18 Q All right. Did you -- how did you learn about the

19 shooting of Demarcus Robinson? And don't say what somebody

20 told you, but where did you learn it from?

21 A First from a friend of the family, and then after

22 speaking with my brother.

23 Q All right. So you spoke with your brother, do you

24 know about when?

25 A That same morning, probably about 7:00 or 7:30 that

LEANNA CRAWFORD - DIRECT

1 same morning.

2 Q All right. So a few hours after the incident?

3 A Yes, sir.

4 Q Okay. How did you come to speak with him?

5 A He came by my house.

6 Q Okay. Did you observe any injury to him when you saw
7 him that morning?

8 A Yes, sir.

9 Q And what did you see?

10 A He had some swelling to his top and bottom lip, some
11 bruises. He had a knot on the side of his head.

12 Q Okay. Did you urge him to do anything that -- did you
13 know what had happened to Demarcus Robinson?

14 A Not until I spoke with my friend and then spoke with
15 my brother. I knew he had been shot, did not know that he
16 had passed away at that time.

17 Q Well, did you know that Allen had been involved in the
18 shooting --

19 A Yes, sir, I did.

20 Q -- when you saw Allen?

21 A Uh-huh.

22 Q Did you advise him in any way about what he ought to
23 do?

24 A Yes, sir.

25 Q And how did you advise him?

LEANNA CRAWFORD - DIRECT

1 A Told him that, you know, the best thing for him to do
2 would be to talk to my mother and then just turn himself
3 in, you know. He told me that he didn't plan on running,
4 ~~he said that he was going to turn himself in, that he just~~
5 wanted to see everybody before he did.

6 Q At that time had you had any contact with law
7 enforcement seeking to find him?

8 A No, sir.

9 Q Okay. Did you -- can you tell me -- did you encourage
10 him to do anything else? Did you encourage him to hide?

11 A No.

12 Q All right. So do you know what he did after he left
13 your place?

14 A No, sir, I honestly don't.

15 Q All right. Well, you took a picture of him.

16 A Yes, sir, I did.

17 Q Would you look at it --

18 MR. GRIER: I would offer it for identification.

19 MS. COLLINS: I've seen it, Judge. I have no
20 objection to it coming in as long as she lays the
21 foundation and testifies.

22 Q Do you recognize that picture?

23 A Yes, sir.

24 Q Who is that a picture of?

25 A My brother, Allen.

LEANNA CRAWFORD - DIRECT

1 Q Okay. And why did you take that picture?

2 A I just felt like it would be important to have a
3 picture of him of how he looked, you know, following the
4 incident.

5 Q All right. And how did he look?

6 A Like that, the swelling to his mouth. He still had
7 some blood on the inside of his lip, he had a knot on the
8 side of his head.

9 Q All right.

10 THE COURT: What exhibit number is that, 3?

11 MR. GRIER: Your Honor, it's Exhibit Number 3.

12 THE COURT: Thank you.

13 Q And did you get a picture of the knot specifically?

14 A No, sir, I didn't. I couldn't get a good shot of it.

15 Q All right. Okay. Did he tell you where he got those
16 injuries?

17 A Yes, sir, he did.

18 Q All right. What did he tell you?

19 A He told me he had been at a party and that he was
20 intoxicated and that he had been jumped on, he had been
21 jumped on from behind. He said that Marcus had attacked
22 him and was hitting him and was stomping him in the head,
23 had kicked him in the head and hit him about the face, and
24 said that he thought the man was going to beat him to
25 death so that's why he shot him.

LEANNA CRAWFORD - DIRECT

1 Q So what was his explanation for the busted lip?

2 A Yes, sir, that Marcus had hit him.

3 Q Did you see any other evidence of him being assaulted?

4 A ~~No, sir. Just the injuries to the head and to the~~
5 face.

6 Q Was there any conversation about an incident prior to
7 the evening?

8 A Yes, sir.

9 Q All right. What did Marcus -- what did Allen tell you
10 about that?

11 A Said that Marcus had tried to start with him earlier
12 and that just to keep down confusion he left the prior
13 area that they were at and went somewhere else, but that
14 Marcus ended up going to the other party where my brother
15 had went to.

16 Q Okay. Well, did you know Demarcus Robinson?

17 A Yes, sir.

18 Q How did you know him?

19 A I used to work third shift at Crenco, and I know him
20 from working up there.

21 Q All right. Did you know anything about him having a
22 nickname?

23 A Knockout king, that's what they used to call him.

24 Q And did you ever have any problem yourself with him?

25 A Yes, I did. We had him banned from Crenco when I

LEANNA CRAWFORD - DIRECT

1 worked there because he was constantly coming in
2 shoplifting, and because he had gotten in an altercation
3 with a young man in the parking lot before.

4 Q All right. When were you working at Crenco?

5 A Probably around 2003 or 2004.

6 Q So that's been awhile back?

7 A Yes, sir.

8 Q Had you had any recent encounters with him at all?

9 A No, sir, nothing recent.

10 Q All right. Okay.

11 MR. GRIER: Your Honor, I would offer the photograph
12 as Defense Exhibit 3.

13 MS. COLLINS: No objection.

14 THE COURT: May I see it, please? Without objection,
15 Defendant's Exhibit Number 3 admitted into evidence.

16 (The photo was received as Defendant's 3.)

17 Q Did you know anything about the gun that was used?

18 A No, sir, I don't.

19 Q All right. Nothing came up from Allen that night
20 about that?

21 A No, sir.

22 Q All right. Ultimately did you -- were you present
23 when Allen turned himself in?

24 A Yes, sir, I was.

25 Q How did the gun come into possession of the Lancaster

LEANNA CRAWFORD - DIRECT

1 Police Department?

2 A My brother turned it in, when he turned himself in he
3 gave them the gun.

4 Q Where was the gun at?

5 A I'm not sure. All I know is that a friend of his
6 named Hemi had the gun.

7 Q All right. Physically when the gun got to the police
8 department, where was it at? Was it in the vehicle
9 somewhere?

10 A Yes, sir. It was in the trunk, the gate of my
11 sister's car.

12 Q All right. Had you had any contact with Demarcus
13 Robinson on Facebook?

14 A No, sir.

15 Q Did you look on Facebook for his postings at all?

16 A Yes, sir.

17 Q Did you make a record of those?

18 A No, sir, I looked at them.

19 Q Okay. Did you photograph them?

20 A No, sir, I didn't.

21 Q Okay. All right. When you looked at them, did you
22 see anything about any violence?

23 A Yes, sir, just --

24 MS. COLLINS: Objection to hearsay.

25 THE COURT: Restate your question.

LEANNA CRAWFORD - DIRECT

1 MS. COLLINS: Your Honor, I asked her if she had
2 observed Marcus Robinson's postings on Facebook.

3 THE COURT: I will allow her to answer that. You can
4 answer that question.

5 A Yes, sir, I did.

6 MR. GRIER: And then I asked her to state what she saw
7 about any aggressive behavior, I think. Is that the
8 essence of the question?

9 THE COURT: Have you got an objection?

10 MS. COLLINS: I do, Your Honor, objection is hearsay.

11 THE COURT: Objection sustained.

12 Q Okay. Don't repeat anything that anybody told you,
13 but did you have contact with Navoney Curry after the
14 shooting incident?

15 A Yes, sir, I did.

16 Q Did you initiate that contact?

17 A The first time I did, I called him that night, the
18 night that the incident occurred.

19 Q Okay. Did you do anything as a result of him
20 communicating with you?

21 A As far as?

22 Q Did you take any action or --

23 A Yes, sir. I let my mother know the conversations
24 that we had.

25 Q Could you characterize the conversation as being

LEANNA CRAWFORD - DIRECT

1 favorable or unfavorable to --

2 A Favorable.

3 MS. COLLINS: I'm going to object in that he's

~~4 basically asking for a summary and he is eliciting hearsay~~

5 as a result.

6 MR. GRIER: I asked if the conversation that she had

7 with Navoney Curry was favorable or unfavorable about her

8 brother.

9 THE COURT: I'll allow that.

10 Q Okay. All right.

11 MR. GRIER: Answer any questions that the solicitor

12 may have for you, Ms. Crawford.

13 THE WITNESS: Yes, sir.

14 THE COURT: Cross examination.

~~15 CROSS EXAMINATION~~

16 BY MS. COLLINS:

17 Q Your last name is Mrs. Crawford; is that right?

18 A Yes, sir -- yes, ma'am.

19 Q So you -- originally Leanna Massey is your maiden name
20 and you're now married, so you are Ms. Crawford.

21 A Yes, ma'am. /

22 Q I would like to show you Defense Exhibit 3, which is
23 in evidence. You say that's a photograph that you took of
24 your brother?

25 A Yes, ma'am.

LEANNA CRAWFORD - CROSS

1 Q And the incident transpired approximately 3:50 in the
2 early morning hours of October 12th of 2013. What time did
3 you take that photograph of your brother?

4 A --- Probably around 7:30 that morning.

5 Q So about 7:30 the same morning of October 12th of
6 2013?

7 A Yes, ma'am.

8 Q Okay. So in between the defendant had called you,
9 correct?

10 A No, ma'am.

11 Q How did you hook up with the defendant to take that
12 picture?

13 A He came to my house that morning.

14 Q Okay. And when he came to your house that morning,
15 was he alone?

16 A Other than -- he came in alone, I'm not sure who
17 brought him to the house, though.

18 Q Okay. Did you see anybody drive away?

19 A No, ma'am. I didn't look outside.

20 Q And were you alone at your house when he came to the
21 house?

22 A No, ma'am. My husband and my children were there but
23 they were asleep.

24 Q Okay. But was your husband asleep too?

25 A Yes. He got up after he heard myself and my brother

LEANNA CRAWFORD - CROSS

1 in the living room talking.

2 Q What's your husband's name?

3 A Lorenzo Crawford.

4 Q Was he in there when you took the picture of Allen

5 Wesley Massey, your brother?

6 A No, ma'am.

7 Q But he came in while your brother was there?

8 A Yes, ma'am.

9 Q In the picture there appears to be a type of scar to
10 the upper lip just below your brother's left nostril; is
11 that correct?

12 A Yes, ma'am.

13 Q Is that from a prior incident, a prior injury?

14 A Yes, ma'am.

15 Q Okay. So that's an older scar, I just wanted to be
16 clear about that.

17 A The one under his eye?

18 Q The one under his left nostril, the outside of his
19 left nostril.

20 A I'm trying to see where you're speaking of.

21 Q You see the outside area of his right nostril, right
22 below it, the small one.

23 A I'm trying to see what you're saying.

24 Q If you draw a line right below the left nostril
25 straight down, is this an old scar?

LEANNA CRAWFORD - CROSS

1 A That's not the injury, that's a piece of hair.

2 Q Oh, okay. All right. So that's a piece of hair. So
3 that is not an injury; is that correct?

4 A ~~No, ma'am. That small thing, that's a piece of hair.~~

5 Q A piece of facial hair?

6 A Yes, ma'am.

7 Q Okay. So you indicated that in addition to the
8 injuries on the lips that you've got that picture that you
9 observed a knot to his head, correct?

10 A Yes, ma'am.

11 Q Where was the knot?

12 A I want to say on the left side of his head.

13 Q Okay. So it should have shown up on the left side of
14 his head, correct?

15 A Yes, ma'am.

16 Q In that picture is he wearing a hat?

17 A Yes, ma'am?

18 Q So in the picture you took, Defense Exhibit 3, your
19 brother is still wearing a hat?

20 A Uh-huh.

21 Q And you said you were not able to get a good picture
22 of the knot; is that right?

23 A No, I was not.

24 Q Did you make an effort?

25 A Yes, ma'am, I did.

LEANNA CRAWFORD - CROSS

1 Q Did you make him remove his hat?

2 A Yes, ma'am, I did.

3 Q And where --

4 A ~~He took his hat off when he came in. He was getting~~

5 ready to leave and I stopped him and told him I thought it

6 would be a good idea for me to take these pictures.

7 Q And where on the head was the knot? You said the left
8 side; is that right?

9 A Yes, ma'am.

10 Q Is that where?

11 A In between the side and the back, kind of
12 caddy-cornered to the back of his head.

13 MS. COLLINS: So let the record reflect that the
14 witness reached about two inches behind her left ear, about
15 three inches from the top of her head.

16 Q Would you say that's accurate?

17 A Yes, ma'am. I would say right around in here
18 somewhere.

19 Q All right. And you said you made an effort to
20 photograph that night?

21 A Yes, ma'am, I did. And I just could not get a good
22 picture.

23 Q Do you have those pictures where you tried to make
24 that effort?

25 A I probably do, I can go back and look. I probably

LEANNA CRAWFORD - CROSS

1 do.

2 Q Did you provide that to Mr. Grier?

3 A No, ma'am, I didn't.

4 ~~Q But you told him about this knot.~~

5 A Yes, ma'am, I did. Well, I told Ryan along with my
6 mother. I honestly cannot remember whether or not I told
7 Mr. Grier.

8 Q Is Ryan the investigator seated behind Mr. Grier
9 beside your brother?

10 A Yes, ma'am?

11 Q I believe you testified on direct examination that you
12 also observed some bruises to your brother; is that right?

13 A The lip, yes, ma'am.

14 Q Okay. To the lip area?

15 A Yes, ma'am.

16 Q But nowhere else on his body, correct?

17 A Just the mouth and the head.

18 Q And I believe you testified that your brother said
19 that Marcus had tried to start something with him earlier
20 and to keep down any --

21 A Any mess, any confusion.

22 Q -- any confusion that your brother had left.

23 A Yes, ma'am.

24 Q And that he said that Marcus went to the other house,
25 I guess, on City Avenue?

LEANNA CRAWFORD - CROSS

1 A Yes, ma'am. They kind of -- I guess they met up
2 there, they were both there at the same time.

3 Q So your recollection is your brother said Marcus tried
4 ~~to start something with him earlier --~~

5 A Yes, ma'am.

6 Q -- at another house.

7 A Yes, ma'am.

8 Q He didn't say anything about Rashawd.

9 A No, ma'am, not that I can recall.

10 Q And your testimony on direct examination was that he
11 said that when he was at City Avenue at Malika's house,
12 that Marcus had kicked him in the head; is that correct?

13 A Yes, ma'am, that he had got kicked in the head.

14 Q And he also said that Marcus had beat him about the
15 ~~face; is that right?~~

16 A Yes, ma'am, had hit him in the face.

17 Q And you said he told you that your brother told you
18 that he thought Marcus was going to beat him to death; is
19 that right?

20 A Yes, ma'am, he was scared. He was also crying when
21 he came to my house.

22 Q And that that's why -- and he told you that's why he
23 shot --

24 A That's why he shot.

25 Q -- Marcus.

LEANNA CRAWFORD - CROSS

1 A Yes, ma'am.

2 Q Did you know your brother carried a concealed weapon?

3 A No, ma'am, I did not.

4 Q Did you know he had twice before pled guilty to

5 carrying a concealed weapon?

6 A I knew of one because he had a firearm that belonged

7 to me, I had let him hold one of my firearms.

8 Q Did you -- when he came and talked to you about what

9 had happened, did you ask him then where's the gun?

10 A No, ma'am, I didn't.

11 Q You're a security guard, correct?

12 A Yes, ma'am, I am.

13 Q I imagine you carry a firearm in that regard?

14 A No, ma'am, I do not.

15 Q Okay. Were you not concerned that your younger

16 brother having been through something and facing something

17 coming down the road in terms of potential charges perhaps

18 might harm himself with a gun? Were you not concerned

19 about that as a sister?

20 A Was I worried about him harming himself?

21 Q Yes.

22 A No, ma'am, I wasn't.

23 Q So you didn't feel there was some need to go ahead and

24 lock down where was the gun and get it under control?

25 A I honestly did not think to ask him where the gun was

LEANNA CRAWFORD - CROSS

1 at the time.

2 Q Did he call his mama, and your mama too, from your
3 house?

4 A ~~No, ma'am, not from my house.~~

5 Q And you talked to Marcus at about 7:30 or so the
6 morning of October 12th, 2013 is that what you're saying
7 when you took that picture?

8 A No, ma'am. I --

9 Q Not Marcus, I apologize, I said Marcus, I apologize.
10 You talked to your brother.

11 A Yes, ma'am. Around 7:30, yes, ma'am.

12 Q Allen Massey about 7:30 on October 12th.

13 A Yes, ma'am.

14 Q All right. And were you with him when he turned
15 himself into law enforcement the next day?

16 A Yes, ma'am, I was.

17 Q Did you have any interaction with him in between in
18 person?

19 A No, ma'am.

20 Q Did you have any interaction in between you taking
21 that picture and him being at your house and turning
22 himself into law enforcement by phone?

23 A No, ma'am.

24 Q Are you aware that your brother has been convicted
25 before of possession of crack cocaine?

LEANNA CRAWFORD - CROSS

1 A Yes, ma'am.

2 Q Are you aware that just slightly over 24 hours after
3 you say he was scared to death of Marcus, are you aware
4 that he didn't say a word about being afraid for his life
5 to law enforcement?

6 A I'm not aware -- all I'm aware of is what he told me.
7 I'm aware of how he was when he came to my house, how
8 upset he was, but that's the only thing I'm aware of.

9 Q So you're not aware he didn't breath a word to law
10 enforcement the next day about being kicked in the head by
11 Marcus, you're not aware of that.

12 A No, ma'am.

13 Q And you're not aware that he didn't breath a word to
14 law enforcement about being beaten about the face by
15 Marcus.

16 A No, ma'am.

17 Q And you're not aware that he didn't tell law
18 enforcement just over 24 hours after seeing you that he
19 thought Marcus was going to beat him to death and that's
20 why he shot him.

21 A No, ma'am.

22 Q You said that Navoney Curry, you spoke to him the
23 night that the incident occurred, correct?

24 A I spoke with him that night. I initiated contact
25 with him and I spoke with him two previous times where he

LEANNA CRAWFORD - CROSS

1 initiated contact with me. I mean, two -- yes, ma'am, two
2 times after that where he initiated contact with me.

3 Q Not two previous times but two times after that.

4 A Yes, ma'am.

5 Q And did you record one of those conversations?

6 A Yes, ma'am, I did.

7 Q Where is that recording?

8 A I turned the phone that we recorded it over to the

9 authorities and they were unable to retrieve the

10 recordings because of the phone was so damaged.

11 Q You turned it over to the authorities. When you say

12 authorities, do you mean the defense attorney and his

13 investigators?

14 A Yes, ma'am.

15 Q So you didn't turn it into the authorities law

16 enforcement, right?

17 A No, ma'am, I didn't.

18 Q You gave it to your brother's attorney and his

19 investigator; is that correct?

20 A Yes, ma'am, I did. But I did make law enforcement

21 aware that there were recordings.

22 Q You did? When did you do that?

23 A Probably the week after this whole thing happened.

24 Q Who did you speak with at law enforcement?

25 A I talked with Phillip Hall.

LEANNA CRAWFORD - CROSS

1 Q And you said you recorded one of the conversations.

2 You had multiple conversations according to you with

3 Navoney and you recorded one of them; is that right?

4 A I recorded the conversations from that night, yes,

5 ma'am.

6 Q How come you didn't record the other ones?

7 A When he called me, he called me when he was coming

8 out of the police station that Tuesday and I want to say I

9 was at work, and all he called me was to tell me what he

10 had gone inside and done, so I didn't really have a way to

11 record that conversation with me being at work.

12 Q Did you call him back when you got off work and say,

13 "Navoney, I was real interested in what you had to say?"

14 A No, ma'am, I didn't. Because he told me that he

15 worked nights.

16 Q Okay. So you didn't speak with him again on that

17 point?

18 A He called me one time after that just to ask me how

19 my brother was doing and that was it, it was a very brief

20 conversation.

21 Q Okay. But you could have asked him then -- it was a

22 very brief conversation but you could have said, "Don't

23 hang up yet, let me ask you about what you said earlier,"

24 couldn't you?

25 A I could have, yes, ma'am.

LEANNA CRAWFORD - CROSS

1 Q And you didn't.

2 A No, ma'am. It just was not on my mind to.

3 MS. COLLINS: Thank you, Ms. Crawford.

4 THE COURT: Any redirect?

5 MR. GRIER: No, Your Honor. Thank you.

6 THE COURT: Thank you, ma'am, you step down. We will
7 stand down for a few minutes.

8 (A recess was taken.)

9 THE COURT: Call your next witness.

10 MR. GRIER: Phillip Hall.

11 The witness, PHILLIP HALL, was first duly sworn and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. GRIER:

15 Q Lieutenant Hall, state your name, please.

16 A Phillip Hall.

17 Q You're a lieutenant, right?

18 A Yes, sir.

19 Q Lancaster Police Department?

20 A Yes, sir.

21 Q Did you participate in the investigation of this case?

22 A I did.

23 Q And including -- you interviewed Mr. Massey, didn't
24 you?

25 A Yes, sir.

PHILLIP HALL - DIRECT

1 Q Okay. And you interviewed also Sindarous Wells?

2 A Yes, sir.

3 Q Did you have any contact with a person name Navoney

4 Curry?

5 A I'm not for sure.

6 Q Well, do you recall his name coming up as having been

7 present? Does that name ring any bells during the

8 shooting?

9 A I think Sindarous told me he was there inside the

10 house, or there at the house.

11 Q Okay. Well, in fact, did Sindarous point him out to

12 you while y'all were sitting in the car?

13 A I don't recall him doing it.

14 Q Okay. And you don't recall, you may have spoken with

15 Sindarous Wells -- or excuse me, you did.

16 A I know two guys came to the station and I didn't

17 really get their names. Sergeant Small was the primary

18 lead on this case and he asked me if I would sit in. As

19 we do with every other investigation we videotape the

20 interview, these two guys said they didn't want to be

21 interviewed, they weren't going to give a statement.

22 Q Okay. They didn't give a statement off camera?

23 A Nuh-uh.

24 THE COURT: Is that a no?

25 THE WITNESS: No, sir.

PHILLIP HALL - DIRECT

1 THE COURT: Thank you.

2 Q But you can't say with certainty whether that was
3 Navoney Curry or not?

4 A I can't say for certain.

5 Q Okay. All right. Did you communicate anything about
6 these individuals coming forward as part of the
7 investigation?

8 A I received a phone call last week from your
9 investigator saying that they wanted to talk, I sent word
10 to them for them to come see me and they never did.

11 Q Did you communicate with Brian Smalls -- I don't know
12 what rank, is he investigator, sergeant?

13 A Sergeant. No.

14 Q Did you have any communication with Sergeant Small
15 about -- did you have any communication with him about your
16 contact with Navoney Curry or these two gentleman that had
17 come up to the police department that you had spoken with?

18 A I believe he was there if I recall right.

19 Q Okay. And did you document anything in the police
20 report about these individuals having come forward and
21 then --

22 A I personally didn't. I'm not sure if Sergeant Small
23 did or not.

24 Q Okay. All right. Do you recognize this document?

25 This is Defense Exhibit 2 at this point for identification

PHILLIP HALL - DIRECT

1 purposes only. Do you recognize a document? So you're not
2 the author of that document.

3 A No, sir.

4 Q If you were you would recognize it.

5 A Yes, sir.

6 Q That isn't even your handwriting, is it? I recognize
7 your handwriting from all our dealings. Okay. You
8 conducted the interview with the defendant, Allen Massey,
9 correct?

10 A I did along with Captain Grant, yes, sir.

11 Q And he told you that he was struck by Demarcus
12 Robinson, correct?

13 A That's what he said.

14 Q At the party. And as part of your investigation, did
15 you have anyone else that corroborated his version of
16 having been struck by --

17 A The only person I talked to was Sindarous and he
18 never made any mention about any altercation.

19 Q So he did not.

20 MR. GRIER: Thank you, Sergeant Hall -- excuse me,
21 Lieutenant.

22 THE COURT: Cross examination.

23 CROSS EXAMINATION

24 BY MS. COLLINS:

25 Q Lieutenant Hall, when you interviewed the defendant,

PHILLIP HALL - CROSS

1 Allen Wesley Massey, Captain Scott Grant was present with
2 you, correct?

3 A Yes, ma'am.

4 Q And at the time that y'all spoke to the defendant,

5 Allen Wesley Massey, he was in custody, correct?

6 A Yes, ma'am.

7 Q This was October 13, 2013, correct?

8 A Yes, ma'am.

9 Q And because he'd fled after the incident on 10/12 of
10 2013, this was the first opportunity you had a chance to
11 view the defendant, correct?

12 A Yes, ma'am.

13 Q And at the conclusion of the videotaped interview of
14 the defendant y'all took photographs of the defendant's
15 face, correct?

16 A Yes, ma'am.

17 Q And you took photographs of his lips, correct?

18 A Yes, ma'am.

19 Q Did he at anytime indicate to you that he had a knot
20 on his head?

21 A No, ma'am.

22 Q Did he at anytime indicate to you he had any other
23 mark on his body other than his lip area that he wanted you
24 to photograph?

25 A That was it.

PHILLIP HALL - CROSS

1 Q Did he at anytime indicate to you that he had any
2 other mark on his body that he wanted you just to look at?

3 A He did not.

4 Q At the time that he was interviewed on videotape he
5 had been given his Miranda rights, correct?

6 A Correct.

7 Q He waived his Miranda rights, correct?

8 A He did.

9 Q And you spoke with him on camera, that was videoed,
10 correct?

11 A Yes, ma'am.

12 Q At the conclusion of that videotaped interview you cut
13 the camera off, correct?

14 A Yes, ma'am.

15 Q Subsequent to that, did the defendant tell you, "I
16 want to tell you something more about the incident?"

17 A No, ma'am.

18 Q So the defendant never told you that he was afraid of
19 the victim, did he?

20 A No, ma'am, he didn't.

21 Q He never told you he was scared of the victim, did he?

22 A No, ma'am.

23 Q He never told you that the victim had kicked him in
24 the head, did he?

25 A No, ma'am, he did not.

PHILLIP HALL - CROSS

1 Q He never told you that other than the one hit to his
2 lips, he never told you the victim had beat him about his
3 face, did he?

4 A No, ma'am.

5 Q He never told you that he felt the victim might kill
6 him, or would kill him and that's why he shot, did he?

7 A No, ma'am. We asked him why he shot him.

8 Q And he never told you that he had an earlier incident
9 with Demarcus Robinson earlier in the evening, did he?

10 A Not to my knowledge.

11 Q He told you about another incident with Rashawd
12 Robinson earlier that evening, correct?

13 A Yes, ma'am. At a party on 16th Street, yes, ma'am.

14 Q And he told you that Rashawd hit him two times on the
15 left side of his face at the party on 16th Street, correct?

16 A Yes, ma'am.

17 Q And he told you, "I had been drinking that night, I
18 wasn't in any -- no shape to fight so I just left it alone,
19 you know, I just left it;" isn't that right?

20 A In regards to --

21 Q Rashawd.

22 A Yes, ma'am.

23 Q And then later when he is describing what happened
24 with Marcus he also said, "I had been drinking and I was in
25 no shape to fight," right?

PHILLIP HALL - CROSS

1 A Yes, ma'am. Well, his actual statement was, "I had
2 been drinking, didn't feel like fighting and wasn't in any
3 shape to fight."

4 Q Did the defendant at anytime offer to draw for you a
5 diagram showing or explaining where he was in relation to
6 the victim when he shot the victim?

7 A I don't recall.

8 Q Had he made that offer during the interview it would
9 have been on tape, correct?

10 A Yes, ma'am.

11 Q You don't recall him making that ever at anytime
12 since; is that right?

13 A No, ma'am.

14 Q Lieutenant Hall, you were involved to a great extent
15 in this investigation, weren't you?

16 A Yes, ma'am.

17 Q You responded to the scene after a call was received
18 about a person being shot, right?

19 A I responded to the ER.

20 Q You went to the ER first.

21 A Or to the helipad, because I heard he was flying out.

22 Q You heard that they were about to helicopter out the
23 victim to Charlotte Medical Center, right?

24 A Yes, ma'am.

25 Q So you first went to the landing, the helicopter pad.

PHILLIP HALL - CROSS

1 A Yes, ma'am.

2 Q At the ER at Springs?

3 A Yes, ma'am.

4 ~~Q And at that time did you see the victim Demarcus~~

5 Robinson?

6 A I did.

7 Q And was he still alive?

8 ~~A He was.~~

9 Q And were you with him briefly before they took him by
10 helicopter to Carolinas Medical Center?

11 A I was.

12 Q And did you video or audiotape or take any pictures of
13 the victim at that time as you observed him in the early
14 morning hours of October 12th of 2013?

15 ~~A I did.~~

16 Q Did you provide a copy of that video to the
17 solicitor's office pursuant to your investigation of this
18 case?

19 A Yes, ma'am, I did.

20 Q One moment. And was that videotape recording a fair
21 and accurate representation of the -- as you observed the
22 victim at the time within the ambulance, or prior to him
23 being sent to Carolinas Medical Center in the helicopter?

24 A Yes, ma'am.

25 MS. COLLINS: Your Honor, at this time I would ask

PHILLIP HALL - CROSS

1 that this be marked as the State's next exhibit and I would
2 move it into evidence.

3 MR. GRIER: I object, Your Honor.

4 THE COURT: What's your objection?

5 MR. GRIER: Judge, we've stipulated as to the size and
6 weight of the deceased, and also this is an immunity
7 hearing, the allegations that Allen Massey fired the fatal
8 shot that killed Demarcus Robinson is not in dispute today.
9 I don't see any additional value in placing that into
10 evidence and I think it's more prejudicial than probative
11 and more likely to elicit compassions. I understand this
12 isn't a jury but in front of a Judge, but I don't see any
13 probative value beyond the matters that have already been
14 stipulated to by the defense, and I think it's redundant
15 and unnecessary.

16 THE COURT: What's on the video?

17 MS. COLLINS: May it please the Court? It is a very
18 brief video of the victim as he's laying in the ambulance.
19 I don't mind if you don't hear any of the audio, the
20 officer asked him in terms of who shot him and he responds
21 with one word. However -- so I don't mind if you don't
22 even hear the volume. But the reason I'm offering that
23 into evidence is to hear someone's height and weight but
24 then to actually see them I think is important. And I
25 think it is part and parcel of the immunity hearing to talk

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1 about the disparity, if any -- I would submit there's
2 none -- of the sizes of the parties, and to the extent that
3 the defendant either believed or had a reasonable belief
4 that a man of ordinary firmness and courage would have in
5 terms of what was transpiring that evening. I think it's
6 important for Your Honor to see the size of the victim
7 because I would respectfully submit it's very close to the
8 size of the defendant.

9 THE COURT: Over defendant's objection I'm going to
10 allow it in.

11 MS. COLLINS: For the record this is State's Exhibit
12 25 in evidence at this time. Your Honor, at this time we
13 can either submit it to you to view privately at an
14 appropriate time and we play it in the courtroom, but if
15 it's played in the courtroom at this time I would direct my
16 victim advocate to suggest to the mother of Mr. Robinson
17 that she might want to consider stepping out of the
18 courtroom.

19 THE COURT: Any objection to me viewing in privacy,
20 Mr. Grier?

21 MR. GRIER: Your Honor, I could not understand you.

22 THE COURT: If I cut my microphone on you might could
23 hear me. Any objection to me viewing that in private as
24 opposed to me playing it in the courtroom?

25 MR. GRIER: No, Your Honor.

PHILLIP HALL - CROSS

1 THE COURT: I'll do that.

2 (The video was received as State's 25.)

3 Q Lieutenant Hall, you prepared a warrant request in
4 this case, correct?

5 A Yes, ma'am, I did.

6 Q You noted at the bottom of that that Sergeant Brian
7 Small seated to my right would be the affiant on those
8 warrants, but you did prepare the request for the warrants
9 charging the defendant with murder and possession of a
10 firearm during the commission of a violent crime; is that
11 correct?

12 A Yes, ma'am.

13 Q This incident happened within the city limits of
14 Lancaster, South Carolina?

15 A Yes, ma'am, it did.

16 Q The City Avenue location is within that premise,
17 right?

18 A Yes, ma'am.

19 MS. COLLINS: Thank you, that's all.

20 THE COURT: Any redirect?

21 MR. GRIER: A bit.

22 REDIRECT EXAMINATION

23 BY MR. GRIER:

24 Q Lieutenant, the solicitor asked you if Allen Massey
25 testified that he was beat around the face and you said no,

PHILLIP HALL - CROSS

1 correct.

2 A Say it one more time.

3 Q I believe the solicitor asked you if Mr. Massey

4 testified that he was beat around the face and you said no,

5 he did not, correct?

6 A When you said beat around, was he punched in the

7 face? I think he made mention that he did get punched --

8 Q Okay.

9 A -- one time.

10 Q Just to clarify, he did testify, or he did give a

11 statement stating that he was struck in the face.

12 A Yes, one time.

13 Q Okay. Now, did you know Demarcus Robinson prior to

14 this incident? Had you had any contact with him?

15 A I'm not sure.

16 Q But you were present when this video that's in

17 evidence was made. Were you present when that video --

18 A Which video?

19 Q The video of Demarcus Robinson.

20 A In the ambulance?

21 Q Yes.

22 A Yes. I was the one taking the video.

23 Q You took the video. Okay.

24 A Yes, sir.

25 Q Demarcus was a stocky guy, wasn't he?

PHILLIP HALL - CROSS

1 A I wouldn't say stocky, I would say medium build.

2 Q Okay. Was he fat?

3 A I would say medium build. Was he a bodybuilder? No.

4 Was he medium build? Yeah.

5 Q Okay. All right.

6 MR. GRIER: Thank you.

7 MS. COLLINS: Nothing further, Your Honor.

8 THE COURT: Sir, you may step down, thank you.

9 MS. COLLINS: Your Honor, we would ask if he would be
10 excused at this time to return to investigations, however
11 subject with the instructions not to discuss with anyone
12 the case because it may be necessary to recall him if
13 someone gives an inconsistent statement that he
14 interviewed.

15 THE COURT: Mr. Grier?

16 MR. GRIER: I'm sorry, Your Honor. Quite frankly my
17 client was speaking with me and distracted me --

18 THE COURT: Please state again, Ms. Collins what you
19 put on the record and I will hear from Mr. Grier.

20 MS. COLLINS: Thank you, Your Honor. I ask that this
21 witness be excused to return to his duties at the police
22 department with the instructions that he still is subject
23 to being recalled in the case if someone that he
24 interviewed testifies inconsistently today as to the
25 statement he previously gave to Lieutenant Hall, that

PHILLIP HALL - CROSS

1 Lieutenant Hall be instructed that the witnesses are
2 sequestered, he should not discuss the case whatsoever with
3 anyone at all until this immunity hearing is completely
4 done.

5 MR. GRIER: No objection, Your Honor.

6 THE COURT: You understand that?

7 THE WITNESS: Yes, sir.

8 THE COURT: So granted. Call your next witness.

9 The witness, BRIAN SMALL, was first sworn and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. GRIER:

13 Q Please state your name for the record.

14 A Brian Small.

15 Q Sergeant, you are the lead investigator in this case,
16 correct?

17 A Yes, sir.

18 Q And you conducted at least one of the interviews of
19 witnesses on the scene, I believe?

20 A Two.

21 Q Two? Who did you --

22 A Ebonie Harris and Shonettia Hunter.

23 Q And as -- what's the different between lead
24 investigator and the other investigators? Why do you get
25 that title?

BRIAN SMALL - DIRECT

- 1 A Every investigation Captain Grant assigns a lead
2 investigator.
- 3 Q Okay.
- 4 A We all --- everybody in the division could have a part
5 of it but he only assigns one lead.
- 6 Q And what's --
- 7 A I don't know his reason, that's just what he says.
- 8 Q Okay. But does that give you additional
9 responsibility for the case?
- 10 A Not necessarily. We would be accountable for what we
11 did during the case.
- 12 Q Okay. All right. Do you recall during your
13 interviews of possibly both of the folks that you
14 interviewed on the scene mentioning a shooting
15 investigation -- a shooting incident down on at Wylie Park,
16 at Wylie Park? Were you aware that there had been one?
- 17 A I believe there was with the interview with
18 Shonettia.
- 19 Q And did the Lancaster Police Department investigate
20 that?
- 21 A We couldn't have, Wiley Park Road is not ours.
- 22 Q So it's just -- part of Wiley Park, isn't there?
- 23 A I think there's two homes. You turn off of Meeting
24 Street onto Wiley Park Road, there's two homes on the
25 right, you make a left turn onto Central Avenue and that's

BRIAN SMALL - DIRECT

1 where the county will take over as you make that left.

2 The rest of Wylie Park Road is county jurisdiction.

3 Q So there was no determination of the address of the
4 shooting call, correct?

5 A I wasn't present for the call.

6 Q Okay. Well, y'all didn't send any response even
7 though Wylie Park is partly in the city, correct?

8 A That happened before I was called about this
9 incident.

10 Q Okay. But you were aware that there had been a
11 shooting incident alleged.

12 A A type of shooting, I learned it during this
13 investigation.

14 Q When I say shooting, I don't mean somebody got shot,
15 but the discharge of a firearm --

16 A Yes, sir.

17 THE COURT: Hold on a minute. Please let him finish
18 his question before you answer. Likewise it goes to you as
19 well, Mr. Grier.

20 MR. GRIER: Yes, sir.

21 Q Now, during the preparation for this hearing today I
22 had asked the solicitor to provide me with any information
23 in possession of the Lancaster Police Department about an
24 alleged shooting on Wiley Park, and you became aware of my
25 inquiry, didn't you?

BRIAN SMALL - DIRECT

1 A I did.

2 Q And you provided me through the solicitor with a copy

3 of a phone log from the county, or from 911 that indicates

4 a response by the county to Wiley Park at about 1:48 in the

5 morning on October 12th, 2015 (sic); is that correct?

6 A Is that when I acquired it? You said 2015.

7 Q I'm sorry, 2013.

8 A I'm not sure the exact date, I haven't studied it

9 that much because it's not involving us.

10 Q Okay. All right.

11 MR. GRIER: Your Honor, may I have the document marked

12 as Defense Exhibit 4 for identification purposes only at

13 this time?

14 Q All right. Sergeant Small, would you examine the

15 exhibit and see if you recognize that?

16 A Yes, sir.

17 Q Is that the document that was provided to the defense

18 as a result of our inquiry about --

19 A Through the solicitor, yes, sir.

20 Q And what does that document signify?

21 A That is a type of entry log that was done at the

22 Lancaster County Sheriff's Office, I don't know who

23 entered it, I don't know how to read their entry logs.

24 But that's an entry log for a shots fired in the area of

25 Wiley Park Road.

BRIAN SMALL - DIRECT

1 Q And about what time did that indicate the sheriff's
2 department received that call?

3 A Received time appeared it looks like 1:48 or 1:43 on
4 October 12, 2013.

5 Q Okay. And so is that the morning of the shooting
6 death of Demarcus Robinson, prior to it?

7 A It is.

8 Q Okay. And does it indicate a response?

9 A It does.

10 Q What does it say? And I mean a response by law
11 enforcement to clarify.

12 A Are you asking for an arrival time?

13 Q Well, does it indicate what action they took?

14 A There's a narrative that says checked the area, was
15 unable to locate anybody or anything.

16 Q Okay. So it didn't pan out as far as anybody being
17 identified as a suspect or anything like that based on what
18 you -- the document you had in front of you.

19 A That is correct, according to the entry of the
20 sheriff's office.

21 Q Okay. Thank you.

22 MR. GRIER: Your Honor, I would offer as Defense
23 Exhibit 3 -- 4, excuse me.

24 THE COURT: Any objection?

25 MS. COLLINS: Your Honor, I'll object as to relevance.

BRIAN SMALL - DIRECT

1 There's no indication that Demarcus Robinson or any of the
2 parties herewith were involved with this at all per the
3 log. Moreover, there's no indication that Mr. Massey was
4 aware of this shooting incident at all. I would just
5 submit it's not relevant.

6 THE COURT: Let me see the document, please.

7 MR. GRIER: And Your Honor, may I respond at an
8 appropriate time?

9 THE COURT: Happy to hear from you, Mr. Grier.

10 MR. GRIER: Your Honor, you've heard testimony of
11 Tyzhe Hough that he was at Wiley Park Road and that
12 Demarcus Robinson threatened his younger brother and fired
13 shots, number one. Your Honor, the Douglas case makes it
14 clear under 404B that the state of mind of the victim in
15 the case in an immunity hearing is relevant, not just the
16 knowledge of the defendant. In fact, it distinguishes
17 that, it mentions both of those. I could refer you to the
18 specific language if you want me to. In State versus
19 Graham, Franklin Douglas, this was in the court of appeals
20 filed December 23, 2014 if you want me to read specifically
21 or hand it up.

22 THE COURT: Go ahead, I've read it.

23 MR. GRIER: Your Honor, it just says in -- this is not
24 page -- and it goes moreover -- I think I said 404, but 405
25 addresses the methods of proving character and reputation

BRIAN SMALL - DIRECT

1 are pending in all cases in which evidence of character or
2 trait of character of a person is admissible. Proof may be
3 made by testimony as to reputation or by testimony or in
4 the form of opinion and cross examination inquiries are
5 relevant in instances of conduct. B, specific instances of
6 conduct in cases in which character of a person in an
7 essential element of the charge claiming defense. Proof
8 may also be made of specific instance of that person's
9 conduct. And the relevant part, Your Honor, is emphasis
10 added. However, in the murder prosecution of one pleading
11 self-defense against an attack by the deceased, evidence of
12 other specific instances of violence on the part of the
13 deceased are not admissible unless they were directed
14 against defendant, or if directed against others were so
15 closely connected at point in time or occasion with the
16 homicide as reasonably to indicate the state of mind of the
17 deceased at the time of the homicide, or to produce
18 reasonable apprehension of great bodily harm. There's no
19 evidence that my client knew about it, but --

20 THE COURT: There's no evidence that your client knew
21 about it nor is there evidence that the decedent had a gun
22 when he was fired upon by your client. But for the purpose
23 of this hearing -- I don't disagree with the State's
24 objection, but for the purposes of this hearing only I'll
25 allow it.

BRIAN SMALL - DIRECT

1 MS. COLLINS: Yes, sir.

2 (The call log was received as Defense 4.)

3 Q All right. Sergeant Small, do you recognize

4 Defendant's Exhibit 2?

5 A I do.

6 Q Who was that document prepared by?

7 A It's my writing.

8 Q Do you -- do you recognize the date that that was

9 made -- or I say recognize, what date was that note made?

10 A October 14th, which would have been Monday.

11 Q Okay. So this was after Mr. Massey had been taken

12 into custody. And what is the posture of the investigation

13 on October 14th of 2013 as far as -- what are y'all still

14 doing about this case?

15 A Attempting to speak with witnesses, potential

16 witnesses.

17 Q And were any additional witnesses actually spoken to

18 after Mr. Massey was taken into custody?

19 A I have not.

20 Q Okay. Did you get any indication that anyone else had

21 had contact with potential witnesses?

22 A Someone -- are you asking me what the origination of

23 this document is?

24 Q I'm asking you right now did you become aware that

25 there had been contact of law enforcement with other

BRIAN SMALL - DIRECT

1 potential witnesses.

2 A By which law enforcement officer?

3 Q Any of them.

4 A Not that was brought to my attention.

5 Q So would you read the first entry on that document?

6 A It is Navoney -- you want me to read the name?

7 Q Yes, sir.

8 A Navoney Curry, Navoney Quantay (phonetically) Curry.

9 Date of birth as well?

10 Q Yes, sir.

11 A [REDACTED], [REDACTED] Springdale Road, Lancaster, [REDACTED]

12 [REDACTED]

13 Q And there's an annotation to that out to the side?

14 A There is.

15 Q And what does that say?

16 A It says, "Talked to Lieutenant Hall, supported

17 Massey's statement."

18 Q And so what did that indicate? What's the purpose of

19 that note?

20 A Anyone that tries to get in touch with me has to know

21 my specific phone number. My phone number is not

22 connected to the main line of the special operations

23 division, nor is it connected to the main line of the

24 Lancaster Police Department, my phone number is separate

25 to my desk. Someone called in on the main line, which is

BRIAN SMALL - DIRECT

1 283-1174, if you call that number you will get any of the
2 five individuals, meaning Captain Grant, Lieutenant Hall,
3 Sergeant Dale Johnson, Sergeant Dustynn Burlingame or
4 Sergeant Jody Sims, any of those five can get 283-1174.

5 My phone number is not connected to that line. Someone
6 called Lieutenant Hall and left a message, don't know who
7 it was, they left a message on the phone, Lieutenant Hall
8 checked that message, which any of those five could have
9 checked that message, he left me a note that said someone
10 left a message that Navoney Curry supported Allen Massey's
11 statement.

12 Q Okay. So you're not aware of Hall having an encounter
13 with Navoney Curry.

14 A I am not.

15 Q The document goes on further to -- may I hold it? It
16 mentions Larry Jamar Truesdale.

17 A Yes, sir.

18 Q And it has a note after that "Talked to Allen after
19 shooting same night," and Allen called him on the
20 cellphone?

21 A Again, I acquired that information the exact same
22 way, through the recording through our Lancaster Police
23 Department special operations division number of 283-1174.
24 That has not been corroborated by no means. That was a --
25 that paperwork was noted by me so I could keep up with how

BRIAN SMALL - DIRECT

1 the case was going in putting a case file together.

2 Q All right. Well, then the next entry --

3 A Okay.

4 ~~Q --- it says, "Rashawd threatening he's going to get~~

5 revenge on anybody talking to Allen." What was the

6 investigative purpose in making that note?

7 A Again, that is a message left to our division and I

8 was going to follow-up with it but nobody has come

9 forward.

10 Q And then it says, "Did not want to give video-recorded

11 statement, wanted to remain anonymous." What's the

12 investigative value of that statement?

13 A That is for Navoney Curry. He came to their office

14 one day and I offered him a video statement, he refused

15 and said he wanted to remain anonymous and did not want to

16 give any information on record.

17 Q Okay. Do you know what day he came?

18 A I do not.

19 Q Okay. So as a result of receiving this information

20 did you take any investigative action as to talking to

21 Navoney Curry or Larry Truesdale or Rashawd?

22 A I made a couple of attempts to contact Navoney, and

23 there was a couple of days, don't remember exact dates,

24 where I heard my name called out loud. I was actually

25 with my family and Navoney said, "I still want to come

BRIAN SMALL - DIRECT

1 talk to you," and I told him, "All you have to do is come
2 see me." Now, in regards to Truesdale, no, sir. I have
3 not spoken to Larry Truesdale anymore and I have not
4 spoken to Rashawd Robinson.

5 Q Okay. So these contacts with Navoney Curry were made
6 after you made this note?

7 A Yes.

8 Q Okay. So you had a note, you'd made a note that
9 Navoney Curry based on some information that you couldn't
10 verify --

11 A Right.

12 Q -- had -- and so you had contact with him, and you
13 wanted to get to the truth of this matter, don't you?

14 A I do.

15 Q Did you ask him when you had contact with him --

16 A I did not because the cameras --

17 THE COURT: Hold on a minute, please sir. Let him
18 finish his question before you answer.

19 Q Well, did you not think it was important to state that
20 you had information -- to have a conversation with him and
21 ask him if he was supportive of Allen Massey's statement to
22 police?

23 A If that's his point of view it is important, but he
24 didn't give it to me.

25 Q Well, did you inquire -- you had -- did you ask him

BRIAN SMALL - DIRECT

1 the question, "Do you have information supportive of Allen
2 Massey's statement?"

3 A No, sir.

4 Q ~~Wouldn't that have been some reasonable inquiry when~~
5 you had some information in your possession that he was
6 supporting Allen Massey's statement?

7 A I don't know what his true feeling is, he didn't tell
8 me directly.

9 Q No. My question is would it not have been reasonable
10 to have inquired following up information that you were in
11 possession of that he was supportive of Allen Massey's
12 statement?

13 A Yes, sir, but he would not talk to me.

14 Q Did you ask him the question?

15 A No, sir.

16 Q How about Rashawd threatening he's going to get
17 revenge on anybody talking to Allen, do you know who gave
18 the department information that Rashawd was threatening
19 people?

20 A I do not.

21 Q Okay. Well, is part of the investigation into why
22 people aren't -- a lot of people aren't talking, right?

23 A That's their decision, their feeling, yes, sir.

24 Q The answer is yes?

25 A (Nods head yes.)

BRIAN SMALL - DIRECT

1 THE COURT: Is that a yes?

2 THE WITNESS: Yes, sir, I'm sorry.

3 Q And so wouldn't it be a reasonable investigative

4 technique to either ask Navoney Curry was he being

5 threatened?

6 A Is that the information we acquired from your office,

7 sir?

8 Q No. I'm talking about you have a note that Rashawd is

9 threatening that he's going to get revenge on anybody

10 talking to Allen. I want to know, wouldn't it have been a

11 reasonable investigative technique to try to get to the

12 bottom of this information that you've received?

13 A We don't know who Rashawd was making threats to.

14 Q Okay. But you know people aren't talking, right?

15 A Yes, sir.

16 Q Okay. Would it not have been reasonable to ask them

17 if they're being threatened to try and find out why they're

18 not talking?

19 A If they gave us the opportunity to, yes, sir.

20 Q Okay. And you had the opportunity to talk to Curry on

21 a couple of occasions after you made this note, didn't you?

22 A I did.

23 Q Okay. Thank you.

24 MR. GRIER: Your Honor, I would offer this as defense

25 exhibit for identification purpose only at this point,

BRIAN SMALL - CROSS

1 but --

2 THE COURT: Any objection?

3 MS. COLLINS: No objection.

4 ~~THE COURT: Without objection so admitted as Exhibit~~

5 2.

6 (The notes were received as Defense 2.)

7 THE COURT: Ms. Collins?

8 CROSS EXAMINATION

9 BY MS. COLLINS:

10 Q You were here earlier when the sister of the
11 defendant, Leann Massey Crawford, testified, were you not?

12 A Yes, ma'am.

13 Q Did Ms. Crawford ever contact your department and say
14 that she had a telephone recording of Navoney Curry

15 speaking to her about the incident?

16 A Not that I'm aware of, no, ma'am.

17 Q She never called you?

18 A No, ma'am.

19 Q To your knowledge to the extent you're aware of, she
20 never called anybody in your department?

21 A No, ma'am. I have not seen evidence of that.

22 Q And as indicated from your notes, anytime information
23 is received since you're the lead investigator other
24 officers forward that information to you even if it's a
25 message on the machine; is that right?

BRIAN SMALL - CROSS

- 1 A They do.
- 2 Q But you were here earlier when Navoney Curry came in,
3 put his hand on the Bible and testified to this Court about
4 what he observed and what he didn't observe that night,
5 weren't you?
- 6 A Yesterday?
- 7 Q Yes.
- 8 A Yes, ma'am.
- 9 Q And so you were here when Navoney Curry said he was
10 outside using the bathroom when everything happened and he
11 didn't see anything, right?
- 12 A Yes, ma'am.
- 13 Q Mr. Grier asked you, said people weren't talking. An
14 interview was done with Ebonie Harris, right?
- 15 A Yes, ma'am.
- 16 Q Of Shonettia Hunter, right?
- 17 A Yes, ma'am.
- 18 Q Of Malika Harris, right? Malika Harris, the owner of
19 the house, right?
- 20 A Yes, ma'am.
- 21 Q Sindarous Wells, right?
- 22 A Yes, ma'am.
- 23 Q And all of those individuals gave statements to law
24 enforcement that night as to what they observed, right?
- 25 A Yes, ma'am.

BRIAN SMALL - CROSS

1 Q So you're saying that there were two people that came
2 in but because they were going to be recorded they left
3 without making a statement.

4 A Yes, ma'am.

5 Q And you don't know the names of those two people?

6 A I do.

7 Q Oh, I'm sorry. What are the names of those people?

8 A Navoney Curry and Larry Truesdale.

9 Q Navoney Curry and Larry Truesdale.

10 MS. COLLINS: Thank you, nothing further.

11 THE COURT: Mr. Grier?

12 REDIRECT EXAMINATION

13 BY MR. GRIER:

14 Q Did the department or you have any information at the
15 time of the shooting that Mr. Robinson was a suspect in
16 another shooting, that y'all were looking for him?

17 A Not that I'm aware of, no, sir.

18 Q Okay. Now, you did the interview of Malika Harris?

19 A No.

20 Q Okay. Well, somebody did, didn't they?

21 A Yes, sir.

22 Q Why isn't that interview referenced in the police
23 report?

24 A In which part of the report?

25 Q It's not in any of mine. Do you see it in there?

BRIAN SMALL - CROSS

1 A There's a DVD that's been submitted.

2 MR. GRIER: All right. That's all.

3 THE COURT: Ms. Collins?

4 ~~RE-CROSS EXAMINATION~~

5 BY MS. COLLINS:

6 Q And the DVD was submitted to the solicitor's office
7 per the investigation of this case of Malika Harris,
8 correct?

9 A Yes, ma'am.

10 MS. COLLINS: Nothing further.

11 THE COURT: Sir, you may step down. Thank you.

12 The witness, ALLEN MASSEY, was duly sworn and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. COLLINS:

16 Q State your name for the record.

17 A Allen Massey.

18 Q All right. Mr. Massey, you were present in the
19 courtroom when your sister, Leanna, testified?

20 A Yes, sir, I was.

21 Q And she testified about a conversation that you had
22 with her.

23 A Yes, sir.

24 Q And this is immediately after the shooting?

25 A Around 7:00 or 7:30 the next morning.

ALLEN MASSEY - DIRECT

1 Q All right. Now, you heard her testimony.

2 A I did.

3 Q That you said that there had been an encounter with

4 ~~Marcus previously that evening prior to the City Avenue?~~

5 A Yeah, I did.

6 Q Do you recall what you told her?

7 A See, it was earlier in the morning I had -- I believe

8 I woke her up, you know. And the way I was telling her I

9 was like, okay, I left this party with Rashawd and then

10 the incident happened and I get here and Marcus is here.

11 I believe that since I said Rashawd Robinson and Marcus

12 Robinson, their names were so quick that she he might have

13 mistaken and thought I was referring to Marcus in both

14 situations.

15 ~~Q So did you tell her that you had had an encounter with~~

16 Marcus earlier that evening?

17 A No, I didn't.

18 Q Had you even seen Marcus that evening at any party or

19 anything?

20 A No, I didn't.

21 MR. GRIER: Okay. That's all.

22 THE COURT: Ms. Collins?

23 CROSS EXAMINATION

24 BY MS. COLLINS:

25 Q I have a couple of questions for you, Mr. Massey, if

ALLEN MASSEY - CROSS

1 you will bear with me while I find the exhibit? I would
2 like to show you what has been marked as Defendant's
3 Exhibit 1 that's already been entered into evidence by your
4 attorney. Again, who drew that drawing?

5 A A fellow inmate of mine.

6 Q What is his name?

7 A Christopher Graham.

8 Q And what day did he draw that?

9 A I don't know the exact date, but when I mailed it to
10 Mark Grier it has the postmark date on the letter.

11 Q Okay. But Mr. Graham didn't initial his drawing or
12 put his name, correct?

13 A Correct.

14 Q And he didn't put a date, correct?

15 A Correct.

16 Q All right. Now, looking at the drawing, can you
17 indicate to the Court which -- which is the right hand of
18 the figure purporting to be Demarcus Robinson and which is
19 the left?

20 A The right hand is the one down towards the ground and
21 the left one, that's the one that's cocking back.

22 Q So the left one is the one lifted in the air?

23 A Yes, sir.

24 Q And the right one is the one down toward the ground.

25 A Yes.

ALLEN MASSEY - CROSS

1 MS. COLLINS: Thank you. Nothing further.

2 THE COURT: Mr. Grier?

3 MR. GRIER: Nothing else, Your Honor.

4 ~~THE COURT: Sir, you may step down. Yes, sir?~~

5 MR. GRIER: Your Honor, my understanding was that

6 after Mr. Massey's testimony we're going to break, I would

7 ask that I be allowed the break before resting. My client

8 ~~has raised an issue about --~~ that I may possibly need to

9 address with him prior to resting.

10 THE COURT: Ms. Collins?

11 MS. COLLINS: If he's just asking can he rest after

12 the break I have no objection to that.

13 THE COURT: 2:00.

14 (A lunch break was taken.)

15 ~~THE COURT: Counsel ready to proceed?~~

16 MS. COLLINS: Yes, Your Honor.

17 THE COURT: Mr. Grier?

18 MR. GRIER: Your Honor, I would call my investigator,

19 Ryan Fielden.

20 The witness, RYAN FIELDEN, was first duly sworn and

21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GRIER:

24 Q Please state your name.

25 A Ryan Fielden.

MALIKA HARRIS - DIRECT

1 raised another issue before her testimony. We had actually
2 discussed with your law clerk this morning, the Solicitor
3 and I, an issue that -- could we have maybe a side bar with
4 you about this testimony?

5 (A bench conference was held.)

6 The witness, MALIKA HARRIS, was first duly sworn
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. COLLINS:

10 Q Would you please state your name?

11 A Malika Harris.

12 Q Can you spell your first name, please?

13 A M-a-l-i-k-a.

14 Q And where do you reside at this time, Ms. Harris?

15 A [REDACTED] Pardue Street.

16 Q Here in Lancaster, South Carolina?

17 A Yes, ma'am.

18 Q Can you speak up just a little bit for us?

19 A Yes, ma'am.

20 Q In October of 2013, where did you reside?

21 A [REDACTED] City Avenue.

22 Q [REDACTED] City Avenue?

23 A Yes, ma'am.

24 Q Is that also in Lancaster, South Carolina?

25 A It is.

MALIKA HARRIS - DIRECT

1 Q And that was in the city limits of Lancaster, correct?

2 A Uh-huh.

3 Q On October 12th of 2013 you said you resided at [REDACTED]

4 City Avenue. Who resided with you?

5 A Shonettia Hunter.

6 Q Who else?

7 A My two kids.

8 Q What are your children's names?

9 A Artavion (phonetically) Herbert, and Zarkida

10 (phonetically) McIlwaine.

11 Q And what are their ages?

12 A Now nine and five.

13 Q So now they're nine and five?

14 A Uh-huh.

15 Q And did you own this home or did you rent it?

16 A I was renting it.

17 Q And whose name was on the lease?

18 A Mines and Shonettia's.

19 Q Both of you?

20 A Yes, ma'am.

21 Q And do you know the defendant, Allen Wesley Massey?

22 A I do.

23 Q How do you know him?

24 A School, the streets.

25 Q Is he related to you?

MALIKA HARRIS - DIRECT

1 A Yes.

2 Q What is that relationship?

3 A Cousins.

4 Q Prior to living at City Avenue, did you and Shonettia

5 at one time live on Elm Street in Lancaster, South

6 Carolina?

7 A Yes, ma'am.

8 Q Was this in close proximity to the home of Allen

9 Massey and his mother, Ms. Dorothy Massey, which was also

10 on Elm Street?

11 A Yes, ma'am.

12 Q And while you lived on Elm Street with Shonettia, did

13 the defendant come and visit your home and hang out with

14 y'all some there at your home on Elm Street?

15 A Yes, he did.

16 Q Do you recall approximately when you moved to [REDACTED] City

17 Avenue?

18 A Can you repeat it?

19 Q Do you recall approximately when you moved to [REDACTED] City

20 Avenue?

21 A February.

22 Q So you had been living there several months before

23 October 12th of 2013?

24 A Yes.

25 Q Several months before Marcus Robinson was killed in

MALIKA HARRIS - DIRECT

1 that home?

2 A Yes.

3 Q And during the several months from February of 2013

4 until October of 2013 when this incident occurred, had the

5 defendant, Allen Wesley Massey, visited your home and spent

6 time with you and Shonettia at your home at [REDACTED] City Avenue

7 in Lancaster?

8 A No.

9 Q Not one time?

10 A No.

11 Q I want to draw your attention to the evening of

12 October 11th of 2013. Okay. What were you doing the

13 evening of October 11th of 2013?

14 A I went to a few house parties.

15 Q Where were those parties?

16 A One was off of Brooklyn Avenue. I don't know the

17 street name of the other, but I know it was near the

18 soccer field.

19 Q Okay. One on Brooklyn Avenue and the other one is

20 near the soccer field?

21 A Yes.

22 Q At the party at Brooklyn Avenue, approximately what

23 time did you go there?

24 A Maybe around 9:00 I'm thinking.

25 Q Anybody with you?

MALIKA HARRIS - DIRECT

- 1 A Me and Shonettia and Navoney.
- 2 Q Navoney Curry?
- 3 A Yes.
- 4 Q When y'all went to the house at Brooklyn Avenue, did
5 you see the defendant, Allen Wesley Massey, there?
- 6 A For a second I did.
- 7 Q Did you see the deceased, Marcus Robinson, there?
- 8 A Yes.
- 9 Q Were they both there at the same time, Mr. Massey and
10 Marcus Robinson?
- 11 A I'm not sure.
- 12 Q So you did not see them interacting at that party; is
13 that right?
- 14 A No.
- 15 Q Was Rashawd Robinson there?
- 16 A I seen him.
- 17 Q Did you see Rashawd Robinson interact with Allen
18 Massey at the Brooklyn Avenue party?
- 19 A No, ma'am, I didn't.
- 20 Q How long were y'all at the Brooklyn Avenue party?
- 21 A We didn't stay long, maybe between 15 or 30 minutes.
- 22 Q Where did you go after that?
- 23 A We went to Kayasha's house.
- 24 Q Is that the one near the soccer field?
- 25 A Yes, ma'am.

MALIKA HARRIS - DIRECT

1 Q And how long were you at Kayasha's house?

2 A We stayed over an hour I know.

3 Q How do you spell Kayasha?

4 A K-a-y-a-s-h-a.

5 Q Did both you and Shonettia and Navoney Curry leave the
6 house at Brooklyn Avenue and go to Kayasha's house near the
7 soccer field? Y'all were all still together?

8 A I don't remember if Navoney was still with us then,
9 but I know me and Shonettia went.

10 Q And when you were at the house near the soccer field,
11 Kayasha's house, did you see Allen Wesley Massey there?

12 A Yes.

13 Q Did you see Demarcus Robinson there?

14 A Yes.

15 Q Did you see the two of them interacting there at
16 Kayasha's house?

17 A No.

18 Q Did you see Rashawd Robinson there at Kayasha's house?

19 A Yes.

20 Q Did you see him interacting any with Allen Wesley
21 Massey there?

22 A No.

23 Q Y'all ultimately left the home near the soccer field,
24 Kayasha's house; is that right?

25 A Right.

MALIKA HARRIS - DIRECT

- 1 Q Why did y'all leave that home?
- 2 A A shooting took place.
- 3 Q You heard a shooting?
- 4 A Uh-huh.
- 5 Q Did you see who shot?
- 6 A No.
- 7 Q Was anybody injured to your knowledge?
- 8 A Not that I know of.
- 9 Q But when you heard a shooting y'all left?
- 10 A Uh-huh.
- 11 THE COURT: Is this a yes?
- 12 A Yes.
- 13 Q You need to answer yes or no.
- 14 A Okay. That's fine.
- 15 Q And how many shots did you hear fired?
- 16 A It was like three to five, it wasn't much.
- 17 Q At the time those three to five shots were fired, did
- 18 you see Allen Wesley Massey around?
- 19 A I wasn't paying attention.
- 20 Q Okay. And at the time those three to five shots were
- 21 fired, did you happen to notice Marcus Robinson around?
- 22 A Yes. He was the one who told me to leave.
- 23 Q He told you to leave?
- 24 A Uh-huh.
- 25 Q So you saw him at the time you heard the shots fired?

MALIKA HARRIS - DIRECT

1 A Me and him were standing there talking together when
2 I heard them.

3 Q And can you then testify to this Court under oath that
4 he was not the one that fired those shots?

5 A No, he wasn't.

6 Q Did he have a weapon in his hand at all?

7 A No, not in his hand.

8 Q All right. So you and Shonettia left Kayasha's house,
9 correct?

10 A Right.

11 Q And where did y'all go?

12 A To my house.

13 Q And then you got to your house at [REDACTED] City Avenue,
14 correct?

15 A Uh-huh.

16 Q About what time did y'all get there?

17 A Maybe around 2:00, 1:00 -- between 1:00 and 2:00 I'm
18 thinking.

19 Q 1:00 or 2:00 in the morning?

20 A Uh-huh.

21 Q This would be the early morning hours of October 12th
22 of 2013?

23 A Right.

24 Q And when you and Shonettia got home, who was there at
25 the home with you at [REDACTED] City Avenue?

MALIKA HARRIS - DIRECT

- 1 A It was just Shonettia and I at first.
- 2 Q Where were the children?
- 3 A With my mom.
- 4 Q Was she keeping them over night?
- 5 A Yes.
- 6 Q So once you and Shonettia got home, who came over
- 7 after that?
- 8 A Sindarous came.
- 9 Q Sindarous Wells?
- 10 A Yes.
- 11 Q Who else?
- 12 A Navoney came a little bit afterwards.
- 13 Q Navoney Curry?
- 14 A Uh-huh.
- 15 Q Who else?
- 16 A Marcus and Ebonie came.
- 17 Q Marcus Robinson and Ebonie Harris, the mother of his
- 18 child?
- 19 A Uh-huh.
- 20 THE COURT: Is that a yes?
- 21 THE WITNESS: Yes.
- 22 THE COURT: Please give me a yes or no. Okay.
- 23 THE WITNESS: I'm sorry.
- 24 THE COURT: That's okay.
- 25 Q The mother of his child?

MALIKA HARRIS - DIRECT

1 A Yes, ma'am.

2 Q Now, when Marcus Robinson got there with Ebonie

3 Harris, had you invited Marcus Robinson to come over to

4 your house?

5 A He had said -- he didn't tell that me he was coming

6 but they just came.

7 Q Okay. And when they came, did they knock on the door?

8 A Well, it's my sister, she knows she don't have to

9 knock on the door.

10 Q Ebonie Harris is your sister?

11 A Right.

12 Q And when she came in then, were you fine with Marcus

13 Robinson coming in with her?

14 A Yes. He helped take care of my kids, put them back

15 and forth on the bus for me and stuff like that, yes.

16 Q So at that time did you consider him a guest in your

17 home?

18 A Yes.

19 Q And you were fine with him being in your home?

20 A Yes.

21 Q What did you and the others that you've described do

22 at that time at your home?

23 A We were playing cards.

24 Q What kind of cards were you playing, what game?

25 A A game of spades.

MALIKA HARRIS - DIRECT

- 1 Q How many people play that at any one hand?
- 2 A Four.
- 3 Q As y'all were playing cards, did anybody else show up?
- 4 A Yeah.
- 5 Q Who showed up?
- 6 A Allen.
- 7 Q The defendant, Allen Wesley Massey?
- 8 A Yes, ma'am.
- 9 Q And when he showed up, where were you when you first
- 10 saw him in your home?
- 11 A Sitting at my kitchen table.
- 12 Q All right. Were you, in fact, playing cards?
- 13 A Yes, ma'am.
- 14 Q When the defendant came in your home you first saw him
- 15 in the kitchen?
- 16 A Yes.
- 17 Q As he entered the kitchen?
- 18 A Yes.
- 19 Q Had you heard a knock before he came in?
- 20 A No, ma'am.
- 21 Q And you say this is the first time the defendant had
- 22 visited you in your home at [REDACTED] City Avenue?
- 23 A Yes, ma'am.
- 24 Q And you didn't hear a knock so you didn't let him in?
- 25 A No, I didn't.

MALIKA HARRIS - DIRECT

1 Q Was the front door, the wooden door open at that time?

2 A Yes.

3 Q But was there a storm door on it?

4 A A screen door, yes, ma'am.

5 Q Screen door. Was it closed?

6 A Yeah, it was closed.

7 Q But it wasn't locked or latched?

8 A Correct.

9 Q So the first that you're aware that the defendant is

10 in your home was when you look in the kitchen and he is

11 standing there; is that right?

12 A Right.

13 Q And what was your reaction to seeing the defendant

14 standing in your home at that time?

15 A Well, we were shocked because nobody invited him in.

16 But he came in and he hugged everybody so after a minute

17 or two he was fine. It didn't bother me at all that he

18 was there.

19 Q So he wasn't expressly invited but you didn't feel the

20 need at that time to ask him to leave; is that right?

21 A Right.

22 Q Were you aware at that time that Allen Wesley Massey

23 had a pistol in his pocket?

24 A No.

25 Q At any time did he make you aware that he had a

MALIKA HARRIS - DIRECT

1 handgun in his pocket?

2 A No, ma'am.

3 Q And he didn't make you aware that he had a loaded

4 handgun in his pocket, did he?

5 A No, ma'am.

6 Q Had Mr. Massey told you that he had a handgun in his
7 pocket at that time, what would have been your reaction as
8 the person who resided in that residence?

9 A He would have had to leave.

10 Q And would you have told him that?

11 A Yes.

12 Q And would you have made sure he left?

13 A Right.

14 Q Immediately?

15 A Immediately.

16 Q You say he didn't tell you. Could you see the firearm
17 in his pocket?

18 A No.

19 Q So after he came you said everything seemed all right
20 and he was speaking to people, correct?

21 A Right.

22 Q Then what happened?

23 A After then we started playing cards, afterwards we
24 was playing cards, you know. Me and Shonettia went to the
25 bathroom. After we went to the bathroom, I comes out -- I

MALIKA HARRIS - DIRECT

1 come out before Shonettia comes out of the bathroom and I
2 seen them tussling a little bit, Urk shot him and he ran
3 out of the door.

4 Q ~~Let's back up. You said you see them tussling. Who~~
5 did you see tussling?

6 A Marcus and Urk.

7 Q When you say tussling, describe as the best you can to
8 the Judge what you saw.

9 A They was basically almost not really locked up but
10 they were locked a little bit, and I seen him pull a gun
11 out, he shot him and he ran.

12 Q Were they both still standing at that point?

13 A Yes.

14 Q Where were they standing? What room were they in?

15 A In my kitchen.

16 Q Was anything being said?

17 A No. Everybody paused. We really just didn't know
18 what to do. And I told -- I seen Marcus falling down on
19 the kitchen floor, he was falling slowly, and just from
20 hearsay I heard that if you move a lot --

21 Q Well, don't say anything about hearsay, but what did
22 you do then?

23 A I just told him not to fall. I said, "Marcus, don't
24 drop, don't fall."

25 Q And said you saw him tussling. Did you reference --

MALIKA HARRIS - DIRECT

- 1 did you hear a gunshot?
- 2 A I heard it.
- 3 Q And what did it sound like to you?
- 4 A It was a, "pow."
- 5 Q By that, was it loud, soft or in between?
- 6 A It wasn't really that loud, in between.
- 7 Q And then you saw Marcus falling?
- 8 A Right.
- 9 Q And where did Marcus fall?
- 10 A In my kitchen floor.
- 11 Q Up to that point had you seen any interaction
- 12 between -- any physical interaction between Marcus and the
- 13 defendant?
- 14 A No.
- 15 Q Up to the point when you came out of the bathroom you
- 16 said you saw them tussling, correct?
- 17 A Correct.
- 18 Q Did you at anytime see Marcus strike the defendant?
- 19 A No, I didn't.
- 20 Q At anytime did you hear any Marcus raise his voice to
- 21 the defendant?
- 22 A No, I didn't, it was very quiet.
- 23 Q And after Marcus fell back to the floor after you
- 24 heard the gunshot -- it was just one gunshot, right?
- 25 A Yes, ma'am.

MALIKA HARRIS - DIRECT

1 Q And after Marcus fell back to the floor, what did the
2 defendant do?

3 A He ran.

4 ~~Q Did you see at that point whether or not the defendant~~
5 had anything still in his hand?

6 A No. From what I recall he put it back in his pocket
7 and he ran.

8 ~~Q Did you actually see when the defendant pulled the gun~~
9 or did you just hear the shots?

10 A As soon as -- it was so fast. It was pulled out,
11 pop, run, that's what I seen.

12 Q But you did actually see him holding the gun?

13 A Right.

14 Q Can you describe for the Court his gesture, where he
15 held that gun? Was it --

16 A Like kind of on the side maybe a little bit.

17 Q And when he shot Marcus, where was the gun?

18 A He put it in his pocket and he ran.

19 Q But that was afterwards. When he shot Marcus, where
20 was the gun?

21 A Like on his side.

22 Q And they were both standing at that time?

23 A Right.

24 Q And was the defendant -- you said it was on his side.

25 So it was on his side around his waist or holding up higher

MALIKA HARRIS - DIRECT

- 1 or holding up low?
- 2 A Like right here maybe.
- 3 Q So let the record reflect that the witness indicated
- 4 with her elbow out that the hand would have been around
- 5 your shoulder; is that right?
- 6 A Yes, ma'am.
- 7 Q So the defendant ran out and Marcus fell down. And
- 8 did anybody call the police?
- 9 A Yes, ma'am.
- 10 Q And I want to back up and ask you -- and when the
- 11 police came, did you give them a statement?
- 12 A Yes.
- 13 Q How long was Allen Massey there in your home from the
- 14 time you saw him in the kitchen until the point that he ran
- 15 out after the shooting?
- 16 A It wasn't -- he wasn't there long. I would say maybe
- 17 like 20 or 25 minutes maybe.
- 18 Q And when you saw Allen Massey running out of the home,
- 19 if you noticed, did you see any injuries to Allen Massey?
- 20 A No.
- 21 Q Did you happen to notice his face?
- 22 A No.
- 23 Q Okay. I want to back up and ask you, y'all were all
- 24 at several parties that night, correct?
- 25 A Yes.

MALIKA HARRIS - DIRECT

1 Q And because it may go to your perception as a witness
2 and your ability to relay it to the Court, let me ask you,
3 from the point that you left your house that night to the
4 point of the shooting, had you had anything to drink?

5 A In between I probably had like three beers at the
6 most. Marcus had the liquor on him so I didn't drink no
7 liquor until he came.

8 Q So up to the point of Marcus coming you had had about
9 three beers?

10 A Yes, ma'am.

11 Q Regular size beers?

12 A The 12-ounce..

13 Q 12-ounce can?

14 A Uh-huh. Yes, ma'am.

15 Q And when Marcus came you said he had some liquor?

16 A Yes.

17 Q Do you know what type?

18 A Zodiak.

19 Q And you said at that point you had some?

20 A Yeah. When he came we all took a shot together.

21 Q Okay. One shot?

22 A Yes, ma'am.

23 Q Had you had any prescription drugs that evening?

24 A No, ma'am.

25 Q Had you had any illegal drugs that evening?

MALIKA HARRIS - DIRECT

- 1 A No.
- 2 Q You had been with Shonettia all night, correct?
- 3 A Right.
- 4 Q Had she been drinking?
- 5 A Probably drunk around the same amount.
- 6 Q All right. And had you seen Marcus drinking that
- 7 evening?
- 8 A Yes.
- 9 Q And about how much had he had to drink?
- 10 A Once we was there the only thing that we got to drink
- 11 together was a shot.
- 12 Q All right. But you'd seen him earlier at the other
- 13 houses?
- 14 A Yeah. I don't know how much he drunk.
- 15 Q And do you know whether or not the defendant, Mr.
- 16 Massey, had been drinking that evening?
- 17 A No, ma'am.
- 18 Q Did you at any point that evening in your home at [REDACTED]
- 19 City Avenue see the defendant, Allen Wesley Massey, fall?
- 20 A No. Once I came out of the bathroom they both was
- 21 standing.
- 22 Q So you never saw Mr. Massey on the floor at your house
- 23 at all?
- 24 A No, ma'am.
- 25 Q When you were in the bathroom with Shonettia -- how

MALIKA HARRIS - DIRECT

1 big is this house, how many bedrooms?

2 A Two.

3 Q How many bathrooms?

4 A One.

5 Q How close to the bathroom is the living room?

6 A My bathroom -- well, my bathroom was separate -- my

7 sink was separate from my tub and my toilet. So it was

8 the bathroom, the tub and toilet, and then it was the

9 sink, and if you come around the corner you would see the

10 kitchen and then it was the living room.

11 Q So my question is when you were in the bathroom, did

12 you hear any scuffling going on outside?

13 A I didn't hear nothing, no.

14 Q Did you hear any sound like anybody fell?

15 A No.

16 Q Did you hear any yelling?

17 A No, I didn't.

18 MS. COLLINS: Thank you. Nothing further.

19 THE COURT: Mr. Grier?

20 MR. GRIER: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. GRIER:

23 Q Ms. Harris, you and Allen Massey are related?

24 A Yes, sir.

25 Q How is that, do you know?

MALIKA HARRIS - CROSS

- 1 A I don't know, I guess from my dad.
- 2 Q It's pretty distant related. But y'all have known
- 3 each other kind of your whole lives.
-
- 4 A For awhile.
- 5 Q And what's his nickname?
- 6 A Urk.
- 7 Q Okay. Why is he called Urk, do you know?
- 8 A I don't know.
-
- 9 Q Well -- but has he got any reputation for being
- 10 aggressive?
- 11 A No. That's my family. Since I've been knowing him
- 12 he's a really, really sweet boy, coming around, he played
- 13 with my kids, just in a messed up situation. He is really
- 14 sweet, though, you know.
-
- 15 Q All right. So you've never really seen him pose any
- 16 threat to anybody or do anything like this?
- 17 A No.
- 18 Q You didn't see what happened that caused anything
- 19 between them?
- 20 A No.
- 21 Q Everything -- when you went in -- did you go with
- 22 Shonettia, did y'all both go to the bathroom together?
- 23 A Yes.
- 24 Q How big is that bathroom?
- 25 A It's pretty big. Shonettia, that's my significant

MALIKA HARRIS - CROSS

1 other, me and her, we're engaged. We was actually racing
2 to the bathroom. I said I had to go to the bathroom and
3 she said "I had to go first," that type of thing, you
4 know.

5 Q All right. But y'all both got in there. Who won the
6 race?

7 A I did.

8 Q All right. But she got in there, too?

9 A Yeah.

10 Q All right. Now, let's see, going back to -- you
11 mentioned two parties that you went to earlier that night,
12 correct?

13 A Correct.

14 Q One you said -- is it Brooklyn?

15 A Yeah, it was off Brooklyn Avenue.

16 Q Are you familiar with the street names and everything
17 in there? Do you know where 16th Street is?

18 A Yeah. But I know them when I see them.

19 Q Well, is it Brooklyn right there at 16th Street?

20 A It is.

21 Q If somebody is talking about the 16th Street party, is
22 that the same as the Brooklyn party?

23 A Probably so, I don't know.

24 Q Did you know of any party on 16th Street?

25 A No. The way that I got to the party, I took a back

MALIKA HARRIS - CROSS

- 1 road, a dirt road behind the house. I didn't come off --
- 2 I knew the house was off Brooklyn Avenue.
- 3 Q Yes, ma'am. Okay. And you said y'all didn't stay
- 4 there very long.
- 5 A No, we didn't stay there.
- 6 Q But you did see Allen there?
- 7 A Right.
- 8 Q And then he went over to -- now, who was with you over
- 9 at what you're calling the Brooklyn Avenue party? You and
- 10 Shonettia?
- 11 A And Navoney Curry.
- 12 Q Now who goes over to you said the soccer fields?
- 13 A I think it was just me and Shonettia together, I
- 14 don't think Navoney went with us.
- 15 Q Now, are the soccer fields over near Wiley Park? Is
- 16 that over near Wiley Park?
- 17 A Yeah.
- 18 Q So just you and Shonettia go over there. But no doubt
- 19 about it, Shonettia went with you over to Wiley Park.
- 20 A Right.
- 21 Q Okay. And do you know what time you got there?
- 22 A I don't know what time it was.
- 23 Q But you -- do you know -- and you testified that you
- 24 left around two or something.
- 25 A I'm thinking we left her house between one and two.

MALIKA HARRIS - CROSS

1 Q At any rate -- were you really keeping track of time?

2 A No.

3 Q You do know about what time the shooting took place,

4 or do you?

5 A Like after three in the morning.

6 Q How long -- can you tell me what your estimate is of
7 the amount of time that you were in your home before Marcus
8 arrived?

9 A It wasn't long after he arrived, maybe 30 minutes,
10 probably not even that long.

11 Q And so y'all got there, Marcus showed up with Ebonie?

12 A Yes.

13 Q So Marcus and Ebonie are there. Now, did they stay
14 there throughout?

15 A They left out, went and got some beer, came back.

16 Q Okay. All right. Both of them came back?

17 A Yes.

18 Q And after that they stayed, both of them, from the
19 time they got there until the unfortunate incident, they
20 both stayed the whole time.

21 A Right.

22 Q Now, after they -- when did Allen get there after they
23 got there, or did he get there before? Do you know?

24 A He came in right after they did, it was like five
25 minutes.

MALIKA HARRIS - CROSS

1 Q Okay. And your sense is that Allen was there about 20
2 minutes maybe, something in that neighborhood?

3 A Yeah, maybe around 20 minutes. It wasn't that long.

4 ~~Q Didn't see anything. Everybody is partying and~~
5 rapping, just having a very good time.

6 A Right.

7 Q And now as far as -- the solicitor asked you about
8 Allen -- he had been over at your house extensively over on
9 Elm Street, correct?

10 A Yeah.

11 Q And so this night when he shows up, you know, you were
12 shocked.

13 A I couldn't really say shocked, it was just that where
14 did he come from. He hadn't been over here.

15 Q Okay. Surprised?

16 A Maybe surprised.

17 Q Okay. But not in a sense of I haven't -- was it in a
18 sense of, wow, he'd never been here and here he is, he's my
19 friend? Because y'all ended up having a good time together
20 until this went down, didn't you?

21 A Right.

22 Q And so it wasn't like there was any problem with him
23 being there that you could know of at that time.

24 A No.

25 Q Couldn't anticipate there being a problem with him.

MALIKA HARRIS - CROSS

1 A Yeah.

2 Q Because he's a sweet guy?

3 A Yeah, he is.

4 Q Okay. Do you have any way of knowing how much

5 Demarcus had to drink that night?

6 A I'm not sure.

7 Q Had you been with him earlier in the evening at all or

8 just saw him? Y'all haven't been right there together all

9 night.

10 A No, not all night. We seen each other, we was -- I

11 wasn't trying to keep an account of how much he was

12 drinking.

13 Q Well, do you keep track really of how much anybody is

14 drinking besides yourself?

15 A Myself and Shonettia, we're together.

16 Q All right. But did Demarcus -- what can you tell me

17 about -- was he a heavy drinker at times?

18 A When he was around me he didn't drink up, because

19 when he came around my sister was around and she didn't

20 like him to have as much.

21 Q Now, Demarcus had been -- he was dating your sister,

22 right?

23 A Right.

24 Q And he had done a lot of good things for you, taking

25 care of your kids, taking them to the bus, all of that.

MALIKA HARRIS - CROSS

1 A Right.

2 Q Had some really good qualities.

3 A Right.

4 Q In fact, him and Allen didn't have any issues that you
5 were aware of at all, until you walked out of that bathroom
6 is the first time you see anything bad going down between
7 them, is that accurate?

8 A Exactly.

9 Q Is it possible that -- how do you say -- is it
10 Navoney?

11 A Navoney.

12 Q So that I just kind of --

13 A Right.

14 Q But that's the same person?

15 A Yes, exactly.

16 Q Now, do you recall giving a statement on the night
17 after this happened?

18 A Yes.

19 Q Do you know who you gave that statement to?

20 A This officer if I'm not mistaken.

21 Q Would that be Officer Small? Sergeant, would you
22 raise your hand?

23 A Yeah. I told him if I wasn't mistaken I thought it
24 was you that I gave a statement to that night.

25 Q Anyhow -- well, at any rate you gave a statement that

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1 night.

2 A Yeah.

3 Q And do you recall in that statement that you said when

4 ~~you came out of the bathroom they were wrapped up and you~~

5 were asked the question did you see the gun and you said

6 you didn't actually see the gun?

7 A Yeah. I said I wasn't looking at it, I couldn't tell

8 what it looked like. But I can tell you that I seen the

9 gun and he pulled it out, put it back in and he ran, I did

10 see that.

11 Q Now, how close were they at that time -- and they

12 being -- how close were Mr. Robinson and Mr. Allen?

13 A Maybe like from here to here maybe.

14 Q So they were directly on each other?

15 A Not directly on each other, but you can see in

16 between the two.

17 Q Now, how far was the gun would you estimate from --

18 A In between the two.

19 Q So they were within a foot and a half about?

20 A Probably so.

21 Q A foot to foot and a half?

22 A Yeah.

23 Q And the gun was between them?

24 A Like up this way. I could see the end of the gun.

25 Q So it was virtually right there on Marcus's body at

MALIKA HARRIS - CROSS

1 the time the shot was fired?

2 A Right.

3 Q Could you see whether it was literally touching?

4 A I couldn't tell.

5 Q But it was on the --

6 A I wasn't really paying attention to that.

7 Q But it was only inches away.

8 A Right.

9 Q Do you think it was more than six inches away?

10 A I'm not sure.

11 Q Okay. All right. Now, at the time of the shooting
12 who was present?

13 A Myself, Shonettia, Navoney, Sindarous, Marcus, Urk,
14 Ebonie.

15 Q Okay. And Navoney was in the room?

16 A Navoney was on the porch from my understanding.

17 Q Who was in the room?

18 A In the room? Myself, Shonettia had came in -- myself
19 Sindarous, Marcus. I'm thinking that's it.

20 Q All right. Okay. So the shooting occurred in the
21 kitchen and the living room was just steps away.

22 A Uh-huh.

23 THE COURT: Is that a yes?

24 THE WITNESS: Yes, I'm sorry.

25 Q I mean, the table is right there beside the living

MALIKA HARRIS - CROSS

1 room?

2 A Uh-huh.

3 THE COURT: Is that a yes?

4 ~~THE WITNESS: Yes.~~

5 Q Now, you know, you're going back -- you're coming out
6 of the bathroom. How long -- are you in the kitchen when
7 you see what you see?

8 A In the hallway.

9 Q You're in the hallway. And how long between the time
10 you step out of the bathroom -- I mean, you haven't even --
11 you've just stepped out of the bathroom. How many steps
12 are you out of the bathroom?

13 A Maybe like seven.

14 Q Okay. And when do you see the tussling going on? How
15 many steps out of the bathroom do you guess you were when
16 you saw the tussling going on?

17 A Seven.

18 Q So it was just one instant you saw -- it all happened
19 simultaneously at one time?

20 A Right.

21 Q All right. Do you see them physically in contact with
22 each other? Are they touching each other?

23 A Once I seen that they were standing where I said they
24 were standing, like maybe a foot away from each other,
25 everything happened so fast.

MALIKA HARRIS - CROSS

1 Q Okay. Are you looking at both of them -- is it --
2 from your view are you looking at space between them? Are
3 they standing sideways to you, or one of them got their
4 back to you or --

5 A They're standing sideways.

6 Q So you literally see them like standing -- looking
7 face to face in front of each other right there.

8 A Right.

9 Q Now, in your vision of that, who is on the right?

10 You're coming out of the hallway, who's on the right?

11 A Urk is on the right.

12 Q Okay. And Marcus is on the left.

13 A Okay.

14 Q So you didn't see Marcus hit Allen?

15 A No.

16 MR. GRIER: Thank you.

17 REDIRECT EXAMINATION

18 BY MS. COLLINS:

19 Q Ms. Harris, Mr. Grier asked you about the position of
20 the defendant and the victim.

21 A Uh-huh.

22 Q I would like to show you what has been marked as
23 Defendant's Exhibit 1 that's in evidence at this time. Is
24 that an accurate drawing of the position of the defendant
25 and the victim, Marcus Robinson, as you observed it on the

MALIKA HARRIS - REDIRECT

1 evening/early morning of 10/12 of 2013?

2 A No. When I came out they weren't looking like that.

3 Q And why is it inaccurate? What's inaccurate about it?

4 ~~What's not correct about it?~~

5 A He is sitting down.

6 Q The person on the right is sitting down?

7 A Right.

8 Q But you did say you saw the defendant on the right,

9 correct?

10 A Uh-huh.

11 Q You saw the victim on the left.

12 A Right.

13 Q But they were both standing up.

14 A Right.

15 Q And how about the victim's hand? Did you see the

16 victim's -- either of his hands raised up in the air like

17 that?

18 A No, ma'am, I didn't.

19 Q Did you see the victim making a fist at all?

20 A No.

21 MS. COLLINS: Nothing further.

22 THE COURT: Mr. Grier?

23 RECROSS EXAMINATION

24 BY MR. GRIER:

25 Q Y'all left because there was a shooting over at the

MALIKA HARRIS - RECROSS

1 soccer field at Wiley Park.

2 A Right.

3 Q But y'all didn't see nothing about that. You and

4 Shonettia were both there.

5 A Right.

6 Q And you knew about that shooting right then and that's

7 why y'all left.

8 A Right.

9 MR. GRIER: Okay. Thank you.

10 MS. COLLINS: Nothing further.

11 THE COURT: Ma'am, you may stand down.

12 MR. GRIER: Your Honor, if I may, I apologize, but I

13 do need to ask you her an additional question about the

14 matter.

15 THE COURT: Hold on a second, ma'am.

16 FURTHER CROSS EXAMINATION

17 BY MR. GRIER:

18 Q Pardon me, Ms. Harris. But were you advised about

19 having conversations about this case when you were told you

20 were sequestered and had to be out in the hall?

21 A Say that one more time.

22 Q Were you told that you could not have conversations

23 about this case when you were told that you had to stay out

24 in the hall before you --

25 A Right.

MALIKA HARRIS - RE CROSS

1 Q Okay. And have you had conversations about this case?

2 A No.

3 Q So you deny either you telling Shonettia or Shonettia

4 telling you that you had to testify in a particular way or

5 you're going to be contradicting each other? Y'all didn't

6 have that conversation?

7 A No. We was talking about a totally different case.

8 Q What case were you telling about?

9 A Her brother getting convicted of life in prison.

10 Q Okay. But did you have words about the way that you

11 would testify, or the way she would testify about being in

12 the bathroom, both of you, or if Shonettia said she

13 actually saw the shooting incident?

14 A No.

15 Q Y'all never had that conversation?

16 A No.

17 MR. GRIER: All right. That's all.

18 THE COURT: Ma'am, you may step down. Thank you.

19 The witness, SHONETTIA HUNTER, was first duly sworn

20 and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. COLLINS:

23 Q What is your name, please?

24 A Shonettia Hunter.

25 Q Can you please spell Shonettia for us?

SHONETTIA HUNTER - DIRECT

1 A S-h-o-n-e-t-t-i-a.

2 Q And you have a soft voice, if you could please speak
3 up and speak directly into the microphone.

4 A Okay.

5 THE COURT: Slide up, please, ma'am, to that
6 microphone. Pull it down to you. Okay? Thank you. Go
7 ahead, Ms. Collins.

8 MS. COLLINS: Thank you.

9 Q Ms. Hunter, do you know the defendant, Allen Wesley
10 Massey?

11 A Yes.

12 Q Are you related to him?

13 A No, ma'am.

14 Q Do you know Malika Harris that just testified?

15 A Yes, ma'am.

16 Q Are you in a relationship with Ms. Harris?

17 A Yes.

18 Q How many years have y'all been in a relationship
19 together?

20 A Close to six.

21 Q All right. And did you and Ms. Harris used to live on
22 Elm Street in Lancaster, South Carolina?

23 A Yes.

24 Q And the defendant and his mother lived down the street
25 on that same street, Elm Street; is that correct?

SHONETTIA HUNTER - DIRECT

1 A Yes, ma'am.

2 Q And while you lived in the house on Elm Street, did
3 the defendant ever come over to your house on Elm Street?

4 A Yes, ma'am.

5 Q And would he come and visit with y'all?

6 A Yes.

7 Q And would you say he came several times/a week?

8 A No.

9 Q How often would you say he came?

10 A Maybe twice, three times a month, something like
11 that.

12 Q Two or three times a month?

13 A Uh-huh.

14 Q And do you recall y'all later moved to a house on City
15 Avenue; is that correct?

16 A Yes, ma'am.

17 Q [REDACTED] City Avenue?

18 A Yes, ma'am.

19 Q Do you recall approximately when y'all moved to [REDACTED]
20 City Avenue in Lancaster, South Carolina?

21 A I don't recall the date, but -- no, ma'am. I can't
22 remember the date.

23 Q Let me ask you this: Were you there on the early
24 morning hours of October 12th of 2013 when Marcus Robinson
25 was shot?

SHONETTIA HUNTER - DIRECT

1 A Yes, ma'am.

2 Q At that time approximately how long had you and Malika
3 Harris been living at [REDACTED] City Avenue?

4 A Maybe several months, about seven or eight months.

5 Q And during the time that you and Ms. Harris were
6 staying, living at City Avenue up to the point when you
7 moved there until Mr. Robinson was shot there, had the
8 defendant, Allen Wesley Massey, ever been there in your
9 home on City Avenue?

10 A No, ma'am.

11 Q Who lived there in the house with you in addition to
12 Malika Harris?

13 A Her two kids and my nieces.

14 Q And how many nieces did you have?

15 A Four.

16 Q Were they all under the age of say 12?

17 A All of them.

18 Q I want to draw your attention to October 11th of 2013.

19 Were you with Malika Harris that evening?

20 A Yes, ma'am.

21 Q What did y'all do?

22 A We went to two parties that night.

23 Q Where was the first party?

24 A At her brother's house.

25 Q Do you know where that was located?

SHONETTIA HUNTER - DIRECT

- 1 A Off of 16th Street, 17th Street.
- 2 Q How about the second house?
- 3 A It was Marcus's family's house.
- 4 Q Do you know where it was located?
- 5 A Not exactly, but over by the ball field.
- 6 Q And who went with you to the house -- the first house
- 7 on 16th or 17th Street?
- 8 A I'm thinking it was just me and Malika.
- 9 Q About what time did you get there and how long were
- 10 you there?
- 11 A It was pretty early. We wasn't there but maybe an
- 12 hour if that long.
- 13 Q Was it before midnight?
- 14 A Yes, ma'am.
- 15 Q Did you have anything to drink there?
- 16 A Yes, ma'am.
- 17 Q How much had you had to drink there?
- 18 A We probably drunk one or two beers, no more than that
- 19 when we were there because we didn't stay long.
- 20 Q Same for you and Malika?
- 21 A Uh-huh.
- 22 Q I'll back up and ask you that at the end, we'll come
- 23 back to that. Let's go to the second house. So when you
- 24 left the first house and went to the party at the second
- 25 house you said it was Marcus' family's house there at the

SHONETTIA HUNTER - DIRECT

1 ball field?

2 A Yes, ma'am.

3 Q Who went with you there?

4 A It was me, Malika, I want to say my cousin, Navoney,

5 rode with me but I can't remember if he drove his car or

6 if he rode with me so I'm not sure, I can't be positive.

7 Q Is Navoney Curry your cousin?

8 A Yes, ma'am.

9 Q And when y'all got to the second house -- let me back

10 up, I apologize. On the house at 16th Street, did you see

11 Allen Wesley Massey there?

12 A No, ma'am.

13 Q Did you see Marcus Robinson there?

14 A No, ma'am. The reason being, Malika went in the

15 house, I stayed at my car and I was talking to a friend so

16 I didn't even go up there.

17 Q Okay. And did you see Rashawd Robinson there at that

18 house?

19 A No, ma'am.

20 Q So at the second house, the one near the ball field,

21 when you got there you said you and Malika were there and

22 Navoney may or may not have gotten there with y'all; is

23 that right?

24 A Yes, ma'am.

25 Q But he may have drove separately, correct?

SHONETTIA HUNTER - DIRECT

1 A Yes, ma'am.

2 Q And when you went there, were a lot of people there?

3 A Yes, ma'am.

4 Q Did you see Allen Wesley-Massey there?

5 A No, ma'am.

6 Q Did you see Marcus Robinson there?

7 A Yes, ma'am.

8 Q Did you see Rashawd Robinson there to the best of your
9 memory?

10 A I don't think so.

11 Q Okay. And how long were y'all there at that second
12 house?

13 A Maybe two or two and a half hours, something like
14 that. We stayed there a pretty long time.

15 Q So you actually got out of the car at that house and
16 you were mingling; is that right?

17 A Yes, ma'am, uh-huh.

18 Q When y'all left two or two and a half hours later,
19 what caused y'all to leave?

20 A I think it was a fight.

21 Q Do you know who was involved in the fight? Did you
22 see the fight? Let me ask you --

23 A No, ma'am. I was actually at Ebonie's car standing
24 at the back of her car mingling, talking to everybody back
25 there, everybody else was at Marcus's family house, you

SHONETTIA HUNTER - DIRECT

1 know. So I heard the commotion but we were at the car so
2 I really didn't see nothing.

3 Q You were standing at the back of Ebonie Harris's car?

4 A Yes, ma'am.

5 Q That's the girlfriend of Marcus Robinson?

6 A Yes.

7 Q Was Marcus around?

8 A Yes.

9 Q Ebonie around?

10 A Yes, ma'am.

11 Q Malika around?

12 A Yes, ma'am.

13 Q So you did not see a fight?

14 A No, ma'am.

15 Q But at that point y'all left?

16 A Yes, ma'am.

17 Q And when you left where did y'all go?

18 A To my house.

19 Q And when you got to your house -- and that's at [REDACTED]
20 City Avenue?

21 A Yes, ma'am.

22 Q When you got there, who was there?

23 A Just me and Malika first. Navoney, Ebonie and Marcus
24 pulled up. We actually called him so we could play cards,
25 they were already turning in, they pulled up. One of

SHONETTIA HUNTER - DIRECT

1 their friends, I can never remember his name, ten-ten, he
2 ended upcoming.

3 Q Is ten-ten the guy's name you can't remember or is
4 ten-ten someone else?

5 A Ten-ten is the one who was out there waiting.

6 Q Would that be Sindarous Wells?

7 A Yes, ma'am. I didn't know his real name.

8 Q He is waiting to testify?

9 A Yes, ma'am.

10 Q Is he the one who later performed CPR on Marcus?

11 A Yes, ma'am.

12 Q So there was another guy but you didn't -- could never
13 remember his name.

14 A Uh-huh.

15 Q So you say y'all actually called Ebonie and Marcus to
16 come over so y'all could have at least four people to play
17 cards?

18 A Yes, ma'am. They was going home but we actually
19 called them over.

20 Q And where were the children?

21 A My nieces was with my mother and Malika's kids was
22 with her mother.

23 Q They were being babysat outside of the home?

24 A Yes, ma'am.

25 Q At some point did you see Allen Wesley Massey come

SHONETTIA HUNTER - DIRECT

1 into your home at City Avenue?

2 A Yes, ma'am, he walked in.

3 Q About how long had y'all been there when Mr. Massey
4 came in?

5 A It wasn't long.

6 Q And when he came in when did you first see the
7 defendant, Mr. Massey?

8 A When he walked through the hallway and looked up and
9 kind of scared us because we thought the door was locked
10 but evidently it wasn't.

11 Q So you looked up and saw him in your house?

12 A Yeah.

13 Q And you said you had never seen them in that
14 particular house before.

15 A Not in that house, no, ma'am.

16 Q But you never had any trouble with Mr. Massey, right?

17 A No, ma'am. We used to play cards together and drink
18 and whatever.

19 Q At that point did you allow him to continue to stay in
20 your home as a guest right then?

21 A Yes, ma'am.

22 Q Not overnight but just there at the get-together?

23 A Yes, ma'am.

24 Q Did you know that at that moment that the defendant,
25 Allen Wesley Massey, had a firearm in his pocket?

SHONETTIA HUNTER - DIRECT

1 A No, ma'am.

2 Q Did you know that the firearm in his pocket was
3 loaded?

4 A No, ma'am.

5 Q Had you known that the defendant had a firearm in his
6 pocket loaded or unloaded, would you have allowed him to
7 continue in your home?

8 A No way possible.

9 Q Would you have asked him to leave?

10 A Yes, ma'am.

11 Q Would you have made sure he left?

12 A Yes, ma'am.

13 Q Tell the Court what happened after Mr. Massey got
14 there.

15 A Me and Marcus, we started running, meaning rapping.
16 Me and Malika, we was like all hugged up and he was
17 telling us how much he loved us and how happy he was to
18 have met us. It was like -- I don't know, it was like --
19 kind of like he knew something was fixin' to happen to
20 him, I don't know. And then he had a bottle of liquor so
21 he just started pouring everybody shots and sliding them
22 across the table. I got a phone call, I stepped out in
23 the living room to take my phone call, then I had to go to
24 the bathroom. So Malika followed me to the bathroom. It
25 was just, God, I would say probably seven to ten minutes

SHONETTIA HUNTER - DIRECT

1 we went to the bathroom --

2 Q Seven to ten minutes what, that y'all were in the
3 bathroom?

4 A No, ma'am.

5 Q Or seven or ten minutes what, since Mr. Massey got
6 there?

7 A Yes, ma'am, that everything happened is what I'm
8 saying.

9 Q Okay. So you and Malika went to the bathroom, right?

10 A Yes, ma'am.

11 Q And while y'all were in the bathroom, did y'all hear
12 anything going outside in the house?

13 A Yes, ma'am. That's what brought us out the bathroom,
14 Malika was ahead of me.

15 Q So y'all came out the bathroom, Malika was ahead of
16 you. What did you hear while you were in the bathroom?

17 A Well, I heard like commotion, like -- I'm not going
18 to say a fight, but it was like bumping and moving and,
19 you know. So Malika walked ahead of me and she was like,
20 "You hear that?" And I was like, "Yeah." So she actually
21 heard -- I mean, saw the gunshot but I didn't, I heard it
22 but I didn't see it. And when I came out of the bathroom
23 Marcus was -- he was like holding his side. And the
24 gunshot was so low you would think it was like a balloon
25 popping, so I really didn't think it was a gunshot. But

SHONETTIA HUNTER - DIRECT

1 when I saw him holding his side and he was leaning over I
2 was like, "Malika, Marcus been shot." We was just so
3 shocked, everybody was just standing there, we couldn't
4 even do nothing right then.

5 Q Let me ask you this: When you got in there you said
6 you had heard the gunshot, it sounded low and that Marcus
7 was holding his side; is that right?

8 A Yes, ma'am.

9 Q Was he still standing at that point?

10 A He was still standing.

11 Q Where was the defendant at that point?

12 A I saw him run.

13 Q Did you at anytime see the defendant lying on the --
14 laying down on the floor, the defendant --

15 A Oh --

16 Q -- Allen Massey?

17 A No, ma'am.

18 Q Never saw him on the floor at all?

19 A No, ma'am.

20 Q Ever see him sitting on the floor?

21 A No, ma'am.

22 Q So when you came out of the bathroom you saw Marcus
23 and the defendant was running. Where did he run to?

24 A He ran out the door.

25 Q He, the defendant?

SHONETTIA HUNTER - DIRECT

- 1 A Yes, ma'am.
- 2 Q And at that point did someone attempt to perform CPR
- 3 on Marcus Robinson?
- 4 A Yes, ma'am.
- 5 Q All right. And that was ten-ten, Sindarous Wells?
- 6 A Twice. He did it twice.
- 7 Q Now, y'all had been out that evening. Up until the
- 8 point that you later -- well, up until the point of the
- 9 gunshot, let me ask you, what if anything to drink had you
- 10 had that whole evening?
- 11 A I will say probably about five beers, couple shots of
- 12 liquor. We really didn't start drinking until we got
- 13 home.
- 14 Q Okay. And by beers do you mean regular sized can or
- 15 were they bigger cans, or what were they?
- 16 A 12 ounces.
- 17 Q And a couple shots of liquor?
- 18 A Yes, ma'am.
- 19 Q Who provided the liquor?
- 20 A Marcus.
- 21 Q And do you know what Malika had had to drink that
- 22 whole evening while y'all were over at these other two
- 23 houses and then back at your house, up until this time of
- 24 the shooting?
- 25 A Probably about the same thing.

SHONETTIA HUNTER - DIRECT

1 Q And had you seen Mr. Massey drinking during the
2 evening at all?

3 A I didn't even see him.

4 Q Okay. Did he drink anything at your house?

5 A I don't think so.

6 Q Did you see Malika hand him a beer when he came in?

7 Do you remember?

8 A No, ma'am. I mean, she probably did but I really

9 didn't pay attention to that.

10 Q And how much that you observed Marcus Robinson have to
11 drink?

12 A He had a beer, I remember a beer in his hand. I
13 remember he poured himself probably about two shots.

14 Q Now, Ms. Hunter, during the course of that evening,
15 had you had any prescription drugs that evening?

16 A No, ma'am.

17 Q Had you had any illegal drugs that evening?

18 A No, ma'am.

19 Q Had you observed Malika have any prescription drugs or
20 any illegal drugs?

21 A No, ma'am.

22 Q Had you observed Marcus having any illegal drugs or
23 prescription drugs?

24 A No, ma'am.

25 Q Had you observed Mr. Wesley, the defendant, have any

SHONETTIA HUNTER - DIRECT

1 prescription drugs or illegal drugs?

2 A No, ma'am.

3 Q Before Mr. Massey came in your home -- you said you
4 saw him in the kitchen -- had you heard a knock at the
5 door?

6 A No, ma'am.

7 Q Also you said you heard like a bumping while you were
8 in the bathroom. Did it sound like anybody fell?

9 A No, ma'am. It was just -- I don't know what it was.
10 I don't know if there's beating on the table because we
11 were making beats and rhyming like I said, but it was like
12 noise in the kitchen which brought us out of the bathroom.

13 MS. COLLINS: Thank you. Nothing further.

14 THE COURT: Mr. Grier?

15 MR. GRIER: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. GRIER:

18 Q Ms. Hunter, a couple of parties going on that night?

19 A Yes, sir.

20 Q 16th Street.

21 A Yes.

22 Q You didn't actually go in there.

23 A No.

24 Q You hung out on the street and talked to somebody?

25 A Yes.

SHONETTIA HUNTER - CROSS

1 Q Now, do you recall -- you went over to the ball park,
2 is that Wiley park?

3 A Yes.

4 Q And do you recall who you went over there with?

5 A Yes.

6 Q Who was that -- who were you with?

7 A Malika.

8 Q And so Navoney wasn't with you?

9 A I'm not sure, I can't remember. I'm thinking he was
10 but I don't remember. I know he ended up with me but I
11 don't know if he rode with me or not.

12 Q Okay. You were there at that party with Malika
13 throughout, I mean, over on the Wiley Park?

14 A Uh-huh.

15 Q So y'all were together the whole time?

16 A Yes.

17 Q So you know everything that happened there that she
18 knows.

19 A No, I don't.

20 Q You don't? Okay. Well, you testified that there was
21 some commotion over there, right?

22 A Yes.

23 Q If there had been a shooting over there while you were
24 there, do you think you would know about it?

25 A I don't remember a shooting, but I remember a fight.

SHONETTIA HUNTER - CROSS

1 Q Well, the question was if there would have been a
2 shooting.

3 A I don't know.

4 Q You don't think --

5 A I never said it was a shooting, I said it was a
6 fight.

7 Q I know. Okay. But if Malika knew about a shooting
8 there, do you think you would have known about it?

9 A No, probably not. Maybe.

10 Q So if y'all left a party because there was a shooting,
11 you know, you might not have known about it.

12 A I just said I didn't say nothing about no shooting.

13 Q Okay. All right.

14 A You're asking me if I left because of a shooting, I
15 never said it was a shooting, I said a fight.

16 Q All right. Well, did Mr. Demarcus Robinson get
17 involved in any kind of conflict over there at Wiley Park?

18 A Not that I know of. I don't know who was fighting, I
19 didn't even stay to see.

20 Q Okay. But you left with Malika.

21 A Right.

22 Q And did y'all talk about why you left why y'all were
23 leaving?

24 A No. I was just talking about hearsay, everybody was
25 trying to figure out who was fighting.

SHONETTIA HUNTER - CROSS

1 Q So all of the conversation was about a fight.

2 A Right.

3 Q Who all left Wiley Park at the same time in terms of
4 people? Who all ended up over at City Avenue?

5 A Me, Malika, Navoney, Ebonie and Marcus.

6 Q But they didn't go straight to your house, did they?

7 They went to their cousin's or something? Do you know?

8 A No, I don't know.

9 Q You don't know? Okay. When you got to your home, do
10 you anything about the time that you got to yours and
11 Malika's home?

12 A It was late.

13 Q It was late?

14 A Yeah, it was late.

15 Q Do you know what time you left Wiley Park
16 approximately?

17 A Maybe 1:00 in the morning, I'm not sure. It was
18 late.

19 Q Okay. All right. Do you know what time the shooting
20 took place?

21 A No.

22 Q No idea?

23 A No idea.

24 Q Okay. Well, when you were in your home and you say --
25 did you call? Did you call Marcus and Ebonie?

SHONETTIA HUNTER - CROSS

1 A Malika did.

2 Q Because y'all wanted some people to come over and play
3 some cards.

4 A Right.

5 Q And you didn't find out where they were, though? You
6 didn't know where they had been after they left Wiley Park?

7 A No. I'm pretty sure Malika did, I didn't care to
8 ask.

9 Q Okay. Do you recall being interviewed by law
10 enforcement that night?

11 A Uh-huh.

12 THE COURT: Is that a yes?

13 THE WITNESS: Yes.

14 THE COURT: Thank you.

15 Q And do you recall telling them that Marcus and Ebonie
16 went over to his cousin's for a few minutes, CJ?

17 A Maybe I did, maybe I didn't, I'm not sure. This was
18 awhile back, I can't remember everything, but I probably
19 did.

20 Q All right. How long were you there -- who comes in
21 first? Once you get there who comes in first, Marcus and
22 Ebonie or Allen Massey?

23 A Marcus.

24 Q How long was Marcus -- Marcus and Ebonie or just
25 Marcus?

SHONETTIA HUNTER - CROSS

1 A Just Marcus.

2 Q So only Marcus came in.

3 A Ebonie came in, she left back out, she was on my
4 phone.

5 Q All right. So Marcus comes in -- she came in and then
6 she went back out? Ebonie did come in and she went back
7 out?

8 A She did come in.

9 Q Okay. And how long from the time that they came in
10 until Allen Massey came in?

11 A Wasn't long, maybe five minutes.

12 Q All right. And how long from the time that Allen
13 Massey came in until the shooting occurred?

14 A Maybe five minutes.

15 Q Okay.

16 A Probably long enough to drink a beer.

17 Q All right. Now, you and Malika went to the restroom?

18 A Yes.

19 Q Is that normal for y'all -- y'all go together a lot?

20 A We go together.

21 Q Okay. Was there any kind of competition going on to
22 get to the bathroom, who was going to get there first or
23 anything?

24 A As a matter of fact I think there was.

25 Q Okay. Now, how long do you think you were in there

SHONETTIA HUNTER - CROSS

- 1 before you heard something going on?
- 2 A Maybe two minutes.
- 3 Q Okay. So who left the bathroom first?
- 4 A Malika was ahead of me. We came out at the same time
- 5 but she was ahead of me.
- 6 Q Y'all came out at the same time but she was ahead of
- 7 you.
- 8 A Yes.
- 9 Q So did you see anything that happened?
- 10 A No, I heard it.
- 11 Q I'm sorry?
- 12 A She saw it, I heard it. I was behind her so I didn't
- 13 actually see it.
- 14 Q Okay. So you didn't see the position of anybody at
- 15 the time of the shooting.
- 16 A Not when he shot the gun. But yeah, when Marcus got
- 17 shot I was standing right there with him.
- 18 Q When he got shot you were standing right there with
- 19 him?
- 20 A Not when he actually got shot. After he got shot I
- 21 was right there beside him.
- 22 Q Okay. And I think you said the first thing you saw
- 23 was Allen Massey running as far as what Allen was doing?
- 24 A Yeah, I saw him take off.
- 25 Q And how did he take off? Which way did he go?

SHONETTIA HUNTER - CROSS

1 A He went toward my living room.

2 Q Okay. And you didn't see where he was at when

3 Demarcus got shot though?

4 ~~A No. I saw like a reflection of it. But like I said,~~

5 Malika was standing there in front of me so she would have

6 saw that, not me.

7 Q Okay. All right. Well, do you recall when you gave

8 your statement -- do you know the officer you gave the

9 statement to?

10 A Yes.

11 Q Who was it?

12 A He's sitting right there.

13 Q And do you recall him asking you the question, "Do

14 y'all have any idea who shot at Wiley Park?"

15 A Maybe.

16 Q Okay. Yes or no.

17 A No, I don't know about a shooting.

18 Q No. Do you recall him asking that question?

19 A I don't remember.

20 Q Do you recall saying that you didn't hear about the

21 shooting until the police arrived just then?

22 A Maybe, if that's what I said. I mean, it's been a

23 long time ago, I don't remember.

24 Q Okay. Just yes or no.

25 A I don't remember.

SHONETTIA HUNTER - CROSS

1 Q Okay. At the time of the shooting who was present,
2 who was in the room at the time of the shooting? /

3 A Who was in the room or who was in the house?

4 Q No. Who was in the room at the time of the shooting.

5 You walk in right behind the shooting, right, within
6 seconds of it?

7 A Right.

8 Q So did you observe who was in that room when it
9 happened?

10 A Marcus, ten-ten, Malika was already in the kitchen,
11 she was ahead of me, I walked behind her. Navoney, Ebonie
12 was outside.

13 Q Is that all?

14 A Uh-huh.

15 Q Do you know Tommy McGriff?

16 A Yes.

17 Q Was he there that night?

18 A Yeah, he came.

19 Q Was he there at the time of the shooting?

20 A He wasn't in the house, not that I remember.

21 Q So you didn't see him at the time of the shooting.

22 A No.

23 Q And how about --

24 MR. GRIER: Court's indulgence.

25 (Break in proceedings.)

SHONETTIA HUNTER - CROSS

1 Q All right. So do you recall if a guy by the name of
2 Orlando Bryant being present that night?

3 A I don't even know who that is.

4 Q -- Okay. -- All right. -- Pardon me for skipping around here, --
5 but back during the interview -- you say you were in the
6 bathroom for a couple of minutes before you heard anything?

7 A Uh-huh.

8 Q Well, do you recall when you gave a statement about
9 this, and you say it was to Officer Small, do you recall
10 telling him that you walked into the bathroom but just as
11 you stepped into the bathroom you heard a pop?

12 A I heard a pop, yeah.

13 Q Well, I mean, two minutes after you were in there or
14 just as you stepped into the bathroom?

15 A Sir, a length of time for me to sit and that's when I
16 heard it. So however it took for me to pee I heard it.
17 Do it really matter if it's one minute, two minutes?

18 THE COURT: Ma'am, just answer the question.

19 A I used the bathroom and I heard the shot.

20 Q Well, did you hear the shot as you stepped into the
21 bathroom?

22 A I heard the shot while I was in the bathroom.

23 Q All right. So Ebonie -- was Ebonie in the kitchen at
24 the time of the shooting?

25 A No.

SHONETTIA HUNTER - REDIRECT

1 Q Okay. Did Malika say anything when you came out of
2 the bathroom -- she was right ahead of you -- did she say
3 anything to you about Marcus being shot? What did she say?

4 A All she said was "Don't fall."

5 Q Don't fall?

6 A Yeah.

7 Q Okay. So you don't recall telling law enforcement
8 that she said that he shot Marcus?

9 A I probably did. But I remember her saying don't
10 fall, she was telling him not to fall.

11 MR. GRIER: Okay. Thank you, Ms. Hunter.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MS. COLLINS:

15 Q Who was she telling him not to fall?

16 A She was telling Marcus. He was like leaned over and
17 like on one foot like hanging on and she was telling him
18 not to fall.

19 MS. COLLINS: Thank you. Nothing further.

20 THE COURT: Mr. Grier, anything further?

21 MR. GRIER: Your Honor, I don't have anything further.

22 The witness, SINDAROUS WELLS, was first duly sworn
23 and testified as follows:

24 DIRECT EXAMINATION

25 BY MS. COLLINS:

SINDAROUS WELLS - DIRECT

1 Q Would you please state your name?

2 A Sindarous Wells.

3 Q Could you spell your first name?

4 A S-i-n-d-a-r-o-u-s.

5 Q Do you have a nickname, Mr. Wells?

6 A Yes.

7 Q And what is that?

8 A Ten.

9 Q Ten?

10 A Like the number ten.

11 Q Let me ask you, do you know the defendant, Allen

12 Wesley Massey?

13 A I don't really want to say I know him, but I have

14 seen him around.

15 Q You know him by sight?

16 A Yes.

17 Q But you never really hung out with him?

18 A No.

19 Q Did you know Demarcus Robinson before he died?

20 A Yes.

21 Q Did y'all sometimes hang out?

22 A Yes.

23 Q Now, I want to draw your attention to the evening of

24 March (sic) 11, 2013, all right, the evening of March 11th

25 of 2013. Did you go out to any parties that night or any

SINDAROUS WELLS - DIRECT

1 residences that night?

2 A Yes.

3 Q Where did you go?

4 A It was a party, I'm not sure the name of that road or

5 whose house it was at because I went with somebody else.

6 And then we left that house and went to Malika's house.

7 Q So you went to one other house and then you went to

8 Malika's house?

9 A Yes.

10 Q Who were you with -- you said you were with somebody

11 else. Who were you with at the first house?

12 A It was me and it was this other girl named Ivory and

13 her boyfriend, I'm not sure what his name is.

14 Q And when y'all left that first house -- do you know

15 about what time that was that y'all left that first house

16 and went to Malika's?

17 A I'm not really sure about the time.

18 Q Did y'all go straight to Malika's?

19 A Yes.

20 Q Did they go with you?

21 A Yes.

22 Q And when you got to Malika's house, was that the house

23 at [REDACTED] City Avenue.

24 A Yes, ma'am.

25 Q And when you got to Malika's house, did y'all go

SINDAROUS WELLS - DIRECT

1 inside?

2 A Yes.

3 Q And when you went inside, who was there?

4 A Malika, Shonettia, and that was it at first.

5 Q Had Malika and Shonettia invited you to come over
6 there?

7 A Yes.

8 Q And they were going to play cards and asked you to
9 come?

10 A Yes, ma'am.

11 Q And had you gone over there before?

12 A Yes.

13 Q At anytime when you had gone over there before had you
14 ever seen Allen Wesley Massey over there?

15 A No, ma'am.

16 Q Are you kin to any of the parties? Are you kin to
17 Shonettia or Malika?

18 A No, ma'am. We all grew up close together but we're
19 not related.

20 Q How about, are you kin to Marcus Robinson?

21 A No, ma'am, but we all grew up together.

22 Q And when you got to Malika's with Ivory and her
23 boyfriend, did Ivory and her boyfriend stay or did they
24 leave?

25 A They left. They actually caught a ride from there

SINDAROUS WELLS - DIRECT

1 with somebody else.

2 Q Okay. So at the time they left had anybody else come,
3 or at the time they left was it still just you and Malika
4 and Shonettia?

5 A Uh-huh.

6 Q You need to answer yes or no just to be clear for the
7 court reporter. So that's correct?

8 A Yes.

9 Q And then when they left -- can you play a hand of
10 cards with three people?

11 A You could.

12 Q Okay. Did y'all?

13 A No, we didn't.

14 Q And did someone later come?

15 A Yes.

16 Q Who came next?

17 A Marcus and Ebonie.

18 Q And you said you had grown up with Marcus. And did
19 you know Ebonie too?

20 A Yes, ma'am.

21 Q And when they came, what did y'all do then?

22 A We were still just hanging around in the kitchen
23 talking and laughing and joking around and stuff.

24 Q All right. And what happened next?

25 A I would say probably about 30 minutes to an hour

SINDAROUS WELLS - DIRECT

1 after that, that's when Urk came in.

2 Q Okay. And when you say Urk, who do you mean?

3 A Allen.

4 Q Allen Wesley Massey, the defendant?

5 A Yes, ma'am.

6 Q His nickname is Urk?

7 A Yes, ma'am.

8 Q And so when the defendant Urk came in later, you said

9 y'all had been there about 30 minutes to an hour; is that

10 right?

11 A Uh-huh.

12 Q About how long had Malika -- not Malika -- about how

13 long had Marcus and Ebonie been there?

14 A Probably about 20 to 30 minutes, somewhere along in

15 there.

16 Q And when the defendant came in the house, where did

17 you first see him within the house? Where did you first

18 notice him?

19 A In the kitchen.

20 Q All right. And was everybody that you've just named

21 in the kitchen at that time?

22 A I don't think Ebonie was. But when he first came in

23 I was in the kitchen, Shonettia was in the kitchen, Malika

24 was in the kitchen. And there was another guy, someone

25 else had came and I'm not sure what his name was, but

SINDAROUS WELLS - DIRECT

1 there was about five or six people that was there in the
2 kitchen.

3 Q And that's the point that the defendant came in the
4 kitchen you say?

5 A Yes, ma'am.

6 Q Had you heard a knock at the door?

7 A No, ma'am.

8 Q Could you see the front door from where you were
9 seated in the kitchen?

10 A Yes, ma'am.

11 Q Did you see the defendant come in the front door?

12 A Yes.

13 Q Okay. Did anybody let him in the front door?

14 A I didn't see no one let him in.

15 Q And when he came in the front door, does he just come
16 on back to where y'all were in the kitchen?

17 A Yes, ma'am.

18 Q And can you describe for the Court, what was y'all's
19 reaction when the defendant came in the kitchen?

20 A Well, my reaction was I didn't -- like I said, I
21 didn't really know him. And I -- well, everyone was
22 looking around like puzzled that he was there, like he
23 wasn't invited or something. I'm not sure if they invited
24 him or not, I just didn't know that he was coming.

25 Q And when he got there did he speak to everyone?

SINDAROUS WELLS - DIRECT

1 A Yes.

2 Q And did everyone seem comfortable with each other?

3 A Yes.

4 Q Were there any words between anybody at that point?

5 A Not that I seen.

6 Q And what happened then?

7 A Well, we began -- we were talking. And then Malika

8 and Shonettia walked out of the room and I don't think --

9 Ebonie wasn't in there either, it was just me and Allen

10 and Marcus and then the other guy. And Allen started

11 telling us about another party or something that he had

12 just left from and that he got into an altercation with

13 some guy who ended up being Marcus's cousin.

14 Q Do you remember the name of Marcus's cousin he was

15 referencing?

16 A No, ma'am.

17 Q And so Allen, the defendant, was telling y'all he'd

18 gotten into some, what did you say, altercation with

19 someone?

20 A Well, I wouldn't really say an altercation but they

21 had some words.

22 Q Okay. And did he say that that person had done

23 anything to him?

24 A No. He said that the guy was trying to fight him.

25 Q Okay. And did he say what his reaction was when the

SINDAROUS WELLS - DIRECT

1 guy was trying to fight them?

2 A He said that he had pulled a gun out on the guy.

3 Q Okay. When you say he said he had pulled a gun out on

4 the guy, who said?

5 A Allen said that he pulled a gun out on Marcus's

6 cousin.

7 Q Okay. So Allen said that Allen himself pulled a gun

8 out on Marcus's cousin?

9 A Yes.

10 Q And did he say what happened at that point?

11 A No. He just said that he had left.

12 Q Okay. And did you know that at that point that the

13 defendant actually had a firearm on him?

14 A No, ma'am.

15 Q He didn't show it to y'all?

16 A No, ma'am.

17 Q He didn't say he still had a firearm?

18 A No, ma'am.

19 Q And at that point -- up to that point how had Marcus

20 been toward the defendant?

21 A He wasn't -- he wasn't really saying nothing, he

22 wasn't saying anything. We was just standing right there

23 and we was still talking. And then out of nowhere he just

24 swung and hit Allen.

25 Q Okay. When you said he, who?

SINDAROUS WELLS - DIRECT

1 A Marcus.

2 Q Swung and hit the defendant?

3 A Yes.

4 Q And where did he hit the defendant?

5 A Somewhere in the face.

6 Q And how many times did he hit the defendant?

7 A Once.

8 Q And when Marcus hit the defendant, did the defendant
9 fall?

10 A He went back into the living room. I'm not sure if
11 he actually hit the ground but he went into the living
12 room area.

13 Q Did you hear him hit the ground?

14 A No, ma'am.

15 Q What did Marcus do?

16 A He was walking towards him.

17 Q Towards who?

18 A Allen.

19 Q Could you still see Marcus at that point?

20 A Yes, I could see his back.

21 Q And was he leaning over or was he standing up?

22 A Standing up.

23 Q Was Marcus saying anything?

24 A Not that I can remember.

25 Q Did he have any weapons in his hands?

SINDAROUS WELLS - DIRECT

1 A No, ma'am.

2 Q Was Allen Wesley Massey saying anything?

3 A No, ma'am.

4 Q And you said that the defendant fell or went --

5 correct me if I'm wrong -- backwards into the living room;

6 is that right?

7 A Correct.

8 Q At that point was the defendant out of your range of

9 vision?

10 A Yes. Because it was dark in the living room, it

11 wasn't no lights on in there.

12 Q But you were still in the kitchen, right?

13 A Correct.

14 Q And you could still see Marcus, right?

15 A I could see his back.

16 Q You said he was standing up, right?

17 A Yes, ma'am.

18 Q He was standing straight up, right?

19 A Yeah.

20 Q He was not leaned over.

21 A Correct.

22 Q Could you see his hands?

23 A No. I just could see his back.

24 Q Okay. So you couldn't see whether or not he had one

25 or both hands raised?

SINDAROUS WELLS - DIRECT

1 A No, ma'am.

2 Q And then what happened?

3 A Then I heard a shot go off and Marcus fell back into
4 the kitchen.

5 Q Okay. I want to show you what has been marked as
6 State's Exhibit 19 that is in evidence. Does that appear
7 to be a picture of the kitchen area behind you at [REDACTED] City
8 Avenue where you were?

9 A Yes, ma'am.

10 Q And can you --

11 MS. COLLINS: Is there any objection to the witness
12 marking with an X where he was?

13 THE COURT: Mr. Grier?

14 MR. GRIER: No objection to that -- marking where he
15 was?

16 MS. COLLINS: Yeah.

17 MR. GRIER: Your Honor, if I might just to observe.

18 Q I would ask you to take this pen and mark with an X
19 and circle around the X where you were.

20 A (Witness complies.)

21 Q All right. And you've marked at the bottom corner of
22 the stove; is that right?

23 A Yeah, somewhere over in there.

24 Q All right. And so you say that when Marcus swung he
25 hit Mr. Massey one time somewhere in the face, correct?

SINDAROUS WELLS - DIRECT

- 1 A... Correct....
- 2 Q And Mr. Massey went back into the living room.
- 3 A The living room.
- 4 Q And did Marcus as a result of swinging, did he -- was
- 5 he steady on his feet?
- 6 A Well, when he first swung he actually stumbled back
- 7 himself.
- 8 Q And did he stumble back further into the kitchen or
- 9 toward the living room?
- 10 A Back towards in the kitchen.
- 11 Q All right. And then you saw him head toward the
- 12 living room where Mr. Massey was?
- 13 A Correct.
- 14 Q And you said at that point you could just see his
- 15 back, correct?
- 16 A Yes.
- 17 Q And then what happened?
- 18 A Like I said, the shot went off, he went back in the
- 19 kitchen and Mr. Massey ran out the front door.
- 20 Q How many shots did you hear?
- 21 A One.
- 22 Q And at that time you said Marcus fell back in the
- 23 kitchen and the defendant ran out the front door?
- 24 A Correct.
- 25 Q Did you see the defendant's face as he was running out

SINDAROUS WELLS - DIRECT

1 the front door?

2 A No.

3 Q Could you tell if the defendant was injured at all as
4 he ran out the front door?

5 A No. Because it was dark in the living room so I
6 couldn't see anything in there.

7 Q And finally, at that point did you attempt to perform
8 CPR on Marcus?

9 A Yes.

10 Q Did you do that on more than one time or was it -- one
11 time and then revival and then do it again or was it just
12 the one time, or do you know?

13 A I actually made two attempts because the first time I
14 didn't get a response.

15 Q Mr. Wells, I need to ask you, in terms of that evening
16 when you went out that evening because it might affect your
17 ability to perceive or tell the Court what you saw, can you
18 let us know, how much had you had, if anything, to drink in
19 terms of any beer or alcoholic beverages that whole evening
20 up until the point that Marcus was shot?

21 A I had a couple of beers.

22 Q Okay. And would that be like regular size beers or
23 the tall cans?

24 A No, the little can beers.

25 Q All right. And had you had anything harder than beer

SINDAROUS WELLS - DIRECT

1 to drink, just the two beers?

2 A Maybe a shot of liquor. But I didn't have like ten
3 or 12 shots or nothing like that.

4 Q You were still able to perceive what was happening?

5 A Correct.

6 Q And had you had any prescription medicine that night?

7 A No, ma'am.

8 Q Had you had any drugs that night whether legal or
9 illegal?

10 A No, ma'am.

11 Q Okay. Thank you. Had you observed -- up until the
12 point that the incident happened between Marcus and the
13 defendant, had you observed any animosity or bad feelings
14 or tension between them at all?

15 A No, ma'am.

16 Q After the defendant told Marcus about this prior
17 incident with his cousin, did you see anybody talking to
18 Marcus and egging him on to do anything to the defendant?

19 A No, ma'am.

20 Q Mr. Wells, do you remember giving an interview that
21 night after you performed CPR on Marcus?

22 A Yes, ma'am.

23 Q Do you remember sitting in one of the patrol cars and
24 talking to one of the officers?

25 A Yes, it was Phillip Hall.

SINDAROUS WELLS - DIRECT

1 Q Do you remember whether or not you told Phillip Hall
2 at that time -- well, do you remember that at that time you
3 spoke with Phillip Hall you did not reference seeing Marcus
4 ~~hit the defendant at all? Do you remember that?~~

5 A No.

6 Q Did you think that you did or you just don't remember
7 one way or the other?

8 A I don't remember.

9 Q Had you been through a lot that night?

10 A No, ma'am.

11 Q Was it difficult to observe this happen?

12 A I mean, yeah, I was in shock really.

13 Q But you've testified here under oath to the best of
14 your memory of what you observed?

15 A Yes, ma'am.

16 Q I know you testified that after Marcus hit Mr. Massey
17 in the face that Mr. Massey goes back into living room,
18 correct?

19 A Correct.

20 Q And you said that Marcus actually fell back into the
21 kitchen a little bit, correct?

22 A Yes, ma'am.

23 Q At that point as far as you know was there anything
24 stopping the defendant from running out the front door of
25 the house?

SINDAROUS WELLS - DIRECT)

1 A No.

2 Q And as far as you know, could the defendant have
3 gotten out the front door of the house had he gone out then
4 by the time Marcus regained his footing and went toward
5 them in the living room, or do you know?

6 A Can you repeat the question?

7 Q Yes, I'm sorry. As far as you know, could the
8 defendant once he went back into the living room and Marcus
9 went back toward -- further into the kitchen after he swung
10 and hit the defendant, could the defendant have gone on and
11 continued out the front door before Marcus regained his
12 footing and came into the living room after him? Was there
13 time?

14 A I'm mean, it happened, you know, very quickly --

15 Q So you don't know?

16 A -- so I'm really not sure. Because he stumbled back
17 and then he went straight forward, so it wasn't like a big
18 pause in between there.

19 Q But you didn't hear Marcus say anything to the
20 defendant like "I'm going to beat you up," right?

21 A No, ma'am.

22 Q Didn't hear him say anything to him like, "I have a
23 weapon, I'm going to shoot you." Marcus didn't say that,
24 right?

25 A No, ma'am.

SINDAROUS WELLS - DIRECT

1 Q And you didn't hear the defendant say anything to
2 Marcus like, "Stop, I have a weapon," right?

3 A No, ma'am.

4 Q ~~Mr. Wells, did it appear to you --- you're standing~~
5 there in the kitchen, did it appear to you that Marcus was
6 about to beat up the defendant or did you know?

7 A You're talking about before he hit him?

8 Q ~~Before the defendant shot Marcus. After Marcus swung~~
9 and hit the defendant one time in the face, did you have a
10 concern watching the incident that Marcus was about to beat
11 up the defendant?

12 A Yes.

13 Q Did you have a concern watching the incident that
14 Marcus -- that Marcus -- may kill the defendant? Did you
15 have a concern at that moment? Or did you know?

16 A I mean, I wasn't thinking about that he was going to
17 kill him or whatever, that wasn't in my mind.

18 Q And, of course, you still did not know until you heard
19 the shot that the defendant had a firearm on him.

20 A Correct.

21 Q And you didn't know that he had a loaded firearm on
22 him, right?

23 A Correct. He just told him that he had just
24 previously dropped a gun out but I didn't know he still
25 had it on him.

SINDAROUS WELLS - DIRECT

1 MS. COLLINS: Thank you.

2 CROSS EXAMINATION

3 BY MR. GRIER:

4 Q Mr. Wells, how old are you now, sir? I think you were
5 19 at the time you said on the interview?

6 A Yeah, I was 19.

7 Q You an actor?

8 A Yes.

9 Q Involved in the Playhouse. I believe you mentioned
10 you had been there that night.

11 A Yes.

12 Q Did y'all have a play that night?

13 A Yes.

14 Q What play did y'all do?

15 A It was To Kill a Mocking Bird.

16 Q And approximately what time was that over?

17 A Let me see, the show started around 7:30, it was
18 probably over around almost 10:00, I think, like nine
19 something.

20 Q I understand. You weren't looking at your watch and
21 saying it's over.

22 A Correct.

23 Q But where did you go from there?

24 A I went to Carolina Court.

25 Q Why did you go there?

SINDAROUS WELLS - CROSS

1 A I have two cousins that stay over there.

2 Q Okay. You went to visit them then, is that what
3 you're saying?

4 A Yes.

5 Q Did you visit them?

6 A Yes.

7 Q And where did you go from there?

8 A I went from there to the party that was over there by
9 the baseball field.

10 Q Is that the Wiley Park Drive there?

11 A It's not exactly on the road -- it's on -- I just
12 don't know the name of the road but I know it's by there.

13 Q By the ball fields down there?

14 A Yes.

15 Q All right. Now, did you see people you knew down
16 there I assume?

17 A Yes.

18 Q Is that how you ended up over at Malika and

19 Shonettia's later on? Did you see them over there?

20 A No. Yeah.

21 Q You did see them over there?

22 A Yes.

23 Q All right. Do you recall when you left Wiley Park?

24 A I didn't stay there long, it was probably 15 minutes,
25 if that, that I stayed there.

SINDAROUS WELLS - CROSS

1 Q Was there a reason that you left?

2 A No. I just left because -- I don't usually hang over

3 there, but my cousin who stayed in Carolina Court, I went

4 over to her house and she was telling me that somebody she

5 knew was having a party over there. So we went over there

6 and stayed for a little bit, and then we left and went to

7 Malika's house.

8 Q Your cousin?

9 A Yes.

10 Q And who was that?

11 A Jamalaya phonetically) Wells.

12 Q How about Thomas McGriff, Tommy McGriff known as Tommy

13 Gun? Do you know who he is?

14 A Yes.

15 Q Was he over at Malika and Shonettia's that night as

16 well?

17 A I think he was there.

18 Q All right. Now, how about -- you refer to a guy -- do

19 you recall giving your statement to I guess Officer Hall?

20 A Yes.

21 Q And do you recall actually talking about a guy in a

22 vest that was in there at the party too and saying "There

23 he is" on the video? I guess literally he was in front of

24 the car. Do you recall that?

25 A No.

SINDAROUS WELLS - CROSS

1 Q So you don't recall a guy in a vest at all being at
2 the party or referring to that?

3 A No, sir.

4 ~~Q Do you recall why you --- skipping around here --- but~~
5 do you recall why you left the Wiley Park party?

6 A Like I said, I don't usually hang around there. We
7 just stopped by there for a few seconds just to see how
8 ~~the party was going or who all was there. I didn't stay~~
9 long.

10 Q So you and your cousin -- what was their name?

11 A Jamalaya (phonetically) Wells, as well as Ivory
12 Price, which is one of our friends -- well, it's my
13 cousin's friend, but she was also with us.

14 Q Now, did they end up over at Malika or Shonettia's,
15 ~~either of them?~~

16 A Yes. But Jamalaya, she actually caught a ride and
17 left -- her and Ivory, they both left before any of that
18 happened.

19 Q That being the shooting?

20 A Yes.

21 Q And do you recall how long you were at Malika's at
22 City Avenue? Do you know where City Avenue is at? Does
23 that make sense to you?

24 A Yes.

25 Q That's where -- I'll call it City Avenue is?

SINDAROUS WELLS - CROSS

- 1 A I was there for awhile, a couple of hours.
- 2 Q Do you know what time you got there? If you don't --
- 3 A I don't remember a time.
- 4 Q But do you have a frame of reference for how long you
- 5 were there before Demarcus got there?
- 6 A Maybe 45 minutes to an hour before he got there.
- 7 Q Okay. And did he come with anybody?
- 8 A If I'm not mistaken him and Ebonie came together.
- 9 Q Okay. All right. Now -- and how long before -- after
- 10 Mr. Robinson got there, was it before Mr. Massey arrived,
- 11 Urk?
- 12 A Yes, I seen Marcus first.
- 13 Q Okay. But do you know -- do you have an estimate of
- 14 how long it was before Mr. Massey arrived?
- 15 A Close to an hour and 30 minutes, somewhere along --
- 16 close to an hour. I wasn't really keeping up with the
- 17 time.
- 18 Q All right. I believe you testified he arrived and
- 19 there was some like what's he doing here looks or
- 20 something?
- 21 A Yes.
- 22 Q Was anything said?
- 23 A No.
- 24 Q And he dapped everybody?
- 25 A Yes.

SINDAROUS WELLS - CROSS

1 Q And dapping means fisting, that's the first thing?

2 A Yes.

3 Q And everybody just -- nobody seemed to have any

4 objection with him being there.

5 A No problems.

6 Q Did you know what the relationship was between he and

7 Malika or anything?

8 A No, sir.

9 Q You didn't know anything about that?

10 A No, sir.

11 Q No, you know Thomas McGriff.

12 A Yes.

13 Q You heard some conversation -- you testified now that

14 you heard some conversation between Mr. Massey and Mr.

15 Robinson about a prior incident involving Mr. Robinson's

16 cousin?

17 A Well, he was telling us -- it wasn't like just them

18 two was talking, he was just telling us.

19 Q All right. And after he revealed that there had been

20 some difficulties between him and Marcus's cousin, did you

21 see anybody talking to Marcus about that egging him on or

22 anything?

23 A No.

24 Q Against Allen Massey?

25 A No.

SINDAROUS WELLS - CROSS

1 Q Didn't see any of that? Okay. Well, you do recall
2 giving your statement previously, right, to Mr. Hall back
3 on that morning?

4 A Yeah. Like I said, I remember some stuff from giving
5 the statement, but like I said, I was in shock at the
6 time.

7 Q Okay. Well, do you feel like you told him everything
8 that was important to the case at that time?

9 A Yes. I'm pretty sure I did.

10 Q Okay. All right. Well, did you think it was
11 important that law enforcement know that Marcus hit Allen?

12 A Yes.

13 Q But you didn't say anything about it that night.

14 A I don't recall. Like I said, I might have been in
15 shock or whatever that I didn't say that.

16 Q Well, did you think it was important that Mr. Massey
17 had said something about actually pulling a gun earlier in
18 the evening?

19 A Yes. I'm pretty sure I said that.

20 Q Okay. Well, if it had been important at the time do
21 you think you would have said it?

22 A Yes.

23 Q And so you believe you said that at the time?

24 A I don't recall, I'm not sure, but I believe I said
25 it.

SINDAROUS WELLS - CROSS

1 Q Okay. Well, Mr. Wells, right after this happened did
2 you get any pressure to make a statement that Mr. Massey
3 just came in and shot Marcus?

4 A No.

5 Q Anybody pressure you to make a statement at all in
6 this case ever?

7 A No.

8 Q Anybody tell you you needed to say anything?

9 A No.

10 Q You've been sitting out in that hall for two days now.

11 A Yes.

12 Q Who have you been hanging out with out there?

13 A Malika and Shonettia.

14 Q Do you recall being told that you're not supposed to

15 be discussing the case while you're out there?

16 A Correct.

17 Q You haven't been discussing this case while you have
18 been out there, have you?

19 A No.

20 Q But you've heard other people discussing it, haven't
21 you?

22 A No.

23 Q You haven't heard Malika and Shonettia?

24 A No. We were talking about a case but it wasn't this
25 case.

SINDAROUS WELLS - CROSS

1 Q So you didn't hear the words you need to testify in a
2 certain way because that's going to contradict what I said
3 between them at all?

4 A No, sir.

5 Q All right. After Mr. Massey was punched -- and you
6 believe he was punched in the face, right?

7 A Yes.

8 Q He falls -- you used the word fell into the living
9 room, right?

10 A I said fell back. I'm not sure if he fell on the
11 floor.

12 Q All right. You just didn't see what the outcome of
13 that falling backwards was.

14 A Correct.

15 Q Now, do you recall -- have you been to that place
16 since then?

17 A Not since that night.

18 Q I don't blame you. But you do recall the way things
19 were situated. Is this an accurate -- this is State's
20 Exhibit 19.

21 A I think the table was more this way.

22 Q Pushed over?

23 A Uh-huh. But everything else is accurate.

24 Q Okay. Now, this -- what room are we looking into on
25 this kitchen?

SINDAROUS WELLS - CROSS

1 A This is the kitchen and that was the living room.

2 Q Okay. So you were literally standing -- are you
3 standing at the time?

4 A Yes.

5 Q Okay. Cards weren't being played at that precise
6 moment, were they?

7 A No. We had stopped playing cards but people were
8 still sitting at the table.

9 Q Okay. Now, where was -- who was sitting where, or do
10 you recall, as far as those chairs go?

11 A I'm not sure exactly where the people were sitting.
12 But I know we were all -- well, me, Marcus and Allen, we
13 were all standing over here in this area.

14 Q And that's the area where you have indicated an X.

15 A Yes.

16 Q And now relative to where you were standing where that
17 X is, where were they standing, do you know?

18 A Allen was standing beside me and Marcus was standing
19 on the other side of me.

20 Q Okay. So I mean, literally where that X is if you're
21 facing the table Allen is kind of to your left.

22 A Correct.

23 Q Marcus is to your right.

24 A Correct.

25 Q But you're all within like a close distance, you're

SINDAROUS WELLS - CROSS

- 1 friends, talking.
- 2 A Yes.
- 3 Q Okay. And relative to -- okay. Would you mark where
- 4 you just -- put a M for Massey and -- let's do it different
- 5 because they're both -- Marcus doesn't and -- yeah, do an M
- 6 for Massey and a R for Robinson.
- 7 A (Witness complies.)
- 8 Q All right. Why don't we put circles around them.
- 9 A (Witness complies.)
- 10 Q All right. Mr. Wells -- okay. Mr. Wells, relative
- 11 to -- let's go back to State's Exhibit 19. Okay. Relative
- 12 to the position of the camera.
- 13 A Uh-huh.
- 14 Q You know, do you recall where the bathroom was?
- 15 A It was more -- it was somewhere that way from where
- 16 the picture is standing, it was back this way.
- 17 Q Okay. So would it be fair to say that would be stage
- 18 left?
- 19 A Correct.
- 20 Q But facing this picture it would be to the right,
- 21 correct?
- 22 A Correct.
- 23 Q Okay. And is it immediately off of this room, the
- 24 bathroom? There's a hallway.
- 25 A Yes.

SINDAROUS WELLS - CROSS

1 Q So to the right do you see that there's -- that table
2 is in a corner more or less, is it not?

3 A Uh-huh.

4 Q ~~And there's a wall looking at that angle that we're~~
5 looking at, to the right there's a wall.

6 A Correct.

7 Q And there's a hall that goes off that wall, and
8 there's a bathroom down that hall, correct? And can you
9 see down that hallway from where you're standing there?

10 A No.

11 Q You cannot see down the hallway from where you were
12 standing right there?

13 A No.

14 Q Why not?

15 A ~~Because there's a wall there.~~

16 Q So you cannot see out of that hallway to the point of
17 where all of y'all are standing.

18 A Correct. You could see the hallway but I couldn't
19 see down the hallway.

20 Q Now, relative to this picture again, y'all are
21 standing like this, in this position at the time that
22 Marcus got -- excuse me, that Allen got struck by Marcus?

23 A Yes.

24 Q This happened while y'all are just standing there
25 talking.

SINDAROUS WELLS - CROSS

1 A Yes.

2 Q Did Allen see it coming?

3 A No idea.

4 Q Are we literally in a conversation and this just

5 happens?

6 A Yes.

7 Q Did it appear violent to you?

8 A Yes.

9 Q Okay. Did Mr. Massey say anything?

10 A Not that I remember.

11 Q Did Mr. Robinson say anything?

12 A Not that I remember.

13 Q Did you hear anybody saying anything egging Mr.

14 Robinson on?

15 A No, sir.

16 Q Was there time for anybody to do anything try to stop

17 what happened?

18 A No. It happened fast.

19 Q From the appearance of what you'd just seen, you just

20 seen Mr. Massey get struck and you saw Mr. Robinson go back

21 like fall or just like as a result of swinging or a stagger

22 or what?

23 A Yeah, like a stagger stumble backwards.

24 Q Okay. So he staggers back towards and then he goes --

25 A Forward.

SINDAROUS WELLS - CROSS

1 Q -- forward. Is he moving quickly --

2 A Yes.

3 Q -- going forward? Okay. Do you see his hands?

4 A No.

5 Q You can't see them or you just don't recall seeing
6 them?

7 A I just remember seeing his back.

8 Q Okay. So you didn't see a fist ball up or anything of
9 that nature at that point?

10 A No.

11 Q Now, you don't see what happens to Mr. Massey, you
12 just see him disappear after getting hit into that dark
13 spot.

14 A Correct.

15 Q Don't hear anything as far as --

16 A Talking wise.

17 Q -- as far as a fall or a noise or anything, right?

18 A No.

19 Q Now, it's carpeted in that room, right?

20 A No.

21 Q Well, what is the appearance there. Can you tell from
22 that picture?

23 A It looks like a rug there. I can't really tell.

24 Q Okay. You're right. Okay. How about State's Exhibit

25 18? Is that any better for being able to tell whether

SINDAROUS WELLS - CROSS

1 there's carpet in there or not?

2 A Well, yeah, it looks like it on this picture. I
3 never really went into the living room that night because
4 we were all in the kitchen and the lights was off the
5 whole time in the living room so I didn't really get to
6 see.

7 Q Nothing was really going on in there.

8 A No.

9 Q In fact, were they trying to keep you out of that room
10 just to avoid messing it up kind of?

11 A I wouldn't say that, but everyone was just in the
12 kitchen.

13 Q All right. Okay. You have no -- you didn't see the
14 position that Mr. Massey was in when that firearm went off.

15 A Correct.

16 Q But you were concerned from what you saw that Mr.
17 Massey was getting ready to get beat up more seriously.

18 A Yes.

19 MR. GRIER: Court's indulgence.

20 (Break in proceedings.)

21 MR. GRIER: Thank you very much, Mr. Wells.

22 REDIRECT EXAMINATION

23 BY MS. COLLINS:

24 Q Mr. Wells, you did not see Marcus Robinson hit the
25 defendant a second time, correct?

SINDAROUS WELLS - CROSS

1 A Correct.

2 Q You did not see Marcus Robinson kick the defendant
3 anywhere about his body, correct?

4 A Correct.

5 Q You didn't see Marcus Robinson kick the defendant in
6 his head, correct?

7 A Correct.

8 Q You said it happened fast, right?

9 A Yes.

10 Q You said that Marcus Robinson swung and hit the
11 defendant, right?

12 A Correct.

13 Q And then after that Marcus was a little unsteady on
14 his feet and went backwards into the kitchen, right? Is
15 that correct?

16 A Correct.

17 Q And then you said Marcus regains his footing and goes
18 towards the living room, right?

19 A Yes.

20 Q And you said he was moving fast, right?

21 A Correct.

22 Q And then you heard the gunshot, right?

23 A Correct.

24 Q Marcus Robinson didn't even have time to hit the
25 defendant a second time before he was shot and killed by

SINDAROUS WELLS - REDIRECT

1 the defendant; isn't that true?

2 A Correct.

3 Q It was that fast that the defendant shot the gun and
4 killed Demarcus, correct?

5 A Yes.

6 MS. COLLINS: Thank you, Mr. Wells.

7 THE COURT: Mr. Grier, anything further?

8 MR. GRIER: Yes, briefly, Your Honor.

9 RECROSS EXAMINATION

10 BY MR. GRIER:

11 Q How long had you known Demarcus?

12 A For a good while.

13 Q Okay. He had the representation of being a tough guy,
14 didn't he? Do you know his nickname?

15 A I heard it but, you know, he never seemed violent to
16 me.

17 Q But did you know his nickname was the knockout king?

18 MS. COLLINS: Your Honor, I'll object. This is
19 outside the scope of redirect.

20 THE COURT: Sustained.

21 MR. GRIER: Okay.

22 THE COURT: Anything further, Mr. Grier?

23 MR. GRIER: That's all, Your Honor.

24 THE COURT: Sir, you may step down.

25 The witness, PHILLIP HALL, remained under oath and

SINDAROUS WELLS - RECROSS

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MS. COLLINS:

4 Q ~~Lieutenant Hall, during the course of your~~
5 investigation of this case in the early morning hours of
6 October 1th of 2013, did you have occasion to interview
7 some witnesses there?

8 A I did.

9 Q Did you, in fact, interview Sindarous Wells there?

10 A I did.

11 Q And did he give you a statement?

12 A He did.

13 Q Did he answer your questions?

14 A He did.

15 Q Did he do that within your patrol car?

16 A He did.

17 Q And did you make a video and audiotape of that?

18 A I did.

19 Q And pursuant to the investigation and what y'all do,
20 did you forward that to the solicitor's office?

21 A Yes, I did.

22 Q And during that interview did Sindarous Wells ever
23 tell you to the best of your memory that he saw the victim,
24 Marcus Robinson, hit Allen Wesley Massey in the face?

25 A No, I do not recall that.

PHILLIP HALL - DIRECT

1 Q And to the best of your memory, did Sindarous Wells
2 ever tell you during that interview that the defendant had
3 told them all, including Marcus, something about a prior
4 altercation with Marcus' cousin? Do you remember that, or
5 you don't recall?

6 A I don't recall.

7 Q That's fine.

8 A I remember him telling me that but not far as
9 Sindarous.

10 MS. COLLINS: Your Honor, at this time I offer State's
11 Exhibit 26 into evidence, which is the interview by
12 Lieutenant Hall of Sindarous Wells the early morning of
13 10/12 of 2013.

14 THE COURT: Any objection?

15 MR. GRIER: No objection.

16 THE COURT: Without, objection so admitted.

17 (The video was received as State's 26.)

18 (The video was played.)

19 MS. COLLINS: I have no further questions for this
20 witness.

21 THE COURT: Mr. Grier, anything from you?

22 MR. GRIER: Yes, Your Honor.

23 CROSS EXAMINATION

24 BY MR. GRIER:

25 Q Lieutenant Hall, you took the statement obviously from

PHILLIP HALL - DIRECT

1 Mr. Wells, correct?

2 A Yes, sir.

3 Q And did you hear him reference a man in a vest as
4 ~~having been present at the time of the shooting during that~~
5 video?

6 A I heard him make mention but he couldn't think of
7 anybody's name.

8 Q Well, he pointed and said "he's right there" in the
9 video, didn't he? Did you see that? He said, "The man in
10 the vest is standing right there," or right there and
11 pointed to somebody. You didn't see that in the video?

12 A Well, I seen it in the video, yeah, but as far as --
13 I don't know who the guy was he was referring to.

14 Q I understand you don't, but he pointed to somebody out
15 ~~there right in front of you wearing a vest, didn't he?~~

16 A It appears that he did, yeah. But again, I don't
17 know who he was actually pointing at.

18 Q I understand. All right. But are you aware of
19 anybody that has been a witness that -- or anything about
20 anybody that's testified having worn a vest that night?

21 You were there. Did anybody interview anybody that was
22 wearing a vest that you recall, a man wearing a vest?

23 A That I couldn't tell you.

24 Q All right. Okay. All right. Now, during -- did you
25 hear Mr. Wells say anything about Marcus hitting Allen in

PHILLIP HALL - CROSS

- 1 that interview?
- 2 A No, sir.
- 3 Q Did you hear Mr. Wells say anything about Allen Massey
- 4 ~~pulling a gun on Marcus' cousin earlier in the evening?~~
- 5 A In the video, no.
- 6 Q That Allen said that he pulled a gun in the video?
- 7 A No.
- 8 Q Nothing of that nature in there, is there?
- 9 A No.
- 10 Q Okay. Now, in Allen's -- you were present and
- 11 actually took the interview of Allen Massey along with
- 12 Captain Grant, correct?
- 13 A Yes, sir.
- 14 Q Do you recall Allen telling you that his sister had
- 15 ~~phones with the statement from Navoney Curry that night~~
- 16 during that interview with Allen Massey?
- 17 A I don't think I understand your question.
- 18 Q Do you recall -- did Allen Massey tell you during that
- 19 interview that his sister had phones with a recording of a
- 20 statement from Navoney Curry?
- 21 A That I don't recollect.
- 22 Q Okay. That's fair. Did you take interviews of any
- 23 others or is that the only one you did?
- 24 A That's the only one I did, yeah.
- 25 MR. GRIER: Thank you, Lieutenant.

PHILLIP HALL - CROSS

1 MS. COLLINS: Nothing further.

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

3 The witness, EBONIE HARRIS, was first duly sworn and

4 testified as follows:

5 DIRECT EXAMINATION

6 BY MS. COLLINS:

7 THE COURT: State your full name and spell your last.

8 THE WITNESS: Ebonie Harris, H-a-r-r-i-s.

9 Q And Ebonie is spelled a little different. How is that
10 spelled?

11 A E-b-o-n-i-e.

12 Q If you could speak up just a little bit and try to
13 speak right into that microphone if you could, and if you
14 could answer out loud and not nodding or shaking your head.

15 All right. Now, Ms. Harris, did you know Demarcus

16 Robinson?

17 A Yes.

18 Q Did y'all have a child together?

19 A Yes.

20 Q How long were you and Marcus Robinson in a
21 relationship?

22 A Two years.

23 Q How many children did y'all have together?

24 A One.

25 Q That's a daughter named Gianna (phonetically.)

EBONIE HARRIS - DIRECT

- 1 A Yes, ma'am.
- 2 Q And she's currently seven?
- 3 A Yes, ma'am.
- 4 Q So y'all had live together about two's year prior to
- 5 Demarcus dying?
- 6 A Yes, ma'am.
- 7 Q And I want to draw your attention to the evening of
- 8 October 11th, 2013, all right?
- 9 A Yes, ma'am.
- 10 Q Were you with Marcus Robinson that evening?
- 11 A Yes, ma'am.
- 12 Q What did y'all do that evening?
- 13 A Went to a few parties.
- 14 MR. GRIER: Your Honor, I'm having some difficulty
- 15 hearing her if she could speak a little louder.
- 16 THE COURT: Please slide up and speak into that
- 17 microphone, please, ma'am.
- 18 Q What did you do that evening?
- 19 A We went to a few parties.
- 20 Q And do you recall about what time y'all went to the
- 21 first party?
- 22 A That was around seven.
- 23 Q Seven in the evening on October 12 of 2013?
- 24 A It was that Friday.
- 25 Q October 11th of 2013.

EBONIE HARRIS - DIRECT

1 A Yes, ma'am.

2 Q And you and Marcus went to the party. Do you know
3 what street that was, or what area of town that was in?

4 A That was in Midway.

5 Q Where?

6 A Midway.

7 Q And at that party did y'all see the defendant, Allen
8 Wesley Massey?

9 A I didn't see him at that one.

10 Q And how long were y'all at that first party?

11 A About five hours.

12 Q And you said you got there about seven?

13 A Yes, ma'am.

14 Q And when you left that place where did you go?

15 A We went to another party, it was off of Brooklyn
16 Avenue.

17 Q And was that at a private home?

18 A Yes, ma'am.

19 Q The first one was at a private home too, correct?

20 A Yes, ma'am.

21 Q And when you went to that second party where was it
22 located, Brooklyn?

23 A It was off of Brooklyn Avenue.

24 Q And about what time did y'all get there?

25 A It was about one, around that time.

EBONIE HARRIS - DIRECT

1 Q So about one in the morning on October 12th of 2013?

2 A Yes, ma'am.

3 Q And when y'all got there to that party, did you see at
4 any time the defendant, Allen Wesley Massey?

5 A Yes, ma'am.

6 Q He was there at that party?

7 A Yes, ma'am.

8 Q And did you observe the defendant speaking or
9 interacting in any way with Marcus Robinson at that party
10 off Brooklyn?

11 A Yes, ma'am.

12 Q Did you hear what they were saying at that time?

13 A No, ma'am, I was in the car.

14 Q Okay. But did they appear to be on good terms at that
15 time?

16 A Yes, ma'am.

17 Q Now, you had been in a relationship with the victim
18 you said about two years before this, correct?

19 A Yes, ma'am.

20 Q During that time had you observed the defendant ever
21 in the company of the defendant, or the defendant ever in
22 the company of Marcus?

23 A No.

24 Q Okay. So y'all ultimately leave the house at
25 Brooklyn, correct?

EBONIE HARRIS - DIRECT

1 A Yes, ma'am.

2 Q And where do you go?

3 A City Avenue.

4 Q When you went to City Avenue, that's Malika Harris'
5 house?

6 A Yes, ma'am.

7 Q And that's your sister?

8 A Yes, ma'am.

9 Q And about what time did you get to Malika's house?

10 A I'm not sure of the time.

11 Q And that was with you and Marcus traveling together?

12 A Yes, ma'am.

13 Q And when you got to Malika's house, what did you and
14 Marcus do?

15 A We went in. They were playing cards and I sat off to
16 the side, and at that time they stopped playing cards,
17 they were rapping and beat-boxing. That was about it.

18 MR. GRIER: Couldn't hear that, I'm sorry.

19 A Beat boxing, like a beat.

20 Q And I believe you said that was about it?

21 A Yeah.

22 Q Okay. And again, if you could speak into the
23 microphone and try to speak up. And at that point had Mr.
24 Massey come to the house?

25 A No, ma'am.

EBONIE HARRIS - DIRECT

- 1 Q Okay. And then what happened?
- 2 A Marcus said he wanted a beer so at that time we left.
- 3 When we were outside going to the car me and him were
- 4 talking and that's when I heard -- well, I call him Urk --
- 5 I heard Urk say, "Is that Malika?"
- 6 Q And by Urk you mean the defendant, Mr. Massey?
- 7 A Yes, ma'am.
- 8 Q Okay. Go ahead.
- 9 A And I said, "No, this is Ebonie." And we went to the
- 10 car, we got in the car. And by the time we got in the car
- 11 he was at the driver's side window.
- 12 Q Who when you say he?
- 13 A Urk. Marcus was driving.
- 14 Q Okay.
- 15 A And they shook hands and he said, "I need to holler
- 16 at you."
- 17 Q Who said? You said he said, who said that?
- 18 A Urk said, "I need to holler at you."
- 19 Q Okay. Go ahead.
- 20 A And Marcus said, "Okay. We'll be right back."
- 21 Q And at that time did you observe any tension between
- 22 the defendant and the victim?
- 23 A No, ma'am.
- 24 Q Defendant seemed fine with the victim?
- 25 A Yes, ma'am.

EBONIE HARRIS - DIRECT

1 Q Marcus seemed fine with the defendant?

2 A Yes, ma'am.

3 Q So then what happened?

4 A We went to Crenco.

5 Q All right. You and Marcus went to Crenco?

6 A Yes, ma'am.

7 Q And what did y'all do there?

8 A We went in the store and bought a 40-ounce Bud Ice.

9 Q All right. When he came out of Crenco where did y'all
10 go?

11 A We went back to City Avenue.

12 Q And that's Malika's house?

13 A Yes, ma'am.

14 Q And what did y'all do when y'all got there?

15 A I didn't get out because I had a headache. So he
16 asked me did I want to stay in the car and take a nap and
17 I said yes.

18 Q All right. And so you stayed in the car?

19 A Yes, ma'am.

20 Q And Marcus went in the house, went into Malika's
21 house?

22 A Yes, ma'am.

23 Q At that point did you see the defendant anywhere on
24 the street?

25 A No, ma'am.

EBONIE HARRIS - DIRECT

1 Q What happened next?

2 A Well, I was sitting in the car and I just heard it

3 was just a faint noise, it was just a pop. And it was two

4 people on the porch and so they didn't move so it wasn't

5 loud, and so --

6 Q Can I ask you who were the people you saw on the

7 porch?

8 A Yes, ma'am. It was --

9 Q Do you need any water?

10 A No.

11 (Break in proceedings.)

12 A But it was a guy named Bryant and Navoney.

13 Q Navoney?

14 A Yes, ma'am?

15 Q Navoney Curry?

16 A Yes, ma'am.

17 Q Go ahead, Ms. Harris. You heard this faint noise like

18 a pop.

19 A Yes, ma'am.

20 Q You saw there were two people on the porch, Navoney

21 and a guy named Brian, right?

22 A Yes, ma'am.

23 Q And then what happened? What did you see next?

24 A I saw them going out, and that's when I saw Urk run

25 outside and he ran past me and he ran past the car. And

EBONIE HARRIS - DIRECT

1 when he ran past the car I seen some more people come on
2 the porch and they were yelling something to him, I don't
3 know what they were yelling but the only word I heard was
4 ~~pistol. So I leaned back in the seat. And so they went~~
5 back in the house and I looked back and I saw him running
6 towards Elm Street. And after that I waited. And then I
7 got out of the car and walked in the house, only thing I
8 could hear was everybody yelling. When I walked through
9 the hallway and looked to the right, that's where the
10 kitchen was, the only thing that I could see was him lying
11 there.

12 Q Him being?

13 A Marcus, he was on the floor. And the only thing they
14 kept yelling was "Urk shot Mark." And I left out and I
15 ~~called the police after that.~~

16 Q All right. Ms. Harris, when you saw the defendant run
17 by the car -- run out of the house and run by the car, did
18 you see anything in his hands?

19 A No, ma'am.

20 Q Could you see his face at that time?

21 A No, he passed the car. I just saw him come out of
22 the house.

23 Q Okay. You said you saw Navoney -- after you hear the
24 faint noise you saw Navoney and Brian go in the house; is
25 that right?

EBONIE HARRIS - DIRECT

- 1 A Yes, ma'am.
- 2 Q And you saw Urk run out of the house?
- 3 A Yes, ma'am.
- 4 Q Was that -- did they pass or did one --
- 5 A I'm not sure. I wasn't parked in front of the door,
- 6 I was just parked to the side.
- 7 Q And you said you saw others come out and then you
- 8 ultimately went into the house?
- 9 A I waited before I did anything.
- 10 Q And when you went into the house, who did you see that
- 11 was there? Do you remember the people you saw in there at
- 12 the point you went in the house and saw Marcus on the
- 13 floor?
- 14 A The first two people I saw was Malika and Shonettia.
- 15 Q Did you see anybody else there inside the house at
- 16 that point?
- 17 A I don't remember for sure.
- 18 Q So you weren't inside the house at all during the
- 19 incident, right?
- 20 A No, ma'am, I wasn't.
- 21 Q But when you saw Mr. Massey earlier in the evening his
- 22 interaction with Marcus appeared to be fine, correct?
- 23 A Yes.
- 24 Q Mr. Massey said, "I need to talk to you, Marcus." And
- 25 he said, "I'm going to the store, you can holler at me

EBONIE HARRIS - DIRECT

1 later."

2 A He said, "I need to holler at you."

3 Q He said, "I'm going to the store, I will holler at you
4 later?"

5 MS. COLLINS: Thank you. Nothing further.

6 THE COURT: Mr. Grier?

7 MR. GRIER: Yes, sir.

8 CROSS EXAMINATION

9 BY MR. GRIER:

10 Q Ms. Harris, I'm sorry for your loss. When you
11 described the two parties that y'all went to earlier in
12 that evening, one you said is off Brooklyn. Would that be
13 off 16th Street?

14 A Yes.

15 Q And the one -- the other one was where you said off
16 Midway?

17 A Yes. It was by the --

18 Q Ball fields over there?

19 A Yes.

20 Q Is that Wiley Park area?

21 A Yeah, the Wiley Park.

22 Q Okay. All right. So you're saying that you went --
23 okay. When you were at the -- let's call it Wiley Park.
24 All right. When you left there you went over to 16th
25 Street?

EBONIE HARRIS - CROSS

- 1 A Yes, sir.
- 2 Q Did you hang out with Shonettia and Malika and maybe
- 3 Navoney Curry over on Wiley Park? Did you see them over
- 4 there?
- 5 A I was with Malika.
- 6 Q Oh, you were with Malika.
- 7 A She came over, yes, sir.
- 8 Q Was Demarcus with you too there?
- 9 A Yes. But he lived on Jackson Road, we lived right
- 10 there.
- 11 Q Very close by.
- 12 A Yes, sir.
- 13 Q And who else that ultimately ended up over at Malika's
- 14 house were you with at Wiley Park?
- 15 A The only person I recall is Malika.
- 16 Q Okay. And you say you were there about five hours.
- 17 And do you recall why you left Wiley Park?
- 18 A Because I went to drop my sister off.
- 19 Q Your sister, Malika.
- 20 A Yes, I'm sorry.
- 21 Q That's all right. You have other sisters.
- 22 A Yeah.
- 23 Q Doesn't matter. You say when you left Wiley Park you
- 24 took Malika home?
- 25 A Yes, I took her home.

EBONIE HARRIS - CROSS

1 Q So how about Shonettia, did she go with you too?

2 A No, she didn't go with me.

3 Q So she stayed at Wiley Park?

4 A No. She was -- well, I'm not -- I can't recall

5 Shonettia being at Wiley Park.

6 Q Oh, she wasn't even there.

7 A I can't recall.

8 Q Are they pretty tight, though? They stay together?

9 A Yes, they stay together.

10 Q Okay. So did you know anything about a shooting over
11 at Wiley Park?

12 A Yes, sir.

13 Q What did you know about that? What did you know? Did
14 you hear about it? Did you know any facts about it?

15 A I don't know any facts, I just know what I was told.

16 Q Did it kind of break things up over there?

17 A I just know that the police were called.

18 Q Okay. That they were called or that they actually
19 showed up over there?

20 A Well, they did show up, sir.

21 Q Did they talk to anybody, did you see?

22 A I don't know.

23 Q You took Malika home.

24 A Yes, sir.

25 Q I thought you went to another party.

EBONIE HARRIS - CROSS

- 1 A Yes, sir.
- 2 Q You did? When did you go to the other party?
- 3 A When I went back to Wiley Park, that's when the
- 4 police were there.
- 5 Q Okay. Now I've got this right. You're at Wiley Park,
- 6 you take Malika home and you go back to Wiley Park.
- 7 A Yes.
- 8 Q And then the police are there?
- 9 A Yes, sir.
- 10 Q Okay. Did Demarcus get into anything with anybody
- 11 over there at Wiley Park that you're aware of?
- 12 A I don't know.
- 13 Q But you weren't there for some period of time,
- 14 correct?
- 15 A Yes, sir.
- 16 Q Okay. When you arrived the police were there?
- 17 A Yes, sir.
- 18 Q And so the shooting had happened after you took Malika
- 19 home.
- 20 A Yes, sir.
- 21 Q Do you know where Shonettia was at?
- 22 A No, sir.
- 23 Q Didn't even see her?
- 24 A No, sir.
- 25 Q So you don't know whether she just stayed home or that

EBONIE HARRIS - CROSS

1 she was at a party. You don't know if she was home when
2 you took Malika home.

3 A No, sir.

4 Q You didn't go in.

5 A No.

6 Q Now, when you went and you picked Marcus up at the
7 Wiley Park party, correct? And from there you were going
8 over to this other party off of 16th Street, off Brooklyn?

9 A Yes, sir.

10 Q Now, whose party is that?

11 A That was my cousin's party.

12 Q How about Marcus' cousin?

13 A That's the Wiley Park address.

14 Q Okay. So when y'all -- okay. So your cousin was on
15 16th Street and his cousin was on Wiley Park.

16 A Yes.

17 Q All right. And how long did y'all stay at -- do you
18 know? Not long at Wiley Park? Excuse me, at 16th Street?

19 A It wasn't long because that party was over.

20 Q Okay. And you don't recall seeing Allen Massey at
21 16th Street.

22 A I seen him at 16th.

23 Q Okay. But he -- that's right. You said he and Marcus
24 dapped and talked and everything was friendly and fine
25 while they were there, correct?

EBONIE HARRIS - CROSS

1 A Yes, sir.

2 Q Were you with Marcus throughout the time that you were
3 at 16th Street? Were y'all together basically?

4 A Yes, sir, I was in the car.

5 Q So when you left you weren't aware -- 16th Street you
6 weren't aware of any difficulties between Allen Massey and
7 Marcus.

8 A No, sir.

9 Q All right. Did you play any cards when y'all went
10 from 16th Street to Malika's?

11 A Yes.

12 Q Do you know why? Did y'all plan on doing that or did
13 y'all hear from somebody to tell you to come over, or how
14 did y'all end up going over there?

15 A We were going to stop by before we went home.

16 Q Okay. So your intention was just to go there after
17 you dropped Malika off?

18 A After we left 16th Street.

19 Q Right. Oh, okay. But y'all didn't get called to come
20 over there or anything.

21 A No, sir.

22 Q Okay. Now, when you got over to Malika's on City
23 Avenue, right, that's on City Avenue, correct?

24 A Yes, sir.

25 Q You went to the store, you get back, you said you

EBONIE HARRIS - CROSS

1 wanted to go to sleep.

2 A Well, I had a headache.

3 Q Okay. All right.

4 A ~~So I was going to stay in the car and take a nap.~~

5 Q Okay. Well, did you just put the seat down or did

6 you --

7 A No, sir.

8 Q -- close your eyes and take a nap, or did you --

9 A No, I didn't take a nap.

10 Q How long was it from the time that y'all got back --

11 you and Demarcus got back to City Avenue before you heard

12 the first thing about something going on in the house?

13 A It was no longer than five minutes.

14 Q So you were only out there a couple of minutes

15 before -- what's the first thing that you -- you're sitting

16 out there, you're waiting for Demarcus to come out and

17 you're going to take a nap kind of if you can or just see

18 if you feel better?

19 A Yeah, and go home.

20 Q And nothing remarkable happens. What's the first

21 thing that you notice that gets your attention?

22 A The faint noise.

23 Q The what?

24 A The noise, the pop.

25 Q The pop?

EBONIE HARRIS - CROSS

1 A It was just a pop.

2 Q Okay. So you heard a pop. Was it loud or was it
3 quiet?

4 A No.

5 Q How close was the car to the house?

6 A It was fairly close. It wasn't probably at the most
7 15 steps away.

8 Q Fifteen steps away. So you pulled right up there.

9 A Approximately.

10 Q What was Marcus drinking that night?

11 A Well, we both had beer and some liquor.

12 Q Well, did Marcus have a big bottle of liquor?

13 A Well, we split a big bottle. It wasn't just us two,
14 it was more than just us two.

15 Q And you took that over to Malika's?

16 A Yeah.

17 Q Okay. All right. Well, I mean, how about -- did
18 Marcus, did he have an aggressive behavior when he drank?

19 A Sometimes.

20 Q Okay. Were you aware of his nickname being the
21 knockout king?

22 A Yes, sir.

23 Q Where did he get that nickname?

24 A Well, they said if you mess with Marcus he will knock
25 you out.

EBONIE HARRIS - CROSS

1 Q Okay. Are you aware of him actually doing that?

2 A I have seen it, yes, sir.

3 Q Was that common knowledge that he was somebody you

4 ~~didn't want to mess with?~~

5 A Yes, sir.

6 Q Do you know of anything that Allen Massey did to mess

7 with him?

8 ~~A No, sir.~~

9 Q It's just a mystery of how this went down and it got

10 to that point to you.

11 A Yes, sir.

12 MR. GRIER: Thank you, Ms. Harris.

13 THE COURT: Any redirect?

14 MS. COLLINS: No, Your Honor.

15 ~~THE COURT: Ma'am, you may step down. Thank you.~~

16 MS. COLLINS: Your Honor, those are the witnesses for

17 the State..

18 THE COURT: All right. Anything by way of argument?

19 MR. GRIER: Judge, I would like to put up some

20 rebuttal evidence.

21 THE COURT: How many witnesses have you got?

22 MR. GRIER: Well, I need followup on the issue of what

23 happened in the hallway, Your Honor.

24 THE COURT: I understand, but how many witnesses do

25 you have?

EBONIE HARRIS - CROSS

1 MR. GRIER: Two, and it will be brief.

2 THE COURT: All right. Let's go, call them.

3 The witness, DOROTHY MASSEY, remained under oath and

4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GRIER:

7 Q State your name.

8 A Dorothy Massey.

9 Q Okay. Ms. Massey, you've been sitting out in that
10 hall for two days, haven't you?

11 A I have.

12 Q Now, you understood there were instructions not to
13 discuss this case out in that hall?

14 A Yes, sir.

15 Q And has that rule been abided by out in that hallway?

16 A As to what was going on? Yes, sir.

17 Q Have you heard --

18 A Yes, sir.

19 Q Okay. As far as you are concerned. Have you
20 overheard conversations out in that hall about the facts of
21 this case from anybody that was out in the hall when you
22 were sequestered?

23 A No, sir.

24 Q So you didn't overhear a conversation between
25 Shonettia and Malika in the hallway?

DOROTHY MASSEY - DIRECT

1 A Oh, I did, I overheard that yesterday.

2 Q Okay.

3 A I overheard part of it.

4 Q ~~Okay. What did you overhear?~~

5 A I didn't hear as much as my daughter, but what I
6 heard was --

7 Q We're going to call her.

8 A What I heard was, Shonettia telling --

9 Q Okay. Is that Shonettia --

10 A Shonettia Hunter. She told Malika, "No, you can't
11 say that." And I'm not sure what Malika said, I couldn't
12 hear her clearly, but Shonettia was speaking louder. She
13 said, "You've got to tell them that you turned around and
14 saw Urk shoot Marcus." And I'm not sure what was said
15 before, but that's pretty much the only part I heard
16 because I was looking at that point.

17 Q All right. How far were you away from them when you
18 heard it?

19 A I was sitting right there at the end of one of the
20 columns, I was on the very end of one of the columns.
21 Malika was sitting on the next seat and Sindarous Wells
22 was sitting on the next, Shonettia was sitting directly
23 across from them on this side of the courtroom.

24 Q What distance were you from them approximately?

25 A I was maybe as far as from here to that seat right

DOROTHY MASSEY - DIRECT

1 there from Shonettia.

2 Q Okay.

3 A And maybe from here directly across from the column

4 maybe to the edge of that desk right there.

5 Q Okay. All right.

6 A There was only a column between us, between Malika

7 and Sindarous and me.

8 Q Is that the only comment you heard?

9 A That was the only comment I heard then. I think when
10 Shonettia noticed that I was talking she kind of backed
11 off on it.

12 Q When she noticed you were talking?

13 A That I was listening she stopped talking.

14 Q Okay. All right.

15 MR. GRIER: Thank you. Answer any questions that
16 Solicitor Collins has.

17 CROSS EXAMINATION

18 BY MS. COLLINS:

19 Q Was Sindarous Wells as close to Malika and Shonettia
20 as you were during that conversation?

21 A He was on the third seat -- he was on the second
22 seat. There was me on the end of one bench, or one set of
23 seats, the column and then there was Malika and Sindarous,
24 I'm not sure if there was a seat between them or not but I
25 couldn't see as far around it, but he was right there. He

DOROTHY MASSEY - CROSS

1 was closer -- as close to Malika than I was.

2 Q So he was actually closer than you were to Malika.

3 A He was a seat away from Malika, so I guess it was

4 about the same distance, but he was there.

5 MS. COLLINS: All right. Thank you.

6 REDIRECT EXAMINATION

7 BY MR. GRIER:

8 Q Did Sindarous Wells participate in any conversations?

9 A I didn't hear him say anything. I heard Malika say

10 something and Shonettia kind of corrected her on what she

11 needed to say.

12 Q Okay.

13 MR. GRIER: Thank you, Ms. Massey.

14 THE COURT: Ms. Collins, anything else?

15 MS. COLLINS: No, Your Honor.

16 THE COURT: You may step down.

17 MR. GRIER: Ms. Leanna Crawford.

18 The witness, LEANNA CRAWFORD, remained under oath

19 and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GRIER:

22 Q Ms. Crawford, you've been sitting out in the hall

23 yesterday and today, correct?

24 A Yes, sir.

25 Q Have you -- were you aware that there was a sequester

DOROTHY MASSEY - REDIRECT

- 1 order in this case --
- 2 A Yes, sir.
- 3 Q -- that involved no talking about the case?
- 4 A Yes, sir.
- 5 Q Have you engaged in any talking and any discussions of
- 6 this case?
- 7 A No, sir.
- 8 Q Have you heard discussions -- anyone discussing facts
- 9 of this case in that hallway?
- 10 A Yes, sir.
- 11 Q What did you overhear?
- 12 A Shonettia Hunter yesterday, she leaned forward and
- 13 she was telling Malika that --
- 14 Q Okay. Malika --
- 15 A Malika Harris, I'm sorry.
- 16 Q That's all right.
- 17 A When she got on the stand she would have to tell
- 18 them -- that she needed to tell them that when she heard
- 19 the shot that's when she turned her head and saw Urk
- 20 firing the gun. Malika then told Shonettia to this, she's
- 21 like, "Well, we were in the bathroom." And Shonettia
- 22 said, "I know but you've got to tell them that when you
- 23 heard the gun go off that you saw Urk shooting."
- 24 Q All right. Did you hear any other conversation?
- 25 A No, sir.

LEANNA CRAWFORD -- DIRECT

1 Q What drew your attention to that?

2 A Just the fact that they were doing it in front of us.

3 Q How far away from them were you?

4 A ~~Directly across the hall -- across from us.~~

5 Q Point out an object in this room of approximate
6 distance.

7 A Probably from here to that first chair right there.

8 Q ~~Have you got any reservations about what you heard?~~

9 A No, sir.

10 MS. COLLINS: Ms. Collins, anything?

11 CROSS EXAMINATION

12 BY MS. COLLINS:

13 Q Was Sindarous Wells in the proximity of y'all as well?

14 A Yes, he was. He was sitting beside Malika Harris.

15 MS. COLLINS: All right. Thank you, nothing further.

16 THE COURT: All right.

17 REDIRECT EXAMINATION

18 BY MS. COLLINS:

19 Q Did he participate in that conversation?

20 A No, sir, he did not.

21 THE COURT: Ms. Collins?

22 MS. COLLINS: No, nothing else.

23 THE COURT: Ma'am, you may step down. Thank you.

24 Anything by way of argument, Mr. Grier.

25 MR. GRIER: Your Honor, I did need a bit of

LEANNA CRAWFORD - CROSS AND REDIRECT

1 impeachment testimony from Sergeant Small.

2 THE COURT: Come on back up.

3 The witness, BRIAN SMALL, remained under oath and

4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GRIER:

7 Q Please state your name for the record.

8 A Brian Small.

9 Q Sergeant Small, did you do the interview of Shonettia
10 Hunter?

11 A I did.

12 Q And do you recall what she said about Wiley Park,
13 about learning about the Wiley Park shooting?

14 A I don't, no, sir.

15 Q You don't recall "do y'all have any idea who shot at
16 Wiley Park?"

17 A I do not, no, sir.

18 Q You don't recall that "do y'all have any idea who shot
19 at Wylie Park?"

20 A No, sir.

21 Q You don't recall that?

22 A No, sir.

23 Q You didn't hear and then -- you don't remember a
24 response from her, "Didn't hear about the shooting until
25 police arrived just then?"

BRIAN SMALL - DIRECT

1 A You're referring to Shonettia?

2 Q Yes, I'm referring to Shonettia.

3 A Can you repeat the question, please?

4 Q You don't recall her response being, "Didn't hear
5 about the shooting until the police arrived just then?" In
6 essence she didn't hear about it until y'all told them
7 about it.

8 A I don't recall, no, sir.

9 MR. GRIER: Judge, at the risk of -- I don't think I
10 can actually follow-up on his response to that without
11 having you listen to that. I have it pegged on her video
12 unless the solicitor wants to stipulate that that was her
13 response.

14 MS. COLLINS: I don't recall her response, I can't
15 stipulate.

16 THE COURT: Any other questions, Mr. Grier?

17 MR. GRIER: No, Your Honor.

18 THE COURT: Ms. Collins?

19 MS. COLLINS: I have no questions.

20 THE COURT: Sir, you may step down. Thank you.
21 Anything else, Mr. Grier?

22 MR. GRIER: That's all, Your Honor.

23 THE COURT: Anything by way of argument?

24 MR. GRIER: Yes, Your Honor. Can give me 30 seconds
25 to pull that together from my notes?

BRIAN SMALL - DIRECT

1 (Break in proceedings.)

2 MR. GRIER: Your Honor, we are here in regards to an
3 immunity hearing wherein the burden of proof is a
4 preponderance of the evidence, and you sit in essence to
5 determine whether the burden of proof has been met by the
6 defendant. And as I stated before and you're aware, the
7 question before you presented is, number one, did Mr.
8 Massey, was he at fault in bringing about the difficulties.
9 Your Honor, you've heard a bit of mixed testimony about it,
10 but I would argue that the prevailing evidence that --
11 certainly more likely than not the evidence is that
12 everything was fine in the home of Malika Harris and
13 Shonettia Hunter until some comment was made by some
14 accounts, but under any circumstances the objective
15 evidence is that Mr. Massey was struck in an unprovoked
16 attack by the defendant. There is testimony of Sindarous
17 Wells that say Mr. Massey made a comment that may have
18 precipitated that provocation which pertained to him having
19 brandished a gun at Mr. Robinson's cousin at a prior event.
20 Your Honor, I -- that certainly is the only evidence that
21 has been presented that gives any plausible explanation for
22 why Mr. Massey was struck. I think the evidence is
23 certainly clear that he did get struck, we've got
24 photographs of it, that's not at issue. And then moving on
25 from that, did he have any fault? I don't think -- I think

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1 we've demonstrated clearly that he had no fault in bringing
2 about that, that he was there with consent, if not direct
3 consent, then most certainly implied consent, Your Honor.
4 ~~In my research on consent --- and we have certainly~~
5 different types of consent, Your Honor, but we have
6 invitees and we have licensees and a licensee is typically
7 a social guest. I think we've met criteria for showing
8 that he was there as someone that knew him, that he was a
9 social guest and that he was -- there's even a case I think
10 that the Giles or Giles case, I'm not sure how to pronounce
11 that for you, that says that a person on the premises that
12 is tolerated is, then consent has been given, and that's
13 the course of a civil matter involving some tort claim,
14 Your Honor. I'm not sure what that is, but I would have to
15 ~~look at it again. But -- so was he there, you know, with~~
16 consent? Yes, sir, I believe he was there with implied
17 consent. Did he have any fault in bringing about it? I
18 don't think there was any evidence that he had fault in
19 bringing about the difficulties. Did he have the
20 apprehension of an imminent threat? The second prong of
21 self-defense, did he have a reasonable apprehension of
22 imminent danger of death or serious bodily injury? I think
23 the evidence clearly shows -- Mr. Sindarous Wells certainly
24 stated that his, I guess, subjective belief and his
25 evidence was that Mr. Massey was struck and that he fell

ARGUMENTS

1 away, he didn't see whether he ended up on the ground or
2 not, but he saw him hit and he saw him falling backwards,
3 and nobody knows whether he fell or not. I don't believe
4 anybody other than Mr. Massey has actually testified to
5 whether they saw him stand up or fall except Malika Harris.
6 Now, Your Honor, Malika Harris -- number one, Malika
7 Harris' testimony I would consider tainted by what you've
8 heard about her conversation, which I believe is credible,
9 about her conversation about the way she testified in this
10 courtroom and it is un-rebutted, and I believe it's
11 discredited by the fact that many inconsistencies in the
12 testimony here that -- of course, she is Ebonie's sister,
13 but she testified that as far as between Shonettia and
14 Malika, that they left the Wiley Park party because they
15 had heard of a shooting, or that there was a shooting that
16 occurred. Of course, Shonettia, who they say both say --
17 Malika and Shonettia both say they were together at the
18 time and knew nothing about shooting, which brings her
19 testimony under scrutiny. I believe both of their -- the
20 testimony of both of those is tainted by them having a
21 conversation in violation of this Court's sequestration
22 order. But the only testimony that does not have -- of a
23 witness that does not have Mr. Massey being struck is her
24 testimony, that being Malika's. And, Your Honor, I think
25 you have heard the testimony of the person that we maintain

ARGUMENTS

1 was present and we have attempted to give testimony, and I
2 think the objective evidence that Navoney Curry was
3 threatened. He had lost two brothers murdered and that he,
4 of course --- under impeachment evidence of Ms. Massey was
5 that Navoney Curry had called her and told her that he was
6 a witness to the incident and that it didn't go down like
7 they were saying and that he was threatened, or at least
8 pressured to make a statement consistent with statements
9 implicating Mr. Massey. And that he attempted to give
10 evidence to -- or went to the police department and never
11 ultimately gave a statement. I think that there are --
12 Your Honor -- in the grand scheme of things, if you look
13 at -- Shonettia and Malika are lovers, Malika is Ebonie's
14 sister, Sindarous is obviously friends with them.
15 Everybody in this case as is so often -- and I find -- the
16 difficulties of law enforcement sorting this stuff out are
17 staggering. But the biases, if you don't discount the
18 testimony of Malika Harris, then when you shake everything
19 down and distill it to what -- and then if you consider the
20 testimony of Dot Massey about Navoney Curry biased because
21 she is the mother, and the sister of my client being
22 biased, the way I kind of see it when it all shakes down,
23 although Sindarous Wells was -- gave some -- he gave a
24 followup statement that implicated my client in an earlier
25 event of pulling a gun, but he also gave evidence of my

ARGUMENTS

1 client having been struck and that was only a few days ago
2 that we learned that that was what he was testifying to
3 now, he didn't testify consistent with that during his
4 first interview. And so since he is testifying and his
5 testimony has shifted in a way on the one hand that it
6 hurts me, or my client, but it's a position if believed,
7 and on the other hand supports my client's version of being
8 struck and falling, you know, and he's under pressure
9 because he knows all of these folks. And I think that his
10 testimony about what happened on that event is likely
11 the -- more than likely by far, clear and convincingly more
12 credible than the other witnesses that have testified
13 before this Court about the fact that Mr. Massey was struck
14 and that Mr. Robinson unfortunately charged, and that based
15 on what he saw that he was afraid that Mr. Massey -- he
16 believed that it likely that Mr. Massey was in danger of
17 being hurt. Of course, the pathologist had testified that
18 a concussion could be a serious -- could constitute a
19 serious bodily injury, and basically that any assault could
20 result in a serious bodily injury. Mr. Massey has already
21 been struck one time, I think it's credible evidence and
22 proof, in fact, a busted lip and that, in fact, he was
23 struck and that's what he told everyone and Sindarous Wells
24 vouches for that. But, Your Honor -- I lost my train of
25 thought there for a second -- but at any rate, I believe

ARGUMENTS

1 that his testimony should carry great weight about -- the
2 pathologist that certainly would give you an objective
3 measure from an expert about what the results of an assault
4 could be. And Mr. Massey had already been struck once, it
5 is -- I believe an objective reasonable person could
6 conclude they might suffer death or certainly serious
7 bodily injury as a result of a continuing assault that has
8 already started and it looks imminent. Your Honor, the
9 trajectory of the bullet that's testified to by the
10 pathologist would be consistent with two people standing up
11 and being -- and one of them becoming a victim of a
12 firearm. But it would also be consistent of a person that
13 is on the floor, that has a person coming at them and
14 bending over and putting their body in a position to --
15 because how do you strike a person on the floor, Your
16 Honor? How do you actually hit a person on the floor
17 without bending over? Just as a practical common sense
18 matter, you can't hit a person on the floor without bending
19 over. That bending over puts -- is consistent and I think
20 more likely than not an explanation for how Mr. Robinson's
21 body gets in a position to where a shot from a sitting
22 position into a man bending over would cause that
23 trajectory of that bullet to have the same trajectory as to
24 create a downward trajectory in an erect body, which is
25 what the pathologist testified. I'm about to wrap it up

ARGUMENTS

1 and you're probably ready for that. Finally, I believe,
2 the third element or prong, whatever we're going to call
3 it, of self-defense -- and there are four -- but the fourth
4 one is not relevant, duty to retreat. And certainly
5 Douglas clarified that, if there was any doubt about it,
6 and that's basically what the immunity involves is that a
7 person in a place that they've got a right to be. And, you
8 know, was there any probability -- any other probability of
9 escape, which doesn't imply to duty to retreat, but was
10 there any probable means of saving himself from the
11 imminent danger of certainly serious bodily injury, and,
12 you know, the objective standard applies there, Your Honor,
13 the reasonable person standard. And I believe most
14 certainly the evidence supports that this happened very
15 quickly, again, Sindarous Wells, his description of --
16 everybody's description of it is it was just so quick that
17 nobody was able to do anything to intervene, you know, that
18 it was just so fast that there was no opportunity for any
19 other option to stop Mr. Robinson from assaulting Mr..
20 Massey other than the one he chose, and I say chose out
21 of -- under the objective standard. His other option -- he
22 did have another options, Your Honor, and that was to take
23 whatever Marcus was going to dish out. Your Honor, Marcus
24 had a reputation for the knockout king, that was his
25 nickname. He earned that reputation by unfortunately

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1 his -- the way he had, you know, been on the street, Your
2 Honor, even his girlfriend said the same thing. And bless
3 his heart -- bless her heart, his poor unfortunate mother
4 to have lost her son, and I know she loves him and it's
5 hard to talk about somebody in front of their mother as a
6 defense attorney, certainly that's my responsibility and my
7 duty, and I do want Ms. Robinson to know because I have
8 actually known Ms. Robinson for a long time and everybody
9 in this courtroom feels for her sincerely. Judge, you
10 know, the -- I'm going to close with, Your Honor, there was
11 some implication that there was an attempt to conceal these
12 phones from law enforcement. I made every effort I knew as
13 a defense lawyer to try to procure what was on those phones
14 but my experts were not able to it. But if you would
15 listen -- and if you doubt it I would ask you to listen
16 again because I think my investigator got confused when I
17 asked him about this, I asked him if he'd heard during the
18 interview of Allen Massey -- Allen Massey clearly states
19 during his interview on the day of his arrest that his
20 sister had taped Navoney Curry, and if they would get that
21 they would hear Navoney Curry's account of what really
22 happened, that he was present and that he was threatened
23 and all of the things that you've heard in this courtroom,
24 Your Honor. But, you know, police department had the first
25 opportunity to get it, Your Honor. I don't know -- I know

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1 how challenging it must be to get these things together and
2 to run everybody down, but that -- it would seem that if
3 you wanted to get the evidence from everybody that was
4 ~~there and really investigate everything that was said about~~
5 the available testimony, that one of the first things you
6 do is run out and get those phones, and unfortunately that
7 didn't happen and unfortunately I wouldn't able to procure
8 any evidence from them. And finally -- or anything at all
9 from them. And so I received them recently, but I don't
10 think I have any duty to turn it over to law enforcement.
11 But quite frankly I had had a conversation with them pretty
12 recently about giving them and seeing if they could dump
13 them and if they could recover anything, but as late in the
14 game as that was it seemed futile, asking SLED to do that.
15 The turn around time with SLED is not a couple of weeks or
16 a week even. Your Honor, I think that we've met or burden
17 of proof, that under 16-11-440 Mr. Massey has by a
18 preponderance of the evidence proven that he is entitled to
19 immunity from prosecution in this case, and I'm asking you
20 to find likewise, Your Honor. Thank you.

21 THE COURT: Ms. Collins.

22 MS. COLLINS: May it please the Court? Your Honor,
23 the Protection of Persons and Property Act provides that,
24 first of all, it's the intent of the general assembly
25 finding that it's proper for law abiding citizens to

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1 protect themselves, their families and others from
2 intruders and attackers. That section, 16-11-440 Section
3 A, provides that a person is presumed to have a reasonable
4 ~~fear of imminent peril or death or great bodily injury to~~
5 himself or another person applies if the victim was an
6 intruder or was trying to kidnap or forcibly remove someone
7 from the residence. Section A does not apply, therefore
8 there is no presumption. That kicks us to Section C, which
9 says, first of all, that a person who is not engaged in
10 unlawful activity and who is attacked in another place
11 where he has a right to be, including but not limited to
12 his place of business, has no duty to retreat and has a
13 right to stand his ground and meet force with force
14 including deadly force if he reasonably believes, and you
15 know the rest of the section. In fact, Your Honor, I would
16 hand up at this time the cases from appellate courts that
17 have interpreted -- I have made copies for the defense, and
18 I'll include a copy of the Persons and Property Act. Your
19 Honor, I have previously handed up the two statutes that we
20 would contend that the defendant was not acting lawfully,
21 because at that time he was carrying a firearm, he knew he
22 was acting unlawfully, he knew it was against the law
23 because he had previously on four occasions pled guilty to
24 unlawful carrying of a weapon. In addition he discharged a
25 firearm while under the influence of alcohol, so he was

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1 also violating that code section. We would submit that the
2 case of State v. Burris, which was cited earlier by the
3 defense, is not applicable. That case -- the fact pattern
4 was in '94, the opinion was issued in '99, well before the
5 2006 Persons and Property Act was enacted. That has
6 nothing to do, we would submit, it's totally inequitable to
7 the issue before the Court today, and that is what that
8 term means under the Protection of Persons and Property
9 Act. I would submit that in looking at the Protection of
10 Persons and Property Act as to whether or not someone is
11 engaged in unlawful activity, that again, you look back to
12 the intent of the general assembly to find it's proper for
13 law abiding citizens. Here you have a defendant who has
14 testified, he's admitted that he has been convicted with
15 the impeachable offense of possession of crack. He admits
16 he had twice before pled, even though he said that he never
17 carried a firearm until March 23rd of 2012, but then he
18 admitted that, yes, he had and he in fact pled guilty to it
19 in 2011. You've got inconsistencies in that statement.
20 And I would submit the reason, the most critical reason why
21 Burris is not applicable in this case is that had to do
22 with whether or not the defendant, who was 16 years old at
23 the time of incident, was entitled to a jury charge on the
24 issue of accident. And that, Your Honor, is very different
25 from the case at hand. Because in that case the fact

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1 pattern was that the defendant had a firearm, shot in the
2 ground in an attempt to scare off these people that he had
3 observed smoking marijuana laced with crack, that he was
4 concerned that they came toward him and tried to rob him,
5 he at that time -- he had a gun in his pocket -- shot twice
6 into the ground to warn them to back away, they didn't back
7 away, he drops the gun on the ground, and when they come
8 back towards him then he picked up his gun, he said it went
9 off killing one of the men, Kenneth. It is at that point I
10 would argue that when he picks up his gun, that's the
11 issue, he is at that point arming himself in self-defense.
12 That is not the issue before the Court at all, the issue of
13 accident is not before the Court at all. What is the issue
14 is at the time -- first of all at the time that the
15 defendant entered that home, the residents of that home
16 clearly testified that if they knew that he had a firearm
17 they would have ejected him, they would have asked him to
18 leave, they would have made sure he left. They did not
19 know that, he did not make them aware of that. So did he
20 have a right to be there? Mr. Grier argued that he was
21 tolerated, and by tolerated he became a licensee or a
22 guest, but I would submit by not revealing that to them he
23 didn't have a right to be there, they would have been
24 entitled to eject them had they known. They didn't know
25 because he didn't tell them that. In regard to whether or

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1 not he is engaged in unlawful activity, again I would
2 submit that he was. But even beyond that, then you look to
3 the issue of did the defendant have a right to stand his
4 ground and meet force with force, including deadly force if
5 he reasonably believed it was necessary to prevent death or
6 great bodily injury and that is when we look to the
7 self-defense elements, and only when we get to that point
8 does the duty to retreat not apply. Your Honor, it is true
9 that Dr. Ross testified that any assault could ultimately
10 result in serious bodily injury. If this Court takes the
11 argument that's being presented by defense counsel in this
12 case, and I would note the testimony of it happened so fast
13 is a phrase that was applied on two occasions, one to the
14 hit in the lip area of the defendant by the victim, but
15 then also as to how quickly the defendant shot the victim.
16 Sindarous Wells, who nobody testified was out there trying
17 to alter his testimony in any way, waited two days to
18 testify, came in today and he said that he could still see
19 the back of Marcus, and that the back -- he was not bent
20 over, that he was standing straight up. He said that it
21 happened quick, he said he was concerned, and he said that
22 Marcus did hit the defendant out of the blue, and that the
23 defendant reeled back and that Marcus reeled back away from
24 each other, Marcus into the kitchen, the defendant into the
25 living room area. He stated he could not see the defendant

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1 at that time so he couldn't see whether or not the
2 defendant had hit the ground and was lying back, but he did
3 know this, that when Marcus went toward the living room he
4 could see Marcus and Marcus was standing straight up and
5 that immediately he heard the shot. So for the defense to
6 take the position that someone can get hit in the mouth one
7 time and have that person coming toward them that they can
8 immediately pull a gun and shoot them and kill them I would
9 submit is not at all what the general assembly intended in
10 codifying what has been called the common law Castle
11 Doctrine. I would point this Court to various
12 inconsistencies presented by the defendant himself but by
13 the witnesses presented by the defense. Your Honor, as to
14 this diagram that's presented, first of all the defendant
15 admitted he himself didn't draw it, admitted he had drawn a
16 rough sketch but didn't bring it to share with the Court.
17 He admitted that there had been other sketches, but this is
18 the one that he felt was best and that was the only one
19 that was brought and shared to the Court. I asked the
20 defendant which of those hands was the left hand of Marcus
21 and the right hand of Marcus, he indicated that the left
22 hand of Marcus was raised up and the right hand was lowered
23 toward him. Your Honor, that's important, because on the
24 video of the statement that the defendant gave after
25 waiving his Miranda rights to law enforcement when he

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1 references Marcus raising his fist, the defendant does not
2 raise his left hand, he raises his right hand. Moreover,
3 the testimony of Leanna Crawford, his sister, was that he
4 didn't have simply bruising in an area around his lips, but
5 that he had a knot on his head. No one has testified to
6 that. I specifically asked Mr. Massey if he hit his head
7 when he fell back, he said he did not. He never said
8 anything about, "But I did have a knot later that my sister
9 took a picture of or tried to take a picture of." If she
10 did try to take a picture that night, wouldn't he have been
11 aware? Here she is trying to take a picture of him so that
12 when he turned himself into law enforcement and gave him
13 his statement and they were taking pictures of them that he
14 would have been prompted to go, "Oh, and by the way, I
15 think I have something back here because my sister was
16 trying to take a picture of that." He did not tell law
17 enforcement that he was kicked in the head as his sister
18 indicated he told her, he did not tell law enforcement that
19 he felt that he was about to be beaten to death and die as
20 his sister claims that he told her the night before he
21 turned himself into law enforcement. Your Honor, when the
22 defendant gave his statement to law enforcement he said
23 that Rashawd hit him two times on the left side of his face
24 and quote, "I had been drinking that night. I wasn't in
25 any -- no shape to fight so I just left it alone, you know,

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1 I just left. I walked down the street." He later goes on
2 to tell law enforcement in terms of why he shot the victim
3 again he said as to why I shot Marcus, "I had been
4 drinking, I was in shape to fight, it just happened so
5 quick." So his initial response is exactly the same as to
6 what he said in regard to Rashawd, but with Rashawd he
7 walked away despite having been hit twice, despite knowing
8 that Rashawd had a beef with him compared to Marcus who he
9 had been friends with for years, had never had any issues
10 with him by his own admission. The defendant never once
11 told law enforcement "I was scared of Marcus," never once
12 told law enforcement, "I was terrified of Marcus," never
13 once told law enforcement, "He was coming at me like a lion
14 for the kill or like a professional fighter for the kill,"
15 none of these wonderful analogies that he is presenting now
16 after over a year. He said, "Law enforcement gave me
17 leading questions." I submit to you that Captain Scott
18 Grant respectfully asked non-leading questions and said,
19 "Just help me understand why, why did you shoot the victim
20 when you had not shot Rashawd?" And it was then at that
21 time prompted by that question that the defendant did go on
22 and say, "Well, all right. I felt like I deserved that,"
23 and he then said, "Well, Marcus did hit me and knock me
24 down, he hit me pretty hard." On the DVD of the interview
25 with law enforcement the defendant said Marcus was still

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1 standing -- this is at 10:10 on the video -- Marcus was
2 still standing. He never once said, "Marcus was leaning
3 over. Marcus was still standing by my feet." And by the
4 way, when he testified here in court he said that Marcus,
5 after he shot him, fell forward. If Marcus Robinson fell
6 forward as portrayed as described in the testimony of the
7 defendant and portrayed in Defense Exhibit 1, Marcus
8 Robinson would have fallen on top of the defendant, no one,
9 including the defendant, has ever said that. Looking at
10 the inconsistencies of what the defendant told this Court
11 as opposed to what he told law enforcement, now is when he
12 says, "I was afraid I might die." Now is when he says,
13 appropriately so, "I was concerned I might have serious
14 bodily injury." I submit to the Court that he did not say,
15 "I thought he might break my arm, I thought he might break
16 my leg." I thought he might beat me in the head to the
17 point that I was unconscious, because by the way, he's the
18 knockout king." The defendant never described what he
19 meant by serious bodily injury, he just used that catch
20 phrase, and I submit to you he used that catch phrase
21 because now he knew as opposed to when he was interviewed
22 by law enforcement right at the time it happened when they
23 asked him, "Tell us about the difference between the two,"
24 that he needed more. And yet I submit to you it's simply
25 not credible, because if it were credible then he could

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1 tell you exactly what he was worried about. The cases that
2 have interpreted the Protections of Persons and Property
3 Act look at a lot of things, they look at whether or not
4 ~~there's a sizable difference between the victim and the~~
5 defendant. In this case the defendant, per the booking
6 report, which he admitted to based on words he gave the
7 booking officer, 5-11, 210 pounds. The victim 5-10,
8 ~~220-pound per the autopsy.~~ Victim 30 years old, defendant
9 26 years old. When you saw the interview of the defendant
10 he was in a sleeveless black tank top, I submit to you that
11 throughout that interview you could see several times
12 particularly when he was signing his name, the flex of his
13 biceps, that this is not a young man who has a problem in
14 terms of strength. Similarly just hearing 220 pounds
15 ~~someone might think, well, that sounds pretty sizable to~~
16 me, and that is why we submitted the DVD of the victim in
17 the ambulance, and I would submit that the two are
18 comparable sizes. Your Honor, there are four cases where
19 ~~the Court interprets the Protection of Persons and Property~~
20 Act, there were five. Manning was another opinion that was
21 ultimately withdrawn by the Court after granting the
22 petition for rehearing, and at that time they decided to
23 reverse that case and remand it for an evidentiary hearing,
24 and they specifically withdrew that opinion so I am not
25 citing that case. The four cases are Duncan, Dickey, Curry

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1 and Douglas. One of those cases results in an ultimate
2 ruling for the State and that's State v. Curry. In Curry
3 the supreme court noted the testimony of the accused and
4 the State's witnesses varied substantially, and that the
5 defendant's claim of self-defense presents a quintessential
6 jury question, that's on page three of the opinion. That
7 Court specifically noted that there were inconsistencies,
8 and they cite other cases where if there are
9 inconsistencies between the purported alleged beating of
10 the defendant and the lack of physical injuries, that that
11 should be an issue of concern, and that's exactly what
12 should go to a jury and let the jury decide whether or not
13 the defendant has successfully met the requirements of
14 setting out self-defense. Curry noted that the Trial Court
15 is not required to accept the defendant's version of the
16 facts, and the Trial Court must consider all of the
17 elements of self-defense say the duty to retreat, and that
18 is if the Court finds the Protections of Property Act upon
19 us. Of course, Curry noted that the burden is upon the
20 defendant to show all of the elements of self-defense by a
21 preponderance of the evidence, and in that case the victim
22 was a guest in the defendants mother's apartment, it was
23 noted that the victim was considerably bigger and stronger
24 than the defendant, the victim was unarmed, the defendant
25 shot the victim six times in the back. The defendant and

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1 the victim scuffled, were separated by others. The
2 defendant and victim scuffled again, they were separated a
3 second time and it was then and only then that the
4 ~~defendant said there was a third time where "the victim was~~
5 lunging toward me." We don't have that fact pattern here.
6 We don't have an issue -- we have an issue of one hit, one
7 hit to the mouth of the defendant by the victim, and then
8 ~~the victim comes toward the defendant and the defendant~~
9 didn't wait, it did happen fast because he did not wait.
10 He immediately pulls out his gun and shoots and kills
11 Marcus Robinson. And I would submit to you that is not
12 what the law anticipated, that's not what the general
13 assembly anticipated in passing this statute. The other
14 three cases, Duncan, Your Honor, that's a Section A case
15 ~~where the ultimate ruling is for the defendant, it happened~~
16 in the defendant's home. Again, Section A applied because
17 he had asked the victim to leave, he ejected the victim and
18 the victim came back, and I would submit Duncan doesn't
19 apply because of that, it's distinguishable. As to Dickey,
20 that was actually a self-defense case, Your Honor. That
21 was a case that the Court ultimately did find for the
22 defendant. That was the case -- it happened in Columbia
23 South Carolina. The defendant was actually a security
24 guard and lived there, and the Court was looking at issues
25 of self-defense. That case, the fact pattern predated the

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1 passage of the Protection and Persons Property Act. So
2 even though later it's referenced, because the opinion came
3 out after the passage in 2011 was the date of the opinion,
4 ~~that really isn't as to the applicability of the act~~
5 because it predated it. As to Douglas, that case
6 ultimately resulted in a ruling for the defendant and that
7 was in the defendant's home and the defendant asked the
8 victim to leave. Both defendant and the victim were
9 intoxicated. He stated the victim attacked him, he hit his
10 head two times on the fridge and on the floor, and it's
11 noted in a footnote that the defendant likely had a
12 concussion from that. Again, the defendant specifically
13 answered me when I asked him, "Did you hit your head?" And
14 he said, "No." He said -- in Douglas the defendant said
15 that the victim was on top of him and hit him in the eye
16 and he asked him a number of times to leave, the victim did
17 not leave, he advanced toward the defendant, and then
18 ultimately notably the defendant did not run in that case.
19 The defendant after shooting the victim calls 911, and they
20 noted that the defendant had a high number of injuries.
21 And in that case although it was noted that the victim had
22 a BA level and an ocular fluid level, the ocular fluid
23 level being .24 and the lesser one being .216, in that one
24 they had testimony by an expert as to the impact of that.
25 But again, that's notably greater than that of the victim

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1 in this case. So in our case I would submit respectfully
2 if the act applies at all under Subsection C, that the
3 defendant did not have a reasonable belief at that time
4 ~~that he was about to suffer great bodily injury or death~~
5 such that he was entitled to meet force with force, or
6 entitled to meet -- even if he thought he could meet force
7 with force what he was observing was greater than the force
8 ~~that he knew the whole evening he had in his pocket, that~~
9 he immediately pulled out his gun and shot the victim.
10 Your Honor, I think one of the most important things we
11 heard during the course of these two days was Dr. Ross'
12 statement in terms of her observation of the body of the
13 victim. And I asked her if she looked at the victim in
14 terms of what's known as defensive wounds or any wounds to
15 ~~the hands of the victim, and I asked Dr. Ross, "Did you see~~
16 any marks whatsoever on the hands of Marcus Robinson when
17 you examine his deceased body?" And she said, "No." I
18 said, "No marks at all, not a scratch? No. Any mark on
19 ~~his knuckles. No.~~" ~~Not a one.~~ I submit to you the
20 defendant was very careful when he testified -- and I
21 submit to you his name is applicable in terms of he's
22 brainy, he's smart, because I submit respectfully that when
23 he testified now "I don't remember him doing anything
24 else," as if to insinuate that he had been knocked out, but
25 no one testified as to that, he's now trying to imply that

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1 perhaps there was a greater beating. But the hands of
2 Marcus Robinson as observed by Dr. Ross don't lie. These
3 were not hands that repeatedly beat the defendant, the
4 defendant never said that, to this day cannot say it, but
5 can just equivocate by just saying, "I just remember the
6 one hit to my mouth." Because the defendant ran we could
7 not -- law enforcement could not take his blood alcohol
8 level in terms of him discharging a firearm under the
9 influence because the defendant ran. We could not take his
10 clothing in evidence to see how much his lip bled. Because
11 the defendant ran we could not at that time examine how
12 fresh his injuries were. He ran. And he didn't just run,
13 he left and took the gun with him. And he didn't just
14 leave and he took the gun with him, he took the gun and
15 stored it away with a friend and then he got another friend
16 to drive him to Pageland and he waited, started calling
17 around to his friends and call around to his family and
18 then ultimately turn himself in after he had time to think
19 about it, and he's had more time to think about it and more
20 time to polish his story. I submit to you that this is not
21 a case that should be decided at this point. I submit to
22 you that the defense has not proven by a preponderance of
23 the evidence that the act is applicable to him such that he
24 is immune from prosecution for murder. I submit just as
25 Justice Kittredge said in the Curry case, this is a

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1 quintessential question for the jury, and I ask that you
2 find such you that you allow to proceed with the
3 prosecution of this young man for murder and put that
4 question to the jury. Thank you.

5 THE COURT: Mr. Grier, five minutes, anything in
6 reply?

7 MR. GRIER: Your Honor, it's going to be shorter than
8 that. Okay.

9 THE COURT: I'm watching the clock.

10 MR. GRIER: Your Honor, Ms. Collins has ultimately
11 attempted to convince the Court that Burris is not
12 applicable. But it's clear from the Duncan case, which is
13 the -- I believe tells us more about how the immune from
14 prosecution statute is supposed to work. And it
15 specifically, you know, unambiguous reference to -- Your
16 Honor, I got off track on that -- not the reference
17 Burris -- excuse me, Burris does not represent Burris, but
18 our state supreme court in unambiguous language in Burris.
19 With regard to that this Court has held that the person
20 could be acting lawfully even if he is in an unlawful
21 possession of a weapon if he's entitled to arm himself in
22 self-defense at the time of the shooting. And Douglas,
23 going back to -- Douglas gives us a roadmap for, you know,
24 how to look at that and it takes away the duty to retreat
25 is really all it does. And I would argue that my client

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1 was acting lawful in every other regard other than being in
2 possession of that pistol in that Burris says that at the
3 time of the shooting, I'm talking about at that moment of
4 the shooting in that second, which is only a reasonable
5 interpretation of Burris, that, yeah, if you had that
6 imminent fear then you're entitled to use your gun even if
7 you were unlawfully carrying it and even if you were using
8 alcohol to excess at the time you used it, both of those
9 things would be unlawful and possession of that firearm.
10 But I don't think anything would take away his right to use
11 a firearm in a self-defense argument that Ms. Collins has
12 argued. Your Honor, she does argue that the testimony --
13 other than Mr. Wells that Mr. Massey was in a downward
14 position, in a crouching or on the floor position there is
15 none. And if you would believe that Mr. Massey is not
16 being honest about what position he was in then it would
17 change the trajectory of the wound in a way that would be
18 consistent with a man standing erect. So if you believe
19 that Mr. Massey wasn't on the floor, then the argument that
20 Mr. Robinson was erect at the time that the firearm was
21 discharged would make an erect body consistent. So I
22 believe that she may have not heard all of the testimony of
23 my client, I believe he did testify that Mr. Robinson was
24 in a crouching position coming at him, that is my
25 recollection of it. Your Honor, just the end of it all, in

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1 Curry the victim was shot six times. What's I think
2 compelling in this case is that the victim was shot one
3 time because it went down fast and he was in apprehension
4 of serious imminent danger to his person and that he had no
5 probable means to escape, and I believe that's what we've
6 got to show by a preponderance of the evidence, and I would
7 submit that we have done that and I would ask you for a
8 favorable ruling.

9 MS. COLLINS: Did you want a copy of Burris?

10 THE COURT: Yeah, hand it up to me. I will render my
11 decision for you in a week.

12 (End of hearing.)

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case
6 relative to appeal in the Court of General Sessions for
7 Lancaster County, South Carolina, on the 30th-31st days of
8 March, 2015.

9 I do further certify that am neither of kin, counsel,
10 nor interest to any party hereto.

11

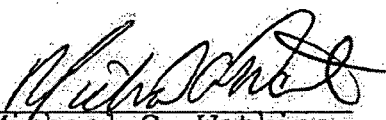
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April 8, 2016

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Michael C. Watkins

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Court Reporter

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER

4 ~~2014-GS-29-00094~~

5 State of South Carolina

6 vs.

7 Allen Wesley Massey

8 ~~RULING~~

9 Lancaster, South Carolina

10 April 3, 2015

11 Before the Honorable Craig Brown

12

13 APPEARANCES

14 For the State: Lisa Collins

15 ~~For the Defendant: Mark Grier~~

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

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1 THE COURT: We're back on the record with regard to
2 the State of South Carolina versus Allen Wesley Massey,
3 indictment number 2014-GS-29-94 and 95; 94 being an
4 indictment for murder, 95 being an indictment for
5 possession or display of a firearm during the commission of
6 a violent crime. This matter came before the Court earlier
7 in the week on defendant's motion for immunity pursuant to
8 section 16-11-440 of the South Carolina Code of Laws that
9 deals specifically with protection of persons and property.
10 The Court heard two days of testimony from numerous
11 witnesses concerning the incident and I want to address
12 these matters in order. First of all, there's an issue
13 pertaining to the sequestration of witnesses. Some reply
14 testimony was put up by the defense concerning
15 sequestration and I want to make it clear that when the
16 defense argued that it was discussions that were
17 allegedly -- or that allegedly took place outside was a
18 violation of a sequestration order. I want to make it
19 clear that when sequestration takes place during the course
20 of a trial, that the purpose of such is to ensure that
21 witnesses or potential witnesses are not seated in the
22 courtroom wherein they can hear the testimony of other
23 witnesses and tailor their testimony to that of witnesses
24 as they testify during the course of a hearing or during a
25 trial. This Court did not issue any type of gag order or

1 restrictive order prohibiting or preventing individuals
2 from talking about it, but I want to make that clear before
3 I go any further. Now, with regards to the hearing on the
4 ~~Protection of Persons and Property Act, pursuant to case~~
5 law, more specifically State v. Curry and those which
6 preceded Curry, State v. Curry, being 406SC364 and
7 752SE2D263, a claim of immunity under the Protection of
8 Persons and Property Act requires a pretrial determination
9 using a preponderance of the evidence standard which is
10 reviewed on appeal under abuse of discretion standard of
11 review. In a case in which a murder defendant claims
12 immunity under the Protection of Persons and Property Act,
13 a valid case of self-defense must exist and the trial court
14 must necessarily consider the elements of self-defense in
15 ~~determining the defendant's entitlement to immunity~~
16 including all elements of self-defense, save the duty to
17 retreat. Furthermore such immunity is predicated on the
18 accused demonstrating the elements of self-defense to the
19 satisfaction of the trial court by a preponderance of the
20 evidence. The first issue to address with regards to
21 defendant's assertion of such immunity is that which was
22 raised by the State under subsection C. This Court finds
23 that subsection C of 16-11-440 is the applicable provision
24 for this particular case. The State first asserts that
25 under subsection C that the defendant would not be entitled

1 to assert immunity under this act in light of the fact that
2 the defendant was engaged in an unlawful act. First of
3 all, the State asserts that the defendant was unlawfully
4 ~~carrying a weapon at the time that this incident took place~~
5 and therefore would not be entitled to assert immunity.
6 The Court has reviewed the case of the South Carolina
7 versus Demetric Burris (phonetically,) 513SC2D104, which is
8 a 19 -- it was a case that was decided in 1999 by the South
9 Carolina Supreme Court. The Court has also reviewed the
10 case of the State of South Carolina versus Lord Byron
11 Slater, which is cited at 373SC66, that is a 2007 case. In
12 State v. Burris, that particular case the appellant was a
13 16 year old who had been involved in an altercation with
14 two individuals whereupon the appellant utilized a firearm
15 and claimed that the firearm accidentally discharged
16 killing the victim. The Court in Burris cited State v.
17 McCaskill, which is 300SC256, 387SC2D268, which is a 1990
18 case. In State v. McCaskill the trial judge erred in
19 failing to charge that if appellant lawfully armed herself
20 in self-defense because of a threat to her safety created
21 by the decedent and the gun accidentally discharged the
22 jury would have to find her not guilty. In State v. Burris
23 the Court also noted that they expanded the holding of
24 McCaskill in Goodson, State v. Goodson stating -- Goodson
25 being cited at 312SC Act 278 where Burris pulls this

1 language from. Goodson stated that the burden rests upon
2 the State to prove beyond a reasonable doubt that the
3 unlawful act in which the accused was engaged was at least
4 ~~the proximate cause of the homicide. Burris further says~~
5 that read together McCaskill and Goodson stand for the
6 proposition that a person can be lawfully -- excuse me, can
7 be acting lawfully even if he is in unlawful possession of
8 ~~a weapon if he was entitled to arm himself in self-defense~~
9 at the time of the shooting. The Court also reviewed the
10 case of State of South Carolina -- as I've previously said,
11 State v. Slater. In State v. Slater, the defendant in that
12 particular case retrieved a firearm from his automobile,
13 observed an incident occurring in a parking lot which
14 turned out to be a robbery, and as that robbery was
15 ~~unfolding where the victim was on the ground being~~
16 assaulted by five men, the defendant, Slater, knew neither
17 the victim nor his attackers. The defendant testified that
18 he walked up to the robbery and surprised one of the
19 attackers. The Court in that case found that the
20 defendant's actions were the proximate cause of the
21 decedent's death. The Court stated in Slater that where
22 the defendant's unlawful possession of a weapon is merely
23 incidental to the defendant's lawful act of arming himself
24 in self-defense, the unlawful possession of the weapon will
25 not prevent the use of an accident defense. The Court in

1 Slater further stated although Burris takes the additional
2 step of applying the rule in the context of accident, the
3 analysis is equally applicable if the defendant is in
4 unlawful possession of a weapon is entitled to a charge on
5 self-defense. In Slater's case, Slater's unlawful
6 possession of the weapon was the proximate cause of the
7 homicide. Slater was not merely in unlawful possession of
8 a weapon, he carried the cocked weapon in open view into an
9 already violent attack in which he had no prior
10 involvement. Slater's actions, including the unlawful
11 possession of the weapon, proximately caused the exchange
12 of gunfire and ultimately the death of the victim. Based
13 upon this Court's review of Burris and Slater, if the
14 version of facts as testified to by the defendant occurred,
15 this Court does not believe that such unlawful possession
16 by the defendant Massey would result -- or turn out to be
17 the proximate cause of the decedent's death, therefore this
18 Court finds that while the defendant was in unlawful
19 possession of such firearm, that that was not the proximate
20 cause of the decedent's death in this case. Now, with
21 regards to the defendant's claim for immunity under the
22 act, as previously stated, the Court has viewed State v.
23 Curry as well as State v. Douglas. In State v. Curry,
24 again, 406SC364, it is important to note in that particular
25 case the Court noted the testimony of appellant and the

1 State's witnesses varied substantially. The defendant
2 through his attorney, I believe, has acknowledged the
3 variance of testimony from all of the witnesses as well,
4 ~~whether they did or not I think the record is clear that~~
5 the testimony of all of the witnesses to some degree varied
6 substantially. State v. Curry further says that appellant
7 in State v. Curry appeared to argue that the act should be
8 construed to require a trial court to accept the accused's
9 version of the underlying facts. The Court further states
10 that the general assembly did not intend such an
11 application. It is not this Court's role nor is this Court
12 required to accept the accused's version of the facts in
13 this -- in any type of situation wherein an accused asserts
14 such immunity under the act. In this case -- or during the
15 ~~hearing earlier in the week the defendant's version of~~
16 facts vary from the video confession of his statement given
17 to law enforcement on the day that he turned himself in.
18 On the day that he turned himself in the defendant
19 testified that the victim hit him, that he fell and he
20 further stated that he was in no shape to fight. The
21 victim allegedly balled his fist up, according to Mr.
22 Massey's video confession, like he was going to hit him
23 again and that is when the defendant shot. The defendant
24 further stated that he was on his back when he shot. The
25 defendant was at the defendant's feet, the victim still

1 standing when the defendant shot. On three -- and this
2 Court reviewed the video statement again prior to coming in
3 here today -- that on three separate occasions Lieutenant
4 Hall, I believe it was, inquired of the defendant, "Why did
5 you shoot him? What made you decide to shoot him?"
6 Furthermore inquiring, "You walked away from one fight,"
7 which testimony throughout has been that the defendant was
8 involved in a prior altercation on 16th Street with Rashad
9 Robinson, who was the cousin of the victim in this case.
10 Law enforcement inquired on at least three separate
11 occasions what the difference was. The defendant in his
12 statement to law enforcement on the morning that he turned
13 himself in was that he had been drinking, that he was in no
14 shape to fight, that it just happened so quick. He further
15 stated that the victim hit him so quick that "I don't know
16 what went on from there." Law enforcement asked him again,
17 "You walked away from one fight, what's different?"
18 Wherein the defendant replied, "I was labeled a snitch on
19 the street. When he hit me I felt kind of personally bad
20 for myself because I had snitched, that was part of the
21 reason. I just didn't feel like fighting anyway, I had
22 been drinking." During the defendant's testimony this week
23 he stated that when Rashad Robinson hit him twice, twice,
24 over on 16th Street that several people intervened and he
25 did not retaliate, to some extent he felt like he deserved

1 it. When questioned about the victim hitting him, he
2 stated that the victim punched him, knocked him to the
3 floor, that he had time to sit up and that the victim was
4 coming at him again and in mind's eye to kill him. The
5 defendant confirmed through Defendant's Exhibit Number 1,
6 that Defendant's Exhibit Number 1 was the position of
7 himself as well as the victim at the time of the shooting,
8 which was in contradiction to some extent from his
9 statement to law enforcement wherein he stated that he was
10 on his back. On cross examination the defendant stated
11 that he fired at the victim because he thought the victim
12 would hit him again. The testimony of the numerous
13 witnesses that testified, if you accept Sindarous Wells's
14 testimony, backing up prior to his testimony this week to
15 his video statement to law enforcement on the morning of
16 this incident, he says that defendant told them at the City
17 Avenue address where this -- where the victim was shot,
18 that the defendant came to that address, told of what
19 happened on 16th Street and that he pulled a gun on Rashad.
20 He further stated in his video statement that there was no
21 fussing, et cetera, that the victim walked into the living
22 room and he heard a shot. Mr. Wells testified this week
23 that the victim hit the defendant, but that he did not see
24 the defendant go down. Ms. Massey, the defendant's mother,
25 testified that when she spoke to the defendant, her son, on

1 the morning after this incident occurred that when she
2 spoke to her son that he was beat up a little but that he
3 was okay. The defendant's sister, Leeanna Crawford,
4 testified that the defendant told her that the victim beat
5 him about the face, that the defendant thought the victim
6 was going to beat him to death and that's why he shot the
7 victim. Lieutenant Hall testified that he observed no
8 knots on the defendant's head, just the lip area, and that
9 there were no other marks that he observed on the
10 defendant. While Ms. Crawford testified there was
11 something on the left side of his head, I believe from his
12 ear to the back side, there were no photographs -- or that
13 she was at least unable to get any photographs of such.
14 Lieutenant Hall testified that he observed no such. Now,
15 while the defendant testified that he was knocked to the
16 ground, such testimony by Malika Harris testified that she
17 never saw the defendant fall, that both the defendant and
18 the victim were standing when the shooting happened. Dr.
19 Ross testified that the trajectory of the bullet was below
20 the victim's right nipple down and to the left, that such
21 was consistent of the testimony of Malika Harris indicating
22 that they were both standing. But the doctor also
23 testified that such trajectory could be consistent with
24 Defendant's Exhibit Number 1 as well. Now, having stated
25 all of that, the law requires that this Court, that this

1 Court review the elements of self-defense to determine
2 whether or not the defendant is entitled to immunity under
3 the act. First, the defendant must be without fault in
4 bringing on the difficulty. This Court believes that based
5 upon the testimony, if the Court only accepted the
6 testimony of the defendant, which it is not required to do,
7 the defendant would be without fault in bringing on the
8 difficulty. However there is varying statements as to what
9 brought it about, and I say that to say that Wells --
10 Sindarous Wells testified that the defendant told them
11 about the incident as stated previously with Rashad and
12 that he had pulled a gun on Rashad. This to some extent
13 could be construed as possibly bringing on the difficulty
14 here. With regards to the second element of self-defense,
15 the defendant must have actually believed he was in
16 imminent danger of losing his life or sustaining serious
17 bodily injury, or he actually was in such imminent danger.
18 As testified -- or excuse me, as stated by the defendant in
19 his video confession there was never such conveyance to law
20 enforcement of such belief that he was in any type of
21 imminent danger of losing his life or sustaining serious
22 bodily injury. Furthermore under the third element of
23 self-defense, if the defendant's defense is based on his
24 belief of immanent danger, a reasonably prudent man of
25 ordinary firmness and courage would have entertained the

1 same belief. In State v. Douglas, there was substantial
2 objective evidence, substantial objective evidence that led
3 the Court to believe that the defendant in that case
4 believed that there was a reasonable belief of imminent
5 danger. There were numerous photographs depicting the
6 defendant's injuries in State v. Douglas wherein the Court
7 found the Protection of Property and Persons Act was
8 applicable. I say that to say the only objective evidence
9 in the case before this Court is that the defendant had a
10 busted lip. Going back to State v. Douglas the Court says
11 there were several photographs showing severe bruising on
12 respondent's upper arms, a black eye, a scraped knee and
13 several marks on his legs and chest. Based upon the
14 numerous witnesses that have testified in this hearing and
15 based upon the varying testimony of such witnesses as
16 stated by the Court and as supported not only in this
17 Court's recitation of the facts or testimony but which the
18 Court heard over two days and supported in the record, this
19 Court believes that the defendant's claim of self-defense
20 as eloquently stated by the Court in State v. Douglas
21 presents a quintessential jury question, and therefore the
22 Court finds that the defendant, Allen Wesley Massey, is not
23 entitled to immunity under section 16-11-440. Thank you.

24 (End of the ruling.)

25

1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case
6 relative to appeal in the Court of General Sessions for
7 Lancaster County, South Carolina, on the 3rd days of April,
8 2015.

9 I do further certify that am neither of kin, counsel,
10 nor interest to any party hereto.

11

12

April 8, 2016

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Michael C. Watkins

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Court Reporter

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER

4 ~~2014-GS-29-00094~~

5 State of South Carolina

6 vs.

7 Allen Wesley Massey

8

9 Lancaster, South Carolina

10 August 3-7, 2015

11 Before the Honorable G. Thomas Cooper

12

13 APPEARANCES

14 For the State: Lisa Collins, Matt Edgerton

15 For the Defendant: Mark Grier

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

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OPENING STATEMENTS

1 MS. COLLINS: Thank you, Your Honor. May it please
2 the Court? This is a case about two men and one gun. It's
3 a case about a man with a gun and a man who did not have a
4 ~~gun, in fact, did not have a knife, did not have any weapon~~
5 whatsoever. But most of all it is a case about how a life
6 can be taken so quickly and so cheaply in the blink of an
7 eye. But what this case is not about, although the issue
8 ~~will be raised~~, I submit the evidence will show what this
9 case is not about is self-defense. And I submit that the
10 evidence presented will show you beyond any reasonable
11 doubt that the State has disproven that this was truly a
12 self-defense case. The two men in this case are the
13 victim, Demarcus Robinson, and the defendant, Allen Wesley
14 Massey. The one gun, the only weapon involved in the
15 ~~incident was the gun of Allen Wesley Massey. It was a gun~~
16 that the defendant had hidden in his pocket, loaded and
17 hidden in his pocket that no one else knew he had. It was
18 his secret, his secret weapon that he pulled out and shot
19 the victim with after he says the victim hit him one time
20 in the mouth. You will hear evidence at the time of the
21 incident the two men were approximately the same height and
22 weight. At the time of his death Demarcus Robinson had
23 just turned 30 in September of 2013, he was about 5-10 and
24 weighed about 220 pounds. At the time of the defendant's
25 arrest he gave his height to the officer as six feet tall

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1 and his weight at approximately 210 pounds, so about 10
2 pounds apart. The defendant was 26 years old at that time,
3 just a few years younger than the victim. Demarcus died on
4 ~~October 1st of 2013; just a little over one hour and a half~~
5 after having been shot by the defendant. He won't be able
6 to come in here and testify and tell you what happened, but
7 the people who were there that night will come in and
8 testify and tell you what they saw. You will hear their
9 testimony and after seeing such a shocking incident you may
10 have some variations in what they saw. You may also hear
11 some variations in what they testify about today and
12 tomorrow and through the course of this trial and in
13 statements that were previously made regarding what they
14 saw. Ultimately you, ladies and gentlemen of the jury, you
15 alone are the judges of the facts of this case and you
16 alone judge the credibility of the witnesses. I know that
17 you will each listen closely and consider carefully the
18 testimony of all of the witnesses presented. The State's
19 witnesses will tell you that at about 3:50 in the morning,
20 the early morning of October 12th of 2013, the defendant
21 entered the home of Malika Harris and Shonettia Hunter at
22 [REDACTED] City Avenue in the City of Lancaster. They will tell
23 you that he had not been invited to come there that
24 morning, he just stopped in when he saw there was a
25 gathering, and when he came in the door he didn't tell

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1 anyone about the loaded gun in his pocket, and that as he
2 waited to play in the card game they were playing he didn't
3 tell anyone about the loaded gun in his pocket. At the
4 ~~time of the shooting the witnesses who stayed at the scene~~
5 to talk to the police and who came forward to talk to the
6 police all said that the defendant entered uninvited, and
7 that the defendant ultimately shot the victim, Demarcus
8 ~~Robinson. No witness immediately after the incident told~~
9 the police anything about seeing the victim hit the
10 defendant one time in the face or mouth. However, you may
11 hear testimony in this trial about the victim, who lost his
12 life that day, hit the defendant one time in the mouth.
13 Although no one told that to the police on the day of
14 incident you may hear testimony to that effect during this
15 ~~trial. But no witnesses have ever told the police or this~~
16 Court that the victim ever hit the defendant more than one
17 time. The testimony you will hear will be that the
18 defendant shot the victim and ran, ran out of the house,
19 left and hid, that he fled from the police and hid and that
20 it was hours later, many hours later, in fact, the next day
21 after the police had searched for him, had put out a be on
22 the lookout notice, a wanted poster, a press release, after
23 all of those efforts had been made to try to apprehend and
24 arrest him, the next day in the afternoon the defendant
25 finally came out of hiding and turned himself into the

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1 police and turned in the gun that he used to kill Demarcus
2 Robinson. You will hear evidence about the statement the
3 defendant gave the police on October 13th, the day after
4 the killing. You will hear how the defendant told the
5 police about an incident earlier in the evening between the
6 defendant and another person, not the victim, but a cousin
7 of the victim's. And you will also hear how the defendant
8 said that the victim hit him one time in the mouth, and
9 that since the defendant had been drinking he didn't feel
10 like fighting, that he was in no shape to fight so he shot
11 Demarcus Robinson and he fled and gave the gun to another
12 person and went into hiding. You will hear how at the time
13 of the statement that the defendant gave to the police he
14 admitted the victim didn't have a weapon. You'll hear that
15 he did not say he feared death from Demarcus, he did not
16 say that he thought Demarcus was going to kill him or to
17 cause serious bodily injury to him. You'll hear him say
18 that Demarcus hit him one time, he fell and Demarcus came
19 towards him with his fist raised, and how at that point he
20 shot the victim. You'll hear him say he shot the victim
21 because he was in no shape to fight, had been drinking and
22 just didn't feel like fighting. No matter how much the
23 defense wants you to believe otherwise, that the case is
24 about self-defense, we submit that the evidence will show
25 that it is not. Because in South Carolina the law of

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1 self-defense has four elements, and at the conclusion of
2 this trial, His Honor, the judge of the law, will instruct
3 you on the law to be applied in this case. We submit that
4 ~~when you examine the evidence presented and examine the~~
5 facts of the case in regard to those elements, that the
6 State will disprove at least one of those elements, but I
7 submit we will disprove all four, we're only required to
8 ~~disprove one.~~ The defendant is charged with murder.
9 Murder is defined as the unlawful killing of another person
10 with malice aforethought. Malice is defined as evil
11 intent. The Judge will instruct you on the law to be
12 applied to this case at the end of the trial. He will
13 instruct you that malice does not have to exist for a set
14 period of time before the killing, it can be the instant
15 ~~before the fatal act. It can be like that. It does not~~
16 have to be a murder that is premeditated for any length of
17 time or planned out at all, it is the killing of another
18 with malice aforethought, malice immediately before the
19 act. The law states that malice can either be implied for
20 expressed, expressed out loud or implied by the actions of
21 the defendant, and the circumstances in which those actions
22 took place. I submit the evidence will show that
23 immediately before he pulled the gun out of his pocket,
24 immediately before he pulled the trigger the defendant had
25 malice towards the victim, that evil intent immediately

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1 preceded the defendant pulling that trigger and killing the
2 victim, and that's why the defendant is charged with
3 murder. At the end of the case the Judge may instruct you
4 ~~on some lesser included charges that you may consider, one~~
5 of those charges may include manslaughter. Once you decide
6 the facts of the case you will apply the law as the Judge
7 instructs you. I submit that it will be clear that the
8 defendant shot Demarcus Robinson, and that Demarcus
9 Robinson died as a result of that shooting, and that the
10 defendant acted with malice aforethought. I submit the
11 evidence will show that the defendant was on edge because
12 of that incident that happened earlier that day with the
13 cousin of the victim's, and how the defendant insisted on
14 telling the victim about the incident and was nervous about
15 ~~telling the victim about that incident but insisted on~~
16 doing so, and in the moments after Allen Massey told the
17 defendant about the incident, that anger rose up in the
18 defendant, malice, and manifested itself with the shooting
19 of the victim. The victim, a friend who had never harmed
20 the defendant, a friend who had been -- a man who had been
21 a friend to the defendant, a man with whom the defendant
22 had never had any disagreement or quarrel. At the very
23 least the defendant is guilty of voluntary manslaughter,
24 which is simply the unlawful killing of another person
25 period, without any malice at all, the unlawful killing.

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1 And His Honor will instruct you on the law to be applied to
2 determine that. If you find that the defendant killed the
3 victim and that he did so unlawfully, then the defendant
4 ~~should be found guilty of voluntary manslaughter. The~~
5 defendant is charged with a second charge and that's
6 possession of a firearm during the commission of a violent
7 crime. His Honor will tell you that murder is defined as a
8 violent crime in South Carolina. So the defendant is
9 charged with having committed murder, the violent crime,
10 while in possession of a firearm as opposed to just choking
11 someone or not using a firearm. I submit the evidence will
12 be clear that the defendant is guilty of that charge.
13 Ladies and gentlemen, this is a case where the defendant
14 acted with malice aforethought. He killed another person
15 ~~where another man of reasonable firmness and courage would~~
16 not have done so. He killed another person after, his
17 words, being hit one time in the mouth. There were many
18 alternatives open to the defendant. He didn't give the
19 others in the room time to intervene, he didn't pull out
20 the gun and show the victim that he had it before he fired
21 it, he gave no warning shot, no warning at all. He shot
22 and he killed Demarcus Robinson, and he took the life of
23 Demarcus Robinson and then he ran out into the dark of the
24 night and hid from the police. But the truth will not
25 hide. The truth shines like a light in the darkness and

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1 the truth only asks to be seen and to be heard. And at the
2 end of the case His Honor will ask you to return a verdict
3 that speaks the truth because, in fact, that is what the
4 word verdict means. I submit that after consideration of
5 all of the evidence you will find the defendant guilty,
6 guilty of the murder of Demarcus Robinson and guilty of
7 possessing a firearm during the commission of a violent
8 crime. Thank you for being the jury in this case, the
9 judges of facts in this case. Thank you all for leaving
10 your homes and your jobs and your families to bring justice
11 to this courtroom today. Thank you.

12 MR. GRIER: Please the Court?

13 THE COURT: Mr. Grier?

14 MR. GRIER: Ms. Collins? Ladies and gentlemen of the
15 jury, thank you for your participation in this proceeding.
16 It's necessary for things to get resolved and without you
17 as the Judge has -- I would like to join the Judge in
18 telling you how essential your service is. Next to armed
19 service in a conflict that might be the most important
20 thing that we do as citizens, because folks that are
21 accused of crimes have their right to be -- have their day
22 in court, and as citizens of this state you have a right to
23 be defended and protected from crime, and we have the best
24 system in the world for resolving those issues. When you
25 came here today I think you probably maybe had some

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1 apprehension about walking into a place that you're
2 unfamiliar with and that would be human nature, maybe
3 you're not, maybe you weren't, but I think I probably would
4 ~~have and I think I did the first time I ever served as a~~
5 juror, which was in law school. I didn't know what to
6 expect, I didn't know anything -- I had never practiced
7 law, I hadn't been in the courtroom. But I had somebody to
8 ~~guide me through and that was the bailiff, y'all met Mr.~~
9 ~~Carl and he's your guide around this courthouse and to help~~
10 you find your way around the courthouse. Well, a lawyer is
11 really just a guide through a system that's complicated and
12 difficult and fraught with danger to actually someone who
13 doesn't understand the system. And so a lawyer in a
14 criminal proceeding and in any proceeding is really just a
15 ~~guide through that process. And I'm just a guide for Mr.~~
16 Massey through a process through -- without a guide he
17 would be at the mercy of the process and the procedure, and
18 so that's my role is to guide him through the process. Ms.
19 Collins said quite a few things that I do agree with, and
20 certainly it's uncontested that Allen Massey and Demarcus
21 Robinson -- I think you will hear him called Marcus
22 probably more often -- had known each other for many, many
23 years, and their relationship had been without
24 difficulties. They had never fought, fussed. There had
25 been some tensions between the families because of an

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1 incident that Mr. Massey had been involved in earlier, and
2 I think Ms. Collins alluded to an incident earlier in the
3 evening. But Allen Massey had no reason to -- when he
4 ~~walked into the home where Mr. Robinson died~~, he went there
5 because it was his cousin's house, he'd spent a lot of time
6 around those cousins -- around a cousin and those good
7 folks, he was welcomed there, they all had a good time,
8 there was some drinking going on, they were playing cards.
9 I think he is going to testify that, you know, there was no
10 reason to sense that anything was going to go wrong that
11 evening. But something did go wrong, and the evidence will
12 show you that what went wrong is that Demarcus Robinson
13 struck Mr. Massey, struck him violently enough to knock
14 him, and then immediately charged in with his fist balled
15 up to strike him again. Mr. Massey, the evidence will show
16 he did not shoot Mr. Robinson with malice, he shot him
17 legally in self-defense. And, of course, this will all --
18 there will be -- as Ms. Collins told you, there will be
19 some contradictions, there will be a lot to sort out and
20 you've got a task ahead of you. But, you know, I'm
21 usually -- when I argue in my opening I take issue with the
22 fact that my clients are called defendants in the first
23 place, because the burden of proof is on the State and the
24 defense isn't required to do anything. We're not required
25 to present any kind of evidence, we're actually not

OPENING STATEMENTS

1 required to do anything. So the State is the one that has
2 the burden of proof to prove beyond a reasonable doubt the
3 guilt of the defendant, and so I think that the State is as
4 much-in-a-defensive-posture-because-they-have-to-defend
5 their prosecution, which has the intention in some way of
6 impairing the freedom of my client. But, you know, in this
7 case I think my client -- it's appropriate to call my
8 client a defendant because that's exactly what he did in
9 this case, he defended himself after being struck violently
10 without knowing it was coming, sucker punched it's often
11 called, and then having -- immediately having the person
12 that struck him towering over him, coming at him to harm
13 him again. You're going to hear compelling evidence about
14 Mr. Robinson and, you know, it's hurtful to say it, but he
15 had the reputation for being aggressive, and in fact his
16 nickname was knockout king. He had -- you'll hear
17 evidence -- and it's up to you whether -- you decide
18 whether you believe it or not -- that he'd been involved in
19 an attempt to intimidate someone earlier in the evening at
20 another party. And that -- but notwithstanding his
21 reputation, Mr. Massey lives in the same neighborhood as
22 Mr. Robinson, and, you know, that neighborhood might be
23 different than most of the neighborhoods that we live in.
24 There are dangers in that neighborhood that Mr. Massey will
25 testify that he had experienced and was his reason for

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1 arming himself. Nobody suggests that anything -- that
2 there was anything that anybody could see where this was
3 coming, that Mr. Massey in some way came in there with the
4 ~~intent to do anything. Whatever happened happened,~~ and it
5 happened quick. And when you hear Mr. Massey's statement,
6 yeah, he didn't realize -- at the time he gave his
7 statement he didn't know he was going to need to state the
8 law, that he felt in fear of serious bodily injury, you'll
9 see that. It's common sense that someone in his position
10 would have had a very good reason to fear serious bodily
11 injury from the evidence that is presented in this case.
12 And you'll see that, yeah, there are contradictions from
13 the State's witnesses, the ones that -- the witnesses that
14 don't say that Mr. Massey was struck before Mr. Robinson
15 was shot, the contradictions in the State's case, and that
16 will all be laid before you. Now, we do have a genius
17 system, the Judge has talked eloquently about it. I don't
18 know how many of you have been on juries, I guess I should
19 remember because I think you were asked that question, but
20 at any rate, our system is a -- the design of our system is
21 genius. The State needs to protect us, and the State --
22 our system gives the State the tools to protect us. Our
23 state -- our government needs to protect the individual
24 from the State, that was the experience that brought about
25 our constitution is that the individual that didn't have

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1 access to the King, or to the powerful in Old England
2 didn't have justice quite frankly. And a large part of the
3 experience of the founders of our country and the
4 constitution, while they didn't make justice equal for
5 everybody when they did it, they did take a step towards
6 building a system that could get there, and they did it by
7 establishing the principles of the burden of proof being on
8 the State to prove beyond a reasonable doubt to be able to
9 impinge upon the freedom, to take away the freedom of
10 someone that's accused of a crime. But they gave the State
11 the tools to prosecute a case when one is accused of a
12 crime. This isn't the first time we have been in court,
13 ladies and gentlemen of the jury. In fact, there have been
14 really three other proceedings, and one of them is not one
15 with a lawyer, but the arrest is a legal proceeding where
16 the State has to have some basis for arresting somebody,
17 and it's reviewed and they have to get a warrant unless they
18 witness it and that sort of thing. But the State -- and
19 that warrant can be challenged at a preliminary hearing,
20 and at that proceeding the evidence is in the light most
21 favorable to the State. In other words, the State -- the
22 burden of proof is on the defendant at that point. And
23 then you have a grand jury proceeding, which I think y'all
24 saw the grand jury report today, the grand jury reviews
25 cases. And simply put, again, that's interpreted in the

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1 light most favorable to the State, the evidence presented.
2 In a trial the tables are turned in terms of the burden of
3 proof and the light most favorable. In a trial when the
4 ~~State has the burden of presenting all of the evidence, and~~
5 if there are uncertainties they -- I believe the Judge will
6 tell you that those uncertainties are to be resolved in a
7 light most favorable to the State, as opposed to prior to
8 today everything is resolved in the light most favorable --
9 ~~excuse me -- in today's proceeding it must be resolved in~~
10 the light most favorable to the defense, I said the State,
11 pardon me. The Judge told you the presumption of
12 innocence. As Mr. Massey sits here today he is presumed
13 innocent and only you can take away that cloak of innocence
14 if the State proves beyond a reasonable doubt that he's
15 guilty. Now, what is a reasonable doubt? I believe the
16 Judge will give you jury instructions at the closure of all
17 of the evidence and I believe he will tell you in South
18 Carolina that a reasonable doubt is the kind of doubt that
19 would cause one to hesitate to act. I think he'll further
20 tell you that based upon our case law that if you are
21 firmly convinced of the defendant's guilt you must convict
22 him. However, if you find the real possibility of
23 innocence then you must acquit him. Now, this is a
24 criminal case, the evidence must be beyond a reasonable
25 doubt, not to be confused with a civil case. In a civil

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1 case merely a preponderance of the evidence, more likely
2 than not is the burden of proof that must be shown to take
3 away somebody's money. When freedom is at stake the stakes
4 are much higher, because if you take away my freedom you
5 take away my ability to make money, you take away
6 everything, my right to pursue happiness when you take away
7 my freedom, and therefore the burden of proof is much
8 higher and it's beyond a reasonable doubt. Mr. Allen
9 Massey submits to you that he acted in self-defense and the
10 State must prove that he didn't, and must prove it beyond a
11 reasonable doubt. I believe that when you've heard all of
12 the evidence that you will find Mr. Massey acted in
13 self-defense and you will return a verdict of not guilty.
14 Thank you.

15 THE COURT: All right. Counsel, call your first
16 witness.

17 MS. COLLINS: State's first witness is Janice Pat
18 Ross.

19 The witness, JANICE EDWARDS ROSS, was first duly sworn
20 And testified as follows:

21 DIRECT EXAMINATION

22 BY MS. COLLINS:

23 Q Will please state your name?

24 A Janice Edwards Ross.

25 Q What is your occupation?

JANICE ROSS - DIRECT

- 1 A I'm a forensic pathologist.
- 2 Q What is a pathologist?
- 3 A A pathologist is a physician/doctor. I got
- 4 my Bachelor's Degree from the University of South Carolina
- 5 and my MD from Upstate Medical Center in Syracuse, New
- 6 York. I did further study in the field of pathology,
- 7 which is the study of disease. We learned how to diagnose
- 8 cancers and other infections type of things with using the
- 9 microscope and the laboratory of the hospital. We also
- 10 learned how to do an autopsy to find a cause of death. A
- 11 forensic pathologist is further trained in a forensic
- 12 autopsy to identify and document patterns of injury to
- 13 secure evidence for a court of law.
- 14 Q So your specialty is forensic pathology?
- 15 A Yes.
- 16 Q And you've told us a little bit about your education
- 17 to become a doctor. When did you get your medical degree?
- 18 A 1972.
- 19 Q Can you tell us about the training you received to be
- 20 a doctor after receiving your medical degree, or in the
- 21 course of your medical degree?
- 22 A It would be a four plus year training in pathology.
- 23 Q Are you licensed to practice medicine in South
- 24 Carolina?
- 25 A Yes.

JANICE ROSS - DIRECT

1 Q Are you certified in the field of forensic pathology
2 as a specialty?

3 A Yes.

4 Q How many autopsies have you performed in your career,
5 Doctor?

6 A Approximately 9,000.

7 Q Have you ever been qualified to testify as an expert
8 witness in a court of law in the field of forensic
9 pathology?

10 A Yes.

11 Q How many times have you been determined to be an
12 expert witness in a court of law in that field?

13 A In the State of South Carolina about 180 times.

14 MS. COLLINS: Your Honor, at this time I would like to
15 offer Dr. Ross as an expert witness in the field of
16 forensic pathology.

17 THE COURT: Any voir dire or objection?

18 MR. GRIER: No, Your Honor, no challenge.

19 Q Did you perform an autopsy on the body of Demarcus
20 Robinson on October 13th of 2013?

21 A Yes, I did.

22 Q At approximately what time?

23 A 9:30 in the morning.

24 Q Did you perform that autopsy at the request of the
25 Lancaster County Coroner, Michael Morris?

JANICE ROSS - DIRECT

1 A Yes.

2 Q And where did you perform the autopsy?

3 A They transported the body to us in the morgue at

4 Newberry County Memorial Hospital.

5 Q The body of the deceased was brought to you by the
6 coroner's staff?

7 A Yes.

8 Q Did they also give you copies of the medical records

9 of the victim and an image of the x-ray of the victim's

10 chest?

11 A I don't recall that.

12 Q Would you like to refer to your file?

13 A We do our own x-rays in the --

14 Q Oh, you do your own x-rays?

15 A Yes.

16 MS. COLLINS: Ask that this be marked as State's

17 Exhibit 4.

18 MR. GRIER: No objection.

19 Q Dr. Ross, I would like to show you what has been
20 marked as State's Exhibit 4. Is that a photograph of the
21 x-rays that y'all performed, or is that from the hospital?

22 A No. This is from the hospital, yes.

23 Q Would you have utilized that in your examination of
24 the deceased's body?

25 A We would have. They don't always bring us the

JANICE ROSS - DIRECT

1 x-rays, the hospitals don't generally let those x-rays
2 out. If we have anything that looks like a bullet wound
3 we'll do our own x-rays.

4 Q Did you do your own x-ray in this case?

5 A Yes.

6 Q Does that exhibit appear to be an accurate reflection
7 of where the bullet ended in the deceased's body?

8 A Yes.

9 MS. COLLINS: Your Honor, I would move State's Exhibit
10 4 into evidence at this time.

11 THE COURT: Without objection?

12 MR. GRIER: Without objection.

13 (The x-ray was received as State's 4.)

14 Q Did a member of law enforcement come to the autopsy?

15 A Yes.

16 Q Was there any evidence recovered from the victim's
17 body during the autopsy that you placed in an evidence bag
18 and gave to that law enforcement officer?

19 A The toxicology blood work, et cetera, and the bullet.

20 Q There was one bullet retrieved from the victim's body?

21 A Yes.

22 Q And the bodily fluids that you retrieved from the
23 victim's body so they could be analyzed for toxic
24 substances?

25 A Correct.

JANICE ROSS - DIRECT

- 1 Q Such as alcohol or drugs?
- 2 A Correct.
- 3 Q Dr. Ross, did you closely examine the body of the
- 4 victim?
- 5 A Yes.
- 6 Q Do you know the victim's date of birth as reflected on
- 7 your report?
- 8 A We had it as [REDACTED].
- 9 Q The date of injury?
- 10 A Was October 11, 2013.
- 11 Q Was it the 11th or the 12th?
- 12 A It had to be the 12th, I'm sorry.
- 13 Q What was the date and time of the autopsy?
- 14 A October 13th of 2013.
- 15 Q You prepared a report at the end of your examination
- 16 of the victim; is that correct?
- 17 A Yes.
- 18 Q On that report did you reflect that he died on a
- 19 certain date and time?
- 20 A Yes.
- 21 Q And what is that reflected on your report?
- 22 A Well, he died on October 12th of 2013 at 5:28 a.m.
- 23 Q Was there a clerical error at first indicating 10/11
- 24 rather than 10/12?
- 25 A Yes. On page two the correct date is in the case

JANICE ROSS - DIRECT

1 history.

2 Q Very good. Thank you. What was the height of the
3 deceased?

4 A We measured him at 70 inches, which is five feet, 10
5 inches.

6 Q The weight?

7 A We don't have a scale in the morgue, but we estimated
8 the weight as 220 pounds.

9 Q Dr. Ross, you've testified that you examined the body
10 of the victim closely, correct?

11 A Yes.

12 Q Did you examine the hands of the deceased?

13 A Yes.

14 Q Did you observe any injuries whatsoever to the hands
15 of Demarcus Robinson?

16 A No, I did not.

17 Q Were there any marks at all to his knuckles?

18 A No.

19 Q There were not?

20 A No, there were not.

21 Q What injuries did you observe to the body of the
22 victim?

23 A There was an entrance gunshot wound in the right
24 chest.

25 Q Was that the only bullet wound?

JANICE ROSS - DIRECT

1 A Yes.

2 MS. COLLINS: I would ask these be marked as five and
3 six.

4 MR. GRIER: No objection.

5 Q Dr. Ross, I would like to show you what's been marked
6 for the record first as State's Exhibit 5 and then we'll
7 talk about State's Exhibit 6. Looking at State's Exhibit
8 5, does that appear to be a photograph of the bullet wound
9 to the body of the victim as you observed it when you
10 performed the autopsy?

11 A Yes.

12 Q Is that a true and accurate reflection of his injury?

13 A Yes.

14 Q How about the next exhibit, Exhibit 6? Does that also
15 appear to be a photograph of the bullet wound just under
16 the right nipple of the victim?

17 A Yes.

18 Q And that's a true and accurate depiction photograph as
19 well of that injury?

20 A Yes.

21 MS. COLLINS: Your Honor, I would move State's
22 Exhibits 5 and 6 into evidence at this time?

23 THE COURT: Without objection.

24 (The photos were received as State's 5 and 6.)

25 Q You describe in your report, I believe, an exact

JANICE ROSS - DIRECT

1 measurement of how far down the body of the victim and how
2 far over the bullet wound is; is that correct?

3 A Yes.

4 Q Tell us about that.

5 A We measure the bullet wounds from the top -- from the
6 top of the head and the distance from the middle of the
7 body. This was 21-inches below the top of the head and
8 five and a half inches to the right of the midline.

9 Q Was there an exit wound?

10 A No.

11 Q The bullet was still in the body?

12 A Correct.

13 Q Could you observe when you opened up the body cavity
14 of the victim the trajectory path of the bullet?

15 A Yes.

16 Q Can you tell us, what was the trajectory path of the
17 bullet?

18 A The bullet went from right to left, from front to
19 back and downward. It went through the diaphragm, through
20 the liver, through part of the small intestine, through
21 the left kidney and it was found in the tissue around the
22 left kidney.

23 Q When you say the bullet went from right to left, are
24 you saying from the -- on the victim's body from right to
25 left or as you're standing there looking at the victim?

JANICE ROSS - DIRECT

1 A That's on the victim's body.

2 Q Thank you. So from right to left, upward to downward
3 and from front to back?

4 A Correct.

5 Q Dr. Ross, would it be of assistance to you in showing
6 the jury that trajectory if you could show us those three
7 right to left, up and down and then forward to back by
8 using a dowel rod and one of our assistants?

9 A Yes.

10 MS. COLLINS: Ask the Court's indulgence. Mr.
11 Edgerton, will you come forward please?

12 Q Dr. Ross, will you step down, please?

13 MR. GRIER: Your Honor, I object to this. There's no
14 foundation for the angle or the trajectory and she's going
15 to speculate on a trajectory?

16 THE COURT: I don't think she's speculating, she's
17 testifying as to what she saw. Overruled.

18 Q If you would, using that dowel rod, Dr. Ross -- and
19 again, you said it would be of assistance to you in
20 explaining that trajectory to the jury to do this; is that
21 right?

22 A Yes.

23 Q Can you show us again where the entrance would have
24 been?

25 A Right about here.

JANICE ROSS - DIRECT

1 Q And that was a few inches under the deceased's right
2 nipple, correct?

3 A Correct.

4 Q And then show us the trajectory path as it went
5 through the body of deceased.

6 A Well, it's going downward towards the left and
7 slightly backward.

8 Q Would it be of assistance if Mr. Edgerton turned his
9 body now in a different position toward the jury to show
10 the other angle of -- or not?

11 A I'm not sure.

12 Q Well, just tell us -- because it's been a long time
13 since I have had science where the various organs are of
14 the body that the bullet passed through that you described.

15 A Well, right at the bottom of where the rib cage is is
16 where the diaphragm is, so it went through the diaphragm.
17 The diaphragm provides the stomach cavity from the chest
18 cavity, so the bullet went right in through the diaphragm,
19 and the liver is on the right side of the body, so the
20 liver is right underneath the diaphragm. It goes through
21 the liver and downward in the -- the kidney is more
22 towards the back, so the kidney in the left is where the
23 bullet ended up.

24 MS. COLLINS: And, Mr. Edgerton, if you'll turn toward
25 the jury and face the Judge.

JANICE ROSS - DIRECT

1 Q I would just ask you, when the bullet went through the
2 body, did it stay the same distance from the front of the
3 body or you described it moving back towards?

4 A Somewhat backwards, yes.

5 MS. COLLINS: You can go ahead and have a seat again,
6 please, Dr. Ross. Thank you.

7 Q Dr. Ross, you've indicated that the x-ray film there
8 shows where the bullet ended up there near the left kidney
9 and the connecting tissue; is that right?

10 A Correct.

11 Q Can you tell us at what rib level, which rib the
12 bullet ended at? Is that something that y'all note?

13 A We talk about it in the morgue, I don't know that I
14 documented it. But it would be about below rib number ten
15 on the left.

16 Q Okay. Is it noted how far below the left nipple,
17 then, where the bullet would have ended up? You've
18 testified about the inches below the right nipple where it
19 entered, so I'm wondering does it note where it ended up in
20 terms of an angle where it ended up near the kidney?

21 A I don't have that, no.

22 Q All right. What was the result of that single gunshot
23 wound to the victim?

24 A It was excessive bleeding inside the abdominal cavity
25 of about two liters of blood.

JANICE ROSS - DIRECT

1 Q Did he bleed to death internally?

2 A Yes.

3 Q How much blood was there in the body cavity of the
4 victim when you opened up his body for autopsy?

5 A 2,000 CC's, 2 liters in the abdomen.

6 Q Approximately how many liters does the human body
7 normally have in them?

8 A It depends on the size of the person, but this would
9 be at least a third of the total volume.

10 Q And therefore enough to cause death?

11 A Yes.

12 Q Was the gunshot wound therefore the cause of death of
13 the victim?

14 A Yes.

15 Q Dr. Ross, do you have an expert opinion to a
16 reasonable degree of medical and scientific certainty of
17 the cause of death of Demarcus Robinson?

18 A Yes, I do.

19 Q What is that opinion?

20 A It's exsanguination, which means to bleed out due to
21 the laceration of the liver and the kidney due to the
22 gunshot wound to the chest.

23 Q And to bleed out means the draining of the blood?

24 A Outside of the circulatory system into the body
25 cavity.

JANICE ROSS - DIRECT

1 Q So it doesn't necessarily mean there was a lot of
2 blood on the scene or on the outside of the victim's body,
3 it is just out of where it should be within the body; is
4 that correct.

5 A Correct.

6 Q You've already stated that you prepared a report of
7 your autopsy and conclusions, correct?

8 A Yes.

9 Q And you provided that report to the coroner's office?

10 A Yes.

11 MS. COLLINS: Ask that this be marked as State's
12 Exhibit 7.

13 MR. GRIER: I have a copy of that. No objection.

14 Q Dr. Ross, I'm going to show you what's been marked now
15 as State's Exhibit 7, and ask you, is that a true and
16 correct copy of your autopsy report that you prepared after
17 the autopsy of Demarcus Robinson?

18 A Yes, it is.

19 MR. GRIER: I would move that exhibit, Exhibit 7, into
20 evidence at this time.

21 THE COURT: Without objection.

22 (The pathologist report was received as State's 7.)

23 Q Dr. Ross, what impact, if any, on the trajectory path
24 of the bullet would CPR have? If CPR is performed on a
25 victim after they'd been shot, would that force of CPR

JANICE ROSS - DIRECT

1 change the trajectory path before you had a chance to
2 analyze it upon the victim's death?

3 A No, it would not.

4 Q And why is that?

5 A Because the last -- the bullet path and the
6 laceration of the organs stay the same.

7 Q So the speed and force of the bullet cutting through
8 the body tissue would not be altered by the use of CPR?

9 A Correct.

10 Q Did you observe any efforts to provide medical care to
11 the victim prior to death?

12 A Yes.

13 Q Would any of that attempted medical care have impacted
14 the trajectory path?

15 A No, it would not.

16 Q Is the trajectory path consistent with the shooter and
17 the victim both standing and the gun pointing downward and
18 across the victim's chest?

19 A It could be. Bullets go straight, so you know, I
20 can't -- it doesn't tell me where the -- what positions
21 everybody was in.

22 Q Again, you've testified you drew the specimen for
23 toxicology and analysis and sealed them and gave them to
24 the law enforcement officer so they could be sent for
25 analysis; is that correct?

JANICE ROSS - DIRECT

1 A Correct.

2 Q You stated at the end of your report that if those
3 toxicology results are positive for any alcohol or drugs,

4 that you reserve the right to change your opinion, do you
5 recall that?

6 A Correct, yes.

7 Q Did you receive the toxicology report from SLED?

8 A Yes.

9 Q And after having reviewed that report, did it change
10 your findings in any way regarding the cause of death of
11 Demarcus Robinson?

12 A No, it did not.

13 MS. COLLINS: One moment, please.

14 (Break in proceedings.)

15 MS. COLLINS: Thank you, Dr. Ross. Please answer any
16 questions of Mr. Grier.

17 THE COURT: Cross examination.

18 CROSS EXAMINATION

19 BY MR. GRIER:

20 Q Dr. Ross, I had reviewed the autopsy and I noticed,
21 and I think you just testified, that the point of entry of
22 the bullet into Mr. Robinson's body was 21 inches below the
23 top of the head.

24 A Correct.

25 Q And what was the distance of the -- where the bullet

JANICE ROSS - CROSS

1 was found from the top of the head?

2 A I did not measure that. If it existed the body we
3 would measure that.

4 Q Well, you have an x-ray and you examined the body and
5 you knew the bullet was out -- and you got the bullet out?

6 A Yes.

7 Q All of those. And, you know, the point where -- you
8 determined where the bullet was at, correct?

9 A Correct.

10 Q To remove it. So when you were at the point of
11 removing the bullet, would it not have been a simple matter
12 to have measured it to the top of the head?

13 A Yes, it would.

14 Q And had that been done would we know the true
15 trajectory of the bullet?

16 A Bodies bend.

17 Q Excuse me, avoid you having to go through that. But
18 this assumes the body was erect, correct?

19 A Correct.

20 Q Okay. How would there be a difficulty with measuring
21 the top of the head to where the bullet was in relation to
22 the body?

23 A It wouldn't have been. Generally speaking it goes
24 downward, backward and right to left. If you're -- some
25 people go all out to identify the angle of the bullet, but

JANICE ROSS - CROSS

1 if the body is turning or bent over then it's going to
2 change.

3 Q Well, you had a lot of confidence in showing the
4 trajectory like that, didn't you?

5 A That's the trajectory of the bullet in a person
6 standing up, that doesn't tell me what position the body
7 was in when he was shot.

8 Q Absolutely it doesn't. But it purports to show where
9 the bullet entered the body and where it ended up, does it
10 not purport to showing that, when you're doweling this
11 thing? Is that not what you're purporting to do?

12 A Yes.

13 Q Okay. With an erect body.

14 A Yes.

15 Q And so if you don't know the distance of the entry and
16 the distance where the bullet is at, how does this tell us
17 much of anything?

18 A It tells you the direction that the bullet went.

19 Bullets go straight.

20 Q We know that it went -- had a downward trajectory is
21 really all we know, don't we? We don't know if the angle
22 was like that to an erect body, we don't know the angle, do
23 we.

24 A Yes, we do. It goes --

25 Q How?

JANICE ROSS - CROSS

1 A -- downward, right to left and then backward.

2 Q Okay. Well, in that erect body -- assuming a line

3 across where the bullet was found, and assuming the downward

~~4 trajectory being another line that crosses the line~~

5 where -- at the level the bullet was found, what's the

6 angle between those two lines?

7 A I don't have an angle.

8 Q -- So you don't know what the trajectory is, do you?

9 A Yes, you do. You can tell where the bullet went.

10 Q Well, why can't you give me an angle then?

11 A We don't measure angles. We don't do like 90

12 degrees or 45 degrees or whatever, because in the end it

13 doesn't tell me whether the body was bent over or not.

14 Q Well, okay. When we talk about a trajectory we're

~~15 talking about where the gun was at and pointed and what~~

16 direction it was pointed at the time it was discharged,

17 correct, or at the time it entered the body?

18 A Correct.

19 Q And if we don't know what those two points are, how

20 can we possibly figure out what that --

21 A You can see where the two points are.

22 Q Okay. Well --

23 A This being that the barrel of the gun had to be to

24 the victim's right and above the chest and slightly

25 forward.