

23154

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
R. Markley Dennis, Circuit Court Judge

ANDERS
ORIGINAL
NO DEF. BRIEF
VOLUME I OF II
RECEIVED
JAN 24 2017
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRANDON RASHAD MARSHALL,

APPELLANT

APPELLATE CASE NO 2016-000870

RECORD ON APPEAL

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**THIS EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT #39 (DVD)**

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	CASE NO. 2014-GS-10-052621
	)	2014-GS-10-052622
PLAINTIFF,	)	
	)	
VS.	)	TRANSCRIPT OF RECORD
	)	
BRANDON R. MARSHALL,	)	
	)	
DEFENDANT.	)	
	)	

April 4, 2016 to April 7, 2016

Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis, Jr.; and a Jury.

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

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For the Plaintiff

Melisa W. Gay, Esquire
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I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

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1 (WHEREUPON, JURY QUALIFICATION was had as follows:)

2 THE COURT: The morning has been spent productively, I
3 know. And you are probably as frustrated as anybody could
4 be with this process, and I appreciate your patience and
5 your indulgence to some extent.

6 The process now continues. As you know you were
7 qualified generally. And now there is a second
8 qualification that will occur in a case that we need -- in
9 which we need your assistance.

10 My name is Markley Dennis. I am one of the circuit
11 court judges in the Ninth Circuit. And I have been assigned
12 this week to conduct a term of General Sessions court which
13 is criminal court. And we have a criminal dispute in which
14 we need your assistance in resolving.

15 I am going to identify -- I am going to ask you some
16 questions. These questions really are as I am sure you were
17 explained they really don't have any correct answers. They
18 are designed and offered to really help you know a little
19 bit about this dispute so that you can make a determination
20 as to whether or not you can be a fair and impartial judge
21 with me.

22 And you having the sole responsibility of deciding the
23 true facts of the dispute. My responsibility being to
24 preside over the trial and to give you the law. And we work
25 together to resolve the dispute.

1 So they are really designed to help you as to whether
2 or not this case is one in which you have that ability to be
3 that fair and impartial person and fair and impartial judge.

4 First I want to introduce the parties. Obviously in
5 this -- any criminal case in the State of South Carolina one
6 of the parties will be the State of South Carolina. They
7 are the party that is making the claim.

8 The case in this case is being made against Mr. Brandon
9 Marshall. He has been accused in two documents that I am
10 holding in my hand. And they are what they appear to you.
11 They are pieces of paper. There are called indictments.
12 And it is really just a formal charge. It is not evidence,
13 and you shouldn't consider it as evidence.

14 But he is accused of committing two criminal offenses;
15 one murder, the other possession of a deadly weapon during a
16 violent crime.

17 First I would like to introduce to you Mr. Marshall.
18 He is seated at the table to my left in the yellow shirt.
19 Mr. Marshall, if you will please stand and face the jury
20 panel for me.

21 (WHEREUPON, Mr. Marshall complied.)

22 THE COURT: Thank you, sir. You may be seated.

23 Are there any members of the jury panel related by
24 blood or marriage, have any business dealings with, socially
25 or casually acquainted with, have any connection with Mr.

1 Marshall; if so, please stand.

2 THE COURT: Thank you. There are none.

3 Mr. Marshall is represented in this matter by Ms. Gay.
4 If you will identify yourself and anyone who will be
5 assisting you, please.

6 MS. GAY: May name is Melisa Gay. I work in the Tri-
7 county area. This is Robert Blanchard. He works with me
8 and will be in and out with me in this trial ---

9 THE COURT: Okay.

10 MS. GAY: --- to represent Mr. Marshall.

11 THE COURT: Thank you.

12 Are there any members of the jury panel related by
13 blood or marriage, have any business dealings with, socially
14 or casually acquainted with, ever been represented by Ms.
15 Gay or Mr. Blanchard; if so, please stand.

16 (WHEREUPON, no one stood.)

17 THE COURT: Thank you. There appear to be none.

18 The State of South Carolina is represented throughout
19 our state by circuit solicitors. And the circuit solicitor
20 in this circuit is Ms. Scarlett Wilson.

21 Are there any members of the jury panel related by
22 blood or marriage, have any business dealings with, socially
23 or casually acquainted with, have any connection with Ms.
24 Wilson, please stand; or ever been represented by her.

25 (WHEREUPON, no one stood.)

1 THE COURT: Thank you. There are none.

2 As you can imagine each solicitor in their 16 circuits
3 have persons employed, lawyers employed, who assist in
4 performing the function of prosecuting cases in this state.
5 And we have one here.

6 Mr. Osborne is the solicitor -- assistant solicitor
7 helping prosecute this case. If you will identify yourself
8 and anybody who will be assisting you, Mr. Osborne.

9 MR. OSBORNE: Yes, sir. My name is David Osborne. I
10 am an assistant solicitor or prosecutor. This is Mark
11 Bourdon. He is also a prosecutor in our office. We work
12 for Scarlett Wilson.

13 This is Detective Paul Krasowski. He works for the
14 Charleston Police Department. He is the case agent in this
15 case.

16 And this is one of our investigators, Ray Haupt. He is
17 going to be helping us throughout the trial.

18 THE COURT: Are there any members of the jury panel
19 related by blood or marriage, have any business dealings
20 with, socially or casually acquainted with, any of the
21 persons that Mr. Osborne has identified or ever been
22 represented by Mr. Bourdon or Mr. Osborne; if so, please
23 stand.

24 (WHEREUPON, no one stood.)

25 THE COURT: Thank you. There appear to be none.

1 I am going to identify a number of persons, ladies and
2 gentlemen; and if you are related by blood or marriage to
3 any of these individuals, have any business dealings with
4 any of them, socially or casually acquainted with any of
5 them, you need to stand and share that information, please.

6 The following are from the Charleston Police
7 Department. Is that correct, it is the agency involved?

8 MR. OSBORNE: Yes, Your Honor.

9 THE COURT: Okay. Richard Burckhardt, Officer Edward
10 Henderson, Officer Karl Shehan or Shehan, Officer Phil Dean,
11 Crime Scene Technician Jeff Miller, Detective Paul
12 Krasowski, Jennifer Wooley.

13 The following persons who are connected with South
14 Carolina Law Enforcement, also known as SLED: Analyst Chad
15 Smith, Analyst Lieutenant Jennifer Stone Nates, Forensic
16 Serologist Ashley Bell, Analyst Samuel Stewart.

17 Also Doctor Nicholas Batalis from MUSC. And the
18 following individuals: Tylonda Lacem or Lacem-Grier, Jerome
19 Johnson, Ashley Butler, Lanette Smalls, Chris Williams.

20 Also the following from SLED: Dorris Yarbrough,
21 Jennifer Aycock, Amy Stephens, Tyler Sturkie.

22 Also Crime Scene Technician Sarah Gladwell with the
23 Charleston Police Department and Sergeant Craig Kosarko.

24 Any of those persons?

25 JURY PANEL MEMBER: Your Honor, I have been employed by

1 MUSC; and I don't know the individual whose name you spoke,
2 but I just wanted to bring that to you attention.

3 THE COURT: The fact that you are employed with the
4 same agency or institution would that influence you in this
5 case, sir?

6 JURY PANEL MEMBER: It would not.

7 THE COURT: If Doctor Nicholas Batalis testifies will
8 you consider his testimony the same as any witness?

9 JURY PANEL MEMBER: Yes, sir.

10 THE COURT: And will you base your decision on the
11 evidence and the law and will that decision be fair to both
12 sides?

13 JURY PANEL MEMBER: Yes, Your Honor.

14 THE COURT: And your name and number, please?

15 JURY PANEL MEMBER: Benjamin Jackson, Number 175.

16 THE COURT: Thank you, Mr. Jackson. You may be seated.
17 Are there any others?

18 (WHEREUPON, no one stood.)

19 THE COURT: Thank you, there appear to be none.

20 I am going to share with you what is alleged. Again,
21 this is not evidence; but I need to ask you certain
22 questions concerning this alleged incident.

23 But it is alleged that in Charleston County or or about
24 May 22nd, 2014, with malice aforethought, Brandon Rashad
25 Marshall did kill and murder Anthony Williams by means of

1 gunshot and that Anthony Williams did die in Charleston
2 County as a proximate result thereof on May 22nd, 2014,
3 which is alleged in violation of our law prescribing the
4 conduct of murder.

5 It is also alleged that at that time and place on May
6 the 22nd, 2014, Mr. Marshall did possess a handgun or
7 visibly display what appeared to be a handgun during the
8 commission of a -- of a -- attempted commission of a murder
9 or violent crime which is also cited as a statute which
10 prescribes that conduct as well.

11 First I would ask you if any member of the jury panel
12 has heard anything, read anything, you have any prior
13 knowledge of this incident or alleged incident; if so,
14 please stand.

15 (WHEREUPON, no one stood.)

16 THE COURT: Thank you. There appear to be none.

17 Any members of the jury panel that knew or have any --
18 had any connection with or know the family of Anthony
19 Williams; if so please stand.

20 (WHEREUPON, no one stood.)

21 THE COURT: Thank you. There are none.

22 Are there any members of the jury panel that live in
23 the vicinity or have any connection with anyone that live in
24 the vicinity of [REDACTED], Robert Mills Manor,
25 Charleston, South Carolina; if so, please stand.

1 (WHEREUPON, no one stood.)

2 THE COURT: Thank you. There appear to be none.

3 Is there anything about the nature of this dispute,
4 ladies and gentlemen, that would give you concern about your
5 ability to fairly and impartially apply your common sense,
6 your sense of logic and reason, at the appropriate time and
7 analyze the evidence and decide what you believe to be the
8 true facts of this dispute and once making that decision of
9 what you find to be the true facts then taking the law as I
10 will give it to you and apply that law fairly and
11 impartially to those facts; if you feel there is something
12 that has occurred in your lifetime, something that has
13 happened to you, family member or close personal friend,
14 that would affect or influence that process, please stand.

15 (WHEREUPON, no one stood.)

16 THE COURT: Thank you. There appear to be none.

17 Are there any members of the jury panel that have been
18 involved in any way; you were accused, you were an alleged
19 victim, you were a witness for, you had any participation in
20 the prosecution or presentation of any criminal dispute; if
21 so, please stand.

22 (WHEREUPON, no one stood.)

23 THE COURT: Thank you, there appear to be none.

24 Are there any members of the jury panel that are
25 members of any crime organizations or prevention -- crime

1 prevention organization such as MAD, CAVE, PAR, or similar
2 group. If so, please stand.

3 (WHEREUPON, no one stood.)

4 THE COURT: Thank you, there appear to be none.

5 Are there any members of the jury panel related by
6 blood or marriage, have any connection with anyone that has
7 been involved in law enforcement now or formerly; if so,
8 please stand.

9 Okay. We will start over here (pointing) and work our
10 way across.

11 Yes, sir. We will go with you, ma'am. That will be
12 good. If you will give me your name and number, please.

13 JURY PANEL MEMBER: One twenty-five, Leslie Godwin.

14 THE COURT: Yes, Ms. Godwin.

15 JURY PANEL MEMBER: My cousin is married to a North
16 Charleston police.

17 THE COURT: Would that affect or influence you at all?

18 JURY PANEL MEMBER: No.

19 THE COURT: All right. Thank you. You may be seated.

20 Yes, sir.

21 JURY PANEL MEMBER: One twenty-eight, Keith Grabowski.
22 My grandfather was a Detroit cop for like 50 years.

23 THE COURT: Would that affect or influence you in any
24 way?

25 JURY PANEL MEMBER: No, sir.

1 THE COURT: Thank you, sir.

2 Yes.

3 JURY PANEL MEMBER: One ninety-seven. My sister works
4 for Florida Department of Law Enforcement.

5 THE COURT: Would that affect or influence you in this
6 dispute?

7 JURY PANEL MEMBER: No, sir.

8 THE COURT: Thank you, sir.

9 JURY PANEL MEMBER: Juror Number 81. My first cousin
10 is an officer.

11 THE COURT: Would that effect or influence you, sir?

12 JURY PANEL MEMBER: No, sir.

13 THE COURT: Thank you, sir. You may be seated.

14 Yes.

15 JURY PANEL MEMBER: Juror Number 100. My brother-in-
16 law is a detective.

17 THE COURT: Would that affect or influence you, sir?

18 JURY PANEL MEMBER: No, sir.

19 THE COURT: Thank you.

20 Yes, ma'am,

21 JURY PANEL MEMBER: Juror Number 56. My husband was a
22 City of Charleston police officer from 1995 to 2003. Also
23 worked for County.

24 THE COURT: All right.

25 JURY PANEL MEMBER: He is currently not employed at

1 that.

2 THE COURT: Would that affect our influence you?

3 JURY PANEL MEMBER: I would have to say yes, Your
4 Honor.

5 THE COURT: All right. And your number again, please.

6 JURY PANEL MEMBER: Fifty-six.

7 THE COURT: Number 56 will be excused from
8 participation in this dispute.

9 Are they going to draw another jury?

10 THE CLERK: She is to come back at 2:30.

11 THE COURT: Come back at 2:30. But you are free to
12 leave, but report -- where -- report to the jury ---

13 THE CLERK: On the second floor.

14 THE COURT: Report to the second to the Assembly Room.
15 Thank you, ma'am.

16 Yes, sir.

17 JURY PANEL MEMBER: I am Juror Number 365, and my
18 brother is a detective for Charleston County.

19 THE COURT: For the County?

20 JURY PANEL MEMBER: Yes, sir.

21 THE COURT: Would that affect you in any way, sir?

22 JURY PANEL MEMBER: No, sir.

23 THE COURT: Thank you, sir. You may be seated.
24 Yes, sir.

25 JURY PANEL MEMBER: Hi, I am Max Lenyard, Juror 201.

1 My cousin is a -- I guess he is retired from the police
2 force now.

3 THE COURT: Here?

4 JURY PANEL MEMBER: No, Wisconsin.

5 THE COURT: Okay. Would that affect or influence you,
6 sir?

7 JURY PANEL MEMBER: No.

8 THE COURT: Thank you, sir.

9 Yes.

10 JURY PANEL MEMBER: My number is 223. My brother-in-
11 law was employed by the City of Charleston Police Department
12 for ten years.

13 THE COURT: Okay. Would that affect you in any way?

14 JURY PANEL MEMBER: No.

15 THE COURT: Thank you, ma'am.

16 Yes.

17 JURY PANEL MEMBER: My number is Number 233, and I am a
18 retired correctional officer. And I have a cousin that also
19 works in law-enforcement.

20 THE COURT: Okay. Would that affect you in any way,
21 ma'am?

22 JURY PANEL MEMBER: No.

23 THE COURT: Thank you, ma'am.

24 Are there any others?

25 (WHEREUPON, no one stood.)

1 THE COURT: Thank you. There appear to be none.

2 Are there any members of the jury panel that have ever
3 had a dispute with law-enforcement in any way; if so, please
4 stand.

5 (WHEREUPON, no one stood.)

6 THE COURT: Okay. Thank you. And that doesn't mean
7 you maybe were stopped for a traffic violation and you
8 disagreed. I am not talking about that. But you had a
9 dispute about the way they were handling themselves or some
10 fashion.

11 Are there any members of the jury panel or a member of
12 your family that is involved with any organization involving
13 firearms; if so, please stand.

14 (WHEREUPON, no one stood.)

15 THE COURT: Thank you. There are none.

16 One of the -- and I am sure you were explained this is
17 your qualification, but one of the important parts of what
18 we do is you and I have well-defined roles. When you are
19 present I have nothing to do with the factual determination
20 in this dispute. That is your sole responsibility.

21 But just as I have nothing to do with the facts, you
22 have nothing to do with the law. That's my job. And it is
23 my job to make rulings on matters of law that may arise
24 during the trial of this case.

25 In fact, one of the things, after we have selected our

1 jury we will excuse you for tomorrow because there are some
2 hearing -- there are some matters that I have to take up out
3 of your presence dealing with matters of law. And that is
4 the way it works, and that is the way it should work.

5 Just as when you decide the facts you will be in a jury
6 room and you will talk among yourselves and decide what you
7 believe to be the true facts.

8 This process works because we trust each of us. You
9 have to trust me and I have to trust you, to do the job
10 assigned to you and I do the job assigned to me.

11 And that means that you have to accept the law as I
12 give it to you not withstanding your personal opinions about
13 what you thought the law was, what you thought the law
14 should be, or the fact that you just disagree with the law.

15 I assure you I have similar feelings, if you do have
16 those. I don't agree with all the laws that I have to deal
17 with every day. I can promise you that.

18 But just as you took -- you will take an oath to decide
19 the evidence and apply the law. I take -- took the same
20 oath. And I set aside my personal feelings about it and I
21 apply that law. It is hopefully fairly and impartially as I
22 have hopefully done for 22 years as humanly possible.

23 My question to you is is there anything about your
24 beliefs - and I respect those - your strong feelings, that
25 would affect or influence your ability to take the law as I

1 give it to you and accept that law and apply it fairly and
2 impartially to the facts.

3 Thank you. There are --
4 (WHEREUPON, jury panel member stood.)

5 THE COURT: Yes. All right. I am going to ask you to
6 come forward, sir, and we will -- the attorneys to approach
7 as well.

8 THE BAILIFF: Juror 246.

9 THE COURT: Thank you.
10 (WHEREUPON, bench conference was had as follows:)

11 THE COURT: Good morning, sir.

12 JURY PANEL MEMBER: Hi. I feel pretty strongly against
13 capital punishment if it is this trial.

14 THE COURT: All right. Well, this isn't a capital
15 punishment case. And I appreciate that. So you would not
16 be imposing a penalty.

17 Would the fact that you -- it would be in dealing with
18 a crime that general is a capital case in murder, but this
19 isn't one of them. Would that -- would that, your belief on
20 capital punishment affect you in imposing or deciding the
21 facts of a murder case; because you don't impose the
22 punishment, I do?

23 JURY PANEL MEMBER: Well, no, I guess it depends on how
24 it was swaying.

25 THE COURT: Okay. Thank you, sir. Well, I appreciate

1 that. And listen, that is precisely why we ask the
2 questions. And I respect you for that. Your number,
3 please.

4 JURY PANEL MEMBER: Two, four, six.

5 THE COURT: I am going -- out of abundance I think you
6 may -- you would probably do your best to do that, but I am
7 not going to put you in that situation; and I will excuse
8 you.

9 (WHEREUPON, bench conference concluded.)

10 THE COURT: Report back downstairs at 2:30, sir. Thank
11 you very much. Have a great day.

12 Are there any others?

13 (WHEREUPON, no one stood.)

14 THE COURT: Are there any members of the jury panel
15 that have ever -- or member of your family that have ever
16 been involved with someone who was a victim of a violent
17 crime; if so, please stand.

18 Okay. I am going to ask you to come forward, please.
19 And yes, ma'am, you too. We will take them one at a time.
20 Y'all may approach as well.

21 JURY PANEL MEMBER: Three fifteen.

22 THE BAILIFF: Three fifteen.

23 THE COURT: Okay.

24 JURY PANEL MEMBER: Oh; three, five, zero.

25 THE BAILIFF: Three, five, zero.

1 JURY PANEL MEMBER: Yes.

2 THE COURT: Yes, ma'am.

3 (WHEREUPON, bench conference was had as follows:)

4 JURY PANEL MEMBER: My mother was murdered.

5 THE COURT: Okay. Would that affect you?

6 JURY PANEL MEMBER: It would not, no.

7 THE COURT: Would you be able to listen to this and
8 remove your emotion in the facts of that?

9 JURY PANEL MEMBER: Oh, of course. It is a different
10 situation.

11 THE COURT: I understand. But I just want to be sure
12 it doesn't put you in ---

13 JURY PANEL MEMBER: No.

14 THE COURT: And would you decide this case based on the
15 evidence and the law and be fair to both sides?

16 JURY PANEL MEMBER: Yes.

17 THE COURT: And your number again?

18 JURY PANEL MEMBER: Three, five, zero.

19 (WHEREUPON, bench conference concluded.)

20 THE COURT: Three fifty will remain. Thank you so
21 much.

22 THE BAILIFF: One twenty-five.

23 (WHEREUPON, bench conference was had as follows:)

24 THE COURT: What is your situation?

25 JURY PANEL MEMBER: I don't know if this applies, but I

1 had a cousin who died by law enforcement.
2 THE COURT: While he was in police custody?
3 JURY PANEL MEMBER: Yes.
4 THE COURT: Would that affect you?
5 JURY PANEL MEMBER: No.
6 THE COURT: You would be able to set that -- any
7 feelings you had about that aside and decide this case
8 fairly and impartially ---
9 JURY PANEL MEMBER: Yes.
10 THE COURT: --- based on the evidence and the law?
11 JURY PANEL MEMBER: Uh-huh.
12 THE COURT: And that decision would be fair to both
13 sides including the State?
14 JURY PANEL MEMBER: Yes.
15 THE COURT: Okay. And 125 is your number?
16 JURY PANEL MEMBER: Yes.
17 (WHEREUPON, bench conference concluded.)
18 THE COURT: Number 125 will remain. Thank you.
19 THE BAILIFF: Eighty-one.
20 (WHEREUPON, bench conference was had as follows:)
21 JURY PANEL MEMBER: Good morning.
22 THE COURT: Good morning, sir.
23 JURY PANEL MEMBER: Years ago I had a cousin that was
24 slain by his supposed best friend so.
25 THE COURT: Okay. Would that affect you, sir?

1 JURY PANEL MEMBER: No.

2 THE COURT: Would the fact that there was a friendship
3 and that there may be testimony about this having some
4 friendship would that -- would that give you some problems?

5 JURY PANEL MEMBER: It is somewhat kind of weak and
6 I -- kind of heavy because this was affecting somebody's
7 life so.

8 THE COURT: I gotcha. Your number again.

9 JURY PANEL MEMBER: Eighty-one.

10 (WHEREUPON, bench conference concluded.)

11 THE COURT: Number eighty-one will be excused from
12 participation in this.

13 If you will report back downstairs at 2:30, sir. Have
14 a good day.

15 THE BAILIFF: Two forty.

16 (WHEREUPON, bench conference was had as follows:)

17 THE COURT: Good morning. Good afternoon.

18 JURY PANEL MEMBER: Good afternoon. My nephew was
19 killed in 2003.

20 THE COURT: Would that affect your decision?

21 JURY PANEL MEMBER: Uh-huh.

22 THE COURT: Number 240 is your ---

23 JURY PANEL MEMBER: Yes, sir.

24 (WHEREUPON, bench conference concluded.)

25 THE COURT: Two forty will be excused from

1 participation in this dispute. Thank you so much. If you
2 will report downstairs at 2:30.

3 JURY PANEL MEMBER: Thank you, sir.

4 THE COURT: Thank you. Have a nice day.

5 Are there any others?

6 (WHEREUPON, no one stood.)

7 THE COURT: Thank you.

8 Any other specific questions from the State?

9 MR. OSBORNE: No, Your Honor.

10 THE COURT: Any other specific questions from the
11 department?

12 MS. GAY: No.

13 THE COURT: The last question I have for you, ladies
14 and gentlemen, it kind of lumps it all together. As I
15 mentioned to you, just as I had to take an oath on this task
16 of being a circuit court judge, you will have to take an
17 oath to perform the task of being a judge in this case.

18 And is there anything that you have heard about this
19 dispute that would give you any concern about your ability
20 to make a commitment that you would decide this case based
21 on the evidence and the law and that decision would be fair
22 to both sides meaning that you would at the appropriate time
23 be able to fairly and impartially apply your common sense,
24 your sense of logic and reason, and decide true facts and
25 then apply the law; if you feel there is something, please

1 stand.

2 (WHEREUPON, no one stood.)

3 THE COURT: Thank you very much.

4 What will happen now is your names will be called and
5 then selected at random. And you will be called and asked
6 to come forward. And if you will stand -- if you stand in
7 front of this podium facing your fellow jurors, facing the
8 parties in this dispute.

9 Each side in this dispute can excuse a person. The
10 State can excuse five. The defendant can excuse ten. And
11 we will go through the process. And somebody will say --
12 first the State will say whatever, you seat the juror or
13 excuse the juror. And then the defendant will have the same
14 option. And we will go through that process until we select
15 our twelve jurors and two alternates.

16 So if you will be patient with us. And if somebody is
17 excused -- either side excused you, don't be offended by
18 that. That is the way the process works. And we will just
19 go through it. And I would turn it over to the clerk.

20 And I allow the attorneys to have the list, so if you
21 will run a copy. Okay. We will be ready in just a second.

22 THE CLERK: Yes, sir.

23 (WHEREUPON, list provided to counselors.)

24 JURY SELECTION:

25 THE COURT: All right. Ladies and gentlemen when Mr.

1 Malone is ready you will just follow his instructions. And
2 you take your time.

3 THE CLERK: Ladies and gentlemen, when I call your
4 juror number, please stand. Gather all of your belongings,
5 come up to the podium, turn around and face the audience.

6 Juror Number 366.

7 (WHEREUPON, according to the random strike sheet
8 description, a white male came forward.)

9 THE CLERK: What say you for the State?

10 MR. OSBORNE: Please present this juror.

11 THE CLERK: What say you for the defense?

12 MS. GAY: Please seat the juror for the trial of this
13 case.

14 THE CLERK: Sir, please have a seat in the jury box.
15 You have been selected as a juror in the trial of this case.

16 (WHEREUPON, juror was seated in the jury box.)

17 THE CLERK: Juror Number 341.

18 (WHEREUPON, according to the random strike sheet
19 description, a white female came forward.)

20 THE CLERK: What say you for the State?

21 MR. OSBORNE: Please present this juror.

22 THE CLERK: What say you for the defense?

23 MS. GAY: One moment, please.

24 THE COURT: Take your time.

25 MS. GAY: Please seat the juror for the trial of this

1 case.

2 THE CLERK: Ma'am, please have a seat in the jury box.
3 You have been selected as a juror in the trial of this case.
4 (WHEREUPON, juror was seated in the jury box.)

5 THE CLERK: Juror Number 172.
6 (WHEREUPON, according to the random strike sheet
7 description, a white female came forward.)

8 THE CLERK: What say you for the State?

9 MR. OSBORNE: Please present this juror.

10 THE CLERK: What say you for the defense?

11 MS. GAY: One moment, please.

12 Please excuse the juror from the trial of this case.

13 THE CLERK: Ma'am, please have a seat back in the
14 gallery. You have been excused from the trial of this case.
15 (WHEREUPON, jury panel member complied.)

16 THE CLERK: Juror Number 107.
17 (WHEREUPON, according to the random strike sheet
18 description, a white male came forward.)

19 THE CLERK: What say you for the State?

20 MR. OSBORNE: Please present this juror.

21 THE CLERK: What say you for the defense?

22 MS. GAY: One moment, please.

23 Please seat the juror for the trial of this case.

24 THE CLERK: Sir, please have a seat in the jury box.
25 You have been selected as a juror in the trial of this case.

1 (WHEREUPON, juror was seated in the jury box.)
2 THE CLERK: Juror Number 269.
3 (WHEREUPON, according to the random strike sheet
4 description, a white male came forward.)
5 THE CLERK: What say you for the State?
6 MR. OSBORNE: Please present this juror.
7 THE CLERK: What say you for the defense?
8 MS. GAY: One moment, please.
9 Please seat the juror for the trial of this case.
10 THE CLERK: Sir, please have a seat in the jury box.
11 You have been selected as a juror in the trial of this case.
12 (WHEREUPON, juror was seated in the jury box.)
13 THE CLERK: Juror Number 195.
14 (WHEREUPON, according to the random strike sheet
15 description, a black male came forward.)
16 THE CLERK: What say you for the State?
17 MR. OSBORNE: Please present this juror.
18 THE CLERK: What say you for the defense?
19 MS. GAY: Please seat the juror for the trial of this
20 case.
21 THE CLERK: Sir, please have a seat in the jury box.
22 You have been selected as a juror in the trial of this case.
23 (WHEREUPON, juror was seated in the jury box.)
24 THE CLERK: Juror Number 195.
25 (WHEREUPON, according to the random strike sheet

1 description, a black male came forward.)

2 THE CLERK: What say you for the State?

3 MR. OSBORNE: Please present this juror.

4 THE CLERK: What say you for the defense?

5 MS. GAY: Please seat the juror for the trial of this
6 case.

7 THE CLERK: Sir, please have a seat in the jury box.
8 You have been selected as a juror in the trial of this case.
9 (WHEREUPON, juror was seated in the jury box.)

10 THE CLERK: Juror Number 230.
11 (WHEREUPON, according to the random strike sheet
12 description, a white male came forward.)

13 THE CLERK: What say you for the State?

14 MR. OSBORNE: Beg the court's indulgence.

15 THE COURT: Take your time.

16 MR. OSBORNE: Please present this juror.

17 THE CLERK: What say you for the defense?

18 MS. GAY: Please seat the juror for the trial of this
19 case.

20 THE CLERK: Sir, please have a seat in the jury box.
21 You have been selected as a juror in the trial of this case.
22 (WHEREUPON, juror was seated in the jury box.)

23 THE CLERK: Juror Number 119.

24 (WHEREUPON, according to the random strike sheet
25 description, a black female came forward.)

1 THE CLERK: What say you for the State?

2 MR. OSBORNE: Please excuse this juror.

3 THE CLERK: Ma'am, please have a seat back in the
4 gallery. You have been excused from the trial of this case.
5 (WHEREUPON, jury panel member complied.)

6 THE CLERK: Juror Number 168.
7 (WHEREUPON, according to the random strike sheet
8 description, a white male came forward.)

9 THE CLERK: What say you for the State?

10 MR. OSBORNE: Please present this juror.

11 THE CLERK: What say you for the defense?

12 MS. GAY: One moment, please.

13 Please excuse the juror from the trial of this case.

14 THE CLERK: Sir, please have a seat back in the
15 gallery. You have been excused from the trial of this case.
16 (WHEREUPON, jury panel member complied.)

17 THE CLERK: Juror Number 84.
18 (WHEREUPON, according to the random strike sheet
19 description, a white female came forward.)

20 THE CLERK: What say you for the State?

21 MR. OSBORNE: Please present this juror.

22 THE CLERK: What say you for the defense?

23 MS. GAY: One moment please.

24 Please excuse the juror from the trial of this case.

25 THE CLERK: Ma'am, please have a seat back in the

1 gallery. You have been excused from the trial of this case.

2 (WHEREUPON, the jury panel member complied.)

3 THE CLERK: The defendant has exhausted three out of
4 its ten strikes.

5 Juror Number 350. Three, five, zero.

6 (WHEREUPON, according to the random strike sheet
7 description, a white female came forward.)

8 THE CLERK: What say you for the State?

9 MR. OSBORNE: Please present this juror.

10 MS. GAY: One moment, please. Please excuse the juror
11 from the trial of this case.

12 THE CLERK: Ma'am, please have a seat back in the
13 gallery. You have been excused from the trial of this case.
14 (WHEREUPON, jury panel member complied.)

15 THE CLERK: Juror Number 285.
16 (WHEREUPON, according to the random strike sheet
17 description, a white female came forward.)

18 THE CLERK: What say you for the State?

19 MR. OSBORNE: Please present this juror.

20 THE CLERK: What say you for the defense?

21 MS. GAY: One moment, please.

22 Please excuse the juror from the trial of this case.

23 THE CLERK: Ma'am, please have a seat back in the
24 gallery. You have been excused from the trial of this case.
25 (WHEREUPON, jury panel member complied.)

1 THE CLERK: The defense has exhausted five out of its
2 ten strikes.

3 Juror Number 201.

4 (WHEREUPON, according to the random strike sheet
5 description, a black male came forward.)

6 THE CLERK: What say you for the State?

7 MR. OSBORNE: Please excuse this juror.

8 THE CLERK: Sir, please have a seat back in the
9 audience. You have been excused from the trial of this
10 case.

11 (WHEREUPON, the jury panel member complied.)

12 THE CLERK: The State has exhausted two out of its five
13 strikes.

14 Juror Number 193.

15 (WHEREUPON, according to the random strike sheet
16 description, a white female came forward.)

17 THE CLERK: What say you for the State?

18 MR. OSBORNE: Please present this juror.

19 THE CLERK: What say you for the defense?

20 MS. GAY: One moment, please.

21 Please seat the juror for the trial of this case.

22 THE CLERK: Ma'am, please have a seat in the jury box.
23 You have been selected as a juror in the trial of this case.
24 (WHEREUPON, juror was seated in the jury box.)

25 THE CLERK: Juror Number 198.

1 (WHEREUPON, according to the random strike sheet
2 description, a white male came forward.)

3 THE CLERK: What say you for the State?

4 MR. OSBORNE: Please present this juror.

5 THE CLERK: What say you for the defense?

6 MS. GAY: One moment, please.

7 Please seat the juror for the trial of this case.

8 THE CLERK: Sir, please have a seat in the jury box.
9 You have been selected as a juror in the trial of this case.

10 (WHEREUPON, juror was seated in the jury box.)

11 THE CLERK: Juror Number 53.

12 (WHEREUPON, according to the random strike sheet
13 description, a white male came forward.)

14 THE CLERK: What say you for the State?

15 MR. OSBORNE: Please present this juror.

16 THE CLERK: What say you for the defense?

17 MS. GAY: One moment, please.

18 THE CLERK: Yes, sir.

19 MS. GAY: Please seat the juror for the trial of this
20 case.

21 THE CLERK: Sir, please have a seat in the jury box.
22 You have been selected as a juror in the trial of this case.

23 (WHEREUPON, juror was seated in the jury box.)

24 THE CLERK: Juror Number 223.

25 (WHEREUPON, according to the random strike sheet

1 description, a white female came forward.)

2 THE CLERK: What say you for the State?

3 MR. OSBORNE: Please excuse this juror.

4 THE CLERK: Ma'am, please have a seat back in the
5 gallery. You have been excused from the trial of this case.

6 (WHEREUPON, the jury panel member complied.)

7 THE CLERK: Juror Number 233.

8 (WHEREUPON, according to the random strike sheet
9 description, a black female came forward.)

10 THE CLERK: What say you for the State?

11 MR. OSBORNE: Please present this juror.

12 THE CLERK: What say you for the defense?

13 MS. GAY: Please excuse the juror.

14 THE CLERK: Ma'am, please have a seat back in the
15 gallery. You have been excused from the trial of this case.

16 (WHEREUPON, the jury panel member complied.)

17 THE CLERK: The defense has used six out of its ten
18 strikes.

19 Juror Number 361.

20 (WHEREUPON, according to the random strike sheet
21 description, a white female came forward.)

22 THE CLERK: What say you for the State?

23 MR. OSBORNE: Please present this juror.

24 THE CLERK: What say you for the defense?

25 MS. GAY: Please seat the juror for the trial of this

1 case.

2 THE CLERK: Ma'am, please have a seat in the jury box.
3 You have been selected as a juror in the trial of this case.
4 (WHEREUPON, juror was seated in the jury box.)

5 THE CLERK: Juror Number 125.
6 (WHEREUPON, according to the random strike sheet
7 description, a black female came forward.)

8 THE CLERK: What say you for the State?

9 MR. OSBORNE: Please present this juror.

10 THE CLERK: What say you for the defense?

11 MS. GAY: Please excuse the juror from the trial of
12 this case.

13 THE CLERK: Ma'am, please have a seat back in the
14 gallery. You have been excused from the trial of this case.
15 (WHEREUPON, the jury panel member complied.)

16 THE CLERK: Juror Number 158.
17 (WHEREUPON, according to the random strike sheet
18 description, a white male came forward.)

19 THE CLERK: What say you for the State?

20 MR. OSBORNE: Beg the court's indulgence.

21 THE COURT: Take your time.

22 MR. OSBORNE: Please excuse this juror.

23 THE CLERK: Sir, please have a seat back in the
24 gallery. You have been excused from the trial of this case.
25 (WHEREUPON, the jury panel member complied.)

1 THE CLERK: Juror Number 128.
2 (WHEREUPON, according to the random strike sheet
3 description, a white male came forward.)
4 THE CLERK: What say you for the State?
5 MR. OSBORNE: Please present this juror.
6 THE CLERK: What say you for the defense?
7 MS. GAY: One moment, please.
8 Please seat the juror for the trial of this case.
9 THE CLERK: Sir, please have a seat back in the jury
10 box. You have been selected as a juror in the trial of this
11 case.
12 (WHEREUPON, juror was seated in the jury box.)
13 THE CLERK: Juror Number 138.
14 (WHEREUPON, according to the random strike sheet
15 description, a white male came forward.)
16 THE CLERK: What say you for the State?
17 MR. OSBORNE: Please present this juror.
18 THE CLERK: What say you for the defense?
19 MS. GAY: What number is he again?
20 THE CLERK: One, three, eight.
21 MS. GAY: I am looking in the wrong place. Please
22 excuse this juror from the trial of this case.
23 THE CLERK: Sir, please have a seat back in the
24 gallery. You have been excused from the trial of this case.
25 (WHEREUPON, the jury panel member complied.)

1 THE CLERK: The defense has exhausted eight out of its
2 ten strikes.

3 Juror Number 342.

4 (WHEREUPON, according to the random strike sheet
5 description, a black female came forward.)

6 THE CLERK: What say you for the State?

7 MR. OSBORNE: Please present this juror.

8 THE CLERK: What say you for the defense?

9 MS. GAY: One moment, please. Please excuse this juror
10 from the trial of this case.

11 THE CLERK: Ma'am, please have a seat back in the
12 gallery. You have been excused from the trial of this case.
13 (WHEREUPON, jury panel member complied.)

14 THE CLERK: Juror Number 197.

15 (WHEREUPON, according to the random strike sheet
16 description, a white male came forward.)

17 THE CLERK: What say you for the State?

18 MR. OSBORNE: Please present this juror.

19 THE CLERK: What say you for the defense?

20 MS. GAY: Hold on a second. How many strikes have we
21 used; nine?

22 THE CLERK: Yes, ma'am. You have one left.

23 MS. GAY: Okay. One moment, please. Please -- please
24 seat the juror for the trial of this case.

25 THE CLERK: Sir, please have a seat in the jury box.

1 You have been selected as a juror in the trial of this case.
2 (WHEREUPON, juror was seated in the jury box.)
3 THE CLERK: Now striking for alternate.
4 Juror Number 93.
5 (WHEREUPON, according to the random strike sheet
6 description, a white male came forward.)
7 THE CLERK: What say you for the State?
8 MR. OSBORNE: Please excuse this juror.
9 THE CLERK: Sir, please have a seat back in the
10 gallery. You have been excused from the trial of this case.
11 (WHEREUPON, jury panel member complied.)
12 THE CLERK: Juror Number 120.
13 (WHEREUPON, according to the random strike sheet
14 description, a white male came forward.)
15 THE CLERK: Any challenges from the State?
16 MR. OSBORNE: No.
17 THE CLERK: What say you for the defense?
18 MS. GAY: One moment, please. Please excuse the juror
19 from the trial of this case.
20 THE CLERK: Sir, please have a seat back in the
21 gallery. You have been excused from the trial of this case.
22 (WHEREUPON, jury panel member complied.)
23 THE CLERK: Juror Number 114.
24 (WHEREUPON, according to the random strike sheet
25 description, a black male came forward.)

1 THE CLERK: Any challenges from the State?

2 MR. OSBORNE: None.

3 THE CLERK: What say you for the defense?

4 MS. GAY: Please seat the juror for the trial of this
5 case.

6 THE CLERK: Sir, please have a seat in the jury box.
7 You have been selected as our first alternate in the trial
8 of this case.

9 (WHEREUPON, juror was seated in the jury box.)

10 THE CLERK: Now striking for second alternate.

11 Juror Number 300.

12 (WHEREUPON, according to the random strike sheet
13 description, a white female came forward.)

14 THE CLERK: What say you for the State?

15 MR. OSBORNE: No objection.

16 THE COURT: Use another one. We start again. One and
17 two.

18 THE CLERK: We start again. We are on number two.

19 THE COURT: I'm sorry.

20 MR. OSBORNE: Please present this juror.

21 THE CLERK: What say you for the defense?

22 MS. GAY: Please excuse the juror from the trial of
23 this case.

24 THE CLERK: Ma'am, please have a seat back in the
25 gallery. You have been excused from the trial of this case.

1 (WHEREUPON, jury panel member complied.)

2 THE CLERK: Juror Number 175.

3 (WHEREUPON, according to the random strike sheet
4 description, a white male came forward.)

5 THE CLERK: What say you for the State?

6 MR. OSBORNE: Please present this juror.

7 THE CLERK: What say you for the defense?

8 MS. GAY: Hang on. Please seat the juror for the trial
9 of this case.

10 THE CLERK: Sir, please have a seat in the jury box.
11 You have been selected as our second alternate in the trial
12 of this case.

13 (WHEREUPON, juror was seated in the jury box.)

14 THE COURT: Are there any motions from the State
15 regarding the jury selection?

16 MR. OSBORNE: None, Your Honor.

17 THE COURT: Any motions from the defendant regarding
18 the jury selection?

19 MS. GAY: No, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, that
21 concludes your assistance and involvement in this case. You
22 need to report back at 2:30 downstairs at the jury assembly
23 room. Thank you for your assistance.

24 I hope you have a good -- if I don't see you again,
25 have a good week and good rest of the year. But I may see

1 you later on in the week. Thank you.

2 (WHEREUPON, remainder of jury panel exits the courtroom.)

3 THE COURT: Ladies and gentlemen, thank you for your
4 assistance as well. And I will be seeing you again for
5 sure.

6 Let me talk to you about the seating. The box is full.
7 The two seats on the end are reserved for our alternate
8 jurors. That's -- it is really nothing sacred about it. It
9 just helps us identify everybody and knowing that the --
10 everything is in place.

11 And our alternate jurors in this case are Mr. Gathers
12 and Mr. Jackson. Gentlemen, you may occupy either one of
13 those seats as you come in the courtroom. They are your
14 seats.

15 Alternate juror really has no significance at this
16 point. You are very much a part of this jury panel. And
17 please -- I know you will pay close attention. At the end
18 of the case if the first 12 that were selected are able to
19 continue then you will not participate in the final
20 deliberations.

21 But I will assure you that it is not uncommon to have
22 an alternate placed on the jury panel during the trial.
23 Things happen, as you can imagine, on a day-to-day basis.
24 And so please don't let that deter you from paying attention
25 and serving as a juror. And I am confident that you will

1 honor that commitment they you will make.

2 The rest of you may occupy any of the seats that you
3 have except the two end seats. There is only one designated
4 seat that Ms. -- Ms. Knight is occupying. She is eligible,
5 as any of the first 12 of you are eligible, to serve as I
6 call them presiding jurors; foreman, forelady, foreperson.

7 Someone has to be responsible for signing the verdict
8 form on behalf of your fellow jurors. If there are exhibits
9 that are introduced during the trial the presiding juror
10 receives those and when the jury has completed its
11 deliberations, gathers them together and brings them back to
12 the courtroom to present to our court reporter.

13 There may be occasions when there is some written
14 communication that is necessary from the jury to the court.
15 It would be your responsibility, sir, basically as a clerk
16 for your fellow jurors. As I stated, any of you are
17 eligible. I would tell you there is no unique qualities or
18 qualifications.

19 Probably there are fewer judges that do what I have
20 been doing for 22 years. Most of -- most -- the statute
21 allows a judge to select a presiding juror. Most of my
22 brothers and sisters do that. I don't. I have allowed the
23 jury -- because the jury can also select a presiding juror.
24 I let the jury pick their presiding juror.

25 It doesn't have to be done right away. You may want to

1 get to know one another. You can do it right away if you
2 chose to. But once that person is identified I would ask
3 that that person occupy that first chair. But until that is
4 done that first chair is available just as -- the only two
5 chairs that aren't are the two on the end here.

6 Presiding jurors everybody has their idea. One of the
7 things, no foreperson or presiding juror controls the jury.
8 That is not the purpose of your role anyway. It has come to
9 my -- it just appears to me that one of the qualities, that
10 some people are better facilitators than others in
11 discussing.

12 I don't know whether you would use that as a quality or
13 characteristic that you may choose. But I will just tell
14 you you pick it at some point, and once you have identified
15 that person I would ask that person to do that.

16 The only two persons that are not eligible, assuming
17 you pick it before something happens, are the two
18 alternates. If -- if on the other hand you haven't selected
19 and one of the alternates comes on the jury panel, then of
20 course you would be eligible to serve as well.

21 Please -- you are going to probably get tired of
22 hearing me say this, and but I will repeat this just about
23 every time we leave the courtroom. And it is important.
24 Not that it would affect you, but what we do we also have to
25 have the appearance of doing the correct thing.

1 You will take an oath to decide this case based on the
2 evidence that you hear in this trial. That occurs during
3 the trial while you are present in this courtroom.

4 You will be asked to at the appropriate time to apply
5 your common sense, your sense of logic, and analyze that
6 evidence. And I am confident that each one of you will
7 honor the commitment that you will ultimately make. But it
8 is obvious given that, that you can't talk to anyone outside
9 of this court about it or allow anybody to talk to you about
10 serving on this case or about what this case is about.

11 Another thing, we are human and some persons are more
12 inquisitive than others. I have had jurors -- and that's a
13 result of it -- I am not the only person. There are others.
14 And our Chief Justice a couple of years ago sent out
15 basically an order that said be sure to remind the jurors
16 they are not at liberty to conduct any independent research.

17 Because why? People would go get on -- if you have
18 access to the Internet they would say well I am going to
19 find out about this, what is this law about.

20 I will share this with you, not to bore you but to say
21 there is a reason. The primary reason is it occurs outside
22 of this courtroom. I will give you the law. And it is my
23 job to do that. After this case is over if you want to do
24 any research on the law, be my guest and enjoy it.

25 I would just caution you. Because I did this; I was

1 asked a question that I was going to have to do something in
2 Berkeley where my home office is and I didn't have -- I
3 didn't have my computer with me which allows me to get the
4 Westlaw where I could pull up the law. But I thought I had
5 my I-Pad.

6 I said, well, I can't get no Westlaw on my I-Pad but I
7 can Google it. Well, low and behold, it came up, the
8 statute that I was looking for. And I thought wow.

9 And it was interesting because it had a provision that
10 I just didn't recall. I had never done that. It had to do
11 with an oath of office.

12 Well, the next day I went to the office before I was to
13 administer that oath and I pulled my code section and
14 looked. Well, guess what; that statute had been amended.
15 But Google didn't have it as amended. What they had was not
16 the law. It was wrong.

17 So that is a reason too. You don't want to do that.
18 Because you just simply can't -- you have to -- well, first
19 of all primarily, it is my responsibility.

20 I also had one one time a juror when we resolved the
21 case before the jury ultimately decided and I was thanking
22 them me for participating, and the person raised an issue.

23 And it does -- it does appear in some criminal cases.
24 The strange thing, it didn't have a thing in the world with
25 the case that we had. He said, yeah, I was on the internet

1 last night and I couldn't figure out how they were going to
2 get around this problem. And I thought wow.

3 So don't find yourself in that dilemma, please. It is
4 very important. Because if you do, everything that we have
5 done and everything that we will do will have to be redone.
6 So it is that important.

7 So but probably the most important thing is you are
8 going to make a commitment to follow the process. And I am
9 confident each one of you will honor that. And I thank you
10 for that.

11 You are free now. You don't have to -- don't call the
12 number tonight. That jury information, that doesn't apply
13 to you.

14 And you may say, well, of course. Believe it or not I
15 have had persons that didn't come back. They said, well, I
16 called the number and it said I didn't have to come back.
17 And I thought, oh, goodness, well, okay.

18 I forget things too, so it is good to be reminded of
19 that. But don't call that number.

20 Tomorrow you are going to get a little bit -- a lot
21 later start than customarily. Well, this week you are
22 going to have a luxury. We have some matters scheduled,
23 not in this case, that we have scheduled for a long time in
24 advance and we set them for like 9:15 so we can get those
25 done.

1 Most of them will be finished before 10:00. But you
2 are going to probably just about every day have ten o'clock
3 as your report time. So you are going to get a little bit
4 of a break, a little bit longer than you would normally
5 have.

6 And I promise you if any of you drive downtown from
7 above malfunction junction that little extra time will be
8 great. Because when I come from my home in Moncks Corner,
9 Berkeley County, it's nicer to come at 9:30 or 10:00 than it
10 is to come at eight o'clock. So you will have that luxury.
11 It won't be as bad.

12 Our working hours will be -- typically will stop
13 somewhere between 5:00 and 5:30. There may be occasion when
14 we work a little longer to finish a witness. I will try to
15 get you out of here -- or get you on the road by 6:00.

16 Also in that regard, if you live above that or too you
17 -- you -- if will -- you leave at 5:00 or leave about 5:45
18 you are going to get home about the same time generally.

19 But anyway, that will be your working. You will not be
20 sequestered. Don't worry about that. You will be able to
21 go home every night. And we will finish this case this
22 week. And I promise you that as well.

23 Thank you for your patience with us today. I am going
24 to let you exit through the door. They will show you --
25 tomorrow you will come directly to your jury room and they

1 will designate that room for you.

2 Please do not discuss this case among yourselves.

3 Don't start -- don't talk with anyone. And you don't really
4 know anything about this case other than what I have told,
5 you is alleged. And you are going to make a promise to
6 decide on the evidence. And the evidence consists of
7 testimony of witnesses that are rendered before you in this
8 courtroom. So please know that.

9 That means if there is somebody at home they are
10 probably going to ask well what is the case about. Just
11 tell them I have got a mean judge that said I can't talk
12 with you about it. You can talk when you finish. Talk
13 about something else. You can talk about the process;
14 but just don't talk about this case, please, in any
15 fashion.

16 And I will see you tomorrow at one o'clock. Be back in
17 your jury room by one o'clock. Okay. So you get a real
18 late start tomorrow. How about that. Thank you very much.
19 Have a good day.

20 So if you have some work that you want to do and you
21 have your workplace you can leave by lunch, have -- you at
22 least have that opportunity tomorrow too. That will help
23 you a little bit as well. Thank you.

24 (WHEREUPON, jury exits courtroom 4/4/16, 1:09 p.m.)

25 THE COURT: Any exceptions, additions, objection from

1 the State concerning the court's remarks?

2 MR. OSBORNE: None from the State, Your Honor.

3 THE COURT: Any from the defendant?

4 MS. GAY: No, sir.

5 THE COURT: Thank you. All right. It is ten after
6 1:00. Let's be back by 2:30. That will give y'all some
7 chance to chat too. And then we will start with the
8 hearings.

9 (WHEREUPON, recess for discussions regarding planning
10 followed by lunch, 4/4/16, 1:10 p.m.)

11 (WHEREUPON, State's Exhibit Number 1, photo - outside of
12 front view, was marked for identification.)

13 (WHEREUPON, State's Exhibit Number 2, photo - couch, was
14 marked for identification.)

15 (WHEREUPON, State's Exhibit Number 3, photo - kitchen table,
16 chicken, was marked for identification.)

17 (WHEREUPON, State's Exhibit Number 4, photo - backdoor, was
18 marked for identification.)

19 (WHEREUPON, State's Exhibit Number 5, photo - clothes on
20 ground, was marked for identification.)

21 (WHEREUPON, State's Exhibit Number 6, photo - backyard, was
22 marked for identification.)

23 (WHEREUPON, State's Exhibit Number 7, photo - cars & body
24 bag, was marked for identification.)

25 (WHEREUPON, State's Exhibit Number 8, 911 call, was marked

1 for identification.)
2 (WHEREUPON, State's Exhibit Number 9, Google overhead, was
3 marked for identification.)
4 (WHEREUPON, State's Exhibit Number 10, holster, was marked
5 for identification.)
6 (WHEREUPON, State's Exhibit Number 11, photo - vehicle, was
7 marked for identification.)
8 (WHEREUPON, State's Exhibit Number 12, photo - gun, was
9 marked for identification.)
10 (WHEREUPON, State's Exhibit Number 13, photo - gun, was
11 marked for identification.)
12 (WHEREUPON, State's Exhibit Number 14, body cam CD, was
13 marked for identification.)
14 (WHEREUPON, State's Exhibit Number 15, 9mm handgun, was
15 marked for identification.)
16 (WHEREUPON, State's Exhibit Number 16, Gunshot residue -
17 defendant, was marked for identification.)
18 (WHEREUPON, State's Exhibit Number 17, photo, was marked for
19 identification.)
20 (WHEREUPON, State's Exhibit Number 18, photo - placard, was
21 marked for identification.)
22 (WHEREUPON, State's Exhibit Number 19, photo - placard, was
23 marked for identification.)
24 (WHEREUPON, State's Exhibit Number 20, photo - eyeglasses,
25 was marked for identification.)

1 (WHEREUPON, State's Exhibit Number 21, photo - cell phone &
2 lighter, was marked for identification.)
3 (WHEREUPON, State's Exhibit Number 22, photo - placard, was
4 marked for identification.)
5 (WHEREUPON, State's Exhibit Number 23, photo - placard, was
6 marked for identification.)
7 (WHEREUPON, State's Exhibit Number 24, photo - placard, was
8 marked for identification.)
9 (WHEREUPON, State's Exhibit Number 25, photo - placard, was
10 marked for identification.)
11 (WHEREUPON, State's Exhibit Number 26, photo - placard
12 shell, was marked for identification.)
13 (WHEREUPON, State's Exhibit Number 27, autopsy sketch, was
14 marked for identification.)
15 (WHEREUPON, State's Exhibit Number 28, photo - autopsy side
16 leg, was marked for identification.)
17 (WHEREUPON, State's Exhibit Number 29, x-ray pelvis, was
18 marked for identification.)
19 (WHEREUPON, State's Exhibit Number 30, photo - legs, was
20 marked for identification.)
21 (WHEREUPON, State's Exhibit Number 31, photo - chest, was
22 marked for identification.)
23 (WHEREUPON, State's Exhibit Number 32, photo of Marshall,
24 was marked for identification.)
25 (WHEREUPON, State's Exhibit Number 33, photo of Marshall,

1 was marked for identification.)
2 (WHEREUPON, State's Exhibit Number 34, photo of Marshall,
3 was marked for identification.)
4 (WHEREUPON, State's Exhibit Number 35, photo of Marshall,
5 was marked for identification.)
6 (WHEREUPON, State's Exhibit Number 36, photo of Marshall,
7 was marked for identification.)
8 (WHEREUPON, State's Exhibit Number 37, photo of Marshall,
9 was marked for identification.)
10 (WHEREUPON, State's Exhibit Number 38, photo of Marshall,
11 was marked for identification.)
12 (WHEREUPON, State's Exhibit Number 39, DVD w/interview, was
13 marked for identification.)
14 (WHEREUPON, State's Exhibit Number 40, Miranda card, was
15 marked for identification.)
16 (WHEREUPON, State's Exhibit Number 41, white shirt, was
17 marked for identification.)
18 (WHEREUPON, State's Exhibit Number 42, photo - text from
19 Anthony, was marked for identification.)
20 (WHEREUPON, State's Exhibit Number 43, photo - clothes, was
21 marked for identification.)
22 (WHEREUPON, State's Exhibit Number 44, photo - text from
23 Anthony, was marked for identification.)
24 (WHEREUPON, State's Exhibit Number 45, Buccal swab, was
25 marked for identification.)

1 (WHEREUPON, State's Exhibit Number 46, DNA swab, was marked
2 for identification.)
3 (WHEREUPON, State's Exhibit Number 47, cuttings from shirt,
4 was marked for identification.)
5 (WHEREUPON, State's Exhibit Number 48 - NO EXHIBIT PROVIDED.
6 (WHEREUPON, State's Exhibit Number 49, DNA Chart, was marked
7 for identification.)
8 (WHEREUPON, State's Exhibit Number 50, Marshall's shorts,
9 was marked for identification.)
10 (WHEREUPON, State's Exhibit Number 51, Marshall's shoes, was
11 marked for identification.)
12 (WHEREUPON, State's Exhibit Number 52, defendant's
13 eyeglasses, was marked for identification.)
14 (WHEREUPON, State's Exhibit Number 53, victim's tan pants,
15 was marked for identification.)
16 (WHEREUPON, State's Exhibit Number 54, victim's blood spot,
17 was marked for identification.)
18 (WHEREUPON, State's Exhibit Number 55, search warrant for
19 Brandon's buccal, was marked for identification.)
20 (WHEREUPON, State's Exhibit Number 56, shell casing, was
21 marked for identification.)
22 (WHEREUPON, State's Exhibit Number 56(A), bullet, was marked
23 for identification.)
24 (WHEREUPON, State's Exhibit Number 57, SLED Ashley Bell's
25 Forensic Serology Report, was marked for identification.)

1 (WHEREUPON, State's Exhibit Number 58, Victim's Alcatell
2 cell phone, was marked for identification.)
3 (WHEREUPON, State's Exhibit Number 59, Search warrant for
4 Brandon's phone from CCDC, was marked for identification.)
5 (WHEREUPON, State's Exhibit Number 60, Defendant's cell
6 phone, was marked for identification.)
7 (WHEREUPON, State's Exhibit Number 61, Search warrant for
8 forensic dump of victim's cell phone, was marked for
9 identification.)
10 (WHEREUPON, State's Exhibit Number 62, receipt for purchase
11 of D's gun, Gene's Pawn Shop, was marked for
12 identification.)
13 (WHEREUPON, State's Exhibit Number 63, picture of D's white
14 t-shire, was marked for identification.)
15 (WHEREUPON, State's Exhibit Number 64, SLED Gunshot residue
16 report, was marked for identification.)
17 (WHEREUPON, State's Exhibit Number 65, SLED IBIS report, was
18 marked for identification.)
19 (WHEREUPON, NO EXHIBITS PROVIDED FOR State's Exhibit Number
20 66 through 69.)
21 (WHEREUPON, State's Exhibit Number 70, photo - bag with two
22 liquor bottles, was marked for identification.)
23 (WHEREUPON, resume from lunch break 4/4/16, 2:15 p.m.)
24 THE COURT: Are you ready for the Jackson v. Denno
25 hearing?

1 MR. OSBORNE: Yes, Your Honor, we are.

2 THE COURT: Okay.

3 MR. OSBORNE: If you would like I can go ahead and put
4 on the record the items that's been moved into evidence by
5 stipulation.

6 THE COURT: All right. \ That would be great.

7 MR. OSBORNE: Okay. The items that have been
8 pre-marked are State's Exhibit 1 through 13.

9 THE COURT: Okay.

10 MR. OSBORNE: And then State's Exhibit Number 15
11 through 31.

12 THE COURT: Okay.

13 MR. OSBORNE: And then State's Exhibit Number 39
14 through 70 ---

15 THE COURT: Okay.

16 MR. OSBORNE: --- leaving out 48.

17 THE COURT: Okay. Is that correct, Ms. Gay?

18 MS. GAY: Yes, ma'am -- I mean, yes, sir. We went over
19 it during the lunch break.

20 THE COURT: Okay. And let the record reflect Mr.
21 Marshall is present.

22 State's Exhibits 1 through 13 are admitted without
23 objection. State's Exhibits 15 through 31 are admitted
24 without objection. State's Exhibits 39 through 70 exclusive
25 of Exhibit 78 -- no, 48, is admitted without objection.

1 (WHEREUPON, State's Exhibits 1 - 13, 15 - 31, 39 - 47, and
2 49 - 70 are admitted into evidence.)

3 THE COURT: All right. You may proceed.

4 MR. OSBORNE: We are ready for the Denno hearing, Your
5 Honor.

6 THE COURT: All right, sir.

7 MR. OSBORNE: All right. The State calls Detective
8 Richard Burckhardt.

9 (WHEREUPON, the witness was duly sworn.)

10 THE CLERK: Please state your first and last name and
11 spell your last name loudly and clearly into the microphone.

12 THE WITNESS: Richard Burckhardt. B-U-R-C-K-H-A-R-D-T.

13 **DIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE RICHARD**

14 **BURCKHARDT (IC):**

15 Q. Detective Burckhardt, where do you work now?

16 A. I am currently employed -- employed in the federal
17 court in a security position for the U.S. Marshals Service.

18 Q. And what job did you have before that?

19 A. I retired in November of 2015 after 27 years,
20 Charleston Police Department.

21 Q. Briefly what were some of the duties that you have had
22 at Charleston Police?

23 A. I started out after completing the Criminal Justice
24 Academy I went into Uniformed Division and patrolled for
25 several years. From that point on I went into the Narcotics

1 Division. I was deputized by the Drug Enforcement
2 Administration, worked for DEA. I was also deputized via
3 the United States Marshals Service.

4 From that point I went on to work in criminal
5 investigations of which was pretty much 17 years of my
6 career and is where I finished.

7 Q. All right. Did you have the occasion to become
8 involved in the investigation of a murder case involving
9 Brandon Marshall?

10 A. I did.

11 Q. Did you interview Mr. Marshall?

12 A. Yes, I did.

13 MR. OSBORNE: Your Honor, may I approach the witness?

14 THE COURT: You may.

15 Q. I am going to just start off by showing you what has
16 been marked as State's Exhibit 8. Can you take a look at
17 that and tell me if you recognize it.

18 A. Yes, this would be a disc recording of the interview.

19 Q. The interview that you had with who?

20 A. The defendant.

21 Q. All right. How did you become involved in the
22 investigation?

23 A. On the evening that the incident occurred I was on
24 duty. I was a duty detective for the evening shift for the
25 City. I was requested to respond to Wilson Street in

1 reference to the shooting that has just occurred.

2 Q. All right. Do you -- when you got to Wilson Street did
3 you give any directions to any of the officers?

4 A. Yes, upon my initial arrival there was a couple of CPD
5 units that had already had arrived prior to my arrival. I
6 was advised -- I was asked by the uniformed officers on the
7 scene to give me a quick briefing of what had transpired.

8 I was told there was a shooting that had occurred
9 outside of the residence at 9-B Wilson, that a subject was
10 down, and that a person was in custody and was being held in
11 a CPD cruiser.

12 Q. Okay. Did you give any instructions to the officers
13 regarding the individual that had been taken into custody?

14 A. Yes.

15 Q. And what did you tell them?

16 A. I told them to take him to CPD headquarters where he
17 would be formally interviewed later on.

18 Q. Okay. Did you later meet with him at CPD?

19 A. I did.

20 Q. And who was the individual that you met with?

21 A. Brandon Marshall.

22 Q. All right. Do you remember about what time the
23 defendant was brought to CPD?

24 A. I believe it was somewhere after 4 a.m.; thereabouts.

25 Q. All right. Now at that point while he was at CPD was

1 he free to leave?

2 A. No, he was not.

3 Q. Was he under arrest?

4 A. Yes.

5 Q. Do you know about what time the defendant left the
6 interview room?

7 A. I think it was some four hours after his arrival.

8 Q. Now did the entire time that he was in interview was he
9 being interviewed that entire four hours or so?

10 A. No. No. There was -- there was a couple of breaks
11 from the time of his arrival for the interview. I stepped
12 out of the interview on a couple of occasions.

13 Q. Okay. All right. So during your time with the
14 defendant did you notice him to be intoxicated or under the
15 influence of any drugs?

16 A. He didn't appear to be. My estimations.

17 Q. But he did state at some point that he had been
18 drinking earlier that night?

19 A. He did.

20 Q. But did he appear intoxicated to you?

21 A. No.

22 Q. Did he appear to have any physical or mental disability
23 that would have impaired his ability to understand what was
24 being said to him or answer questions?

25 A. No, he did not.

1 Q. So prior to the interview or during the interview did
2 you offer him any breaks?

3 A. I did.

4 Q. Did he accept any?

5 A. He told me he wanted to continue. I don't recall him
6 using the restroom. He may have at one point in time. I'm
7 not exactly sure.

8 Q. During the entire time with him did you ever deny him
9 access to a telephone, food, or a drink?

10 A. No.

11 Q. Did you make any threats or any promises to him?

12 A. No, I did not.

13 MR. OSBORNE: Your Honor, may I approach?

14 THE COURT: You may.

15 Q. I am showing you now what has been marked as State's
16 Exhibit 40. Can you open that and tell me if you recognize
17 it.

18 A. This would have been my standard Miranda warning to
19 the defendant. It is dated and timed. It is the original
20 card.

21 Q. Okay. And when you met with him did you read from
22 that card right there when you advised him of his Miranda
23 rights?

24 A. Yeah; so I typically with any defendant in that
25 position I would have read one through five on the back of

1 the card, each right, each individually.

2 Q. Okay.

3 MR. OSBORNE: Your Honor, at this time I would request
4 to publish State's Exhibit-8, the actual interview.

5 THE COURT: Okay. Any objection?

6 MS. GAY: No, Your Honor.

7 THE COURT: Very well.

8 MR. OSBORNE: It is in three separate clips, Your
9 Honor. I think the time is about 20 or 30 minutes.

10 THE COURT: Okay.

11 (WHEREUPON, published a portion of State's Exhibit 8, the
12 interview, at court time of approximately 4/4/16, 2:46 p.m.)

13 Q. Okay. If that ended at 4:23 was that when the
14 defendant was first brought into the interview room?

15 A. Yes.

16 Q. Okay.

17 MR. OSBORNE: Go ahead and play Clip Number 2.

18 (WHEREUPON, resumed publishing State's Exhibit 8, the
19 interview.)

20 (WHEREUPON, paused publishing.)

21 Q. All right. What did he say there?

22 A. He said it was too late for me to Mirandize him.

23 Q. And do you know what he meant by that?

24 A. I believe what he meant was upon his apprehension on
25 the street that it was his belief that the arresting officer

1 should have read him his rights at that time. That's what
2 my perception was.

3 Q. Did anyone interview him on the scene?

4 A. No.

5 Q. This is the first interview of him?

6 A. Yes.

7 (WHEREUPON, resumed publishing State's Exhibit 8, the
8 interview.)

9 (WHEREUPON, paused publishing.)

10 Q. All right. Detective Burckhardt, how long have you
11 been doing investigations, again?

12 A. Seventeen years.

13 Q. And during that time - I know this is a tough question
14 to answer - but can you estimate about how many interviews
15 you did to suspects after you advised them of their Miranda
16 rights?

17 A. Several hundred.

18 Q. Several hundred. At this point did you understand the
19 defendant to be invoking his right to counsel for the
20 interview?

21 A. No. He stated several times that it was okay for him
22 to talk without a lawyer present for the interview. It was
23 my understanding that he may want an attorney down the road
24 such as a bond hearing or a preliminary hearing. I think
25 that is what he was relaying to me.

1 When I stepped out, I spoke to associate detectives
2 that would have been monitoring the interview to get their
3 perception as well. Was he asking for a lawyer, was he
4 refusing to have a lawyer, and so forth. So I let him have
5 time to think about it again.

6 Q. And then what did you do then?

7 A. Went back in.

8 Q. And when you went back in ---

9 A. Went back in -- back over the same issue.

10 Q. Okay.

11 MR. OSBORNE: Your Honor, we are going to play the last
12 clip now.

13 THE COURT: Okay.

14 (WHEREUPON, resumed publishing State's Exhibit 8, the
15 interview.)

16 (WHEREUPON, paused publishing.)

17 Q. Detective, does his story change -- I know it changes a
18 little bit, but does it change substantially from that point
19 on?

20 A. Later on through the interview it's -- you know, I
21 wanted to pretty much talk about number one was the victim
22 armed, did he have a weapon. He said, no, he didn't.

23 The amount of times he was shot I believe - I was
24 looking for the crime scene report - it was more than two or
25 three. It was -- it was several. He was shot several

1 times.

2 Q. After this point in the interview does he ever request
3 an attorney again?

4 A. No.

5 Q. Do you make any promises to him; are there any threats
6 made to him from them point on?

7 A. No.

8 MR. OSBORNE: Your Honor, I think there is about 20
9 minutes left. We can play the rest if you would like.

10 THE COURT: You need to play it all.

11 MR. OSBORNE: Okay.

12 (WHEREUPON, resumed publishing State's Exhibit 8, the
13 interview.)

14 (WHEREUPON, paused publishing.)

15 Q. Detective, did you understand this to be a clear
16 invocation of his right for an attorney?

17 A. Yes.

18 Q. Did you question him or did anyone else question him at
19 all from this point on?

20 A. No.

21 MR. OSBORNE: No further questions, Your Honor.

22 THE COURT: Okay. Cross-examination.

23 **CROSS-EXAMINATION BY MS. GAY OF DETECTIVE BURCKHARDT (IC):**

24 Q. We watched. You know, we have all seen the movie now.
25 But and in the movie one of the things that happens at the

1 beginning is is that Mr. Marshall does say - though he is
2 not articulating it very correctly or clearly - that he
3 wanted a lawyer; he does say that?

4 A. Not for the interview.

5 Q. He says I want a lawyer, and then I think your
6 testimony is that you believed that he may have had a
7 different opinion of what that meant; but he did say I want
8 a lawyer?

9 A. Not for the interview. I went over it with him several
10 times. I think we watched that.

11 Q. I know. And he is not a lawyer. He is just a lay guy.
12 He doesn't have any kind of legal training?

13 A. Probably not.

14 Q. Or police training?

15 A. Probably not.

16 Q. And so in the end of the interview, again, he says I do
17 want a lawyer, I want you to call him, I want to call him.
18 And I think you said I think we are over now.

19 MS. GAY: I have no further questions, Your Honor.

20 THE COURT: Okay. Redirect?

21 MR. OSBORNE: No, Your Honor.

22 THE COURT: Okay. Any additional evidence from the
23 State?

24 MR. OSBORNE: No, Your Honor.

25 THE COURT: Anything further from the defendant on this

1 issue?

2 MS. GAY: I would like to call Brandon Marshall.

3 THE COURT: Sure.

4 You can step down, Mr. Burckhardt.

5 (WHEREUPON, court reporter asked for clarification on
6 exhibits.)

7 MR. OSBORNE: Sixty-six, sixty-seven, sixty-eight, and
8 sixty-nine are not numbered.

9 THE COURT: So 67, 68, 69 are numbers, but they
10 don't -- aren't an exhibit?

11 MR. OSBORNE: They are not exhibits.

12 MR. OSBORNE: Sixty-six through sixty-nine.

13 THE COURT: All right. That's fine.

14 (WHEREUPON, the witness was duly sworn.)

15 THE CLERK: Please state your first and last name and
16 spell your last name loudly and clearly into the microphone.

17 THE WITNESS: Brandon Marshall, M-A-R-S-H-A-L-L.

18 **DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL (IC):**

19 Q. Mr. Marshall, we are here today and this is your trial.
20 You just watched a video that was taken. Do you remember
21 that night?

22 A. Somewhat.

23 Q. Okay. Can you describe a little bit more to the judge
24 about what do you mean by somewhat.

25 A. Parts of my memory is still really groggy. That is why

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL (IC):

1 most of my statement didn't quite make sense.

2 Q. Okay. And so before we get to the contents of your
3 statement and what you said, tell the judge please what was
4 going through your head and what you meant in the beginning
5 of this when Mr. Burckhardt comes in and starts talking to
6 you and the things that you said; explain that to the judge
7 what your state of mind was.

8 A. I felt like I was pretty incoherent. My memory didn't
9 really make sense. It was all kind of a blur. Not really
10 in order I guess.

11 Q. Okay, now there was a part of this video where you said
12 I want to talk to my lawyer. Did you have a lawyer in your
13 life at that time that was handling some legal things for
14 you?

15 A. Yes.

16 Q. And who was that?

17 A. Jonathan Altman.

18 Q. Had you -- in the past you -- I believe that the
19 testimony -- the video said that you had his phone number in
20 your phone?

21 A. Yes.

22 Q. Had you had occasion in the past to call him when you
23 needed some legal things answered?

24 A. Yes.

25 Q. And you -- we saw it and when you said I would like to

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL (IC):

1 call my lawyer. Can you explain to the judge what that
2 meant to you.

3 A. I meant that I wanted to contact my attorney.

4 Q. Okay. And when you in the beginning of this statement
5 when you kind of go back and forth on I want my lawyer but I
6 don't want him here, can you explain to the judge what you
7 meant.

8 A. I thought that I would be able to contact my attorney
9 then and stop everything and be able to give a statement
10 later on.

11 Q. Okay. And that's not what happened?

12 A. No.

13 Q. Why didn't you just stop talking?

14 A. Because I felt like I was being pushed to give an
15 interview after he kept going back and forth about what it
16 meant about an attorney.

17 Q. So do you recall when he said to you these are your
18 Miranda warnings and I think your comment was it is too late
19 to give me Miranda; what did that mean to you?

20 A. I thought that he -- I thought that -- from what I knew
21 I thought that he was supposed to issue that to me upon my
22 apprehension.

23 Q. Okay. And when you say from what you know, have you
24 ever gone to law school?

25 A. No.

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL (IC):

1 Q. Or gone to the Police Academy?

2 A. No. And I had been asked questions when I was
3 apprehended. So they lied when they said they did not
4 interview me before.

5 Q. Okay. Well, those -- I think those things -- did
6 anybody issue the Miranda warnings at the time of your --
7 when you were on the street, on Wilson Street; do ---

8 A. No.

9 Q. --- you remember anybody? No; and so this time when he
10 came in with the card, that was the first time you had heard
11 that?

12 A. Yes.

13 Q. However, you are saying that people had asked you
14 things before that?

15 A. Yes.

16 Q. Not just things had just come out of your mouth
17 spontaneously?

18 A. No.

19 Q. And when he brought the card back in and showed it to
20 you did you take time to read it?

21 A. I heard what he was saying, but I didn't read it.

22 Q. Okay. And I think he said put your initials right
23 here?

24 A. He said put an "x" here and sign.

25 Q. Put an "x" -- or he said sign at the "x" or something.

DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL (IC):

1 Did you take the time to read it then?

2 A. No.

3 Q. Okay. So it is your testimony here to the judge here
4 today that you had asked for a lawyer and that you did not
5 want to be interviewed until your lawyer came?

6 A. Yes.

7 MS. GAY: One moment, Your Honor. I have no further
8 questions.

9 THE COURT: Cross-examine.

10 MR. OSBORNE: Just briefly, Your Honor.

11 THE COURT: Sure.

12 **CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL (IC):**

13 Q. All right. Mr. Marshall, you say that night your
14 memory was groggy; is ---

15 A. Yes.

16 Q. --- that correct, your memory was groggy?

17 A. Yes.

18 Q. Okay. But you did see the interview, right?

19 A. Yes.

20 Q. And you did hear Detective Burckhardt ask you do you
21 want to be interviewed?

22 A. Yes.

23 Q. And you responded yes?

24 A. Yes.

25 Q. And he asked you again do you want to be interviewed?

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL (IC):

1 A. And I said, yes, ---

2 Q. And you said yes again?

3 A. --- I want to contact my attorney.

4 Q. That is not what happened though. Detective Burckhardt
5 then said with my lawyer -- with your lawyer present, right?

6 A. Is that a question?

7 Q. Yes.

8 A. Yes.

9 Q. And then your answer was: "Without my lawyer present"?

10 A. I said, without my lawyer present I would answer the
11 questions. But I had already stated I wanted an attorney
12 before he kept going back and forth about it.

13 Q. So you see where that would be a little confusing?

14 A. I can see why he should have taken my first words.

15 Q. Even though you said something different right after?

16 A. Yes.

17 Q. It is a little confusing. And then you said I'm not
18 giving up the right to counsel, I am just saying that any
19 questions you need me to answer I will answer?

20 A. Uh-huh.

21 Q. You did say that?

22 A. Yes.

23 Q. And Detective Burckhardt, he was confused; so he said
24 well I'm a little bit confused now. And then he asked you
25 do you want a lawyer here while I question you. Do you

CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON MARSHALL (IC):

1 remember that?

2 A. Uh-huh.

3 THE COURT: Is that a yes?

4 A. Yes.

5 Q. And do you recall answering I want a lawyer in general
6 but I don't need a lawyer while you ask me the questions?

7 A. I recall just watching myself say that.

8 Q. Okay. But you don't recall it from that night?

9 A. No.

10 Q. And that was you on the video saying that? Or was it
11 you on the video?

12 A. Oh, I mean I didn't -- I wasn't sure that was a
13 question.

14 Q. So that was you on the video?

15 A. Yes.

16 MR. OSBORNE: No further questions, Your Honor.

17 THE COURT: Redirect.

18 **REDIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL (IC):**

19 Q. Brandon, when you said that you thought that he should
20 take the first word that you said or the first time - I want
21 a lawyer and then we will do this interview - at that point
22 when he didn't stop what did you think you were supposed to
23 do?

24 A. I thought I had no choice.

25 Q. So you thought at that point you -- they weren't

REDIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL (IC):

1 listening to you and it was going to happen anyway?

2 A. Yeah.

3 Q. That you had no choice?

4 A. (No response from defendant.)

5 MS. GAY: Thank you, Your Honor.

6 THE COURT: Okay. Recross.

7 MR. OSBORNE: No, Your Honor.

8 THE COURT: All right. You may step down, Mr.

9 Marshall.

10 Any additional testimony from the defendant? Any
11 additional testimony from the defendant's side ---

12 MS. GAY: No.

13 THE COURT: --- from anyone?

14 MS. GAY: No, Your Honor.

15 THE COURT: Okay. Any reply testimony?

16 MR. OSBORNE: No, Your Honor.

17 THE COURT: Okay. I will be happy to hear from you in
18 argument. Any argument from the -- I will let Ms. Gay and
19 then you can respond.

20 MS. GAY: Well, Your Honor, Mr. Marshall who, as he
21 testified, is not anybody who has, you know, got any prior
22 experience in this area, unlike the officer in this case;
23 testified as honestly as he could that he believed that when
24 he said I want a lawyer and I will -- I am not going to give
25 up my right to a lawyer, that he thought that meant that he

26

1 was going to be able to contact his lawyer.

2 As he testified, he said that when they kept -- when he
3 kept asking him questions he thought at that point that they
4 weren't going to listen to him and that he had no choice.

5 Certainly there is a whole lot of going back and forth,
6 which I know the solicitor will discuss; and he said, well,
7 I will talk to you but I want a lawyer.

8 I think that his lack of knowledge and sophistication
9 in this area caused him to be confused about what -- what
10 his rights may have been.

11 And he certainly signed the form. He did. They read
12 his rights on the video. He did sign the form. But I do
13 think that in discussing things and answering questions
14 there was enough inertia in the beginning that he had asked
15 for a lawyer that there should not have been any -- any
16 further discussions with him.

17 And then even when he said, you know, I told you I
18 wanted a lawyer, that that verified that he did not intend
19 to waive his right to remain silent under the circumstances,
20 Your Honor.

21 THE COURT: Okay.

22 MR. OSBORNE: Thank you, Your Honor. The way I see
23 this Denno hearing is basically two parts. The first part
24 is whether the statement itself was voluntary. All right,
25 looking at that element certain factors that come into play

1 is whether he was intoxicated, whether he had any physical
2 or mental disability, whether the statements were made under
3 any threats or promise of leniency, whether Miranda was
4 given, and whether he indicated he understood after Miranda.

5 So looking at those, he was very clear. He was very
6 articulate. Yes, he had been drinking a little bit that
7 night. But the video shows an intelligent conversation
8 occurring between the two individuals. You do have a waiver
9 of Miranda.

10 So I think that the first aspect of Denno has been met.
11 It is a voluntary statement. The real question here is
12 whether he invoked Miranda or not.

13 Looking at just some quotes that I pulled from some
14 cases; looking at Kennedy, quoting Davis v. U.S., Kennedy
15 333 SC at 430: If the desire for counsel is presented
16 sufficiently, clearly, that a reasonable police officer in
17 the circumstances would understand the statement to be a
18 request for an attorney, no ambiguity exists and all
19 questioning must stop.

20 Detective Burckhardt has been a seasoned detective for
21 many years. He is a reasonable detective. He didn't
22 understand what this defendant was asking so he asked for
23 clarification. The defendant on the stand himself admits
24 that it was somewhat confusing what he was saying.

25 If the suspect's invocation is ambiguous, a reasonable

1 officer can continue to ask him questions to find out what
2 exactly he is trying to say.

3 I found this situation right here to be almost
4 identical to a South Carolina Court of Appeals case that
5 just came out.

6 THE COURT: I have -- we don't need to ---

7 MR. OSBORNE: State v. Palmer.

8 THE COURT: I have already read it. We don't -- and I
9 understand the law, Mr. Osborne. I mean I appreciate you
10 bringing that. And the court -- certainly I understand that
11 case has some similarities. There's no question about it
12 so.

13 MR. OSBORNE: So, Your Honor, I think it was ambiguous.
14 Detective Burckhardt asked follow-up questions. He clearly
15 stated that he understood. He clearly stated that he wanted
16 to give a statement.

17 He wanted the type of lawyerly assistance that occurs
18 after the statement, not on the night of the statement.

19 THE COURT: Okay.

20 MR. OSBORNE: Thank you, Your Honor.

21 THE COURT: Reply.

22 MS. GAY: No, Your Honor.

23 THE COURT: Okay. Well, my level is by preponderance
24 of the evidence. And clearly both from the specific
25 statements given by the defendant, by that standard, clearly

1 it meets all the requirements as being freely, voluntarily,
2 knowingly and intelligently made and after warnings were
3 given.

4 And warnings, while defendant claims that he didn't
5 read it, he was -- he -- he certainly took a while -- it
6 speaks for itself how long he considered what he was asked
7 to sign. It wasn't instantaneous. He looked at it, flipped
8 it over at least once that I saw.

9 The fact that he made the comment that you're too late
10 indicates that he knows something about Miranda because he
11 took a position. So obviously it may be in an error, but
12 he -- this wasn't foreign to him, as counsel seems to argue.

13 I agree he is not trained in any police investigation
14 or the law.

15 The other clearly is when -- when the link -- when the
16 statement is given, Detective Burckhardt comes in and says
17 do you want a lawyer present. He said no. Not -- very
18 clearly. And he starts asking questions.

19 And then that is the other part from inference and
20 deduction. I would venture to say -- and I didn't tabulate
21 it, but I just made a note. The majority of the statement
22 is a narrative. The majority of it is the defendant
23 responding and elaborating on issues. Not questions. Not
24 being asked and nothing specifically pried, but most of it
25 is just his.

1 He has demonstrated while he says he was foggy several
2 times he said wait a minute I forgot to add this part of it.
3 He is obviously comprehending. He shows he is not
4 intoxicated. He shows he clearly understands what he is
5 saying.

6 And probably the most convincing part to me that he
7 understood what he was doing is at the end. He said you
8 have asked all the questions that you can ask me and now I
9 will not -- I want my lawyer.

10 Clearly he understood his rights because he exercised
11 them. And it stopped. So all of that suggests to me he
12 freely, voluntarily, knowingly and intelligently made the
13 statement and clearly after being informed. So I will allow
14 the statement.

15 Now of course the jury will have to make a
16 determination based on the beyond a reasonable doubt
17 standard.

18 Thank you. Okay. All right. We have finished that
19 one. Let's go to the -- let's go to the -- to the hearing
20 on whether immunity should be granted.

21 MR. OSBORNE: Your Honor, during the lunch break Ms.
22 Gay and myself have entered into a number of stipulations
23 for the purposes of an immunity hearing.

24 THE COURT: Very good. That would be fine. Sure.
25 Absolutely. Thank you. Yes. Do you have a copy? And we

1 will make this -- stipulations will be Court's Exhibit 1.
2 (WHEREUPON, Court's 1; stipulations, was marked for
3 identification.)

4 THE COURT: All right.

5 MR. OSBORNE: Your Honor, just for clarification
6 purposes, Ms. Gay has filed a motion for sequestration of
7 the witnesses.

8 THE COURT: Yes.

9 MR. OSBORNE: I have the victim's family outside who
10 would like to come in.

11 THE COURT: Victim's ---

12 MR. OSBORNE: I only anticipate calling Ashley Butler
13 who is the victim's wife, girlfriend. I don't know if Ms.
14 Gay intends on calling any of the other family members. But
15 they would like to sit in during the trial.

16 THE COURT: I think the victim's family has a right to
17 be present.

18 MS. GAY: I am not planning on calling anybody.

19 THE COURT: Okay. That's fine. Well, they have a
20 right to be present.

21 MS. GAY: Well, I mean Ashley Butler is a fact witness.
22 But yeah.

23 THE COURT: Well ---

24 MS. GAY: Not the rest of them.

25 THE COURT: Well, they don't -- if they are not going

1 to be a witness they don't have to be sequestered.

2 MS. GAY: Right.

3 THE COURT: Okay. So they can come in. Those persons
4 that are not going to be a witness have a right to come in.
5 Okay. All right. You may proceed.

6 MS. GAY: Your Honor, I would like to just make this as
7 part of the court record. I believe you talked about this
8 earlier. Not necessarily to -- this is -- my client was
9 evaluated for competency, criminal responsibility. And just
10 to get ---

11 THE COURT: Let's -- let's -- if you don't mind -- is
12 he planning to testify now?

13 MS. GAY: Yes.

14 THE COURT: Okay. Well, why don't you -- well, put
15 that in when he is called to testify. We will put that in
16 as an additional court's exhibit.

17 MS. GAY: Okay.

18 THE COURT: Okay.

19 MS. GAY: Just give me one second, Your Honor.

20 (WHEREUPON, pause for defense counsel.).

21 MS. GAY: Your Honor, would you like for me just
22 to discuss what it is we think we were doing here with
23 this Duncan, or would you like me to jump right into
24 testimony?

25 THE COURT: Ms. Gay, with all due respect, this isn't

1 the first time I have had a Duncan hearing. I know what we
2 are doing. It is your time -- your chance to present
3 evidence for my consideration. Thank you. Let's proceed.

4 MS. GAY: All right. Your Honor, I would call Brandon
5 Marshall.

6 THE COURT: Okay. I will just remind Mr. Marshall -- I
7 will remind you you are still under oath in this matter.

8 THE COURT: Mr. Marshall, I will remind you you are
9 still under oath in this matter.

10 **DIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL (IC):**

11 Q. Mr. Marshall, we are here and you are still under oath.
12 At this hearing we are going to talk about what happened
13 that night. And I know we have now seen a portion of it on
14 video.

15 And one of things that -- you said something to me
16 about the video as we were sitting back there. Can you --
17 was there more of that video than what we saw?

18 A. Yes.

19 Q. Okay. And describe what you remember about the rest of
20 that video after the conversation with you and Mr. -- the
21 officer ended?

22 A. I remember the -- enter and exit the room several
23 times. And I remember crying every time we would exit the
24 room and wiping my face when he would enter the room. And
25 then I think that went on for quite a while until I left.

1 Q. Okay. And so that was -- the statement is at the end
2 of the evening, what happened that night. I think that was
3 what -- what time of night was that; do you remember?

4 A. I believe -- I don't know. I only know from
5 remember -- reading the reports it was about 2:30 a.m., 2:40
6 a.m.

7 Q. Okay. So why don't you go backwards and tell us what
8 happened earlier in the day; and, you know, -- or maybe even
9 just start with how you met Anthony Williams.

10 A. I met him through a friend named E-dras. And I
11 remember he introduced him to him. I was at E-dras'
12 house drinking.

13 Q. And he introduced you to Anthony Williams?

14 A. Uh-huh. Yes.

15 Q. And about -- this happened on the 22nd day of May. How
16 long before this happened did you meet him?

17 A. Me -- I am pretty sure it was at least three months.

18 Q. Three months. And was there something unique about him
19 when you met him?

20 A. Not right away, no.

21 Q. So at what point did you ---

22 A. After I started getting to know him I realized we had a
23 lot in common, and then we started hanging out more and
24 more.

25 Q. All right. And there are some things about your

1 personal life that I think that -- that came out in this
2 case. What is your sexual orientation?

3 A. I am a homosexual.

4 Q. And how long have you been a homosexual?

5 A. As long as I have known myself, I guess.

6 Q. Since about when?

7 A. At least eight, I guess.

8 Q. Okay. So most all of your life?

9 A. Yes.

10 Q. And with regard to that tell the court a little bit
11 about you and Mr. Williams?

12 A. Well, I guess it depends on where you want me to start.
13 I mean

14 Q. Were y'all more than friends?

15 A. Yes, we were sexually involved.

16 Q. And when did that started happening?

17 A. I think about a month after I met him.

18 Q. So that would have been a couple of months before May;
19 maybe in March?

20 A. Yeah. Yes.

21 Q. And were you employed during this period of time?

22 A. I technically was, but I wasn't working.

23 Q. What kind of work did you do?

24 A. I am an electrician.

25 Q. So had you been working at a place during the period of

1 time when you first met him?

2 A. I was working at Boeing until I got into a car
3 accident.

4 Q. And when was that car accident?

5 A. The first one I believe was in February or some time.
6 And then I also got into another one about three weeks
7 before this incident happened.

8 Q. And is that what Mr. Altman was representing you on?

9 A. Yes, both incidents.

10 Q. And with regard to that situation had you sought
11 medical treatment?

12 A. Yes, I was in intense therapy about three times a week
13 and receiving spinal injections as well as treatment for
14 nerve damage in my arms.

15 Q. And that was how soon before this accident -- this
16 incident night?

17 A. I was still in treatment actually during this incident.
18 I was supposed to go the previous day. But I didn't.

19 Q. Okay. And I think that you testified earlier or today
20 you testified that you had been on a trip with Mr. Williams?

21 A. Yes, we went to Myrtle Beach.

22 Q. And in that trip do you remember what dates that you
23 went? Well, let me ask it this way: This incident occurred
24 this night was on May 22nd. How many days had you been back
25 in the Charleston area?

1 A. For about three days.

2 Q. Okay. And I think it is referred to in the tape that
3 there/was -- there were receipts in your car ---

4 A. It ---

5 Q. --- had to do with Myrtle Beach?

6 A. Yes, that they gathered as evidence as well.

7 Q. Do you recall -- and I think in your -- the tape also
8 mentions that you --

9 MS. GAY: Your Honor, if I could just maybe adopt what
10 was in the tape at this time.

11 Q. Well, were you interviewed -- we saw that on the tape?

12 A. Yes.

13 Q. And did they -- were you aware that they were recording
14 it?

15 A. Yes.

16 MS. GAY: At this time, Your Honor, I would like to
17 move in the tape.

18 THE COURT: For what purpose? To prove what?

19 MS. GAY: Well, he can testify to it.

20 THE COURT: I mean I have already heard that, yes. But
21 the purpose of this -- that's -- that's fine. Do you have
22 any objection to incorporating it?

23 MR. OSBORNE: No, Your Honor.

24 THE COURT: That is fine. We will incorporate it.

25 That's fine.

1 THE COURT REPORTER: And the exhibit number we are
2 talking about.

3 THE COURT: That would be eight.

4 MR. OSBORNE: Eight.

5 THE COURT: State's 8. The video.

6 Q. Did you -- one of the things that -- did you go to a
7 place having to do with guns when you were in Myrtle Beach?

8 A. Yes, we went to a gun range.

9 Q. And was there an ammunition store there?

10 A. Yes.

11 Q. And I believe that there was part of an exhibit in this
12 case as a receipt from an ammunition store that is dated a
13 few days before this?

14 A. Yes.

15 Q. And so the night that this happened can you tell the
16 court a little bit about what happened earlier in the day?

17 A. Earlier that day I was doing laundry from about 7:00
18 a.m. up until late that afternoon. I had left the house a
19 few times to go and get laundry detergent, food, so forth.

20 And then I was invited earlier that day to a cookout,
21 and I didn't show up until a couple of hours later. So I
22 think I got there maybe about 8:00 p.m.

23 Q. And so you got to a cookout. Was Anthony Williams
24 there?

25 A. No, it was at another friend's house in West Ashley.

1 Q. Okay. And I think there was -- how did you end up with
2 coming over to Anthony Williams' where Anthony Williams was
3 that night?

4 A. I had texted him earlier that day. Well, actually he
5 texted me first and told me he had gotten a job. And then I
6 responded back to him and told him we should hang out to
7 celebrate him getting a job. He told me he would contact me
8 later. He contacted me several hours later and asked me
9 what I was doing. And I told ---

10 Q. Do you remember what time it was when he contacted you
11 several hours later?

12 A. No.

13 Q. Well after dark?

14 A. Yes.

15 Q. Okay. And then what happened?

16 A. Then I told him I was at a friend's house in West
17 Ashley. And he asked me if I -- I told him I could come
18 over, after he asked me what I was doing. And then that was
19 it. That was the response for a little minute. And then he
20 texted me back about ten minutes later and told me to come
21 on over.

22 Q. And where was come on over; to where?

23 A. To Ashley Butler's house.

24 Q. Okay. And does she live in a housing place?

25 A. Yes, she lives in a Housing Authority apartments.

1 Q. Is that on Beaufain and Wilson Street?

2 A. Yes.

3 Q. Are you aware that that is called the Robert Mills
4 Manor?

5 A. I am now.

6 Q. I would like to show you what's marked as Exhibit 1.
7 Do you recognize this?

8 A. Yes.

9 Q. And can you identify that for me, please.

10 A. It is State's Exhibit 1.

11 Q. What is it a picture of?

12 A. It is a picture of the front part of their apartment.

13 Q. This is where this occurred at [REDACTED]?

14 A. Yes.

15 Q. Okay. And when you went to the apartment who lived --
16 who lived in the apartment?

17 A. I believe Ashley's two kids, Anthony -- Ashley and
18 Anthony's two kids, Ashley and Anthony.

19 Q. All right. And so I am going to show you a few more
20 of -- Exhibit 2, 3, 4 and 5. Can you identify these,
21 please.

22 A. Yes, Exhibit 2 is the living room at Ashley's
23 apartment. Exhibit 3 is the kitchen and dining room area of
24 Ashley's apartment. Exhibit 4 is a rear door facing a
25 picture of Ashley's kitchen. And Exhibit 5 is the inside of

1 the front door in front of the stairwell in Ashley's
2 apartment.

3 Q. Okay.

4 MS. GAY: Your Honor, I would like to admit one through
5 five.

6 THE COURT: They are already admitted.

7 MS. GAY: Yeah, that is right, Your Honor. Stipulated.

8 Q. Okay. Now when you were at the apartment there was
9 some drinking going on?

10 A. Yes.

11 Q. Okay. Can you describe to us how that all happened.
12 Was there alcohol there at the house or did ...?

13 A. I brought two bottles of tequila with me to the house.

14 Q. Okay. And I think that there was one that was white
15 and one that was brown?

16 A. Yes.

17 Q. And so those bottles of tequila. Was there enough
18 mixer there at the house?

19 A. No, there wasn't. I wanted orange juice. They didn't
20 have any. So I left to go to a store. They didn't have
21 change to break the \$100 bill, so I went to Wet Willies to
22 get change and then I went back to get orange juice. And
23 then I returned to Ashley's apartment.

24 Q. Okay. And how much of that alcohol did you think you
25 drank that night?

1 A. Maybe about three mixed drinks.

2 Q. Okay. Were you pouring them with an ounce or two
3 ounces?

4 A. I believe I had maybe about -- I believe the bottle was
5 about 800 milliliters. I had about a little over a fourth
6 of it.

7 Q. Okay. And how about Mr. Williams and Ms. Ashley, were
8 they drinking?

9 A. Ashley had one drink out of the brown tequila bottle,
10 and then she was drinking I believe it was vodka they
11 already had. And then Anthony drunk the rest that was
12 missing from the white tequila bottle.

13 Q. So how big was that tequila bottle?

14 A. The same size. About 800 milliliters.

15 Q. And those tequila bottles were taken into evidence
16 after this -- after everything happened, right?

17 A. Yes.

18 Q. Weren't they in your car?

19 A. Yes.

20 Q. And they were taken out and put into evidence. Okay.
21 So when y'all were there that night in the house describe
22 what happened and where it went from there, after you came
23 back from the mixers. What time of day or night was it?

24 A. I believe it was maybe about maybe after 10:00 at that
25 time, I think.

1 Q. Okay. So that the police were called about 2:30 in the
2 morning. So it was after 10:00 you think when you came back
3 with the mixers?

4 A. It might have been later than that, based on that time.
5 I'm not sure.

6 Q. So tell us what happened that evening.

7 A. After I returned with the drinks I hadn't eaten
8 anything yet so I went and got some -- some chicken out of
9 my car and then came back in inside the house with the
10 chicken as well as the orange juice. I took all of that out
11 with me when I first got back from Little Cricket.

12 I went inside. The first part is kind of a blur. I
13 don't really remember the first part. I kind of remember
14 what happened after we started drinking.

15 We were sitting in the living room. Ashley and Anthony
16 was on one couch, and I was on the other couch. I had been
17 messaging Anthony's brother on my Facebook messenger. We
18 were having a conversation about Myrtle Beach and I kind of
19 freaked out because I thought maybe that he had mentioned to
20 Ashley or whatever that me and Anthony went to Myrtle Beach.

21 But then upon me thinking about it, me and Ashley and
22 Anthony had also talked about going to Myrtle Beach
23 previously with them and their kids and me and a couple of
24 friends. So I freaked out for no reason thinking that he
25 had told her about us going to Myrtle Beach. Because he was

1 the only other person that knew we went to Myrtle Beach and
2 not Florida.

3 Q. That is the brother?

4 A. Yes.

5 Q. Okay.

6 A. And then upon messaging him he said no that he didn't
7 tell her that. And then he had asked me if I was near
8 Anthony, and I told him yeah.

9 And then he told me to tell him to answer his messages.
10 He told me to tell Anthony answer his messages. And then
11 when I told Anthony that, Ashley yelled out how would he
12 know that you are near Anthony. And I said because he asked
13 me. And her first response was it is gay to ask another man
14 about their whereabouts.

15 And then she said that his brother is gay, and they
16 started arguing because I remember him saying -- I remember
17 him asking her do I talk about your family in front of
18 people like that. And she didn't answer. She just laughed.
19 And he was like that is not cool.

20 And then I think I -- I remember making the comment you
21 guys are killing my vibes, y'all need to stop arguing, just
22 relax. And then ---

23 Q. Where were you in the apartment; y'all were all ---

24 A. I was ---

25 Q. --- still where?

1 A. --- in the living room still.

2 Q. So all three of you were in the living room?

3 A. Yes.

4 Q. Where were their children?

5 A. They were at Anthony's mother's house.

6 Q. So then what happened?

7 A. Then we just started talk about other stuff. I don't
8 remember what exactly. But I remember her next comment was
9 that she was going to Myrtle Beach with her boyfriend. And
10 Anthony asked her who was going to watch the kids. And she
11 said who -- I mean and he said says who. When -- when she
12 said that Anthony was going to watch the kids while she was
13 gone. And I think (pause) ---

14 Q. It is okay. You know, just what do you remember next?

15 A. After that I remember -- I remember they started
16 arguing when she said that she was going with her boyfriend
17 to Myrtle Beach.

18 And I kind of took it as a sly comment, because her
19 next comment after that was because he went with his
20 boyfriend to Myrtle Beach. She was referring to me. And I
21 just looked at her like what are you talking about.

22 And then -- and then they started arguing and I just
23 kind of got up and went into the living room. A couple of
24 minutes later -- well, almost instantly actually I heard her
25 yelling saying get off on me, you are always putting your

1 hands on me.

2 I think she called him a punk and said all he does is
3 hit her or something like that. And then that stopped and
4 he walked into the kitchen. I was sitting down having
5 another drink. I think that was my last drink.

6 And then she said something. I didn't hear what she
7 said, but he just kind of charged off and took off back into
8 the living room. And all I heard her saying was the same
9 thing, get off of me, you are always putting your hands on
10 me.

11 And I think she said something about I can't breathe.
12 And that is when -- when I heard her yelling and stuff. And
13 I got up and I looked into the kitchen -- I mean I looked
14 out of the kitchen into the living room, and he was on top
15 of her with his hands around his (sic) neck like with one
16 hand like he was about to punch her in the face with the
17 other hand. And she was on her back on the floor.

18 Q. And you saw this?

19 A. Yes.

20 Q. Okay. And so what did you do at that point?

21 A. I remember grabbing my gun off of the table when she
22 first started making the noise. And I had put my clip in
23 the gun at that time. And I walked to the doorway.

24 And I looked; and as soon as I saw that I was like
25 Anthony you need to stop, you need to get off of her, we

1 need to leave. And then he actually stopped, which
2 surprised me. He actually just stopped right away, got off
3 of her and kind of pushed past me and walked out of the back
4 door. I looked back at Ashley ---

5 Q. Let me stop you for a second. You just testified that
6 you put your clip in the gun at that time?

7 A. Yes.

8 Q. You are aware that in the recorded statement you said
9 you put your clip in the gun outside?

10 A. I also remember saying that I put the clip in when I
11 first grabbed it off of the table. I contradicted myself in
12 my recorded statement.

13 Q. Okay. So what is -- what is -- okay, you are under
14 oath today. What -- what is your version of when you put
15 the clip in the gun?

16 A. I remember putting the clip in the gun as soon as I got
17 up from the table.

18 Q. Okay. So and why was the gun in the house?

19 A. I got into it with someone that lives in that area in
20 that very close vicinity to their apartment. And do I need
21 to be specific about that?

22 Q. Well, let me ask you a question. This gun that -- you
23 bought the gun from the pawn shop. I believe you paid how
24 much for it?

25 A. Two -- about two hundred bucks.

1 Q. And there wasn't anything on your record or anything
2 that prevented you ---

3 A. No.

4 Q. --- from being able to buy the gun?

5 A. No.

6 Q. And so -- and your -- how long before this incident did
7 you buy the gun?

8 A. About a week. Maybe a week and a half at the most.

9 Q. Okay. And I think the gun also had a clip?

10 A. Yes.

11 Q. Okay. This is Defendant's -- State's Exhibit -- or
12 Stipulated Exhibit 10. Do you recognize this?

13 A. Yes.

14 Q. Is this the holster?

15 A. Yes.

16 Q. Okay. We are going to get to where it was in a minute.
17 But I will just put it there. So you had the gun. It has
18 been about a week. And you are -- you were going to tell me
19 why you brought the gun into that house.

20 A. I saw the guy, Dawan, maybe about a month before this
21 incident, I saw him beat this guy pretty much to a pulp. I
22 found out later on that the guy had -- had a broken eye
23 socket and part of his nose was fractured. There was blood
24 all over the ground.

25 I actually called to police that night when I was

1 sitting in my car waiting on Anthony to come downstairs when
2 I witnessed that. And I remember texting Anthony saying
3 that his friend just beat the hell out of someone.

4 And then me and this guy got into it ourselves over an
5 accusation that he made that didn't happen.

6 Q. Is that what you were referring to in the recorded
7 statement?

8 A. Yes.

9 Q. This is the same guy ---

10 A. Yes, Dawan.

11 Q. --- that has some kind of overtones?

12 A. Yes.

13 Q. Okay. So -- so that night did you see this man, Dawan,
14 that night?

15 A. No, not that night.

16 Q. Okay. So when you came into the house where did you
17 put the gun?

18 A. I put the gun on the table. I had already had the clip
19 out of it when it was sitting inside of my glove
20 compartment.

21 Q. Okay. And do you think -- is it your testimony that it
22 was visible, like in plain view it could have been seen ---

23 A. Yes.

24 Q. --- by others?

25 A. Yes.

1 Q. Okay. Now you just mentioned you got to the point
2 where there was this physical altercation that you observed.
3 And I think you said that Mr. Williams had pushed past you
4 and gone outside?

5 A. Yes.

6 Q. When -- what happened when he went outside -- or did
7 you follow right behind him or stay behind or what?

8 A. No, I didn't follow immediately behind him. I turned
9 around and asked Ashley if she was all right. And she said,
10 yeah, she is fine.

11 And then I walked out of the door and closed the door
12 behind me, and she immediately locked the door. And then I
13 looked and Anthony was going to his car, so I thought he was
14 leaving.

15 I turned back around and tried to walk back in the
16 house to grab my bags, but it was locked. I knocked on the
17 door ---

18 Q. Okay. Back up. This bag that you wanted to grab, what
19 was in it?

20 A. Two bottles of tequila and my gun holster. Was on the
21 table, but she put it in the bag as well.

22 Q. Okay. I think that the victim's car was a big, blue
23 car?

24 A. Yes.

25 Q. This is seven. Can you see that?

1 A. Yes.

2 Q. Now is that also -- the gray one right there, is that
3 the one you were driving?

4 A. Yes.

5 Q. Okay. So -- all right, so she had locked the door.
6 Anthony is headed to his car which as we -- it was right
7 here (pointing). And let's talk right here about seven. Do
8 you see that big tree right there?

9 A. Yes.

10 Q. Where is that tree in relation to the car and the door?

11 A. My car in on the exact opposite side of the tree and
12 maybe about 15 to 20 feet away from Ashley's backdoor.

13 Q. Okay. So Mr. Williams would have had to have walked
14 past the tree to get to his car?

15 A. Yes.

16 Q. Okay. And so he goes to his car. And what do you do?

17 A. I turned back around to try to get in the door, back
18 inside the house to grab my things. The door was locked, so
19 I knocked on it. And I asked Ashley to hand me my things.
20 And she said she was going to put it on the front porch
21 because she didn't want to open the backdoor again. So I
22 walked around to the front porch and grabbed my bag off of
23 the porch ---

24 Q. Okay.

25 A. --- and I realized my ---

1 Q. I'm going to give you State's Exhibit 6, and we are
2 going to talk to about the area again. Can you recognize
3 this?

4 A. Yes.

5 Q. Okay. Is this a close up of the big tree?

6 A. Yes.

7 Q. Okay. When you see in the front, can you show me where
8 you would have to have gone to be in the front?

9 A. I would have had to -- usually I walked in between the
10 clothing lines and the tree roots, because they are like all
11 over the ground.

12 Q. So here is the side of the building. You had to go on
13 the other side of the building?

14 A. Yes.

15 Q. Okay. And that's where you headed to get your stuff?

16 A. Yes.

17 Q. Okay. And then -- and then what happened?

18 A. I was out of view of the backyard as I went to retrieve
19 my things off of the front steps. And so when I came back
20 around with my bag in my hand ---

21 Q. And what else was in your hand?

22 A. My holster and my gun was already in my hand as well.

23 Q. Was the gun in the holster?

24 A. No, the holster was in the bag, ---

25 Q. Okay.

1 A. --- but that was in the bag since the bag was in my
2 hand.

3 Q. So you are holding a bag and the gun in the other hand?

4 A. Yes.

5 Q. And you said when you came around -- all this has taken
6 what, how many minutes, how many seconds?

7 A. I mean I didn't move swathfully. So I mean I guess it
8 was pretty quick.

9 Q. Okay, quickly. So when you came back around what did
10 you see?

11 A. As I was coming back around the side corner of the
12 house I saw Anthony getting out of his car and going back
13 towards Ashley's backdoor as I was putting my things inside
14 of my car. Somewhere in my car. Either in the back
15 passenger seat or the trunk. When I saw that, I tried to
16 hurry up and put my things in the car.

17 Q. And when you say things in the car, what did you put?

18 A. The bags -- the bag of liquor with -- with the holster.

19 Q. Okay. And so you see him approaching the back door.
20 Was he in a good mood or a bad mood?

21 A. No, he seemed like he was charging towards the back
22 door.

23 Q. Okay. And you said that you rushed to your car and
24 then rushed back out to where he was?

25 A. Yes.

1 Q. Okay. I am going to show you what it is 19. This ---

2 A. Yes.

3 Q. --- can you identify this? Okay. Is that -- what is
4 this? Here we are again at the tree, and this is the ---

5 A. The clothing line and Apartment 9-A.

6 Q. Oh, I see where there is the clothing line. And this
7 is the back door (pointing)?

8 A. Yes.

9 Q. Okay.

10 A. Not -- that is not Ashley's back door. Ashley's back
11 door is over here (pointing).

12 Q. Oh, over here. Behind these trashcans?

13 A. Behind the trashcan and behind the wall -- the kind of
14 wall divider.

15 Q. I understand. So he would have been in this area over
16 here (pointing)?

17 A. Yes.

18 Q. Okay. And you went towards him?

19 A. Yes.

20 Q. Why did you do that?

21 A. I figured I could try to calm him down and kind of
22 avoid something worse form happening.

23 Q. So it was your intent to try to diffuse it?

24 A. Yes.

25 Q. Okay. And then when you start up there and you are

1 talking to Anthony, how is that going?

2 A. When I the first walked around the corner the first
3 thing I heard was him kicking the door. I believe he was
4 trying to kick the door open so he could get back in the
5 house at Ashley. I wasn't sure exactly. I can't read
6 minds.

7 That is just what it appeared to be, judged by his mood
8 and judged by what he was doing. It appeared he was trying
9 to kick the door in.

10 Q. And what was he saying?

11 A. Well, at first he wasn't saying anything until I walked
12 up to him and tried to talk to him. I was trying to tell
13 him to calm down and that it wasn't that serious. And that
14 I remember mentioning that he shouldn't get in trouble
15 because he is not supposed to be there and if he -- if the
16 police catch's him he is going to get in trouble. So I was
17 trying to get him to leave and calm down.

18 Q. Okay. Let's talk about that for a second. Pursuant to
19 your knowledge of the situation was Anthony supposed to even
20 be on Wilson Street in the projects at that point?

21 A. No, he was on a no trespass order.

22 Q. And were you familiar with the fact that he was on the
23 no trespass order?

24 A. Yes.

25 Q. And do you know when that had occurred?

1 A. Officially he signed the paperwork I believe just a
2 couple of days before this incident occurred. But he was on
3 no trespass notice for about two weeks before that.

4 Q. Okay. So in other words something had happened and he
5 had been told not to come back, but they had officially
6 brought the paperwork or given it to him ---

7 A. Yes.

8 Q. --- just a few days before? All right. And so you
9 are by the back door. And I am going to show you what is
10 18. And maybe this is a better -- a little bit better
11 picture of where her door is. This is 18.

12 A. Yes.

13 Q. This is her door over here where this recycling thing
14 is?

15 A. Yes.

16 Q. Okay. And so -- so -- and here is the tree (pointing)?

17 A. Yes.

18 Q. Okay. And so this situation is going on over here by
19 these trashcans?

20 A. At first, yes.

21 Q. Okay. And so describe to me again what is happening
22 over by the trashcans.

23 A. He is kicking the door until I walk up and try to calm
24 him down. I remember saying, you know, just calm down, you
25 are not supposed to be here, I don't want you to get in

1 trouble, if the police catches you you are going to get in
2 trouble.

3 And then I remember him stopping and he turned and
4 looked at me. And he said -- I remembered him saying look
5 what she did to me. I think -- I think I recall him having
6 like a scratch on his face or like on his chest or
7 something. He was showing me. That apparently she had
8 caused.

9 And I was like that is not important, you need to try
10 to calm down, we need to just leave. And then he shoved me
11 to the ground, and I just kind of -- I felt like I just flew
12 back maybe about 10 feet.

13 I kind of got caught up. My back was hurting because
14 I -- I was already, you know, pretty weakened state from
15 being in a couple of different car accidents. I stood up.
16 And by that time I am pretty sure my glasses was off because
17 I could barely see anything.

18 Q. Okay. Let's back up about that. So when you say you
19 are pretty sure your glasses were off, let me show you -- do
20 you have to use glasses to see?

21 A. Yes.

22 Q. They are on your face now. The -- let's find a picture
23 here. Here it is. Here is the picture of -- Number 19.
24 And can you -- let's see if you can recognize this again.
25 Okay, this is the tree (pointing). This is her back door

1 (pointing)?

2 A. Yes.

3 Q. First of all let me show you this one. This is Number

4 20. Can you identify these for me (pointing to photograph)?

5 A. Those are my military issued glasses.

6 Q. All right. And what is that little number next to it?

7 A. Number 4.

8 Q. Okay. So this is Number 20. In this Number 19 can --

9 do you see Number 4 as -- this is like an evidence tag. Do
10 you see ---

11 A. I see ---

12 Q. --- Number 4?

13 A. I see Number 4 at the very base of the tree.

14 Q. Okay. So this is where your glasses were found after
15 this was over at the base of the tree. Can you tell us why
16 your glasses were found at the base of the tree?

17 A. When I was shoved down the first time I believe it was
18 the first time when my glasses flew off.

19 Q. Okay. And when you say shoved down, that means you
20 were on the ground?

21 A. Yes.

22 Q. And were you on the ground because Mr. Williams put you
23 on the ground?

24 A. Yes.

25 Q. Okay. And you said -- is it your testimony that you

1 were able to get up at that point, and what happened next?

2 A. When I got up again he was probably about 10 feet away
3 from me back by the like the fencing part near Ashley's back
4 door. I got up. I looked -- kind of looked around, looked
5 on the ground. I was looking for my glasses. I couldn't
6 really see much of anything. And ---

7 Q. And it was dark out there?

8 A. It was very dark.

9 Q. No lights?

10 A. No lights. I think there might have been one light at
11 the far end of the apartment building, but that was not in
12 the vicinity of my -- of my visual range. I walked back up
13 to him again.

14 Q. And what was your reasoning for walking back up towards
15 him again?

16 A. I was still trying to calm him down, because I realized
17 he was upset. And I still thought maybe I could calm the
18 situation.

19 Q. And was he at the door again?

20 A. He was maybe about three feet from the door. Maybe
21 less than that actually. Maybe about two feet from the
22 door.

23 Q. Okay. And so what happened next?

24 A. I walked back up to him and I started talking again
25 trying to get him to calm down. I remember trying to grab

1 his wrist and he just got kind of snatched it away from me
2 and started a -- started kicking and punching on the door
3 again.

4 And then I walked a little bit closer to him and tried
5 to grab his hand. I was like Anthony we need to just go.
6 And I remember trying to pull him from the door a little
7 bit.

8 And then he turns around and shoves me again. That
9 time I didn't fall immediately. And then he kind of like
10 rushed me and shoved me even harder. And that's when I flew
11 backwards into the tree.

12 Q. Okay. And when you flew backwards into the tree do you
13 remember getting some abrasions or scratches or something
14 from being on the ground and on the tree and all of that?

15 A. No.

16 Q. Okay. There was -- in this case there is a piece of
17 evidence. It is a shirt that is yours. It is Number 41.
18 Okay. We are not going to take it out. But it is a white
19 T-shirt. Do you recall wearing a white T-shirt that night?

20 A. Yes.

21 Q. And I think that this white T-shirt had some -- it is
22 stipulated we have agreed to that it had some blood on it
23 that was yours?

24 A. Yes.

25 Q. And it is on the left-hand side of your T-shirt?

1 A. Yes.

2 Q. And then so it is your testimony that at least twice
3 you ended up on the ground? And ---

4 A. Yes.

5 Q. --- one time you said he pushed you back about 10 feet?

6 A. Yes.

7 Q. Okay. And then what happened?

8 A. After I slammed into the -- into the tree I remember I
9 couldn't -- it was almost like -- like I couldn't even
10 stand. When I tried to get up my back was hurting so bad it
11 took me a little second to get up. And then when I actually
12 got up I remember him pushing me up against the tree, and I
13 like fell -- like pretty much fell down on -- down to the
14 base of the tree. And then he was on top of me.

15 The next parts are kind of like foggy. I remember
16 turning over. I remember being hit once in the face. At
17 least once. I remember trying to turn over to get out of
18 his grasp.

19 Q. So basically he was beating you up?

20 A. Yes.

21 Q. And so at that point it was hand-to-hand; I mean he had
22 already -- there wasn't any more threat; he was actually
23 physically touching you, ---

24 A. Yes.

25 Q. --- assaulting you? And then what happened?

1 A. I think I was on my -- I remember like turning over
2 trying to get out of his grasp. I remember slinging back --
3 I had the gun in my right hand. There was nothing in my
4 left hand. I remember when I kind of swung back like this
5 (motioning), and I think that is when I fired the shots.

6 Q. Okay. And did you -- I think in your statement you
7 said that you verbally said, you know, leave me alone, leave
8 me alone?

9 A. Yes.

10 Q. Do you remember today when you are under oath ---

11 A. Yes, I remember saying get off of me. I remember
12 saying stop. I remember literally begging him to get off of
13 me, to stop attacking me.

14 Q. Okay. And then you said that when you swung your arms,
15 that is when you think you shot?

16 A. Yes.

17 Q. Do you have any idea where the bullets went ---

18 A. No, ---

19 Q. --- or ---

20 A. --- I couldn't actually see.

21 Q. Or if they even hit him?

22 A. To be honest with you I didn't even know I hit him
23 until after I got back. And I was in the police officer's
24 car and I remember I kept asking if he was okay. I remember
25 the officer said he has been shot. And I remember him

1 asking me if I was the shooter. And I said, yes, I am the
2 shooter.

3 And I remember that is when I was on the ground. And
4 he was asking me this while I was on the ground. And ---

5 Q. Well, before you get to that part let's go back to
6 where I was. So you -- I think that your statement that you
7 had said that you think that you fired some shots and then
8 he tried to -- well, tell me about how -- did he get up, did
9 he not get up; what happened next?

10 A. No, he never got up.

11 Q. Well, so was there a time where you shot a couple of
12 times and then you shot a couple of more times; or how do
13 you recall doing it?

14 A. I remember firing it until it stopped, and then I
15 freaked out and tried to run away.

16 Q. Okay. And so you took the gun with you?

17 A. Yes.

18 Q. And I am going to show you what is 13 and 12; 12 and
19 13. Can you identify these?

20 A. Yes, it is a plastic water bottle and my gun.

21 Q. Okay. So this is -- this is the gun you killed Mr.
22 Williams with?

23 A. Yes.

24 Q. And that is 12 and 13. And you -- when you had this in
25 your hand you went back to your car. And I think we had a

1 picture of where your car was by the tree. This is number
2 seven. This is -- this is your car (pointing)?

3 A. Yes.

4 Q. And how -- where did you go in there; what did you do?

5 A. Um ---

6 Q. There's no police there?

7 A. No.

8 Q. Mr. Williams is there. And what did you do in your
9 car?

10 A. I remember -- I think I literally just threw the gun
11 out of my hand and then cranked the car up and then reversed
12 out of the driveway and started driving.

13 Q. Now when you say reversed out of the driveway it would
14 have been backing up that way (pointing)?

15 A. Yes.

16 Q. Okay. So you were backing up to leave?

17 A. Yes.

18 Q. All right. And -- and then what happened?

19 A. I started driving forward towards Beaufain -- towards
20 Beaufain Street on Wilson Street. And then I remember a
21 car being in front of me, and I just stopped and started
22 backing up again.

23 And then I turned around and went back to the driveway.
24 And as soon as I stepped out of the car I was going to go
25 check and see ---

1 Q. Okay, well let's back up for a second. So you stopped
2 and came back?

3 A. Yes.

4 Q. And when you first left were there any police there?

5 A. No.

6 Q. And when you came back was there a police officer
7 there?

8 A. I believe that's who told me to get on the ground. I
9 still don't know for sure because I -- I don't know who that
10 was.

11 Q. And do you remember making statements or have -- being
12 asked about things?

13 A. I remember them asking me questions, yes.

14 Q. And what do you remember saying?

15 A. I remember he asked if I was the shooter. He said
16 somebody was down. And I said, yes, I am the shooter. And
17 then that's all I remember saying at that time until I got
18 in the police cruiser.

19 Q. And what did you say in the police cruiser?

20 A. I remember I was crying a lot and I was repeatedly
21 asked the officers who were standing outside of my door if
22 he was okay, if he was okay. And he said he didn't know. I
23 asked him if he could check. He said he couldn't interrupt
24 the EMTs.

25 And then it seemed like forever later they he said they

1 pulled the sheet.

2 Q. Okay. And that meant to you that he had died?

3 A. Yes.

4 Q. And --

5 MS. GAY: Your Honor, if you will just give me minute.

6 THE COURT: Sure. Take your time.

7 Q. Based on what you had seen in the house that went on
8 between Mr. Williams and Ashley what were your thoughts of
9 what might be happening to you -- or what might could happen
10 to you?

11 A. I thought that since he wasn't responding to anything I
12 was saying and he wasn't trying to stop, I thought
13 he was I guess out of control. He wasn't in control of
14 himself. He just seemed like he was in an uncontrollable
15 rage.

16 Q. And did you believe that you were -- that he could do
17 some damage?

18 A. I thought he was trying to kill me or that he would
19 kill me if he didn't stop.

20 Q. And is that also what you thought he might could have
21 done to Ms. Ashley ---

22 A. Yes.

23 Q. --- if it hadn't ended?

24 A. I thought she would have been dead had I not stopped
25 him from choking her.

1 Q. And one thing about him that night, you said that he
2 was acting irrational. He was intoxicated, wasn't he?

3 A. Yes.

4 Q. And I believe you are aware and we are all aware that
5 his blood alcohol level was .13?

6 A. Yes.

7 Q. And that he also had marijuana in his system?

8 A. Yes.

9 Q. And was under the influence of drugs?

10 A. Yes.

11 Q. Do you smoke marijuana?

12 A. No.

13 Q. Did you smoke marijuana with Mr. Williams that night?

14 A. No. But I have smoked with him before, once.

15 Q. But not that night?

16 A. No.

17 Q. And so -- and also -- that -- at that time when you
18 were making those decisions how many minutes had it been
19 since you came around the back of the building and walked
20 through the clothesline and past the tree and saw him
21 kicking the door to the time you got in your car; what would
22 you say? You are the only one that was there in this room.
23 We don't know. How long was that?

24 A. It seemed like forever. But it might have been about
25 five minutes.

1 Q. Five minutes total. And is there anything you think
2 you could have done different -- I mean -- I mean at that
3 point in your life?

4 A. I was not physically strong enough to get him off of
5 me. Like I said, I have nerve damage in my arms. I have
6 tendonitis in my upper back my lower back. I was 290
7 pounds, fat.

8 Q. So how much have you lost in the jail?

9 A. I have lost 60 pounds.

10 Q. So based on your physical conditions and your injuries
11 that you had from the accident you felt like you could not
12 have gotten him off of you?

13 A. I tried. I couldn't get him off of me.

14 Q. And he wasn't responding to your plea?

15 A. He was not responding at all, not verbally or
16 physically.

17 Q. And when you made the decision to pull the trigger what
18 reasoning did you -- why did you do that?

19 A. It wasn't really a decision. It is not like I sat
20 there and had time to think about it. I was trying to get
21 him off of me. And that is the only thing that seemed to
22 get him off of me.

23 Q. Did you mean to kill him?

24 A. No.

25 Q. But in shooting him what was your intent?

1 A. To get him off of me hoping that I would live.

2 MS. GAY: One moment, Your Honor. I have no further
3 questions at this time.

4 THE COURT: Cross-examine.

5 MR. OSBORNE: Thank you, Your Honor.

6 **CROSS-EXAMINATION BY MR. OSBORNE OF BRANDON WILLIAMS:**

7 Q. Anthony -- or Mr. Marshall, since you were arrested you
8 have written a lot of letter; haven't you?

9 A. No.

10 Q. You have not written any letters?

11 A. I didn't say that. You said I have written a lot, and
12 I said no.

13 Q. Okay. So you have written some letters?

14 A. Yes.

15 Q. You have written letters to me?

16 A. Yes.

17 Q. You have written letters to the victim's mom?

18 A. I have written a letter to the victim's mom.

19 Q. You have written a letter to another assistant
20 solicitor before my time; is that correct?

21 A. Yes.

22 Q. And during those letters you said that you have been
23 reading up on the law?

24 A. Yes.

25 Q. Now you didn't know much about the law on the night

1 that you were speaking to Detective Burckhardt, did you?

2 A. No.

3 Q. But after that you have learned a lot?

4 A. Yes.

5 Q. You even quoted some passages for me?

6 A. Yes. I figured you didn't understand them.

7 Q. But you do?

8 A. I feel like I do, yes.

9 Q. And that might explain why your story is so different
10 today from what you told Detective Burckhardt, correct?

11 A. Wrong.

12 Q. So your memory is better now than on the night of the
13 incident?

14 A. Yes, my memory is much better than immediately after
15 the traumatizing incident; yes.

16 Q. It makes sense. All right. One of the things that you
17 said to Ms. Gay, one of the last things that she asked you
18 was that could you have done anything differently. You
19 didn't really answer that question.

20 A. Yes, I did.

21 Q. Do you think you could have done anything differently?

22 A. And lived, probably not. There was nobody else out
23 there to get him off of me.

24 Q. So the answer is no?

25 A. No.

1 Q. Okay. Isn't it true that you wrote to the victim's
2 mother: Everyone asked me why I didn't just leave, but he
3 wasn't mad at me that I know of. I didn't want to leave.
4 Then he would end up in jail for it. Is that correct?

5 A. Yes.

6 Q. So that would indicate that you did have an option?

7 A. After the incident started, no. That was -- what I was
8 -- excuse me. What I was referring to during that letter
9 was when the incident started between him and Ashley inside
10 of the house.

11 Q. So when you went to your car you the option to leave?

12 A. Yes.

13 Q. Instead you approached Anthony; is that correct?

14 A. Yes.

15 Q. With a gun in your hand?

16 A. Yes, the gun that was already in my hand.

17 Q. Now Anthony was at the back door, right?

18 A. Yes.

19 Q. Now when you spoke to Detective Burckhardt you didn't
20 mention anything to him about Anthony trying to kick in the
21 door, did you?

22 A. That is not true.

23 Q. Oh, you did mention that?

24 A. Yes, I did. We just watched my statement.

25 Q. You said that you weighed 290 pounds at the time?

1 A. Yes.

2 Q. All right. I couldn't see where you were at in these
3 pictures, so let's go over this one more time. Okay. I am
4 showing you now what is marked as State's Exhibit 18. Okay.
5 Does this picture help; can you show us on there where
6 Anthony was when you first approached him in the back yard?

7 A. He was rounding where the trashcan that's going to the
8 door. And as I was walking by the clotheslines he started
9 kicking on the door.

10 Q. Okay. Kicking on the door, like this (motioning)?

11 A. Kicking and punching on the door.

12 Q. And punching on the door?

13 A. Yes.

14 Q. Kicking and punching?

15 A. Kicking and punching on the door.

16 Q. Not like this (motioning), but kicking and punching?

17 A. I don't know exactly. I know he was kicking it because
18 I saw him kicking it.

19 Q. But you don't know how?

20 A. No, I don't know exactly. I wasn't close enough while
21 he was kicking it.

22 Q. So you are not really sure whether he was trying to
23 kick the door in or not?

24 A. I know that it sounded like he was, and it looked like
25 it.

1 Q. You said he wasn't saying anything. You couldn't hear
2 him say Ashley bring me my clothes?

3 A. No.

4 Q. You never heard him say Ashley I need my clothes for
5 work, bring me my clothes?

6 A. No.

7 Q. You never heard any of that?

8 A. No. He was not saying anything until I started
9 speaking to him. And after that he wouldn't respond at all.

10 Q. So you are talking to him. And once you talk to him
11 did you ask him hey what are you doing back here, why are
12 you at the back door?

13 A. No, I didn't ask him that. It looked like he was
14 trying to kick the door open. I was concerned with trying
15 to get him to leave and calm down before he actually kicked
16 the door back open and get back to Ashley. It appeared he
17 was trying to kill her.

18 Q. Now if I heard you right, when you were talking to
19 Anthony you were telling him to stay calm?

20 A. No, I was telling him to calm down.

21 Q. Oh, to calm down.

22 A. He wasn't calm, so he couldn't have stayed calm.

23 Q. Okay. That didn't work?

24 A. No.

25 Q. In fact he got more upset I guess according to you?

1 A. Yes, it appeared that way.

2 Q. Now you said that while you are standing at the back
3 door Anthony said look at what she did to me and she (sic)
4 shows you a scratch; but you can't recall where it was, it
5 was either the face or the chest?

6 A. All of this upper body (motioning) was exposed. So I
7 am just going by what I barely remember.

8 Q. Did you tell that to Detective Burckhardt too?

9 A. No. That wasn't relevant to what happened between me
10 and him.

11 Q. The fact that he might be angry at Ashley because of
12 being hurt wasn't relevant?

13 A. I told him why he was already upset at Ashley before we
14 exited the apartment.

15 Q. All right. So while you are sitting there talking to
16 him and he says that he is -- you know, look at what she did
17 to me, then what happened?

18 A. Then he just seemed like he got more upset and he
19 shoved me.

20 Q. He shoved you. That is what I thought I heard. So you
21 are just sitting there talking to him and you are telling
22 him to calm down?

23 A. Yes.

24 Q. And he is like look at what you did to me, and out of
25 no reason he just shoved you?

1 A. He just shoved me.

2 Q. Okay.

3 A. He was already in a rage. There was already a reason.

4 Q. Can you point on there where you fell down?

5 A. The first time I think it was to the right side of
6 trashcans.

7 Q. All right. That is a big area. So whereabouts?

8 A. I don't have a pointer.

9 THE COURT: Why don't you stand up and you can point to
10 it, sir.

11 A. About right there (pointing).

12 Q. Okay. So about where those two little markers are
13 right there?

14 A. No, a little further this way (pointing).

15 Q. A little further to the left?

16 A. No -- well, yeah, at the bottom right of -- left --
17 yeah, bottom left.

18 Q. Okay. Where is Anthony then?

19 A. He was -- it seemed like he was charging at me again
20 while I was getting up.

21 Q. Okay. But you got up?

22 A. Yes.

23 Q. That is when you grabbed his wrist and told him come
24 on, let's go?

25 A. No.

1 Q. You didn't tell Detective Burckhardt that you grabbed
2 his wrist twice?

3 A. Yes, I did; but that is not when I said it happened.

4 Q. Oh, that is not when it happened. Okay, well, tell us
5 when you did grab his wrist the first time.

6 A. I have already said.

7 Q. Do you mind telling me again?

8 A. Yes, I do.

9 THE COURT: Answer the question, please, sir.

10 A. I grabbed his wrist when I got up and started
11 approaching him again.

12 Q. Okay. And then what did he do when you grabbed his
13 wrist?

14 A. He snatched it away and shoved me back on the ground.

15 Q. Okay. So this is the second shove?

16 A. Yes.

17 Q. All right. Show us where you landed at this time.

18 A. Further by the tree. Closer to the base of the tree.

19 Q. Okay. Further by the tree. And then he I assume is
20 still over there by the trashcans?

21 A. No, he's -- he was charging me. He was -- well, I
22 guess -- yeah, from that distance. He was past the
23 trashcan.

24 Q. Okay. So you are on the ground?

25 A. Yes.

1 Q. You get back up again?

2 A. Yes.

3 Q. And this is the time when you grab a hold of his wrist
4 and you are not letting go, right?

5 A. No.

6 Q. Right?

7 A. No.

8 Q. Oh, you don't grab his wrist ---

9 A. Yeah, I did grab his wrist; ---

10 Q. --- and not let go?

11 A. --- but that is not how that happened.

12 Q. Oh, well, didn't you tell Detective Burckhardt that
13 after the third time that you got pushed down you got up and
14 then you grabbed a hold of his wrist and you said I'm - and
15 to yourself - I am not letting go?

16 A. A lot of what I said didn't even make sense nor was it
17 in order that would make sense.

18 Q. That is what you told him?

19 A. That is what you are saying I told him. I don't know
20 if I told him that. I don't recall telling him that.

21 MR. OSBORNE: Your Honor, may I approach?

22 THE COURT: Sure.

23 Q. Mr. Marshall, I am showing you what has been marked as
24 State's Exhibit 73. If you could take a look at that. That
25 is a transcript from your interview with Detective

1 Burckhardt.

2 I would like you to turn to Page 21 for me. Now
3 starting right where Detective Burckhardt says: He shoved
4 you? Yeah.

5 I am going to read along. And tell me if anything
6 isn't correct.

7 Detective Burckhardt: He shoved you? Yeah.

8 Brandon Marshall: On the ground.

9 That was the first time.

10 Detective Burckhardt: Okay.

11 Brandon Marshall: Then I was like man, come on, don't
12 do this. Let's just stop. Let's just go. Let's just come
13 on. It doesn't need to get this serious.

14 Detective Burckhardt: Right.

15 Brandon Marshall: And he didn't stop. He shoved me on
16 the ground again. I got back up. The third time I grabbed
17 him by his wrist and I wouldn't let his wrist go. Then he
18 turns around and he is like get the fuck off me, and he
19 shoved me on the ground. When I got back up I am like stop.
20 He still was walking towards me. I am like stop, don't make
21 me do this. I shot him two to three times. That was the
22 first time.

23 That is what you told Detective Burckhardt?

24 A. That is what this transcript says.

25 Q. You still had the gun in your hand?

1 A. Yes.

2 Q. Now when you fired the first set of shots ---

3 A. There was no first set of shots. There were all the
4 shots at once.

5 Q. Okay. But that's not what you told Detective
6 Burckhardt, is it?

7 A. That is not what happened. As a matter of fact, based
8 my Rule 5 and other people's witness testimonies it all --
9 everybody that made 911 calls as well as your first
10 responding officer or whatever said that all of the shots
11 were fired at once.

12 Your -- the first responding officer said he heard at
13 least six shots fired all at once. Several other people
14 that called the 911 operator also said that there were
15 several shots fired all at once.

16 Q. So prior to reviewing all the evidence you had one
17 story; now that you have reviewed all the evidence you have
18 another story?

19 A. I was completely incoherent at the time.

20 Q. Turn to Page 36, and let's go right down to the very
21 bottom. Brandon Marshall: The second time and possibly
22 the third time he was still coming towards me when I shot
23 him. But I don't remember exactly where I shot him. I saw
24 the smoke. And then after either the second or third shot
25 he started to get back up and started walking toward me

1 again. At that time I heard him wheezing. I heard what
2 I -- what felt -- what sounded to me like a punctured lung
3 or something like that.

4 So after you fired those first two shots you heard
5 something from him like a laborious, a punctured lung, he is
6 having a hard time breathing. Does that help refresh your
7 memory a little bit?

8 A. No, I remember -- actually, no, I don't even recall
9 that in the video that we just watched.

10 Q. All right, when you fired the gun I heard you tell on
11 direct to Ms. Gay when you fired the gun you didn't have
12 your glasses on?

13 A. No.

14 Q. You said it was blurry, you couldn't see very well?

15 A. It was also very dark.

16 Q. That is not what you told Detective Burckhardt, is it?

17 A. About it being dark?

18 Q. No, about having your glasses on.

19 A. I don't know.

20 Q. Turn to Page 36.

21 A. We are already on 36.

22 Q. All right. Follow me from the top:

23 Like I said, my glasses --

24 This is coming from you:

25 My glasses, see my glasses, they had dropped off on the

1 ground.

2 Detective Burckhardt: Okay, do you wear glasses?

3 Brandon Marshall: Yes.

4 Detective Burckhardt: Okay.

5 Brandon Marshall: I can barely see without them.

6 Detective Burckhardt: Okay.

7 Brandon Marshall: Yes, they were still on my face when
8 I shot the gun.

9 Do you remember now?

10 A. I remember reading it just now off of this paper. I
11 don't remember it happening like that.

12 Q. One thing consistent about your story to Detective
13 Burckhardt and the story you just told on direct is that
14 Anthony never had any weapon; isn't that correct?

15 A. I said I don't think he had his weapon. I ---

16 Q. You never saw him with a bat ---

17 A. --- am pretty sure that is in the transcript as well.

18 Q. I'm sorry. You never saw him with a bat?

19 A. A bat?

20 Q. A bat.

21 A. No.

22 Q. You never saw him with a knife?

23 A. No.

24 Q. You never saw him with any kind of weapon?

25 A. I have seen him with a gun several times.

1 Q. On that night?

2 A. Yes, I saw him with his gun that night.

3 Q. When you had your encounter with him at the back door
4 did you see him with a gun?

5 A. No.

6 Q. Now in the video -- I am sure you can recall this. In
7 the video Detective Burckhardt said how far away from you
8 when you -- was the victim from you when you fired your
9 first shot. And Detective Burckhardt was sitting in the
10 chair, and then you backed him up. Remember? You said back
11 up.

12 A. Uh-huh.

13 Q. Back up about three more feet. And then Detective
14 Burckhardt went all the way to the wall and he said all
15 right and you said well just a little bit further. It is a
16 little bit different than what you told Ms. Gay, isn't it?

17 A. Yes.

18 Q. All right. I was a little lost because it happened so
19 fast. Your testimony now is that you fired one or two
20 shots, fired until the gun was empty.

21 Are you testifying now that you were on the ground when
22 you were firing those shots or that you were standing up
23 when you fired those shots?

24 A. I am pretty sure I just sat here and said that I was on
25 the ground.

1 Q. You were on the ground. Okay. But that is not what
2 you told Detective Burckhardt either, is it?

3 A. I didn't remember most of what I said. I didn't even
4 remember most of what happened when I gave my statement.

5 Q. You mentioned tonight that when he threw you to the
6 ground you were on one of the occasions thrown and slammed
7 up against a tree?

8 A. Yes.

9 Q. You never mentioned that to Detective Burckhardt, did
10 you?

11 A. You also didn't play my complete statement on that
12 video, in case you didn't remember.

13 Q. Are you saying that you told Detective Burckhardt after
14 that moment right there where you asked for a lawyer that
15 you were thrown up against a tree?

16 A. Detective Burckhardt entered the room several times
17 after that, which you did not show conveniently in your
18 video.

19 Q. All right. So when the victim hit the ground and he is
20 having a hard time breathing and the blood -- that is still
21 true, right, he was having a hard time breathing?

22 A. I do not know.

23 Q. You don't remember that?

24 A. I was not there.

25 Q. I am talking about the time in which you shot the

1 victim. When the victim hit the ground he was having a hard
2 time breathing, correct?

3 A. I don't know. I am assuming so. I jumped up and ran
4 away.

5 Q. But you did tell Detective Burckhardt that you could
6 hear him wheezing, gasping, it sounded like a punctured
7 lung; you remember that, right?

8 A. I don't remember seeing that in the video we just all
9 watched.

10 Q. Okay.

11 A. So, no, I don't remember that.

12 Q. All right. Turn to Page 36.

13 A. We are on 36.

14 Q. A second time and possibly the third time he was still
15 coming toward me when I shot him. But I don't remember
16 exactly where I shot him. I saw the smoke then either the
17 second or third shot he started to get back up and then
18 started walking toward me. At that time I heard him
19 wheezing. I heard what felt -- what sound to me like a
20 punctured lung or something like that. You begged him to
21 get off of you. Is that correct?

22 A. Yes.

23 Q. You never mentioned that to Detective Burckhardt. You
24 said that he hit you, he assaulted you a number of times.
25 Is that correct?

1 A. I said I remember him hitting me at least one time.

2 Q. Did you ever -- you spoke to a few officers that night,
3 correct?

4 A. Yes.

5 Q. Did you ever tell any of the officers that you were
6 injured?

7 A. None of them asked. I highly felt that that was
8 irrelevant at the time considering what just happened. I
9 was happy to be alive.

10 Q. You weren't ---

11 A. I look half dead in that picture.

12 Q. You weren't injured, were you?

13 A. Yes, I was.

14 Q. Where were you injured?

15 A. My back. And apparently where ever the blood came
16 from.

17 Q. Okay. Well, where were you bleeding from?

18 A. I don't even know. I just remember when I got to jail
19 my -- I could barely stand. My neck was hurting and I felt
20 like I had been punched in the face several times.

21 Q. That face (displaying photo)?

22 A. Yes.

23 Q. Where was the pain; where was the injury?

24 A. Well, from the looks of that picture it looks like my
25 lip was busted open. But I don't remember exactly, at that

1 night.

2 Q. No scrapes, no claws, no scratches on your hands? I
3 think this is what Ms. Gay was --- isn't that correct?

4 A. What?

5 Q. No scrapes, no scratches on your hands; nothing like
6 that?

7 A. Not that I remember, no.

8 Q. And I think this is what Ms. Gay was referring to. You
9 do have a couple of loose chards of grass on the back of
10 your shorts there, don't you?

11 A. Yes, that material doesn't hold dirt or grass at all.

12 Q. Any here is this bloodstain you are talking about?

13 A. Where?

14 Q. We will cover that later. Then that is fine.

15 A. It will probably appear better if you actually show the
16 shirt.

17 Q. All right. One thing I didn't hear from your
18 testimony - and excuse my language here, Your Honor - I
19 didn't hear you mention the part where you said you just
20 fucked with the wrong mother fucker, nigger.

21 A. No, I don't use the N-word.

22 Q. You never made that comment ---

23 A. No.

24 Q. --- after you shot Anthony?

25 A. No.

1 Q. You never made that comment after you shot Anthony
2 while he was on the ground bleeding before you ran to your
3 car?

4 A. No.

5 Q. Did you hear anybody say that?

6 A. No. And by the way, the way you say that doesn't even
7 make sense. Nor do I speak like that. I don't use the N-
8 word.

9 MR. OSBORNE: Beg the court's indulgence.

10 THE COURT: Yes, sir.

11 Q. Who invited you there?

12 A. Anthony texted me, but he said Ashley told me to come
13 over.

14 Q. Okay. When y'all were inside the house and the
15 argument started between Ashley and Anthony and it started
16 to get a little physical didn't Ashley tell you good night,
17 it is time to go?

18 A. That's what she said.

19 Q. Okay.

20 A. In your statement. But she -- I don't recall her
21 saying it.

22 Q. But you told Detective Burckhardt she said it?

23 A. Yes.

24 Q. And when you went back to the back door and you knocked
25 on the door and you asked for your liquor and your holster

1 didn't Ashley yell from the front door when she dropped it
2 off: Brandon, just take your stuff and go?

3 A. No, she didn't. Ashley was at the back door when I
4 knocked on the back door, and she said she would put it on
5 the front door -- on the front porch.

6 Q. When you racked the slide did you ---

7 A. At the what?

8 Q. When you chambered a round, when you took your gun and
9 put a bullet in the chamber, that would enable you to pull
10 the trigger ---

11 A. Yes.

12 Q. When you did that did you go overhead on the slide or
13 did you pinch the slide to rack it?

14 A. I don't recall.

15 Q. What do you normally do?

16 A. I don't usually handle guns.

17 Q. But you have fired guns before, right?

18 A. No.

19 Q. You didn't go to a range and fire guns with the victim
20 at Myrtle Beach?

21 A. No, if you actually listen to the facts of what I said
22 I said Anthony fired my gun.

23 Q. Oh, so you have never fired your gun?

24 A. No.

25 Q. So you can't remember how you racked the slide?

1 A. I never had to before.

2 Q. But you did that night?

3 A. Yes.

4 Q. Okay. You are right-handed?

5 A. Yes.

6 Q. Do you have a concealed weapons permit?

7 A. No.

8 Q. No further questions, Your Honor.

9 THE COURT: Redirect.

10 MS. GAY: Hold on a second.

11 **REDIRECT EXAMINATION BY MS. GAY OF BRANDON MARSHALL:**

12 Q. Brandon, when you were -- when you bought the gun you
13 said that you bought it for protection?

14 A. Yes.

15 Q. Okay. But you didn't have a concealed weapons permit?

16 A. No. I was in the process of obtaining one. I had
17 signed up for a class.

18 Q. Signed -- is that something you had to do first?

19 A. Yes.

20 Q. And when you had the gun inside the house that day or
21 in the apartment did you have it in a brown paper bag?

22 A. No.

23 Q. Okay. And when you left the house, the apartment, what
24 was your intent with the gun?

25 A. Oh, I just knew I couldn't leave it behind.

1 Q. Okay. Well, was your intent to take it back to your
2 house?

3 A. Yes -- well, usually I leave it in my car. But
4 sometimes I take it my -- sometime I take it in my car.

5 Q. Where do you leave it in your car?

6 A. In the glove compartment with the clip staying next to
7 it.

8 Q. Okay. So on that particular day is it your testimony
9 that you hadn't gotten to that point where you can put it in
10 your car in your glove compartment by the time all this
11 happened?

12 A. Say that one more time.

13 Q. Was it your goal to get it to the car in the glove
14 compartment ---

15 A. Yes.

16 Q. --- and then all this happened in the middle?

17 A. Yes.

18 Q. From the time you were leaving the door until the time
19 you were leaving your car?

20 A. Yes, as I was putting my things in the car to leave I
21 was putting my liquor in the back seat. Or in the trunk. I
22 just know I don't ever put it in the front because I don't
23 want to get pulled over for like having open container or
24 whatever.

25 Q. So in other words when you -- your first time you went

1 to your car you were putting stuff in the back seat. You
2 said either the back or the trunk?

3 A. Yes.

4 Q. And so you weren't planning on putting the gun in the
5 trunk?

6 A. No, ---

7 Q. That is why ---

8 A. --- I usually didn't.

9 Q. --- you still had it on you?

10 A. Yes.

11 Q. And the rest of it happened before you went around ---

12 A. Yes.

13 Q. --- to actually -- and I think that we went around a
14 lot about how your testimony today is different than your
15 testimony -- or that the statement that you gave, the
16 recorded meeting that you had with Officer Burckhardt. And
17 obviously you have had a lot of time to think about it. It
18 has been, you know, almost two years now.

19 A. Yes.

20 Q. But today you are under oath. And is it your assertion
21 that what you're saying today is the truth?

22 A. Yes.

23 Q. And that -- I think you have given some flesh to the
24 fact that what was being said that night was a little turned
25 upside down in your mind because of all of the shock and

1 everything?

2 A. As well as there were things at the time I didn't
3 remember. There are still things now that I don't remember.
4 But everything that I remember, I have said.

5 Q. And I think that you said that all the people say that
6 you had -- you shot, that all the bullets were consecutive;
7 boom, boom, boom, boom, boom?

8 A. Yes.

9 Q. And you acknowledge that you did tell him that you
10 first did a couple of shots and then you did a couple of
11 shots more?

12 A. Yes.

13 Q. Do you really know how -- how it was -- how that
14 happened?

15 A. The statement or the action?

16 Q. No, in life. In reality under oath today do you
17 know -- can you tell the court the way in which all the
18 bullets came out and what direction they were in and how
19 quick it happened and all that; do you know that?

20 A. I just know it happened very quickly. I do know the
21 direction I -- I remember trying to twist out of his grip.
22 And I remember I swung back like that (motioning) while I
23 was pulling the trigger.

24 Q. And are you aware that one of the bullets hit him in
25 the leg, in the right leg?

1 A. I am now.

2 Q. And are you aware what one of the bullets hit him in
3 the groin area sort of coming out of the back?

4 A. Yes.

5 Q. And that two of the bullets hit him sort of more
6 central in the trunk?

7 A. Yes.

8 Q. You know that now from seeing ---

9 A. Now.

10 Q. --- the discovery? But did you have any idea that
11 night in the dark where those bullets were going?

12 A. No.

13 Q. And you are also aware that three other cases were
14 found out there that night but didn't hit anybody?

15 A. Yes.

16 Q. That was found. All part of what came out of your gun?

17 A. Yes.

18 Q. And as far as being able to change the direction of
19 this evening I think you testified and you said that it all
20 happened in about five minutes?

21 A. I believe so. I don't know exactly.

22 Q. And do you think that at any point if you had gone and
23 got in your car and left him there without continuing to
24 interact with him that -- that he would have calmed down?

25 A. Realistically, no.

1 Q. Do you -- was it your position or thought at the time
2 that something worse might have happened to Ashley?

3 A. Yes.

4 Q. What was that?

5 A. Yes.

6 Q. So you -- was it your thought that, you know, you were
7 preventing something worse from happening to her that night?

8 A. Yes.

9 MS. GAY: Hold on one moment, Your Honor?

10 THE COURT: Sure.

11 MS. GAY: That's all I have, Your Honor.

12 THE COURT: Re-cross.

13 MR. OSBORNE: No, Your Honor.

14 THE COURT: Okay. You can step down. Thank you, Mr.
15 Marshall. All right. Do you have additional witnesses, Ms.
16 Gay?

17 MS. GAY: Your Honor, I would like to call one
18 additional witness.

19 THE COURT: All right. Well, ---

20 MS. GAY: I would like ---

21 THE COURT: We are going to take -- no, that is fine.
22 I am going to take about a five-minute break at this point.
23 Thank you. We will be at ease for about five or ten
24 minutes. Thank you.

25 No, you call as many as you want. I just wanted to

STATE VERSUS BRANDON MARSHALL

1 take a break. Thank you.

2 (WHEREUPON, break was had 4/4/16, 5:04 p.m.)

3 (WHEREUPON, resumed 4/4/16, 5:11 p.m.)

4 THE COURT: Mr. Marshall is present, and we will
5 proceed. You may call your next witness.

6 MS. GAY: I would like to call Ashley Butler.

7 THE COURT: Okay.

8 THE CLERK: Please state your first and last name and
9 spell your last name loudly and clearly into the microphone.

10 THE WITNESS: Ashley Butler, B-U-T-L-E-R.

11 THE COURT: Okay.

12 MS. GAY: Thank you.

13 **DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):**

14 Q. Ms. Butler, my name is Melisa Gay. I am going to ask
15 you a couple of questions pursuant to the situation. You
16 are the mother of three kids?

17 A. Two.

18 Q. Two kids. And how old are they now?

19 A. Seven and three.

20 Q. And are they both Mr. Williams' children?

21 A. No.

22 Q. Just the little one?

23 A. Three-year-old.

24 Q. And Mr. Williams and you had been involved for how long
25 before May 22nd?

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 A. About two-and-a-half years.

2 Q. And at the time that this incident happened you were
3 living at on Wilson Street?

4 A. [REDACTED].

5 Q. Okay. I am going to show you some pictures that we
6 have all talked about throughout the course of today. This
7 is Exhibit 1. If you can identify this?

8 A. Yes. My apartment.

9 Q. Okay.

10 A. The whole apartment.

11 Q. And is this in a housing project area?

12 A. Yes.

13 Q. What is it called?

14 A. Robert Mills Manor, I believe.

15 Q. Okay. And is this the front doors or the back doors?

16 A. It's the front door.

17 Q. Okay. So this is Exhibit 1. And Exhibit 2, 3, and 4
18 were also in evidence. I think -- what is Exhibit 2?

19 A. That is my living room area.

20 Q. And Exhibit 3?

21 A. My kitchen area.

22 Q. And Exhibit 4?

23 A. The back door.

24 Q. Okay. And on the night that his happened, this
25 situation happened, the -- your children were not home?

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

- 1 A. Correct.
- 2 Q. Where were they?
- 3 A. With Anthony Williams' mother.
- 4 Q. Okay. And why was that?
- 5 A. Because me and Anthony went on a date.
- 6 Q. Okay. And so there were no kids at the house?
- 7 A. No kids.
- 8 Q. And during the course of this whole situation there
- 9 was -- Anthony was intoxicated at the time of his death.
- 10 His blood alcohol level was .13. You are aware of that?
- 11 A. Yes.
- 12 Q. And that he also had marijuana in his system that
- 13 was -- that when they did the autopsy he had marijuana in
- 14 his system. Are you aware of that?
- 15 A. No.
- 16 Q. Okay. Do you smoke marijuana?
- 17 A. No, ma'am.
- 18 Q. Okay. So you would not have smoked marijuana with him
- 19 that night?
- 20 A. No, ma'am.
- 21 Q. Okay. And with during that night when y'all went on
- 22 your date where did you go?
- 23 A. Golden Corral.
- 24 Q. Okay. In North Charleston?
- 25 A. Yes, ma'am.

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

- 1 Q. And so about what time did you get home?
- 2 A. I think it was about 8:30 p.m. or 9:00 p.m.
- 3 Q. And did you -- did the evening -- the dinner go okay?
- 4 A. Yes, ma'am.
- 5 Q. Were you aware as y'all were doing your dinner and
- 6 hanging out that he was texting Mr. Marshall?
- 7 A. No.
- 8 Q. So you weren't aware?
- 9 A. No, ma'am. When we got home I knew that they texted
- 10 about me and him.
- 11 Q. And did you tell him it was okay for Mr. Marshall to
- 12 come?
- 13 A. Yes.
- 14 Q. So you live in the house?
- 15 A. Yes, ma'am.
- 16 Q. And you are on the lease?
- 17 A. Yes, ma'am,
- 18 Q. Is Anthony on the lease?
- 19 A. No, ma'am.
- 20 Q. So Anthony is not on the lease because men aren't
- 21 really supposed to be on housing leases, are they?
- 22 A. Correct.
- 23 Q. So but you had told him that it was okay to invite Mr.
- 24 Marshall over as a guest?
- 25 A. Yes.

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 Q. Okay. Because you are the one that lived there?

2 A. Yes.

3 Q. And also I think that a couple -- like a week or so
4 before this incident there had been this -- this problem
5 that arose where Anthony was placed on some kind of they
6 call it notice where he is like legally given notice by the
7 City that he is not to come on those project -- that --
8 those streets?

9 A. It happened the day before.

10 Q. The day before?

11 A. Yes.

12 Q. Okay. So the day before -- there is actually something
13 in writing that they give him?

14 A. He got it the day before.

15 Q. Okay. And was -- was it written to your house or ---

16 A. No.

17 Q. To his mom's house?

18 A. Yes.

19 Q. Because that is his legal address?

20 A. No, they -- he was seen over there and was served with
21 the paper while he was standing outside.

22 Q. And so once he is served with the paper he is no longer
23 allowed to be in your house or on the premises like the
24 grounds?

25 A. He can be in the road.

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 Q. In the road.

2 A. He can be in the road. Just not in the residence.

3 Q. When you say in the road can he be on the grassy area?

4 That is not -- anything that is like in the grassy area he
5 is not supposed to be on?

6 A. No.

7 Q. Okay. And then that was kind of an issue with this
8 night because of what happened the day before; if the police
9 had been called by you about him getting all rowdy that
10 night he could have gone to jail for trespass notice, right?

11 A. Yes.

12 Q. And so I think that there is even a point maybe where
13 you are saying that the police should have been called but
14 you didn't want him to get in trouble?

15 A. Right.

16 Q. And you remember saying that to people?

17 A. Right.

18 Q. That the police -- you could have called the police or
19 maybe should have called the police about his behavior that
20 night, right?

21 A. No, I said I should have just opened the door.

22 Q. Okay. But if the police had been called about anything
23 he would have gone to jail?

24 A. I -- it wasn't the issue of him going to jail. It was
25 more of me not being able to live there anymore.

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 Q. Oh, so you were ---

2 A. Worried about ---

3 Q. You were concerned that if you called the police about
4 something that was going on that you would be evicted?

5 A. Correct.

6 Q. You and your children would be evicted?

7 A. Yes.

8 Q. And that that's a real concern for you because
9 obviously you are there and you are settled and you can
10 afford it?

11 A. Yes.

12 Q. Okay. So on that night after like nine o'clock or so
13 do you recall the time that Brandon came to your house?

14 A. I think it was close to 10:00 p.m.

15 Q. And did Brandon bring liquor?

16 A. Yes.

17 Q. He brought tequila, right?

18 A. Yes.

19 Q. Two bottles?

20 A. One tequila and another drink.

21 Q. Peach something or another?

22 A. Amsterdam.

23 Q. Okay. And so were all three of you drinking?

24 A. Yes.

25 Q. Do you remember how much you drank?

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 A. Not too much.

2 Q. And then how about Mr. Marshall, do you remember what
3 he drank?

4 A. The tequila.

5 Q. Okay. And what about Mr. Williams, Anthony; how much
6 did he drink?

7 A. The tequila -- I am not aware of how much, but it was
8 the tequila also.

9 Q. Did you see him doing shots?

10 A. No.

11 Q. Just pouring mixed drinks?

12 A. With juice.

13 Q. And that juice, that orange juice, that is the juice
14 that Mr. Marshall went up to the store to buy?

15 A. Yes.

16 Q. And wasn't -- when he went up to the store is that when
17 you became aware that he had a weapon on him?

18 A. Yes, because -- yes, that is when.

19 Q. I didn't hear you.

20 A. Yes, that is when. When he went to the store.

21 Q. And how is that?

22 A. At first I was going to drive his car to the store
23 because mine was blocked in. And he told me no, because he
24 had just got in the car.

25 Q. Okay. So when he went to the store and came back he

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 brought the gun back inside?

2 A. Yes.

3 Q. And the gun was in your house?

4 A. Yes.

5 Q. Wouldn't that also have been a problem if the police
6 had come if there had been a gun in your house ---

7 A. Yes.

8 Q. --- about being kicked out of housing?

9 A. Yes.

10 Q. Okay. And there was a holster also?

11 A. Yes.

12 Q. Now when everybody is talking and different things are
13 happening when did it go south; what happened?

14 A. Brandon was acting a little intoxicated, and he wanted
15 to spend the night.

16 Q. About what time of the night was this?

17 A. Around 2:00 a.m.

18 Q. Okay. So from about 10:00 to 2:00 y'all are drinking
19 and everything is okay?

20 A. Yes.

21 Q. And so Brandon acted intoxicated, and there was
22 discussion about him spending the night?

23 A. Yes.

24 Q. What about Mr. Williams, did he want him to spend the
25 night?

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 A. They really just asked me. He said that Brandon was
2 drinking a lot and he probably is a drunk. So at first I
3 said yes he could spend the night.

4 Q. And I think that in the statements that you made that
5 it became apparent to you that if your boyfriend was going
6 to get up and go to work that you wanted him out of there at
7 like 4:00 in the morning or something or 3:00 in the
8 morning?

9 A. Yes, 6:00.

10 Q. 6:00 in the morning. So that it became like that
11 wasn't a plan that was good for you?

12 A. Yeah, because I felt Brandon wasn't really drunk.

13 Q. Okay. So you thought Brandon wasn't drunk, so that Mr.
14 Williams was sort of pushing this on you?

15 A. No, he wasn't. He was -- Mr. Williams was more in the
16 mood like he wanted to stay and drink.

17 Q. Okay. So he is already intox- -- he had already had a
18 bunch of tequila. We know his blood alcohol level was at
19 .13. So he wanted to stay up partying; that is what you're
20 telling me?

21 A. Yes.

22 Q. And okay, that wasn't going over with you?

23 A. No.

24 Q. So when he -- when y'all got in an argument I think you
25 have described it a lot of different ways. You described it

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 as being physical?

2 A. Yes.

3 Q. Yes -- what?

4 A. Yes.

5 Q. And you have described that it was verbal also?

6 A. Yes.

7 Q. And I think that you have described it as that he was
8 choking you at one point?

9 MR. OSBORNE: Your Honor, I am going to object. This
10 is -- the whole thing is leading. It ---

11 THE COURT: Sustained.

12 Q. Okay. Can you tell us what happened on that night and
13 where you were in the room and where you -- what happened?

14 A. Yeah, I came down the stairs and I told him that
15 Brandon needed to leave because I don't think he was really
16 drunk. And we started arguing because I said why are you
17 sitting here with him and you know you have to go to work
18 tomorrow, like he is your girlfriend; I'm your girlfriend
19 and you should come to bed with me so you can have enough
20 rest to get up at 6:00.

21 And we started arguing because Anthony felt like I was
22 nagging him. And when he -- what happened was I spit at him
23 because I knew he wouldn't like that.

24 And when I spit at him he grabbed me and he held me
25 down on the couch. And I really couldn't breathe. I was --

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 wasn't being choked. I was kind of like choking because I
2 couldn't breathe. He was holding both of my arms down. So
3 I used my head and I kind of knocked the picture that was on
4 the wall down to try to hit him with it.

5 And around that time Brandon was grabbing him saying to
6 just leave her alone and come on. And they left. And they
7 went out the back door.

8 Q. And when they went out the back door you locked it?

9 A. Yes.

10 Q. Now is that the last you heard of the two of them? Did
11 they just -- I mean did they both leave, or what happened?

12 A. No.

13 Q. So what happened?

14 A. They didn't leave. I locked the door. And at first
15 Brandon knocked on the door for his things. And I told him
16 to come around front and I would bag his liquor up, his
17 holster. And I set it outside of my front door.

18 Q. That is the front door; that is the one we looked at;
19 not the backdoor?

20 A. Yes, the front door.

21 Q. Did they go out the backdoor or the front door?

22 A. The backdoor.

23 Q. And I'm going to show you what has been marked as
24 six -- well, let me try to find a better one. I'm sorry.
25 Yeah, here is one. This is 19. Do you recognize this?

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

- 1 A. Yes.
- 2 Q. Is this -- what is this?
- 3 A. The backdoor.
- 4 Q. Okay. And is -- what is this?
- 5 A. A tree.
- 6 Q. Okay. And is this -- this is number six. Is this the
- 7 same tree?
- 8 A. Yes.
- 9 Q. Okay. And so that tree is in your backdoor? Okay, let
- 10 me ask you another ---
- 11 A. The tree is at the backdoor.
- 12 Q. Okay. In 19 there are some green trashcans right here.
- 13 Are those yours?
- 14 A. One of them is.
- 15 Q. Okay. So not this first door but the second door?
- 16 A. The second door.
- 17 Q. Is yours?
- 18 A. Yes.
- 19 Q. Okay. So Brandon comes back and he knocks on the door
- 20 and you put his holster and his stuff on the front steps.
- 21 And then what about Mr. Williams; did you hear from him
- 22 again?
- 23 A. Not right then, no. When he -- he came back to the
- 24 backdoor and he knocked on it and asked me for his -- told
- 25 me he wanted to get some clothes.

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 Q. Okay. And so at that -- is it -- what did you do at
2 that point?

3 A. I yelled and said I would get some. And I grabbed a
4 bag and just put some undies and stuff in it.

5 Q. So you yelled I will get some, and then you grabbed the
6 bag. Did you -- were you downstairs or upstairs?

7 A. I was downstairs, but the backdoor. And I yelled. And
8 I grabbed the trash bags out of the kitchen, because the
9 backdoor is in the kitchen.

10 Q. And the trash bags are like big -- big ones; you were
11 planning on ---

12 A. No, it was just a little small, 13-gallon trash bag.

13 Q. Okay. And that is what you were going to use to get
14 his clothes?

15 A. Yes.

16 Q. So then what happened?

17 A. I ran up the stairs and started throwing stuff in the
18 bag.

19 Q. And then what happened?

20 A. On the way back down the stairs I heard shots.

21 Q. And describe how you heard those shots.

22 A. It just sounded low.

23 Q. I can't hear you.

24 A. It just sounded low to me. Like ta, ta, ta, ta.

25 Q. Do you know how many you heard?

DIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 A. I thought I heard four.

2 Q. Four?

3 A. Yes.

4 Q. Four shots right after each other?

5 A. Yes.

6 Q. And that is when you went outside and saw what was

7 going on?

8 A. I started running down the stairs, and I dropped the

9 bag. And I opened the backdoor, and I saw Anthony laying on

10 the ground. So I ran back up the stairs to grab my cell

11 phone to call 911.

12 Q. And you did call 911, right?

13 A. Yes.

14 MS. GAY: One moment, Your Honor.

15 THE COURT: Sure. Take your time.

16 MS. GAY: I have no further questions for this witness

17 at this time.

18 THE COURT: Okay. You may cross-examine.

19 MR. OSBORNE: Yes, Your Honor.

20 **CROSS-EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER (IC):**

21 Q. Hi, Ashley.

22 A. Hi.

23 Q. Has Anthony ever hit you?

24 A. No.

25 Q. Has he ever assaulted you at all?

CROSS-EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER (IC):

- 1 A. No.
- 2 Q. You have gotten into verbal arguments with him?
- 3 A. Yes.
- 4 Q. But he has never laid his hands on you before ---
- 5 A. No.
- 6 Q. --- prior to that night?
- 7 A. No.
- 8 Q. All right. Now you said that you and Anthony lived
- 9 there. How long did y'all live at 9-B Wilson together?
- 10 A. The summer of 2012 he started staying there with me.
- 11 Q. So for almost two years?
- 12 A. Yes.
- 13 Q. And he left and he had all of his property there, his
- 14 clothes?
- 15 A. Yes.
- 16 Q. He had a key to the apartment?
- 17 A. Yes.
- 18 Q. He raised children there?
- 19 A. Yes.
- 20 Q. You and he had Alisia together?
- 21 A. Alisa.
- 22 Q. Alisa. Three years old now?
- 23 A. Yes.
- 24 Q. And Alaysia, the six-year-old, he was basically a dad
- 25 to her too?

CROSS-EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER (IC):

- 1 A. Yes.
- 2 Q. So for all intensive purposes that's where he lived?
- 3 A. Yes..
- 4 Q. Slept there with you every night?
- 5 A. Yes.
- 6 Q. Now Ms. Gay mentioned that you got -- or Mr. Williams
- 7 was served with trespass notice?
- 8 A. Yes.
- 9 Q. Was there any sort of appeal process mentioned on the
- 10 paperwork?
- 11 A. Yes.
- 12 Q. And did you and Anthony talk about that?
- 13 A. Yes. And his mom was going to do it for us, just write
- 14 a letter.
- 15 Q. Going to appeal it?
- 16 A. Yes.
- 17 Q. I think he had been arrested for disorderly conduct or
- 18 something?
- 19 A. Yes.
- 20 Q. And that's what put him on trespass notice?
- 21 A. That is the reason.
- 22 Q. I think he had been stopped twice back-to-back days for
- 23 hanging out in front of his own place?
- 24 A. Yes.
- 25 Q. Told he was loitering in the area?

1 A. Yes.

2 Q. You said you thought the defendant was acting like he
3 was intoxicated but he was faking it?

4 A. Yes.

5 Q. All right. So if I understand it right, downstairs;
6 you go upstairs and you tell Anthony that you want him to
7 come to bed?

8 A. Yes.

9 Q. Is it because Anthony had a new job in the morning?

10 A. Yes.

11 Q. You wanted him to come to bed with you?

12 A. Yes, and get some rest.

13 Q. And he didn't come to bed?

14 A. No.

15 Q. It started to make you a little angry?

16 A. Yes.

17 Q. Especially when you can hear him downstairs drinking
18 and what not?

19 A. Yes.

20 Q. So when you came downstairs you were a little bit mad
21 with him, right?

22 A. Yes.

23 Q. So a verbal argument started?

24 A. Yes.

25 Q. You tried to spit on him, right?

CROSS-EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER (IC):

1 A. That's correct.

2 Q. And then he held you down on the couch, correct?

3 A. Correct.

4 Q. Now when he held you down on the couch did you ever say
5 anything like: Anthony, stopping hitting me; I don't want
6 you to hit me again; please stop hitting me?

7 A. No.

8 Q. Did he ever hit you?

9 A. No.

10 Q. Did those words ever escape your mouth?

11 A. No.

12 Q. Did he have his hands around your throat strangling
13 you?

14 A. No.

15 Q. So it was just the way he was kind of holding you down
16 made it hard to breathe?

17 A. Yes.

18 Q. At any point during this encounter did you think
19 Anthony was going to kill you?

20 A. No.

21 Q. Did you think Anthony was going to seriously hurt you?

22 A. No.

23 Q. Could he have if he wanted to?

24 A. Yes.

25 Q. Now that night were you injured at all?

CROSS-EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER (IC):

- 1 A. No.
- 2 Q. Did you go to the hospital?
- 3 A. No.
- 4 Q. Did you have any bruising, ---
- 5 A. No.
- 6 Q. --- scrapes; ---
- 7 A. No.
- 8 Q. --- anything like that?
- 9 A. No.
- 10 Q. Now Brandon came -- the defendant came over and he and
- 11 Anthony then walked out of the back door. Do you remember
- 12 telling the defendant as he walked out of the back door,
- 13 goodbye, goodnight, don't come back, or something to that
- 14 effect?
- 15 A. Yes, I told him just leave.
- 16 Q. The defendant?
- 17 A. I told the defendant just leave.
- 18 Q. All right. Shortly after that you got a knock on the
- 19 backdoor from the defendant again. Do you recall he was
- 20 asking for his liquor; is that correct?
- 21 A. Yes.
- 22 Q. And then you left it on the front porch?
- 23 A. Yes.
- 24 Q. When you left it on the front porch did you say,
- 25 Brandon, just get your stuff and go home?

CROSS-EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER (IC):

1 A. I told him again to just leave.

2 Q. You told him twice to leave?

3 A. Just leave.

4 Q. Okay.

5 MR. OSBORNE: Your Honor, I am showing her now State's
6 Exhibit 42.

7 THE COURT: Okay.

8 Q. Do you recall receiving a text from Anthony ---

9 A. Yes.

10 Q. --- right after you told the defendant to leave?

11 A. Yes.

12 Q. Does this look familiar?

13 A. Yes.

14 Q. And what does it say?

15 A. I want my clothes.

16 Q. And who gave -- was that text sent to you?

17 A. Yes.

18 Q. And who sent that text to you?

19 A. Anthony sent it.

20 Q. Now when you received that text what did you do?

21 A. I was already in the process of putting the clothes in
22 the bag.

23 Q. Okay. So Anthony had been to the backdoor and he was
24 knocking at the backdoor asking for his clothes, then you
25 received a text?

CROSS-EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER (IC):

1 A. Yes.

2 Q. Okay. So Anthony is at the backdoor; he is banging on
3 the door, right?

4 A. Yes.

5 Q. I mean in all fairness it was louder than the
6 defendant's knock?

7 A. Yes.

8 Q. But was he trying to kick in the door?

9 A. No.

10 Q. Did you think, oh, he is coming through the door now?

11 A. No.

12 Q. Were you afraid that he might come in the door?

13 A. No.

14 Q. In fact you would have let him in, wouldn't you?

15 A. Yes, but I didn't want to then.

16 Q. Because he was a little loud?

17 A. Right.

18 Q. And if he comes in being loud like that the policeman
19 might come, right?

20 A. Right.

21 Q. Him being on the banned list in your apartment meant
22 what to you?

23 A. That was my home and I didn't want to be evicted.

24 Q. They would have kicked you out, right?

25 A. Yes.

CROSS-EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER (IC):

1 Q. So the only reason why you didn't let Anthony in was
2 because you didn't want to get kicked out; not because you
3 were afraid he was going to hurt you?

4 A. Right. Yes.

5 Q. All right. So you are in the process of getting the
6 clothes. He texted you with this.

7 MR. OSBORNE: Your Honor, I am showing her State's
8 Exhibit 43.

9 Q. Is this the clothes that you were in the process of
10 getting him?

11 A. Yes.

12 Q. Now where -- this is a really close-up picture. Right
13 off to the left there, what is that? Right -- oh, there it
14 is. You can see the hinges there. What is that door to?

15 A. Well, the front door.

16 Q. The front door. Is that where you were headed with the
17 clothes?

18 A. No, I was headed down the stairs to go back to the
19 backdoor.

20 Q. Oh, you were just going to give it to him to the
21 backdoor?

22 A. Yes.

23 Q. So when Brandon asked for something, you left it on the
24 front porch. But when your boyfriend asked for something,
25 the man that you lived with, the man that you loved, you

CROSS-EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER (IC):

1 have two children -- you were just going to go hand it to
2 him?

3 A. Right.

4 Q. Okay.

5 A. Yes.

6 MR. OSBORNE: Your Honor, I am showing her State's
7 Exhibit 44.

8 THE COURT: Very well.

9 Q. That is his ID and his wallet, Anthony's?

10 A. Yes.

11 Q. That was inside his pants?

12 A. Yes.

13 Q. Kind of hard for him to drive away without his ID and
14 wallet, huh?

15 A. Yes.

16 Q. All right. Do you recall speaking with me and my
17 investigator, Ray Haupt, and we asked you about the sound of
18 the gunshots and you said that you heard gunshots, then a
19 slight pause, then more gunshots?

20 A. Yes.

21 Q. Do you remember that?

22 A. Yes.

23 Q. Is that what happened?

24 A. Yes.

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

CROSS-EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER (IC):

1 THE COURT: Yes, sir.

2 Q. Did you ever see what the defendant was doing with the
3 gun in the house?

4 A. He just had took it -- put it on the table. That's all
5 I saw.

6 Q. Did he ever talk to you about shooting that gun?

7 A. No.

8 Q. What do you think -- I mean what do you mean by he was
9 acting like he was intoxicated, fake intoxication; what do
10 you mean by that?

11 A. He was pretending to be asleep.

12 Q. Pretending to be asleep?

13 A. Yes. He had his arm on his head and he was at the
14 table making a snoring noise. Then I really thought he was
15 very intoxicated so I said okay we should just let him lay
16 downstairs. Because that wouldn't have been the first night
17 he slept there.

18 MR. OSBORNE: No further questions, Your Honor.

19 THE COURT: Redirect, Ms. Gay.

20 **REDIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):**

21 Q. So the last thing that you said is that Brandon had
22 actually slept at y'all's house before?

23 A. Yes.

24 Q. And so this night you said that he was acting like he
25 was sleeping and that's why initially you said that it was

1 okay for him to stay?

2 A. Yes.

3 Q. And then you changed your mind?

4 A. Yes.

5 Q. And that led to this problem that you had with Anthony?

6 A. Yes.

7 Q. And I think that when Anthony texted you, you didn't --
8 you said you were already in the process of getting the
9 clothes so you didn't text him back I am bringing them down?

10 A. No.

11 Q. You didn't respond to his text?

12 A. No.

13 Q. Okay. And then I believe your testimony was is that
14 you were going to hand it to him but never got to that
15 stage; for all Anthony knew you were never going to come to
16 the door; I mean he didn't know; you had to text him, right?

17 A. Well -- I guess.

18 Q. You hadn't communicated back with him after he texted
19 you?

20 A. No, because I had already yelled through the door that
21 I am getting the clothes.

22 Q. And then -- Anthony had a gun that he did some stuff
23 with at some point that you had seen ---

24 MR. OSBORNE: Objection, Your Honor.

25 THE COURT: What is the basis?

REDIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 MR. OSBORNE: Relevance.

2 THE COURT: I will allow it for purposes of this
3 proceeding. A. I'm not sure what you mean by did some things
4 with. But he had a gun.

5 Q. He had a gun. And I think it was a gun that was
6 actually in the car?

7 A. Locked in his glove compartment, yes.

8 Q. In the glove box. In the car I mean.

9 MS. GAY: I don't believe I have anything further. Let
10 me just check, Your Honor.

11 THE COURT: Sure.

12 MS. GAY: David, which pictures did you show her at the
13 close, which numbers?

14 MR. OSBORNE: It is still up there on the ELMO.

15 MS. GAY: I have no further questions at this time,
16 Your Honor.

17 THE COURT: Okay. Re-cross?

18 MR. OSBORNE: No, Your Honor.

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

20 Do you have any additional witnesses, Ms. Gay?

21 MS. GAY: No, Your Honor.

22 THE COURT: Okay. Does the State wish to present any
23 testimony in these -- in this proceeding?

24 MR. OSBORNE: Yes, Your Honor, we do.

25 THE COURT: Very well.

REDIRECT EXAMINATION BY MS. GAY OF ASHLEY BUTLER (IC):

1 MR. OSBORNE: They are going to be very brief
2 witnesses.
3 THE COURT: No, that's fine. Go right ahead.
4 MR. OSBORNE: The State calls Lanette Smalls.
5 THE COURT: Okay.
6 (WHEREUPON, the witness was duly sworn.)
7 THE CLERK: Please state your first and last name and
8 spell your last name loudly and clearly into the microphone.
9 THE WITNESS: Lanette Smalls. Smalls, S-M-A-L-L-S.
10 THE COURT: Okay.
11 **DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS: (IC)**
12 Q. Ms. Smalls, I am just going to kind of get right to it;
13 okay. On May the 22nd of 2014 where did you reside?
14 A. At [REDACTED] (inaudible).
15 Q. I'm sorry, say it again.
16 A. [REDACTED].
17 Q. [REDACTED]. You might need to like lean up underneath
18 the microphone.
19 THE COURT: If you would lean up and pull that mic so
20 you can get as close to it as you can.
21 Q. This was the night of the murder.. Do you recall what
22 time you went to bed that night?
23 A. About eleven something.
24 Q. About what time?
25 A. Eleven something.

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS: (IC)

- 1 Q. You are going to have to really like yell it.
- 2 A. I am nervous.
- 3 Q. That's okay. I am too. Okay. 9-C Wilson, would
- 4 that -- would your next-door neighbor be 9-B Wilson?
- 5 A. (Witness nods head.)
- 6 Q. You have to answer.
- 7 A. Yes.
- 8 Q. Do you know who lived there?
- 9 A. Ash.
- 10 Q. Ashley?
- 11 A. (Witness nods head.)
- 12 Q. All right. So you went to bed about 11:00 p.m. Do you
- 13 remember waking up? Did something wake you up?
- 14 A. Yes.
- 15 Q. What woke you up?
- 16 A. Some popping and somebody talking.
- 17 Q. You heard what now?
- 18 A. Some gunshots.
- 19 Q. You heard gunshots?
- 20 A. Yeah.
- 21 Q. Do you remember about how many gunshots you heard?
- 22 A. It was a pop, pop, pop, pop, pop. Like that.
- 23 Q. Okay. And then you said you heard some voice after
- 24 that?
- 25 A. Pop, pop, pop, pop, you are messing with the wrong one,

1 mother fucker.

2 Oh, I'm sorry.

3 Q. Did you recognize the voice?

4 A. Huh-uh.

5 THE COURT: Is that a no? You have to answer.

6 A. No.

7 THE COURT: Thank you.

8 Q. Did it sound like the voice was coming from the same
9 area as the gunshots?

10 A. Yeah.

11 Q. And where was that in relation to your apartment?

12 A. Like right next door on the left side.

13 Q. Okay. Did you hear anything after that?

14 A. I didn't take a chance to wait. As soon as I heard it
15 and I heard what the person said, I tried to run downstairs.
16 Because at the same time I heard this car squeaking trying
17 to leave.

18 So I ran downstairs to try to see what kind of car it
19 was to get the tag. But so many steps. Like I got there
20 too late.

21 Q. Okay. Did you see the car though?

22 A. It was a light-colored car.

23 Q. A light-colored car?

24 A. Yes.

25 MR. OSBORNE: I am showing her State's Exhibit 9, Your

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS: (IC)

1 Honor.

2 THE COURT: Okay.

3 Q. I know this is going to be a little bit difficult. Can
4 you tell where your apartment is on there?

5 A. No.

6 Q. It has been a while since we spoke, right? All right,
7 let me show you instead. Let me just get to this. State's
8 Exhibit -- well, let me ask you this. You said you saw a
9 silver vehicle going at a high rate of speed down Wilson?

10 A. Uh-huh.

11 Q. Which way down Wilson was it headed?

12 A. It would be going in (motioning).

13 Q. Going left towards ---

14 A. Yeah, towards Beaufain.

15 Q. Left toward Beaufain. Okay. Now I am showing you
16 State's Exhibit Number 6. Now after you heard the loud
17 sound -- the popping, then you just messed with the wrong
18 MF'er, did you hear anything else?

19 A. No, when that -- after I saw -- what -- I couldn't see
20 the back of the car. It sped off so fast.

21 Q. Yeah.

22 A. I went upstairs to look through the window. And then
23 that is when I saw Ashley downstairs. And that's whenever
24 I -- back downstairs.

25 Q. Okay. And just to give the judge some perspective. In

1 that picture it is kind of hard to tell. Show -- and you
2 might have to stand up to point to it. Show the judge where
3 your apartment is.

4 A. The open window.

5 Q. And it is kind of hard to see, but that is you in the
6 open window; isn't it?

7 A. That's me in the window.

8 Q. Did you see Anthony fall to the ground ---

9 A. I ---

10 Q. --- when you looked out ---

11 A. I saw him and I heard him.

12 Q. What do you mean you heard him?

13 A. Go pop, he hit the ground.

14 Q. You heard him hit the ground. Did you see anybody else
15 out there?

16 A. Ashley.

17 Q. Was Ashley there when he hit the ground, or did he hit
18 the ground before Ashley got there?

19 A. I don't remember that part.

20 Q. Okay. Did you see anybody else out there with him?

21 A. Huh-uh.

22 Q. Just Ashley. Okay.

23 THE COURT: Was that a no, ma'am?

24 THE WITNESS: No.

25 A. No.

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS: (IC)

1 THE COURT: We need to make sure. Sometimes it is hard
2 to discern which one with huh-uh and uh-huh.

3 MR. OSBORNE: Thank you, Your Honor.. No further
4 questions.

5 THE COURT: Cross-examine.

6 MS. GAY: I have to find something. Hold on.

7 **CROSS-EXAMINATION BY MS. GAY OF MS. LANETTE SMALLS (IC):**

8 Q. Hey. My name is Melisa Gay. Sorry to keep you here so
9 late. There was a noise that you heard, and that is what
10 woke you up. Do you remember what time that was?

11 A. Huh-uh.

12 THE COURT: Was that a no, ma'am?

13 THE WITNESS: No.

14 A. No.

15 THE COURT: You need to say yes and no, ---

16 A. No.

17 THE COURT: --- for us, please.

18 Q. And I believe that you heard somebody scream out and
19 then you heard the shots, pop, pop, pop, pop?

20 A. No, it was the shots, pop, pop, pop, pop, you have
21 messed with the wrong one. That is how it went in that way.

22 Q. Okay.

23 A. And that's ---

24 Q. And when you say that it was -- the description, your
25 verbal description of the bullets, there wasn't any pause in

CROSS-EXAMINATION BY MS. GAY OF MS. LANETTE SMALLS (IC):

1 it; it was like pop, pop, pop, pop ---

2 A. Pop, pop, pop, pop, pop.

3 Q. With no pause, correct?

4 A. The next couple that I heard, yeah -- or the first
5 couple that I heard, yeah.

6 Q. And ---

7 A. Mine was a straight pop, pop, pop, pop, pop, ---

8 Q. A straight pop, pop ---

9 A. --- you have messed with the wrong one ---

10 Q. With no pause?

11 A. Huh-uh.

12 Q. All right. Thank you.

13 MS. GAY: No further questions, Your Honor.

14 THE COURT: Redirect.

15 THE COURT REPORTER: You (directed to Ms. Gay) said:

16 "With no pause?". But I didn't hear your (directed to
17 witness) answer.

18 THE WITNESS: No.

19 THE COURT REPORTER: Thank you.

20 **REDIRECT EXAMINATION BY MR. OSBORNE OF MS. LANETTE SMALLS**

21 **(IC):**

22 Q. Ms. Smalls, I know it makes you uncomfortably to say
23 it. I am uncomfortable to say it. But I need you to say
24 exactly what you heard from that voice coming from the
25 backyard.

REDIRECT EXAMINATION BY MR. OSBORNE OF MS. LANETTE SMALLS

(IC):

1 A. It's pop, pop, pop, pop, pop, you messed with the wrong
2 mother -- wrong one, mother fucker. And then that is when I
3 woke up and I turned over. And that is when I heard the
4 baam, the body hit the ground.

5 Q. So you heard the shots, then the sound, then you turned
6 over on your bed, and then you saw ---

7 A. It was my bed ---

8 Q. --- the body hit the ground?

9 A. Is was my bed- -- y'all saw me in the window.
10 That's -- I am on the bed.

11 Q. Okay. So when you saw that --

12 MR. OSBORNE: State's Exhibit 6 again, Your Honor.

13 Q. So when you heard the gunshots you heard you messed
14 with the wrong MF'er or -- tell me.

15 A. The gunshot went off. That is when I turned over. , And
16 that seems like that is what he said: You messed with the
17 wrong one, mother fucker.

18 And that is as I am looking out the window. And that
19 is when I saw Anthony (clap hands) ---

20 Q. Right.

21 A. --- hitting the ground.

22 Q. And when Anthony hit the ground was there anybody
23 standing next to Anthony?

24 A. I can't remember. Because at the same time that
25 is when I took off out the bed and ran downstairs to try

REDIRECT EXAMINATION BY MR. OSBORNE OF MS. LANETTE SMALLS

(IC):

1 and

2 Q. If there had been somebody else there do you think you
3 would have seen him?

4 A. Uh-huh.

5 THE COURT: Is that a yes?

6 A. Yes.

7 Q. When -- that is a tarp. But where that yellow tarp is,
8 is that where Anthony fell down?

9 A. That.

10 Q. Say it again.

11 A. Yes.

12 Q. The voice, you're -- the way I am hearing it sounds
13 like it was loud. Was he just mumbling it; was he yelling
14 it; describe ---

15 A. No, it was loud and clear.

16 Q. Loud and clear. Was it a male voice or a female voice?

17 A. A male voice.

18 MR. OSBORNE: No further questions, Your Honor.

19 THE COURT: Re-cross, Ms. Gay?

20 MS. GAY: No, sir.

21 THE COURT: You may come down, Ms. Smalls.

22 Okay. Any additional witnesses?

23 MR. OSBORNE: The State calls Dr. Batalis.

24 THE COURT: For purposes of this proceeding?

25 MR. OSBORNE: The trajectories are pretty important.

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS 187
(IC):

1 I will do it real fast.

2 THE COURT: All right. I don't see that. It is your
3 case, so that is fine.

4 (WHEREUPON, the witness was duly sworn.)

5 THE COURT: Based on your stipulations we don't have to
6 qualify him; everyone agrees he is an autopsy and he can go
7 directly to those points; is that correct?

8 MS. GAY: Yes, sir.

9 THE COURT: Okay. So you can go directly to the
10 pertinent parts of it.

11 MR. OSBORNE: Thank you, Your Honor.

12 THE CLERK: Please state your first and last name and
13 spell your last name loudly and clearly into the microphone.

14 THE WITNESS: My name is Nicholas Batalis,
15 B-A-T-A-L-I-S.

16 **DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS**
17 **(IC):**

18 Q. Dr. Batalis, thanks for coming. We are going to kind
19 of get right into the injuries that were sustained to the
20 victim. You did the pathology or the autopsy on the victim
21 Anthony Williams in this case?

22 A. Yes, I did.

23 Q. Okay. And how many times was Anthony struck that
24 night?

25 A. He was shot four times.

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS 188
(IC):

1 Q. Okay.

2 MR. OSBORNE: Now, Your Honor, I am showing the witness
3 State's Exhibit 27.

4 THE COURT: Okay.

5 Q. And what is this, Dr. Batalis?

6 A. This is a body diagram of the decedent I prepared after
7 the autopsy. There is during the course of the autopsy we
8 have a much -- kind of a dirtier diagram that has lots of
9 notes and scribbles, but in order to simplify things to show
10 the injuries suffered in this case I put a diagram together
11 with just the gunshot wounds with the entrances, exits, and
12 a recovery of one of the bullets.

13 Q. Okay. So you examined the victim and you examined each
14 one of these gunshot injuries?

15 A. I did.

16 Q. Did you see any stippling or soot present on any of
17 these injuries?

18 A. I did not.

19 Q. And at what proximity would you expect to see stippling
20 and soot?

21 A. So it would depend on the weapon and ammunition. But
22 soot will go no further than six to twelve inches. So no
23 more than a foot away from the gun. Stippling you don't
24 expect to see beyond two to four feet.

25 Q. Two to four feet. And you didn't see stippling on this

1 victim at all?

2 A. I did not.

3 Q. Okay. Let's get right into the injuries then. And
4 just so we are all on the same page, one through four
5 doesn't mean sequence; it is just a number, correct?

6 A. Correct. It was just a way to describe the injuries
7 just to put it in some sort of order. They are not numbered
8 for chronology or severity of the injuries.

9 Q. All right. Gunshot labeled Number One can you show
10 the judge the trajectory or the path of that gunshot?

11 A. Sure. So Gunshot Wound Number One entered the kind of
12 upper left side of the chest or base of the neck kind of
13 right where your collar bone hits your sternum.

14 The bullet then went across the body from left to right
15 and also front to back. So as it made its way through the
16 body it ended up going through the trachea, so the main
17 breathing tube. Went through the aorta, the main blood
18 vessel that takes blood from the heart to the rest of your
19 body. Through the right lung and then out the upper right
20 side of the back.

21 So again, from left to right, front to back, and just a
22 little bit at a downward angle.

23 Q. Was this a fatal shot?

24 A. It certainly could have been. Of the four shots it
25 went through, two or three of them went through -- could

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS 190
(IC):

1 have been considered fatal. But this one certainly would be
2 included in that, going through the aorta, the trachea and
3 the lung.

4 Q. Would this shot have caused blood to accumulate in the
5 lungs making it difficult for Mr. Williams to breathe?

6 A. Certainly. And he did have a large volume -- he had
7 aspirated blood, so blood that he inhaled into his lungs
8 which would make it tough to -- tough to breathe.

9 Additionally he had a large amount of blood surrounding
10 the lung, which again would make it tough to breathe because
11 your lung can't open up and close back because the fluid is
12 preventing that.

13 Q. Okay. We will move on to Number Two.

14 A. Sure. Gunshot Wound Number Two is on the upper, right
15 side of the abdomen. This one predominately -- again, no
16 soot or stippling with this wound.

17 Predominantly went from front to back and exited on the
18 right side of the back. As the bullet coursed through the
19 body this one went through the skin, went through the liver,
20 the right adrenal gland which is a small gland that sits on
21 top of your kidney that has crucial functions from various
22 hormones, and then exited the back from there.

23 And so -- speaking previously, that was Number One a
24 fatal shot; and I said, yes, it could be; again, likewise,
25 with Number Two going through the liver, the adrenal gland,

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS 191
(IC):

1 and it again caused significant bleeding into the abdomen.

2 Also severe injuries.

3 Q. But Number 2 wouldn't have caused the blood in the
4 lungs; that would have only been from 1?

5 A. Correct. Yes, there were -- but there was bleeding in
6 the abdomen as well.

7 Q. All right. And Number 3, briefly.

8 A. So Number 3 entered on the right side of the groin as
9 shown in the picture. This one then went into through the
10 skin and subcutaneous tissues. Went into the pelvis, or the
11 lower part of the abdominal cavity. Went through a couple
12 of loops of the intestine and then became embedded in the
13 left side of the pelvis.

14 So the major pathway for this one was going -- or
15 trajectory was moving from right to left, a little bit front
16 to back, and a little bit downward.

17 This one did not have an exit wound. We recovered two
18 small fragments of a bullet within the intestine. And then
19 the majority of the deformed bullet was embedded in the
20 pelvis.

21 Q. Okay. And Number 4?

22 A. Number 4 is there on the right side. You can see the
23 entrance and exit are fairly close to one another. This was
24 a very superficial wound. It entered the front outer part
25 of the thigh or the circles on the diagram.

1 It's trajectory, again from front to back and a little
2 bit upward and a little bit left to right. So a little bit
3 towards the outer part of the thigh. So the entrance is the
4 circle. The exit is the "x" just above that. So a few
5 inches up and behind the entrance wound.

6 Q. Okay.

7 A. And again that did not go through any crucial
8 structures, just through the underneath the skin.

9 Q. The -- this has already been stipulated to. The
10 toxicology on the victim was I believe a blood-alcohol
11 concentration of .13?

12 A. Yes.

13 Q. Is that -- is that intoxicated?

14 A. It is. You know, different individuals will react
15 differently to alcohol. So some people could be at the same
16 concentration may behave differently. But certainly .13 is
17 a significant amount.

18 Q. What does that THC level mean, 3.4; can you draw any
19 conclusions on that?

20 A. So with the THC the concentrations don't -- it's not
21 quite as linear or one to one as much with alcohol where we
22 know the higher the alcohol concentration is the more -- you
23 know, the more drunk somebody may be.

24 With the THC it's not quite as clear. What we do know
25 based on that level -- it is not -- again, it is not a high

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS 193
(IC):

1 level; but the most important part is it tells us that he
2 would have ingested the THC within hours before he died.

3 So it -- he would have been under the influence.
4 Again, what that meant for him, I don't know what that
5 behavior would be. But he would have ingested it. And
6 again, not a huge amount was on board.

7 Q. Okay.

8 MR. OSBORNE: No further questions, Your Honor.

9 THE COURT: Cross-examine.

10 MS. GAY: Just a second, Your Honor. Yes.

11 Would y'all turn that back on, please.

12 (WHEREUPON, ELMO was turned on.)

13 **CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS (IC):**

14 Q. Hey. How are you?

15 A. Good.

16 Q. I am Melisa Gay. I have a couple of things I want to
17 ask you. If a person gets hit by Bullet 1 are they down for
18 the count or would they be getting back up?

19 A. It would not be -- it didn't strike any structures that
20 would be immediately fatal. Going through the windpipe or
21 trachea, the aorta, the right lung, with the bleeding, you
22 know, maybe for a couple of minutes he could have been
23 moving around. But, you know, certainly there was
24 significantly bleeding that would have slowed him down very
25 quickly.

1 Q. Slowed him down quickly. Okay. And then this Bullet
2 Number 2, same situation or would he have still been kind of
3 able to get back up?

4 A. The same idea. Number 2 did not cause the as severe of
5 injuries. So again, I don't know the timing of the two.
6 But I would expect if 1 and 2 came at the same time, 1 would
7 have likely caused his demise quicker than Number 2 as we
8 didn't have as much bleeding from Number 2 and it didn't
9 strike as quite as vital of organs.

10 Q. So would it be -- would it be fair to say that if he is
11 going to get hit and two -- one and two he is probably going
12 to go down right there? Or do you think he is going to walk
13 five feet or something; what would be ...?

14 A. You know, I can't say what would immediately happen. I
15 do know that I have seen people with significant gunshot
16 wounds to the heart and lungs that have been able to make it
17 down the street, over a fence.

18 You know, not knowing the specifics of this case I
19 can't attest to what he -- what he -- what he did. But he
20 would be able to do some significant movements for a short
21 period of time.

22 Q. But he would start bleeding heavily ---

23 A. Correct.

24 Q. And the -- what was happening in his body would happen
25 quickly; ---

CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS (IC):

1 A. Correct.

2 Q. --- is that what you're saying? Okay. And then with
3 regard to Bullet Number 3 and 4, I think 4 is kind of more
4 of a non-life-threatening bullet?

5 A. Correct. Yeah. I mean if it -- if he would have gone
6 two or three days it could have gotten infected or slowly
7 bled out. But yet Number 4 certainly could have caused some
8 pain and some, you know, additional bleeding but wouldn't --
9 wouldn't cause any imminent -- imminent death.

10 Q. How about Number 3?

11 A. Number 3 is sort of an intermediate between 1 and 2 and
12 4. It did go through the pelvis and the intestine, so there
13 is -- there is some more bleeding associated with those
14 organs. But again really nothing -- it didn't go through
15 anything that would cause his immediate death.

16 But again, the totality of the gunshot wounds adding
17 up, each one causing more bleeding, if they happened at the
18 same time then it would accelerate things.

19 Q. And the last thing I want to ask us about -- well, you
20 definitely said that a person would have consumed marijuana
21 or smoked pot, or however they consumed it, within just a
22 few hours of death based on the levels that you have in his
23 body?

24 A. Yes, it is not based on the specific level but just
25 based that we have the parent drug, the THC. If we just

1 have a metabolite it could have been last night, the day
2 before. But the fact that we had the parent THC at all
3 tells us that it was injected within a couple of hours.

4 Q. All right. And then soot. Soot is -- just because my
5 client I think is a little confused about this. Soot is the
6 stuff that blows out of a gun like the gunpowders that --
7 when -- and so if you have a contact wound or something like
8 that it is going to show on the skin?

9 A. Yes, so the way I think of it, when you fire a gun not
10 only the bullet obviously comes out, other things come out
11 as well. Soot as you were saying is kind of the cloud of
12 smoke. It is the burnt up gunpowder that happened when
13 that -- when the gun is fired and you have that explosion in
14 the gun. So essentially it is a cloud of smoke. And again,
15 it will -- it will drift, you know, six inches to a foot
16 from the barrel of the gun.

17 The other thing that comes out of the barrel when the
18 gun is fired is pieces of gunpowder that don't get consumed
19 or get blown up in the explosion within the gun, and they
20 will fly through the air.

21 Sometimes they are burning. Sometimes they are
22 unburned. And then strike the skin where they can cause
23 some small burns or scrapes on the skin. And that is what
24 we call stippling.

25 Q. So the stippling, which is the gunpowder stuff that

CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS (IC):

1 flies out of the gun, so it is your testimony that that
2 usually is within two to four feet so if there is not any
3 stippling the distance should have been more than four feet;
4 is that what your testimony is?

5 A. From the barrel of the gun to the body. Correct.
6 Additionally intervening objects of -- if it was, you know,
7 if it is shot through a window, shot through a door, heavy
8 sweatshirt, coat; thick, you know, mattress; those type of
9 things could absorb the gun pow- -- the soot and the
10 stippling. But if there is no interfering object that --
11 yes, two to four feet.

12 Q. All right. Thank you. I don't have any further
13 questions.

14 THE COURT: Redirect.

15 MR. OSBORNE: None, Your Honor.

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

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Any further witnesses?

19 MR. OSBORNE: No, Your Honor.

20 THE COURT: Ms. Gay, any reply testimony?

21 MS. GAY: No, Your Honor.

22 THE COURT: Okay. Any arguments? I would be happy to
23 hear from you.

24 MS. GAY: I thought you said you knew all this law.

25 Well, Your Honor, we made this motion on behalf -- made

1 this motion on behalf of Mr. Marshall because I think it is
2 appropriate under South Carolina law.

3 The Duncan case specifically indicates that it should
4 be done in a pretrial motion when a person is asserting
5 self-defense as an affirmative defense.

6 So we notified the solicitor that we would be asserting
7 self-defense and felt like this was necessary to do what we
8 needed to do to come -- bring this to the court as a
9 preponderance issue in a pretrial motion.

10 Oh, Lord, where to begin. There -- first, Your Honor,
11 with regard to the law of self-defense -- see if I can find
12 all my stuff. I just moved it.

13 Self-defense requires four elements, Your Honor.

14 THE COURT: Well, ---

15 MS. GAY: Those ---

16 THE COURT: --- normally. But it doesn't -- I think
17 the court has spoken as to the duty to retreat in this -- in
18 this issue. So it is the three elements.

19 And I have read -- I want you to know that at lunch I
20 didn't go to lunch. I said and I -- and I have been reading
21 them this morning as well.

22 I think I have read about six of the decisions since
23 Duncan today. So I am very familiar with what the court has
24 basically stated concerning these issues especially when
25 you're not in a -- not in your home.

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1 Basically they have been -- two of the cases -- and I
2 think there are two that are very similar in so far as
3 factual with one be a little more aggravating than the
4 other.

5 But for me - and I'm not saying there aren't others -
6 but State v. Douglas and State v. Curry are the two cases
7 that seem to frame these issues, one of which Judge Baxley
8 granted immunity in State v. Douglas. And then in State v.
9 Curry, Judge Goldsmith declined that and submitted it to the
10 jury.

11 Oddly enough it appears in Judge Goldsmith and Curry.
12 And I have seen this done -- I was asked to do this, but
13 they never did it. I am familiar with at least once in
14 Charleston that that was done at the close of a case of
15 submitting the immunity issue.

16 I understand -- and typically what was done, and we
17 know this because I have two of these before the Supreme
18 Court ruled on the issue of whether it is directly
19 appealable. It was -- became more of a defense strategy
20 than anything because it bought some time because you have
21 got to appeal it.

22 And then Judge Newman had the decision where the
23 Supreme Court said, no, it is basically a part of the case
24 and will be addressed just as my ruling on the Jackson v.
25 Denno hearing.

1 I understand there is some proposed legislation - I
2 don't know what the status of it is - to try to reinstate
3 that directly appealable issue. But as I say, I don't know
4 what that is. But clearly the court has said, no, it
5 doesn't stop the case from proceeding.

6 But no, I am familiar with this whole principle. And I
7 am familiar with what is required so.

8 MS. GAY: Yes, sir. And I think that under it's
9 Statute 1611-440(C). I don't think we are -- we don't
10 qualify for (B) -- or for (A) because we don't live in the
11 house. But in (C) I think that when we look at this that
12 says a person who is not engaged in any unlawful activity is
13 attacked in another place where he has a right to be.

14 This happen on the -- on the street area. This was not
15 inside the apartment, but it happened on the street. Now
16 she had -- one of the things -- I can anticipate everything
17 that Mr. Osborne is going to say.

18 She had asked him to leave. Yes, she had asked him to
19 leave. But then he also wants to say that Mr. Williams who
20 was living there, though he was on notice and all of these
21 other things and wasn't on the lease, he kept referring to
22 the fact that he lived there, that my client was an invited
23 guest by a man who he claimed lived there even though, you
24 know, there is this issue of the fact that he was on notice
25 and he shouldn't have been there at that time.

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1 So it gets very confusing about whether he is lawfully
2 there or not. But we believe he is.

3 It says he has no duty to retreat and has the right to
4 stand his ground and meet force with force including deadly
5 force if he reasonably believes it is necessary ---

6 THE COURT: But Ms. Gay, the court in Curry really
7 addressed that. And I've been waiting for it. They didn't
8 come out verbatim and say that. It is my interpretation of
9 it.

10 While that was -- they weren't at the home; they were
11 guests; they were social guests. And but the court
12 commented in applying (C) to that situation. Because
13 obviously, it really doesn't matter whether you were a social
14 guest or on the street, it is where you had a right to be.
15 The same analogy would apply.

16 But the court said - and I quote. And that is -- this
17 is on -- the site on Curry is 406-364. And the court in
18 that case states as follows. It says: As a result the
19 trial court could only determine if the accused is not
20 engaged in an unlawful activity and is in a place where he
21 had the right -- the right to be - just what you just
22 basically are saying; he had a right to be there, wasn't
23 unlawful to be standing there - we find that the General
24 Assembly did not intend such an application. Consistent
25 with the Castle Doctrine and the text of the act a valid

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1 case of self-defense must exist - And that is what you were
2 talking about the elements - and the trial court must
3 necessarily consider the elements of self-defense in
4 determining a defense entitlement to the act's immunity.
5 This includes all elements of self-defense.

6 And it goes on to say: Given the facts presented we
7 conclude here evidence to support the trial court's denial
8 of the immunity but the appellant's claim of self-defense
9 presents a quintessential jury question which most assuredly
10 is not a situation warranting immunity from prosecution.

11 So what the court is saying is we recognize all of that
12 but clearly in this particular case it is -- it is kind of
13 what has been tried is where ever I am if I have a legal
14 right to be I can -- I have the right to shoot somebody.

15 And I don't think -- I think by their statement in this
16 case -- I don't think that is what -- the court is saying --
17 I don't think that is what the legislature said or meant.

18 And so that's what -- I think in this case I would
19 agree with your position and certainly in a preponderance of
20 the evidence there is certainly a question of whether -- the
21 three elements necessary.

22 I think that they are in this case clearly a jury
23 issue, however. Because I can't find by the preponderance
24 of the evidence that I would find that it existed. Because
25 I think the credibility of the defendant is suspect, due to

1 the inconsistent statements throughout and even today. And
2 then you factor in the other part where the scientific
3 evidence just simply doesn't support his theory.
4 Furthermore, the distance in where he was and where the body
5 is and where the tree is, according to his testimony, those
6 are inconsistent.

7 So there are just -- there are just too many
8 inconsistencies for me to conclude that his testimony is
9 reliable; and, therefore, I would -- I couldn't find that
10 he -- if I were to decide whether self-defense exists and it
11 was left to my standard, preponderance of the evidence, I
12 would conclude it doesn't. But that's not what I am here to
13 do.

14 It doesn't meet the immunity test, in my opinion. I
15 think -- I think that certainly a jury could conclude and
16 they -- if they choose to believe his version of it that he
17 was basically being beaten, his ver- -- that version is
18 consistent not to the degree that Douglas, because Douglas
19 this guy was abused all day long and basically kept coming
20 back.

21 And it seems -- I am not suggesting the defendant has
22 read Douglas. But his testimony seemed to be gravitating
23 more from Curry to Douglas, or trying to, to put himself in
24 consistent with this case. But I don't think it reaches
25 that point.

1 Clearly there was ongoing problems that these persons
2 had had before. And there is another distinguishing. There
3 is no question what he knew of the defendant from the
4 standpoint of, -- while I said it had a relevance, his
5 knowledge of his gun, there is no evidence that he had the
6 gun present that night.

7 But there is that third part where he -- I mean he has
8 got one part where did I cause the incident, did I bring
9 about the controversy.

10 I mean in theory -- it keeps moving, gravitating from
11 defense of others to defense of self to whether or not he
12 had a right or any duty to do anything that he did when --
13 assuming for the sake of discussion the first party was
14 shoved. Leave.

15 And he doesn't have a duty to retreat. But clearly the
16 persistent come on, you come home, when he really didn't
17 have any right or duty to do that in the first place,
18 aggravated the situation.

19 So a jury could conclude that he doesn't meet the first
20 one. The -- whether or not there is a real danger, I
21 haven't heard -- I heard his problems, his medical problems,
22 which certainly creates a perception of real danger. I
23 don't know what the weight and size of the victim was at
24 this point.

25 But clearly, given the knowledge of a gun, which I

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1 would allow of what his perception was whether a reasonable
2 person -- I guess a jury could conclude that it was and
3 maybe conclude that. The State will have to meet that and
4 prove -- disprove self-defense beyond a reasonable doubt.

5 But clearly, a distinct version of this case, while
6 Curry resulted in a manslaughter, this case a jury could
7 conclude he was angry and there was a fight. But a jury
8 could also conclude that this is murder very easily based on
9 this evidence and based on the inconsistencies of the
10 testimony of the defendant.

11 So given all of that, it is a jury question. It is
12 certainly not entitled to immunity and protection.

13 And I appreciate your bringing it to the court, Ms.
14 Gay, because you absolutely had not only the right to do it
15 but I think a responsibility to do that given -- given the
16 testimony that I have heard here today. So I don't fault
17 you for that at all. I just can't agree with you.

18 MS. GAY: That's my job.

19 THE COURT: I know. And you did it well. But I can't
20 agree with you in your position because of those things that
21 I have enumerated.

22 Now I am not trying to cut you all off. Anything else
23 you want to add to support? I think the record speaks for
24 itself. And I am comfortable with my ruling based on the
25 record and what I have enumerated as being my concerns about

1 the credibility issue.

2 I find the witnesses concerning this -- I think Ms.
3 Butler basically was very credible. There was certainly
4 disagreement between she and the victim and possibly even
5 the defendant. Although that was sort of a subtle one. It
6 was more inference that could be drawn.

7 But clearly going to get the clothing is consistent in
8 what they found. And that is just consistent with -- there
9 wasn't this guy try to break in to harm this lady. And that
10 being said, that goes again also against the credibility and
11 believability of a witness.

12 Clearly any statement, he changes his version in the
13 statement itself, he is right, I didn't allow it at the
14 trial based on his statements here. I think we are going to
15 have to revisit that.

16 I didn't cut it off to cut it -- to do it. But I cut
17 it off because at the point that he said I want my lawyer
18 present, that is fine.

19 But if he wants to play it in his case, he can play
20 it -- he -- you can put that in when that statement comes in
21 to play the whole thing. The law allows you to do that.

22 I've concluded that you exercised your right and until
23 I -- until you argue against that, Ms. Gay, I will stand by
24 that. You know, I don't know what -- I agree with him. I
25 didn't hear some of the parts. I assume that is later in --

1 I am assuming that is later on. But where ever it is, it
2 is.

3 But clearly there is inconsistencies in that as well.
4 But the main inconsistency that I am dealing with is the
5 version of what happened.

6 And basically what I -- the physical evidence and the
7 testimony is more consistent -- I -- with most of his
8 testimony -- I agree that probably it was more of a
9 continuous shooting than it was a pause and then shooting,
10 because -- but that is mine by the preponderance of the
11 evidence. But it doesn't really make any difference.

12 The question is here is a person with a gun that he is
13 the only person brandishing a gun and he has it -- he
14 doesn't put it up ever once he takes it off that table.

15 And that to me is -- that is why I say a jury could
16 easily concern -- easily determine that you know what, he
17 got mad too and he took out his anger on somebody.

18 And he curls his eyebrows up at me right now. Let the
19 record reflect I am watching the defendant, who I would say
20 has been very much involved in this. And I commend him for
21 that.

22 But, yes, that is the interesting thing about people
23 that do this for a living and someone that doesn't do it for
24 a living and just reads the law. And I think people can
25 read it all the time, but when you watch it in play for 40

1 years you understand that people can draw inferences where
2 you don't think they are there. And therein lies the real
3 issue here today. Because that is what we are facing. You
4 are facing a murder charge.

5 So I say that for the simple reason that if a jury were
6 to conclude that and the testimony goes -- it is going to be
7 worse than what we saw today I'm sure from the standpoint
8 of the case against you. And maybe -- maybe even for the
9 self-defense for you. I haven't heard the whole case.

10 But clearly in this particular setting a jury could
11 easily find -- find you guilty of murder in this case.
12 And I don't -- I don't -- there is no basis -- I wouldn't
13 think -- this evidence just what we heard today I wouldn't
14 overturn that verdict if that should be the conclusion. Of
15 course I don't know what a jury is going to do.

16 Thank you so much.

17 MS. GAY: Thank you.

18 THE COURT: All right. We will be back at one o'clock
19 tomorrow -- now we have some other issues we need to deal
20 with. I am not going to deal with them tonight.

21 MS. GAY: Just a few tiny ones.

22 THE COURT: Huh?

23 MS. GAY: Little ones.

24 THE COURT: Little ones? We can do those probably
25 after we -- well, if we have to we will do it before the

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1 testimony of those witnesses and where those -- those
2 evidentiary issues are concerned.

3 I will just tell you now - for benefit of your client
4 too, Ms. Gay - that those evidentiary issues are very
5 difficult to rule in a vacuum right now because I don't know
6 what the whole testi- -- y'all know a heck of a lot more
7 about this case than I do. I am just learning about it.
8 But so I really would have to hear most of the testimony
9 anyway. But thank you.

10 MR. OSBORNE: Thank you, Your Honor.

11 (WHEREUPON, recessed for the evening, 4/4/16, 6:24 p.m.)

12 (WHEREUPON, resumed trial Tuesday, 4/5/16, 1:24 p.m.)

13 MS. GAY: One thing, a little housekeeping matter, Your
14 Honor. My client was evaluated for competency to stand
15 trial and criminal responsibility, and I felt that we should
16 make those orders a part of the record.

17 THE COURT: That would be fine.

18 MS. GAY: I have a copy for the filing.

19 THE COURT: The court -- you have had the entire
20 packet -- you have seen it, Solicitor?

21 MR. OSBORNE: Yes, Your Honor, I have.

22 THE COURT: Any objection?

23 MR. OSBORNE: No, Your Honor.

24 THE COURT: Court's Exhibit 2 will be the packet that
25 basically responds to whether Mr. Marshall is competent to

1 stand trial.

2 THE COURT: And he has communicated with you throughout
3 and including up to today?

4 MS. GAY: Yes, sir.

5 THE COURT: You were able to -- he assisted you in the
6 preparation of his defense?

7 MS. GAY: Yes.

8 THE COURT: And the court made an observation yesterday
9 as well that he was very actively involved in both the jury
10 selection and all the motions very -- taking a very
11 proactive role in, so further demonstrating his
12 understanding of what the process was.

13 He also testified and clearly handled cross-examination
14 and was very responsive, all of which is confirmatory of the
15 findings contained in Court's Exhibit 2. Okay.

16 MS. GAY: Thank you, Your Honor.

17 (WHEREUPON, the court reporter asked for clarification on
18 documents submitted as a court's exhibit.)

19 THE COURT: Let's do two and three. Two is competency
20 evaluation, and three is understanding.

21 (WHEREUPON, Court's Exhibit Number 2, competency evaluation,
22 was marked for identification.)

23 (WHEREUPON, Court's Exhibit Number 3, criminal
24 responsibility/understanding, was marked for
25 identification.)

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1 THE COURT: All right. Anything from the State before
2 we bring the jury in? Or excuse me.

3 MR. OSBORNE: Well, one matter. One of our first two
4 witnesses is Ashley Butler. I would anticipate that the
5 defense is planning on asking Ashley about the victim and
6 him being on trespass notice.

7 I would object to that line of questioning. I don't
8 see how it is relevant to the case. It is a self-defense
9 case. We have already been filed with a notice for
10 self-defense. Whether the victim is on trespass notice or
11 not isn't one of the elements that come into play under
12 self-defense.

13 I think if anything, it is character evidence trying to
14 say he is a bad guy in essence; and it is not a pertinent
15 character trait in reference to a homicide case.

16 THE COURT: Okay. What is your position?

17 MS. GAY: Well, Your Honor, I think that there is case
18 law to support when in a self-defense case that anything
19 that the defendant knows -- okay, we all know that this has
20 to do with his belief or appearance that he was in eminent
21 danger or having some type of threat to his life.

22 And I believe the fact that Mr. Williams was on
23 trespass notice because of an event that occurred that was a
24 disorderly conduct that my client, as he testified
25 yesterday, was aware of and was familiar with, that he --

1 that that -- under the law of self-defense any factor that
2 has anything to do with his knowledge of him being violent
3 or -- is relevant to his perception of the defendant at the
4 time.

5 Now I mean there is also other things that happened in
6 this defendant's -- the victim's life. He was arrested and
7 charged with resisting arrest before for fighting with his I
8 believe his mother. And my client was also aware of that.

9 And these things I believe are all relevant to his
10 understanding of who the man was that night. And, you know,
11 he says that it is character evidence. And I understand
12 that. But in this particular case I think that things
13 related to his propensity to violence or his character -- I
14 mean his -- the act that happened in his life.

15 Plus I believe Mr. Marshall was even present during the
16 arrest, so he is certainly aware of it. Nobody had to tell
17 him that. He was aware of it himself.

18 And it becomes relevant because he says in his
19 statement that, you know, he didn't want to call the police
20 because of the fact that he was on notice and he knew his
21 friend would go to jail. So I think that it becomes very
22 relevant.

23 THE COURT: Well, it becomes relevant for his testimony
24 maybe. But it hasn't got a thing in the world to do with
25 cross-examination of Ms. Butler.

1 The problem that I have with it is this: First of
2 all -- the testimony at least that I heard thus far -- and I
3 haven't heard anything else. Maybe you can lay a better
4 foundation than what I have to this point. That he was
5 served with the notice the day before and it hadn't even
6 been processed yet.

7 So we are not talking about a conviction. We are not
8 talking about violation of some order. We are talking
9 about allegations or assertions which really even raises
10 the standard tremendously from the standpoint of its
11 admission -- I understand that there are times when bad
12 acts come in, but not necessarily in those -- in that
13 situation.

14 I am not going to allow you to cross-examine the
15 State's witness concerning that. When your client -- if
16 your client chooses to testify -- I don't know whether he is
17 or isn't.

18 But if he chooses to testify then certainly I think
19 from the standpoint of an explanation of why he was taking
20 the actions he was taking that may -- that may have some
21 relevancies to that. But it certainly doesn't have anything
22 to do with show his state of mind.

23 Because -- just because he -- just because he was
24 standing there doesn't make him violent. So I am not going
25 to allow that. That -- cross-examination of Ms. Butler.

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1 Whether or not it comes in under a later witness, I
2 don't know. I will just have to see how that comes up.
3 Okay.

4 MS. GAY: Yes, sir. The other thing -- motion I filed
5 had to do with my client's bad acts. And there were some
6 allegations and some comments made by at least one or two of
7 the witnesses about the fact that my client was supposed to
8 be involved in some kind of unlawful scheme having to do
9 with PayPal. That was something that he told me.

10 I don't know if Mr. Osborne intends to go into that
11 with anybody. But I would say that that is not at all
12 relevant and prejudicial to my client.

13 THE COURT: I don't -- I don't see how that comes in.
14 But at this point -- let me just say if you intend to do
15 that let's have -- let's -- if it gives rise -- if something
16 happens in the trial that you believe has opened that door,
17 so to speak, then let's excuse the jury and I will hear -- I
18 will hear that testimony or make a determination then, Ms.
19 Gay. At this point though I would sustain any objection
20 until we have that type of hearing.

21 MR. OSBORNE: Yes, Your Honor.

22 THE COURT: Okay.

23 MS. GAY: Thank you.

24 THE COURT: All right. Anything else, Solicitor?

25 MR. OSBORNE: No, Your Honor.

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1 THE COURT: Okay. Then we are ready for our jury?

2 MR. OSBORNE: Yes.

3 THE COURT: All right. Then let's bring them in.

4 (WHEREUPON, pause awaiting jury.)

5 MS. GAY: I have an issue with my client. He
6 apparently wants to talk to me about a motion, Your Honor.
7 Can you give me just a minute? I don't know what it is.

8 THE COURT: Well, the jury is coming in right now. No,
9 he -- can't talk to him, but we will -- when first break he
10 can talk to her -- you can talk about it.

11 (WHEREUPON, Ms. Gay confers with her client.)

12 THE COURT: The first break we will have, we can put
13 any of that on the record. Be happy to. Anything even
14 specifically.

15 You have discussed with your client about our State not
16 recognizing hybrid representation?

17 MS. GAY: I will discuss that more, Your Honor.

18 THE COURT: You need to.

19 (WHEREUPON, break awaiting jury.)

20 (WHEREUPON, jury enters 4/5/16, 1:32 p.m.)

21 THE COURT: Thank you, ladies and gentlemen. I hope
22 you had a good day yesterday. We are ready now to resume
23 the matter that we commenced.

24 Have you been selected as a presiding juror? You have
25 been?

1 MR. FRIEDMAN: Yes.

2 THE COURT: For the record your name and juror number,
3 please.

4 MR. FRIEDMAN: Michael Friedman, 107.

5 THE COURT: Thank you very much, Mr. Friedman. And
6 thank you, ladies and gentlemen, as well.

7 That will of course remain your seat for the balance of
8 the trial.

9 Thank you. If you will now give your attention to our
10 clerk as he administers your oath.

11 (WHEREUPON, the jurors were duly sworn.)

12 THE CLERK: If you please, again, if you accept this
13 oath please be seated.

14 (WHEREUPON, all jurors took their seats.)

15 THE CLERK: Please let the record reflect all jurors
16 are seated.

17 THE COURT: Thank you very much.

18 Thank you, ladies and gentlemen. As I mentioned to you
19 yesterday when we qualified you for this case and talked
20 about what was going to happen, the last question that I had
21 for you was there anything about this case that would have
22 given you any concern about making the commitment that you
23 just made; and none of you stood. So you have confirmed
24 that your promise basically to the State, Mr. Marshall, and
25 to the court, that you will now at the appropriate time when

1 directed by the court apply your common sense, your sense of
2 logic and reason, fairly and impartially, and decide from
3 the evidence what you believe to be the true facts in this
4 dispute.

5 You now by virtue of that oath have become a judge with
6 me and now you and I will perform the tasks expected of us
7 to resolve this dispute.

8 I want to assure you of something. When you walked in
9 the door you brought everything you are going to need to
10 fulfill your responsibility that you have just accepted in
11 performing that task. Because one thing is sure, there is
12 no one in the world more qualified than you are to do what
13 you just said you would do. And I can say that without
14 really knowing you.

15 I can say that -- well, let me put it this way: Unless
16 some of you can convince me there is somebody out there that
17 can apply your life's experience, your common sense, your
18 sense of logic and reason, your knowledge, better than you
19 can, maybe I will retract that. But I don't think that
20 person exists.

21 And that is all you are going to have to do. This is a
22 common sense process that you are engaged in. It is
23 something that we do every day of our lives. God knows
24 right now, in this season that we are in, we are bombarded
25 with things that we have to say do I believe that, does that

1 make sense to me, is -- am I convinced that that is true.
2 That is happening every day in our lives. We are really
3 practicing that.

4 But we practice that every day, don't we really. Most
5 of the time it is a subconscious process. We don't really
6 give a lot of thought to it. You will here. But you know
7 how to deal with it.

8 Those qualities and characteristics that you possessed
9 when you came in, you will use. But there is something else
10 that we haven't talked about specifically that also is
11 equally important to your fulfilling the commitment that you
12 just made. And that is to what?

13 Truly -- fairly and truly decide this case based on the
14 law and the evidence fairly and impartially. And that is
15 that you brought an open mind. Because if you think about
16 it -- you heard me ask some questions. Maybe -- maybe some
17 of you responded to them.

18 And if you did, I asked the question and you probably
19 got tired of me saying the same thing: Will that influence
20 you, will you base your decision on the evidence and the law
21 and will it be fair to both sides.

22 And that is really the essence of the process. And
23 that is the essence of the oath that you just took. Because
24 that is what you promised you would do.

25 I would tell you now that you are instructed and will

1 be instructed to maintain that open mind, that status,
2 throughout this entire process. And you can't change it
3 until I give you an instruction to begin your deliberations.

4 And folks, the last part of this process -- there are
5 four parts to this trial process. The last part is when I
6 give you the law which you will be expected to apply to the
7 facts that you are to determine. And the last thing I will
8 tell you is when you may start your deliberations.

9 So until you get to that point do whatever is necessary
10 to keep that open mind. I'm -- we are human. And I am as
11 guilty of this as anyone else, of jumping to conclusions
12 sometimes. You hear a little bit and say I know where this
13 is going. And that is a human trait. That is a human --
14 some of us are worse than others.

15 If you happen to be kind of in my category, then you
16 are really are going to have to be conscious about that.
17 Keep that open mind. Don't engage in that process of
18 deciding anything at all.

19 Because if you do, you will have started your
20 individual deliberations. You will have decided something.
21 You can't do that. The process depends on you not doing
22 that. And there are a number of reasons. Number one -- of
23 course you just said I promise to make it consistent with
24 the evidence and the law. And the law says you can't do it.
25 So that is number one.

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1 Number two, in fairness to the entire process it
2 requires that also. One of the reasons is -- as I said,
3 there are four parts. And each part is extremely important
4 to the overall decision-making process.

5 Some of you may have participated in a jury process.
6 And if you have, you understand what I am saying. But if
7 you haven't, it is a very very valid process. It is a
8 won- -- if somebody said -- I am not going to tell you it is
9 the best it could possibly be. But it beats the second best
10 hands down. No question about it.

11 And that is really, truly it. And it works because of
12 people just like you that are willing to accept this
13 responsibility.

14 It's not something you chose to do. It is not
15 something you said hey, Ms. Armstrong, can I really serve on
16 this jury, I would really love to do that.

17 No, you were picked. And you said, okay, I am here.
18 And you accepted it and you made the commitment. And thank
19 you for that.

20 The first -- we are going to have four parts. The
21 attorneys speak to you twice. Once before you hear the
22 evidence and then once after you had heard the evidence.

23 The difference is quite obvious. We call the first one
24 the opening statement where they give you an overview of the
25 dispute and tell you a little bit about what it is about.

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1 They may discuss some of the evidence that they expect
2 that you will hear during the process. And I think you will
3 find their remarks helpful when as we move through that
4 evidentiary portion.

5 After you have heard the evidence then the attorneys
6 speak to you again where they will discuss the evidence and
7 suggest reasonable inferences that you may draw from that
8 evidence.

9 Their remarks will be extremely helpful to you when you
10 do begin the process of deciding this case. So -- and they
11 are officers of this court and they have a very important
12 responsibility in this process.

13 Please give them your undivided attention. And I am
14 sure that you will. But just remember something. While
15 their remarks are extremely important, very helpful, never,
16 never consider their remarks to be evidence. Because the
17 evidence will come through the testimony of the witnesses
18 who will appear.

19 And it is that testimony that you ultimately -- and
20 exhibits that might be introduced in their testimony that
21 you ultimately will be tasked with evaluating and deciding
22 something that is very important.

23 And sometimes we talk about this at the start, and I
24 worry about my inability to communicate sometimes in making
25 it clear. Because I have had jurors when they -- at the end

1 I have had questions come back and thinking what are we
2 supposed to do. And I understand that because that is not
3 something you do every day. It is not something that you
4 are accustomed to.

5 Well, folks, I will tell you this. It is something
6 that you are capable of doing. And basically what you are
7 going to do is you are going to consider the testimony of
8 witnesses and listen to people without making a decision
9 about whether you believe somebody or disbelieve somebody.

10 You are just going to catalogue that knowledge that you
11 are going to glean from listening to their testimony and
12 then at the end you will be asked to assess it.

13 Now let me say something. There are many things that
14 we use in our life to help us make these decisions. And
15 we -- we -- I will talk about some of them when we -- when I
16 give you the charge on the law. But, you know, was the
17 testimony consistent; was it inconsistent; is it
18 strengthened or weakened by other evidence; is it logical;
19 does it make any sense.

20 If you -- when you hear that testimony, that occurs to
21 you, make a note of that. I just don't want you to go to
22 the next step and say, well, I don't believe that.

23 Make a note of it so when you begin your deliberations
24 you can when that witness is discussed you can say, well,
25 you know, such and such was said and that just didn't ring

1 true to me or that just didn't make any sense to me or, you
2 know, that was totally inconsistent with something else, I
3 don't understand the -- I don't understand the
4 inconsistencies.

5 And then your fellow jurors may say, well, you know, I
6 understand that. Or they may be able to give you a logical
7 explanation which allays that concern that you have.

8 And that is why I say it is a very deliberative
9 process. You are expected to make those notes. Just don't
10 reach the ultimate conclusion that I don't believe or I do
11 believe someone until you are given that instruction to
12 begin your deliberations.

13 But that is what you will be doing. So whatever you
14 have to do -- I will talk about this now. Sometimes jurors
15 say they want to take notes. Every judge treats it
16 differently.

17 I am okay with that. My only concern and caution is
18 this -- it is twofold really. Number one, there is a lady,
19 Ms. Norton, who is sitting here taking down what we are
20 saying. She is our court reporter. She has a task too. It
21 is her job and hers alone to keep the record in this case.

22 So if in your deliberations you have a question that
23 you can't resolve collectively about a witness, what the
24 witness said or didn't say, we have the ability of replaying
25 that testimony for you so you can hear it again if need be.

1 But that -- again, if you want to take notes, that if
2 fine. They will be your notes.

3 The other problem I have with note taking is this.
4 Some of us -- some people are better note takers than
5 others. And my concern about if you are taking a note if
6 you might write something -- and you and I both know it is
7 not always what somebody says.

8 Sometimes it is body language that goes along with
9 that, some facial expression, something that you will
10 observe that triggers your belief that, you know, wait a
11 minute, I am not sure about that. And if you were taking a
12 note you may miss that very important factor or that is the
13 only other factor.

14 And the most important part I think is that you are
15 just going to listen to this and you are going -- it is
16 going to unfold. It is a -- it is the -- it is what
17 occurred, what the State has alleged.

18 And I say that for this reason. You know, the process
19 in a criminal dispute and a civil dispute are the same,
20 there are four parts; but there are a couple of differences.

21 There are in most cases in a civil dispute the person
22 that makes the claim has the sole burden of proof. But
23 there are situations where someone against whom a claim was
24 made may have a burden of proof in a very limited area.

25 Well, that is the first difference. In this dispute

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1 only one side, the only party that has any burden of proof,
2 is the State of South Carolina.

3 Persons who are accused of committing criminal offenses
4 have no responsibility in this state and in the United
5 States to prove one thing.

6 They don't have to say anything. They don't have to
7 present any evidence. They have -- why? Because they are
8 presumed innocent. And we will talk about that presumption
9 when I give you the charge, and I will elaborate.

10 But what I am saying to you is you will never look to
11 Mr. Marshall to prove or disprove anything, because he has
12 no responsibility whatsoever to do that.

13 The burden rests solely on the State. And the State
14 has accused him of two crimes: murder and the crime of
15 possession of a firearm during the commission of a violent
16 crime.

17 Those are two charges that I will give you at the time
18 that I give you the charge, the various elements of that --
19 each of those crimes.

20 You will then be analyzing the evidence when instructed
21 to begin your deliberations to decide whether or not you are
22 convinced that the State has met its burden of proof as to
23 each element for that particular crime.

24 And the burden of proof -- and that is the other
25 difference. Typically in a civil trial the burden of proof

1 is called the preponderance or greater weight of the
2 evidence. Simply stated, it is a probability standard; is
3 it more likely than not.

4 The burden of proof here is much higher than that. The
5 burden of proof here is beyond a reasonable doubt. And I
6 will explain that you as well.

7 But beyond a reasonable doubt is a doubt that would
8 make an honest, sincere, conscientious juror who is
9 searching for the truth in a case to hesitate to act or take
10 some action.

11 That is the standard that you will apply. It is more
12 than being probably guilty; it is beyond a reasonable doubt.
13 And in order to return a verdict of guilty you have to be
14 convinced of that standard as to each element of that crime.
15 And if the State fails on one element you must return a
16 verdict of not guilty because the State will not have met
17 its burden of proof.

18 And that is what a -- that is what a verdict means in a
19 criminal dispute. Guilty simply means that that jury was
20 convinced beyond a reasonable doubt that that State -- that
21 the State or the prosecuting agency presented sufficient
22 evidence to convince each juror of each element and
23 therefore they returned a verdict of guilty. Not guilty
24 means they failed on one or more elements. And that is what
25 you will be doing. That is what the ultimate decision that

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1 you will be making in this case.

2 Because the State has the burden of proof, you hear
3 from the State first. Now, while Mr. Marshall, as I
4 mentioned, has absolutely nothing to prove or disprove,
5 doesn't have to present one thing for your consideration, he
6 still would have the right to present any additional
7 testimony he chooses too; but that doesn't happen until the
8 State has completed its case.

9 A very logical reason you shouldn't make any decisions,
10 obviously, until you hear all of it. So please resist that
11 temptation to jump to any conclusions throughout this
12 process.

13 At the close of the State's case -- and the State
14 will -- the attorneys will argue to you, and then I will
15 give you the charge on the law.

16 And as I mentioned to you, I will define for you the
17 various elements of the crime of murder and the crime of
18 possession of a firearm with -- when the commission of a
19 violent crime.

20 We will talk about the verdict. We will talk about
21 the burden of proof. We will talk some -- we will elaborate
22 on this credibility issue that you will be required to
23 assess.

24 And please remember this, that throughout this process
25 anything that I say, and including the charge on the jury,

1 just as the attorney's remarks while important and you must
2 listen to them, please remember that nothing I say or
3 nothing that I do during this proceeding should be taken by
4 you as a suggestion of how you are to resolve the factual
5 issue; because I have nothing to do with that. That is your
6 job and yours alone.

7 And thank you for your attention to my remarks. I ask
8 you to give that same attention now to the attorneys as they
9 give their opening statements on behalf of their parties.

10 You may proceed.

11 MR. OSBORNE: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. OSBORNE: May it please the court.

14 THE COURT: Yes, sir, Mr. Osborne.

15 MR. OSBORNE: Ms. Gay.

16 **OPENING BY MR. OSBORNE:**

17 You just messed with the wrong motherfuck. Those are
18 the words that were yelled by this man, the defendant, right
19 after he decided that he just had to shoot his friend
20 Anthony Williams and kill Anthony in Anthony's own backyard.

21 He decided that he just had to shoot Anthony over and
22 over again. And while Anthony was on the ground lying there
23 gasping, trying to catch his breath, blood gathering in his
24 lungs, he fired again and again and again. He fired seven
25 shots in all. He hit Anthony four times.

OPENING BY MR. OSBORNE

1 This was nothing more than a senseless act of murder
2 all perpetrated by that man (pointing) because he felt that
3 Anthony had messed with him.

4 This incident started on May the 22nd of 2014. The
5 victim in this case is Anthony Williams. Anthony is married
6 to Ashley Butler. Anthony and Ashley lived together at the
7 Robert Mills Manor. That is right over here, Beaufain and
8 Wilson Street. They live at 9-B Wilson. They raised two
9 children together, Alysa and Alaysa. One is three. One is
10 six now.

11 Now on that night they decided to go out to dinner. It
12 was going to be a date night. So they contacted Anthony's
13 family and asked if it would be okay for them to watch the
14 kids. And they said okay.

15 So they brought the kids over to Anthony's family and
16 then they went out to dinner. And when they get back
17 Anthony asked would it be okay for me to invite over the
18 defendant, a guy that he had just met a month, month-and-a-
19 half ago. Ashley said yeah, that's fine.

20 So they communicated through text and the defendant
21 came over. The defendant brought two bottles of tequila
22 with him. When the defendant got there he wanted something
23 to mix with the tequila. He wanted orange juice.

24 Ashley and Anthony didn't have the orange juice in the
25 house, so he left. He went to the corner store. He got

OPENING BY MR. OSBORNE

1 some orange juice and he came back.

2 But when he came back he brought more than the orange
3 juice inside the apartment. He brought his nine-millimeter
4 highpoint handgun.

5 The three of them sat there. They drank. And as the
6 night went along Ashley told Anthony, well, it is time to go
7 to bed. She wanted Anthony to come to bed because Anthony
8 was starting a new job the next day. He was starting a new
9 job at the College of Charleston.

10 So she went to bed. She went upstairs and she waited.
11 She could hear Anthony downstairs with the defendant. They
12 kept drinking. She starting to get a little bit upset. She
13 wanted him to come to bed, and he didn't.

14 She came back downstairs and got into a verbal argument
15 with Anthony. She tried to spit on him. Anthony then
16 grabbed her, put her up against the couch. Held her. She
17 then grabbed a poster, tried to hit Anthony upside the head
18 with the poster.

19 And she told him, Anthony get out of here; Brandon, get
20 out of here. And they did. The defendant and Anthony then
21 went out to the back. They went out the backdoor together.

22 The defendant made an odd, senseless choice. When his
23 friend was over there arguing with his wife he chose to pick
24 up his handgun. That was his first instinct, to pick up his
25 handgun.

OPENING BY MR. OSBORNE

1 And then he went over to Anthony while they were
2 arguing. And when Ashley said go, he said come on Anthony
3 let's go. Handgun in his hand. They walk out the backdoor
4 together.

5 While they are at the backdoor they go out. Anthony
6 gets into his blue vehicle. The defendant gets into his
7 silver vehicle.

8 The defendant then realizes he forgot something. He
9 forgot his two bottles of tequila. So he goes to the
10 backdoor and he knocks on the backdoor. Ashley, I need my
11 liquor.

12 Ashley gets the two bottle of tequila. He has still
13 got the pistol in his hand. He forgot his holster. He left
14 that on the table.

15 Ashley took the holster. She put it in the bag with
16 the liquor. She put it on the front porch. Tells him,
17 Brandon, your stuff is on the front porch; get it; go.

18 The defendant then gets the bag with the liquor that
19 has got the holster. Goes back to his car.

20 The victim, Anthony, is in his car; in his blue car.
21 He also realizes he forgot something. He forgot his
22 clothes. He has got to work the next day. He forgot his
23 wallet. He forgot his ID. He goes to the backdoor.

24 Ashley, I need my clothes. She starts to go get them.
25 He then texts her, bring me my clothes. He is getting the

OPENING BY MR. OSBORNE

1 clothes -- she is getting the clothes.

2 As she is coming down the steps she heard gunfire;
3 baam, baam, baam. She drops the clothes and she runs out to
4 the back. And she sees her husband on the ground dying.
5 She cradles him. He ends up dying.

6 Now you will hear form Lanette Smalls. Lanette lives
7 right there in the same building. She lives in 9-C Wilson
8 Street. They live in 9-B.

9 She went to sleep early that night at about 11:00 p.m.
10 All right. She is sleeping. She has got the window to her
11 bedroom up. It is at the end of April. It is Charleston.
12 It is a little warm.

13 She is awoken to the sound of gunfire; baam, baam,
14 baam, baam. Then she hears a voice, a male voice yelling -
15 one she is not familiar with - you just messed with the
16 wrong motherfucker. She rolls over, looks out the window;
17 and then she sees Anthony fall to the ground. He is already
18 gone. He has taken off.

19 You will hear from Officer Henderson. He is a
20 Charleston Police Department officer. Officer Henderson is
21 right around the corner. He is filling out reports.

22 He hears the gunshots. Gets out of his car. Runs to
23 9-B Wilson where he hears the gunshots. He sees a silver
24 vehicle backing up. Draws his service weapon on the
25 vehicle. Stop. Police.

OPENING BY MR. OSBORNE

1 The defendant is driving. He ignores it. Gets onto
2 Wilson. Takes off at a high rate of speed. Henderson gets
3 his license plate though.

4 Officer Henderson then goes to the back. That is where
5 he sees Anthony on the ground with Ashley.

6 Seconds later the defendant comes back. And when he
7 comes back he gets out of the car and he said something to
8 the effect of it was self-defense, I had to shoot him, the
9 gun is in the car.

10 I would submit to you that that is what this case is
11 all going to be about, did he have to kill Anthony, did he
12 just have to.

13 When he -- that night when he was taken into custody he
14 spoke to detectives. And he gave -- spoke to Detective
15 Burckhardt. You are going to -- you are going to hear from
16 him.

17 And he gave Detective Burckhardt a story. And then
18 this is basically what his story was:

19 When he was at the back of his car with the bag, with
20 the liquor, with the holster, gun still in his hand, he sees
21 Anthony at the backdoor banging on the backdoor. So he made
22 a decision to confront Anthony. He left the liquor in the
23 car, brought the gun with him.

24 Anthony is unarmed. He goes to Anthony and he says
25 come on, let's go; let's go. Anthony says come on, get away

OPENING BY MR. OSBORNE

1 from me. Pushes him.

2 He comes back to him again. This time he grabs him.
3 Gun in hand. We have got to go. Let's go. Pushes him
4 again.

5 A third time -- this is his story now. The third time
6 he comes up to him again. And this time he grabs him and
7 he's not letting go.

8 Anthony says get the "F" off me. Pushes him. He
9 stumbles back. Falls to the ground. Then gets up. And he
10 said that Anthony is then charging him - that is his story -
11 and that he had to fire. Boom, boom, boom. Two or three
12 times.

13 Anthony then falls to the ground. He says it sounds
14 like he is wheezing, he is gasping, it sounds like he has
15 got a punctured lung. His words.

16 But Anthony tries to get back up so he just has to
17 shoot him again and again and again and again. Seven shots
18 in total. Shot him four times.

19 You are going to hear from Ashley. And you are going
20 to hear from the detectives and the officers who were out
21 there on the scene.

22 Ashley was not injured that night. He (pointing) was
23 not injured that night. The only person that was injured
24 that night was Anthony. He was murdered.

25 At the end of this trial I am going to ask you to find

OPENING BY MR. OSBORNE

1 what it is - it is a senseless act of murder - and find him
2 guilty. Thank you.

3 THE COURT: Ms. Gay.

4 MS. GAY: Thank you, Your Honor.

5 THE COURT: Yes.

6 MS. GAY: Mr. Osborne.

7 **OPENING BY MS. MELISA GAY:**

8 Well, all trials take a long time. And we have even
9 taken a day-and-a-half to get this far. And one of the
10 reasons that it takes so long to do that is because it is
11 the most important day of my client Mr. Marshall's life.

12 And today is the day that all of these -- since May
13 22nd of 2014 to get -- the decision gets to be made about,
14 you know, what was going on that night, what his -- what is
15 the outcome of all of this. So it is the most important day
16 of his life. And you twelve plus the alternates are the
17 most important people in the world to him.

18 One of the things that happens when you pick a jury is
19 that there are some people that are not selected, not
20 selected by the defendant -- defendant, or they are not
21 selected by the State. Because it is a jury of your peers,
22 and there's reasons obviously why, you know, we get to
23 excuse different people or choose different people. And as
24 you all recall, you are the ones that were chosen. You are
25 the ones that were chosen for his day in court. And it is

OPENING BY MS. MELISA GAY

1 the most important thing for him.

2 And because of that, you are very unique. You are the
3 jury. As the judge told you, you are the fact finders in
4 this case. And because of that, it is an interesting thing.

5 Because I may make a mistake or the judge may make some
6 kind of error in law, but -- and that maybe can be decided
7 at some point in the future. But the facts and how these
8 facts on that night are going to be perceived are going to
9 be decided by y'all. And that will never change. You will
10 always be the people who decide what happened in terms of
11 the facts.

12 Now I am absolutely not a TV star. That is one of the
13 things that happens and when people watch a lot of court TV
14 or they watch, you know, something where someone else in
15 Hollywood wrote this script and it makes total sense and
16 there are all these suspenseful moments and, you know,
17 witnesses say things that are revealing and' all that. That
18 is not what this is.

19 And I don't have anybody write my scripts. And a lot
20 of what happens is -- a trial sort of has a life. And as
21 people testify and different things happen, different things
22 will happen.

23 And I may fumble. I may do something that you don't
24 like. But please don't hold that against my client.
25 Because, you know, it is his -- it is his life and his --

OPENING BY MS. MELISA GAY

1 and he was there. And, you know, I wasn't there. And Mr.
2 Osborne or Mr. Bourdon or none of us were there.

3 And so now we are trying to re-create what happened
4 that night and figure out how it fits in the law. But, you
5 know, Mr. Marshall was there; and he is the only person in
6 this entire case that was outside with his Williams, with
7 Anthony, at the time when this happened.

8 One of the things that the solicitor said is is that
9 you are going to hear from some different people. But the
10 minute that Ashley Butler shut that door she has no idea
11 what happened outside. The minute Lanette Smalls heard some
12 sound and is going to testify that she heard somebody say
13 something, she has no idea what happened in the interim.
14 The only person who is here today that knows is Mr.
15 Marshall. He is the only person who knows what was going
16 on.

17 And what is interesting is is that as he sits here
18 today he is an innocent man. And the judge kind of alluded
19 to that. And, you know, the judge at the end of this case
20 will explain all of the law to you of how so many of these
21 principles that we have heard about play in to how a trial
22 goes.

23 But it has been referred to as like he has the coat of
24 innocence or the cloak of innocence on him. He is just as
25 innocent as you or I or the solicitor or the police officers

OPENING BY MS. MELISA GAY

1 or Ms. Butler or anybody else in this room. And until such
2 time as the State can prove to you beyond a reasonable doubt
3 and remove that cloak of innocence he sits here as an
4 innocent man today. And those are decisions that are yet to
5 be determined and only to be determined by y'all.

6 And the judge explained to you what reasonable doubt
7 is. That is a very technical, legal concept. And he is
8 going to be the one that explains that in the end when he
9 tells you what your jury charges are.

10 But what he is said is is that -- you know, when a
11 reasonably prudent juror or person hesitates to act and
12 makes a decision not to convict because they don't feel that
13 the State has proven everything to the point where they
14 would act and convict. And that is the simple way to say
15 it.

16 And so what happens in this case is we are going to see
17 a set of facts. And that happened on May 22nd, 2014. And
18 you are going to hear from Ms. Butler. And you are going to
19 hear from a bunch of police officers, a bunch of people that
20 we -- one of the things that Mr. Osborne and I decided to do
21 is agree on a lot of the evidence in this case.

22 Because many of the things like who picked up a bullet
23 or shell casing or who -- you know, who did something and
24 moved it from one place to the other is really not relevant
25 to the facts in this case, so we have agreed to -- on a lot

OPENING BY MS. MELISA GAY

1 of those things.

2 So a lot of the evidence is going to come in and we are
3 going to have already agreed that it came in lawfully and
4 that it is here for y'all to consider.

5 But what is going to happen is you are also going to
6 hear from Mr. Marshall. Because as I said, he is the only
7 person that was out there.

8 So when after all of this stuff that is said by people
9 who weren't out there that night and who were not a part of
10 the incident that happened between him and Mr. Williams,
11 those people are going to stop and that is going to be the
12 end of the State's case and then you are going to get to
13 hear from him.

14 And what is interesting which already -- has already
15 been alluded to is that on that night right after this
16 happened Mr. Marshall was driving away. I think he freaked
17 out. He was driving away. He was in his car headed out.
18 And then he said wow, wait a minute, I need to know if he is
19 okay, I need to make this right. And he came back. And
20 that becomes the most important thing in this whole case is
21 you will hear from Officer Henderson that, you know, the car
22 drove away and then it came back. And the first thing he
23 said to the first officer that re- -- that he saw was it
24 was self-defense, I need to tell you what happened, it was
25 self-defense.

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1 And everything beyond that point on is Mr. Marshall
2 telling any -- he is in the back of the police car telling
3 the people, you know, this is -- you know, don't put me on
4 the ground; you know, I have a bad back; I mean I -- this
5 happened, let me tell you what happened.

6 And from the minute that he was placed in custody until
7 today Mr. Marshall has been trying to tell somebody what
8 really happened that night and why he should not be charged
9 with murder.

10 And, you know, murder is the intentional killing of
11 another with malice aforethought without legal provocation.
12 But that is the definition of murder.

13 Well, in this case there is also a whole group of law
14 that the judge will tell you about what self defense is.
15 Self defense is a -- there is a whole bunch of stuff that
16 you will know about that.

17 And in the end after you hear it all what you are going
18 to find is that this was self-defense; this is not murder.
19 This is a situation where my client after you hear from him
20 will explain to you what happened and why he did believe he
21 had no other choice and why he did believe that -- he didn't
22 intentionally have the gun in his hand to take some kind of
23 action against Mr. Williams. It was in his hand because he
24 was leaving the house and he was going to his car and
25 putting things in his car and it just so happened that he

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1 had it in his hand. He didn't arm himself to hurt Mr.
2 Williams.

3 You will hear from him that he was in love with Mr.
4 Williams, that there was a relationship between the two of
5 them, a homosexual relationship between the two of them, and
6 that he cared very deeply about him.

7 You will hear from him on the video that Mr. Williams
8 was the only person he ever really trusted and felt like he
9 had bonded with. He did not want to hurt him. But what
10 happened that night put him in a situation such that he felt
11 like he had no choice. And that's what all this will be.

12 There will be him testifying to this. There will be a
13 video of him and interviewed talking about that. All --
14 everything that he has been saying from the beginning is I
15 had no choice, I felt like he was going to kill me, I felt
16 like I going to be hurt, have serious bodily injury if I
17 didn't take action right then.

18 And you will also hear the whole thing took about five
19 minutes. Okay, I have been talking longer than five
20 minutes. And one thing that the solicitor wants you to
21 believe is that there was all this malice that came into my
22 client's mind and some type of intent to murder this guy in
23 like five minutes.

24 And so from the time that 'they' put -- you know, the
25 doors shut and the time that he go -- my client goes around

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1 to get his bag of stuff and all these things happen and
2 everybody hears things and the police come, that is a tiny
3 itty bitty little amount of time. And all of this happened
4 just that quickly.

5 And now we are all here second-guessing what was going
6 through Brandon Marshall's mind at that point in time when
7 he had to make that instantaneous decision right that
8 minute.

9 He didn't intend to arm himself. He didn't intend to
10 hurt him. He just acted. And what you will hear in his
11 testimony is that he felt threatened, he was on the ground,
12 he has been pushed down, and he just acted because he had it
13 in his hand.

14 And he will tell you that he came back that night, he
15 told them that it was self-defense. He has been telling
16 everybody since, I didn't mean to hurt him.

17 There's things in this case that you will see that he
18 just keeps telling everybody I didn't mean to hurt him. And
19 at the end of this trial I am convinced that you are going
20 to find that he did act in self-defense and you are going to
21 find him not guilty.

22 THE COURT: Thank you, Ms. Gay.

23 You may call your first witness.

24 MR. OSBORNE: Thank you, Your Honor.

25 MR. OSBORNE: The State calls Ashley Butler.

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 (WHEREUPON, pause awaiting witness.)

2 (WHEREUPON, the witness was duly sworn.)

3 THE CLERK: Please state your first and last name and
4 spell your last name loudly and clearly into the microphone.

5 THE WITNESS: Ashley Butler, B-U-T-L-E-R.

6 **DIRECT EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER:**

7 Q. Good afternoon, Ashley.

8 A. Good afternoon.

9 Q. Let's just start off by introducing yourself a little
10 bit to the jury. Where were you born?

11 A. Charleston, South Carolina.

12 Q. And did you go to high school?

13 A. Yes.

14 Q. Did you graduate or get your GED?

15 A. GED.

16 Q. What are some of the jobs that you have held?

17 A. Fast-food, retail, call center.

18 Q. Okay. Do you have any children?

19 A. Yes.

20 Q. And who are they?

21 A. I have a seven-year-old and -- a seven-year-old
22 daughter and a three-year-old daughter.

23 Q. Okay. What is the seven-year-old daughter's name?

24 A. Alaysha.

25 Q. Alaysha. And the three-year-old?

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER.

1 A. Alisa.

2 Q. And the victim in this case, Anthony Williams, what was
3 your relationship with him?

4 A. Me and Anthony was dating at the time of the murder.
5 He is my three-year-old daughter's dad.

6 Q. Okay. How long had you been -- well, let me ask you
7 this: How long have you known him?

8 A. I met him in the summer of 2011, I believe. I believe
9 it was the summer of 2011.

10 Q. Okay. And he was killed in 2014. So about three years
11 at that point?

12 A. Yes.

13 Q. How long had you been dating him?

14 A. I started dating him towards the end of 2011.

15 Q. I think you first met him at one of your jobs?

16 A. Me and him was working together at Hardee's.

17 Q. Did y'all live together on Wilson Street?

18 A. Yes.

19 Q. Do you know about when that started?

20 A. The summer of 2012.

21 Q. Okay. So about almost two years I guess?

22 A. Yeah, he was living with me about two years.

23 Q. Okay. Do you know the defendant?

24 A. Yes, I do.

25 Q. And who is he?

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 A. Brandon was a friend of ours or what I would consider
2 him a friend of ours.

3 Q. And how did you meet him?

4 A. Through one of my cousins. He was -- they were I
5 believe in the military together.

6 Q. Okay. Now were you more of a friend with the defendant
7 or was Anthony more of a friend with the defendant?

8 A. Mostly Anthony.

9 Q. Okay. All right. Let's go to the night of the
10 incident. Did you have any plans that night?

11 A. Yes, we did.

12 Q. And what were they?

13 A. Me and Anthony went on a date together. Just the
14 Golden Corral.

15 Q. Okay. What was the -- what were y'all planning on
16 doing with the children?

17 A. The children we didn't want to take them because we
18 wanted time alone. So we took the kids to Anthony's mother.

19 Q. She lives in Charleston too?

20 A. Yes.

21 Q. Okay. So y'all dropped the kids off and went out to
22 dinner?

23 A. Yes.

24 Q. What did you -- did you come back to your apartment at
25 some point?

- 1 A. Yes, we did.
- 2 Q. And did the defendant come over?
- 3 A. Yes.
- 4 Q. How did that come about?
- 5 A. He asked Anthony if he could come over and bring some
- 6 drinks. And Anthony asked me. And I told him it was fine
- 7 because we didn't have the children with us.
- 8 Q. Okay. Do you recall about what time he came over?
- 9 A. I believe it was close to 10:00 p.m.
- 10 Q. Now when the defendant arrived did -- you said drinks.
- 11 I assume alcohol?
- 12 A. Yes.
- 13 Q. When he arrived did he bring alcohol with him?
- 14 A. Yes.
- 15 Q. Did you and Anthony have any alcohol in the house?
- 16 A. No.
- 17 Q. Do you recall what kind of alcohol he brought?
- 18 A. Tequila and regular vodka.
- 19 Q. Okay. Did he bring anything or did you have anything
- 20 in the house to mix with the drinks?
- 21 A. No.
- 22 Q. All right. What happened then?
- 23 A. I went to the store closest to my house to buy some
- 24 juice, and they was already closed. So I came back in the
- 25 house and I let them know that the store was closed.

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 Q. Okay. Did you offer to go someplace else?

2 A. Yes. My car was blocked in so I asked Brandon if I
3 could drive his car to the next closest store.

4 Q. Okay.

5 MR. OSBORNE: Your Honor, I am showing the witness now
6 State's Exhibit 11 ---

7 THE COURT: Okay.

8 MR. OSBORNE: --- marked into evidence.

9 THE COURT: Very well.

10 Q. Do you recognize what that photograph depicts?

11 A. Yes.

12 Q. And what is that?

13 A. That is the car that was -- that Brandon was driving at
14 the time of this incident.

15 Q. Okay. So you offered to go to the store to buy some
16 mixers and drive Brandon's car because yours was blocked in.

17 A. Yes.

18 Q. What did Brandon say to that?

19 A. He told me no because he would have to take his -- he
20 had stuff in the car. He would have to take it out. The
21 stuff being his gun and his ID.

22 Q. Okay. Did he say he had his gun in the car?

23 A. Yes, he told me that.

24 Q. Had you seen the defendant with a gun before that?

25 A. No, I haven't.

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 Q. , Okay. All right. So did Brandon then go to the store
2 to buy the mixer?

3 A. Yes, he did.

4 Q. Okay. And he came back I assume?

5 A. He came back.

6 Q. Do you remember about how long he was gone?

7 A. I think about 30 minutes.

8 Q. When he came back into the house and he had the mixer
9 for the alcohol did he bring anything else in the house with
10 him?

11 A. Yes, he did.

12 Q. Do you remember what?

13 A. It was his um -- he brought his gun in.

14 MR. OSBORNE: Your Honor, may I approach?

15 THE COURT: You may.

16 Q. I am showing you, Ashley, what has been marked as
17 State's Exhibit Number 15. Does that look familiar?

18 A. Yes.

19 Q. And what is that?

20 A. A gun.

21 Q. Does that look like the gun that the defendant brought
22 into the house?

23 A. Yes.

24 Q. All right. Do you remember when he brought the gun
25 into the house was he holding it; did he have it in his

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 pocket; do you remember?

2 A. He had it in the holster.

3 MR. OSBORNE: Your Honor, may I approach?

4 THE COURT: Yes.

5 Q. I am showing you State's Exhibit Number 10. Does that
6 look like the holster?

7 A. Yes.

8 Q. All right. So how was he carrying the holster; do you
9 remember?

10 A. On his pants.

11 Q. He had it in his pocket or did he have it looped in his
12 belt; do you remember?

13 A. I believed it was looped in his belt.

14 Q. But you are not sure?

15 A. I am not sure.

16 Q. All right. So y'all are sitting around drinking, and I
17 guess it gets a little bit later at night; is that right?

18 A. Yes, it did.

19 Q. Now at a certain point do you go to bed?

20 A. I was about to go to bed and Anthony told me that he
21 believed Brandon was very intoxicated and we should let him
22 spend the night. To me it wasn't anything odd because he
23 had spent the night before.

24 So Anthony told him okay you can spend the night. And
25 I went upstairs and I left them downstairs.

1 Q. Okay. Let me stop you right there. Anthony asked if
2 it was okay for the defendant to spend the night?

3 A. Right. Yes.

4 Q. Okay. And that wasn't uncommon; he had did it before?

5 A. Correct.

6 Q. Okay. And he said that the defendant was intoxicated?

7 A. Yeah.

8 Q. Did you believe him to be intoxicated?

9 A. I did at first.

10 Q. At first.

11 A. At first I did.

12 Q. Okay. So you -- you agree -- he asked if it was okay
13 and you agreed?

14 A. Yes, I said he could.

15 Q. Okay. And then you went upstairs?

16 A. When I went up -- before I went up the stairs Brandon
17 told Anthony that he had some chicken in the car. So
18 Brandon went in the car and got the chicken. And I don't
19 know if Brandon was eating the chicken, but Anthony ate a
20 piece.

21 Okay, a few minutes later when I was upstairs I just
22 had a feeling that Brandon wasn't drunk. Because at first
23 when I was down there he was acting like he was very sleepy.
24 So when I went upstairs he had a lot of energy all of a
25 sudden. So I came back down and told Anthony that Brandon

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 should leave now.

2 Q. Okay. So while you were downstairs it seemed like he
3 was sleepy and a little lethargic or whatever?

4 A. And intoxicated.

5 Q. And intoxicated. But when you went upstairs you heard
6 a lot of energy from him then?

7 A. Yes.

8 Q. Okay. So now you are starting to doubt, well, maybe he
9 is not as intoxicating as he made out?

10 A. Yes.

11 Q. So what do you do then?

12 A. I came back downstairs and told Anthony that Brandon
13 should leave now.

14 Q. All right. So why did you have a change of heart?

15 A. It just seemed like he was pretending to be
16 intoxicated, and I didn't have any idea why would he do
17 that. So I felt like since Anthony had to be to work at
18 6:00 -- he wasn't going to leave Brandon in the house at
19 6:00 when he went to work, so I told him that it should --
20 it would be best if Brandon just left right then.

21 Q. Why wouldn't Anthony leave the defendant in the house
22 when he had left to go to work?

23 A. Because it was more like they were friends, and he
24 wasn't going to leave another guy around his girlfriend.

25 Q. All right. So -- and I assume you want Anthony to go

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 to bed too?

2 A. I did.

3 Q. Now why did you want Anthony to go to bed?

4 A. So he could have enough -- just a little bit of rest
5 before he went to work.

6 Q. Was he starting a new job the next day or was this an
7 old job?

8 A. It was a new job.

9 Q. Do you remember where he was starting to work?

10 A. Yes, at the College of Charleston.

11 Q. All right. When you came back down the steps is it
12 fair to say that you were a little bit annoyed that Anthony
13 hadn't come to bed with you?

14 A. I was.

15 Q. When you came back down the steps tell the jury what
16 happened then.

17 A. When I came back down the stairs it was taking too long
18 for Anthony to tell Brandon to just go home. So I kind of
19 got very annoyed and I started using bad language and
20 started an argument with Anthony.

21 Q. Is it a verbal argument?

22 A. A verbal argument.

23 Q. Okay. Did it escalate at any point; did you do
24 something else to maybe provoke Anthony?

25 A. Yes, I told Anthony -- I said: You should have already

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 came to bed by now. You are standing here holding a
2 conversation with Brandon like that is your girlfriend. I
3 am your girlfriend. You need to come to bed.

4 And I spit at Anthony.

5 Q. Okay. This was a date night?

6 A. Yes.

7 Q. It was between you and him?

8 A. Yes.

9 Q. And who agreed to allow him to come over?

10 A. I did.

11 Q. But you did want Anthony to come to bed?

12 A. Yes.

13 Q. So you made some comments about Anthony acting like the
14 defendant was his girlfriend?

15 A. Yes.

16 Q. Do you believe that to be the fact?

17 A. No.

18 Q. Did you have any idea that that -- that they had had a
19 relationship?

20 A. No.

21 Q. Do you believe that they had a relationship?

22 A. No.

23 Q. All right. So you said you tried to spit into
24 Anthony's face. How did Anthony take that?

25 A. I knew it would make him mad. He was very mad. So he

1 grabbed me by both sides of my arms, and he held me down on
2 the couch.

3 Q. Held you down on the couch?

4 A. Yes.

5 Q. What did you do then?

6 A. I tried to knock a picture off of my wall with my head
7 and hit him with it to get him off to leave me alone. And
8 Brandon came behind him and told him to just come on, let's
9 go, just get out of here and leave her alone. And they left
10 out of the backdoor.

11 Q. Did you tell both of them to leave?

12 A. Yes, I told them to just go, just leave.

13 Q. Now Ashley, at any point during this encounter with
14 Anthony did you fear for your life?

15 A. No, I didn't.

16 Q. Did you fear that Anthony might hurt you that night?

17 A. No, I didn't.

18 Q. Could Anthony have hurt you if he wanted to?

19 A. Yes.

20 Q. He was just holding you down?

21 A. Yes.

22 Q. Were you injured at all that night?

23 A. No.

24 Q. And bruises?

25 A. No.

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1 Q. Any scrapes?

2 A. No.

3 Q. Did you get any bruises the next day that might have
4 developed?

5 A. No.

6 Q. All right. So now the defendant and Anthony went out
7 the backdoor. What happened next?

8 A. I locked the backdoor. And I heard Brandon knock on
9 the door first and ask me if he could have his alcohol. I
10 grabbed his alcohol and I put it in a bag. And I also
11 grabbed his holster and I told him to meet me at the front.

12 Q. Okay.

13 A. At the front door.

14 MR. OSBORNE: Beg the court's indulgence.

15 THE COURT: Certainly.

16 Q. Okay. All right. This is the holster, again
17 (displaying)?

18 A. Yes.

19 Q. And you put the holster in the bag with the two bottles
20 of liquor?

21 A. I think it was only one bottle that I put in the bag.

22 Q. Okay. All right. So then you went and you put that on
23 the front porch?

24 A. Yes.

25 Q. Did you tell Brandon that you had put it on the front

1 porch?

2 A. I had already yelled through the backdoor to come
3 around the front. And he did. And when I noticed that he
4 grabbed the bag I told him to just leave.

5 Q. You told Brandon to just get the bag and leave?

6 A. Just leave.

7 Q. Okay. After that did you hear anything else coming
8 from the back?

9 A. Yes.

10 Q. What did you hear?

11 A. Anthony knocked on the door and he said he wanted some
12 clothes.

13 Q. Did you hear his vehicle before that, Anthony's
14 vehicle; or do you recall?

15 A. I don't recall.

16 Q. Okay. All right. So Anthony is on the backdoor. You
17 said he knocked, and he said what?

18 A. He wanted some clothes.

19 Q. Okay. But in all fairness it wasn't just kind of like
20 a knock; it was ---

21 A. It was loud.

22 Q. It was loud. It was probably louder than the
23 defendant's knock?

24 A. Right.

25 Q. All right. So he said he wanted some -- he wanted his

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 clothes?

2 A. Yes.

3 Q. Was he whispering it?

4 A. It was -- no, he said I want some clothes. Like a
5 little louder than usual.

6 Q. You could hear it through the door?

7 A. Yes.

8 Q. All right. What did you do then?

9 A. I yelled and said I was going to get it.

10 Q. Okay.

11 A. And I grab a bag. And I ran upstairs to get some
12 clothes for him.

13 Q. All right. Did you receive any other notification from
14 Anthony regarding his clothes?

15 A. Yes, he sent a text message.

16 MR. OSBORNE: Your Honor, I am showing her State's
17 Exhibit 42.

18 THE COURT: Very well.

19 Q. And what is that, Ashley?

20 A. That is the text message that Anthony sent me.

21 Q. And what does the text message say?

22 A. I want my clothes.

23 Q. And what time was that?

24 A. 2:39 a.m.

25 Q. All right. So while Anthony was at the backdoor

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 banging on the backdoor, I want my clothes, you tell him I
2 am going to go get my clothes. While you are upstairs
3 getting the clothes you receive this text; is that correct?

4 A. Yes.

5 Q. All right. Let's talk just a second about what you
6 could hear. I know you probably couldn't see Anthony at the
7 backdoor, could you?

8 A. No.

9 Q. But you could hear him; is that right?

10 A. Yes.

11 Q. So did it sound like Anthony was trying to kick in the
12 door?

13 A. No.

14 Q. Did it sound like Anthony was maybe trying to ram in
15 the door with his shoulder?

16 A. No.

17 Q. Did it sound like Anthony was in an uncontrollable rage
18 to you?

19 A. No.

20 Q. Describe to the jury what he sounded like.

21 A. He just sounded a little upset. He just was bamming on
22 the door. And he just yelled out through the door that he
23 wanted his clothes.

24 Q. When he was at the backdoor asking for his clothes did
25 you fear for your life?

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1 A. No.

2 Q. All right. After you got -- you got the clothes. You
3 said you put it in a bag?

4 A. Yes.

5 Q. Then what did you do?

6 A. I was running down the stairs and I heard -- I heard
7 what sounded like four shots.

8 Q. Okay. You heard those gunshots. Did it sound like
9 they were coming from the front or the back?

10 A. The back.

11 Q. Were the gunshots in rapid succession, or was there a
12 pause in between?

13 A. To me it sounded like I heard one shot very loud and
14 three that was low that followed.

15 Q. Were they one right after another or was there a pause
16 in between?

17 A. After I heard the first shot it seemed to be a pause
18 and then it was three right back to back after that.

19 Q. Okay. Then what happened?

20 A. I dropped the bag and went to look out the backdoor.
21 And I saw Anthony on the ground.

22 Q. Did you go to him?

23 A. No, I went back upstairs to grab my phone. Because I
24 was already about to go to bed and I had it on the charger.
25 And I grabbed the phone and I ran back down dialing 911.

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 Q. Okay. While you were talking to the 911 operator did
2 you go to Anthony?

3 A. Yes, I grabbed some rags that was on my kitchen sink
4 and I went to him with the rags. And it just appeared that
5 it was a wound to his stomach, so I was trying to hold the
6 rags over his stomach while I was talking to 911.

7 Q. Was Anthony responsive to you at all?

8 A. No.

9 Q. Were you trying to talk to him?

10 A. Yes.

11 Q. Could he talk?

12 A. No. No, he couldn't.

13 Q. Describe to the jury what his sound was like. Was he
14 breathing okay?

15 A. He was breathing and his eyes was rolling in his head.
16 But he couldn't talk. When he tried, the blood came coming
17 out of his mouth.

18 (WHEREUPON, witness crying.)

19 Q. Just take your time.

20 THE COURT: Do you need a break? Ms. Butler, do you
21 need a break?

22 THE WITNESS: (Witness nods head.)

23 THE COURT: All right. Ladies and gentlemen, I am
24 going to let you go to your jury room. Do not begin your
25 deliberation. Don't discuss the case. We will be with you

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 momentarily. Thank you.

2 (WHEREUPON, jury exits the courtroom 4/5/16, 2:30 p.m.)

3 THE COURT: Ms. Butler, if you need some water you have
4 water there. Take a break. If you need to step down to
5 gather yourself, that is fine. Just do not have any
6 conversation with anyone, please.

7 All right. Anything from the State before we take a
8 brief recess?

9 MR. OSBORNE: No, Your Honor.

10 THE COURT: Anything from the defendant, Ms. Gay?

11 MS. GAY: Well, Your Honor, one of the things that Mr.
12 Osborne mentioned to me, there is a body cam on the officer
13 that responded, and that -- it was one of like a photo type
14 or something they were using at the time. And there is a
15 minute or like I think he referred to it as the first minute
16 is like him literally dying on the -- and he asked me if I
17 was going to object to the first minute.

18 And I -- we didn't get to that point because I forgot.
19 But I would like to object to that first minute of the body
20 cam being shown.

21 THE COURT: Well, I haven't -- we haven't gotten that
22 yet, have we?

23 MR. OSBORNE: No, Your Honor.

24 THE COURT: Okay. Well ---

25 MR. OSBORNE: I was going to take that up when Officer

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 Dean took the stand.

2 THE COURT: That's fine. I mean this -- Ms. Gay, help
3 me and help the record. Let's put that closer in time ---

4 MS. GAY: Okay.

5 THE COURT: Right now do you have anything that you
6 want to do that we have done thus far?

7 MS. GAY: No.

8 THE COURT: When we get back, I want -- whatever motion
9 you -- whatever matter you need to address with your client
10 I want to deal with that, okay?

11 MS. GAY: Okay. Thank you.

12 THE COURT: Thank you.

13 (WHEREUPON, break was had 4/5/16, 2:32 p.m.)

14 (WHEREUPON, resumed 4/5/16, 2:43 p.m.)

15 THE COURT: Ms. Butler, are you ready to proceed?

16 THE WITNESS: Yes.

17 THE COURT: The State?

18 MR. OSBORNE: Yes.

19 THE COURT: Ms. Gay?

20 (WHEREUPON, pause for defense counsel.)

21 THE COURT: Are there any matters from the defendant
22 before we bring in the jury, at this point?

23 MS. GAY: Your Honor, we were discussing the pretrial
24 motion about the trespass and different information about
25 the victim and what had happened in his life.

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 My client mentioned to me that he believed there was
2 case law to support our position, and I explained to him
3 that I had already made that motion and that you had ruled
4 on it.

5 THE COURT: I appreciate your client's position.
6 Again, as you have talked with him about hybrid
7 representation, he can raise that at a second preceding if
8 that ever becomes necessary called a post-conviction-relief
9 hearing. But right now you are his lawyer.

10 And Mr. Marshall, she handles the law. You have read
11 some law according to what was said yesterday. That makes
12 you have some knowledge, but that does not qualify you to
13 render opinions about things or to present any evidence or
14 to present any legal argument. That has to be through your
15 lawyer. Do you understand that, sir?

16 MR. MARSHALL: Yes, sir.

17 THE COURT: Thank you, sir. And you may be right, and
18 you may be wrong. That's what we do every day, we make
19 decisions in applying the law. Thank you, sir.

20 All right. Let's bring in our jury.
21 (WHEREUPON, jury enters courtroom 4/5/16, 2:45 p.m.)

22 THE BAILIFF: All are seated, Your Honor.

23 THE COURT: Thank you very much. Thank you.

24 We are ready to continue. You may resume your
25 examination, Solicitor.

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 MR. OSBORNE: Thank you, Your Honor.

2 RESUME DIRECT EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER:

3 Q. Ashley, I am showing you now what is marked as State's
4 Exhibit Number 9.

5 Okay. Ashley, looking at that overhead can you tell
6 where [REDACTED]?

7 A. Looking at it, no, I can't.

8 Q. It is a little bit difficult. I am going to give you
9 this pointer. You may end up needing it sometime later. I
10 am showing you State's Exhibit Number 1. How about that?

11 A. Yes, I can -- I can see which one is mine.

12 Q. Which one is your apartment?

13 A. The second door.

14 Q. Okay. So I am assuming it is "A", "B", and then "C"
15 after that?

16 A. Yes.

17 Q. "A" being the furthest on the left? I am showing you
18 now what has been marked as State's Exhibit -- and this is
19 the front of your apartment?

20 A. The front door, yes.

21 Q. Okay. I am showing you now State's Exhibit 2. What
22 does that photograph depict?

23 A. That is the living room area of 9-B Wilson. That was
24 my home.

25 Q. The poster that is off of the wall here, is this the

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 poster that you tried to hit Anthony with?

2 A. Yes.

3 Q. I am showing you now State's Exhibit Number 3. And
4 what does that picture depict?

5 A. That is the kitchen area of 9-B Wilson.

6 Q. Okay. What is that on the kitchen table right there,
7 that box?

8 A. That is the Churches Chicken that Brandon brought in.

9 Q. Okay. So this is where he was eating -- is this where
10 he was -- where you said that he was you thought he was
11 faking like he was sleeping?

12 A. Yes, in the chair that is turned by the refrigerator.

13 Q. Okay. I am showing you State's Exhibit Number 4 now.
14 And what does that picture show?

15 A. That is the backdoor, 9-B Wilson.

16 Q. Okay. So this is the backdoor that Anthony was at
17 asking for his clothes?

18 A. Yes.

19 Q. Is there any damage to that door?

20 A. No, it was already like that.

21 Q. After this incident did you notice any damage to the
22 door?

23 A. No.

24 Q. I am showing you State's Exhibit Number 5. Do you
25 recognize that?

- 1 A. Yes.
- 2 Q. And what is that?
- 3 A. That is the bag of clothes that I was getting -- that
- 4 is the bag of clothes that I was getting ready to give to
- 5 Anthony when I heard the gunshots.
- 6 Q. Anthony was a pretty decent-sized guy; is that right?
- 7 A. Yes.
- 8 Q. Was he about my size?
- 9 A. Maybe taller.
- 10 Q. Maybe taller. Was he bigger than me?
- 11 A. No.
- 12 Q. About the same size?
- 13 A. About the same size.
- 14 Q. I am showing you State's Exhibit 4 again. Do you think
- 15 if he wanted to get in that backdoor he could have?
- 16 MS. GAY: Your ---
- 17 A. Yes.
- 18 MS. GAY: --- Honor, I object.
- 19 THE COURT: What is the basis of the objection?
- 20 MS. GAY: Speculation, Your Honor.
- 21 THE COURT: Under 602 I would sustain the objection.
- 22 Q. I am showing you now State's Exhibit Number 6. What
- 23 does that picture depict?
- 24 A. That is the backdoor of 9-B Wilson.
- 25 Q. I am showing you State's Exhibit Number 7. On this

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 photograph right here do you know whose blue car that is?

2 A. Yes.

3 Q. Whose blue car is it?

4 A. That is Anthony's car.

5 Q. And do you see the defendant's car on there?

6 A. Yes.

7 Q. And where is his car?

8 A. Behind Anthony's car.

9 Q. Now this photograph was taken after the police arrived;
10 is that correct?

11 A. Yes.

12 Q. Okay. I am showing you State's Exhibit Number 21. Do
13 you recognize those two items?

14 A. Yes.

15 Q. And what are they?

16 A. A lighter and a cell phone.

17 MR. OSBORNE: Your Honor, may I approach?

18 THE COURT: You may.

19 Q. I am showing you now State's Number 58. You can take
20 it. Do you recognize that item?

21 A. Yes.

22 Q. And what is that?

23 A. That is Anthony's cell phone.

24 Q. Anthony's cell phone. If you need to open it we can
25 open it.

DIRECT EXAMINATION BY MR. OSBOURNE OF ASHLEY BUTLER

1 A. Okay.

2 (WHEREUPON, witness attempting to open exhibit bag.)

3 A. I can't -- I am trying to open it.

4 Q. No, no, no, that is going to be hard. Let me get some
5 scissors.

6 (WHEREUPON, exhibit bag was opened.)

7 A. That is Anthony's cell phone.

8 Q. Okay. All right. You said that while you were outside
9 and you were with Anthony you ended up calling 911?

10 A. Yes.

11 MR. OSBORNE: Your Honor, at this time we would like to
12 publish the 911 call. It is State's Exhibit Number 8.

13 THE COURT: Has it already been admitted?

14 MR. OSBORNE: It has.

15 THE COURT: Okay. Very well. You may do so.

16 (WHEREUPON, 911 call published to the jury.)

17 Q. Thank you Anth- -- or Ashley. Please answer any
18 questions that Ms. Gay might have for you.

19 THE COURT: You may cross-examine.

20 **CROSS-EXAMINATION BY MS. GAY OF ASHLEY BUTLER:**

21 Q. Hey, Ms. Butler. How are you?

22 A. All right.

23 Q. It is a really stressful day for you, and I know that.
24 I understand. Today we are here and you are coming into
25 court and it has been almost two years since this happened?

CROSS-EXAMINATION BY MS. GAY OF ASHLEY BUTLER

1 A. Yes.

2 Q. And you don't live on Wilson Street anymore, do you?

3 A. No, ma'am.

4 Q. Where do you live now?

5 A. Summerville.

6 Q. Okay. And your children are older. And one is three
7 now and I think six?

8 A. Seven.

9 Q. Seven. And Mr. Williams is the father of just the
10 littlest one?

11 A. Yes, the three-year-old.

12 Q. I understand. And over the past two years this case
13 has been assigned to Mr. Osborne who is the prosecutor in
14 this case?

15 A. Yes.

16 Q. And you have had the occasion to talk to him several
17 times, haven't you?

18 A. Yes.

19 Q. And you are familiar with the fact that Mr. Marshall
20 said that he had acted in self-defense; you know that?

21 A. Yes.

22 Q. And you have had conversations about that with Mr.
23 Osborne?

24 A. Yes.

25 Q. And during the course of the trial preparations for

1 today did he -- okay, let me ask it this way: You have
2 talked to the police I think at least four times, five
3 times, and been interviewed on videotape twice; do you
4 remember that?

5 A. Yes.

6 Q. Okay. So in the course of preparing for this trial did
7 Mr. Osborne let you review these videotaped statements?

8 A. No.

9 Q. So you haven't had an occasion to review them?

10 A. No.

11 Q. Okay. Has he ever given you a copy of any paperwork
12 that maybe was done in furtherance of your -- some of your
13 statements that you gave?

14 A. No, ma'am.

15 Q. So if I were to say, hey, that they had provided
16 information, written information, and videotaped information
17 of what you said in the past two years, you have never had
18 an occasion to look at them?

19 A. No, ma'am. Never had a copy.

20 Q. Okay. So but you would agree with me that during the
21 past two years you have had I think at least about seven
22 maybe times that you have sat down and talked to somebody or
23 over the phone talked to Mr. Osborne?

24 A. I don't believe it was seven times. But maybe a couple
25 of times. Maybe three or four.

CROSS-EXAMINATION BY MS. GAY OF ASHLEY BUTLER

1 Q. Well, are you aware that every time you have talked to
2 him and different things that y'all have talked about, that
3 he is required to give that information to me; so every time
4 you have a phone call with him or maybe you were interviewed
5 they had to give that to me as part of this?

6 A. I didn't know that.

7 Q. Okay. Well, the first night that this happened when
8 this happened -- we just listened to the 911 tape, and you
9 were the person on there that had called 911; so obviously
10 you are pretty upset?

11 A. Yes.

12 Q. And that night police officers came out and talked to
13 you about the incident that led up to this situation?

14 A. Yes.

15 Q. And do you recall that it was that night that they may
16 have videotaped you or shortly thereafter maybe -- maybe it
17 is not at 2:00 in the morning but like the next day that
18 they may have videotaped you talking to them?

19 A. I don't think it was the next day either or that night.

20 Q. Do you remember talking to an officer named Burckhardt?

21 A. No. I remember talking to Krasowski or something like
22 that.

23 Q. Okay. And is Mr. Krasowski the man sitting right here
24 in the green tie?

25 A. Yes.

CROSS-EXAMINATION BY MS. GAY OF ASHLEY BUTLER

1 Q. Okay. Well, Officer Burckhardt -- if you need to see
2 this information to refresh your recollection, you can do
3 that. But he actually met with you and talked with you
4 verbally on the night that this happened or the next
5 morning? Would you like to see something to refresh your
6 recollection on that?

7 MR. OSBORNE: Objection, Your Honor.

8 THE COURT: Hold on. Number one, is that her statement
9 that you are talking about?

10 MS. GAY: Well, it is him talking to her.

11 THE COURT: That's correct. No, you can't -- she
12 didn't prepare that document, correct?

13 MS. GAY: No, sir.

14 THE COURT: No, I am not going to allow that. That
15 would be inappropriate for refreshing her recollection.
16 That is someone else's recollection, not hers.

17 Q. Do you recall talking to them about it that night?

18 A. Yes.

19 Q. And when were talking to them when you were describing
20 what happened -- and I know you testified to this before.
21 You said that there was this incident that happened between
22 you and Anthony inside the house, and I believe that you --
23 right; correct?

24 A. Correct.

25 Q. And you testified -- you said that what was going on

CROSS-EXAMINATION BY MS. GAY OF ASHLEY BUTLER

1 inside the house was upsetting you because Mr. Williams was
2 not going to bed?

3 MR. OSBORNE: Objection, Your Honor. This is improper
4 impeachment. She asked ---

5 THE COURT: Well, -- well, first of all she's -- she's
6 asked a question. I have overruled -- the question -- your
7 objection to the question. Can you answer that question?

8 THE WITNESS: Yes.

9 THE COURT: All right. You can answer the question.

10 A. Yes.

11 Q. And I believe that you said that the argument that you
12 had was -- landed you with him holding you down?

13 A. Yes.

14 Q. And when he was holding you down were you on the couch
15 or were you on the ground?

16 A. On the couch.

17 Q. On the couch. And you said -- you testified that these
18 pictures that are in this photo, which is Exhibit Number 2,
19 these pictures, these posters, were the things that you
20 tried to knock Anthony in the head with?

21 A. Yes.

22 Q. And you actually said that when you were on the couch
23 that you bopped your head back to try to knock them off the
24 wall or something so they would land on top of him?

25 A. Yes.

CROSS-EXAMINATION BY MS. GAY OF ASHLEY BUTLER

1 Q. And at that point you said that the reason that y'all
2 got into this physical problem was because you had spit in
3 his face?

4 A. I spit at him. Trying to spit in his face.

5 Q. Right. And you say that pretty calmly right now. But
6 that night you were pretty upset and when you spit at him it
7 led him to, you know, pin you basically on the couch?

8 A. Yes.

9 Q. So not only were you pinned on the couch but you were
10 trying to fight to get away from him by knocking stuff in
11 your house on top of him?

12 A. Yes.

13 Q. And during this whole situation Mr. Marshall was in
14 your house watching all of this?

15 A. No, he was sit -- there is a wall that divides that
16 front room from the kitchen. He was in his same spot in the
17 kitchen.

18 Q. Okay. Well, when you say he was in his same spot in
19 the kitchen, what was going on on that couch while you were
20 trying to get away from him, was loud enough that Mr.
21 Marshall could have heard it?

22 A. Could have heard it. Not seen.

23 Q. Okay. And so when -- do you recall when he came and
24 actually saw what was going on, what he did?

25 A. I think after the picture fall he just came up behind

CROSS-EXAMINATION BY MS. GAY OF ASHLEY BUTLER

1 Anthony and just told him to come on, let's go, to leave her
2 alone.

3 Q. Right. So at that point when the picture fell there
4 was enough noise going on in there that it would have caused
5 him to come in and said, hey, we need to go?

6 A. Yes.

7 Q. Okay. And so from that point on when Mr. Marshall
8 came -- and I think he kind of took -- I think you said he
9 touched Mr. Williams and said, hey, yo, we need to go, let's
10 leave?

11 A. Yes.

12 Q. From that point on do you have any idea what happens
13 between Mr. Marshall and Mr. Williams after that?

14 A. No.

15 Q. None?

16 A. No.

17 Q. And you can't tell this jury at all what led up to the
18 shooting ---

19 A. No.

20 Q. --- because you weren't watching?

21 A. That's correct. No, I wasn't.

22 Q. So the last thing that you know when you were doing all
23 this was that Mr. Marshall was trying to get Mr. Williams
24 off of you while y'all had had this physical fight; that is
25 the last thing you know?

1 A. The last thing I know is Mr. Marshall was trying to get
2 Mr. Williams to leave my property with him.

3 Q. After you were screaming and there was that -- those
4 posters you were trying to knock them into Anthony's head
5 and he was pinning you down on the couch?

6 A. Yes.

7 Q. And you were mad and he was mad?

8 A. Yes.

9 Q. And there is no doubt in your mind -- not disputed
10 that that was a physical fight between the two of y'all that
11 was loud, that was aggressive, and that involved the two of
12 you?

13 A. It was not loud. It wasn't so aggressive. But it was
14 between me and Anthony.

15 Q. Okay. Well, do you recall having occasion where you
16 were interviewed and you told them that he had pinned you
17 down?

18 A. I don't recall.

19 Q. Do you recall that you had told him -- that you told
20 them in your interview that he was choking you?

21 A. Yes, I -- I think -- I believe I also said that
22 yesterday that he was holding my arms and I was choking ---

23 Q. Yeah, and I think ---

24 A. --- when I couldn't breathe.

25 Q. --- that what you were saying is that you were choking

CROSS-EXAMINATION BY MS. GAY OF ASHLEY BUTLER

1 because you couldn't breathe very well, ---

2 A. Yes.

3 Q. --- not because his hands were on your throat ---

4 A. That's ---

5 Q. --- but because -- because he was holding you down and
6 constricting you you were unable to breathe well?

7 A. Correct. Yes.

8 Q. And that -- when Mr. Marshall came in and saw you on
9 the couch with Mr. Williams like that, holding you down with
10 your -- basically you are gurgling and unable to breathe
11 very well, that is when he grabbed Mr. Williams and said we
12 need to go?

13 A. Yes.

14 Q. And as I said, you have no idea what happened after
15 that?

16 A. No.

17 MS. GAY: I have no further -- oh, I just need to ask
18 my client something.

19 (WHEREUPON, pause for Ms. Gay to confer with client.)

20 Q. One more thing. Because this is important to me. You
21 are not married to Mr. Williams, were you?

22 A. No.

23 Q. So you never had gone through a ceremony where y'all
24 actually were married?

25 A. No.

1 Q. You've lived together?

2 A. Yes.

3 Q. And I believe that on your lease you were the only
4 person on the lease?

5 A. Me and my children also, yes.

6 Q. Were the only people on the lease?

7 A. Yes.

8 Q. He certainly stayed there and his clothes were there,
9 but he wasn't on the lease?

10 A. Yes.

11 MS. GAY: I have no further questions, Your Honor.

12 THE COURT: Redirect.

13 MR. OSBORNE: Briefly, Your Honor.

14 THE COURT: Sure.

15 **REDIRECT EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER:**

16 Q. Okay. Ms. Gay asked about you about when the defendant
17 came up to Anthony and they walked out together.

18 A. Yes.

19 Q. When they walked out together did Anthony say anything
20 to you when he was leaving?

21 A. Yeah. I believe he told me he was going to his mom's
22 house.

23 Q. Going to his mom's house?

24 A. Yes.

25 Q. Did he say I'm coming back and I'm coming back to hurt

REDIRECT EXAMINATION BY MR. OSBORNE OF ASHLEY BUTLER

1 you?

2 A. No.

3 Q. Did he make any threats to you at all?

4 A. No.

5 Q. He left saying that he is going to his mom's house?

6 A. Yes.

7 Q. And the defendant was standing right with him when he
8 made that comment?

9 A. Yes.

10 Q. You had mentioned to Ms. Gay that the defendant went
11 over to Anthony and said something like let's go, come on;
12 something like that?

13 A. Yes.

14 Q. Did he have to drag Anthony off of you?

15 A. No.

16 Q. Did he have to pull Anthony out the door?

17 A. No.

18 Q. Was Anthony kicking and screaming trying to get back to
19 you?

20 A. No.

21 MR. OSBORNE: No further questions.

22 THE COURT: Re-cross.

23 MS. GAY: I have just got one thing, Your Honor.

24 **RECROSS-EXAMINATION BY MS. GAY OF ASHLEY BUTLER:**

25 Q. That night everybody was drinking tequila or at least

1 the boys were?

2 A. Yes.

3 Q. And I think that you were drinking some vodka?

4 A. Yes.

5 Q. And certainly you are aware as part of all of this that

6 Mr. Williams' blood alcohol level was .13?

7 MR. OSBORNE: Objection, Your Honor. That is beyond
8 the scope of her personal knowledge.

9 THE COURT: Sus- -- well, it is also improper recross
10 because it was not brought out on redirect. It is limited.
11 Thank you. Sustain the objection.

12 MS. GAY: I have no further questions, Your Honor.

13 THE COURT: Okay. You may come down. Thank you, Ms.
14 Butler.

15 Call your next witness, please.

16 MR. OSBORNE: The State calls Lanette Smalls.

17 Your Honor, may we approach.

18 (WHEREUPON, bench conference was had.)

19 (WHEREUPON, the witness was duly sworn.)

20 THE CLERK: Please state your first and last name and
21 spell your last name clearly and loudly into the microphone.

22 THE WITNESS: Lanette Smalls. Smalls, S-M-A-L-L-S.

23 **DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS:**

24 Q. Good afternoon, Lanette.

25 A. Hi.

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 Q. Ms. Smalls. Where were you born?

2 A. In Charleston.

3 Q. And have you lived here your whole life?

4 A. Yes, I have.

5 Q. All right. You are a real soft talker. Just lean up
6 and then talk into the mic so all the jurors can hear.

7 A. Yes, I have.

8 Q. Okay. Now I want to take you back to the night of May
9 the 22nd, the night of this incident. Where did you live
10 then?

11 A. [REDACTED], [REDACTED]

12 Q. Okay. Who did you live with?

13 A. My 16-year-old son.

14 Q. Your 16-year-old son. And what is his name?

15 A. Damon.

16 Q. Damon. Did you know the residents of 9-B Wilson
17 Street?

18 A. Yeah, I do.

19 Q. And who were they?

20 A. Ashley and her kids.

21 Q. She had too little girls I think?

22 A. Uh-huh.

23 THE COURT: Is that a yes, ma'am?

24 THE WITNESS: Yes.

25 Q. Did you know the victim in this case, Anthony?

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 A. Yes.

2 Q. All right. On the night of this incident do you recall
3 about what time you went to bed?

4 A. I went to bed about 11:00. A little after.

5 Q. The bed in which you sleep at 9-C Wilson, is it facing
6 the front of the apartment or the back of the apartment?

7 A. That night I slept in the back of the apartment.
8 That's my son's bedroom.

9 Q. I'm sorry, and you did what?

10 A. My son's bedroom.

11 Q. And you slept in your son's bedroom that night?

12 A. (Witness nods head.)

13 Q. Do you remember waking up?

14 A. Yes.

15 Q. And tell the jury what awoke you?

16 A. Gunshots and screaming.

17 Q. Gunshots?

18 A. And screaming.

19 Q. All right. Let's go real slow. How many gunshots do
20 you think you heard?

21 A. I'm not sure how much I heard. It was just baam, baam,
22 baam, baam.

23 Q. Now you said you heard screaming?

24 A. Yes.

25 Q. Did that come before or after the gunshots?

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 A. Right after.

2 Q. Right after. Could you make out what was said?

3 A. Yes.

4 Q. All right. And what did you hear?

5 A. The person said: You messed with the wrong one,
6 motherfucker.

7 Q. Could you hear where that voice seemed to be coming
8 from?

9 A. It was coming like from the left side of the window.

10 Q. Did it sound like it was coming from the same location
11 as the gunshots or ---

12 A. Yes.

13 Q. --- a different? I'm sorry.

14 A. Yes.

15 Q. Could you tell if it was a male voice or not?

16 A. Yes.

17 Q. Did you recognize the voice?

18 A. No.

19 Q. When he made -- when the male made that comment can you
20 describe to the jury did it sound like he was -- was he
21 mumbling it, was he yelling it; can you draw any conclusions
22 about the tone?

23 A. No, he was yelling it. It was clear. You messed with
24 the wrong one, motherfucker.

25 Q. All right. After you heard that did you roll over or

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 look out of the window?

2 A. No, I rolled over in the process of hearing the
3 gunshots.

4 Q. Did you see anything when you looked out the window?

5 A. Yes.

6 Q. What did you see?

7 A. That is when I saw the victim falling and hitting the
8 ground.

9 Q. Was there anyone else around him?

10 A. Not at that time. I don't -- no, I don't remember
11 seeing anybody at that particular time.

12 MR. OSBORNE: Beg the court's indulgence.

13 THE COURT: Certainly.

14 Q. I am showing you now, Ms. Smalls, State's Exhibit
15 Number 6. Can you tell the jury what this photograph is
16 showing?

17 A. That is in the back of the -- underneath the window
18 where I live at.

19 Q. Okay. Do you know whose Power Wheel that is right
20 there?

21 A. The little girl.

22 Q. What little girl?

23 A. Ashley's little girl.

24 Q. Which -- and there is a pointer right there. Which --
25 which apartment window is yours? You can --

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 MR. OSBORNE: Your Honor, may she stand up to point?

2 THE COURT: Yes, she may. Speak loudly now.

3 A. Right there (pointing.)

4 Q. With the window open. Did you have the window open
5 that night when you were sleeping?

6 A. It was cracked. It was like to about right here
7 (pointing).

8 Q. Okay. What else does that picture show? Is that you
9 in the window there?

10 A. Yes, that is me in the window.

11 Q. You kind of stood out there and looked for a while?

12 All right, you can sit back down. Thank you.

13 All right. So after you roll over and you look and
14 then you see Anthony fall, nobody else around, what do you
15 do then?

16 A. I heard -- when the car -- fell, and I was trying to
17 run downstairs so I could see the car and to get the license
18 tag or whatever. But it was so much of steps the car had
19 already passed and was almost at the corner.

20 Q. Okay. So you heard a car speed off. Could you -- what
21 road was the car speeding down?

22 A. Huh?

23 Q. What road was the car speeding down?

24 A. It was speeding down Wilson.

25 Q. And headed in what direction?

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 A. Beaufain.

2 Q. Beaufain. All right. So is it fair to say that when
3 you heard the gunshots the voice -- the voice that made the
4 comment that yelled was pretty quickly after the gunshots?

5 A. Uh-huh.

6 THE COURT: Is that a yes, ma'am?

7 THE WITNESS: Yes.

8 Q. And how long after those gunshots did it take you to
9 look outside and see Anthony fall?

10 A. Soon after. Because like I was asleep, but I heard the
11 gunshot. Rolled over. You messed with the wrong one,
12 motherfucker. Baam.

13 Q. And you saw him hit the ground, nobody else around him?

14 A. Huh-uh.

15 Q. You have to answer ---

16 THE COURT: Is that a no?

17 THE WITNESS: That is -- that's no.

18 THE COURT: You need to say yes and no. The court
19 reporter needs ---

20 THE WITNESS: Yes.

21 THE COURT: So we can take down your response.

22 THE WITNESS: I didn't see nobody else around him.

23 MR. OSBORNE: Beg the court's indulgence.

24 THE COURT: Okay.

25 Q. You didn't hear -- or did you prior to the gunshots

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 hear any banging on the door underneath you?

2 A. No, what woke me up was the gunshots.

3 Q. Okay. Did you happen to see the color of the car that
4 was ---

5 A. It was a light color -- small-compact colored car.

6 Q. Okay.

7 MR. OSBORNE: Thank you, Your Honor. No further
8 questions.

9 THE COURT: Cross-examine.

10 MS. GAY: I have no questions for this witness, Your
11 Honor.

12 THE COURT: Okay.

13 You may come down, Ms. Smalls. Thank you.

14 THE COURT: Call your next witness.

15 MR. BOURDON: Your Honor, the State would call Saint
16 Nicholas Johnson.

17 THE COURT: Okay.

18 (WHEREUPON, the witness was duly sworn.)

19 THE CLERK: Please state your first and last name and
20 spell your last name loudly, clearly into the microphone.

21 THE WITNESS: Saint Nicholas Johnson.

22 **DIRECT EXAMINATION BY MR. BOURDON OF SAINT NICHOLAS JOHNSON:**

23 Q. And, sir, how old are you?

24 A. Twenty-five.

25 Q. And can you tell the jury where you live.

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 A. In North Charleston.

2 Q. And are you a lifelong resident of Charleston?

3 A. Yes, sir.

4 Q. Okay. Where are you working now?

5 A. At a company called Compost Containers in Mt. Pleasant.

6 Q. If you speak up please so that they can all hear you.

7 And the court reporter is taking down what you are saying,
8 okay.

9 Tell us what you do at your job.

10 A. Make food bags for a company. Like so -- like to stop
11 hazards and stuff like that. Tape up stuff.

12 Q. Okay. Where is that business located?

13 A. In Mt. Pleasant off of Clements Ferry Road.

14 Q. Now let's go back to the night of the 22nd of May of
15 2014. Do you recall that evening?

16 A. Kind of sort of.

17 Q. Okay. About 2:40 in the morning you were in the area
18 of downtown Charleston, correct?

19 A. Yes, sir.

20 Q. And where were you coming from that night?

21 A. From out in the country in Parker's Ferry.

22 Q. Okay. And where were you going to?

23 A. To my sister's house.

24 Q. And where does your sister live?

25 A. Wilson Street.

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 Q. And what -- do you know what number she is at?

2 A. I want to say 5-I. 5-J or 5-I.

3 Q. Okay. And what is your sister's name?

4 A. Margia.

5 Q. Okay. And about 2:40 in the morning did you hear
6 anything unusual as you were heading down Beaufain going to
7 your sister's house?

8 A. Yes.

9 Q. Okay. And tell the jury what it was that you heard?

10 A. I heard like two gunshots while I was coming to the
11 stop sign.

12 Q. Okay. You were at the stop sign at Beaufain and Pitt
13 Street?

14 A. Yes, sir.

15 Q. And can you describe the gunshots; were they quickly
16 done together; were they separated?

17 A. Separated.

18 Q. And if you could kind of make the noise of the
19 gunshots. Can you kind of space out how they sounded to you
20 as you were in your car.

21 A. It was like pow, pow.

22 Q. Okay. And could you see where the gunshots were coming
23 from?

24 A. No, sir.

25 Q. Okay. And how did they appear, to be close by you at

1 that time or far away?

2 A. I wouldn't say far, and I wouldn't say close. Like in
3 between.

4 Q. Okay. After you heard the gunshot what did you then
5 do?

6 A. I came to a stop sign and I turned my music down and I
7 just like continued going toward my sister's house.

8 Q. Okay. And did you hear anymore gunshots after you
9 heard those while you were at the stop sign?

10 A. No, sir.

11 Q. Okay. And then tell us what happened when you got onto
12 Wilson Street?

13 A. I made a right on Wilson Street and I saw a car backing
14 out of the side street off Wilson Street, and it came
15 towards my car; so I stopped. And they stopped.

16 And I reversed my car and went back on Beaufain Street.
17 And the car had came down a little bit more. And then he
18 stopped. And then it was like the car reversed back and
19 went back where it gone -- where it came from. So I just
20 continued going toward my sister's house.

21 Q. And when you saw that car coming towards you what was
22 going through your head?

23 A. I just assumed the gunshots had to do with that car, so
24 I was like trying to get out of the way.

25 Q. Okay. And how fast was the car coming towards you on

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 Wilson Street?

2 A. I wouldn't say fast fast. But it was coming towards
3 me.

4 Q. Okay. Now that is a street -- have you traveled that
5 street before, Wilson Street?

6 A. Yes, sir.

7 Q. Okay. Is it a busy street or is it kind of a quiet
8 street?

9 A. Like a quiet street.

10 Q. Okay. And at 2:40 in the morning was there any other
11 traffic out on the street that you could see?

12 A. No, sir.

13 Q. Do you know what the car looked like; could you
14 describe the color to the jury?

15 A. I wouldn't be able to describe the color of the car now
16 from back then, because it was something like not like on my
17 mind.

18 Q. Okay. Do you remember was it a car or a truck or what
19 kind of vehicle?

20 A. It was car.

21 Q. Okay. Did you make -- did you talk to the detectives
22 that night at all?

23 A. Yes, sir.

24 Q. And do you remember telling them what color car it was?

25 A. Yes.

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 Q. And what color did you tell them that night it was?

2 A. A silver car.

3 Q. Okay. Now when you were traveling back to your
4 sister's house was anyone else in the car with you?

5 A. No, sir.

6 Q. Okay. And when this car was coming towards you
7 approximately how far did it get near you before you backed
8 up?

9 A. I would say like a car and a half.

10 Q. Okay. And were you able to see who the driver of the
11 car was?

12 A. No, sir.

13 Q. Could you tell how many people were in the car?

14 A. No, sir.

15 Q. Okay. And as it was coming towards you did you hear
16 any or see any police in the area?

17 A. There was one police.

18 Q. And what was that -- where was that policeman that you
19 saw?

20 A. Like when I saw him he was like at the back passenger
21 side of the car toward the trunk.

22 Q. And what was he doing?

23 A. I would say he like from that night he had his gun
24 drawn telling the car to stop.

25 Q. Okay. And could you hear the police officer telling

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 the car to stop?

2 A. I could hear him saying something, but like he was back
3 there and I was like -- we wasn't close enough. But I knew
4 he was saying something. I could hear him saying something.

5 Q. Okay. It was loud enough for you to hear. Did you
6 have your car windows down at that time?

7 A. Yes, sir.

8 Q. Okay. And then did the car turn around and go back to
9 where it came from?

10 A. No, sir.

11 Q. Okay. How did it -- what did it do?

12 A. He just put his car in reverse and reversed back down
13 the street.

14 Q. Okay. After then after it reversed back down the
15 street what did you then do?

16 A. Put my car in drive and like continued heading towards
17 my sister's house.

18 Q. Okay. Were you able to make it to your sister's house?

19 A. No, sir.

20 Q. Why weren't you able to get to your sister's house?

21 A. The police came out. And I stopped my car like right
22 in front of that speed bump they have got on the road.

23 Q. Okay. And then did you talk to the police; did they
24 let you go to your sister's house?

25 A. Not right then and there.

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 Q. Okay. And then did you have a chance to speak to the
2 police officers that night?

3 A. I don't think I talked to a police officer. But I
4 talked to someone.

5 Q. Okay. Would that have been a detective?

6 A. Yes, sir.

7 Q. Detective Burckhardt?

8 A. Yes, sir.

9 Q. Okay. Did you see where the silver car went after it
10 backed up down Wilson Street?

11 A. Like it went right back where it came from. Like off
12 that side street.

13 Q. Okay. And then where did you park your car?

14 A. On another side street parking area where there is a
15 park at, like right there off of Wilson Street.

16 Q. Okay. We are going to show you the map in a minute and
17 you can kind of walk the jurors through. I am just kind of
18 having you talk through it and then we will look at the map
19 itself.

20 Mr. Johnson, I am going to show you State's Exhibit 9.
21 This is a map of the area. What I am going to have you do
22 is get so you can use this pointer here and kind of show us
23 where you are on the map. And if you need to walk through
24 the door to do that.

25 If you could show the jurors on this map where Beaufain

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

- 1 Street is.
- 2 A. Right here (pointing).
- 3 Q. Okay. If you can kind of show that.
- 4 A. (Pointing).
- 5 Q. All right. Now where is Pitt Street on the map?
- 6 A. That street right (pointing).
- 7 Q. Okay. And when you came to that intersection of
- 8 Beaufain and Pitt is there a stop sign there?
- 9 A. Yeah, there is two stop signs on both sides right here
- 10 (pointing).
- 11 Q. Okay. And did you stop at that stop sign?
- 12 A. Yes, sir.
- 13 Q. And where were you when you heard the gunshots?
- 14 A. I was right here at this stop sign (pointing).
- 15 Q. Okay. And then tell the jury if you could, please
- 16 follow through on how you got to Wilson Street after you
- 17 heard the gunshots.
- 18 A. I just like came straight on down. I made a right, and
- 19 that is when I saw the car coming from right here off of
- 20 this street. Like he reversed it and came down. And like I
- 21 stopped like right here (pointing).
- 22 Q. Okay. Is that Wilson Street that you are on now?
- 23 A. Yes, this is Wilson Street.
- 24 Q. Okay. And that street just basically goes to those
- 25 homes in the Robert Mills Manor, correct?

1 A. Yes.

2 Q. Okay. Now tell us where your sister's house is.

3 A. My sister's house is like right here (pointing).

4 Q. Okay. And then tell us what happened if you could on
5 the map again. Show us where you came down and where the
6 silver car came and what it did after you first saw it.

7 A. Like I came right here (pointing). And like I stopped
8 right here (pointing). But he backed out. And then he came
9 down towards me. So it is like we stopped like right here
10 (pointing).

11 Q. And at that point did you start backing up?

12 A. I backed up once I saw him started coming towards me.
13 But we just stopped at the same time. Like we just stopped.

14 Q. And why did you start backing up?

15 A. Because I assumed that's why I heard the gunshots and
16 that car was leaving.

17 Q. Okay. Did you have some fear that that car was
18 involved in a shooting?

19 A. Yes, sir.

20 Q. Okay. And then tell us where the car went after it got
21 near you.

22 A. Like so I backed up and went back around the corner.
23 And he like came down and stopped but not at the stop sign.
24 Like he stopped before the stop sign. He just sat there.
25 And then he reversed it and just like went back in where he

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 came from.

2 Q. And if you could on the map show us where you saw the
3 police officer.

4 A. Like this is all the trees right here (pointing). But
5 the police was like right here on this corner (pointing).

6 Q. Okay. And then did you see where the car went to after
7 it backed up on Wilson Street?

8 A. Backed like right in here where these trees are at on
9 the street.

10 Q. Okay. And did you see the car after it went into that
11 parking area?

12 A. No, sir.

13 Q. Okay. And where did you then park your car?

14 A. I had to park my car over here in this parking lot.

15 Q. And did you stay there and speak with Detective
16 Burckhardt?

17 A. Yes, sir.

18 Q. And whereabouts did you talk to him?

19 A. Like right here on these benches. I guess the benches
20 right here (pointing)

21 Q. Okay. And do you know the defendant in this case,
22 Brandon Marshall?

23 A. (Shakes head.)

24 Q. Okay. Have you seen him before?

25 THE COURT: Was that a no?

1 THE WITNESS: Oh, no, sir.

2 THE COURT: Okay.

3 Q. Sir, you can resume your seat.

4 Did you know Anthony Williams who lived at 9-B Wilson
5 Street?

6 A. No, sir.

7 Q. Did you know Ashley?

8 A. No, sir.

9 Q. Okay. And were you able to get to your sister's house
10 that night?

11 A. Yes, sir.

12 Q. And how long -- how did -- how did you make your way to
13 the house?

14 A. I had to walk through that field. Walk around and walk
15 through the field.

16 Q. Okay. And did you ever go look at the car that was in
17 the parking lot?

18 A. No, sir.

19 Q. Okay. And Mr. Johnson, does this look like the car
20 that was coming at you that night?

21 A. I can't say yeah, and I can't say no; because I don't
22 remember how the car looks or what color was it, but....

23 Q. Okay.

24 MR. BOURDON: The court's indulgence.

25 THE COURT: Certainly.

DIRECT EXAMINATION BY MR. OSBORNE OF LANETTE SMALLS

1 MR. BOURDON: Mr. Johnson, I have no further questions.
2 Please answer any from Ms. Gay if she has any for you.

3 THE COURT: Cross-examine.

4 MS. GAY: I have no questions for this witness, Your
5 Honor.

6 THE COURT: Thank you. You may come down, Mr. Johnson.
7 Thank you.

8 Call your next witness, please.

9 MR. OSBORNE: The State calls Officer Edward Henderson.

10 THE CLERK: Please state your first and last name
11 spelling your last name loudly and clearly into the
12 microphone.

13 THE WITNESS: Edward Henderson. My last name is
14 Henderson, H-E-N-D-E-R-S-O-N.

15 **DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD**

16 **HENDERSON:**

17 Q. All right, Mr. Henderson. Where do you work?

18 A. Charleston Police Department.

19 Q. And how long have you worked there?

20 A. Just over four years.

21 Q. During your time with Charleston Police Department what
22 are some of the various assignments that you have had?

23 A. I have been assigned to Team 1 and Team 2 patrol. And
24 so far that is all I have been doing.

25 Q. Okay. What was your assignment back on May the 22nd of

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD
HENDERSON

1 2014?

2 A. I was assigned to Team 2 patrol.

3 Q. Team 2. For the jury's prospective I assume that teams
4 are broken down geographically ---

5 A. Yes.

6 Q. --- and that is how you know where you are assigned?

7 A. Yes, sir.

8 Q. Where is Team 2?

9 A. Team 2 is Downtown Peninsula. Everything -- or Calhoun
10 and everything south of Calhoun Street to the water.

11 Q. Okay. On the night of May the 22nd did you have the
12 occasion to become involved in a murder investigation?

13 A. Yes, I did.

14 Q. And how did that come about?

15 A. May 22nd I was sitting in my cruiser in the area of
16 Robert Mills Manor which is down off of Beaufain Street.
17 And I was parked in the parking lot on -- at the
18 intersection of Logan and Magazine Street.

19 I had been there for about a minute when I heard a
20 series of gunshots, about four to five gunshots. I ran to
21 where I believed the scene was, which was down around Wilson
22 Street and behind [REDACTED].

23 And then I discovered the victim on the ground. And at
24 that point that is how I became involved.

25 Q. Okay. So let's slow it down and we will take it piece

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD
HENDERSON

1 by piece.

2 A. Okay.

3 Q. The gunshots, can you recall were they in rapid
4 succession; do you remember if there was a pause in between?

5 A. They were in rapid succession. I do not remember a
6 pause.

7 Q. And that was about four to five shots?

8 A. That I heard, yes, sir.

9 Q. Okay. So you ended up responding on foot to the area?

10 A. I initially drove, which was probably about a hundred
11 yards. I kind of hesitated for a second. I wasn't sure if
12 I should run up there or drive up there, for officer safety
13 purposes.

14 I decided to drive to the intersection of Magazine and
15 Wilson and then proceeding on from there to the crimescene.

16 Q. Were you driving a marked police unit?

17 A. I was.

18 Q. Were you dressed in standard CPD marked police uniform?

19 A. Yes, sir, I was.

20 Q. All right. So after you parked the vehicle -- you know
21 what, it might just be easier --

22 MR. OSBORNE: Your Honor, I am showing the witness
23 State's Exhibit Number 9.

24 THE COURT: Okay.

25 Q. There is a pointer down there. Or it should be right

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD
HENDERSON

1 there.

2 A. Yes.

3 Q. If you could just stand up and point. And let's just
4 start -- let's do it chronologically. Let's start where you
5 were doing -- sitting in your car doing your reports.

6 A. I was -- I believe if this is Magazine Street ---

7 Q. Yes.

8 A. --- I was in this parking lot (pointing).

9 THE COURT: You need to keep your voice elevated too,
10 please.

11 THE WITNESS: Yes.

12 A. I was in this parking lot right here when the -- when I
13 first heard the gunshots.

14 Q. Okay. Now walk the jury through what you did from that
15 point on.

16 A. Okay. After hearing the gunshots I drove my vehicle
17 down to this intersection right here (pointing). It was
18 parked about on this corner. I exited my vehicle.

19 At which time I saw a female that was coming out from
20 behind the building here (pointing). And she was trying to
21 waive me down., And so at that point I figured that there
22 was something actually going on..

23 I got out of my vehicle and proceeded on foot. In
24 front of these buildings right here (pointing) and then
25 about -- if I am looking at the right thing. About right

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD
HENDERSON

1 here (pointing) I saw a silver in color vehicle backing out
2 the parking lot and then proceeding this direction
3 (pointing). At which time I ran behind the building and
4 located the victim.

5 Q. The female that you saw before you got to the
6 intersection there with the silver vehicle, was she
7 motioning you in any direction?

8 A. She was. She was waiving her hands as if she was
9 trying to flag me down.

10 Q. All right. So when you got there and you saw the
11 silver vehicle backing up did it seem like to you from our
12 prospective and where you heard the gunshots that that
13 silver vehicle was in the area in which the gunshots
14 occurred?

15 A. Yes, it did.

16 Q. All right. So what did you do then in regards to the
17 silver vehicle?

18 A. I didn't know if the occupant of the vehicle was
19 involved, but I figured at this point I should try to keep
20 everyone there. I looked in the vehicle. And I had my CPD
21 firearm drawn and my flashlight. And I was holding it in
22 this manner and pointing it in the vehicle and yelling
23 verbal commands for the vehicle to stop. However, the
24 vehicle did not stop. And like I said, it proceeded on
25 Wilson Street up to Beaufain Street.

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD
HENDERSON

1 Q. Okay. What side of the vehicle were you on when you
2 drew your service weapon on him; were you on the passenger
3 side or the driver's side?

4 A. I was on the driver's side.

5 Q. Okay. Were you in the front of the vehicle or in the
6 rear of the vehicle?

7 A. I was in the front of the vehicle.

8 Q. Could you tell how many people were in the car?

9 A. I could not tell -- I could definitely tell there was
10 at least the driver, but I could not tell anybody else.

11 Q. Okay. Now you said that you gave oral commands. Were
12 you -- were they loud?

13 A. Yes.

14 Q. And what did -- what did you say?

15 A. I said -- if I remember correctly I said stop and stop
16 the vehicle. And that is pretty much all I said.

17 Q. How far away from you -- or how far away were you from
18 the vehicle when you made those commands?

19 A. Probably not much farther than the edge of this -- the
20 table where the evidence is sitting. So probably about five
21 feet or so.

22 Q. From your -- from your prospective were you left with
23 the opinion that the driver could have heard you?

24 A. Possibly. I don't want to say yes, and I don't want to
25 say no. But it is a possibility that he could have heard

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HENDERSON

1 me.

2 Q. When you illuminated the vehicle was it with your
3 flashlight?

4 A. Yes.

5 Q. Did you illuminate the interior of the vehicle?

6 A. I did.

7 Q. Was it dark out there?

8 A. Yes, it was.

9 Q. All right. The vehicle -- which way did the silver
10 vehicle go from there?

11 A. It went this direction (pointing) on Beaufain -- or
12 excuse me, Wilson Street. And then it took a right turn on
13 Beaufain Street heading eastbound on Beaufain Street.

14 Q. Was the vehicle leaving at a moderate rate of speed, a
15 high rate of speed, slow?

16 A. Moderate speed. I couldn't -- once again, it was kind
17 of dark; so I couldn't tell how fast he was trying to get --
18 or it was leaving the scene.

19 But it was -- it was moving at -- it wasn't going slow.
20 It was moving at a decent clip, but not extremely fast.

21 Q. All right. What did you do then?

22 A. I proceeded towards the victim who was on the ground
23 behind [REDACTED] to check his status. When I got up
24 there I observed that he was bleeding from his mouth. And
25 he was also bleeding from what appeared to be several other

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD,
HENDERSON

1 wounds.

2 And he was on his knees face down into the ground kind
3 of -- his face was pointed out towards me -- or towards
4 Wilson Street when I ran up to him.

5 Q. Okay. Facing which direction?

6 A. If he was -- if this is where he was now, he was kind
7 of -- his back -- if I was coming up this direction
8 (pointing) his back would have kind of been towards me at an
9 angle away. And then his face was pointed towards me this
10 direction (pointing) going towards Beaufain -- or Wilson
11 Street.

12 Q. You went out there; you learned the identity of the
13 victim?

14 A. I did not know the identity of the victim at the time.

15 Q. Did you learn that he resided in that building?

16 A. I did not. No.

17 Q. Do you know that now?

18 A. I do know that now, yes.

19 Q. The way his body was positioned was it facing away from
20 the building in which he resided or towards it?

21 A. It was at an angle like towards the building. Like
22 this -- it's this direction (pointing). If the pointer is
23 (pointing), he was -- he was laying kind of like that
24 (pointing).

25 Q. All right. Was the victim alone?

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HENDERSON

1 A. No, there was a female with the victim.

2 Q. All right. What happened then?

3 A. At that point I am trying to access the victim. And I
4 just happened to look over my shoulder and saw the silver
5 vehicle I had seen fleeing the scene was now coming back to
6 the scene.

7 I retreated to a vehicle that was parked -- it was
8 parked along this -- in this parkway -- or parking lot right
9 here (pointing) to get coverage.

10 Because I did not know at the time who the driver of
11 the vehicle was. I didn't know if he was a suspect or just
12 a witness. But I figured for my own safety I would get
13 behind the engine block of the vehicle that was parked right
14 here (pointing). Which I believe that ended up being the
15 victim's vehicle in the long run.

16 The driver of the silver vehicle exited the -- or
17 exited the vehicle. At which point I pointed my firearm at
18 him.

19 Q. All right. Before we get to that ---

20 A. Okay.

21 Q. All right. If you could sit back down. Thank you.

22 Okay. So you are behind [REDACTED] with a
23 female and the victim?

24 A. Yes, sir.

25 Q. And [REDACTED] is that in the City and County of

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD
HENDERSON

1 Charleston?

2 A. It is in the City and County of Charleston.

3 Q. All right. So you are back there. And how long from
4 the time in which you drew down on the silver vehicle that
5 the silver vehicle came back to the scene; can you give any
6 approximation?

7 A. Easily less than a minute. Or at least it seemed like
8 it was about a minute or so.

9 Q. When the -- taking you back. When the silver vehicle
10 fled were you able to see the license plate on the vehicle?

11 A. I was able to get the first letter of his license
12 plate, which was "J". But I couldn't get anything else.

13 Q. Did you broadcast that description?

14 A. I did.

15 Q. All right. So you are sitting there with the female
16 and the victim and then the vehicle comes back. So go
17 ahead. Walk us through what happened then.

18 A. Like I said, I retreated behind -- there was a blue
19 Caprice which I believe ended up being the victim's vehicle.
20 And I was -- the silver Ford Focus pulled up, and the driver
21 exited the vehicle.

22 I pointed my firearm at him. Just as I wasn't 100
23 percent certain what -- who he was, and stated who was the
24 shooter. And he said I was the shooter. And then I asked
25 him to put his hands up. And then I ordered him to the

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD
HENDERSON

1 ground. At that time I took him into custody.

2 Q. Okay. When you ordered him to the ground did he --
3 well, let me ask you this: Who did you end up taking into
4 custody; do you see him in the courtroom here today?

5 A. Yes, sir, the defendant Mr. Brandon Marshall.

6 Q. Okay. When you took him into custody did he make any
7 comment like don't put me on the ground, my back is hurting?

8 A. No, not that I remember.

9 Q. In fact, you put him on the ground?

10 A. I didn't use force. I put him on the ground. He went
11 to the ground on his own accord after I ordered him to the
12 ground.

13 Q. All right. When you place him into custody you mean
14 you put him in handcuffs?

15 A. Yes, sir.

16 Q. After you put him into handcuffs does -- what do you do
17 then?

18 A. At that point I asked him where the firearm was, once
19 again for my own safety; and he said he wasn't sure, he
20 believed it was in the vehicle.

21 I kind of flashed my flashlight in the vehicle and did
22 see it there on the front passenger seat. After that pretty
23 much waited for responding units to come on the scene and
24 offer me -- or offer assistance to secure the crime scene so
25 we could get fire and EMS on the scene.

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD

HENDERSON

1 Q. All right. I am showing you now what has been marked
2 as State's Exhibit 7. Okay. Can you tell the jury what we
3 are looking at in that photograph?

4 A. We are looking at the crime scene. Like I said, the
5 blue Chevy Caprice is the vehicle I initially got behind.
6 And then the silver Ford Focus that was what Mr. Marshall
7 was driving. And then the victim on the ground behind 9-B
8 Wilson Street.

9 Q. And is that where the victim was when you first arrived
10 on the scene?

11 A. Yes.

12 Q. Does that generally show how his body was positioned?

13 A. At that point, no. His body was positioned a little
14 bit differently. But yes, it is pointing in the direction.
15 But other than that everything is the same.

16 Q. I think did EMS arrive on the scene?

17 A. Yes, they did.

18 Q. And they attempted life-saving measures?

19 A. Yes, they did.

20 Q. Okay.

21 MR. OSBORNE: Beg the court's indulgence.

22 THE COURT: All right.

23 Q. Okay. I am showing you now what has been marked as
24 State's Exhibit Number 12. And what does that depict?

25 A. That would be the firearm in the front passenger's seat

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD
HENDERSON

1 of the vehicle.

2 Q. And that would be the passenger seat of ---

3 A. Of the silver Ford Focus, yes, sir.

4 Q. I am showing you State's Exhibit Number 11. Is that

5 the vehicle that you are referring to?

6 A. Yes, sir.

7 Q. Now I am showing you State's Exhibit Number 13. And

8 what does that show?

9 A. It is a firearm. Or the weapon the suspect told me was

10 in the vehicle at the time.

11 Q. Now being a police officer I believe you have to

12 qualify at the fire range and shoot your pistol?

13 A. Yes, sir.

14 Q. I think you have to do it twice a year?

15 A. Once a year for a pistol.

16 Q. So you are a little bit proficient at least ---

17 A. Yes, sir.

18 Q. --- in regards to semi-automatic handguns; ---

19 A. Uh-huh.

20 Q. --- that is what you carry?

21 A. Yes, sir.

22 Q. Can you tell the jury how the slide in this handgun is

23 positioned?

24 A. The slide is locked back to the rear which would

25 indicate that it has been fired and all of the rounds in the

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD
HENDERSON

1 magazine were expended.

2 Q. So when you fire a handgun and all of the bullets come
3 out of a handgun the slide rock -- locks to the rear like
4 that?

5 A. Yes, sir.

6 Q. And that is how the gun was left in the car?

7 A. Yes.

8 Q. Okay. All right. Did you secure the weapon?

9 A. I did not, no.

10 Q. All right. So I think we left off with the defendant
11 you had him in the back of your car?

12 A. He was -- once we moved him to a vehicle he was in the
13 back of Officer Shehan's car.

14 Q. Okay. Let me ask you this. I am going to back up
15 just a second. When you placed him in the handcuffs and you
16 said -- was he on the ground when you put him in the
17 handcuffs?

18 A. Yes, he was.

19 Q. How did you -- did you order him down on his knees?

20 A. I can't remember specifically what I said. But I
21 ordered him to the ground. And like I said, he went down to
22 the ground under his own power without me assisted him in
23 any way, shape or form.

24 Q. And you asked him to put his hands behind his back ---

25 A. Yes.

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD
HENDERSON

1 Q. --- while he was on the ground?

2 A. Yes, sir.

3 Q. Then you came up to him, then put him in the handcuffs
4 with his hands behind his back?

5 A. Yes, sir.

6 Q. Did he have any difficulty getting back up?

7 A. Not that I remember, no.

8 Q. Okay. So he's in the backseat of your car. Do you
9 ever have the occasion to move him to another car?

10 A. He was in the backseat of Officer Sheehan's car. When
11 I transported him to headquarters we moved him to the back
12 of my car.

13 Q. Before that did you have the occasion or did another
14 officer have the occasion to search him?

15 A. Yes, Officer Shehan searched him.

16 Q. Officer Shehan?

17 A. Yes.

18 Q. All right. So now and then you said that you had
19 transported him. Where did you transport him to?

20 A. To our headquarters to be interviewed by Central
21 detectives.

22 Q. Okay. Through your encounters with him did the
23 defendant ever say that he was injured in any way?

24 A. The only thing I remember him saying is when I moved
25 him from Shehan's car to my car he said his hands were numb.

DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD
HENDERSON

1 And I believe that was from the handcuffs. He had been
2 sitting in the back of a police car for probably about an
3 hour at that point. But other than that he mentioned no
4 injuries in any way, shape or form.

5 Q. Did you see any injuries on him?

6 A. I did not, no.

7 MR. OSBORNE: May I approach, Your Honor?

8 THE COURT: You may.

9 Q. All right. I am showing you now what has been marked
10 as State's Exhibit 50. Can you take a look at that and tell
11 me if you recognize that.

12 A. I do not actually recognize these.

13 Q. All right. I am going to show you State's Exhibit
14 Number 41. Can you tell me if you recognize this.

15 A. Yes, I do. This would be the white shirt the defendant
16 was wearing.

17 Q. Did you have the occasion to take that and put that
18 into evidence?

19 A. I did.

20 Q. Officer Shehan (sic), during your encounters with the
21 defendant did you observe any blood on him?

22 A. No, I did not.

23 MR. OSBORNE: No further questions, Your Honor.

24 THE COURT: Okay. Cross-examine.

25 **CROSS-EXAMINATION BY MS. GAY OF OFFICER EDWARD HENDERSON:**

CROSS-EXAMINATION BY MS. GAY OF OFFICER EDWARD HENDERSON

1 Q. Officer Henderson, you were the first person out there?

2 A. Yes, ma'am.

3 Q. And I think your testimony was is that you were out
4 there because you were in the area at 2:30 in the morning
5 anyway?

6 A. Yes, ma'am. I was doing paperwork from an earlier
7 arrest.

8 Q. So when you heard the shots - and I think you have
9 testified it was in quick succession - you came in your car
10 and then you went on foot?

11 A. Yes, ma'am.

12 Q. Now the woman that you saw that flags you down, was
13 that Ashley Butler?

14 A. I do not remember. I don't believe it was. But I do
15 not remember.

16 Q. But when you came up and you saw what we saw on the
17 video coming out of the picture, the man on the ground, Ms.
18 Butler was with him at that time?

19 A. Yes. Yes.

20 Q. And you said that you observed the silver car which I
21 believe you identified. Did you identify the actual car
22 itself?

23 A. I believe I did. But I can't -- again, if you need me
24 to

25 Q. All right. This is 11. Does this refresh your

1 recollection as to what the car ---

2 A. Yes. Yes, ma'am, this is the vehicle.

3 Q. That is the vehicle? And that is the car that I
4 believe you -- this is Number 12, and I think he showed this
5 to you also that this is the -- this is the seat where the
6 gun was?

7 A. Yes, ma'am,

8 Q. And I believe you said that when you came -- when
9 you -- when you got there you saw the car backing up?

10 A. Yes, ma'am,

11 Q. To leave?

12 A. Yes.

13 Q. Ostensivly to leave the scene in the area?

14 A. Yes, ma'am. Yes, ma'am.

15 Q. And would it have been your thought that if this person
16 was involved he was leaving the area?

17 A. Yes.

18 Q. And I think you said that you tried to get him to stop?

19 A. Yes.

20 Q. You illuminated, ---

21 A. Uh-huh.

22 Q. --- you drew your weapon, you did the things you
23 thought were necessary; but the car kept going?

24 A. Yes, ma'am.

25 Q. And at that point there wasn't a roadblock or other

CROSS-EXAMINATION BY MS. GAY OF OFFICER EDWARD HENDERSON

1 officers coming that you were aware of, and that car could
2 have left the scene?

3 A. Yes, ma'am, it could have.

4 Q. And gotten away?

5 A. Yes.

6 Q. And I believe the only part of the license plate that
7 you had seen was that "J", so there was really no way to
8 identify the car?

9 A. Other than any responding officers coming into the
10 area, no.

11 Q. But interestingly, seconds later the car came back?

12 A. Yes.

13 Q. And you have actually referred to that as seconds
14 later. I think you said today it was about a minute. But
15 it was very quickly?

16 A. Yes, it was very quickly. Yes.

17 Q. And so you are attending to the man on the ground and
18 again the lady that is with him, and then you said all of a
19 sudden you turned around and there was the car again?

20 A. Yes.

21 Q. And so and the person that got out of the car was my
22 client, Mr. Marshall?

23 A. Yes, ma'am.

24 Q. And at that point Mr. Marshall started telling you
25 stuff and saying things and in response to your question he

1 said he was the shooter?

2 A. Yes.

3 Q. And he also said that the man was -- had come after
4 him?

5 A. He -- I don't remember him saying that specifically. I
6 do remember when he was down on the ground he said I am the
7 shooter but this is not gang related. I think he said it
8 was self-defense.

9 Q. Okay.

10 A. Yes.

11 Q. If I were to -- did you make a report for this case?

12 A. I did, yes.

13 Q. That you would have given to the case agent?

14 A. Uh-huh.

15 Q. And would your name be on the top of it?

16 A. Yes, it would be.

17 Q. If I show you your report which is called the
18 supplemental report would it refresh your recollection;
19 would it help you remember ---

20 A. Yes, ma'am,

21 Q. --- what you wrote at the time?

22 A. Uh-huh.

23 Q. Okay.

24 THE COURT: Was that a yes?

25 THE WITNESS: Yes. Yes, sir.

CROSS-EXAMINATION BY MS. GAY OF OFFICER EDWARD HENDERSON

1 MR. OSBORNE: Your Honor, may I see what she is
2 showing?

3 THE COURT: Sure. You need to have it marked for
4 identification.

5 MS. GAY: Could I have this marked, please.
6 (WHEREUPON, Defendant Exhibit Number 1, 5/22/14 supplemental
7 report, was marked for identification.)

8 THE COURT: Defendant's 1 for identification.

9 Q. So I am going to show you Defendant's 1 and ask you if
10 you can identify this document.

11 A. Yes, ma'am, this is my supplemental.

12 Q. Okay. And what date is on it?

13 A. May 22nd, 2014.

14 Q. And I would like to direct your attention to this. I
15 believe it is the second paragraph.

16 A. Okay.

17 Q. Does that refresh your recollection of what Mr. Marshall
18 said to you on the evening of? It is written on your
19 report. It is this part right here (pointing).

20 A. He made a spontaneous utterance stating that he was the
21 shooter and that he had done it in self-defense because the
22 victim had come after him.

23 Yes.

24 Q. Okay.

25 MS. GAY: One moment, Your Honor.

CROSS-EXAMINATION BY MS. GAY OF OFFICER EDWARD HENDERSON

1 THE COURT: Okay.

2 Q. Did Mr. Marshall -- was he crying?

3 A. At the initial -- during the initial encounter, no.

4 Q. As he was sitting in the police car?

5 A. Yes, he was.

6 Q. Heavily crying?

7 A. Yes.

8 Q. Asking about ---

9 A. Yes, he did keep asking about the status of the victim.

10 Q. Thank you.

11 MS. GAY: I have no further questions.

12 THE COURT: Redirect.

13 MR. OSBORNE: Very short.

14 **DIRECT EXAMINATION BY MR. OSBORNE OF OFFICER EDWARD**

15 **HENDERSON:**

16 Q. How -- you said you have been an officer for how many
17 years, again?

18 A. Just over four years.

19 Q. Okay. You have arrested people during that time, I
20 take it?

21 A. Yes.

22 Q. A lot of times when you arrest people they probably
23 don't want to go to jail, do they?

24 A. Most of the time, no.

25 Q. Most of the time, no. You ever arrest somebody before

CROSS-EXAMINATION BY MS. GAY OF OFFICER EDWARD HENDERSON

1 that cried when they went to jail?

2 A. Quite a few times, yes.

3 MR. OSBORNE: No further questions.

4 THE COURT: Re-cross.

5 MS. GAY: I have no further questions, Your Honor.

6 THE COURT: Okay.

7 You may come down. Thank you.

8 All right. Ladies and gentlemen, let's take about a
9 ten-minute break. Do not begin your deliberations. Do not
10 discuss the case. We will be with you in ten minutes.

11 Thank you.

12 Everyone else remain seated until the jury leaves,
13 please.

14 (WHEREUPON, jury exits the courtroom 4/5/16, 3:54 p.m.)

15 THE COURT: Anything from the State before recessing?

16 MR. OSBORNE: No, Your Honor. Just for planning
17 purposes.

18 THE COURT: Sure.

19 MR. OSBORNE: So Officer Phil Dean was -- is our next
20 witness. He is the witness that had the body camera where
21 we were hoping to introduce the first minute of that.

22 THE COURT: Okay.

23 MR. OSBORNE: After that we have Jeff Miller. I
24 anticipate that would be kind of long. And then we have
25 Paul Krasowski here.

CROSS-EXAMINATION BY MS. GAY OF OFFICER EDWARD HENDERSON

1 THE COURT: Okay. All right.

2 (WHEREUPON, discussions regarding scheduling of witnesses.)

3 THE COURT: All right. What is the issue concerning
4 the body camera?

5 MS. GAY: Overly prejudicial because it is horrible.

6 THE COURT: I can't rule on it in a vacuum. Got to see
7 it.

8 MR. OSBORNE: Yeah, maybe that is what you should do,
9 Your Honor, during this break. It is only the first minute
10 or so that he is talking about so.

11 THE COURT: Okay.

12 (WHEREUPON, discussions regarding scheduling were had.)

13 (WHEREUPON, the court reviews body camera video.)

14 THE COURT: All right. I would sustain the objection.
15 I think the probative value is outweighed by the prejudice.
16 It has been described. That is not necessary to this case.
17 Thank you. It is merely for inflame- -- to inflame the
18 jury. I don't think it adds a thing.

19 Now having said that, I don't know what they are going
20 to try to say in reply or cross-examination. If they try to
21 suggest that there was some injury that didn't exist, then
22 that changes everything.

23 But right now the pathologist is already going to
24 testify to what the effects -- he did yesterday, which
25 describes precisely what he saw. So I don't think anything

CROSS-EXAMINATION BY MS. GAY OF OFFICER EDWARD HENDERSON

1 is necessary for that. And I think the prejudice is
2 obvious. So I don't think it is necessary at this point.

3 MR. OSBORNE: I understand, Your Honor. Thank you.

4 THE COURT: Thank you.

5 MS. GAY: Thank you, Your Honor.

6 THE COURT: Now if you want to play after that -- I
7 mean any part that -- but you have already -- you have
8 already had -- and really and another reason, let me put in
9 this under 403, it really is somewhat cumulative to the
10 frantics, response, and the 911 call which clearly just
11 depicted the scene of this where someone was radically
12 hoping somebody could be saved. And we know he wasn't.

13 I mean so this -- if this was a civil trial it might be
14 something -- it might be probative to the mental anguish and
15 whatnot, but that is not what we are doing here. So thank
16 you.

17 MS. GAY: Your Honor, if we could maybe 12 minutes
18 instead of 10 minutes?

19 THE COURT: I will give you -- I will give you --
20 whenever you come back we will be ready.

21 MS. GAY: Thank you.

22 THE COURT: Thank you.

23 (WHEREUPON, break was had 4/5/16, 3:59 p.m.)

24 (WHEREUPON, resumed 4/5/16, 4:12 p.m.)

25 (WHEREUPON, scheduling of witnesses was discussed.)

CROSS-EXAMINATION BY MS. GAY OF OFFICER EDWARD HENDERSON

1 THE COURT: Bring in the jury.

2 (WHEREUPON, jury enters 4/5/16, 4:14 p.m.)

3 THE COURT: Thank you, ladies and gentlemen. We are
4 ready to continue.

5 You may call your next witness.

6 MR. OSBORNE: Thank you, Your Honor. The State calls
7 Officer Karl Shehan.

8 THE CLERK: Please state your first and last name and
9 spell your last name loudly and clearly into the microphone.

10 THE WITNESS: Karl Shehan. Last name is S-H-E-H-A-N.

11 **DIRECT EXAMINATION BY MR. BOURDON OF OFFICER KARL SHEHAN:**

12 Q. And where are you employed?

13 A. Charleston Police Department.

14 Q. How long have you been an officer with the Charleston
15 Police Department?

16 A. The first time was approximately two years. I had just
17 recently rehired.

18 Q. Okay. When did you start with Charleston Police
19 Department?

20 A. November of 2012.

21 Q. Can you tell the jury where you were before you became
22 a police officer?

23 A. I was with the United States Navy.

24 Q. And what did you do in the Navy?

25 A. I was an operations specialist for approximately 12

DIRECT EXAMINATION BY MR. BOURDON OF OFFICER KARL SHEHAN

1 years.

2 Q. And then when you joined the Charleston Police
3 Department what were your duties?

4 A. I was assigned to Patrol Division.

5 Q. And did you leave Charleston at some point?

6 A. Yes, sir.

7 Q. Where did you go?

8 A. I went to the Pinellas County Sheriff's Office in
9 Florida.

10 Q. And when did you leave CPD?

11 A. Approximately October of 2014.

12 Q. And when did you return to the Charleston Police
13 Department?

14 A. Earlier this month.

15 Q. And why did you come back to Charleston?

16 A. I enjoyed the area, so I just wanted to return back to
17 the Department.

18 Q. Okay. Now were you on duty on the 22nd of May of 2014?

19 A. I was.

20 Q. Okay. And tell the jury what your duties were at that
21 time as a Charleston police officer.

22 A. I was assigned to Team 2, Downtown District, patrol
23 capacity.

24 Q. And did you receive or hear a call go out over the
25 radio about a shooting on Wilson Street?

DIRECT EXAMINATION BY MR. BOURDON OF OFFICER KARL SHEHAN

1 A. Yes, sir.

2 Q. And tell the jurors what you did in response to that
3 call.

4 A. At the time I was a backup unit for another traffic
5 stop. I noticed the call come over our CAD system. I
6 responded to the area where the shooting was coming out of.

7 Q. And what happened when you got to the area?

8 A. When I arrived on the scene I saw Officer Henderson
9 with a -- the suspect, and I started to help him to detain
10 the suspect and move him to my vehicle.

11 Q. Okay. At the time you saw Officer Shehan with the
12 suspect what were they doing -- or excuse me, Officer
13 Henderson?

14 A. Officer Henderson had the defendant handcuffed at the
15 time I arrived.

16 Q. And is the person that was in custody Mr. Brandon
17 Marshall?

18 A. Yes, sir.

19 Q. Okay. And so Officer Henderson already had him in
20 cuffs at the time?

21 A. Yes, sir.

22 Q. And then what did Officer Henderson want you to do at
23 that point to assist?

24 A. At that point both myself and Officer Henderson
25 escorted him to my vehicle to remove him from the area.

DIRECT EXAMINATION BY MR. BOURDON OF OFFICER KARL SHEHAN

1 Once in my vehicle I conducted a pat down for weapons on
2 Mr. -- for the defendant. And I placed him in the rear of
3 my vehicle.

4 Q. Okay. And how did you conduct a search on the
5 defendant?

6 A. I went around his waistline, legs, just did a search
7 for more weapons if possible.

8 Q. And were the cuffs on the front or the back?

9 A. The back, sir.

10 Q. Okay. And what did you find during your search of the
11 defendant?

12 A. In his right pocket I found an empty holster.

13 Q. Okay. And Officer Shehan, I am going to show you what
14 has been marked as Exhibit 10. Do you recognize this item?

15 A. Yes, sir.

16 Q. And what is that, please?

17 A. That is the holster I removed from his pocket.

18 Q. And what kind of trousers was he wearing at the time?

19 A. I can't recall.

20 Q. And when you had custody of him is it fair to say you
21 were up close and personal with him?

22 A. Yes, sir.

23 Q. Did you notice any injuries on this defendant?

24 A. I did not.

25 Q. Did he complain of being injured in any way?

DIRECT EXAMINATION BY MR. BOURDON OF OFFICER KARL SHEHAN

1 A. No, sir.

2 Q. Did you see any blood on him?

3 A. No, sir, not that I recall.

4 Q. And after you searched him and found this holster what
5 did you then do with Mr. Marshall?

6 A. I placed him in the rear of my patrol vehicle.

7 Q. Okay. And how long was he in your car?

8 A. I can't really recall, but it was an extended period of
9 time.

10 Q. Okay. And where did you move him to?

11 A. Once Officer Henderson was done with his duties at the
12 scene I transferred custody of the defendant to Officer
13 Henderson.

14 Q. And where did that transfer take place?

15 A. At my patrol vehicle.

16 Q. And when you transferred him what did you then do with
17 the defendant?

18 A. I placed him in the custody of Officer Henderson.

19 Q. Do you know what Henderson did with him at that point?

20 A. I believe at that point he transported him to our main
21 headquarters.

22 Q. And after you detained and searched the defendant in
23 this case did you have any further involvement in the case?

24 A. No, sir.

25 Q. Okay. And when I asked you if he had complained of any

DIRECT EXAMINATION BY MR. BOURDON OF OFFICER KARL SHEHAN

1 injuries, did he complain about a back injury?

2 A. No, sir.

3 Q. Did you see any blood on him?

4 A. No, sir, not that I recall.

5 Q. Anything facial that looked like he had been in a
6 fight?

7 A. Not that I recall, no, sir.

8 Q. Okay.

9 MR. BOURDON: No further, questions, Your Honor.

10 THE COURT: Any cross-examine, Ms. Gay?

11 MS. GAY: I have no questions for this witness, Your
12 Honor.

13 THE COURT: Okay.

14 You may step down.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you.

17 You may call your next witness, please.

18 MR. OSBORNE: The State calls crime scene Jeff Miller.
19 (WHEREUPON, the witness was duly sworn.)

20 THE CLERK: Please state your first and last name and
21 spell your last name loudly and clearly into the microphone.

22 THE WITNESS: Jeffrey Miller, M-I-L-L-E-R.

23 **DIRECT EXAMINATION BY MR. OSBORNE OF JEFFERY MILLER:**

24 Q. Good afternoon, Mr. Miller.

25 A. Hey.

1 Q. Where do you work?

2 A. Charleston Police Department.

3 Q. And how long have you worked there?

4 A. Just over 30 years.

5 Q. Thirty years. So what are some of the various
6 assignments that you have had while you have worked there?

7 A. I was a patrol officer, patrol supervisor, a crime
8 scene officer. And now I am a crime scene tech.

9 Q. All right. And so a crime scene technician explain
10 some of the duties and responsibilities of a crime scene
11 technician.

12 A. We respond to calls for service. We take photos to
13 document scenes. We collect physical evidence. We look for
14 physical evidence and then we collect it and then submit it
15 to the Police Department.

16 Q. And how long have you been a tech?

17 A. Going on 22 years.

18 Q. All right. So back on May the 22nd of 2014 were you a
19 crime scene technician then?

20 A. Yes.

21 Q. Did you have the occasion to become involved in this
22 murder investigation?

23 A. Yes.

24 Q. And how did that come about?

25 A. I responded to Wilson Street in reference to the

DIRECT EXAMINATION BY MR. OSBORNE OF JEFFERY MILLER

1 shooting.

2 Q. All right. So when you responded to this shooting and
3 I guess some of the shootings in general what are some of
4 the first things that you do?

5 A. I get with an officer and get information from them,
6 how they got the call, what they have, what they found
7 before I got there.

8 Q. And did you do that in this case?

9 A. Yes.

10 Q. What were some of the points of interest that you
11 learned that you have to investigate in this case?

12 A. Well, in this case there was what I consider a common
13 area behind [REDACTED]. It is just a big open area
14 behind the seven apartments. There was a vehicle. And then
15 later there was another vehicle as well.

16 Q. Okay. So two vehicles?

17 A. Yes.

18 Q. Do you recall the color of the vehicles?

19 A. There was a Ford Fusion. And I believe the other one
20 was blue.

21 Q. Okay. The blue vehicle, when you went to the blue
22 vehicle do you recall whether it had been left running or
23 whether it was off?

24 A. That car was running. That car I found that car
25 belonged to the victim.

1 Q. Did any officer turn on the car, or was it found that
2 way?

3 A. It was found that way.

4 Q. All right. So in essence you had a crime scene that
5 needed to be processed that you knew of; you had a couple of
6 cars; were you interested in any apartments?

7 A. The apartment came up later. Not initially. Not when
8 I first got there, no.

9 Q. And how did that -- do you remember how that came
10 about?

11 A. I don't know how that came about other than the victim
12 and the defendant had been in the apartment earlier.

13 Q. Okay. All right. And a lot of times, you know, we
14 will use the term process the scene. I may say it sometimes
15 if I haven't already. Just so the jury understands, what
16 does that mean, process a scene?

17 A. Well, in this case, like I said, I was dealing with the
18 common areas. So we were looking for anything that may have
19 been dropped or left behind in relationship to the incident.

20 Q. Okay. I am showing you now what has been marked as
21 State's Exhibit 11. You had mentioned a silver vehicle
22 earlier. Does that look alike the silver vehicle?

23 A. Yes, I believe that is the Ford Fusion.

24 Q. Okay. Did you have the occasion to collect any
25 evidence from that vehicle?

DIRECT EXAMINATION BY MR. OSBORNE OF JEFFERY MILLER

1 A. Yes, I picked up a handgun that was in the right front
2 seat.

3 MR. OSBORNE: Your Honor, may I approach?

4 THE COURT: Yes.

5 Q. I am showing you now what has been marked as State's
6 Exhibit Number 15. Can you take a look at that and tell me
7 if you recognize it.

8 A. Yes, this is the handgun that I collected from the
9 vehicle.

10 Q. Okay. I am showing you now what has been marked as
11 State's Exhibit Number 12. Is that the way the handgun was
12 positioned when you collected it?

13 A. Yes.

14 Q. And that is in the front passenger seat I think?

15 A. Yes.

16 Q. Of the same silver vehicle?

17 A. Correct.

18 Q. Okay. Now did you have the occasion or did anyone from
19 your office have the occasion to process this vehicle?

20 A. Yeah, the car was eventually towed back to our crime
21 scene office and then they obtained a warrant to finish the
22 processing of the car.

23 Q. Okay. Why would it be processed at the office and not
24 processed on the scene?

25 A. Well, the first reason is they wanted to get a warrant

1 for it. And then the time, the weather. We still had the
2 scene to do behind the apartment and it can take several
3 hours just to do a car.

4 Q. Okay. I want to just change topics just a second here.
5 Gunshot residue. Generally speaking explain to the jury
6 what is gunshot residue and what does that test entail?

7 A. For our part in it we collect it. We know when a gun
8 is discharged that there are particles that are given off by
9 the spent rounds. And we use a test, a gunshot residue
10 collection test.

11 And it is just a little stub that has some adhesion on
12 it. And then we apply it to -- each one of them is marked
13 for the hand that we do. And then those are collected and
14 then sealed into an envelope.

15 Q. And is it true to say that the objective then is to
16 determine whether the evidence of particles in that gunshot
17 may or may not show that the person fired a gun?

18 A. Correct.

19 Q. Did you take any gunshot residue from the defendant in
20 this case?

21 A. Yes.

22 MR. OSBORNE: Your Honor, may I approach?

23 THE COURT: You may.

24 Q. I am showing you now what has been marked as State's
25 Exhibit Number 16. If you can take a look at that and tell

DIRECT EXAMINATION BY MR. OSBORNE OF JEFFERY MILLER

1 me if you recognize that.

2 A. Yeah, this is the gunshot residue kit. This is what I
3 have when I open the kit up. And then I take out the sticky
4 stubs. And then after the sample is obtained it is placed
5 in here and then sealed up.

6 Q. Okay. Did you have the occasion to collect any
7 evidence from State's Exhibit 15, the defendant -- or the
8 handgun found in the silver vehicle?

9 A. Well, I did do a contact DNA swab on the gun.

10 Q. Okay. And that was later submitted to SLED too?

11 A. I believe so, yes.

12 Q. All right. Let's talk about the scene a little bit.
13 What are some of the various type of techniques that you
14 might use to collect and gather evidence from a scene?

15 A. Well, we -- some things had already been found pretty
16 much found right away by the officers that responded, and so
17 they pointed those out to me.

18 But then we wanted to go a little bit farther and we
19 will do what is called a line search or a grid search or a
20 spiral search. And in this case we did a line where several
21 officers would line up and then we would just proceed to
22 walk in a straight line to see if there might have been
23 anything that we might have missed initially.

24 Q. Okay. Generally speaking briefly what are some of the
25 items of evidence that you collected from the rear of 9-B

1 Wilson?

2 A. Well, there were several shell casings that were picked
3 up from the ground, a beer can. There was some clothing or
4 cloth items that I picked up. Some eyeglasses and a cell
5 phone.

6 Q. Okay. Do you recall how many shell casings you
7 collected?

8 A. I believe it was seven.

9 Q. Okay.

10 A. Yes.

11 Q. I am showing you now what's been marked as State's
12 Exhibit Number 17. And if you have to refer back to your
13 notes to answer this question, that's fine. First, what is
14 this photograph showing?

15 A. Those are placards that we place down to mark items.
16 It is also used to show orientation to where everything is
17 laid out.

18 Q. Okay. Let's first go through these seven shell casings
19 that we recovered. And let's start with Number 8 right
20 there. Is that one of the shell casings depicted in
21 Number 8?

22 A. Yeah, I believe so.

23 Q. All right. Do you recall or do you have notes that you
24 might be able to refresh your memory to recall which of
25 these placards are also shell casing?

DIRECT EXAMINATION BY MR. OSBORNE OF JEFFERY MILLER

1 A. Well, there should be close-ups of them that would help
2 me. I just have them marked on here as Items 105 to 111.---

3 Q. Okay.

4 A. --- as being shell casings.

5 Q. All right. I am showing you now what has been marked
6 as State's Exhibit Number 22. Does that help?

7 A. Yes. You can see that five and ten they are shell
8 casings.

9 Q. Okay. So let's go back and get perspective. Do you
10 see five and ten on there?

11 A. Yes.

12 Q. I am showing you now what has been marked as State's
13 Exhibit Number 23. Does that help?

14 A. Yeah, it is six and nine.

15 Q. Okay. And --- I'm sorry, go ahead.

16 A. Yes, go ahead.

17 Q. And then I was going to back it back up. Do you see
18 six and nine?

19 A. Yes, they are to the left of ten and five.

20 Q. Okay. Now I am showing you State's Exhibit Number 24.

21 A. Yes, it is showing Number 7 there is a shell casing.

22 Q. Okay. So let's back it up. So far we have eight,
23 seven, six, nine, ten and five as all being shell casings;
24 is that correct?

25 A. Yes.

1 Q. Eight?

2 A. Eight, shell casing.

3 Q. And 11?

4 A. Another shell casing.

5 Q. Okay. So now all the placards on the left side of the
6 fence from eleven, six, nine, ten, five, seven, and then
7 eight, those are all shell casings; is that correct?

8 A. Yes.

9 Q. I'm showing you now State's Exhibit Number 19. And
10 what is that by Placard Number 12?

11 A. That is the beer can that I collected.

12 Q. Do you know if that beer can was ever submitted to
13 latent recovery?

14 A. Yeah, the beer can was swabbed for contact DNA and then
15 it was submitted to latent recovery to be processed for
16 fingerprints.

17 Q. I understand you didn't do this, but after reviewing
18 this case prior to your testimony today do you know if the
19 prints came back to the defendant?

20 A. There was one print off the beer can. And no, there
21 was nobody ID'ed off of the fingerprint.

22 Q. Nobody ID'ed?

23 A. Correct. Nobody.

24 Q. Did you have any reason -- or do you have any reason
25 for that beer can as related to the murder investigation?

DIRECT EXAMINATION BY MR. OSBORNE OF JEFFERY MILLER

- 1 A. I have no idea.
- 2 Q. All right. I am showing you now State's Exhibit Number
- 3 20.
- 4 A. That is Number 4 is marking a pair of eyeglasses.
- 5 Q. And you collected those?
- 6 A. Yes.
- 7 Q. And now to give a little bit of perspective, I am
- 8 showing you State's Exhibit Number 18. Can you tell on that
- 9 photograph where Item Number 4 was collected?
- 10 A. I think it is over by the tree. But I can't tell from
- 11 looking at it from this angle.
- 12 (WHEREUPON, photograph adjusted.)
- 13 Q. Does that help?
- 14 A. Yes.
- 15 Q. And State's Exhibit Number 21.
- 16 A. That is marking Number 3 which is the phone. And
- 17 Number 2 is a lighter.
- 18 Q. Okay. And Number Two and Number Three are shown ---
- 19 A. To the left of the light.
- 20 Q. Do you recall were all of the shell casings of the same
- 21 make and type?
- 22 A. Yes, they were GFL nine-millimeters.
- 23 Q. You may have said this, and I might have cut you off.
- 24 When you were taking contact DNA from the handgun, from
- 25 State's Exhibit Number 15 can you explain that process and

DIRECT EXAMINATION BY MR. OSBORNE OF JEFFERY MILLER

1 how you go about that?

2 A. I use a moistened Q-tip. And with a handgun I like to
3 do the grip because that is the biggest surface that your
4 hand would come into contact with.

5 And what we are looking for is -- I mean you can't see
6 it, but we are looking for skin cells that might be left
7 behind when somebody touched something. And so then I try
8 to transfer that to the Q-tip.

9 Q. Okay.

10 MR. OSBORNE: Beg the court's indulgence.

11 THE COURT: Certainly.

12 Q. Okay. I am showing you what has been marked as State's
13 Exhibit Number 46. Can you take a look at that.

14 A. Yeah, this is the envelope that I placed the contact
15 swabs in.

16 Q. Okay. Thank you, Mr. Miller. Please answer any
17 questions that Ms. Gay might have.

18 THE COURT: Cross-examine.

19 MS. GAY: Thank you, Your Honor.

20 THE COURT: Yes, ma'am.

21 **CROSS-EXAMINATION BY MS. GAY OF JEFFREY MILLER:**

22 Q. How are you today?

23 A. Good.

24 Q. Thirty years. That is a long time.

25 A. Yes, it is.

CROSS-EXAMINATION BY MS. GAY OF JEFFREY MILLER

1 Q. So in the beginning of your time in the police force
2 were you more on the street and doing things like that?

3 A. I was a patrol officer, yes.

4 Q. And so now thirty years later they let you come out and
5 take pictures?

6 A. Yes.

7 Q. A lot less stressful?

8 A. Sometimes.

9 Q. Back to this picture that we were just talking about.
10 This is the tree?

11 A. Yes.

12 Q. And this -- we have -- you have testified that right
13 there, which is Number 4, is a pair of eyeglasses?

14 A. Correct.

15 Q. And when you came out there would you describe the area
16 as dark at 2:30 in the morning?

17 A. Yes.

18 Q. Okay. So all of this illumination that we see, that is
19 all artificial?

20 A. Right, you can see my portable right there so I can use
21 to see; yes.

22 Q. Right. So when you actually came out it was real dark?

23 A. Yes.

24 Q. And so Number 4 is the eyeglasses. And then I think
25 that he said to the left of the pole, which are this ones,

CROSS-EXAMINATION BY MS. GAY OF JEFFREY MILLER

1 three and two?

2 A. The phone and the lighter.

3 Q. Okay. So here is Mr. Williams (pointing). And these
4 right over here -- how many feet would you have said that
5 was, like ten?

6 A. I couldn't tell from here looking at it that way, no.

7 Q. Well, your recollection do you recall where ---

8 A. It could be.

9 Q. About ten feet. Okay. And then all of these things up
10 in here, those are the shell casings?

11 A. Yes.

12 Q. And so they are all clumped together over here behind
13 the pole?

14 A. Yeah, behind the pole going over toward the corner of
15 the building.

16 Q. Okay. And then let me see if there is anything else I
17 wanted to ask you about. And so this one -- that was 18
18 that we were looking at. And this one is in Number 20 is
19 the eyeglasses?

20 A. Yes.

21 Q. And then I think you had testified that this one
22 doesn't really have anything to do with it; this is a can.
23 Let me turn it this way. This was a can that goes out ---

24 A. It was collected, yes.

25 Q. And then so here is a better picture of the behind the

CROSS-EXAMINATION BY MS. GAY OF JEFFREY MILLER

1 pole sort of closer to the fence area. That is the shell
2 casing?

3 A. Right.

4 Q. Okay. Now would you agree with me that this thing
5 right here (pointing) was the root of the tree?

6 A. Yes, that was a pretty big tree; yes.

7 Q. Big. And as we see -- and I might have to bring it
8 down a little bit. This Number 4, that is where the
9 eyeglasses were?

10 A. Yes.

11 Q. And here is where the lighter and cell phone are
12 (pointing)?

13 A. Correct.

14 Q. And this is where Mr. Williams is (pointing)?

15 A. Correct.

16 MS. GAY: Beg the court's indulgence, Your Honor, to
17 talk to my client.

18 THE COURT: Yes. Certainly. Take your time.

19 (WHEREUPON, Ms. Gay confers with defendant.)

20 MS. GAY: I have no further questions for this witness,
21 Your Honor.

22 THE COURT: Redirect.

23 MR. OSBORNE: Yes, Your Honor.

24 **REDIRECT EXAMINATION BY MR. OSBORNE OF JEFFREY MILLER:**

25 Q. Ms. Gay asked you prior to you being a crime scene tech

REDIRECT EXAMINATION BY MR. OSBORNE OF JEFFREY MILLER

1 you were a patrolman, a police officer?

2 A. Yes, a patrol officer and a patrol supervisor.

3 Q. And as a patrolman and a patrol supervisor you carry a
4 firearm then?

5 A. Yes.

6 Q. You don't carry one now?

7 A. No.

8 Q. Now as a patrolman you had the occasion I believe to
9 annually re-qualify and fire your gun; is that correct?

10 A. Yes.

11 Q. Did you fire -- and I know this is going back 30 years.
12 Did you carry a revolver then?

13 A. Yes.

14 Q. But did you ever carry a semi-automatic?

15 A. Yes, we eventually converted to a Glock semi auto.
16 Yes.

17 Q. And with a semiautomatic of your experience do the
18 shell casings eject to the right or to the left?

19 A. Well, they eject to the right if you are holding the
20 gun correctly.

21 Q. And ---

22 MR. OSBORNE: Your Honor, may I approach?

23 THE COURT: You may.

24 Q. And from State's Exhibit Number 15 can you take another
25 look at that. And would you say that the shell casings

REDIRECT EXAMINATION BY MR. OSBORNE OF JEFFREY MILLER

1 would have ejected to the right on that gun?

2 A. Yes.

3 Q. Okay. Now let's go back to what Ms. Gay showed you, -
4 State's Exhibit Number 17. She described the shell casings
5 as being in a clump; is that correct?

6 A. I don't recall.

7 Q. Okay. They are really not in a clump, are they?
8 Number 8 is a shell casing, right?

9 A. Yes..

10 Q. And going back to -- okay, so going back to State's
11 Exhibit Number 18 you can see the tree there; correct?

12 A. Yes.

13 Q. And that gives you a little bit of perspective in
14 relation to where eight is compared to the tree; is that
15 correct?

16 A. Yes.

17 Q. Would you say that eight is in front of the tree or
18 more behind the tree?

19 A. Well, that depends on what you consider the front of
20 the tree or the back of the tree.

21 Q. Very good point. Let's say that the front of the tree
22 is where you found the glasses.

23 A. Okay.

24 Q. So would eight then be on the side where the glasses
25 were on the front; or would be more on the back; or the

1 side?

2 A. I would say the side.

3 Q. And number seven, six, nine, ten, five, would you say
4 they were more on the side - again, in relation to where you
5 found the glasses - more on the side or more on the front?

6 A. To the side.

7 Q. And what about Number 11?

8 A. The same. To the side.

9 Q. Okay. So we have some that are in the side and one
10 that is out in the back, but they are all not altogether?

11 A. Not -- not glumped up together, no.

12 Q. All right. Now I want to take you back to another
13 point she mentioned in State's Exhibit Number 18. Now
14 she -- Ms. Gay asked you about two and three. And those
15 were the lighter and the cell phone, correct?

16 A. Yes.

17 Q. And she said -- she asked you how far away was the
18 victim from those. And you said maybe about ten feet?

19 A. Could be, yes.

20 Q. How far were those items from the back landing back to
21 the back door about?

22 A. Probably no more than ten feet.

23 Q. Okay. So ten feet to the backdoor, ten feet to the
24 phone, and then ten feet back to him.

25 A. It could be, yes.

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1 MR. OSBORNE: No further questions, Your Honor.

2 THE COURT: Okay. Re-cross.

3 MS. GAY: No, Your Honor. I have no further questions.

4 THE COURT: All right. You may come down, Mr. Miller.

5 THE WITNESS: Can I be excused?

6 THE COURT: Any objection?

7 MR. OSBORNE: No, Your Honor.

8 THE COURT: Any objection?

9 MS. GAY: No, Your Honor.

10 THE COURT: You are free to leave, sir.

11 THE WITNESS: Thank you..

12 THE COURT: Thank you. Does that conclude the

13 witnesses for the day?

14 MR. OSBORNE: This was the last witness we had for

15 today.

16 THE COURT: Very well. All right, ladies and

17 gentlemen, you get to leave a little early today. Please

18 remember you have now heard some testimony, so again I would

19 remind you that it would inappropriate for you to discuss

20 this among yourselves or talk with anyone outside of the

21 courtroom about this or allow anybody to talk to you,

22 especially at home.

23 We will probably -- I am confident we will finish this

24 case this week and so you will be free to talk about it

25 after that if you wish.

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1 But until then, please remember that if you do begin
2 your deliberations you will have violated the oath that you
3 took and you will have started your deliberations.

4 Thank you for your attention. Please be in your jury
5 room by 9:45 in the morning, please. Thank you. Have a
6 good evening. And again, don't call the number.

7 (WHEREUPON, jury exits the courtroom 4/5/16, 4:44 p.m.)

8 THE COURT: All right. Anything from the State before
9 recessing?

10 MR. OSBORNE: No, Your Honor.

11 THE COURT: Ms. Gay, now you have an issue -- you had
12 an issue I think with a witness.

13 MS. GAY: Yes.

14 THE COURT: Do you want to talk with the solicitor or
15 do you want to -- do you think you can resolve it, or can I
16 help you?

17 MS. GAY: Well, it is an officer. And I asked him if
18 he is not going to call him -- which he has apparently
19 excused him or released him from his subpoena.

20 I wanted to get in touch with him this afternoon. And
21 I asked him if he knew a good number for me to call him.
22 And he basically said, you know -- that is when you said is
23 there something we need to talk about.

24 So I mean he is on the witness list. He is an officer.
25 If I have to call just the City Police Department I am

STATE VS. BRANDON MARSHALL

1 concerned that -- I don't mind getting a subpoena to him ---

2 THE COURT: I understand.

3 MS. GAY: I just want to know how to get in touch with
4 him.

5 THE COURT: Can you give us -- you have a way to get in
6 touch with him. Please give that to her so she can possibly
7 follow up and get him present, okay?

8 MR. OSBORNE: Yes, sir.

9 THE COURT: Thank you very much.

10 MS. GAY: The other thing is, Your Honor, my client
11 just told me that -- I don't know. He said that he was
12 brought here -- he got up at 3:30 this morning and was
13 brought down to the courtroom when we had discussed the fact
14 that it wasn't going to start until 1:00.

15 And he just -- that was disturbing to him, and he just
16 wanted me to let you know that. It's got something to do
17 with the Sheriff's Department I'm sure so.

18 THE COURT: Well, probably because that's when they
19 bring the -- yes, sir?

20 MR. MARSHALL: Actually, Your Honor, I was informed
21 this morning that is the Solicitor's Office that schedules
22 that.

23 THE COURT: Well, I don't -- I don't know anything
24 about that, sir. That is -- we are going to start out 9:45
25 tomorrow. I am sorry you were here. I was here too. So

1 thank you.

2 But I -- we couldn't start because we had another
3 issue. So I apologize for that. But I thought -- I thought
4 the reason for postponing it was legitimate, and she was
5 entitled to have that. I'm sorry for the confusion. Thank
6 you, sir.

7 (WHEREUPON, scheduling discussions were had.)

8 (WHEREUPON, recessed for the evening, 4/5/16, 4:48 p.m.)

9 (WHEREUPON, resumed trial Wednesday, 4/6/16, 9:56 a.m.)

10 MR. OSBORNE: Your Honor, in State's 39 which was the
11 defendant's interview, I separated it for trial clips and
12 then the entire interview.

13 THE COURT: Okay.

14 MR. OSBORNE: What we watched in the Denno hearing was
15 the trial clips.

16 THE COURT: Okay.

17 MR. OSBORNE: When I introduced it I inadvertently put
18 the entire interview in the same sleeve.

19 THE COURT: Okay.

20 MR. OSBORNE: It is my understanding the defense wants
21 the entire interview in. Our position was we just wanted to
22 put the trial clips in.

23 THE COURT: Well ---

24 MR. OSBORNE: If we can't agree on just the trial clips
25 I could pull it back out and we could address that.

STATE VS. BRANDON MARSHALL

1 THE COURT: Well, you want the entire -- you want -- if
2 it is played you want the whole thing played?

3 MS. GAY: If it is played.

4 THE COURT: Okay.

5 MS. GAY: Yes.

6 THE COURT: That -- the rule provides for that. I mean
7 that is not a problem. But they are asking for it, which
8 protects the ruling. So it is not a problem.

9 MR. OSBORNE: Okay. Thank you, Your Honor.

10 THE COURT: Okay. All right.

11 THE COURT REPORTER: Your Honor, it was two different
12 discs inside, so they are separated already.

13 THE COURT: All right. They are separated. So both
14 discs will be admitted, but -- well, the first disc -- the
15 first disc is the trial clip?

16 MR. OSBORNE: Yes, Your Honor. And they are both ---

17 THE COURT: All right. First disc -- let's mark them
18 separately then.

19 Because under the rule you want the entire play. I
20 think it is Rule 106 or 109, whatever it is. It says ---

21 MR. OSBORNE: I think it is 106, Your Honor.

22 THE COURT: One oh six. You want -- under 106 you want
23 that played, correct?

24 MS. GAY: In the event that we choose to bring it in,
25 yes.

1 THE COURT: Well, no, no. All right -- okay, mark
2 the -- let's do this. The trial clip that you -- that we
3 played will be State's Exhibit 39.

4 MR. OSBORNE: Yes, Your Honor.

5 THE COURT: The other one will be Defendant's
6 Exhibit - I think it is two. For identification only at
7 this point. So if you want it, you put it in. Okay? Okay,
8 Ms. Gay?

9 MS. GAY: Yes.

10 THE COURT: All right. Fine. Thank you.

11 (WHEREUPON, Defendant's Number 2, CD/disc from counter 5:07
12 to 5:21, was marked for identification.)

13 MR. OSBORNE: I'm sorry, Your Honor.

14 THE COURT: No, no. No apology. That clarifies it.
15 She is entitled to it. It is her right and his right to
16 have it, but it will be her exhibit not the State's exhibit.

17 That way we maintain the I think the integrity of what
18 we have done. And the rulings and your objections of course
19 are noted for the State's Exhibit 39. And my ruling stands.

20 And then for the balance of it, you are not offering
21 that but they want to offer it.

22 MR. OSBORNE: Yes, sir.

23 THE COURT: Okay. That's fine. All right. That is --
24 now I think that is good. That clarifies the record. Thank
25 you very much.

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1 Anything else, Mr. Osborne, from the State?

2 MR. OSBORNE: No, sir.

3 THE COURT: Ms. Gay, anything from the defendant this
4 morning?

5 MS. GAY: No, Your Honor.

6 THE COURT: And let the record reflect Mr. Marshall is
7 present. Good morning, Mr. Marshall. I hope the day --
8 this day went a little more orderly than yesterday did for
9 you. So good. Good to see you.

10 All right. Let's bring in our jury, please.

11 (WHEREUPON, scheduling remarks were made by Ms. Gay
12 regarding notification to witness.)

13 (WHEREUPON, jury enters courtroom 4/6/16, 10:00 a.m.)

14 THE CLERK: All are seated, Your Honor.

15 THE COURT: Thank you, very much. Good morning,
16 ladies and gentlemen. I hope you had a good evening and
17 we -- my court reporter and I were just talking about the
18 stressful ride in this morning. I hope your rides were not
19 as stressful. It was a crazy parking lot today.

20 But anyway, I am glad we are all here. And we are
21 ready to continue. I appreciate your attention yesterday,
22 and I ask you now to give that same attention.

23 Good morning, Mr. Solicitor. You may call your next
24 witness.

25 MR. OSBORNE: Good morning, Your Honor. Thank you,

DIRECT EXAMINATION BY MR. BOURDON OF LIEUTENANT JENNIFER
NATES

1 Your Honor. The States calls Lieutenant Jennifer Nates.

2 (WHEREUPON, the witness was duly sworn.)

3 THE CLERK: Please state your first and last name and
4 spell your last name loudly and clearly into the microphone.

5 THE WITNESS: Jennifer Nates, N-A-T-E-S.

6 **DIRECT EXAMINATION BY MR. BOURDON OF LIEUTENANT JENNIFER**
7 **NATES:**

8 Q. And Lieutenant Nates, can you tell the jury where you
9 are employed?

10 A. I am employed by the South Carolina Law Enforcement
11 Division in the Trace Evidence Section.

12 Q. And how long have you been with SLED?

13 A. I have been there a little bit over 18 years.

14 Q. And what do you do at SLED?

15 A. I am the lieutenant over the Trace Section which mean
16 that I am in charge of the daily operations of the section
17 in addition to performing case work, testifying in court,
18 generating reports, and just other miscellaneous duties that
19 are assigned.

20 Q. And was is your educational background to hold that
21 position with SLED?

22 A. I have a bachelor of science degree in chemistry from
23 California University of Pennsylvania. Once I completed
24 that degree I received training after I was hired at SLED.
25 That gave me the necessary qualifications I needed for the

DIRECT EXAMINATION BY MR. BOURDON OF LIEUTENANT JENNIFER
NATES

1 position.

2 Q. Okay. How about additional training related to gunshot
3 residue?

4 A. I have had several courses and attended conferences
5 that deal with the instrumentation that is used to analyze
6 for gunshot residue and to deal with reporting parameters
7 and how to report it, how to interpret it, and how to
8 testify in court concerning it.

9 Q. And during your experience and your time with SLED how
10 many gunshot residue samples have you tested?

11 A. I have tested in excess of probably a thousand samples
12 of gunshot residue.

13 Q. And how many cases would that be a week?

14 A. Currently I am working probably two to three cases a
15 week. In the past it was more when I was solely doing
16 gunshot residue, but now I have additional duties and I
17 cannot do as many as I did in the past.

18 Q. Okay. And have you testified or been qualified as an
19 expert in the area of gunshot residue in a court before?

20 A. I have.

21 Q. And how many times has that happened?

22 A. I have testified 97 times in court. And 71 of those
23 testimonies were pertaining to gunshot residue.

24 Q. And is that both in state court and federal court?

25 A. State, federal, and magistrate court.

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1 A. Okay.

2 MR. BOURDON: Your Honor, at this point I would offer
3 Lieutenant Nates as an expert in the field of gunshot
4 residue testing.

5 THE COURT: Do you care to examine her as to
6 qualifications?

7 MS. GAY: No, Your Honor, she's -- I accept her
8 qualifications.

9 THE COURT: Very well. She will be -- will be
10 permitted to render opinions in that area, Mr. Bourdon.

11 MR. BOURDON: Okay.

12 Q. Lieutenant Nates, can you tell the jury a little bit
13 about what gunshot residue is.

14 A. Gunshot residue is a term that is used to describe any
15 debris or residue that is expelled from a weapon when it is
16 fired. This residue can come from the primer of the bullet,
17 from any other residue that was in the gun, or from the gun
18 itself.

19 Q. And how long does gunshot residue last if it is found
20 on a person?

21 A. Gunshot residue is very fragile. On a living
22 individual if gunshot residue is deposited on their hands
23 after four to six hours we don't expect to see it any longer
24 due to you can absorb the residue, it can be removed by
25 washing your hand.

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1 On a deceased individual there is no time limit unless
2 they are out in the elements and it rains it can remove that
3 residue. But on a living individual four to six hours we
4 don't see the residue any longer on the hands.

5 Q. Okay. And how is gunshot residue collected on a
6 suspect in a case that you would analyze?

7 A. Usually they use a gunshot residue evidence collection
8 kit which we provide to the agencies in South Carolina. It
9 is a specific kit for gunshot residue. It contains four
10 sample objects.

11 They are -- it is a small -- we call it a carbon
12 planchette. It has like a Band-Aid adhesive on it, and it
13 is a round stub about this big (motioning). And it is on a
14 base.

15 They take the lid off and they dab each area of that
16 person's hand. They will dab the right palm, the right
17 back, the left palm and left back of the hands to collect
18 any residue that is present on the hands.

19 Q. And with respect to this case did you have occasion to
20 examine the samples that were submitted in the case against
21 Brandon Marshall?

22 A. I did receive the gunshot residue kit on -- in this
23 case.

24 Q. And what items did you receive from the Police
25 Department of Charleston?

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1 A. I received Item Number 11 which was a gunshot residue
2 kit from Brandon Marshall.

3 Q. Okay. Lieutenant, I just want to hand you what has
4 been marked as State's Exhibit 16. If you could look at
5 that, please. And do you recognize what that object is or
6 the inside of the ---

7 A. Yes, this is normally how we receive evidence for
8 gunshot residue kits. Unless we have a large amount of kits
9 it will arrive in a box. But it will come to us in an
10 envelope. It is logged in and given a unique identifying
11 lab number for us with an item number.

12 In this case this was the lab number and the item
13 number that was assigned. The log-in department took the
14 evidence and then I picked it up and I marked the date when
15 I received the evidence and opened it.

16 In this case this is opened. And on the back is where
17 I seal it after completion of analysis.

18 Q. And when did that sample get submitted or received at
19 SLED?

20 A. This sample was submitted to SLED -- I received it on
21 11/10/2015. It was logged in on 6/19/2014.

22 Q. Okay. And then while it is logged into your evidence
23 area how is it preserved until you test it?

24 A. Once it is logged in it is sealed and signed by the
25 submitting officer. Our log-in department will then take

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1 that envelope or the box and they place it in an area -- a
2 secure area, which is our log-in evidence intake.

3 It will stay there until someone from our department
4 takes it up to our secure evidence storage area. And in
5 this case I was the one that picked it up and to begin
6 analysis on it.

7 Q. And the fact that it sat for a few months does that
8 have any effect on your testing?

9 A. It does not. Gunshot residue once it is collected on a
10 particle list you can analyze it over and over again. It is
11 on this particle list and nothing will happen to it unless
12 the evidence is actually destroyed.

13 Q. Where is your lab actually located?

14 A. It is located in Columbia off of Broad River Road.

15 Q. And how do you test for the presence of gunshot residue
16 once you receive a sample such as this?

17 A. Once I receive this kit the samples that I talk about
18 are inside it. There will also be an information kit -- an
19 information sheet inside this kit.

20 So it gives us the information on who the kit was
21 collected on. It will give the collecting officer what
22 the -- what the suspected crime is, what the timeframe was
23 for the collection. It will list both shooting time and the
24 collection time and any other miscellaneous information that
25 may be needed for the analysis. Sometimes if they know what

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1 type of weapon it was, how many shots were fired.

2 So we look at that sheet, make sure that everything
3 lines up with what it says was submitted. We make sure this
4 has the right name on it is what the submitting officer told
5 us. We make sure the timeframe is within our time limits to
6 perform analysis.

7 We then take the samples out, mark them with the item
8 numbers, and we set them up on the instrument for an
9 automated analyses.

10 Now once the analysis is complete we go in and we have
11 to relocate every particle the instrument detected and told
12 us potentially could be gunshot residue, and we have to
13 confirm those particles.

14 Q. And this sample that was submitted from Brandon
15 Marshall when was the gunshot residue collected from him; is
16 it indicated there?

17 A. It is indicated on the collection sheet. Which is --
18 and that is what the collection sheet looks like
19 (displaying). That's the form. In this case it said the
20 incident occurred on 5/22 at 2:46 and it was collected on
21 5/22 at 4:01.

22 Q. Okay. And so is that within the six-hour window that
23 you talked about?

24 A. It was.

25 Q. Okay. And then tell the jury what test you perform in

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1 order to determine whether there is or isn't a presence of
2 gunshot residue.

3 A. Currently we perform a test which is using a scanning
4 electron microscope. We set up these particle lists on the
5 instrument and we set parameters so that it passes a beam
6 over the whole sample.

7 It will detect any particles of interests. It looks
8 for mostly metals; barium, antimony, lead, copper, zinc,
9 anything that can be associated with gunshot residue.

10 And the microscope magnifies them for us to look at
11 them to determine if there are in fact the right morphology
12 and the right elemental composition to be considered gunshot
13 residue.

14 Q. And how are your machines calibrated to make sure that
15 they are reading the evidence properly?

16 A. In this case for a scanning electron microscope when
17 the company sets up the instrument it goes through a
18 validation process which we validate.

19 In this case on this one we did past samples that we
20 had analyzed to compare them to the data we already had.
21 And it goes through the litany of instrumental tests.

22 On a daily basis we set up what we call a copper
23 calibration, which is we have a particle lift that has
24 gunshot residue on it, it has copper on it, and it has
25 carbon. And what that does is it sets up your limits.

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1 Because you want metals to be detected. So you have to
2 have a certain width that is detected on the instrument. So
3 we have to run a sample of copper, make sure we set our
4 parameters so that it is detecting where it needs to be.

5 And then we run a positive QA which is the gunshot
6 residue particle lift, to show that the instrument is
7 working on every run and it is capable of detecting the
8 gunshot residue.

9 And we also run a blank QA to make sure there are no
10 contamination issues within the chamber.

11 Q. Did you have any problems with your instruments during
12 the performance of the testing on this sample?

13 A. No.

14 Q. Okay. And if you could, Lieutenant Nates, could you
15 open your sample that was submitted to show the jury what we
16 are talking about with respect to the GSR.

17 (WHEREUPON, witness complied.)

18 A. These are what we call the particles life. And each
19 one is labeled right palm, right back, left palm, or left
20 back. And if you can see inside it that is the carbon
21 planchette that actually has an adhesive on it that is
22 dabbed on the hands to collect the evidence. And then it is
23 placed back in the holder to preserve the evidence.

24 Q. And were those the samples that you tested in this
25 case?

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1 A. Yes. They were in the sealed kit. And these are my
2 initials and lab number on each one of them.

3 Q. Was there an evidence of tampering with any of these
4 samples that you received?

5 A. No. If we have any evidence of tampering we notate it
6 on our note sheet. The degree of tampering we will actually
7 call the agency.

8 If I have like a little tear at the bottom of the
9 envelope I will just notate it. But there is really no way
10 the sample could come out of that small hole. So it depends
11 on the tampering. In this case I did not have any.

12 Q. Okay. And were you able to perform the tests on these
13 samples to determine presence of gunshot residue?

14 A. I did perform the analysis on these samples.

15 Q. And what was the result of your analysis?

16 A. On these samples on the right hand I found one particle
17 of gunshot residue and particles consistent with gunshot
18 residue. On the left I did not find any particles
19 consistent or associated with gunshot residue.

20 Q. And what is the significance of finding the gunshot
21 residue on the right hand of the suspect?

22 A. When we find gunshot residue on a suspect or on a
23 victim we know that that person was either fired a weapon,
24 was near a weapon when it was fired, or they could have
25 handled an object that had gunshot residue on it.

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1 Q. And did you prepare a report with respect to your
2 findings in this case?

3 A. I did.

4 Q. Okay. I want to show you what has been marked as
5 State's 64. And is this the report that you prepared in
6 this case?

7 A. That appears to be the report, yes.

8 Q. Let me hand it to you first so you look at it. It is
9 kind of hard on the machine.

10 A. Thank you.

11 THE COURT: While she is looking at it, ladies and
12 gentlemen, let me also make it clear. They show them to
13 you. Sometimes they just show it to the witness. Any
14 exhibits that have been introduced will accompany you to
15 your jury room and you will have an opportunity to review
16 and study it in greater detail and in greater depth. Okay.

17 MR. BOURDON: Thank you, Your Honor.

18 Q. Is this the report that you prepared, Lieutenant Nates?

19 A. Yes, sir, it is.

20 MR. BOURDON: Let's put it on the overhead so we can
21 have the jury look at it.

22 Q. And can you go through your report here so when the
23 jury reads it in the jury room they can make sense of it in
24 terms of what it says?

25 A. The first page of the report for gunshot residue

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1 reports we include an interpretation of results section.
2 This just aides the reader of the report to know what we
3 consider gunshot residue, what are consistent particles, are
4 what associated particles are. It will list what the
5 elemental composition of those particles is.

6 And in the first case gunshot residue contained barium,
7 antimony, and lead. And they are microscopic molten
8 particles. Consistent particles are sporadial or round
9 particles that can contain any of those compositions
10 underneath it.

11 And particles associated with primer residue are
12 particles that are a single component particle. I find a
13 round lead particle, a round antimony particle, or a round
14 barium particle.

15 Q. And on the second page of that report if you could
16 please look at that. Top left, Item 11, is this the gunshot
17 residue kit that was examined for Mr. Marshall?

18 A. Item 11 on this report is the GSR kit from Brandon
19 Marshall.

20 Q. Okay. And that would be those samples there on the ---

21 A. These are the samples, yes.

22 Q. And then your results of the right hand.

23 A. Yes.

24 Q. Can you explain what you wrote in your report here.

25 A. In our reporting we report what we find. If we find

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1 one particle, we report one particle. If we find numerous,
2 we don't give a number.

3 In this case I found one particle of gunshot residue
4 which means I found a molten particle that contained the
5 three elements: barium, antimony, and lead. Which is
6 considered unique to gunshot residue.

7 I also found particles consistent with gunshot residue,
8 which means I found several particles with on the first page
9 they have the compositions that contain two of those three
10 elements.

11 So I found one particle of gunshot residue and several
12 consistent particles.

13 Q. And with respect to finding one particle what is the
14 significance or the issue with respect to just one particle?

15 A. We only look for the presence of it. If I had only
16 found one particle total on the whole kit then I would have
17 to say in my opinion that is is probably more consistent
18 with transfer.

19 But I found consistent and I found a gunshot residue
20 particle. We look at the population. Therefore this could
21 be from firing, being near a weapon when it was fired, or
22 handling.

23 Q. Okay. And so you have confidence that that -- either
24 one of those three things occurred in this case?

25 A. Yes.

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1 Q. Okay. And with respect to the left hand.

2 A. On the left hand I did not find any primer gunshot
3 residue. And in this case we -- our results lists no primer
4 and then in parenthesis gunshot residue.

5 Historically before I started at SLED they would report
6 it as primer residue. So we were trying to keep that in the
7 report so people would still understand it. But it is
8 considered gunshot residue, so that is why you have the two
9 words there.

10 On the left hand I did not find any particles of
11 gunshot residue, any particles consistent with gunshot
12 residue, or any particles associated with gunshot residue.

13 Q. Okay. And if a person fired a gun with the right hand
14 would you expect to find particles on their right hand?

15 A. You can. It depends. Gunshot residue is so fragile.
16 You can't -- based on a negative I can't say they didn't
17 fire a weapon or didn't do anything; but if you fire with
18 your right hand and your left hand is behind your back, no,
19 I don't expect to find it on the left hand.

20 Q. And in your expert opinion based on your findings what
21 can you tell the jury about the significance of the gunshot
22 residue samples?

23 A. As it states in the report, that the person that the
24 kit was collected on they either fired a weapon, were near a
25 weapon when it was fired, or handled an object that had

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1 gunshot residue on it.

2 Q. As part -- as part of your case you don't -- you
3 weren't at the scene and you don't get involved in the
4 investigation of this case at all, do you?

5 A. We do not.

6 Q. Okay.

7 MR. OSBORNE: Please answer any questions from Ms. Gay.

8 THE COURT: Cross-examine. Any questions?

9 MS. GAY: I have no witness -- no questions for this
10 witness.

11 THE COURT: Okay.

12 MS. GAY: And I am not opposed to her being excused.

13 THE COURT: All right. You may -- do you wish her to
14 be excused, Mr. Bourdon.

15 MR. BOURDON: Yes, Your Honor. That is fine. Thank
16 you.

17 THE COURT: You may come down. And you are free to
18 leave. Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: You may call your next witness, please.

21 MR. BOURDON: Next we will call Chad Smith, Your Honor.

22 THE COURT: Okay.

23 THE CLERK: Please state your first and last name and
24 spell your last name loudly and clearly into the microphone.

25 THE WITNESS: Chad Smith, S-M-I-T-H.

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1 **DIRECT EXAMINATION BY MR. BOURDON OF CHAD SMITH:**

2 Q. And Mr. Smith, where are you employed?

3 A. I am employed with the South Carolina Law Enforcement
4 Division which is commonly known as SLED. Specifically, I
5 work in the Firearms Department at SLED's Forensic Services
6 Laboratory in Columbia.

7 Q. And how long have you been with SLED?

8 A. About seven-and-a-half years.

9 Q. And can you describe a little bit about your duties as
10 a firearms examiner?

11 A. My main responsibility is examination of firearms,
12 ammunition, and ammunition components. The majority of what
13 I do is try to determine if an ammunition component such as
14 a bullet or a cartridge case was fired by a specific
15 firearm.

16 Q. And how long have you been in the field of firearms
17 identification?

18 A. About seven-and-a-half years.

19 Q. Okay. And what is your educational background?

20 A. I have a bachelors of science degree from Clemson
21 University in biological sciences. When I came aboard at
22 SLED in November of 2008 I began my training as a firearms
23 examiner.

24 This training program lasts between three to five years
25 and is supervised by the board of qualified examiners of the

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1 Firearms Department. It involves extensively reading and
2 studying. There are multiple examinations and tests during
3 this period.

4 Later in my training I was able to help the other
5 examiners prepare their own casework. And at the end of my
6 training period I took a comprehensive multi-part
7 examination which I successfully passed and then I began to
8 receive my own casework.

9 Q. And with respect to your field what other follow-along
10 courses have you had or what other studies have you been
11 involved with to remain proficient in what you do?

12 A. I've been to various seminars and classes regarding the
13 field of firearms identification, several armor's classes.
14 I have been to firearms manufacturing facilities. And I'm
15 also a member of an organization of Association of Firearm
16 and Tool Mark Examiners. And they have a training
17 conference every year. And I was able to attend that
18 several times.

19 Q. Now have you testified in court before?

20 A. Yes, I have.

21 Q. And have you been qualified as an expert in firearm
22 identification in the past?

23 A. Yes, I have.

24 Q. And how many times has that been?

25 A. Twenty-three times.

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1 Q. Is that both in state and federal court?

2 A. Just General Sessions.

3 Q. Okay.

4 MR. BOURDON: Your Honor, at this point I would offer
5 Mr. Smith as an expert in firearms identification.

6 THE COURT: Do you care to examine?

7 MS. GAY: No objection, Your Honor.

8 THE COURT: He will be permitted to render opinions in
9 that area. Thank you.

10 Q. Mr. Smith, were you able to examine the evidence that
11 was submitted in this case against Brandon Marshall?

12 A. Oh, yes, sir.

13 Q. And what items did you receive and what items did you
14 test in conjunction with this investigation?

15 A. I received seven fired cartridge cases as well as a
16 fired bullet with two lead fragments. And also a pistol.

17 Q. Okay. I am going to hand you what has been marked as
18 various exhibits here. This is State's 56. And you can
19 open all of this up if you need to just to show the jury
20 what you're looking at.

21 A. These are the seven fired nine-millimeter Luger caliber
22 cartridge cases which I received.

23 Q. And do you know where those were collected from?

24 A. No, they're not listed on my submission documents.

25 Q. Okay. And then what else is in that exhibit?

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1 A. This is the fired bullet and two lead fragments.

2 Q. Okay. And then I am going to hand you what has been
3 marked as State's 15.

4 A. Ladies and gentlemen, this is a firearm. Which
5 obviously for testing and I just examined it to make sure
6 that it is unloaded so it is safe to handle. But this is
7 the pistol which I received for examination.

8 Q. And did you prepare a report in conjunction with this
9 examination?

10 A. Yes, sir.

11 Q. And is this what has been marked as State's 65?

12 A. I am just comparing it with a copy of my report to make
13 sure the word is correct.

14 (WHEREUPON, pause for review of document.)

15 A. Yes, this is a copy of my report.

16 Q. Thank you. And, Mr. Smith, when did these items come
17 into your possession or come into the possession of SLED?

18 A. They were received in two separate submissions.
19 Everything but the firearm -- let's see. Was submitted on
20 June -- or June 19th, 2014. And the firearm was submitted
21 at a later date of October 30th, 2015.

22 Q. Okay. And then those were all submitted to the SLED
23 laboratory?

24 A. Yes, sir.

25 Q. And how are they secured until you have occasion to

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1 examine items?

2 A. When evidence is brought to the laboratory it is
3 brought to our Evidence Control Department. What they do is
4 they make sure everything is sealed up and then they store
5 it until we are ready to come down and actually get it from
6 the Evidence Control Department and put it into our own
7 custody.

8 Now when it is in our custody it is stored. And each
9 examiner has their own separate evidence storage locker, so
10 everything is under security.

11 Q. Okay. Mr. Smith, can you explain to the jury how the
12 weapon that you have in your possession or how it is
13 operated in terms of how it is loaded and how it is fired
14 and how these casings end up on the ground as they did.

15 A. This is a -- it is a semi-automatic pistol. It is fed
16 from a -- it has got a magazine which holds unfired
17 cartridges. The magazine is inserted into the pistol.

18 This is the slide of the pistol. The slide is
19 retracted back and then lift forward. And what that does is
20 it takes a cartridge from the magazine and chambers it into
21 the barrel of the firearm. And then it is ready to fire.

22 So you pull the trigger and then the firing pin hits
23 the cartridge, the primer of the cartridge, which ignites
24 the cartridge itself.

25 So the bullet travels forward out through the barrel.

1 And then there is rearward pressure on that cartridge case
2 which causes the slide to go back and then the cartridge
3 case is extracted out of the chamber and it is ejected from
4 the firearm.

5 So the slide comes forward again after that motion and
6 takes another round from the magazine. And then the process
7 is repeated every time you pull the trigger.

8 Q. And then when the clip is empty what happens with the
9 slide?

10 A. In this particular firearm the slide is locked back in
11 a rearward position, and then you can take the magazine out
12 or reload it or however you want to do it.

13 Q. And then where do the shell casings eject to; how would
14 they eject once the bullet has been fired?

15 A. Well, the ejection port is this area here (pointing).
16 There is a hole in the slide. And so normally if you are
17 holding it just shooting it normally it would eject kind of
18 upwards and off to the right. And then once it hits the
19 service it could bounce or roll or wherever. But typically
20 on this particular firearm it would bounce -- or eject out
21 to the right.

22 Q. And then once these casings are collected what do you
23 do in terms of analysis to determine the source of where
24 those cases came from?

25 A. Well, in this particular incidence I have the firearm

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1 to compare it to. So I actually look at the cartridge cases
2 under a microscope. We've got an expensive piece of
3 equipment called a comparison microscope. And it is
4 basically two microscopes that are connected by an optical
5 system. So you can view two specimens simultaneously.

6 And what we are looking for are the markings that are
7 created by a firearm during the firearm process. These are
8 microscopic scratches that are placed on the cartridge cases
9 themselves.

10 So I look at the cartridge cases, and then I also test
11 fire the firearm. Look at those test fires. Compare those
12 test fires with the cartridge cases submitted to try to
13 able -- to see if I can determine if they were fired by the
14 same gun.

15 Q. Okay. And how do you perform the test firing on the
16 weapon?

17 A. We have a -- in our laboratory we have got a vertical
18 tank that is basically two stories high. It is inside the
19 laboratory itself. And it is filled with water. And we
20 shoot vertically down into the water. And we have got a cup
21 that sits down -- the bottom of the tank is funnel shaped.
22 So we have got a cup system that sits down at the bottom of
23 that tank. And it is connected by a chain up to the top of
24 the tank.

25 So we shoot into the water and the water slows the

1 bullet down, and it doesn't add any kind of markings or
2 anything to it. And so after test firing we just retrieve
3 the cup and we are able to obtain our test fires. But that
4 is for the bullets.

5 The cartridge cases we have a little box system that
6 the cartridge cases eject into that we can collect.

7 Q. Okay. And does each pistol have its own unique set of
8 characteristics that you can identify the shell casing that
9 the defendant ---

10 A. Right, sometimes we are not able to -- sometimes it is
11 inconclusive. And sometimes the specimens are unsuitable
12 for identification as well. So not all the time that we can
13 actually determine if a particular firearm -- or ammunition
14 component was fired by a particular firearm.

15 But generally individual markings are placed onto the
16 firearm itself during the manufacturing process. And these
17 are just basically markings that are created from the tools
18 wearing the surfaces down during the manufacturing process.
19 And they are just placed there randomly. And so those
20 markings actually cause the markings what we are looking for
21 on the ammunition components.

22 Q. Back to the shell casings. Were you able to determine
23 the caliber of the shell casings?

24 A. Yes, sir. On the bottom of the cartridge case itself
25 there is information. Typically it is the manufacturer of

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1 the cartridge -- or cartridge or cartridge case as well as
2 the caliber information. And these are nine-millimeter
3 Luger caliber cartridge cases.

4 Q. Okay. And the pistol that we have there, what caliber
5 is that?

6 A. Nine-millimeter Luger.

7 Q. So are those shell casings consistent with that weapon?

8 A. Correct.

9 Q. And then what test did you perform to determine whether
10 or not the shell casings came from that weapon?

11 A. Again, just looking at the test fires with the
12 cartridge cases under the microscope we are looking for
13 those markings that are created by the firearm, and I was
14 able to determine that the submitted cartridge cases were
15 fired by the submitted firearm.

16 Q. And how did you arrive at your conclusions?

17 A. There were enough individual characteristics on the
18 cartridge cases themselves with the test fires, and then I
19 was able to determine that conclusion.

20 Q. Okay. And can you stay that to a reasonable degree of
21 scientific certainty that those shell casings came from that
22 weapon?

23 A. Yes, sir.

24 Q. Okay. Let's move on to the two projectiles that were
25 recovered as well. Can you tell the jury what that item is?

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1 A. We have got a fired bullet. And there were also two
2 small lead fragments submitted with that fired bullet. The
3 two lead fragments probably came for the bullet itself. But
4 there were no markings on the lead fragments to determine
5 basically in any kind of origin or if they were fired by a
6 particular firearm.

7 The bullet was badly damaged as well as there really
8 weren't a lot of markings on that bullet, and so my
9 comparison with that bullet with my test fired bullets were
10 inconclusive. So I couldn't tell if it was fired by that
11 firearm or another firearm with similar characteristics.

12 Q. And those fragments were obtained from the body of the
13 victim in this case?

14 A. Yes, sir. The packaging notes that it is from autopsy.

15 Q. And because of the status or the nature of the
16 fragments you weren't able to determine whether it came from
17 this weapon or not?

18 A. Right.

19 Q. Is that unusual in cases such as this?

20 A. It is not unusual. Especially if a bullet is as
21 damaged or just the markings aren't consistent or perhaps
22 the markings just weren't placed on the bullet well enough
23 for me to be able to make a conclusion to whether -- what --
24 if it was fired by that particular firearm.

25 Q. And how does the bullet fragment when it hits the human

DIRECT EXAMINATION BY MR. BOURDON OF CHAD SMITH

1 body that it would end up the way it is in this exhibit?

2 A. That's kind of getting into an area that is ballistics
3 which is the science of projectile motion. Which we are not
4 really studying ballistics. We are studying identification
5 of the firearm itself.

6 But I would imagine the bullet just depending on how it
7 hits it can fragment depending on what kind of bullet it is.
8 So it is not unusual to get bullet fragments especially just
9 pieces of lead or other materials.

10 Q. Okay. And Mr. Smith, if we could look at your report
11 here so the jury can review this when they go into chambers.
12 Walk us through the written report that you prepared in this
13 case.

14 THE COURT: What is the number, Solicitor.

15 MR. OSBORNE: I'm sorry, it is 65.

16 THE COURT: Thank you. Excuse me.

17 MR. OSBORNE: Yes, sir.

18 A. The evidence that I received were Items 3 through 9 for
19 the cartridge cases. That is the SLED lab item number.
20 And so I - having a description seven fired nine-millimeter
21 Luger caliber cartridge cases.

22 And then I go in to determine -- I say that they were
23 examined and microscopically compared with each other as
24 well as the test fires from the Item 14 which is my Item 14
25 pistol.

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1 And then I gave a conclusion that basically there were
2 no markings on the cartridge cases themselves to determine
3 that it was fired by a particular firearm.

4 Then we have got line Item 12 which is the fired bullet
5 and the lead fragments all submitted as Item 12. And I go
6 in to say that they were examined and basically the caliber
7 of the bullet I was able to determine it was most consistent
8 with nine-millimeter Luger caliber which is the correct
9 caliber for use in this firearm.

10 And then I go on to determine that the lead fragments
11 were unsuitable for identification because they bore no
12 marks of value and that the damage and limited marks of
13 value on the bullet itself it may or may not be suitable for
14 identification with a particular firearm.

15 And then I go into the second page and talk about how
16 the -- how I compared the bullet with the test fired-bullets
17 and it was inconclusive based on the damage and limited
18 marks of value.

19 And then my Item 14 which is the pistol, make, model,
20 caliber, serial number, it was physically examined, found to
21 be in working order.

22 And then I have got my test fires which is -- we keep
23 the test fires for a certain amount of time and then we send
24 it back to the submitting agency.

25 But I would just say that the test specimens are fired

DIRECT EXAMINATION BY MR. BOURDON OF CHAD SMITH

1 by the pistol using laboratories supplied ammunition. So
2 that is the ammunition that we have got in our department
3 that are set aside for test firing of submitted firearms.

4 Q. Thank you. And then, Mr. Smith, as part of your work
5 with SLED and through its procedures is your work reviewed
6 or analyzed by anyone else?

7 A. Yes, it is. We have got a verification process which
8 after I look at the evidence and come up with my own
9 conclusion. Another qualified examiner goes behind me and
10 looks at the evidence and makes sure that the conclusion
11 that I came to is what they come to.

12 And then I write my report and then the whole case file
13 with my worksheets and the report go to that examiner, and
14 then they review everything to make sure that anything is
15 technically and grammatically correct.

16 Q. And who reviewed your work in this case?

17 A. Another examiner named Michelle Eichenmiller.

18 Q. Okay. And were her conclusions the same as yours in
19 this case?

20 A. Yes, sir.

21 Q. Thank you.

22 MR. BOURDON: No further questions. Please answer any
23 from Ms. Gay.

24 THE COURT: You may cross-examine.

25 MR. OSBORNE: Thank you.

CROSS-EXAMINATION BY MS. GAY OF CHAD SMITH

1 MS. GAY: Thank you, Your Honor.

2 **CROSS-EXAMINATION BY MS. GAY OF CHAD SMITH:**

3 Q. I have no questions regarding your test results, but I
4 do have a question about what you said. You said that when
5 he was asking you about the mechanism of a gun, ---

6 A. Yes, ma'am.

7 Q. --- the gun in particular, you said that the gun -- you
8 talked about -- I do not have any idea because I don't do
9 guns; but the bar comes in and then as the bullet goes out
10 the casing shoots out to the right?

11 A. Right. The rearward pressure on the bullet going
12 forward causes the cartridge case to have rearward pressure
13 on the slide itself.

14 Q. Right. And there are some cartridges in -- that you
15 were shown. These things right here (pointing). This is
16 number 56.

17 A. Yes, ma'am.

18 Q. These -- these little empty jackets?

19 A. Right. Those are the cartridge cases.

20 Q. Okay. And in this case you were provided all of these
21 cases and you determined that these were from that gun?

22 A. Yes, ma'am.

23 Q. And that was part of your test results. And the one
24 thing that you said that was real interesting to me is you
25 said that as it ejected it could bounce and roll. Do you

1 remember saying that?

2 A. Yes, ma'am.

3 Q. That means out of the gun into this -- the yard, into
4 the ground?

5 A. Correct.

6 Q. And so am I -- am I understanding you correctly that
7 when it ejects to the right it doesn't just drop to the
8 ground like that second; it sort of could fly around ---

9 A. Right.

10 Q. --- as it goes out because it has the momentum of the
11 pin I think is what it is called?

12 A. Right, as it ejects out from the firearm depending on
13 what kind of surface. If it is concrete, you know, or it is
14 a sloped service there is no telling where it could end up.

15 That is getting into an area called ejection pattern in
16 which examiners try to determine based on where the
17 cartridge cases are found where the shooter was.

18 But that is not something that we do. But just based
19 on the -- so many variables involved and where the cartridge
20 case can land on what kind of surface. If people are there
21 they can kick cartridge cases around. Or if emergency
22 services were there they can kick -- inadvertently kick
23 cartridge cases into different locations. So it is not
24 really an exact science.

25 Q. I understand. So you aren't qualified to be an

CROSS-EXAMINATION BY MS. GAY OF CHAD SMITH

1 ejection specialist?

2 A. No, ma'am. That is not an area we deal with.

3 Q. And if a place -- let me just ask you a question.

4 As -- based on what you are saying, it is dark outside then
5 people walking around can actually kick things around before
6 they ---

7 A. Yes, ma'am,

8 Q. Even before they secure the crime scene and do lines
9 and things like that?

10 (WHEREUPON, attorney for the State standing.)

11 A. Correct.

12 THE COURT: Hold on.

13 MR. BOURDON: Your Honor, this is exceeding the scope
14 of direct examination.

15 THE COURT: Well, this is cross-examination.

16 Overruled. Thank you.

17 Q. So that was my question is is that even though they may
18 have marked it off for the crime scene other people that
19 responded before crime scene got there could have kicked it
20 all around?

21 A. It is possible, yes.

22 MS. GAY: I have no further questions, Your Honor.

23 THE COURT: Okay. Redirect.

24 MR. BOURDON: No, Your Honor. Thank you.

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

DIRECT EXAMINATION BY MR. BOURDON OF ASHLEY BELL

1 Call your next witness, please.

2 MR. BOURDON: The State calls Ashley Bell.

3 (WHEREUPON, the witness was duly sworn.)

4 THE CLERK: Please state your first and last name and
5 spell your last name loudly and clearly into the microphone.

6 THE WITNESS: My name is Ashley Bell, B-E-L-L.

7 **DIRECT EXAMINATION BY MR. BOURDON OF ASHLEY BELL:**

8 Q. And Ms. Bell, where are you employed?

9 A. I work with the South Carolina Law Enforcement Division
10 which is more commonly referred to as SLED.

11 Q. And how long have you been with SLED?

12 A. Approximately three years.

13 Q. And what area of expertise do you have at SLED?

14 A. I am currently a forensic scientist in the drug and
15 analysis department. At the time that evidence in this case
16 was submitted I was a forensic serologist with DNA.

17 Q. And could you explain to the jury what a forensic
18 serologist is?

19 A. Sure. I examine items of evidence at -- when I was a
20 forensic serologist I examined items of evidence from the
21 presence of biological evidence.

22 I would collect those potential areas of biological
23 evidence and perform serological tests for the presence of
24 possible biological stains such as blood, semen, saliva, and
25 hair.

DIRECT EXAMINATION BY MR. BOURDON OF ASHLEY BELL

1 I would make cuttings from items of evidence. And for
2 those cutting to DNA for analysis. And then I would also
3 generate reports reflecting my examination results and
4 testify to those reports.

5 Q. And can you tell the jury a little bit about your
6 educational background?

7 A. Sure. I have a bachelor of science degree in
8 biochemistry from Washington and Lee University. I
9 successfully completed in-house training at SLED under a
10 court-qualified expert in evidence processing and serology.

11 I successfully completed multiple chain of samples, a
12 competency test, written examinations, oral examinations. I
13 successfully completed multiple online courses in laboratory
14 safety and evidence handling as well as courses through West
15 Virginia University in biological evidence as well as also a
16 master's levels course -- excuse me, a master level course
17 in biological evidence and serology from the University of
18 Florida.

19 Q. Okay. And have you had any additional training in the
20 field of serology in addition to those courses?

21 A. Any additional training?

22 Q. Yes.

23 A. Aside from the online courses and the SLED in-house
24 training that we go through, that's -- that would be it.

25 Q. And how many samples have you tested in your career as

DIRECT EXAMINATION BY MR. BOURDON OF ASHLEY BELL

1 a serologist?

2 A. I would say thousands.

3 Q. Okay. Have you ever been qualified as an expert in the
4 field of forensic serology?

5 A. Yes, I have.

6 Q. And was that state or federal court?

7 A. It was in federal court.

8 Q. And how many times was that?

9 A. One time.

10 Q. Okay.

11 A. Excuse me, as a forensic serologist that was not
12 federal court; that was state court. But I was qualified as
13 an expert in evidence processing in federal court.

14 Q. Okay. And can you explain the ---

15 MR. BOURDON: Your Honor, at this point I would offer
16 Ms. Bell as an expert in forensic serology.

17 THE COURT: Do you care to examine her as to her
18 qualifications?

19 MS. GAY: No, Your Honor.

20 THE COURT: She will be permitted to render opinions in
21 that area.

22 MR. BOURDON: Thank you, Your Honor.

23 Q. Now can you explain to the jury how the evidence
24 processing works in this case when a sample is submitted
25 from a police department to the SLED agency?

1 A. Yes, sir. We -- evidence processing is just the
2 department where we receive larger items of evidence such as
3 clothing or a bed sheet and we examine those larger items of
4 evidence for the presence of possible biological evidence.

5 Q. And did you receive items in reference to this case
6 against Brandon Marshall and did you examine those items
7 that were submitted?

8 A. Yes, sir, I did.

9 Q. Okay. What items did you receive that you were asked
10 to analyze?

11 A. Okay. May I refer to my notes, please?

12 THE COURT: You may if you need it for purposes of
13 refreshing your recollection.

14 THE WITNESS: Okay.

15 A. Yes, I did receive a T-shirt in this case.

16 Q. Okay. And that has been marked as Item 1. And did you
17 take a photograph of that T-shirt that you received?

18 A. Yes, sir, I did.

19 Q. Okay. I am going to show you what has been marked as
20 State's 63. And do you recognize this item?

21 A. It appears to be a photo of the T-shirt that I
22 examined. I do see markings that have my handwriting
23 present.

24 Q. And when you see an item such as this T-shirt, explain
25 to the jury the process that you go through when you begin

DIRECT EXAMINATION BY MR. BOURDON OF ASHLEY BELL

1 your examination.

2 A. Okay. The submitting agency requested that I look for
3 blood in ownership on the T-shirt. So I would have opened
4 up the T-shirt, examined it for any possible staining that
5 would possibly be blood. I would have circled those areas.

6 I would have performed a chemical test testing those
7 areas to determine if they were possibly blood or not. And
8 then I would have made cuttings if I had any positive
9 results to forward for DNA analysis. I also would have
10 scraped and swabbed the T-shirt for ownership DNA.

11 Q. And did you do that in this case?

12 A. Yes, sir, I did.

13 Q. And what were the results of your analysis with respect
14 to this T-shirt?

15 A. For Item 1, the T-shirt, presumptive testing for blood
16 was positive. And that cutting was forwarded to DNA for
17 further analysis.

18 Q. And how did you perform your testing for ownership of
19 the T-shirt?

20 A. I would have used a plastic one-time use scraper. I
21 would have scraped the neck area of the T-shirt and the
22 underarm area and then would have used a swab similar to a
23 Q-tip except there is cotton only on one end of the swab.

24 I would have moistened it with sterile water. I would
25 have swabbed the areas that I scrapped. And I would have

DIRECT EXAMINATION BY MR. BOURDON OF ASHLEY BELL

1 swabbed the scraper and the debris that fell from those
2 areas onto my processing paper.

3 I then would have packaged that swab, placed it into a
4 coin envelope, sealed it with my initials and the date and
5 forward it for DNA analysis.

6 Q. And did you examine this T-shirt for blood stains?

7 A. Yes, sir, I did.

8 Q. And how did you test for bloodstains in this?

9 A. Again, I would have done a visual examination of the T-
10 shirt. I would have circled any areas of staining that
11 appeared to possibly be blood.

12 I would have taken another swab similar to a Q-tip,
13 cotton on one end. I would have moistened it with sterile
14 water. I would have swabbed the area of staining that I
15 circled. I would then apply a chemical to that swab.

16 If blood is possibly present the application of that
17 chemical would turn the swab a bright pink color. If blood
18 was not indicated on that sample swab then the swab would
19 not change colors and your first testing would be conducted.

20 Q. Okay. Now in this picture if you can see it can you
21 show us where you found blood on the T-shirt in your notes.

22 MR. BOURDON: Let me hand it to her, Your Honor, if I
23 may approach.

24 THE COURT: You may.

25 A. I took a cutting from the exterior front of the shirt,

DIRECT EXAMINATION BY MR. BOURDON OF ASHLEY BELL

1 the upper left chest shoulder area, that tested
2 presumptively positive for blood.

3 There are also other stains circled on the T-shirt.
4 And it appears that there are three that did also test
5 positive for the presumptive testing of blood. Those stains
6 I left behind as a representative sample.

7 Q. And if you can go on your picture can you show us like
8 where you found the blood on these parts of the T-shirt.

9 A. Yes, sir. The cuttings that I took, that bloodstain,
10 possible bloodstain, was found on the exterior of the shirt;
11 the front in the upper left-hand corner of the chest and
12 shoulder area. The presumptive spots that are present or
13 very close by as well.

14 Q. And why did you make cuttings of the shirt instead of
15 submitting the whole shirt for further examination; why do
16 you do cuttings?

17 A. Well, as a serologist that is what we do. We examine
18 the items of evidence, we cut them, and then we make smaller
19 cuttings that are then forwarded to DNA.

20 It makes their testing a little like a bulky. And it
21 simplifies -- or it brings things down to exactly what is
22 pertinent for DNA testing.

23 Q. Okay. And let me hand you what has been marked as
24 State's Exhibit 47. If you could look at this and tell us
25 what it is.

1 A. It appears to be a Chex-All pouch that has the evidence
2 I collected and forwarded for DNA analysis. And I recognize
3 it because of the unique SLED lab number that is attached
4 here as well as seals bearing my initials and the date of
5 when I opened the packaging.

6 Q. Okay. And then how is that sealed after you perform
7 your cuttings; what do you then do with those cuttings?

8 A. My cuttings are then placed into a coin envelope which
9 you see here. And that coin envelope is sealed with my
10 initials and the date. That coin envelope is placed into
11 the Chex-All pouch which again is sealed with my initials
12 and the date that I sealed the evidence.

13 Q. Okay. Now you also found hair on this T-shirt; is
14 that correct?

15 A. Yes, sir, I did.

16 Q. And what did you do with the hairs that you found?

17 A. As part of ownership testing in addition to swabbing --
18 scraping and swabbing the item you also collect any
19 potential hairs that are found. I would have done that in
20 this case and forwarded those hairs for further analysis to
21 DNA.

22 Q. Okay. And then did you prepare a report in conjunction
23 with your findings in this case?

24 A. Yes, sir, I did.

25 Q. Okay. I believe that's been marked as State's 57. I

DIRECT EXAMINATION BY MR. BOURDON OF ASHLEY BELL

1 am going to hand you a copy of State's 57. Okay. And is
2 that the report you prepared in this case?

3 A. Yes, sir, it does appear to be the copy of the report
4 that I generated in this case.

5 Q. Okay. Let me put this on the overhead so you can walk
6 the jury through this. And if you can start with number one
7 and work your way down.

8 A. Okay. Item 1 is the T-shirt which is the larger item
9 of evidence that was submitted in this case. As I stated,
10 when I examined the T-shirt I did find areas that tested
11 presumptively positive for the presence of blood.

12 So we call the initial item submitted Item 1, the
13 parent item. And any cuttings or evidence that you take
14 from that parent item become children of that parent item.

15 In this case Item 1.1, the cutting from the T-shirt, is
16 generated as the presumptively positive cutting that I took
17 from the T-shirt. And you see that on the left-hand side
18 where it says item submitted. The right side are the
19 results generated from testing that item submitted for DNA
20 analysis.

21 Item 1.2 is that swab from the scraping, the neck area
22 and the underarm areas of the T-shirt that I spoke of when I
23 referred to ownership testing. That swab was forwarded for
24 further DNA analysis.

25 Item 1.3 is debris that I collected from the T-shirt

1 where we are looking for possible hairs that are present.

2 So that would be in this case Item 1.3, the debris, is the
3 parent item generated from the kid of the parent item.

4 There are the grandchildren of that item which are
5 1.31, 1.3.2, 1.3.3, all of which were both possible hairs
6 that I forwarded for DNA analysis.

7 Q. Thank you. And on Page 2 is simply is the completion
8 of that report; is that correct?

9 A. Yes, sir, it is.

10 Q. And then is your work reviewed by anyone?

11 A. Yes, sir. We go through a two-step review process, a
12 technical review and an admin review. Which is both are
13 completed by a forensic serologist and/or a DNA analyst.

14 Q. And were their results or their conclusions the same as
15 yours in terms of this case and your findings?

16 A. Yes, sir, when they reviewed my work everything was
17 signed off on as being scientifically okay.

18 Q. And then once you are completed with your work what do
19 you then do with the samples that you have collected?

20 A. The evidence is returned to evidence login and placed
21 on a DNA intake shelf for the DNA analyst that is assigned
22 to the case to pick up when they are ready to examine the
23 evidence.

24 Q. And then do you have anything to do with the DNA
25 examination in case?

DIRECT EXAMINATION BY MR. BOURDON OF ASHLEY BELL

1 A. No, sir, I do not.

2 Q. And Ms. Bell, is this the shirt that you took the
3 cuttings from? I believe it has been marked as 41 I
4 believe.

5 A. Do you have gloves by chance?

6 Q. No, I don't.

7 (WHEREUPON, gloves provided to the witness.)

8 A. Thank you.

9 Q. Sure.

10 A. I do recognize the outside packaging. I have -- I see
11 my handwriting where I wrote the laboratory number, the SLED
12 laboratory number, the item number, my initials and the date
13 that I opened the evidence.

14 I also recognize the processing paper that I would have
15 processed the T-shirt on top of it. Again it has the unique
16 SLED lab number, the item number, my initials, and the date
17 that I processed the clothing.

18 Here is the one-time use plastic scraper that I would
19 have used to scrape the T-shirt in the neck areas and the
20 underarm areas.

21 And I recognize the T-shirt because it also has the
22 unique SLED lab number, item number, and my initials on it
23 as well as my handwriting where I would have made my
24 cuttings right here at the top and the results of that
25 cutting. And then as well as the other areas that tested

DIRECT EXAMINATION BY MR. BOURDON OF ASHLEY BELL

1 positive presumptively for blood. So I do recognize the
2 T-shirt, yes.

3 Q. Okay. And those markings that are on the shirt those
4 are yours that you put on there?

5 A. Yes, sir, they are.

6 Q. And what do they indicate, like each of the markings?

7 A. The markings indicate if there is a positive sign with
8 a circle that indicates that my chemical test was positive
9 for the possible presence of blood.

10 In the case of where you see 1.1 here, this is the
11 cutting that I took that was presumptively positive for the
12 presence of blood. When that happens we forward that item
13 for confirmation of the presence of blood to DNA for
14 analysis.

15 Q. Thank you.

16 A. And if there are areas that have the negative -- the
17 equal sign with a circle, that means that area was swabbed
18 for the possible presence of blood but my chemical test was
19 not positive; it was negative. So that item is marked as
20 such to know that. But nothing -- no cuttings are taken and
21 nothing is sent for DNA for analysis.

22 Q. And then after you examined that T-shirt and took your
23 cuttings what did you then do with the T-shirt?

24 A. I then wrapped the T-shirt here in the processing
25 paper. I sealed it with tape. I placed my initials, the

DIRECT EXAMINATION BY MR. BOURDON OF ASHLEY BELL

1 date, the SLED lab number; the item number on it. And I
2 would have placed it back into its original packaging and
3 sealed that with tape as well. Initialed. Dated. Put my
4 initials, the SLED lab number, item number. And then the
5 packaging would have been returned to our Evidence Control
6 Department.

7 Q. Okay. Now with respect to the blood that you found on
8 there can you date when that blood would have been placed on
9 that T-shirt?

10 A. No, sir, I cannot tell you when that blood was placed
11 there.

12 Q. Okay. So it could have been freshly blood placed on;
13 it could have been an old blood stain on the shirt?

14 A. That is correct. My testing does not tell me when the
15 blood was placed there, just that there may possibly be
16 blood present.

17 MR. BOURDON: Court's indulgence, Your Honor.

18 THE COURT: Yes, sir.

19 Q. Ms. Bell, can you next open up the cutting that you
20 took from that sample.

21 A. Do you have a pair of scissors?

22 Q. Yes.

23 A. It is still sealed shut.

24 (WHEREUPON, supplied scissors.)

25 A. Thank you.

1 Q. All right. And if you could remove those to show the
2 jury what we are talking on terms of this blood and the
3 staining. I know it is kind of hard to see on the
4 overheads. And just holding the T-shirt up.

5 A. Okay. In this coin-envelope is on the T-shirt where I
6 held it up there was the hole in the T-shirt and it had 1.1
7 written on top of the hole and positive seen underneath.

8 That cutting where that -- the cutting comes from that
9 whole and it is placed into this coin envelope right here.
10 Which again, is marked with the SLED item number, SLED lab
11 number. It is sealed with my initials and the date.

12 And the other information on the front just indicated
13 the type of request on the cutting that is inside of this
14 envelope as well as what type of sample, is it a cutting, is
15 it a swab, is it a cutting and a swab.

16 We would indicate that so that the analyst, DNA
17 analyst, opening this envelope would know what is inside.

18 Q. Okay. And was there a significant amount of blood on
19 that cutting; can you show us what the actual cutting looks
20 like?

21 A. Sure. Here is the cutting. And there is a large area
22 circled. And within that larger area there are smaller
23 circles. The areas that were cut and forwarded for DNA
24 analysis are circled and indicated with a positive "T" which
25 means that my presumptive test tested positive for the

DIRECT EXAMINATION BY MR. BOURDON OF ASHLEY BELL

1 presumptive presence of blood.

2 There were also two others circles present that I
3 tested, and those areas were presumptively negative for the
4 presence of blood.

5 Q. And can you see the blood spots on the shirt?

6 A. There is still some visible staining present left on
7 this cutting, yes.

8 Q. Okay. And if you can maybe come out of the witness
9 chair and kind of walk and show the jurors what we are
10 talking about.

11 (WHEREUPON, witness complied.)

12 Q. Thank you. And then with respect to the samples that
13 you identified did you make any comparisons with the
14 defendant Mr. Marshall?

15 A. No, sir. That is DNA analysis.

16 Q. Okay.

17 MR. BOURDON: No further questions, Your Honor.
18 Please answer any from Ms. Gay.

19 THE WITNESS: Okay.

20 THE COURT: Cross-examine, Ms. Gay.

21 **CROSS-EXAMINATION BY MS. GAY OF ASHLEY BELL:**

22 Q. One of the things that you mentioned is that you can
23 still see a little bit of stain. At the time, which was two
24 years ago, any amount of redness or pigmentation would have
25 been more distinct?

CROSS-EXAMINATION BY MS. GAY OF ASHLEY BELL

1 A. Possibly, yes, ma'am.

2 Q. And so what we are looking at today I mean we would
3 agree it is two years later from what you actually -- or
4 almost two years later, from what you had in your hand that
5 day?

6 A. The T-shirt was submitted. Everything on the T-shirt
7 was dry. Aside from looking at my photos from my testing at
8 that time I can't tell you it it faded over time or if it is
9 still the same.

10 Q. I understand. What day did you get it?

11 A. I would have to refer to the chain of custody.

12 Q. Okay. You can do that. Is that part of your notes for
13 you to refresh your recollection?

14 A. Yes, ma'am,

15 Q. Yes, ma'am, fine.

16 A. I would have received this evidence from our evidence
17 intake department on January the 29th and ---

18 Q. What year; 2015?

19 A. Of 2015, yes.

20 Q. Okay.

21 A. And my examination would have been performed on
22 February 2nd, 2015.

23 Q. Okay. And are you aware of what date this incident
24 occurred?

25 A. No, ma'am, not without rereading the incident report.

CROSS-EXAMINATION BY MS. GAY OF ASHLEY BELL

1 Q. I understand. So this stuff that you had the gloves
2 on -- I won't ask you to take -- touch it again. But that
3 is the white T-shirt; I believe he showed you a picture of
4 the T-shirt that you had taken as a part -- that is -- what
5 is that evidence number?

6 A. It says State's Exhibit 63.

7 Q. Okay. I am going to make this go over here. So now
8 that you have done some more thorough discussion with the
9 jury and showed them the actual shirt, this area right here
10 (pointing) that is the left arm and shoulder of the shirt?

11 A. Correct. Yes, ma'am.

12 Q. And I believe you said that this was before you did the
13 cuttings. And so maybe there is a hole right there
14 (pointing). That spot is the spot that has the chunk, the
15 piece, that you cut out?

16 A. Yes. That hole is this cutting that is inside of this
17 envelope.

18 Q. And there are some other things that you said that were
19 blood or tested presumptive serologically for blood but you
20 didn't cut that out, you just marked it on the shirt?

21 A. That is correct.

22 Q. Okay. And so there is some -- like down here
23 (pointing) and then up there (pointing) going down, that is
24 the stuff that was circled was blood, serologically?

25 A. There appears to be three spots that I have marked as

CROSS-EXAMINATION BY MS. GAY OF ASHLEY BELL

1 testing positive for the presumptive testing of blood. And
2 there do -- there does appear to be from what I can make out
3 on the picture one large area that tested presumptively
4 negative for the presence of blood.

5 Q. Okay. And so as you said you are not here to testify
6 as to what the results of the DNA were; that wasn't your
7 job?

8 A. That is correct.

9 Q. You just packaged it. And do you remember what this
10 may have been over here on the shirt when you were looking
11 at it? Possibly dirt?

12 A. I can't see if I made any markings. But if I tested
13 it, it would have been circled and marked with the result of
14 my test.

15 Q. So definitely not blood?

16 A. I don't know. If I tested it I would have marked it
17 with the results of my testing.

18 Q. I understand.

19 MS. GAY: I have no further questions, Your Honor.

20 THE COURT: Redirect.

21 MR. BOURDON: No, Your Honor.

22 THE COURT: Thank you. You may step down. Thank you
23 very much.

24 (WHEREUPON, exhibits were repackaged.)

25 MS. GAY: Your Honor, may I approach?

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1 THE COURT: Just one second. I am going to take a
2 break at this point. I will let this witness ---

3 MS. GAY: That is what I was going to ask.

4 THE COURT: All right. Ladies and gentlemen --
5 Solicitor, do you want the witness to be excused?

6 MR. BOURDON: Yes, Your Honor. That is fine.

7 THE COURT: Any objection?

8 MS. GAY: No, Your Honor.

9 THE COURT: You are also free to leave. Ms. Wilson,
10 thank you.

11 Ladies and gentlemen, at this time we will take our
12 morning recess, let you go to your jury room. Please do not
13 begin your deliberations. We will be with you in about 10
14 or 15 minutes. Thank you.

15 (WHEREUPON, jury exits courtroom 4/6/16, 11:12 a.m.)

16 THE COURT: Anything from the State before recessing?

17 MR. BOURDON: I'm sorry, Your Honor?

18 THE COURT: Anything from the State before recessing?

19 MR. BOURDON: No, sir.

20 THE COURT: Okay.

21 Ms. Gay, anything?

22 MS. GAY: No, Your Honor.

23 THE COURT: All right. We will be at ease for about 15
24 minutes, folks.

25 (WHEREUPON, break was had 4/6/16, 11:13 a.m.)

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1 (WHEREUPON, jurors enter 4/6/16, 11:28 p.m.)

2 THE CLERK: All jurors are present, Your Honor.

3 THE COURT: Thank you very much.

4 Thank you, ladies and gentlemen. Please give your
5 attention to the next witness.

6 Mr. Bourdon, you may call your next witness.

7 MR. BOURDON: Thank you, Your Honor. If it please the
8 court the State will call Samuel Stewart.

9 THE COURT: Okay.

10 (WHEREUPON, the witness was duly sworn.)

11 THE CLERK: Please state your first and last name and
12 spell your last name loudly and clearly into the microphone.

13 THE WITNESS: It is Samuel Stewart, S-T-E-W-A-R-T.

14 **DIRECT EXAMINATION BY MR. BOURDON OF SAMUEL STEWART:**

15 Q. And Mr. Stewart, where are you employed?

16 A. I currently work for the South Carolina Law Enforcement
17 Division, commonly know as SLED.

18 Q. And what is your job title there?

19 A. I am a forensic scientist assigned to the DNA Casework
20 Department.

21 Q. And is the SLED laboratory accredited for DNA testing?

22 A. Yes, it is. It is ASCLAD lab certified.

23 Q. And so what is your educational background?

24 A. I received my bachelors in science and biology from
25 Francis Marion University. I also received in-house SLED

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1 training under other core qualified analysts for over a
2 year-and-a-half where I successfully completed a written
3 exam, an oral exam, a competency, and a mock trial for
4 quality and competence as a DNA analyst.

5 Q. Okay. And how long have you worked for SLED?

6 A. Four years.

7 Q. Okay. And in that time you have been in the DNA unit?

8 A. Yes, I have.

9 Q. And what experience do you have in the field of DNA
10 identification testing?

11 A. Along with my training we also have eight hours of
12 continuing education every year. This is to keep us updated
13 on the latest methodologies and products that are used in
14 the forensic field.

15 Q. And what other courses or seminars have you taken in
16 conjunction with your training in DNA?

17 A. We do a mystery interpretation. We do statistics
18 training. Also required courses that I had to take for my
19 undergrad were biochemistry, molecular biology and
20 statistics.

21 Q. And do you belong to any professional associations?

22 A. Not at this time.

23 Q. Okay. Have you testified as an expert before in court
24 in the field of DNA identification?

25 A. Yes, I have.

1 Q. How many times have you done that?

2 A. Seventeen.

3 Q. And is that in state court?

4 A. That is correct.

5 Q. And have you been in federal court at all?

6 A. No, I have not.

7 MR. BOURDON: Your Honor, at this point I would move
8 that Mr. Stewart be considered an expert in the field of DNA
9 identification testing.

10 THE COURT: Do you care to examine?

11 MS. GAY: I have no objection.

12 THE COURT: Very well. You will be permitted to render
13 opinions in that area.

14 MR. BOURDON: Thank you.

15 Q. Mr. Stewart, can you tell the jury what DNA is?

16 A. DNA stands for deoxyribonucleic acid. It is the
17 genetic material that is found in every person. And it is
18 responsible for certain traits such as our eye and our hair
19 color.

20 DNA is contained in a dense packets known as
21 chromosomes which are found in every cell in any human body,
22 excluding red blood cells.

23 We receive half of our chromosomes from our mother and
24 the other half from our father. On those chromosomes we
25 target certain locations known as STR's which stands for

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1 short tandem repeats. And we look at 16 different STR
2 locations that are found on those chromosomes to develop
3 what is known as a DNA profile which we use to identify a
4 person from another person, excluding identical twins.

5 Q. Okay. What is the significance of identical twins?

6 A. We -- they have the same DNA profiles so we are unable
7 to identify one from the other.

8 Q. Okay. And where is DNA found in the human body?

9 A. It is found in your skin cells, found in blood. It can
10 also be found in your sweat, saliva. Which those are
11 attributable to your skin cells. And semen.

12 Q. And what is the structure of DNA?

13 A. It is a double helix formation.

14 Q. Can you explain what a double helix is?

15 A. It is sort of like two I would say lines going around
16 and circle one another just forming that structure.

17 Q. And we are talking microscopic structures here; is that
18 correct?

19 A. That is correct.

20 Q. Okay. And does DNA vary from person-to-person?

21 A. Yes, it does; excluding identical twins.

22 Q. And from any given individual does the DNA information,
23 one bodily fluid or tissue, the same as the DNA information
24 in another bodily fluid or tissue from that same person?

25 A. That is correct. So the same DNA profile that I would

1 develop from your skin cells will be that same DNA profile
2 that I would get from your blood or your -- from semen from
3 a male.

4 Q. Okay. With respect to the DNA that you have been
5 talking about is there any dispute in the scientific
6 community about what you just described?

7 A. No, there is not.

8 Q. Okay. And are there other uses for DNA aside from in a
9 criminal type investigation?

10 A. It could be used for paternity as well.

11 Q. Okay. And in your field of work with respect to
12 working at the State Law Enforcement Division what are you
13 trying to do and determine through DNA testing in a criminal
14 case?

15 A. My purpose is to try to determine the DNA profile that
16 I develop from a normal standard, which can come from a
17 victim or a subject, whether that DNA profile can be
18 included or excluded from the DNA profile I develop from the
19 evidence in a criminal investigation.

20 Q. Okay. So you are simply comparing a known sample to an
21 unknown sample?

22 A. Essentially. The known sample which comes from, as I
23 stated, the victim or the subject, to the DNA profile from
24 that piece of evidence.

25 Q. Okay. And is what is known as PCR STR testing

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1 performed at your lab?

2 A. Yes, it is. As I said, the STR locations are the 16
3 different locations we use to develop a DNA profile. The
4 PCR, which stands for preliminary chain reaction, that is
5 the process used to develop the DNA and make more copies of
6 it so we are able to accurately develop that DNA profile.

7 Q. Okay. And what is the STR testing?

8 A. The STR, as I said, was short random repeats that we
9 use to develop that DNA profile.

10 Q. What steps -- can you tell the jury what steps are
11 involved in the PCR STR testing?

12 A. Yes. There are four means that -- there is
13 abstraction, which we actually take the DNA from that piece
14 of evidence or from that known standard. We purify it, put
15 it into a stable solution for it to last.

16 Once we have that purified DNA from that sample or from
17 that standard we have to quantify it. This is so we can --
18 to determine how much DNA we have.

19 This is in order so when we actually run it on an
20 instrumentation we have to have it hit between a certain
21 range of DNA.

22 Not enough DNA and we won't have a suitable or a full
23 profile. Too much and we will overload the instrumentation
24 and we won't get a usable profile as well. So we have to
25 make sure that we hit that target range, which is what the

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1 quantification is for.

2 The next up is the PCR that you were speaking of, the
3 amplification, making the many copies so that we get into
4 our target range.

5 Once we have that target range that we are looking for
6 then we are able to run it on our instrumentation which will
7 give you our DNA profile from those 16 different STR
8 locations.

9 Q. Okay. What type of machinery do you use in your DNA
10 testing?

11 A. We use, as I stated, the extraction instrumentation
12 which actually takes the DNA from those samples. The
13 quantification instrumentation that we use, that instrument
14 let's us know how much DNA we have for each sample.

15 And we also use the CE instrument. That
16 instrumentation actually divides the DNA into the 16
17 different locations that we identify.

18 Q. Okay. And what safeguards and controls are used with
19 SLED to insure the integrity of the sample that you are
20 testing?

21 A. Actually we always maintain high use of our quality
22 controls. We want to make sure that we are always using
23 gloves when we are handling evidence and standards.

24 We make sure that we -- whenever we are doing testing
25 we analyze that evidence separate from our standards. This

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1 is to prevent any kind of cross-contamination between the
2 two.

3 We always use UV lights. We use DNA the Spitsman (ph)
4 spray to clean up. So we definitely do go to great lengths
5 to make sure that the laboratory is clean and that there
6 isn't any kind of cross-contamination throughout the whole
7 process.

8 Q. Okay. And how about the reliability of your
9 instrumentation, how is that calibrated; how is that checked
10 to make sure it is working properly?

11 A. Yeah, the individuals that are -- contract out the
12 instrumentation to us, they come and do performance checks
13 every year to make sure that the instrumentation is working
14 properly.

15 Q. Okay. Have they had any issues with the machines not
16 working property?

17 A. Then we would not use it for testing.

18 Q. Now, Mr. Stewart, with respect to this case did you
19 receive evidence related to the State versus Brandon
20 Marshall?

21 A. Yes, I did.

22 Q. And when did you receive the evidence in this case?

23 A. I received the evidence in this case on November 23rd,
24 2015.

25 Q. Okay. And what items specifically did you receive in

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1 order to test them?

2 A. I received a buccal swab from Mr. Brandon Marshall. I
3 also received a blood spot from Mr. Anthony Williams. These
4 are my known standards that I am going to use to compare to
5 the evidence.

6 Q. Okay.

7 A. I also received a cutting from the shirt of Brandon --
8 Mr. Brandon Marshall. A swab from the shirt from Mr.
9 Brandon Marshall. Three hairs that were taken from the
10 shirt of Mr. Brandon Marshall. And a swab from a handgun.

11 Q. Okay. And can you explain to the jury what a buccal
12 swab is?

13 A. A buccal swab is a sterile swab that is used to swipe
14 inside the mouth to collect the cheek cells of an individual
15 which we use for a known standard.

16 Q. Okay. And so one was taken from the defendant in this
17 case, Brandon Marshall?

18 A. That is correct.

19 Q. Okay. And then you mentioned that you also received a
20 blood spot from Anthony Williams. He is the victim in this
21 case; is that correct?

22 A. That is correct.

23 Q. Okay. And with respect to the cutting that you just
24 described, those were all received from Ms. Bell?

25 A. Yes, that was correct. Let me

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1 (WHEREUPON, pause for review of notes.)

2 A. Except for Item 10, the swab from the handgun. That
3 went directly -- I got from my Evidence Control Department.

4 Q. Okay. So the other items you would have received from
5 her section after she did her analysis of that shirt?

6 A. That is correct.

7 Q. Okay. And how long does DNA last if it is collected;
8 is there a timeframe when it expires?

9 A. Depending upon how it is kept DNA can last for years.
10 But if it is exposed to any kind of natural elements such as
11 sun or moisture, heat, those things could possibly degrade
12 DNA.

13 But as long as it is kept in a stable, cool environment
14 DNA can last for a pretty good time.

15 Q. Okay. When did you perform your testing on these items
16 that you received?

17 A. I started on that same day, November 23rd, 2015.

18 Q. I am going to show you some exhibits that have been
19 already marked. This would be State's 45. This I believe
20 is a buccal swab from Mr. Marshall; is that correct?

21 A. That is correct. It has the SLED -- unique SLED
22 number. And it has the item number that is associated with
23 this piece of evidence -- standard I should say.

24 Q. Okay. And at the bottom of that it is also marked in
25 kind of fine print. Is that a label that is created at SLED

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1 where it is given an item number?

2 A. Are you referring to this one (pointing) or this
3 one ---

4 Q. Yeah, that little typewrite.

5 A. No. This wasn't -- I don't believe this was made
6 from ---

7 Q. Okay.

8 A. From SLED.

9 Q. But that indicates that is the buccal swab from Mr.
10 Marshall; is that correct?

11 A. That is correct.

12 Q. Okay. And then 54 can you describe this item to the
13 jury, please.

14 A. This is the blood standard for Mr. Anthony Williams.

15 Q. Okay. And then Item Number 47 if you could take a look
16 at this, please. Can you tell us what that -- those items
17 are?

18 A. This is the Container B. It housed the cutting from
19 Mr. Brandon's shirt, the swab from Mr. Brandon's shirt, and
20 also the three hairs that came from Mr. Brandon Marshall's
21 shirt.

22 Q. And then finally State's 46.

23 A. This is Item 10, the swab from the handgun.

24 Q. Okay. And is that the item that you said you drew
25 directly from the evidence?

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1 A. From our Evidence Control Department. That is correct.

2 Q. Can you tell us what a swab from a gun is; what would
3 that be?

4 A. That is the swab that is trying to achieve -- or
5 collect, I should say, touch DNA. This is DNA that is
6 possibly left behind whenever you touch an object. So that
7 would be the purpose of that swab.

8 Q. Okay. And were you able to perform the DNA testing on
9 each of these samples?

10 A. Yes, I was.

11 Q. Okay. And were you able to obtain any results as the
12 result of your analysis of these items?

13 A. Yes, I was.

14 Q. Okay. And what were your conclusions with respect to
15 your testing on each of these items that you have listed?

16 A. The DNA profile developed from Item 1.1 which was the
17 cutting from Mr. Brandon Marshall's shirt and Item 10 which
18 was the swab from the handgun, matches the DNA profile of
19 Brandon Marshall.

20 The probability of random selecting an unrelated
21 individual having a DNA profile matching these items is
22 approximately one in one hundred seventy quintillion.

23 What that statement means is that if I was to randomly
24 test an individual DNA profile and compare it to that DNA
25 profile from these two pieces of items the chances of that

1 random person's DNA profile matching the DNA profile from
2 those items is one in one hundred seventy quintillion.

3 Q. Okay. How many people are living on the earth right
4 now?

5 A. Approximately seven billion.

6 Q. Okay. And so a hundred and seventy quintillion is a
7 significant more amount?

8 A. Significantly higher than the population on earth.

9 Q. And in layman's terms what does this actually mean in
10 terms of your analysis?

11 A. Yeah, within a degree of scientific certainty I can say
12 that those DNA profiles match the DNA profile of Brandon
13 Marshall.

14 Q. Okay. So that would be the DNA profile from his shirt
15 and from the DNA swab on the gun?

16 A. That is right, the cutting from the shirt and the swab
17 from the handgun.

18 Q. And with respect to the DNA that was found on the gun
19 and the fact that it matches Mr. Marshall's profile what
20 would that indicate to you?

21 A. At some point in time he came in contact with the
22 handgun. That is what I determined.

23 Q. And the same with the T-shirt, what would the
24 significance of that be?

25 A. At some point in time his DNA got -- or got onto that

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1 T-shirt.

2 Q. Okay. And Mr. Stewart, I am going to put this on the
3 overhead so the jury can kind of follow along with your
4 report. Again, this is State's 49. Sir, if you could look
5 at that again and

6 (WHEREUPON, ELMO adjusted.)

7 Q. Okay. Again, Mr. Stewart, if you could explain the
8 first page of your report. I know that you just testified
9 to what the samples were. But, again, if we can just follow
10 through in your ---

11 A. Not a problem. This is the first page of my report.
12 As it says, DNA analysis. And then right under that it says
13 items analyzed.

14 So the first two rows are my known standards. The
15 buccal swab from Mr. Brandon Marshall and the blood spot
16 from Mr. Anthony Williams.

17 And then right below that are the pieces of evidence
18 that I tested to compare against those two known standards.
19 The cutting from the shirt. The swabs from the shirt. The
20 swabs -- I mean excuse me, the hairs from the shirt and the
21 swab on the handgun. So those are just detailing all the
22 pieces of items of evidence and standards that I tested.

23 Q. Okay. And those Items 1.1 through 1.33 those were
24 items that were obtained by Ms. Bell and then submitted to
25 your section of analysis?

1 A. That is correct.

2 Q. If we can go to the second page. And again, I know you
3 just read the results; but if you could again go through
4 this with the jury so we can kind of make sense of this
5 report that you prepared in this case.

6 A. Yes, this is the result section of my report. This is
7 where I state my comparisons between the normal standards
8 and the pieces of evidence that were analyzed in this case.

9 So I also have results for the items -- the other
10 items, 1.3.2, 1.2, 1.3.1, and 1.3.3. So this is listing my
11 further results.

12 Q. And the first part -- if you will read again that first
13 sentence about the match between the shirt, the blood from
14 the shirt, and from the swab of the gun.

15 A. The DNA profile developed Items 1.1 and 10 matches the
16 DNA profile of Brandon Marshall. The probability of
17 randomly selecting an unrelated individual having a DNA
18 profile matching these items is approximately one in one
19 hundred and seventy quintillion.

20 Q. Okay. And then with respect to the second paragraph
21 that you have there, can you explain what a partial DNA
22 profile is?

23 A. Was a partial profile is is when I don't get a full
24 representation at every location. As I stated, sometimes
25 there is just not enough genetic material to get a full

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1 profile. But we still can do comparisons with a partial
2 profile if there is significant enough information there.

3 Q. Okay. And were you able to get that from the items at
4 1.32 which is the hair and 1.33 which is also a hair, the
5 second ---

6 A. Yes, Item 1.3.1 the partial DNA profile from that item
7 matches the DNA profile of Brandon Marshall. The
8 probability of random selecting an unrelated individual
9 having a DNA profile matching this item is approximately one
10 in three point three quadrillion.

11 Q. And would you say that is significantly more than the
12 seven billion people on the earth?

13 A. Yes, I would.

14 Q. And in layman's terms would that mean that those hairs
15 on that shirt were from Brandon Marshall?

16 A. That is correct.

17 Q. And then if you could go to the third paragraph,
18 please.

19 A. The partial profile that I developed from Item 1.2,
20 that was a swab from Mr. Brandon Marshall's shirt, is a
21 mixture of at least two individuals.

22 The DNA profile of the major contributor to this
23 mixture matches the DNA profile of Brandon Marshall. The
24 probability of randomly selecting an unrelated individual
25 having a DNA profile matching the major contributor to this

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1 mixture is one in two hundred and seventy billion.

2 Due to the limited genetic information obtained the DNA
3 profile of the minor contributor to this mixture is
4 insufficient for interpretation.

5 If I may explain. A mixture is when we have more than
6 one person contributing their DNA to a piece of evidence.
7 And often times we will have it where one person is
8 contributing more DNA to that piece of item. When we have
9 that situation we consider that individual the major
10 contributor to our mix- -- to our mixture.

11 In this case the major contributor to this mixture
12 matches the DNA profile of Brandon Marshall. But
13 unfortunately for the minor I just did not have enough
14 genetic material to do any kind of comparison or conclusions
15 to it.

16 So in that case I wasn't -- it was insufficient for me
17 to be able to do any kind of comparisons for the minor
18 contributors to that profile.

19 Q. And then the final paragraph or the fourth one down is
20 1.31 which is another hair?

21 A. Yes, the partial DNA profile developed from Item three
22 point -- I mean excuse me, 1.3.1 which is a hair matches the
23 DNA profile of Brandon Marshall.

24 The probability of random selecting an unrelated
25 individual having a DNA profile matching this item is

1 approximately one in two hundred seventy.

2 Q. And can you explain the significance of that smaller
3 number compared to the quintillion and quadrillions that we
4 see above?

5 A. When we have less genetic information to work with I
6 cannot -- the numbers are going to be significantly lower.
7 Because it just allows for more people to be included into
8 that -- or into that profile.

9 So it is just because there is a lack of genetic
10 information there that I don't have a higher stat.

11 Q. And with respect to the DNA profile on 1.33 which is
12 also a hair can you explain your conclusion in that?

13 A. Yes. There was no DNA profile developed from Item
14 1.3.3. So there just was no genetic material there able --
15 that would allow me to develop a DNA profile.

16 Q. Okay. And through your analysis were you able to find
17 any DNA profile matching that of the victim Anthony
18 Williams?

19 A. No, I was not.

20 Q. Okay. And this partial DNA profile which is the
21 mixture of two people could you eliminate Anthony Williams
22 as being a contributor to that?

23 A. He -- I can't make a comparison to the minor. So it is
24 possible that he could be. But I just couldn't make any
25 kind of determination or any kind of statement on that.

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1 But -- but that is what I -- other than that, no, I
2 don't see any Anthony Williams' hair.

3 Q. Okay. And with respect to the gun you said that it
4 would indicate he came into contact, Mr. William -- Mr.
5 Marshall had come into contact with that gun. Can you
6 explain that a little further?

7 A. Oh ---

8 Q. What contact would have been made?

9 A. I am not sure how the contact would be made. But I
10 just know that because the DNA is there at some point in
11 time I would think that his -- he would have come in contact
12 with the gun.

13 Q. And would that have included or possibly including him
14 touching the gun?

15 A. That is possible, yes.

16 Q. And how did you arrive at your statistical calculations
17 in this case?

18 A. We have a formula that we use at every location that
19 calculates the frequency for us. Or I guess I would say the
20 likelihood of an individual having those DNA types at every
21 location.

22 We use that formula, as I stated, at all the 16
23 different locations and we combine that to formulate
24 statistics for each -- to each one of these items.

25 Q. Okay. I want to show you what is the fourth page in

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1 your report: And Mr. Stewart, if you could, I know it's
2 kind of hard to see here; but is this the -- can you explain
3 what this fourth page of your report is?

4 A: This is my DNA case table. This is where we actually
5 list out the DNA profile for each one of the items and for
6 our known standards.

7 Q: Okay. And can you put these numbers and these letters
8 and so forth into layman's terms as to what we are looking
9 at?

10 A: Yes. As I stated earlier, we receive half of our
11 chromosomes from our mother and the other half from our
12 father. So at each one of those locations we are donated --
13 we are donated a number from our mother and from our father.

14 So for if I can just work with one of the known
15 standards, that is just supposed to be a single source
16 profile that belongs to an individual. Usually you will
17 have two numbers because one was donated from your mother
18 and the other one from your father. In the case that your
19 mother and your father donated you the same number we call
20 that a homozygous so we just list that number once.

21 But like as I stated, if there's two numbers there then
22 we consider that heterozygous meaning that your mother and
23 your father donated you two different numbers.

24 And essentially what we do is I go through each one of
25 the evidence profiles and I determine whether or not the DNA

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1 profile from my known contributors can be included or
2 excluded.

3 And we just go through each location. And we are
4 looking for correspondence in the numbers between each
5 location. And we use that to determine whether or not an
6 individual is included or excluded.

7 Q. And with respect to this chart is this something that
8 is generally accepted in the scientific community?

9 A. Yes, it is.

10 Q. Okay. Other labs are using the same kind of techniques
11 and procedures that you have described here?

12 A. Yes, they are.

13 Q. And then, Mr. Stewart, is your work analyzed or
14 reviewed by anybody to ensure the accuracy of your
15 information?

16 A. Yes, it is. We have a two-tier review process. The
17 step -- the first step is a technical review. That is done
18 by one of my peers. And then we also have an admin review.
19 That is done by a senior analyst.

20 So our work is reviewed twice before it is sent out and
21 it is submitted to different agencies.

22 Q. And your superiors that reviewed your reports today
23 concur with your results and your analysis?

24 A. Yes, they did.

25 MR. BOURDON: Your Honor, I have no further questions.

CROSS-EXAMINATION BY MS. GAY OF SAMUEL STEWART

1 Please answer any from Ms. Gay.

2 THE COURT: Cross-examine.

3 MS. GAY: Yes, sir. Thank you.

4 **CROSS-EXAMINATION BY MS. GAY OF SAMUEL STEWART:**

5 Q. Hi. How are you this afternoon, this morning?

6 A. Good afternoon.

7 Q. What is State's Exhibit 49; which is I think you were
8 on Page 4 of that one. Do you have a copy of it or is it --
9 it is over here. I have it for you, sir.

10 A. Is it my report?

11 Q. Yes.

12 A. All right. I have a copy.

13 Q. You have a copy?

14 A. Yes, I do.

15 Q. Okay. Great. Okay. So the things that were sent to
16 you to be analyzed, the cutting from the shirt from Brandon
17 Marshall, pursuant to your procedure in your office in SLED
18 would you have been aware that that was a cutting that was
19 supposed to have blood on it from the serologist who
20 submitted it?

21 A. Yes, I would know that.

22 Q. Okay. You did. So that 1.1 which is a -- it is
23 supposed to have blood on it from the shirt was then
24 analyzed by you and on Page 2 of your report you have
25 findings -- I don't know if you can even read that. Maybe

CROSS-EXAMINATION BY MS. GAY OF SAMUEL STEWART

1 you could read that section to us again, sir, the one that
2 starts with about the 1.1 and the 10 matches.

3 A. Okay. The DNA profile developed on Items 1.1 and 10
4 match the DNA of Brandon Marshall. The probability of
5 selecting an unrelated individual having a DNA profile
6 matching these items is approximately one in one hundred and
7 seventy quintillion.

8 Q. Okay. So in laymen's terms, that blood was his?

9 A. Yes, I can say that within a degree of scientific
10 certainty.

11 Q. Okay. It was Brandon Marshall's?

12 A. That is correct.

13 Q. And then I believe the second one was the swab from the
14 shirt. Would you have been aware from the serologist that
15 that was the process that where they sort of just I think
16 they call it ownership to rake some things off to see if
17 they can determine if it was that person's shirt?

18 A. That is correct, yes.

19 Q. So you would in the course of your testing you would
20 have known that that swab was about ownership?

21 A. That is correct.

22 Q. And so it was about who or what may have had contact
23 with that fabric?

24 A. That is correct.

25 Q. And is that a good way to describe what ownership is?

CROSS-EXAMINATION BY MS. GAY OF SAMUEL STEWART

1 A. Yeah, essentially we are trying to figure out like who
2 the shirt may have come in -- they say come in contact or
3 who may have been the owner of that piece of item. Piece of
4 item. Excuse me.

5 Q. Right. And so when you say -- you said exactly what I
6 wanted you to say, you came in contact with. And then on
7 that one which is the -- could you read the section again to
8 the jury about Section 1.2...

9 A. The partial DNA profile developed on Item 102 is a
10 mixture of at least two individuals. The DNA profile of the
11 major contributor to this mixture matches the DNA profile of
12 Brandon Marshall.

13 The probability of randomly selecting an unrelated
14 individual having a DNA profile matching the major
15 contributor to this mixture is approximately one in two
16 hundred and seventy billion.

17 Due to limited genetic information obtained the DNA
18 profile of the minor contributor to this mixture is
19 insufficient for interpretation.

20 Q. And I believe you specifically said when asked by the
21 solicitor that it was possible that Anthony Williams could
22 have had contact with that shirt, you just couldn't say?

23 A. That is correct.

24 Q. But it is evident that someone else other than Mr.
25 Marshall their partial DNA was on the shirt?

CROSS-EXAMINATION BY MS. GAY OF SAMUEL STEWART

1 A. That is correct.

2 MS. GAY: I have no further questions, Your Honor.

3 THE COURT: Redirect.

4 **REDIRECT EXAMINATION BY MR. BOURDON OF SAMUEL STEWART:**

5 Q. And, Mr. Stewart, it is possible that that small sample
6 is the defendant's as well; is that not correct?

7 A. Well, he is the major contributor there. But as far as
8 the minor contributor, as I stated, it is just -- it is just
9 so partial I just really couldn't say who is there.

10 Q. That is a hair that we are talking about?

11 A. Item 1.2 was the cut -- the swab from the shirt.

12 Q. Okay. And from your testing are you able to determine
13 the age of a sample of blood that has been submitted?

14 A. I'm sorry, could you please repeat ---

15 Q. Could you tell the age of a sample, like how long the
16 blood had been on a particular item when you are doing your
17 DNA test?

18 A. No, I cannot.

19 Q. Okay. And also with respect to touch DNA wouldn't
20 there be more material needed to do a touch DNA analysis as
21 opposed to a blood or a -- a blood drop on an item?

22 A. Depending upon -- it is possible to get DNA with a
23 little bit from a lot. It just depends on I guess the
24 amount that is left on there.

25 MR. BOURDON: No further questions, Your Honor. Thank

RECROSS-EXAMINATION BY MS. GAY OF SAMUEL STEWART

1 you.

2 THE COURT: Recross.

3 MS. GAY: Thank you, Your Honor.

4 **RECROSS-EXAMINATION BY MS. GAY OF SAMUEL STEWART:**

5 Q. I don't want to beat a dead horse, but what I am
6 telling -- what I am finding in this report and I want to
7 confirm with you is that on that item, the shirt, there was
8 evidence of those separate types of DNA?

9 A. Two individuals. There are two separate individuals.
10 That is correct.

11 Q. Right. One of them, the major contributor, was Mr. --
12 my client, Brandon?

13 A. That is correct.

14 Q. And then there was some piece of DNA, obviously not
15 enough to test, but it did indicate that another human had
16 at some point made contact with the shirt?

17 A. That is correct.

18 Q. And you can't tell us who and you can't tell us when.
19 But at some point there is somebody else that had contact
20 with it?

21 A. That is correct.

22 Q. And he just said something about touch DNA requiring
23 more. It appeared to me as a layman that what you said is
24 not really, it just depends on how much DNA there is?

25 A. That is correct.

1 Q. Okay.

2 MS. GAY: I have no further questions, Your Honor.

3 THE COURT: All right. You may step down. Call your
4 next witness. Who is the next witness?

5 MR. OSBORNE: The State calls Dr. Nicholas Batalis.

6 THE COURT: Okay.

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: Please state your first and last name and
9 spell your last name loudly and clearly into the microphone.

10 THE WITNESS: My name is Nicholas Batalis,
11 B-A-T-A-L-I-S.

12 **DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS:**

13 Q. Dr. Batalis, where are you currently employed?

14 A. I am employed at the Medical University of South
15 Carolina here in Charleston.

16 Q. And in what capacity are you employed there?

17 A. I am employed there as an associate professor in the
18 Pathology Department with my main job being as a forensic
19 pathologist.

20 Q. And what is your educational background?

21 A. As far as my background I completed my undergraduate
22 degree at Butler University in Indianapolis, Indiana. Then
23 completed medical school at Indiana University School of
24 Medicine. After graduation I came down to Charleston at
25 MUSC for general train -- or residency training in general

1 pathology.

2 Pathology is a field of medicine that deals with the
3 diagnosis of disease. So a pathologist would be the one if
4 your surgeon or a medical doctor takes a biopsy they would
5 give it to the pathologist who would make the diagnosis.

6 Also pathologist runs the laboratory. So if you have
7 blood work draw we are the ones that run the laboratory and
8 help your doctor interpret those results.

9 After completing four years of training in general
10 pathology I became -- passed a certification test to become
11 board certified then went on to a one-year specialty
12 fellowship in forensic pathology at the Dallas County
13 Medical Examiner's Office.

14 Again after that one year of fellowship passed another
15 examination to become board certified in forensic pathology
16 and then took my current position just about eight years
17 ago.

18 Q. And as a forensic pathologist do you have the occasion
19 to perform autopsies?

20 A. Yes. Forensic pathology is a subset of pathology that
21 deals with the legal aspects of medicine. The main -- one
22 of our main jobs is being performing autopsies.

23 Q. Over your career approximately how many autopsies do
24 you think you have performed?

25 A. I don't have an exact count. But somewhere around

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 2,000 autopsies.

2 Q. Have you ever been qualified as an expert in the field
3 of forensic pathology?

4 A. Yes, approximately 50 times in South Carolina, twice in
5 North Charleston, and once in Texas.

6 Q. Have you ever failed to qualify as an expert?

7 A. I have not.

8 Q. Your Honor, at this time we would request Dr. Batalis
9 be qualified as an expert in the field of forensic
10 pathology.

11 THE COURT: Do you care to examine him as to
12 qualifications?

13 MS. GAY: No. No.

14 THE COURT: You will be permitted to render opinions in
15 the area of forensic pathology.

16 Q. All right. Dr. Batalis, did you have the occasion to
17 perform an autopsy in this case on victim Anthony Williams?

18 A. Yes, I did. On May 22nd, 2014.

19 Q. And did you determine within a reasonable degree of
20 medical certainty a manner and cause of death for Mr.
21 Williams?

22 A. Yes, I did.

23 Q. And what are they?

24 A. The cause of death was gunshot wounds of the trunk.
25 And the manner of death was homicide.

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 Q. Okay. Were you able to determine a height and weight
2 for Mr. Williams?

3 A. Yes, I did. The decedent Mr. Williams was 75 inches in
4 length. So approximately 6'3" and weighed 200 pounds.

5 Q. And was a toxicology panel done on the victim?

6 A. Yes, it was.

7 Q. And what were the results?

8 A. So just to explain for the jury, as part of the autopsy
9 we collect various fluids and tissues from the body. We
10 then send the appropriate fluids to a national laboratory
11 that performs toxicology testing. The test looks for a
12 couple of hundred different drugs including medications you
13 might take over the counter, prescription medications and
14 illegal drugs.

15 In this case we did that and it was positive for a
16 blood alcohol concentration of .131 percent. Also detected
17 was Delta 9 THC which is the essentially the parent drug in
18 marijuana. And a breakdown product of marijuana.

19 Q. All right. Are you able to -- or do you have any
20 opinion as to what effect, if any a blood alcohol
21 concentration of that level would have on an individual?

22 A. I don't know what that concentration would have on a
23 specific individual. Everybody will handle alcohol
24 differently. It is not an insubstantial concentration.

25 To put things in perspective, the limit to drive is

1 .08. So he is above that. But again, I don't know exactly
2 what the effects would have been for a specific individual.

3 Q. All right. Let's talk about the other positive in the
4 victim's toxicology, the Delta 9 THC. So when you see that
5 type of result what does that indicate to you?

6 A. So to find that Delta 9 THC, the parent drug of
7 marijuana, tells us that he would have ingested or used the
8 drug within a couple of hours before his death. So it is
9 nothing that would have been the day before or two day
10 before.

11 If we just see the breakdown product we wouldn't know.
12 But having that -- the parent drug in his system we know
13 that it was in his system within a couple of hours before he
14 died.

15 Q. And this may be hard to answer as well, but do you have
16 any opinion of that 3.4 number what kind of affect that
17 might have had on the victim?

18 A. Not particularly. It is not a particularly high
19 concentration. But like alcohol everybody's effects will be
20 different under the influence of marijuana. And there is
21 not quite the linear relationship.

22 With alcohol we know if you get beyond a certain level
23 you are going to be inebriated. With marijuana we don't
24 really have that linear relationship.

25 But certainly he could have been under the influence.

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 But it was not a sky-high amount or anything like that.

2 Q. And no cocaine, no stimulants, in the toxicology?

3 A. No.

4 Q. Okay. I am showing you now, Dr. Batalis, what has been
5 marked as State's Exhibit 27. And can you tell the jury
6 what this is and who prepared this?

7 A. Sure. So this is a diagram I prepared after the
8 completion of the autopsy that shows the major injuries in
9 this case. When we were doing the course of the autopsy
10 that day we do a similar body diagram; but it has height,
11 weight, tattoos, scars. Kind of a much dirtier diagram.
12 This is made more simple to show the pertinent injuries.

13 What I have notated with one, two, three, and four are
14 different gunshots that I found when I examined the body.
15 The numbers don't indicate what order the wounds came in or
16 the severity of the injury.

17 It is essentially is just as I looked at the body the
18 first one I saw I said number one and went so along and so
19 forth from there.

20 Also the arrows that are leading off the numbers if
21 there is a circle that designates an entrance wound. So all
22 of the entrance wounds are going to be on the side of the
23 photo showing the front of the body.

24 If there is an "X" that indicates an exit wound. And
25 if there is a "B" that indicates a recovered bullet

1 associated with that with the entrance.

2 Q. Okay. So let's just go ahead and get started. And we
3 will start with bloodshot labeled Number One. Again, this
4 doesn't mean this was the first shot. This is just Gunshot
5 Label Number One, correct?

6 A. Correct.

7 Q. All right. So gunshot labeled Number One can -- were
8 you able to determine any type of trajectory into the body?

9 A. We were. So we determined the trajectory based on
10 essentially the entrance wound, the exit wound, and tracing
11 that through.

12 In this case you can see that the entrance wound is
13 kind of the upper left side of the chest kind of right where
14 your collar bones comes to contact your sternum. So lower
15 neck, upper left side of the chest. The exit wound was on
16 the upper right side of the back.

17 So this bullet tracked across the body from left to
18 right. It also went obviously from front to back since it
19 came in on the front, came out on the back, and just went a
20 little bit down. So essentially kind of towards me would be
21 kind of down like this (motioning).

22 Q. Okay. So let's talk about the impact when the bullet
23 first hit the skin, the entrance wound. When you are doing
24 your autopsies do you try to make any determination in
25 reference to how far the skin was from the barrel when the

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 shot was fired?

2 A. Sure. So there are a couple of things we can do to
3 help estimate the range of fire. When a gun is fired
4 obviously a bullet is going to come out of the barrel of a
5 gun, but a couple of other things come out as well that can
6 help us determine how far the barrel of the gun might have
7 been from the decedent.

8 The first is what we call soot. So when the gun is
9 fired there is an explosion in the gun that has the bullet
10 exit the gun.

11 As a result of that explosion there is this cloud of
12 kind of burnt up gunpowder or soot. That will travel six
13 inches to a foot depending on the weapon, the ammunition,
14 all sorts of factors there. So if we see that we know it is
15 within a foot or so.

16 If it is a contact we can actually see the imprint of
17 the gun on the skin. The other thing that is going to come
18 out other than the soot is pieces of gunpowder that aren't
19 consumed in that explosion when the trigger is fired that
20 either fly out unburned or still burning as they fly out of
21 the barrel of the gun.

22 Since this isn't smoke, it is actually little
23 particles, they can fly a little bit further. They can
24 strike the skin and cause scrapes or small burns, what we
25 call stippling.

1 Stippling will extend out to two to four feet from the
2 barrel of the gun depending on again the type of gun, the
3 type of ammunition.

4 So in the absence of soot, the absence of stippling,
5 and if there is no intermediary target. So if the bullet
6 did not go through a wall, heavy clothing, a door, we can
7 say with confidence that the barrel of the gun was at least
8 two to four feet from the decedent.

9 Q. Okay. So if the decedent wasn't wearing a shirt and
10 the bullet was fired within a prox --- a closer proximity,
11 say two to four feet, would that increase the chances of you
12 seeing stippling or soot?

13 A. Yes, within two to four feet, again, with no shirt and
14 no intervening object you would expect to see stippling for
15 sure. And again, within a foot you would expect to see
16 soot.

17 Q. Okay. So did you see stippling or soot with the
18 entrance to gunshot labeled Number One?

19 A. I did not see any with Gunshot Number One or for that
20 matter any of the gunshots in this case.

21 Q. And so that leads you to the conclusion that when the
22 barrel of the gun when it was fired the barrel was at least
23 two feet -- two to four feet away from the skin?

24 A. Correct.

25 Q. Okay. Let's move on to gunshot labeled -- well, before

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 we move on, I don't know that we talked about this. What is
2 some of the injuries that were caused by gunshot labeled
3 Number One?

4 A. Sure. Gunshot Number One was -- I mean they are all --
5 they all cause significant injuries. But probably cause the
6 most significant injuries.

7 After going through the -- again, the collar bone on
8 the upper left side of the chest as the bullet made its way
9 across the body it went through the trachea which is the big
10 windpipe that takes air from your mouth into your lungs.

11 It went through the aorta. So the aorta is the big
12 blood vessel that is going to take blood from your heart to
13 the rest of your body. Then it went through the right lung
14 before exiting the right side of the back.

15 As a result of this there was quite a bit of bleeding
16 that was actually inhaled into the lungs, kind of swallowed
17 into the lungs, and then also that collected within the
18 right pleural cavity. So the space that kind of the right
19 side of the chest where your lung sits there was quite a bit
20 of blood that had filled up in that right side.

21 Q. Would this gunshot have caused the victim difficulty in
22 breathing?

23 A. Certainly because of the blood, again, that was being
24 aspirated or swallowed into the lungs and also with the
25 blood accumulating around the right lung it wouldn't be able

1 to open up and close down like it normally would.

2 In addition it had a gunshot hole through it which
3 would also affect the dynamics.

4 Q. Would this have been a fatal gunshot?

5 A. Is certainly could have in and of itself without the
6 other wounds.

7 Q. Are you able to draw any conclusions as to - and you
8 may not - as to how long the defendant might have been able
9 to live after this gunshot without receiving any medical
10 attention?

11 A. Without any treatment you would expect, you know, maybe
12 a couple of minutes. There's nothing here that was struck
13 that would cause an immediate incapacitation. But, again,
14 you would have significant bleeding from going through the
15 aorta, going through the right lung.

16 You know, I have seen cases in the past to where they
17 have been documented to walk down the street, to climb a
18 fence. So you could have lived for a couple of minutes. It
19 could have been for a matter of seconds. It is going to be
20 a descent amount of variation there.

21 Q. Seconds and minutes?

22 A. Correct.

23 Q. Before I forget, gunshot labeled two, three and four
24 would any of those shots have caused blood to accumulate in
25 the victim's lungs?

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 A. No.

2 Q. All right. So you talk about a trajectory. Is the
3 trajectory in gunshot labeled one more consistent with the
4 victim facing the shooter or bladed to the shooter?

5 A. The fact that the major pathway was from left to right
6 would indicate that the barrel of the gun would have been as
7 you said bladed or at an angle.

8 If he was facing the shooter it is possible, but it
9 would have to -- kind of stuck his hand out to the side in
10 order to get that pathway across the body.

11 Q. He had to come out like that (motioning)?

12 A. Correct.

13 Q. Okay. All right. So now we can move on. Gunshot
14 labeled Number Two can you describe the trajectory of that
15 gunshot?

16 A. Sure. So as you can see here Gunshot Wound Number Two
17 is on the abdomen just right of center. This bullet the
18 predominant pathway on this one was front to back. It
19 essentially went mostly straight through the body. It did
20 go a little bit downward and just a little bit from the
21 decedent's left to his right.

22 But the predominant pathway here was kind of going
23 straight through; again, a little bit downward, a little bit
24 to the decedent's right.

25 Q. Any signs of soot or stippling with that gunshot?

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 A. No, there was not.

2 Q. Okay. And describe to the jury some of the injuries
3 that gunshot caused.

4 A. So Gunshot Wound Number Two also went through some
5 significant structures. After going through the skin on the
6 abdomen -- right underneath that is your liver, so liver is
7 a very important organ that bleed a fair amount. Went
8 through the liver, then the adrenal gland.

9 So the adrenal gland sits on top of your kidney. It
10 has a lot of important functions for your hormones, various
11 hormones that regulate things in your body. So a critical
12 organ. After going through that adrenal gland then just
13 went through deep tissues of the back and exited.

14 As a result of that, again there was significant
15 bleeding that accumulated in the abdomen around the liver
16 associated with that wound.

17 Q. Okay. Would this gunshot (pointing) be more consistent
18 with facing a shooter or turned to the side?

19 A. This one would be more consistent facing the shooter
20 with the barrel, again, being almost straight in line with
21 the body. Again, maybe a little bit downward. Again, there
22 was just a slight variation to the decedent's right. But
23 more in line with a straight-on shot.

24 Q. Okay. Gunshot labeled Number Three, this is the only
25 gunshot projectile that stayed in Mr. Williams' body; is

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 that correct?

2 A. Correct.

3 Q. All right. So gunshot labeled Number Three, any
4 trajectory on this?

5 A. Yes, the Gunshot Wound Number Three entered the right
6 side of the groin as is shown on the diagram. This one
7 predominantly traveled across the body from right to left.

8 So, again, the first one was going left to right; the
9 second one, straight back. The one on the groin, the right
10 side of the groin, predominately is crossing the body the
11 other way; so going from his right to his left, also a
12 little bit front to back, and then again just a little bit
13 downward.

14 Q. Okay. And what type of injuries did this gunshot
15 cause?

16 A.. So this wound we are kind of almost decreasing in
17 severity here. It certainly was significant, could have
18 contributed to the bleeding in the abdomen.

19 After it passed through the groin it went through a
20 couple of loops of the intestines and then embedded itself
21 into the left side of the pelvis.

22 So, again, there was a fractured of the pelvis,
23 perforations of the intestine, and some bleeding associated
24 with the -- with those injuries.

25 Q. Any signs of soot or stippling with that gunshot wound?

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 A. There was not.

2 Q. Okay. Just to recap where we are at. Gunshot labeled
3 Number One, assuming that you are the shooter, gunshot
4 labeled Number One could have come from him being bladed;
5 correct?

6 A. Certainly.

7 Q. Gunshot labeled Number Two could have been from him
8 facing the shooter?

9 A. Yes.

10 Q. But gunshot labeled Number Three would have been him
11 turning the opposite way, again, not facing the shooter, ---

12 A. Correct, ---

13 Q. --- possibly?

14 A. --- again, unless the other situation would be facing;
15 but the gun would have to be held out at out to the side to
16 get that trajectory across the decedent's body.

17 Q. And to get that trajectory he would have had to have
18 held it with different hands, correct?

19 A. Or really kind of awkwardly reached across (motioning).

20 Q. All right. Let's move on to gunshot labeled Number
21 Four. What is the trajectory on that gunshot?

22 A. So Gunshot Wound Number Four showing the picture you
23 can see the exit and entrance wounds are very close to one
24 another. This one (pointing) essentially just went through
25 the skin and the very superficial tissues.

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 This one (pointing) the predominant trajectory was
2 front to back but also went a little bit upward and then a
3 little bit, again, from the decedent's left to his right.

4 So the exit wound was really on the outer surface of
5 the thigh. The entrance wound was a little bit more on the
6 front of the thigh.

7 Q. This is mostly soft tissue wound here (pointing) here;
8 any organs or anything?

9 A. Correct. No, this soft tissue no deep vessels, no
10 vital structures were injured -- were injured by this
11 bullet.

12 Q. Okay. This is not a fatal shot; or maybe it was
13 but ---

14 A. Not immediately. If you went a couple of days without
15 getting treated you could get infection, you could slowly
16 seep out. But in all likelihood this would not be a fatal
17 shot.

18 Q. Any signs of soot or stippling with this shot
19 (pointing)?

20 A. No, there is not.

21 Q. Might this shot be consistent with the shooter being on
22 the ground shooting up at his victim?

23 A. That is one way in which it could occur.

24 Q. Might it also be consistent with the shooter facing
25 down at the victim?

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 A. Yes, if you are facing down if the decedent's leg was
2 kind of bent at an angle you could get that upward
3 trajectory despite the gun being angled downward.

4 MR. OSBORNE: Your Honor, at this time I am showing
5 State's Exhibit Number 28.

6 THE COURT: Okay.

7 Q. And we are going to go backwards here. Is that a
8 photograph showing gunshot labeled Number Four?

9 A. It is.

10 Q. And, again, that it to the victim's right upper leg,
11 thigh area?

12 A. Correct. The entrance wound is going be towards the
13 top of the picture next to the red tag. The exit wound is
14 where my tag is located, the white marker. The wound
15 nearest that is going to be the exit wound.

16 Q. All right. I am showing you State's Exhibit Number 29.
17 Can you tell the jury what this is showing?

18 A. Sure. So anytime we have a case with gunshots we
19 perform x-rays to locate any bullets or other evidence left
20 behind. This is an x-ray of the decedent's pelvis.

21 The marker on the right side of the screen is just a --
22 it is an upside down "R". So that is something we use just
23 so we know which side is which, right or left.

24 But then if you look kind of in the middle it looks
25 like there is kind of an oval, an empty area where in the

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 middle of the pelvis; and there is a dark object off to the
2 left side. And so that is the main bullet that we recovered
3 associated with that Gunshot Wound Number Three.

4 Q. So just so I understand. This is not -- this x-ray is
5 taken facing the victim, not his back?

6 A. Correct. Yeah, the -- he is laying on the table. That
7 actually would be shot straight down.

8 Q. Okay. I am showing you now what's been marked as
9 State's Exhibit Number 31. Do you see gunshot labeled
10 Number One and Number Two on there?

11 A. I do. Gunshot Wound Number One at the very top of the
12 picture just again at the base of his neck, if you can
13 imagine where his collar bone is coming in to the midline.
14 Gunshot Wound Number Two is mid abdomen a couple of inches
15 below where the nipples are just right of midline.

16 Q. Okay. Now as a result of your autopsy you also examine
17 not only fatal gunshot wounds or anything of that nature but
18 you also examine other injury to the victim?

19 A. Correct. As part of the exam we start with an external
20 exam looking at the body head to toe for basic stuff; eye
21 color, hair color or any injuries, any natural disease. And
22 then as we go through the body internally we do the same.

23 Q. Did you observe any signs of injury to the victim other
24 than what we have talked about?

25 A. There was three small scrapes on that decedent. One

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 was a quarter inch and was on his left foot. And then there
2 were two scrapes or abrasions up to a half inch - so
3 slightly bigger - that were on his left knee.

4 Q. I am showing you State's Exhibit Number 30. I know it
5 is going to be kind of difficult to see the one on his left
6 foot, but there is also a scrape on his left knee there?

7 A. Correct.

8 Q. So you said that you examined him for injuries from
9 head to toe?

10 A. Correct.

11 Q. Did you see any injuries on Mr. Williams about his
12 face?

13 A. I did not.

14 Q. Did you see any injuries on Mr. Williams about his
15 chest?

16 A. On -- not outside of the gunshot wounds that we have
17 already mentioned.

18 Q. Thank you.

19 MR. OSBORNE: Beg the court's indulgence.

20 THE COURT: Yes, sir.

21 Q. So the injury to his left right there, are you able to
22 draw any conclusion as to how fresh that injury might have
23 been?

24 A. Relatively fresh. We didn't see significant healing.
25 So I don't think it was from a couple of days ago. So I

DIRECT EXAMINATION BY MR. OSBORNE OF DR. NICHOLAS BATALIS

1 would say relatively approximate within, you know, a couple
2 of hours to a day of death.

3 Q. Thank you, Dr. Batalis.

4 MR. OSBORNE: No further questions.

5 THE COURT: You may cross-examine.

6 **CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS:**

7 Q. Hey, how are you today?

8 A. Good. How are you?

9 Q. A couple of things I wanted to ask you about. First of
10 all a homicide, what is the definition of a homicide?

11 A. So a homicide is, in more of a medical definition, is
12 the death at the hand of another. So that's about a simple
13 as I could put it.

14 Q. So it is not a word that implies a crime or anything;
15 it is just a medical word that means a death at the hands of
16 another?

17 A. Correct. Again, the whether it is a crime or not is up
18 to law enforcement and solicitors. Mine is from a medical
19 standpoint, correct.

20 Q. I understand. And pursuant to this situation you
21 created a report. Did you bring a copy of your report with
22 you?

23 A. I did.

24 Q. Okay. And if you need to refresh your recollection on
25 that report. I just want to ask you about the toxicology

CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS

1 which becomes extremely important.

2 You've testified that the blood-alcohol level of
3 Anthony Williams was .131 percent?

4 A. Yes.

5 Q. And you have also testified -- and there was some
6 discussion about your opinion about how that would affect a
7 person, but you don't have any information to bring to this
8 jury today about how it would have affected Anthony
9 Williams?

10 A. No. I believe I stated that earlier, correct.

11 Q. Right. And you said that, you know, .08 is the legal
12 limit; and he was certainly over that?

13 A. Yeah, I believe I said it was a legal limit to operate
14 a vehicle. And yes, he was about one and a half times that.

15 Q. And you said that there was THC in his body and that
16 THC is unique because it wasn't a metabolite; it had to be
17 something that was consumed close to the time of his death?

18 A. Right. Within a couple of hours.

19 Q. Okay. And in your report you specifically said - I
20 think it is Page 2 of your report - that that stuff that is
21 in his body at that time was a depressant reality
22 distorting, it had -- it is a depressant and it has reality
23 distorting effects?

24 A. So the information you are reading from is provided by
25 the laboratory that does the testing for us. So every drug

CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS

1 that they detect they provide a little synopsis of how the
2 drug is classified from a pharmacological standpoint.

3 Q. And this is -- this stuff, this report, came -- is
4 part -- and it was included as part of your report?

5 A. I included the findings, the positive findings in my
6 report; correct.

7 Q. Right. And it said specifically also that there would
8 have been a difference if it was just metabolite. Like if
9 he had gotten high the day before or earlier in the day or
10 in the past 30 days or something like that there would have
11 been different things in his body?

12 A. Correct. He did have one metabolite. It kind of
13 varies from person-to-person. Sometimes they have two
14 different metabolites or breakdown products. But he did
15 have one of the breakdown products that detected.

16 So again, if you only had that metabolite we wouldn't
17 know when it came; but having the parent drug does nail the
18 time -- timeframe down.

19 Q. Right. So the metabolite presence meant that he
20 probably had smoked in the past?

21 A. Correct.

22 Q. Or used some form of marijuana in the past?

23 A. Correct. With the past meaning it could be, as --
24 yesterday. It could be two days ago. In the blood the
25 metabolite isn't going to last longer than a couple of days.

CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS

1 Q. I understand. And when the solicitor asked you about
2 the body and what was on the body, in the diagram we have
3 one of the things that he asked you about I think the word
4 is stippling?

5 A. Correct.

6 Q. And soot. And you describe that stippling and soot
7 have to do with the stuff that comes off of a gun when there
8 is a shot fired?

9 A. Correct.

10 Q. And you said that soot would be something -- I guess
11 maybe one way to look at it was if the gun was, you know,
12 very very close to somebody, almost touching them, or I
13 think that is where the twelve to six -- six to twelve
14 inches is what requires for there to be soot?

15 A. Correct.

16 Q. So if I am standing next to you I have to get like all
17 the way up to here (motioning) to get some soot on you, or
18 somewhere close?

19 A. Correct.

20 Q. Okay. And then the stippling you refer to is as -- we
21 have had some other people testify in this trial about the
22 stuff, the metal pieces that come out of the gun that --
23 maybe refer to it as gunpowder that doesn't burn or things
24 like that. That is the stippling?

25 A. Those things strike the skin and causes the changes on

CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS

1 the skin. The changes on the skin are the stippling.

2 Q. Okay.

3 A. But they are caused by, yeah, the burning on -- burning
4 gun powder.

5 Q. So they are like little burn holes or something that
6 actually affects the skin cells?

7 A. Correct.

8 Q. I was a little confused. I'm sorry. I thought it was
9 a debris. I apologize.

10 A. Yeah, the debris flying out of the gun that strikes the
11 skin and causes scrapes or burns.

12 Q. Okay. And in order to have that, you said -- your
13 testimony was is that the person who has been shot would
14 have to be somewhere between two and four feet of the person
15 who is shooting them with a gun?

16 A. From within the barrel of the gun.

17 Q. Right. And so two to four feet. Let's try to
18 determine how that much is.

19 (Motioning). That is probably what, close to two and a
20 half?

21 A. I would say this is probably a foot here (motioning).

22 Q. Okay. Let me ---

23 A. Two and a half is probably somewhere around the water.

24 Q. You are scientific. Do you think that you are three to
25 four feet from me at this point, or am I farther away?

CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS

1 A. If I put my hand out I would said I am probably three
2 feet.

3 Q. Okay. So three feet is going to be about there
4 (motioning). And then four feet is going to be right here
5 (motioning). We are going to be pretty close?

6 A. No. I think you are twisting my words around.

7 Q. I'm sorry.

8 A. I am saying you are three feet from me currently.

9 Q. Okay.

10 A. Then you got closer ---

11 Q. So I have to come back to be four feet?

12 A. Correct.

13 Q. Okay. So this is four feet or close to it (motioning)?

14 A. Approximately.

15 Q. Okay. And in this case on this body, on this gentleman
16 Mr. Williams, you didn't find any of those scrapes?

17 A. Correct.

18 Q. And you said that -- when he was discussing with you
19 the angle of the bullets - and you are not a trajectory
20 expert; you are a medical examiner -- or a pathologist?

21 A. I would disagree. I think determining trajectory is
22 part of being a forensic pathologist.

23 Q. Well, let me do it this way. You are the person who
24 can tell us the angle of the bullet when it went in the
25 body; that is the trajectory of the bullet? I might be

CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS

1 confused.

2 A. Correct. I can testify to the relationship of the
3 barrel of the gun to the body when it was fired.

4 Q. Okay. So in this case we have several bullets, but you
5 don't have any information about the sequence of the bullets
6 that hit the body?

7 A. Correct. I am not sure which order they came.

8 Q. Right. And this one right here which is three, that
9 one you said is almost -- no, I'm sorry, two. I apologize.
10 Two. Two is almost straight on?

11 A. Just about.

12 Q. And I think that you said -- so he actually described
13 it when Mr. Williams was in front of the gun he had to have
14 been in front of the gun straight for it to be that way?

15 A. Right, I mean you are standing. That could have
16 been -- I don't know the positions of the body. But the
17 barrel of the gun to the body would have been almost
18 straight on from one another.

19 Q. Okay. And then Bullet Number Three, the one that was
20 lodged in his pelvic, you said that there was discussion
21 about whether he would have turned this way (motioning) or
22 that way (motioning). And you said well if he went this
23 strange angle.

24 But for the most part it is almost a sideways kind of
25 situation where the gun and Mr. Williams' body would have

CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS

1 had to have been at an angle so that it goes and -- goes in
2 and just sort of goes sideways and stays in the body?

3 A. Correct. So if the court reporter had the weapon, the
4 angle you were standing right there it would get about the
5 same trajectory.

6 Q. Okay. And then Mr. Osborne asked you that if it went
7 this way (motioning), and you said oh he would have had to
8 have held the gun in some strange kind of way if he was
9 turning this way (motioning)?

10 A. If the body -- yeah, if the body was in a different
11 position to get to that so the bullet could enter the right
12 side of the pelvis you would have to really contort your --
13 with the barrel of the gun.

14 Q. And then the Number Four Bullet which is down here
15 (pointing), that is the bullet that was somewhat superficial
16 in the sense that it just went through his leg. And it
17 actually has a little bit of an upward angle?

18 A. Correct.

19 Q. And I think Mr. Osborne asked you, well, is that
20 consistent with when the shooter would have been below the
21 body and then if the bullet goes in that it kind of comes
22 out upward?

23 A. Correct.

24 Q. And then he said or if you are standing over the body
25 and doing -- and shooting in a different manner; that is

1 what you -- y'all were discussing?

2 A. Correct.

3 Q. But there is no doubt that certainly that bullet could
4 have occurred by somebody lower, the gun being lower than
5 the victim in this case?

6 A. Correct.

7 Q. And then the bullet that seems to be the most damaging
8 to his body is Bullet Number One. And that's -- I'm going
9 to try to do this again.

10 If the court reporter has got the gun and I am turning,
11 I have to turn this way (motioning) to have it go through;
12 or ---

13 A. No.

14 Q. --- I have to turn this way (motioning)?

15 A. Exactly. Because the entrance wound is right about
16 where your left hand is touching.

17 Q. So let's say that somebody was over here (motioning)
18 and I was turning this way (motioning), it would go that
19 way? So if there is -- if the gun is here, okay, and then
20 we have a bullet straight on, we have a bullet that went
21 somewhat this way (motioning) and up, and then we have --
22 and here I am the person that's being shot, and turns this
23 way (motioning) is how -- from left to right; is that
24 correct?

25 A. Yeah, I am getting turned around. But yeah, the bullet

CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS

1 traveled across the body from his left to his right side of
2 his back.

3 Q. So if the gun is over here (motioning) ---

4 A. So excuse me, you would have to stay right where you
5 are. Turn a little bit to the left.

6 (WHEREUPON, Ms. Gay complied.)

7 A. Right there.

8 Q. So the gun is over here (motioning).

9 THE COURT: He just told you, Ms. Gay. Come on.

10 MS. GAY: Okay.

11 THE COURT: Move on.

12 Q. And I just turned this way, and that is the way it
13 went, to the left; it goes in from the left to the right
14 straight?

15 A. Left to right. Yeah, the turning is confusing me.

16 Q. I'm sorry. Well, and that is all I really want to ask
17 you is that, you know, it appears -- would it be consistent
18 with your thoughts on this that the person who -- Mr.
19 Williams was in many different positions during the course
20 of these four bullets? He is not standing in one place with
21 four bullets coming all at one -- in the one angle?

22 A. Correct, it would be unlikely with the injuries he
23 suffered for him to stand there like a statute and somebody
24 kind of walk around.

25 But, again, all I can testify to is that the pathway is

CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS

1 going through there. You know, as I wasn't there at the
2 time.

3 Q. And so -- and that's --

4 MS. GAY: I need to confer with my client.

5 THE COURT: Certainly.

6 (WHEREUPON, Ms. Gay confers with client.)

7 Q. And these scratches and things that were on his knees I
8 believe the solicitor had you say that they didn't appear --
9 they appeared to be fresh; they didn't have healing on them?

10 A. Correct.

11 Q. You don't have any idea how he may have acquired those
12 injuries?

13 A. There's a lot of different ways to get scrapes on your
14 feet and knees, so I don't.

15 Q. Well, when you received the body did it have shoes on
16 it?

17 A. No. When we received the body it had previously cut
18 pants, a belt, and underwear.

19 Q. And do normally when they bring you the body do they
20 bring you in the same -- for the most part the same clothing
21 and state that they would have found them at the scene?

22 A. Yes. And we communicated with the coroner's office,
23 with authorities with at the scene. And after they get
24 transferred to the hospital the -- once the person is
25 deceased essentially leave the body as it is for our

CROSS-EXAMINATION BY MS. GAY OF DR. NICHOLAS BATALIS

1 examination.

2 Q. So would it be fair to say that the man didn't have on
3 shoes when this happened?

4 A. He didn't have on shoes when we received the body.

5 Q. All right. Thank you.

6 THE COURT: Redirect.

7 MR. OSBORNE: No, Your Honor.

8 THE COURT: Thank you.

9 You may step down.

10 Do you wish the witness to be excused?

11 MR. OSBORNE: Yes, Your Honor.

12 THE COURT: Any objection?

13 MS. GAY: No.

14 THE COURT: Thank you, Dr. Batalis.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: You are free to leave as well.

17 All right. Ladies and gentlemen, at this point we will
18 take our recess for lunch. Please remember you are not
19 permitted to talk about this case among yourselves. And you
20 are certainly not permitted to allow anybody to talk about
21 it in your presence or talk to you about it.

22 I would ask you to return to your jury room please by
23 two o'clock. We will resume the trial at that time. Thank
24 you.

25 (WHEREUPON, jury exits the courtroom 4/6/16, 12:39 p.m.)

STATE VS.. BRANDON MARSHALL

1 THE COURT: Is there anything from the State before we
2 recess?

3 MR. OSBORNE: No, Your Honor.

4 THE COURT: Anything from the defendant before we
5 recess?

6 MS. GAY: No, Your Honor.

7 THE COURT: Okay. We will be back at two o'clock.

8 (WHEREUPON, scheduling discussions were had.)

9 (WHEREUPON, break for lunch was had 4/6/16, 12:40 p.m.)

10 (WHEREUPON, State's Exhibit Number 71, photograph - Davonte
11 Middleton, was marked for identification.)

12 (WHEREUPON, State's Exhibit Number 72, photograph - text, we
13 should hang on, was marked for identification.)

14 (WHEREUPON, State's Exhibit Number 73, transcript -
15 Marshall's interview w/Burckhardt, was marked for
16 identification.)

17 (WHEREUPON, State's Exhibit Number 74, photograph - receipt
18 for gun range, was marked for identification.)

19 (WHEREUPON, resume 4/6/16, 2:01 p.m. with scheduling
20 discussions.)

21 (WHEREUPON, break was had 4/6/16, 2:02 p.m.)

22 (WHEREUPON, resumed 4/6/16, 2:08 p.m.)

23 THE COURT: Is the State ready?

24 MR. OSBORNE: Yes, Your Honor.

25 THE COURT: Is the defendant ready?

1 MS. GAY: Yes, sir.

2 THE COURT: All right. Very well. Let the record
3 reflect Mr. Marshall is present. Let's bring in our jury,
4 please.

5 (WHEREUPON, jury enters courtroom 4/6/16, 2:10 p.m.)

6 THE CLERK: All jurors are present.

7 THE COURT: Thank you very much.

8 Thank you, ladies and gentlemen. I hope you had a good
9 lunch. We are ready to continue. Solicitor, you may call
10 your next witness.

11 MR. OSBORNE: Thank you, Your Honor. The State calls
12 Detective Paul Krasowski.

13 (WHEREUPON, the witness was duly sworn.)

14 THE CLERK: Please state your first and last name and
15 spell your last name loudly and clearly for the record.

16 THE WITNESS: Paul Krasowski. And my last name is
17 spelled K-R-A-S-O-W-S-K-I.

18 **DIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE PAUL**

19 **KRASOWSKI:**

20 Q. Detective, where do you work?

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

22 Q. And how long have you worked there?

23 A. Just shy of ten years now.

24 Q. What are some of the various assignments that you have
25 had with since you have been with CPD?

DIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE PAUL

KRASOWSKI

1 A. Upon completion of the Criminal Justice Academy I began
2 in regular patrol. And that was in the Team Three area. I
3 went into a bicycle patrol unit which is down in the Market,
4 for a period of time; and then I transitioned into
5 investigations.

6 So I began in the Robbery Division and then was
7 transferred over to the Violent Crimes Unit which is
8 commonly called the Homicide Unit.

9 Q. How long did you work the Robbery Unit?

10 A. I worked in the Robbery Unit for approximately two --
11 about two years.

12 Q. And in the Violent Crimes Unit?

13 A. That is again going on about two-and-a-half years now.

14 Q. And what type of crimes do you investigate in the
15 Violent Crimes Unit?

16 A. So obviously we worked homicide investigations. We
17 also work death investigations which include suicide or any
18 kind of suspicious type deaths.

19 We work aggravated assaults from shootings down to
20 lower end aggravated assaults as well. And anything
21 involving a firearm for the most part.

22 Q. And you have been through various training I guess to
23 help you with your job?

24 A. I have. So there is obviously yearly department
25 training that I go through. In addition I have sought out

DIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE PAUL
KRASOWSKI

1 additional interrogation and interview training courses.

2 And also there is one specific course that was specifically
3 for homicide investigation, and it was crime scene
4 management and just managing a homicide investigation.

5 Q. Okay. Did you have the occasion to become involved in
6 this murder investigation with the victim being Anthony
7 Williams?

8 A. I did have involvement in this investigation.

9 Q. And how did that come about?

10 A. So this occurred during the overnight hours. Which
11 during that period of time I was working regular dayshift
12 hours. So I was actually called in from sleep.

13 So Detective Burckhardt had responded. He notified our
14 supervisor who then in turn called me. And I also responded
15 to that scene.

16 Q. And what did your role end up being in this
17 investigation?

18 A. I became the case agent. So my initial response -- the
19 case agent status isn't known most of the time at that
20 point. It is kind of -- it is a teamwork effort. So we are
21 all just working equally and filling in any of the gaps that
22 we need to.

23 And after everything has settled down a little bit
24 within the first few days I was assigned to be the case
25 agent.

DIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE PAUL
KRASOWSKI

1 Q. All right. So you responded to [REDACTED] that night?

2 A. I did.

3 Q. Tell the jury what you did when you responded to the
4 scene.

5 A. So I responded about 3:40 in the morning, which is
6 almost an hour after this incident occurred. Upon my
7 arrival I saw that the crime scene was set up. There was
8 crime scene tape. And there were actually two layers of
9 crime scene tape which is customary.

10 And I made contact with Detective Burckhardt pretty
11 early on. And he was able to give me a briefing on what we
12 had at that point in time. And he gave me a direction since
13 he had a working knowledge since his response of what the
14 next steps needed to be done.

15 Q. Did you have the occasion to draft any search warrants
16 for this case?

17 A. I did. So once I responded and was briefed on the
18 basic facts of it, we recognized that there were two search
19 warrants that were more important at that point. One being
20 [REDACTED]. So that was -- that took first priority.
21 And the second priority was going to be the search warrant
22 for the defendant's vehicle.

23 Q. Okay. And did you get search warrants for those two
24 locations?

25 A. I did get search warrant for those.

DIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE PAUL
KRASOWSKI

1 Q. All right. So you learned that the victim lived at 9-B
2 Wilson Street?

3 A. I did.

4 Q. And why would you get a search warrant for that
5 location?

6 A. Well, we didn't know exactly what we had. We knew that
7 the victim -- we had an idea, but we just wanted to make
8 sure that we crossed our "t's", dotted our "i's". That we
9 knew that the victim, the defendant, and also the witness
10 Ashley, all had been at that residence for a good portion of
11 the night leading up to this incident; so that way we wanted
12 to make sure that we had a search warrant to make entry into
13 that residence to search for any other additional evidence.

14 Q. Did you find any evidence of note to the investigation
15 while searching 9-B Wilson?

16 A. We did. So we did collect a variety of evidence in the
17 investigation. And one thing of particular we located
18 clothing, a bag of clothing that was at the bottom of the
19 staircase.

20 And this was important for a couple of reasons. Number
21 one, on top of that -- in that clothing, that pile of
22 clothing, there was a wallet that had the victim's ID card
23 in it, his wallet. And so it corroborated her statement
24 because she said that she had been coming down the stairs
25 with clothing that she was retrieving for him. So it

DIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE PAUL
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1 goes -- it went along with her statement very well.

2 Q. All right. I am showing you State's Exhibit Number 43.

3 Is this the clothing that you referred to?

4 A. Yes, that is the clothing.

5 Q. Do you remember if you found anything of importance
6 inside the pants?

7 A. Yes. And that is going back to what I had just said.
8 There was a wallet that belonged to the victim. Had his ID
9 card in that wallet.

10 Q. I am showing you State's Exhibit 44.

11 A. And that is the wallet I was talking about and the ID
12 card.

13 Q. Okay. You -- did you end up searching the victim's
14 vehicle?

15 A. So I got the search warrant signed for the vehicle.
16 And at the time of our response for security purposes the
17 car was towed by a tow company over to our crime scene
18 office for them to process the vehicle.

19 So I didn't have any -- I didn't have any hands in it,
20 if you will, of searching the vehicle. It was brought to
21 our crime scene office.

22 I got the search warrant signed. And once I had the
23 search warrant signed I notified the Crime Scene Division
24 that we had a valid search warrant at that time for them to
25 process the vehicle.

DIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE PAUL
KRASOWSKI

1 Q. Did you find anything of note in the victim's vehicle?

2 A. The victim's vehicle was also searched. And that was
3 brought to Crime Scene. And there was a firearm that was
4 located in that vehicle.

5 Q. Do you remember the caliber of the firearm?

6 A. I do. So it was a 45 caliber. And it was located in
7 his glove compartment in his vehicle.

8 Q. And the shell casings found on the scene do you recall
9 what caliber that was?

10 A. Yeah, they were a nine-millimeter. So two distinctly
11 different ammunition.

12 Q. Was there any evidence to indicate that the victim's
13 firearm was fired?

14 A. There was no evidence whatsoever.

15 Q. Or that it had left the vehicle during this incident?

16 A. No, there was nothing to suggest that occurred.

17 Q. All right. Did you have the occasion to search the
18 defendant's vehicle?

19 A. Again, so I got the search warrant for that vehicle.
20 And that vehicle once I had the judge's signature on it I
21 notified our Crime Scene Division that there was a valid
22 search warrant and they conducted the search of his vehicle.

23 MR. OSBORNE: Your Honor, may I approach?

24 THE COURT: You may.

25 Q. I am showing you what has been marked as State's

DIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE PAUL
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1 Exhibit Number 70. Can you take a look at that?

2 A. I can. So these -- these are two liquor bottles,
3 tequila bottles, that were in -- recovered during the search
4 of the defendant's vehicle. And this goes along with what
5 he said that they had been drinking that night.

6 Q. And where were --

7 MR. OSBORNE: Your Honor, I am not sure that State's
8 Exhibit 70 is in, but if it isn't I would request that it be
9 moved into evidence.

10 THE COURT: Any objection.

11 MS. GAY: I have no objection, Your Honor.

12 THE COURT: Without objection State's 70 is admitted.
13 (WHEREUPON, State's Exhibit Number 70 had been previously
14 admitted.)

15 Q. All right. Do you recall where -- and I am showing you
16 State's Exhibit 70 now on the ELMO. Do you recall where
17 this item was recovered from?

18 A. Those were noted as being in the trunk of the vehicle.

19 Q. All right. Did you have the occasion to speak to Ms.
20 Butler that night?

21 A. I did. So I spoke with her partially during my
22 search -- the execution of the search warrant. I did a very
23 brief follow-up with her just to get some of the basic
24 facts.

25 And later on about two weeks after the incident I had a

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1 more formal interview where it was an audio recorded
2 statement where she came down to the station to provide
3 that.

4 Q. Without getting into the detail of what she told you
5 but as a result of that interview did you have the occasion
6 to do any additional follow-up?

7 A. I did. So actually I pulled a fair amount of video
8 surveillance in this investigation. And that stemmed from
9 the very brief statement that I obtained from her at the
10 time of the search warrant.

11 So she had said -- she had kind of given me a timeline
12 of when the defendant had come to her residence and also
13 when he briefly left the residence to -- to get a mixer for
14 their drinks. And she said I believe somewhere around
15 10:30-ish is that when he left there briefly. And so I was
16 able to trace some of his steps.

17 And she also indicated that he might have bought the
18 mixer drinks at the Little Cricket off -- in the Market
19 area. So I went to the Little Cricket, viewed their video
20 surveillance and sure enough was able to obtain him on video
21 surveillance.

22 And on top of that the City of Charleston has various
23 video surveillance cameras in the Market area and King
24 Street area, and I was able to trace -- retrace some of his
25 steps going -- coming to and going from the convenience

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1 store.

2 Q. Okay. So the video just helped corroborate what had

3 been told to you in regards to the defendant's whereabouts

4 when he left the house?

5 A. Yes.

6 Q. Okay.

7 MR. OSBORNE: Your Honor, may I approach?

8 THE COURT: Yes.

9 Q. I am showing you now what has been marked as State's

10 Exhibit Number 58. Now as a result of this investigation

11 did you have an occasion to request a forensic search of the

12 victim's phone?

13 A. I did. So a forensic search is a download of the

14 contents of the phone. It is through a Cellebrite

15 download. And it just extracts the data that is on the

16 phone.

17 Q. And is that the victim's phone?

18 A. This is the victim's phone.

19 Q. Did you -- did you have a chance to review those

20 contents?

21 A. I did.

22 Q. Did you find anything in those contents that helped

23 further the murder investigation?

24 A. No. There was nothing that assisted the investigation

25 one way or another in the phone.

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1 Q. Okay. Did you have the occasion to take buccal swabs
2 from the defendant?

3 A. I did. So as you heard earlier today, the buccal swab
4 is for a DNA sample. And I obtained that from the
5 defendant.

6 Q. And what were you looking to compare that DNA to?

7 A. So we know that he had the firearm, through his
8 statement, that he had the firearm that -- so we collected
9 that firearm. So again, we are just additionally
10 corroborating all of that, his statement, and making sure
11 that his DNA was on that firearm.

12 Q. And you had to get a search warrant to obtain his
13 buccal swab?

14 A. That is correct. So that is a search of somebody.
15 There is an expectation of privacy. So again, I completed a
16 search warrant, got it signed by judge, and met with him at
17 the county jail and obtained that buccal swab.

18 Q. Okay. Let's talk about that just briefly now. The
19 date of this incident was May the 22nd; is that correct?

20 A. That is correct.

21 Q. Do you remember the date that you met with the
22 defendant at the jail?

23 A. Yes, that was May 30th.

24 Q. All right. That would have been seven to eight days
25 later; ---

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1 A. That is correct.

2 Q. --- is that correct?

3 A. That is correct.

4 Q. Now tell the jury when you take an individual's buccal
5 swab walk them through that process. What is that like?

6 How do you do that?

7 A. So the buccal swab is just a saliva sample. It is the
8 least invasive way to obtain someone's DNA. So there are
9 two sterile Q-tips that we have in a kit. And after I read
10 the search warrant to him and advise him that the warrant
11 was actually signed by a judge he complied.

12 There was no -- there weren't any issues with that. He
13 allowed me take the sterile Q-tips and swab the inside of
14 his mouth between his lip and his gum. And I did that two
15 times. Each -- for each Q-tip. And then put them in a box
16 and submitted them as evidence.

17 Q. When you were retrieving the defendant's buccal swab
18 did you notice any injuries to him?

19 A. No, there were no injuries apparent.

20 Q. All right. Did you have the occasion to examine the
21 defendant's phone?

22 A. We did -- I did also do a digital download of that
23 phone.

24 Q. Okay.

25 MR. OSBORNE: Your Honor, may I approach?

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1 THE COURT: Yes, sir.

2 Q. I am showing you State's Exhibit Number 60. Can you
3 take a look at that.

4 A. Yes.

5 Q. Does that appear to be the defendant's phone?

6 A. This is his phone..

7 Q. Did you find anything relevant in the defendant's phone
8 in reference to this murder investigation?

9 A. Again, there was nothing that helped this investigation
10 in this phone in the contents.

11 Q. Okay. Did you learn if the defendant purchased a gun?

12 A. We did. So during his statement he said that he
13 purchased the firearm soon before the murder actually and he
14 purchased it at Gene's Pawn Shop which was located in North
15 Charleston.

16 Q. And did you have the occasion to verify that?

17 A. I did. I made contact with the manager there and she
18 was able to verify that that gun was in fact purchased I
19 believe it was on the 13th of May.

20 MR. OSBORNE: Your Honor, I am showing the witness
21 State's Exhibit 62. It is already marked and admitted.

22 THE COURT: Very well.

23 Q. Can you see the date on there?

24 A. If you go up. Yeah, May 13th. And that is a six --
25 6:00 p.m.

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1 Q. And who made the purchase?

2 A. It was Brandon Marshall made the purchase.

3 Q. May 13th of what year?

4 A. 2014.

5 Q. And when did the murder happen, again?

6 A. May 22nd of 2014.

7 MR. OSBORNE: No further questions, Your Honor.

8 THE COURT: You may cross-examine.

9 **CROSS-EXAMINATION BY MS. GAY OF DETECTIVE PAUL KRASOWSKI:**

10 Q. So -- hi, how are you? When you went out to the house
11 you said that you had a brief conversation with Ashley and
12 that made you understand that some stuff had occurred inside
13 the house before everything that went on outside the house?

14 A. That is correct.

15 Q. And so pursuant to that you decided to get a search
16 warrant?

17 A. That is correct.

18 Q. And in the search warrant y'all found some -- didn't
19 you also find an ammunition box?

20 A. We did. We found a firearm box that contained
21 ammunition. I am not sure if the firearm box contained a
22 box of ammunition or just additional ammunition. But yes,
23 firearms-related.

24 Q. And then did you -- do you recall that there was like
25 evidence of alcohol drinking on the table?

CROSS-EXAMINATION BY MS. GAY OF DETECTIVE PAUL KRASOWSKI

1 A. There was. It was consistent with what they had been
2 telling us.

3 Q. Right. And that is very important that it was
4 consistent with what you were telling them, because if you
5 had gone in and never found a liquor bottle anywhere it
6 wouldn't have been -- it wouldn't have made much sense or
7 the people wouldn't have been necessarily been telling you
8 the truth?

9 A. Potentially.

10 Q. Potentially?

11 A. Yes.

12 Q. And so as you went inside and you saw that there was
13 evidence of drinking and such, any marijuana or anything
14 like that in there?

15 A. We didn't see any illicit drugs in there.

16 Q. And I think that Mr. Osborne asked you about the search
17 warrants. You didn't need a victim -- a search warrant for
18 the victim's car; you just looked in it?

19 A. That's correct.

20 Q. Because that wouldn't have had an expectation ---

21 A. Expectation ---

22 Q. --- of privacy?

23 A. That is correct.

24 Q. And then you said that there was a firearm in the glove
25 box?

CROSS-EXAMINATION BY MS. GAY OF DETECTIVE PAUL KRASOWSKI

1 A. That's correct.

2 Q. And he made it -- he said but there was no evidence
3 that it would have been used or anything. But you don't
4 really know what happened with that gun earlier in the
5 evening?

6 A. Well, there were no shell casings of a 45 caliber
7 located anywhere around the scene..

8 Q. I understand. But and with regard to my client's, Mr.
9 Marshall's car did require a search warrant and you got one?

10 A. That's correct.

11 Q. And when they went in there they found what he had told
12 you that you -- they would -- you would find?

13 A. And that is the firearm you are speaking of?

14 Q. Yes.

15 A. Yes.

16 Q. So he had said there will be a gun in my car, it is
17 over there?

18 A. That is correct.

19 Q. And one of the things about being the case agent
20 is that you collect supplemental reports from all the
21 different -- different other officers that responded to the
22 area?

23 A. I do.

24 Q. And not that you were -- going to -- here to talk about
25 those reports, but you are gathering them up; that is your

CROSS-EXAMINATION BY MS. GAY OF DETECTIVE PAUL KRASOWSKI

1 job?

2 A. That is.

3 Q. And you said that you had been -- you had even taken a
4 class in case management to make sure that nothing got out
5 of place?

6 A. Yes.

7 Q. And so when he -- so you are aware that the first
8 responding officers and people out there had indicated that
9 there would be a gun in the car based on what Mr. Marshall
10 said?

11 A. Yes, that is correct.

12 Q. And so you go and you find the gun. And that is in
13 this car. This is State's 11. So this is the car. So
14 State's 11. Do you recognize this?

15 A. Yes, that vehicle was on the scene when I arrived.

16 Q. This is the Fusion that was involved. And then this is
17 12. And this is the firearm. Correct?

18 A. That is correct.

19 Q. And then here is 13. And all of this is what Mr.
20 Marshall had said that this would be in the car?

21 A. That is correct.

22 Q. And then also I believe that they -- he -- Mr. Osborne
23 showed you this picture which is Number 70. And in this
24 picture we have two bottles of alcohol?

25 A. That is correct.

CROSS-EXAMINATION BY MS. GAY OF DETECTIVE PAUL KRASOWSKI

1 Q. And in those -- one of them kind of looks like it has a
2 little bit more in it than the other one. Was that -- is
3 that consistent with what you see? One is transparent, so
4 it is difficult.

5 A. Yeah, it is a little difficult. But I -- I wouldn't --
6 I would agree.

7 Q. And those were in the trunk just like Mr. Marshall had
8 said, that I had picked up my bag with my alcohol in it and
9 put it in my car?

10 A. Yes.

11 Q. And that was consistent with what he said?

12 A. Yes.

13 Q. Just like what Ms. Butler told you was consistent with
14 what she said?

15 A. That is correct.

16 MS. GAY: Hold on one moment, Your Honor.

17 THE COURT: Okay.

18 MS. GAY: I have no further questions for this witness,
19 Your Honor.

20 THE COURT: Very well. Redirect.

21 MR. OSBORNE: No, Your Honor.

22 THE COURT: Thank you. You may come down.

23 THE WITNESS: Thank you.

24 THE COURT: Call your next witness, please.

25 MR. OSBORNE: The State calls Detective Richard

CROSS-EXAMINATION BY MS. GAY OF DETECTIVE PAUL KRASOWSKI

1 Burckhardt.

2 (WHEREUPON, the witness was duly sworn.)

3 THE CLERK: Please state your first and last name and
4 spell your last name loudly and clearly into the microphone.

5 THE WITNESS: My name is Richard Burckhardt. That is
6 B-U-R-C-K-H-A-R-D-T.

7 **DIRECT EXAMINATION BY MR. OSBORNE OF DETECTIVE RICHARD**

8 **BURCKHARDT:**

9 Q. Detective, let's start by introducing yourself to the
10 jury a minute. Where do you currently work?

11 A. I am currently employed in the Federal District Court
12 as a security officer for the United State Marshall's
13 Service.

14 Q. And how long have you worked there?

15 A. Since the end of November 2015. After I retired from
16 27 years with the CPD.

17 Q. Okay. For 27 years with the Charleston Police
18 Department during that 27 years what are some of the various
19 assignments that you held?

20 A. I attended the South Carolina Criminal Justice Academy
21 1988. Upon graduation from the Academy I was assigned and
22 appointed to various patrol districts throughout the city
23 where I worked several years.

24 After that I moved into investigations. I was
25 appointed to the Drug Enforcement Administration in a task

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1 force capacity as an investigator.

2 During my time in the Violent Crime Unit I was also
3 appointed to the Federal Bureau of Investigation and their
4 Violent Crime Unit.

5 The last 17 years of my 27 was involved in criminal
6 investigations.

7 Q. During that 17 years were you in the -- or your last 17
8 years, were you in the Violent Crime Unit the entire time?

9 A. Yeah -- yes, the last 17 were pretty much Violent
10 Crime.

11 Q. Okay. Let's go back to the 9th of May the 22nd of
12 2014. Were you working that night?

13 A. I was. I was the duty detective assigned to the City.
14 I was on duty that night.

15 Q. Okay. Did you have the occasion -- well, tell the
16 jury. What does that mean to be a duty detective?

17 A. So the investigative unit has detectives. The way it
18 is structure I believe still to this day. At the CPD is we
19 have investigator detectives that work around-the-clock. We
20 have five shifts -- or had five shifts.

21 That particular night I was on a -- well, on an evening
22 shift. And we would respond as requested to any incident
23 that required an investigation to be conducted.

24 Q. And a homicide would be such an investigation, right?

25 A. Absolutely.

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BURCKHARDT

1 Q. Did you have the occasion to respond to the homicide
2 investigation related to this case?

3 A. Yes, I did.

4 Q. Okay. And that was at [REDACTED] I think?

5 A. That was.

6 Q. All right. When you first arrived on the scene just
7 briefly walk the jury through what you did.

8 A. So when I arrived I was called to that particular
9 scene. As in what I try and accomplish on almost every
10 scene I meet with the responding uniformed officers which
11 are typically the first to arrive. I try and get a briefing
12 by the officers to tell me from their standpoint what
13 knowledge they have obtained, what had taken place, if there
14 are witnesses to be interviewed, if there were suspects
15 arrested; some questions of that along those lines.

16 Q. And you have the occasion to give an overview or get an
17 overview from your own sight sometimes of the crime scene?

18 A. Yes.

19 Q. In this case do you remember going back and looking at
20 the victim?

21 A. Yes.

22 Q. Do you recall if he was wearing a shirt?

23 A. I believe he was shirtless. There was no shirt.

24 Q. And I think there was a woman named Ashley Butler in
25 this case?

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BURCKHARDT

1 A. Yes.

2 Q. Was someone speaking to her or had someone's spoken to
3 her?

4 A. Yes. It's my recollection there was -- she was
5 outside. She was pretty frantic obviously of what she
6 discovered outside of her apartment.

7 Q. Did you have the occasion to speak to her?

8 A. I did.

9 Q. Did you interview other people on the scene?

10 A. Yes. So I interviewed Ms. Butler, a female
11 acquaintance of the victim. There was a couple of -- 9-B
12 Wilson Street is a City housing project. And there was a
13 couple of other individuals that had made their way to the
14 scene. I wasn't sure whether they were actual eyewitnesses
15 to the incident. I spoke to them briefly. And they were
16 not. They actually didn't see the event happen.

17 Q. All right. Were there any vehicles of interest in the
18 investigation?

19 A. Yes. Yes, there was two. One belonging to the victim
20 and one belonging to the defendant Brandon Marshall. Mr.
21 Williams had a Ford Fusion; and the victim had a Caprice,
22 Chevy Caprice.

23 Q. Do you remember the Ford Fusion was running or turned
24 off?

25 A. The -- I believe his ---

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1 Q. What have you got there?

2 A. Yeah, I think the Fusion was off and the Caprice was
3 running.

4 Q. The victim's car was running?

5 A. Yes.

6 Q. Okay. Did you see the defendant on the scene?

7 A. I did. He was -- I was informed by the uniformed
8 officers on -- at the scene that the defendant was being
9 detained in the rear of a CPD cruiser.

10 And he was kept under guard by one of the CPD officers.
11 It might have been Officer Henderson.

12 Q. Okay. Did you tell that -- did you give that officer
13 some instructions on what to do with the defendant?

14 A. I did. I told him that I wouldn't be conducting any
15 interviews, interrogation, there on the street, that I
16 needed him to just keep him there until -- my plan and
17 ultimate decision was to have him transported to CPD
18 headquarters for a formal interview.

19 Q. Okay. Did you have the occasion to meet the defendant
20 at CPD?

21 A. I did.

22 Q. And do you recall about what time that was?

23 A. Yes, I think it was somewhere in the neighborhood of
24 4:00 a.m. or thereabouts.

25 Q. All right. And just to be clear, when you are meeting

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1 with the defendant at CPD I mean he is not free to go is he?

2 A. No, he is not.

3 Q. Do you recall about what time the defendant left the
4 interview room?

5 A. It would have been approximately four hours later,
6 putting it somewhere around 8:00 a.m.

7 Q. All right. Did you interview him the entire four
8 hours?

9 A. Not the entire four hours. There was breaks. I know I
10 got up, left a couple of times. The entire four hours
11 wasn't a constant dialogue, no.

12 Q. During -- because I guess you have paperwork to do; is
13 that correct, that is part of it?

14 A. Yes, there was all of the associated paperwork that you
15 would have to do after something like this and the
16 processing of the defendant to get him transported.

17 Q. And I think maybe his clothing was -- and there were
18 some other crime scene things that needed to be done as
19 well?

20 A. Yes. And in this case as in many cases I have worked
21 like this what is standard operating procedures is we would
22 take the defendant's clothing and bag them separately. For
23 example, shirts, pants, and things like that.

24 Q. And I think photographs were taken of the defendant; is
25 that correct?

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1 A. There were photographs taken, yes.

2 Q. All right. So during your time with the defendant did
3 he appear to be intoxicated to you?

4 A. No.

5 Q. Did he appear to be under the influence of any drugs?

6 A. No.

7 Q. Did he appear to have any physical or mental disability
8 that would have impaired his ability to talk to you or to
9 understand your questions?

10 A. No. In my estimations he was very lucid and we had a
11 normal conversation.

12 Q. And you mentioned this; but I mean did you deny him any
13 breaks, water, bathroom breaks?

14 A. No, I didn't deny him anything like that.

15 Q. Did you make any threats to him?

16 A. No.

17 Q. Did you promise him anything in exchange for his
18 statement?

19 A. No.

20 Q. I'm showing you now what's been marked as State's
21 Exhibit Number 40.

22 MR. OSBORNE: This has already marked and admitted,
23 Your Honor.

24 THE COURT: Okay.

25 Q. Now when you start your interview what is one of the

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1 first things that you do as a detective?

2 A. A criminal interview I would basically explain to the
3 suspect in front of me that I was going to issue a standard
4 Miranda warning which is ---

5 Q. You -- I'm sorry. Go ahead. I'm sorry.

6 A. It is just the issuance of his rights.

7 Q. Okay. Do you recognize this (pointing)?

8 A. Yes.

9 Q. And what is this?

10 A. That is the standard Miranda card has two sides. The
11 first side being the five rights that are read verbally.
12 And that would be the back side of the card that is
13 initialed or signed by the defendant as well as the warning
14 officer, which is me. And dated and timed.

15 Q. And the signature above suspect's signature, whose
16 signature is that?

17 A. Brandon Marshall.

18 Q. Okay. And what time was this done?

19 A. 4:20 a.m.

20 Q. And these are the Miranda rights ---

21 A. Yes.

22 Q. --- that you read?

23 A. Yes.

24 MR. OSBORNE: All right, Your Honor, at this time I
25 would like to publish State's Exhibit Number 39.

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1 THE COURT: All right. Any objection?

2 MS. GAY: The things he just showed, no, I have no
3 objection.

4 THE COURT: To State's 39 for publication.

5 (WHEREUPON, counselors conferred.)

6 MS. GAY: No, the defendant's miranda card?

7 THE COURT: No, the video. Other than the objection
8 previously made ---

9 MS. GAY: Yes, ---

10 THE COURT: --- and we have argued ---

11 MS. GAY: --- to reserve the objection made earlier.

12 THE COURT: Other -- subject to the objection of
13 counsel I will admit State's 39. And the reasons for the
14 court's overruling that objection is stated fully in the
15 record of this proceeding. Okay.

16 (WHEREUPON, State's Exhibit Number 39 was previously
17 admitted into evidence.)

18 (WHEREUPON, break to get audio/video equipment to play
19 State's 39, video.)

20 THE COURT: You may proceed.

21 (WHEREUPON, State's Exhibit 39, video, Clip Number 1, was
22 published to the jury at approximately 4/6/16, 2:42 p.m.)

23 Q. Okay, is this the first image of the defendant entering
24 the interview room?

25 A. Yes.

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1 Q. And was that you that came in and asked him if he was
2 okay while he was out there?

3 A. That is me, yes.

4 MR. OSBORNE: All right. That was Clip Number 1, Your
5 Honor. We are playing Clip Number 2 now.

6 THE COURT: Okay.

7 (WHEREUPON, video, Clip Number 2, was published to the jury
8 at approximately 4/6/16, 2:46 p.m.)

9 Q. All right. Just so we all understand, what did he say
10 there?

11 A. He said -- I believe he said it is too late to
12 Mirandize him.

13 Q. Do you know what he meant by that?

14 A. It is my thought that upon his arrest on the street or
15 his apprehension on the street he perceived that he needed
16 to have been read his rights at that moment.

17 Which is not correct; he was never interviewed, he was
18 never interrogated, he wasn't asked any questions until we
19 got here.

20 Q. So typically you don't advise someone of their Miranda
21 rights until you are ready to question them?

22 A. Yes.

23 Q. And this was the first time he had been questioned?

24 A. Yes.

25 (WHEREUPON, resume publishing video.)

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1 (WHEREUPON, pause video.)

2 Q. What time does that end? Can you see it?

3 A. 4:28 I think.

4 Q. All right. So at that point did you understand the
5 defendant to be asking for a lawyer or an attorney to be
6 present to assist him for the interview?

7 A. No.

8 Q. What did you understand him to be asking?

9 A. I understand him to want an attorney for proceedings
10 that may follow. Typically there is a bond hearing would be
11 the first thing. Preliminary hearing after that.

12 But he clearly stated on a number of occasions that he
13 was okay to talk with me without having a lawyer there in
14 the room.

15 Q. So we wanted a lawyer for proceedings to follow in the
16 future?

17 A. Yes.

18 Q. Like a trial?

19 A. Yes.

20 Q. But not for the interview?

21 A. Not for the interview.

22 Q. So why did you leave?

23 A. We went around and around, as you can see a little bit.
24 While I was doing the interview I had associate detectives
25 that are able to monitor our interview from a remote

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1 location in the office.

2 I stepped out to see if they were hearing and seeing
3 the same thing that I was hearing and seeing. And
4 collectively we all agreed that he was asking for an
5 attorney to be present for proceedings down the road but
6 clearly not for a lawyer to be there at the time of the
7 interview.

8 Q. So what did you decide to do then?

9 A. I went back in and spoke to him and made sure -- went
10 back over it again with him.

11 Q. Okay. If you had understood him to be asking for an
12 attorney to present during the interview what would you have
13 done?

14 A. I would have terminated it immediately.

15 Q. All right. When you we back in did you ask for
16 clarification?

17 A. I did.

18 MR. OSBORNE: Your Honor, we are playing Clip Number 3
19 now.

20 (WHEREUPON, video, Clip Number 3, was published to the
21 jury.)

22 (WHEREUPON, paused video approximately 4/6/16, 3:06 p.m.)

23 Q. All right. I just want to stop it briefly. You asked
24 him, the defendant, if the victim was intoxicated?

25 A. Yes,

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1 Q. And what was his response?

2 A. He believed him not to be intoxicated.

3 Q. In fact I think he said -- or did he, that the victim
4 drank almost as much as he did?

5 A. Yes.

6 (WHEREUPON, resumed publication of the video.)

7 (WHEREUPON, paused video approximately 4/7/16, 3:09 p.m.)

8 Q. All right. The defendant said that when he visually
9 saw it, he saw the argument that turned physical. He said
10 he saw the victim holding Ashley; is that correct?

11 A. Yes.

12 Q. Did he say anything about holding her around the neck
13 or trying to strangle her?

14 A. No.

15 Q. Did he say anything about him being on top of her about
16 to punch her?

17 A. No.

18 (WHEREUPON, resumed publication of video.)

19 (WHEREUPON, paused video approximately 4/7/16, 3:12 p.m.)

20 Q. Was it one sequence of shots; baam, baam, baam, baam,
21 baam, baam, baam; or was there a pause in between?

22 A. He states he shoots him two times at first, the victim
23 goes down, there is a pause and gets up again.

24 Q. And even tells him to stop, right, in between that
25 pause?

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1 A. Yes.

2 (WHEREUPON, resume publication of video.)

3 (WHEREUPON, pause video approximately 4/6/16, 3:13 p.m.)

4 Q. All right. What is the -- this -- he put you there,
5 did he not?

6 A. Yes.

7 Q. And this is him trying to describe how far away he was
8 from the victim when he fired the first two shots; is that
9 what he said?

10 A. Yes.

11 Q. In that interview room right there how far would you
12 estimate you are from him right there?

13 A. Six feet maybe.

14 Q. Okay. So he is six feet away from the victim when he
15 fires the first two shots; is that ---

16 A. Yes.

17 Q. --- correct?

18 A. Yes.

19 (WHEREUPON, resume publication of video.)

20 (WHEREUPON, pause video approximately 4/6/16, 3:15 p.m.)

21 Q. Heard him wheezing while he was on his back?

22 A. Yes. He is describing the victim's last breaths, if
23 you will, while the victim is laying down.

24 (WHEREUPON, resume publication of video.)

25 (WHEREUPON, pause video approximately 4/6/16, 3:16 p.m.)

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1 Q. Okay. When he saw them getting physical, at any point
2 during this entire video does he say something like that he
3 heard Ashley say something to the effect of: Stop hitting
4 me; Stop, Anthony; stop hitting me; don't hit me again?

5 A. No.

6 Q. Did you -- did he ever say that he heard Ashley say
7 anything like that?

8 A. No, he did not.

9 (WHEREUPON, resume publication of video.)

10 (WHEREUPON, pause video approximately 4/6/16, 3:26 p.m.)

11 Q. Where were the glasses when he fired the gun?

12 A. He was wearing them.

13 (WHEREUPON, resume publication of video.)

14 (WHEREUPON, pause video approximately 4/6/16, 3:27 p.m.)

15 Q. Okay, so after the second or third shot the victim got
16 back up and started coming towards him; is that right?

17 A. That is what he said; he said he heard him wheezing.

18 Q. And that is when he heard the punctured lung sound, the
19 wheezing sound?

20 A. Yes.

21 (WHEREUPON, resume publication of video.)

22 (WHEREUPON, paused video approximately 4/6/16, 3:29 p.m.)

23 Q. All right.

24 MR. OSBORNE: What was the time on that? Can you flip
25 up the last image showing the time.

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1 (WHEREUPON, video resumed and paused.) ,

2 Q. And what time did you leave the interview room at that
3 time?

4 A. I'm sorry, I thought -- I missed the time on the
5 corner.

6 (WHEREUPON, video resumed and paused.)

7 A. A little after 5:00 a.m.

8 (WHEREUPON, video resumed and paused.)

9 Q. What time again?

10 A. It is just after -- 5:06 a.m.

11 Q. Okay. From that point on -- and I believe you
12 testified earlier that he did not actually leave the
13 interview room until about 8:30 you said?

14 A. Yes.

15 Q. All right. So from that point on is he interviewed
16 anymore?

17 A. No.

18 Q. I think you talked to him a little bit, but are you
19 interviewing him; do you get anymore pertinent facts about
20 the case?

21 A. No, I didn't go into any detailed interview. There is
22 a processing phase which you obviously have to ask questions
23 if you are filling out paperwork and things like that.

24 There was no -- there was no conversation regarding what
25 took place.

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1 MR. OSBORNE: Your Honor, may I approach?

2 THE COURT: Yes.

3 MS. GAY: I have no objections to what he is going to
4 show.

5 THE COURT: Okay.

6 Q. I am showing you what has been marked as State's
7 Exhibit 32 through 38. Can you just take a look at that?

8 A. Sure. Thirty-two through thirty-eight are color
9 photographs that were taken of the defendant the night that
10 I interviewed him. He was taken inside the interview room
11 that we used at CPD headquarters. It depicts the way he was
12 dressed at the time.

13 Q. Okay. So and that is part of the process, part of the
14 things that were going on during that three-hour ---

15 A. Correct.

16 Q. --- period?

17 A. This would have taken place after my formal interview
18 was done.

19 MR. OSBORNE: Your Honor, I would request 38 -- 32
20 through 38 be moved into evidence. I think without
21 objection.

22 THE COURT: They are admitted a without objection.
23 (WHEREUPON, State's Exhibit Number 32 to 38 were admitted
24 into evidence.)

25 Q. It looks like -- do you recall were those baggy cargo

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1 shorts or do you recall what kind of shorts they were?

2 A. They were standard baggy shorts, yeah.

3 Q. That's okay. Did you notice any injuries to the
4 defendant during your entire encounter with him?

5 A. No.

6 Q. State's Exhibit Number 33, any injuries to his face?

7 A. No.

8 Q. State's Exhibit 34, any injuries to his hands?

9 A. None.

10 Q. I forgot to point out something. I am going to go back
11 to State's Exhibit 32 real quick. During your interview
12 with him did you see any blood on his shirt?

13 A. No, I didn't detect any blood.

14 Q. But you are aware that this shirt was sent to SLED to
15 see if there was any trace of blood on it, right?

16 A. I am aware that was sent, yes.

17 Q. And I think there was a smear of blood found on the
18 shirt?

19 A. That's right.

20 Q. It was unrecognizable to you during the interview?

21 A. Correct.

22 Q. And I think that blood actually came back to the
23 defendant himself?

24 A. It did.

25 Q. I am showing you now State's 35. Any injuries to the

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1 back of his head?

2 A. No.

3 Q. Any injuries to the back of his legs that you observed?

4 A. No.

5 Q. I think there -- did you notice some loose blades of
6 grass to the back of his shorts?

7 A. It is hard for me to say in this photo.

8 Q. Was it something that was apparent to you at the time?

9 A. Not clear on that, no.

10 Q. It is kind of hard to -- I am showing you State's
11 Exhibit 36. Is his shirt right here ripped?

12 A. I don't believe it to be ripped other than maybe
13 pulled, like stretched.

14 Q. I am showing you State's 37. This might be a little
15 better image. Is that the smear of blood that came back?

16 A. I believe that is the same location that was tested,
17 yes.

18 Q. And State's 38. That looks peculiar on his shoes. Did
19 y'all have that tested?

20 A. We did.

21 Q. Did it come back to blood?

22 A. I don't think it did. It gave an appear -- it gave an
23 appearance that night that I was unsure exactly what that
24 matter was, the staining on the Crook shoe,

25 Q. During your entire encounter with the defendant did he

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1 ever complain to you that his back was hurting?

2 A. No.

3 Q. Did he ever say they he had a back injury?

4 A. No.

5 Q. Did he ever say anything that -- regarding his back
6 that would provide an excuse for having to shoot the victim?

7 A. No, there was no -- never -- I was never relayed any
8 information.

9 Q. Did he ever complain about any injuries?

10 A. No, he didn't.

11 Q. What was the victim's height and weight?

12 A. The victim's -- they were both actually 6'2, but there
13 was a 50 pound differential in favor of the defendant.

14 Q. Do you remember how much he did weight, about?

15 A. Two hundred- -- I can check that real quick I think.
16 The victim's height and weight was 6'2", 200 at the time of
17 autopsy. The defendant's height and weight was 6'2", 250
18 pounds according to his DMV Department of Motor Vehicles
19 photo.

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

21 THE COURT: All right. Before we start cross-
22 examination I am going to take a break, let the jury go to
23 their jury room. Do not begin your deliberations. Don't
24 discuss the case. We will be with you in about 10, 15
25 minutes. Thank you.

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1 (WHEREUPON, jury exits courtroom 4/6/16, 3:35 p.m.)
2 THE COURT: Anything from the State before we recess?
3 MR. OSBORNE: No, Your Honor.
4 THE COURT: Anything from the defendant before we
5 recess?
6 MS. GAY: There is more on that tape, and that is ---
7 THE COURT: Ms. Gay, anything ---
8 MS. GAY: Yes.
9 THE COURT: When we come back we will talk about that.
10 MS. GAY: Okay.
11 THE COURT: Okay. Thank you. Thank you.
12 MS. GAY: That's what you had said from the whole
13 thing.
14 THE COURT: Ms. Gay, you -- I said to you that you
15 would have to move it in if you wanted it published. It is
16 your exhibit. You can have it played when we come back in.
17 MS. GAY: Okay. Sure.
18 THE COURT: That is what I said. It is Defendant's
19 Exhibit 3. But you have to request it. You didn't say a
20 word.
21 MS. GAY: Well, you know, I haven't started my case.
22 My
23 THE COURT: That is what I am going -- that is
24 precisely my point; you get to play it when -- whenever you
25 want to play it.