

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

VOLUME II OF IV

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge
R. Markley Dennis, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHANNEN F. RICKS,

APPELLANT

APPELLATE CASE NO 2016-002158

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

State's Exhibit #3 (photo); State's Exhibit #5 (photo); State's Exhibits #14 - #16 (photos); State's Exhibits #21 - #22 (photos); State's Exhibits #27 - #29 (photos); State's Exhibit #37 (photo); State's Exhibits #47 - #48 (photos); State's Exhibits #105 - #106 (photos); State's Exhibit #109 (911 call); State's Exhibit #110 (911 call); State's Exhibit #111 (911 call)

A. DURSO - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. We send all of our stuff to the coroner's office, to
2 SLED. So, all I know is they do the routine drug screen,
3 whatever that involves. I don't have a list in front of
4 me; I do not know.

5 Q. Okay. I want to talk about lastly, Dr. Durso, these
6 injuries that are on State's Exhibit 6.

7 A. Yes.

8 Q. And can you, can you see from that angle?

9 A. I can for the most part.

10 Q. Okay. Trying to make sure the court can see and you
11 can see. On the knees, this -- if I told you that Mr.
12 Pauling was wearing shorts, would you have any reason to
13 disagree with me?

14 A. I would have not any reason to disagree with you, no.

15 Q. Okay. So, on the knees you indicate some, some
16 abrasions?

17 A. Yes.

18 Q. Bright red, if, if I recall the pictures?

19 A. That was a long time, but yes, they are bright red.
20 I, I got back and...

21 THE COURT: If you would, please, Doctor, speak into
22 that microphone. When you turn your head away from the
23 microphone, your voice drops. I can hear it, but I can't
24 always understand you.

25 WITNESS: Okay.

A. DURSO - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 BY MS. ZMROCZEK:

2 A. On the right knee, I said multiple superficial, red
3 abrasions. On the left knee, multiple superficial, red
4 abrasions.

5 Q. An abrasion is a, in layman's terms a ---

6 A. A scrape.

7 Q. A scrape. Dr. Durso, is it possible, in your expert
8 opinion, if someone were to jump on somebody and then take
9 them down in a wrestling move and they had shorts on, is it
10 possible that they could've scraped their knees at that
11 point?

12 A. If they were on a hard surface and their knees hit the
13 hard surface, yes.

14 Q. Okay. Also you pointed out that there were -- now,
15 this is the back of the hand, correct?

16 A. Yes. Let me look back at that. That's actually a
17 scar.

18 Q. Okay. So, that's a scar. What about this right here?

19 A. On the little finger, those were abrasions, dried, red
20 abrasions which usually happen as you're dying. They have
21 the stripe look to them.

22 Q. And that's on the outside of the finger, correct?

23 A. Yes.

24 Q. Okay, but then you have on the inside you actually
25 have some more bright, red abrasions?

A. DURSO - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. Those aren't abrasions. Those are actually
2 lacerations. The laceration actually splits the skin from
3 hitting a hard object.

4 Q. A hard object?

5 A. Like a cement. I was told at one point he might have
6 jumped out a window; it could be from that. I can't tell
7 you specifically what it's from. There was no pattern to
8 it.

9 Q. Okay and, and, and so what you would rely on from your
10 scientific testing, let's say that you were told he was
11 shoved out of -- he jumped out of a window and had a
12 laceration. You would expect to see blood at that site,
13 correct?

14 A. It depends how quickly he started bleeding and how
15 quickly he moved away but, yes, it would start to bleed.

16 Q. So -- and certainly if he traveled some 200 feet, you
17 would expect to see something?

18 A. Depends if he's bleeding from other sites for other
19 reasons. There are a lot of variables that can go into
20 that.

21 Q. Right. So, to just narrow your opinion down that this
22 happened when he fell doesn't account for all these
23 different variables, does it?

24 A. Well, are we saying he fell multiple times or -- I'm
25 not really sure what you're referring to.

1 Q. Let me ask a better question. It's just as plausible
2 as falling when he's shot as getting into a fight where he
3 jumps on someone's back and takes them to the ground. It's
4 just as plausible to get these injuries, correct?

5 A. I wouldn't say the palm injury's really consistent
6 with that, but yeah, any kind of fall where he would hit
7 his protuberant surfaces on the ground, yes.

8 Q. Okay. So ---

9 A. I can't say if he was a in fight or not.

10 Q. You can't say?

11 A. No. He doesn't have any specific injuries to his
12 knuckles, which I typically see when people are punching
13 each other. I did not see anything like that, but whether
14 or not they were rolling on the ground, I would have no
15 idea.

16 Q. Have you seen injuries, Doctor, where there is an
17 object on the ground such as a gun and two people are
18 scrambling for it?

19 A. I do not know of any particular case where I saw
20 specific injuries for that, no.

21 Q. Okay, but on the -- but, but that could be another
22 plausible and reasonable and medical explanation,
23 especially for the scrapes for his knees, correct?

24 A. It's possible but the ones that are more that I
25 described as the dried, red abrasions on his head and his

A. DURSO - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 elbows I believe are more -- they look kind of postmortem,
2 like he was already bleeding from being shot at that point.
3 So, I would expect those happened after he was shot and
4 likely would fall to the ground.

5 Q. And what would you expect to see on the ground if that
6 were the case?

7 A. Not much because he was already bleeding internally
8 from the gunshot wounds.

9 Q. Okay. How much blood would you expect to see in a
10 case like this when someone's been shot three times?

11 A. It varies. He had a lot of blood internally, and
12 sometimes the holes of the skin shrink up and hold the
13 blood in, and other times people pour blood all over. It
14 really varies.

15 Q. So, it's -- so, it's impossible to say ---

16 A. Impossible ---

17 Q. --- unless you're there, right?

18 A. --- to say, right.

19 Q. So, Dr. Durso, is it possible, though, that -- have
20 you been shown any pictures of the incident location and
21 where the shell casings were in relation ---

22 A. No, I ---

23 Q. --- to the body?

24 A. --- have not seen any pictures of those.

25 Q. Okay. I'm showing you what's been marked as State's

A. DURSO - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 8. If you want to come down and look at it just so you can
2 answer the question a little bit better, and if you can't
3 answer the question, that's fine as well.

4 A. You want me to stand there so that the ---

5 Q. Yeah. I want to make sure that, that the court and
6 the court reporter, who are the two most important, can
7 hear you.

8 Is it possible -- were you given any measures -- let
9 me ask it this way. After a person is shot, can they
10 travel some distance?

11 A. Yes.

12 Q. Okay.

13 A. It depends where they're shot, but yes.

14 Q. Okay, and with the injuries that Mr. Pauling received,
15 could he have taken some steps or run a short distance?

16 A. Yes.

17 Q. How, how far would you...

18 A. It's a very difficult question to answer. Most people
19 don't make it more than a few feet after they've been shot
20 through the heart because you need blood flow in order to
21 run. There have been rare instances, some cases where
22 people have run as far as a city block just because some
23 magical burst of adrenaline. So, I can't say. There's no
24 specific set instance -- distance that I know he would be
25 able to run. It varies.

A. DURSO - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 Q. Okay, and indicating on State's Exhibit 8 where my
2 finger is, which is at the corner of building 606, there's
3 a square right there. Do you see that square?

4 A. I do.

5 Q. Okay, and then right here, the circle is where Mr.
6 Pauling's body was found, and certainly this is not drawn
7 to scale, right?

8 A. Okay.

9 Q. But if there were shell casings along this path, is it
10 possible that he was still running and fell here?

11 A. What would you say? That's, like, 10, 15 feet?

12 Q. Less than 10 feet.

13 A. Yes, it's possible.

14 Q. Okay. Thank you. Have a seat.

15 You were certainly told that -- what, what information
16 -- tell the court what information you're provided when you
17 receive...

18 A. I typically receive a report from the corner's office.
19 Sometimes, especially when you're trying to do the cases in
20 a very timely manner -- I don't really need that much
21 information from them to do my part of the job. It was
22 just that he was in a parking lot found with gunshot
23 wounds.

24 Q. Okay. Were you told that there was a -- that he was
25 involved in an altercation prior to that?

1 A. No.

2 Q. Okay. Lastly, Dr. Durso, ethanol and THC, because I
3 can't pronounce that very scientific word, how do they
4 affect, how do they affect people? I mean, like, do they
5 affect people physiologically differently? Do some people
6 -- is it a downer? Is it an upper? So some people get
7 more aggressive?

8 A. Some people get aggressive with alcohol. Others
9 don't.

10 Q. Okay. So, so, you just said that he had a .11, I
11 guess, 1 -- .12?

12 A. Around .11 to .12, yes.

13 Q. Okay. So, you don't know what kind of effect that had
14 on him?

15 A. Like, like physiologically?

16 Q. Right.

17 A. Like as far as his heartbeat and that sort of thing?

18 Q. Right.

19 A. I mean, I know it's not enough to affect his cause of
20 death.

21 Q. Okay. In fact, soot and particle burn powder and
22 things can be, can be altered by clothing, like you said,
23 right?

24 A. Yes.

25 Q. And it doesn't have to be five layers, does it?

A. DURSO - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 A. It depends how thick the clothing is but, you know,
2 just a simple shirt with a sweatshirt pulled over would not
3 be enough.

4 Q. Okay, and would that -- but, but to be sure, you would
5 want to test the clothing, right, to see if there were ---

6 A. If there were doubts, then yes, the clothing would be
7 tested.

8 Q. Okay, and then other, other environmental factors can
9 alter the way a body is presented to you. Certainly you
10 don't go out and do the autopsy ---

11 A. No.

12 Q. --- before people have zipped them up, right?

13 A. Right.

14 Q. Rolled them over?

15 A. Okay.

16 Q. He had leads on him, correct?

17 A. He did have EKG leads, yes.

18 Q. Tell the court what that means.

19 A. Pretty much everybody I get, even if they're obviously
20 dead, has EKG leads on them just because it's protocol.
21 They have to be pronounced dead through EKG leads before
22 they're pronounced dead.

23 Q. So, that means that, that EMTs or other trained
24 professionals come to the body?

25 A. Yes.

1 Q. And they lift the clothes or arrange the body, remove
2 the clothes?

3 A. Sometimes I assume they do, yes.

4 Q. Okay, and you don't know what happened in, in, in, in,
5 in this case, do you?

6 A. I do not.

7 Q. So, we don't know if those cracks on his head were
8 from when he fell or from when they tried to roll his body
9 over, do we?

10 A. It could have happened from then, yes.

11 Q. Okay, especially if, I believe you said, it happened
12 most likely postmortem, right?

13 A. Postmortem or perimortem as he's dying, yes.

14 Q. Okay. So, any movement of the body, that could have
15 happened?

16 A. Yes.

17 Q. And if it's raining, how does that affect what --
18 scientific findings?

19 A. As far as I go, it really doesn't affect much. Soot
20 can be wiped away, but stippling cannot be wiped away.
21 It's actually a scrape on the skin, and I can tell. So,
22 other than that, as far as my findings, it really doesn't
23 make a difference.

24 Q. Okay, and, in fact, the -- an indeterminate range can
25 be, can be when power range made contact with something as

A. DURSO - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 small as, as 1 centimeter, right? That can be, that can be
2 considered an indeterminate range or ---

3 A. I'm kind of ---

4 Q. --- what's ---

5 A. --- confused.

6 Q. What's the lowest number of distance as far as to ---

7 A. Stippling?

8 Q. No, no, no. Soot.

9 A. For, for soot? I mean, you -- we see soot in contact
10 lens.

11 Q. Okay. What scientific significance is it to you,
12 Doctor, that, that, that -- and I know that you can't
13 determine which one of these gunshot wounds happened first,
14 can you?

15 A. I cannot.

16 Q. How do you typically label them?

17 A. I just kind of go from whichever gunshot wound I see
18 first. I just start writing letters. It's very arbitrary.

19 Q. Okay, and how tall is Mr. Pauling?

20 A. He was 73 inches tall. So, 6 foot, 1 inch.

21 Q. And how much did he weight?

22 A. 172 pounds.

23 Q. And did he appear to you to be well developed? Let,
24 let me ask the question this way. Was he overweight?

25 A. No. I do not remember him being overweight.

1 Q. Okay. Did he have muscle definition, if you recall?

2 A. I do -- did not describe his muscle definition, and I
3 have not seen a picture of him since I did this autopsy,
4 and I do not recall.

5 Q. Certainly and, in fact, the last you discussed this
6 was with Mr. Williams just last week. Is that correct?

7 A. That's correct.

8 Q. And that -- at that point is when you came up with the
9 18 to 24 inches?

10 A. No, I'm not -- I say that for every single
11 indeterminate range case. I go through the same speech,
12 yes.

13 Q. So, it's really just a scientific guess?

14 A. Yes. Well, and -- yes. It's based on science.

15 Q. Right. Right.

16 A. Yes. It's an estimation.

17 Q. Estimate, perfect. What scientific significance is it
18 to you that what you label in your anatomical diagnosis as
19 number one, which -- number one, how does that correspond
20 to State's 7?

21 A. So, that's gunshot wound D here, and that goes all the
22 way to gunshot wound -- or the probable projectile here
23 labeled A on the diagram that was under the skin.

24 Q. Okay. So, it traveled from D to A?

25 A. Yes.

A. DURSO - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 Q. Like you said upward?

2 A. Upwards back to front and from -- slightly from right.
3 to left.

4 Q. Okay, and which one is gunshot wound number two?

5 A. That goes from E here kind of in the middle of the --
6 towards, more towards the middle of the back, and that goes
7 to -- let's see, that is actually a projectile that's not
8 on there, but I got it from the right side of the neck, the
9 soft tissue in the right neck.

10 Q. Okay. So, can you point to us where that would be on
11 -- even though it's not on here?

12 A. Around this area.

13 Q. Okay, and that one traveled?

14 A. So, that one goes from, again, back to front upwards
15 and varies slightly from right to left, then away from
16 right to left.

17 Q. And then gunshot wound number three?

18 A. Gunshot wound number three is -- it starts at F. Is
19 the entrance wound, and that actually goes out here in the
20 right kind of armpit area back into the right arm, and then
21 we actually get the projectile from the soft tissue of the
22 right upper arm, and that's labeled sort of here.

23 Q. Okay. What kind of projectiles were these, Doctor?

24 A. I don't proclaim to be an expert on projectiles.

25 Q. Certainly.

1 A. And so I take pictures, and I sign the evidence seal,
2 and we transfer them to the law-enforcement agency.

3 Q. Are you familiar with mushrooming in bullets?

4 A. Yes.

5 Q. Can you tell the judge what that is?

6 A. So, as the bullet expands -- they're usually
7 hollow-point bullets, and so they expand when they hit
8 something.

9 Q. And are those -- is that your limited knowledge of ---

10 A. That is my limited knowledge of them.

11 Q. And those were the bullets that were -- those were the
12 projectiles that were recovered from this body, correct?

13 A. Yes.

14 Q. Okay, and when you say -- oh, well, sorry. Withdraw
15 the question.

16 (A PAUSE.)

17 Q. Dr. Durso, obviously your scientific observations
18 don't change when you are provided with more information on
19 the facts, correct?

20 A. Usually I use it to corroborate and kind of help me
21 decide what the injuries mean.

22 Q. Okay. When -- but these injuries, again, that were on
23 the knees, though, had you known that there was a fight ---

24 A. They're not specific for a fight. Like I said, I, I
25 see a lot of scrapes to knees on a lot of people across the

A. DURSO - CROSS-EXAMINATION BY MS. ZMROCZEK

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1 board. I do autopsies on even just people that drop dead
2 of a heart attack. So, it's not specific. I typically see
3 them when people fall down dead.

4 Q. Right, but you also see them when people are in a
5 fight?

6 A. They're not specific for a fight. It's possible if
7 someone hit their knees in a fight, yes, they would be
8 there from that.

9 Q. And if, and if someone is wearing long pants as
10 opposed to short pants and they hit the concrete, are you
11 more apt to receive abrasions if you have unprotected skin
12 versus if you have blue jeans or something on over your
13 clothes?

14 A. Correct.

15 Q. Okay. Did you -- when you received Mr. Pauling's
16 body, did you bag the hands or were those done ---

17 A. Those are bagged at the time at the scene usually, and
18 then they're unbagged by the law-enforcement agency that
19 attends the autopsy.

20 Q. And do you scrape the nails, or is that something
21 that's ---

22 A. No. That is something that law enforcement does.

23 Q. And were both of those things done prior in this case
24 -- prior to you receiving the body?

25 A. I do not know.

1 MS. ZMROCZEK: Thank you.

2 MR. WILLIAMS: Nothing from the state, Your Honor.

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

4 WITNESS: Thank you.

5 (THE WITNESS EXITS THE STAND.)

6 THE COURT: Anything further from the state at this
7 time?

8 MR. WILLIAMS: Not at this time, Your Honor.

9 THE COURT: Anything further from the defendant at
10 this time?

11 MS. ZMROCZEK: Your Honor, the only thing at this time
12 is I would renew the motion that I filed for bond back in
13 April of 2016. Mr. Ricks waited extremely patiently at my,
14 at my direction and went in front of Judge Hood, and I
15 don't know if -- I think -- does Your Honor have a copy of
16 the complete file up there with all the filings?

17 THE COURT: Yes.

18 MR. WILLIAMS: Your Honor, I've been notified by our
19 victim advocate that the victims have already left the
20 building. Per the Victim's Rights Act, they have the
21 opportunity to be present at any bond hearing. The state
22 would ask, if Your Honor is inclined to hear whether or not
23 the defendant is entitled to a bond, that the victim be
24 given the opportunity to be here and address the court per
25 the South Carolina Victim's Rights Act.

1 THE COURT: Well, I believe they left in the middle of
2 the hearing; I saw them when they left.

3 MR. WILLIAMS: I understand, Your Honor. They were
4 not aware, neither was the state aware, that Ms. Zmroczek
5 would be making a motion for bond at this time.

6 THE COURT: I'll hear what she has to say.

7 MR. WILLIAMS: Thank you, Your Honor.

8 MS. ZMROCZEK: Your Honor, I'm just handing up a filed
9 copy of Judge Hood's order and what it says, Your Honor, is
10 that bond was denied back in April. However, that both
11 parties, because of being a solo practitioner -- nobody's
12 problem but mine, Your Honor -- both parties agreed to this
13 date, and that gave us time to get discovery done, but the
14 -- which is why you got emails and all of these motions and
15 both parties agreed to be ready on August 8th, Your Honor.
16 Mr. Ricks has been ready, his family has been ready, and
17 the victims I know have been ready.

18 THE COURT: Well, apparently -- let me just say this.
19 Apparently people are not ready because all the information
20 hasn't been processed, nor has it been turned over, nor has
21 it been reviewed. So, it might have been based upon
22 information that was available at the time that it was set.
23 It is certainly not the case today that it's ready to go to
24 trial unless you're willing to go forward without having
25 all the evidence.

1 MS. ZMROCZEK: Absolutely not, Your Honor.

2 THE COURT: So, I fully understand your request for
3 bond. I'm not willing at this particular point to grant
4 bond despite the fact that the trial will not be going
5 forward today. I think it's something that can certainly
6 be resolved was within the next month or so for this
7 particular hearing. As I indicated, once I have all the
8 information, I do intend to rule from the bench so that the
9 parties will be well aware of whether or not I believe that
10 the defense has satisfied its burden in this matter. But
11 at this particular point, I'm not going to grant the bond
12 in this particular matter.

13 MS. ZMROCZEK: Thank you, Your Honor.

14 THE COURT: You do have, of course, the opportunity to
15 renew the bond, and the state should always be prepared to
16 understand that a bond issue may be raised as it relates to
17 the hearing in this matter. So, it's always possible it
18 can be raised again on short notice.

19 Anything else we need to take up at this point?

20 MS. ZMROCZEK: Just lastly, Your Honor, I know that
21 you had ordered myself and the state to sit down today and
22 go through all the evidence. We certainly intend to do
23 that. Is there some sort of scheduling order we could
24 submit to the court? I'm speaking with -- my concern is
25 obviously this. I mean, I have two more murder trials

1 scheduled this month, and I don't want Mr. Ricks's case to
2 fall off just because ---

3 THE COURT: I understand. Well, I need to find out
4 when the Richland County Sheriff's Department anticipates
5 that it's going to complete its testing of the fingernail
6 scrapings and the issue with the report. Then once we get
7 that, I believe at that particular time -- and give you all
8 the opportunity to review in detail the jail phone calls,
9 and I think that's all that needs to be done at this
10 particular point to my knowledge.

11 MR. WILLIAMS: Your Honor, Investigator Johnson is
12 checking now about the fingernails. We understand your
13 order. We're prepared to what we -- what you asked us to
14 do. I just want to make sure that when we reconvene, we
15 are recalling Kiara Pelzer to the witness stand. Is that
16 correct, Your Honor?

17 THE COURT: That's correct.

18 MR. WILLIAMS: Okay, and that's the only witness that
19 you would like the state to recall, correct?

20 THE COURT: At this particular time that's the only
21 one to recall, yes, but there will be additional witnesses,
22 I understand.

23 MS. ZMROCZEK: That's correct, Your Honor. I will at
24 least put the -- oh, she's -- I checked with the SLED agent
25 prior to letting her go. She's not due until January, and

1 so the only conflict that she has is the Charleston --
2 Michael Slater case that she was involved in. That's her
3 -- and I'll make sure to get those dates to the court.

4 THE COURT: I think that's not until November.

5 MS. ZMROCZEK: Yeah. I believe that that's pushed
6 back, and so -- and then depending on ---

7 THE COURT: So, we will need whoever from the Richland
8 County Sheriff's Department who's doing the fingernails and
9 the SLED agent and then recall Pelzer.

10 MS. ZMROCZEK: That's, that's my understanding of all
11 the witnesses, Your Honor, unless something else is
12 discovered between now and then that I don't know about.

13 THE COURT: And as soon as you all tell me when that
14 information is available, then we can schedule it probably
15 before -- at least by the first part of September is my
16 guess.

17 MS. ZMROCZEK: Thank you.

18 THE COURT: If I need to, you know, change from
19 Kershaw County to Richland County, I can do that.

20 MS. ZMROCZEK: And we're fine with waiving venue if
21 it's easier for the court to go up there, so.

22 THE COURT: I'll give this back to you.

23 (A PAUSE.)

24 THE COURT: Let's get some clarity as to Defense
25 Exhibits 24, 25, and 26. They are just for identification.

1 They were for identification for purposes of the arguments
2 that were made earlier today. Is that correct?

3 MS. ZMROCZEK: That's correct, Your Honor.

4 THE COURT: So, they're still for identification. All
5 right, anything else?

6 MR. WILLIAMS: Nothing from the state at this time,
7 Your Honor.

8 MS. ZMROCZEK: And nothing from the defense at this
9 time.

10 THE COURT: We'll come back at 2:45 for motions, and
11 we'll go forward with motions that I have for this
12 afternoon.

13 MR. WILLIAMS: Yes, Your Honor. I'll let my office
14 know.

15 THE COURT: Let's adjourn until 2:45.

16 (OFF THE RECORD.)

17 THE COURT: The email that was the subject of what
18 we've been talking about, I am going to make a court
19 exhibit just ---

20 MR. WILLIAMS: Yes, Your Honor.

21 THE COURT: --- for my record.

22 MS. ZMROCZEK: Thank you.

23 (EMAIL MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER
24 5.)

25 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 8TH DAY OF AUGUST, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JUNE 12TH, 2017

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 CHANNEN RICKS,) 2016-GS-40-2836
8 DEFENDANT.)

9
10 September 12th, 2016
11 Columbia, South Carolina

12
13 B E F O R E:

14 THE HONORABLE ALISON RENEE LEE, Judge.

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

17 APRIL SAMPSON and JUSTIN WILLIAMS
18 ASSISTANT SOLICITORS
Attorneys for the State

19 AMY ZMROCZEK
20 ESQ.
Attorney for the Defendant

21
22 BONNIE KELLY
23 Circuit Court Reporter

24
25 Transcribed by Pamela E. Green, Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Defendant's Exhibits</u>		
D-27	Disk		50

P R O C E E D I N G S

THE COURT: Okay. We are here to continue the hearing in the matter of the State versus Channen Franks Ricks. Indictment Number 2016-GS-40-02836.

This hearing is on the Persons -- Protection of Persons & Property Act in which the defendant has moved for immunity pursuant to the provisions of the Act.

We initially came together in August, I believe it was August 1st or 2nd, and in that time we heard from a number of witnesses. We, we then resumed the hearing on August the 8th in which we took additional testimony, I believe from the medical examiner or coroner, and then we are here to continue along based upon some of the rulings that were made back on August the 8th.

It's my understanding the State -- and we're still in the -- presenting the defense witnesses.

And so, is there anything we can take up before we get started?

MS. ZMROCZEK: Nothing from the defense, Your Honor.

SOLICITOR SAMPSON: Nothing from the State, Your Honor.

THE COURT: And, again, just for the record, I'm sure the record reflects that April Sampson and Justin Williams, from the solicitor's office, and Amy Zmroczek, from her law firm, are present today.

Whitney Berry - Direct examination
by Ms. Zmroczek

1 Ms. Zmroczek, you may call your witness then.

2 MS. ZMROCZEK: Thank you, Your Honor.

3 We call Whitney Berry.

4 THE COURT: You need to step forward please, ma'am, to
5 be sworn.

6 (Witness complies.)

7 WHITNEY BERRY, being first duly
8 sworn, testified as follows:

9 THE CLERK: Thank you. Have a seat in the witness
10 stand please.

11 (Witness complies.)

12 THE CLERK: State your name for the record.

13 THE WITNESS: My name is Whitney Berry.

14 THE COURT: And would you please spell your first name?

15 THE WITNESS: W-H-I-T-N-E-Y.

16 THE COURT: And your last name?

17 THE WITNESS: B-E-R-R-Y.

18 THE COURT: Thank you.

19 DIRECT EXAMINATION

20 BY MS. ZMROCZEK:

21 Q Morning.

22 Ms. Berry, where -- what is your occupation?

23 A I am a forensic scientist with the South Carolina Law
24 Enforcement Division.

25 Q How long have you been a forensic scientist with the

Whitney Berry - Direct examination
by Ms. Zmroczek

1 South Carolina Law Enforcement Division?

2 A About three and a half years.

3 Q Did you -- what is your education background?

4 A I have a Bachelors of Science in Chemistry from the
5 University of South Carolina. And when I began working at
6 SLED in the forensics lab, I took the trace evidence
7 in-house training course, that was approximately nine months
8 to a year, for gunshot residue analysis training.

9 Q Is that---

10 SOLICITOR SAMPSON: Your Honor, just for the record, I
11 will stipulate to her qualifications as an expert in the
12 field of gunshot residue analysis. With that being said, if
13 that's okay with Ms. Zmroczek.

14 MS. ZMROCZEK: That's where we were heading to.

15 THE COURT: Okay. So, there's no objection to her
16 being qualified as --?

17 SOLICITOR SAMPSON: An expert -- I'm sorry. An expert
18 in gunshot residue analysis or however you determine it if
19 you have a better term.

20 MS. ZMROCZEK: All right.

21 THE COURT: Then I'll find her so qualified.

22 MS. ZMROCZEK: Thank you.

23 Q Ms. Berry, can you explain a little bit about what,
24 what gunshot residue is?

25 A Yes, ma'am. When we're looking for gunshot residue,

Whitney Berry - Direct examination
by Ms. Zmroczek

1 what we're looking for is the primer residue from the
2 cartridge of the gun. So, whenever the trigger is pulled,
3 the firing pin hits the end of the cartridge, a small
4 explosion happens where the metals that are in the primer
5 become liquid. They vaporize. And as those liquid metals
6 cool in the atmosphere and they land on different things,
7 they become more molten in shape as opposed to typical metal
8 shaving shaped.

9 what we're looking for are those molten particles and
10 they're comprised of the elements lead, barium, and
11 antimony, and those are unique to primer residue.

12 Q The lead, barium, and antimony, all three of them are
13 unique, correct?

14 A Yes, ma'am.

15 Q Now, they can be found -- particles of lead can be
16 found in other items, correct?

17 A Yes, ma'am. We're -- like I, I mentioned, we're
18 looking for the molten or the roundness of the shape to
19 indicate they're under the high heat and pressure of
20 gunfire. It is possible to find round lead or round barium
21 or round antimony particles just in the environment. I know
22 a lot of different products that come from overseas might
23 have round lead on them. But just by itself, it's not
24 indicative of gunshot residue.

25 Q And amongst the three, which is the, the least common

Whitney Berry - Direct examination
by Ms. Zmroczek

1 to find just kind of by itself?

2 A I really wouldn't know specifically. I don't think
3 we've had a study done on that.

4 Q Okay.

5 A The different elements come in different, different
6 items. So --.

7 Q So, when you're looking for the -- but when you're
8 looking specifically to match gunshot residue powder to --
9 typically where do you look for that?

10 A When we're analyzing, typically what is submitted to us
11 is the gunshot residue kit that is taken off the hands of a
12 suspected shooter or the hands of the victim.

13 Q And how can that -- how can someone have particles or
14 particles associated with gunshot residue found on their
15 hands?

16 A You can get gunshot residue or particles associated
17 with it on your hands from being in the vicinity, vicinity
18 to the discharge of a firearm, which would mean pulling the
19 trigger, standing next to somebody who is firing, or in
20 their general area. It can also include being the victim of
21 a gunshot wound.

22 So, the majority of the primer residue's actually gonna
23 follow that bullet towards its intended target. So, you
24 could have someone. You can be a victim.

25 You can also get it on your hands through transfer, and

Whitney Berry - Direct examination
by MS. Zmroczek

1 that comes from coming into contact with something that has
2 been exposed to gunshot residue such as a gun or a cartridge
3 case could potentially have it. Different items like that.

4 Q So -- and I want to talk about the, the second -- so,
5 the first one was standing in close proximity to someone or
6 firing a gun or being in close proximity.

7 How far would you have to be from that person?

8 A I don't know of any studies for certain just because
9 they're the different calibers of guns, the different
10 ammunitions, and you would expect all of them to deposit
11 through their respective ejection ports or cylinder gaps.
12 So, I don't know---

13 THE COURT REPORTER: Cylinder -- I'm sorry. Cylinder
14 --?

15 THE WITNESS: The cylinder gaps. So --.

16 Q And---

17 A I don't know if there's an estimation of the plume
18 around the person who's shooting that's been established.
19 If there is, I'm not aware of it.

20 Q And when you say cylinder gaps, so when you fire a gun,
21 there's a gap that the, the, the powder can come out the
22 side or like out the -- kind of out of the top of the gun as
23 well as follow the path?

24 A Yes, ma'am, if you think of an old western movie,
25 anytime you see one of the cowboys fire a weapon, there's

Whitney Berry - Direct examination
by Ms. Zmroczek

1 always that plume of smoke around their hands. That's
2 coming out of a cylinder gap of their revolver, and in that
3 cloud is the primer residue that's gonna deposit on their
4 hands.

5 Q But now the second type that you talk about was the,
6 the primer can follow the path of the gun, correct?

7 A Yes, ma'am, it will follow the path of the bullet.

8 Q I mean the bullet. Sorry. Not the gun.

9 So, would the -- so -- and you expect to see someone --
10 for example, if they get shot in the stomach and they --
11 immediate reaction would be to, to kind of cover that wound.

12 That's one way -- another way that they could get it on
13 them, correct?

14 A It is. They don't necessarily have to touch the wound.
15 Just being at the other end of that bullet could be enough
16 depending on the distance involved.

17 Q Now, if someone were shot in the back, would it be more
18 likely or less likely that they would have the gunshot
19 residue on their hand from, from the path of that bullet?

20 A It would most -- it would be less likely.

21 Q Okay. And then the third way you said was kind of
22 transfer. For example, if I were fighting over a gun, a gun
23 was on the ground and I was going to grab it, somebody else
24 was going to grab it, and it had recently been shot, and I'm
25 trying to grab it, is that some -- another way that, that

Whitney Berry - Direct examination
by Ms. Zmroczek

1 particles could be --?

2 A That is, that is a potential way you could get gunshot
3 residue on your hands, yes.

4 Q And how, how delicate are these powders? For
5 example -- or these elements?

6 For example, if it's raining or if you're in a fight,
7 can those change what you find?

8 A Well, the primer particles we're looking for are
9 microscopic. We have to use a scanning electron microscope
10 to find them. So, approximately 100 particles of gunshot
11 residue can fit across the diameter of a human hair.

12 So, when we're looking for something that small, it's,
13 of course, going to be fragile. So, anything such as
14 sweating, raining, high wind could potentially remove it.
15 It's very similar to having flour on your hands in the
16 kitchen. Every time you touch a little something, a little
17 bit of that flour can come off. It's, it's a very similar
18 concept.

19 Q Okay. And were you asked to do an analysis in this
20 case, specifically the case of the State v. Channen Ricks,
21 where the victim was Thomas Pauling?

22 A Yes, ma'am.

23 Q And what, what were you asked -- what were you provided
24 and what were you asked to do?

25 A One gunshot residue kit was submitted in this case and

Whitney Berry - Direct examination
by Ms. Zmroczek

1 it was taken from Thomas Pauling.

2 Q And what were the results of that?

3 A One round associated particle was found. So, an
4 associated particle would be a single component particle of
5 round lead, round barium, or round antimony by itself.

6 Q And which of the round particles was found in this
7 case?

8 A I would need to consult my notes for specific.

9 (Pause.)

10 A It was a round antimony particle.

11 Q And you said that you used that the -- you, you located
12 that through the scanning electron microscope?

13 A Yes, ma'am.

14 Q Other than that, did you have any other items of
15 clothing or anything submitted to test in this case?

16 A No, ma'am, nothing else was submitted to the trace
17 department for gunshot residue.

18 Q Thank you. Please answer any questions the State may
19 have.

20 THE COURT: Any cross?

21 SOLICITOR SAMPSON: Just briefly, Your Honor.

22 CROSS-EXAMINATION

23 BY SOLICITOR SAMPSON:

24 Q Ms. Berry, so just to be clear, you found one particle
25 of antimony?

Whitney Berry - Cross-examination
by Solicitor Sampson

1 A Yes, ma'am.

2 Q You didn't find the other two?

3 A Yes, ma'am, I found nothing else.

4 Q And that one round particle of antimony, could be in
5 other places -- from other things?

6 A It could have potentially come from another source,
7 yes.

8 Q And if it did come from gunshot residue, that could of
9 come from being shot at, correct?

10 A Yes, ma'am.

11 Q It could of been from being near a gun that was shot?

12 A Yes, ma'am.

13 Q It could of been from holding a gun when it was shot?

14 A Yes, ma'am.

15 Q Or it could of been from transfer from a gun that was
16 recently shot?

17 A Yes, ma'am.

18 Q There's no way to tell which way?

19 A No, there's absolutely no way to tell how it was
20 deposited there.

21 SOLICITOR SAMPSON: No further questions.

22 THE COURT: Anything further?

23 MS. ZMROCEK: Just one follow-up question.

24 REDIRECT EXAMINATION

25 BY MS. ZMROCEK:

1 Q Where is antimony typically found in the free world?

2 A Aside from primer residue, we can find it in different
3 things such as solder. Occasionally you can find it in
4 different components that are associated with auto mechanic
5 profession, different things like that. Sometimes it's used
6 as a flame retardant or a fire retardant in different
7 objects. So, it really depends on if we're looking for a
8 specific object.

9 Q Thank you.

10 A Yes.

11 MS. ZMROCZEK: No further questions, Your Honor.

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

13 SOLICITOR SAMPSON: May she be released, Your Honor?

14 THE COURT: Any objection?

15 MS. ZMROCZEK: No objection.

16 THE COURT: You may be released. Thank you very much.

17 THE WITNESS: Thank you, ma'am.

18 THE COURT: You may call your next witness.

19 MS. ZMROCZEK: Thank you, Your Honor.

20 That -- those are all the witnesses that we -- that the
21 defense intends to present. We understand that -- I, I
22 believe that Miss Pelzer would be recalled for recross
23 solely for the jail telephone calls.

24 THE COURT: Okay. Are you calling her for recross?

25 MS. ZMROCZEK: If it --.

Kiara Pelzer - Recross examination
by Ms. Zmroczek

1 THE COURT: Or---

2 SOLICITOR SAMPSON: We weren't. I have no question for
3 her at this time. Maybe after whatever Ms. Zmroczek --.

4 THE COURT: Okay.

5 MS. ZMROCZEK: So, that's maybe the rest of it.

6 THE COURT: All right. You may call --.

7 (Pause.)

8 THE COURT: I'm gonna swear her again. It's a whole
9 another day.

10 THE CLERK: Swear her?

11 THE COURT: Yes.

12 KIARA PELZER, being first duly
13 sworn, testified as follows:

14 MS. ZMROCZEK: I apologize for talking low. I'm --
15 maybe it's the smaller courtroom. I'm not sure.

16 THE COURT: Again, would you state your full name for
17 the record?

18 THE WITNESS: Kiara Pelzer.

19 THE COURT: Thank you.

20 RECROSS EXAMINATION

21 BY MS. ZMROCZEK:

22 Q Miss Pelzer, you've previously testified in this case
23 and I just have a few follow-up questions based on listening
24 to the jail phone -- telephone calls.

25 You would agree with me that the first person that

Kiara Pelzer - Recross examination
by Ms. Zmroczek

1 Channen called when he got to the jail was you, right?

2 A I know he called me but I don't know if I was the first
3 person.

4 Q Okay. That might -- that way you don't have to lean
5 down. There you go.

6 A Sorry.

7 Q And one of the things that you said in that very first
8 phone call was I'm sorry, right?

9 A Right.

10 Q Okay. And then you recall specifically a telephone
11 conversation on April 25th of 2015?

12 A Say that again.

13 Q Do you recall -- you spoke with -- let me ask it this
14 way.

15 You spoke with Channen on the phone a lot, correct?

16 A Correct.

17 Q Over the last two and a half years, there would be at
18 least a hundred phone calls with you on them, correct?

19 A Correct.

20 Q And you also went to go visit him numerous times at the
21 jail?

22 A Correct.

23 Q And you brought your daughter?

24 A Correct.

25 Q Navaya P.

Kiara Pelzer - Recross examination
by Ms. Zmroczek

1 A Uh-huh. (Affirmative).

2 Q Okay. And so, I want to refer specifically to a
3 telephone call that happened on, on April 25th of 2015,
4 and if you don't recall it, I'll help, I'll help you by
5 asking specific questions.

6 Okay?

7 A All right.

8 Q Has -- if -- did the State play any telephone calls for
9 you?

10 A One.

11 Q Which one did they play?

12 A I'm not sure.

13 Q Okay. Was it the one where he was talking about asking
14 you to help him understand this?

15 A I'm not sure.

16 MS. ZMROCZEK: Okay. Your Honor, if I may ask?

17 (Pause.)

18 Q So, do you -- so, do you recall having a conversation
19 where Channen asked you to help understand what happened?

20 A We had several phone calls like that.

21 Q Okay. And Channen said to you specifically "so tell me
22 that's what you did. You wanted me to come back to hurt me"
23 and your response was "no, not really. That wasn't my
24 intention."

25 Right?

Kiara Pelzer - Recross examination
by Ms. Zmroczek

1 A I'm not sure. I don't -- I can't remember the phone
2 call.

3 Q Would it refresh your recollection to hear the entire
4 phone call?

5 A Yes, it would.

6 MS. ZMROCZEK: Your Honor, if I may play the phone
7 call---

8 THE COURT: Sure.

9 MS. ZMROCZEK: ---for her?

10 It will take me a second. I thought for sure that they
11 would---

12 THE COURT: That's fine.

13 (WHEREUPON, a phone call was played for the witness at
14 this time.)

15 Q Do you recognize your voice on that phone call?

16 A I do.

17 Q And that was a phone call that I can pull it up again
18 but it was dated April 25th, 2015?

19 A Yeah.

20 Q Okay. And so, the part where I'm going back to asking
21 you these questions, Channen asked you "what was your
22 intentions" and you said "I don't know," right?

23 A Yes.

24 Q And then he said "is that you wanted me, is that why
25 you wanted me to come back. You wanted me to get hurt."

Kiara Pelzer - Recross examination
by Ms. Zmroczek

1 And apparently you were in a store with your child.

2 So, you had a couple of things going on at once, right?

3 A Yes.

4 Q Okay. So, so, you asked him "what did he say," right?

5 A Yes.

6 Q And then he said -- I said "why you can't tell me why
7 you wanted to hurt me instead of you just moving on." You
8 said "because it seems like got to get even. Sometimes you
9 know. You know how it just feel like" and he asked you
10 again, "say what" and you said, I said "you know, just say
11 you have to get even sometimes."

12 You feel like you had to get even because he was being
13 unfaithful to you?

14 A Yeah, but the phone call was basically about coming
15 back and like way before this happened. Like getting back
16 together way before this happened. And he was basically
17 trying to say you wanted me to come back and then you do
18 this but it had nothing to do with that night.

19 Q Okay. Well, he specifically said is that why you
20 wanted me to come back that night?

21 A No, he didn't say that night. I didn't hear that
22 night.

23 Q Okay. We can play it again if you would like.

24 A I don't want to hear it again.

25 Q Okay. So, it's your, it's your testimony today that,

Kiara Pelzer - Recross examination
by Ms. Zmroczek

1 even though he was asking you "I need to understand what
2 happened that night" and asking about "is that why you
3 wanted me to come back that night to get hurt," and your
4 response saying "I just wanted to get even. No, I just had
5 it in my mind. I got even. Well, halfway. Not even close
6 to halfway but somewhat -- some way about like that.
7 Something a little bit about that."

8 You're saying that all of that had to do with some
9 other night and not the night?

10 A Is -- I didn't say some other night. It's basically
11 about the whole relationship, the whole situation that we
12 were going through. It wasn't just that night.

13 Q Okay. But you would agree that, that he was---

14 A I, I agree I said that.

15 THE COURT REPORTER: Don't talk over each other.

16 THE WITNESS: I'm sorry.

17 THE COURT REPORTER: Wait your turn.

18 A I agree that I said that but it wasn't like -- it was
19 about everything basically.

20 Q Okay. But he was specifically asking why you wanted to
21 come back that night?

22 A I didn't hear that night. That's what I'm telling you.

23 Q Okay. Okay.

24 Your Honor, either we can make the, the tape Court
25 Exhibit or I can play it again for her to clarify?

Kiara Pelzer - Recross examination
by Ms. Zmroczek

1 THE COURT: You'll need to make it an exhibit just to
2 preserve it for the record.

3 MS. ZMROCZEK: Okay. We'll do that.

4 In addition to numerous phone calls, I think we
5 established it was over a hundred and, and visits, you also
6 wrote him letters, correct?

7 A Correct.

8 Q And you also, in those letters, wrote about how your
9 relationship -- it was always about you and him. No matter
10 what was going on.

11 Right?

12 A Correct.

13 Q So, the prior testimony about that y'all weren't
14 together, you would agree that y'all were in some sort of
15 relationship?

16 A No, we weren't.

17 Q Okay. So, this relationship just started -- you
18 started writing about this relationship afterwards?

19 A Correct. We weren't in a relationship.

20 THE COURT REPORTER: You weren't?

21 THE WITNESS: No. No, ma'am.

22 MS. ZMROCZEK: Beg the Court's indulgence.

23 (Pause.)

24 Q Please answer any questions the State may have.

25 THE COURT: Any cross?

1 SOLICITOR WILLIAMS: Beg the Court's indulgence.

2 (Pause.)

3 SOLICITOR WILLIAMS: Nothing from the State, Your
4 Honor.

5 THE COURT: You may step down.

6 SOLICITOR WILLIAMS: Your Honor, may this witness be
7 excused?

8 THE COURT: Any objection?

9 MS. ZMROCZEK: No objection, Your Honor.

10 THE COURT: You may be excused.

11 Anything further at this time?

12 MS. ZMROCZEK: Your Honor, there's nothing further from
13 the defense.

14 THE COURT: Anything further from the State?

15 SOLICITOR SAMPSON: No, ma'am.

16 THE COURT: Now, it's defense's motion.

17 Any arguments?

18 MS. ZMROCZEK: Yes, Your Honor. I -- and I -- we
19 submitted our briefs, which I believe the Court has.

20 THE COURT: Yes.

21 MS. ZMROCZEK: And I certainly don't want to reargue
22 that. But in a -- as a supplement, Your Honor, to the
23 testimony that is provided in there, the testimony that
24 we've heard from today includes that at least one particle
25 associated with gunshot residue was found on the victim's

1 hand. And Ms. Berry testified that that could be from
2 someone standing close to a gun when it was shot, someone
3 being shot at, although she wouldn't expect to see that
4 because the primer would follow the bullet, she wouldn't
5 expect to see, on their hands, if -- it would let -- it
6 would be less likely, if I'm understanding her testimony, if
7 someone were shot in the back, that they would have it on
8 their hands because the primer follows the bullet. That's
9 why I specifically asked her that question.

10 So -- and then the third way that she said that she
11 could -- that someone could get it on their hands, Your
12 Honor, is by transfer.

13 The testimony in this case is, basically coming from
14 Mr. Ricks, was that there was a, a struggle for the gun.
15 That would be one way to corroborate what he was saying,
16 Your Honor.

17 The testimony from Miss Ricks in this phone call, which
18 I know she would like to say that they were just talking
19 about their relationship in general, and obviously Your
20 Honor heard the testimony, and I will enter the phone call
21 from April 25th, 2015, into evidence to be considered but
22 he's specifically asking I need to understand what happened.
23 This is my life.

24 Clearly he was talking about that night. She was no --
25 she knows he was talking about that night. He said is that

1 why you wanted me to come over, for me to get hurt, and, and
2 there was conversation back and forth. She just -- her
3 response on the recording, and even here, she confirmed it
4 was she wanted to get even or halfway even.

5 Your Honor, I think that, in no way, did Miss Ricks
6 (sic) intend for anyone to get shot that night. That's
7 certainly not what we're trying to say. But, but what we're
8 saying, for Mr. Ricks prospective, is he was called. It was
9 his birthday. He was told to come over. He came over.
10 There were two men, and she testified to this earlier, that
11 he did not know they were in the house. There was a fight
12 in the house. A gunshot went off. It is still unclear as
13 to who shot that gun.

14 He leaves the house at which time he encounters
15 Mr. Pauling. Something goes down. He testified too though
16 there was a struggle that -- over the gun and that he was in
17 fear for his life. He had just been jumped on. He did not
18 know where the other person was. He heard Mr. Parks calling
19 out for the second person who was there.

20 If you look at the evidence, simply as it's presented,
21 even in the light most favorable to the State, the, the, the
22 burden here is a preponderance of the evidence. So, a 51
23 percent.

24 Is it, is it, is -- does the evidence show that, at
25 least by preponderance of the evidence, that Mr. Ricks was

1 acting in self-defense?

2 We believe that, with all the testimony that we have
3 put in, with all the exhibits, that that's exactly what he
4 was doing, was defending himself that night, and, therefore,
5 should be immune from prosecution under the very purposes
6 for which this act was, was written.

7 THE COURT: From the State.

8 SOLICITOR SAMPSON: Thank you, Your Honor.

9 May it please the Court.

10 I believe in what we turned into Your Honor was just a,
11 a finding of facts. I don't believe we -- that I turned in
12 anything going into the law. So, I would go over it a
13 little bit.

14 I will hand up to Your Honor, as well as to the
15 defense, the case law that I'll be citing from.

16 Your Honor, the case law is pretty specific. I don't
17 know which section Ms., Ms. Zmroczek is stating she's going
18 under as she didn't just state. But Section A, which
19 would -- is normally known as the Castle Doctrine, states
20 the victim would have to have been forcefully and unlawfully
21 entering a house, forcefully and unlawfully had entered the
22 house, or was attempting to or had taken away someone
23 against their will from the dwelling.

24 THE COURT: The victim, the victim or the defendant?

25 SOLICITOR SAMPSON: The victim would had to have been

1 doing all of those things for the act to have applied, and
2 the defendant would of had to believe that the person doing
3 that was about to commit either an unlawful act or had
4 committed an unlawful act.

5 In this particular case, there's absolutely no evidence
6 that the victim had done anything unlawfully in terms of
7 going into the house. He had been let into the house by
8 Miss Pelzer or her -- Brianna or Xavier, depending on whose
9 version you believe of how they got in. But any -- by any
10 testimony given, he was there lawfully. He was not
11 forcefully there. He was not unlawfully there.

12 There's been absolutely no evidence that Section A
13 should apply in any way, shape, or form. The case law is
14 pretty clear, under State versus Curry, under State versus
15 Manning that was just ruled last wednesday by the Supreme
16 Court, that a social guest, Section A does not apply.

17 All the evidence showed, that by all means, Thomas
18 Pauling was just that. He was Kiara Pelzer's cousin. He
19 was Travis Tucker's friend. He was Channen Ricks friend.
20 He was in the home lawfully, was not there forcefully, and,
21 therefore, A wouldn't apply.

22 We would then fall to Section C under the case law.
23 section C states, which is also commonly referred to as the
24 Stand Your Ground portion of the Act, it says that it only
25 applies if a person is acting lawfully, is then attacked in

1 a place where he had the right to be. He is allowed to then
2 meet force with force, including lethal force, if it is
3 reasonable for him to believe that he's in fear or for him
4 to have a reasonable fear of great bodily injury or death
5 from, from that person.

6 It would be the State's position that those things have
7 not been proven in this case.

8 First of all, the defendant was acting unlawfully at
9 the time of the shooting. Now, all the testimony from both
10 the defendant and actually from Investigator Johnson shows
11 that he had a felony on his record. It is unlawful for him
12 to carry a gun. It is unlawful for him to possess a gun.

13 Now, I'm not saying he brought a gun to the apartment.
14 What I'm saying is, even taking the evidence in the light
15 most favorable to the defense since it's their motion, that
16 is how you have to do it, once he picked up that gun, once
17 he took that gun outside of the apartment, once he is
18 walking around the complex with a pistol in his hand, in his
19 waistband, wherever it is, he is acting unlawfully. It is
20 unlawful for a felon to have -- possess a weapon. He's got
21 a record that requires him not to possess a weapon. It is
22 on his rap sheet that he can not have any -- even any
23 ammunition. Therefore, just by having the gun and carrying
24 it around the apartment complex, he was acting unlawfully
25 and, therefore, C wouldn't be applicable to him.

1 Even if somehow he was acting lawfully, he would then
2 have to go to the -- that he was in a place where he was --
3 had a right to be. Miss Pelzer stated that -- also we have
4 the records and we also brought the owners or the management
5 company for the apartment complex. Kiara Pelzer's on the
6 list -- on the lease. Channen Ricks is not on the lease.
7 Channen Ricks did not have a right to be in the apartment
8 complex. What he had, at most, was permission.

9 The only people that had a right to be in that
10 apartment complex would be anyone who had an apartment
11 there. That would fall towards Miss Pelzer, her children,
12 but not Mr. Ricks.

13 If you then believe that perhaps, because he could of
14 been invited over because his position is that he was,
15 although Miss Pelzer's position is that he wasn't, if you do
16 go to that he was there with a right to be at the apartment
17 complex, then you would next go to was he meeting force with
18 force.

19 His testimony was they struggled over the gun and that
20 he gets it. The case the Court just ruled on on Wednesday
21 of last week, State versus Manning, had that exact specific
22 set of facts in that the defendant, in that case, had either
23 invited, however, the woman over to his house. According to
24 him, she pulled a gun on him. According to him, she was
25 able to wrestle the gun away -- he was able to wrestle the

1 gun away from her. He then shot her and he said that was in
2 self-defense.

3 The Court ruled that it did -- Castle did not apply.
4 Stand Your Ground, under Section C, is not applicable to an
5 unarmed individual because, once you have the weapon away
6 from them, you're not meeting force with force. That was
7 the Court's ruling. It was Judge Cooper. The Supreme Court
8 of our State ruled that that was proper, and that his ruling
9 that statute did not apply in that particular set of facts
10 was good, and that was just ruled upon last week.

11 Based on the fact that, even if you believe the
12 defendant's version, although I'm not saying that you
13 should, but even taking it in a light most favorable to the
14 defendant, his version is Mr. Pauling is unarmed at the time
15 that he shoots him. He shot three times in the back, which
16 belies that.

17 We put in and marked into evidence and had Investigator
18 Johnson testify about where the bullet casings were.
19 They're in a line going towards the victim, which, again,
20 belies that. He's been shot at as he's walking away in the
21 back three times.

22 Ms. Zmroczek brought up the gunshot residue. It's one
23 particle out of three. It is a particle associated with
24 gunshot residue and could of been gotten from being shot at,
25 being near a gun, the touching a gun that had been shot. It

1 is not conclusive of the victim having touched a gun or in
2 anyway -- it's not inclusive of anything other than that he
3 has a particle on his hand.

4 There's been absolutely no presentation of evidence
5 that the victim was doing any force other than the
6 defendant's self-serving statement, which was the first time
7 anyone had heard it was today in Court or, excuse me, in
8 August in Court.

9 THE COURT: I'm sorry.

10 What was that again?

11 SOLICITOR SAMPSON: The only evidence that there's any
12 sort of altercation right before the shooting is the
13 defendant's statement. There's no other testimony. There's
14 no other evidence to that. And his statement was that some
15 person that he didn't know just came up and started messing
16 with him and was calling to a Trav.

17 Well, according to him, he didn't know who the two
18 people in the apartment was. So, it shouldn't matter that
19 the person's calling to a Trav. It could of been anybody in
20 the apartment complex. He stated to you and to all of us
21 that he didn't know who had assaulted him in the apartment.
22 So, the name Trav should have no meaning to him.

23 However, he stated that this person, just out of the
24 blue, begins to assault him and he somehow dropped his gun.
25 They fight over the gun and he wins, he wins that battle,

1 that argument over the gun.

2 well, if that's the case that we have, and that's the
3 evidence that they've presented, it still doesn't apply
4 because it doesn't show he was meeting force with force as
5 State v. Manning is clear about that.

6 Based on the evidence that you have before you, the
7 fact that the victim was not unlawfully or forcefully
8 entering, so A is not applicable, based on the fact that,
9 first of all, the defendant's not acting lawfully, that the
10 defendant is not in a place where he has the right to be,
11 and defendant was not meeting force with force, we'd ask
12 that C not be applied either because it's not applicable in
13 this situation.

14 THE COURT: Yes, Ms. Zmroczek.

15 MS. ZMROCZEK: Just briefly in response, Your Honor.

16 There is case law which I cited in my memo about not
17 acting lawfully. He was acting lawfully under the facts of
18 this, of, of this -- these circumstances. He did not bring
19 the gun. The only reason he was in possession of the gun
20 was because someone was in his house.

21 I know that they argue that the victim was in the
22 residence lawfully, and I know that the Court has the
23 definition of -- as they apply to this statute. And, under
24 residence, it's somewhere where you are invited to be or he
25 maintains his items there.

1 Miss Pelzer testified that he had a right to be there.
2 I don't think there's any question about that. I think the
3 question comes down to did she specifically invite him over
4 that night.

5 The text messages speak for themselves. It -- I think
6 that the -- it's pretty clear that he was invited over but
7 what, what I want to focus on is they say that the victim,
8 Mr. Pauling, was inside the house doing nothing wrong. And
9 although that may be true, Mr., Mr. Ricks, he wasn't aware
10 of this.

11 He knocked on the door. Nobody answered, as was his
12 common, his common habit. He puts his key in and that's
13 when he meets force, Your Honor. So, at that point, he
14 doesn't know that Mr. Pauling is in there lawfully. I think
15 that the most telling, the most telling facts are the ones
16 that we can hear right after and that's the 9-1-1 call.

17 She said that it was the first time that we had heard,
18 you know, any, anything about him being in fear or, or
19 anything. I think, if you listen to that 9-1-1 call, which
20 was made ten minutes after this incident, where he states
21 they tried to kill me, they were breaking into my house, he
22 did not know that they were invited in there, which, which
23 kind of goes back to the whole set-up and her getting even,
24 Your Honor. I don't -- again, I don't think that that was
25 her intention but, but it, it is what happened as a result

1 of, of, of her behavior.

2 He -- so, again, I do -- the case law's very clear. I
3 think that the South Carolina Supreme Court has addressed
4 what it means to be acting unlawfully. He wasn't toting
5 around that gun. He had simply had it because they tried to
6 kill him and I referenced that in the brief, Your Honor.

7 Additionally, he had a right to be there. There was no
8 trespass notice. He had clothes there. He had a key to the
9 apartment. He had absolutely every right to be where he
10 was, and the only reason he shot, and he was asked several
11 times, you know, why did you pick up that gun and start
12 shooting, because if I didn't kill him, he was gonna kill
13 me, Your Honor, and that was his belief and state at the
14 time. I think that it's established very clearly through
15 the 9-1-1 call.

16 The Manning case, I was familiar with it. A lot of the
17 opinion deals with whether or not someone is entitled to an
18 immunity hearing. Obviously, we're, we're kind of past that
19 at that point and I disagree that the facts are, are similar
20 in that case as they are to this case.

21 I think that -- and, again, I'm not trying to, to
22 belabor the point or waste the Court's time but I think, if
23 you look at the facts as provided and apply it to the law
24 under A or C as I cited both in my, in my argument section
25 of the memo, that he was acting in self-defense and should

1 be immune.

2 Thank you.

3 THE COURT: I have not had the opportunity to, to
4 review State versus Manning, which is a, a case that the
5 opinion came out on September the 7th. And so, I've not had
6 the opportunity to, to review that. I'd like to take a
7 moment to do that.

8 (Pause.)

9 THE COURT: Yes, ma'am.

10 MS. ZMROCZEK: Your Honor, and I -- in case I didn't
11 give you the cite, I wanted to make sure that it was State
12 v. Burgess. It's 334 S.C. 256, 513 S.E.2d 104. It's a
13 1999 case that deals specifically with -- it provides the
14 argument about finding someone in unlawful possession does
15 not foreclose the possibility of asserting self-defense.

16 The Court addresses that case in, in it's prodigy
17 throughout especially when addressing these, these types of
18 immunity hearing cases. Burgess has been found to, to rebut
19 that, just because someone was prohibited from having a gun,
20 doesn't mean they're prohibited from raising this defense at
21 all. It goes into the -- it all, all goes to the
22 application of the facts.

23 So, I brought -- I think it's cited in there but I just
24 wanted to be sure.

25 THE COURT: Okay.

1 MS. ZMROCZEK: Thank you.

2 (Pause.)

3 SOLICITOR SAMPSON: Your Honor, may I respond to that?

4 THE COURT: One moment.

5 (Pause.)

6 THE COURT: 334 S.C. 256?

7 MS. ZMROCZEK: Yes, Your Honor.

8 THE COURT: Okay. Yes, Ms. Sampson.

9 SOLICITOR SAMPSON: I just wanted to say, Your Honor,
10 the case that she cites, I didn't -- had been used to talk
11 about whether self -- whether it's unlawful in relation to
12 self-defense. It is never been cited to say whether it
13 should be used in application of Section C of the Immunity
14 Act. Those are two separate and distinct issues. There are
15 things that you don't have to do with self-defense as you
16 actually do have to do with Section C.

17 So, I would argue that may be why the Court hasn't
18 actually used that case to say that arming yourself, when
19 you're not suppose to have a gun, isn't still unlawful.
20 They have used it in self-defense and I will give that to
21 Ms. Zmroczek but there's a difference between self-defense
22 and Section C of the, of the Act, and Section C requires
23 different things that I've already gone over.

24 So, to say that the Court has used those in, in this
25 type of situation is not actually what the can pack -- the

1 case---

2 THE COURT: So, what's different about Section C?

3 SOLICITOR SAMPSON: In self-defense?

4 THE COURT: No.

5 Well, I've, I've looked at -- what makes Section C
6 different from -- I understand that in -- that there are
7 some differences between self-defense and, and some
8 provisions of the Act. And what I'm asking you specifically
9 is, I think you said that there were some additional
10 requirements that Section C places that self-defense does
11 not.

12 SOLICITOR SAMPSON: For example, Your Honor, under
13 self-defense, you can act upon appearances. Under
14 self-defense, you can actually fire first. Under cap --
15 under Section C you can't. You actually have to be under
16 attack and you actually have to be meeting force with force.
17 Those are two additional elements that you wouldn't
18 actually have to meet under self-defense. That's via case
19 law and via the wording of self-defense.

20 That's not actually true under Section C where it
21 specifically says you have to be under attack and you have
22 to be meeting force with force. I believe, adding those two
23 additional elements, you would have to have a finding from
24 the Supreme Court or from the Court of Appeals to say that
25 Burgess or any of that prodigy in that it said if you are

1 unlawfully carrying a gun would keep C from or -- I believe
2 it -- until they say it doesn't, it does keep C from
3 applying because they've never said that, that arming
4 yourself, grabbing a gun, and doing anything with it does
5 not mean you're -- you are acting lawfully. It still would
6 be acting unlawfully unless there's case law that says
7 otherwise as to the applicability of Section C.

8 She's talking about the applicability of self-defense.
9 Those are two different things and there's no case law that
10 says that.

11 THE COURT: But, by the same token, if, if a person
12 were under attack, and presumably let's just say deadly
13 attack, then it would be lawful to be able to arm himself
14 for that purpose even under C, would it not?

15 SOLICITOR SAMPSON: Perhaps. I don't, I don't think
16 that's the situation we have in this particular case but---

17 THE COURT: I'm, I'm just asking you -- just want to
18 make sure your position's clear.

19 SOLICITOR SAMPSON: Hypothetically, if -- let's say I
20 am getting attacked by someone who has a gun and I'm not
21 suppose to have a gun. So, I grab a gun and shoot that
22 person, then I think the law might still apply, yes, Your
23 Honor. I don't think that's what we have in this situation
24 but I do think that there could be a situation where you arm
25 yourself in order to respond to an attack and then C could

1 still be applicable. I'm just saying, at this point, the
2 Court has not said that nor is there any case law that says
3 so.

4 THE COURT: So, counsel, both of you, refresh my
5 recollection, as I, as I recall, and I -- how did Mr. Ricks
6 come to, to be armed with the weapon that he had?

7 SOLICITOR SAMPSON: By all accounts, he picks up
8 Mr. Travis Tucker's gun in the apartment. When he's in the
9 apartment complex, he is able to get the gun from -- whether
10 it's that Travis Tucker drops it or he gets it from Travis
11 Tucker. He has it at that -- from that point on. He
12 then -- they -- the -- Mr. Tucker leaves, Mr. Pauling
13 leaves, and then Mr. Ricks leaves the apartment. When he---

14 THE COURT REPORTER: He what?

15 SOLICITOR SAMPSON: Leaves the apartment.

16 When they leave the apartment, Mr. Ricks has the gun
17 that he picked up from Travis Tucker. He then is wanted --
18 is going through the apartment complex, as are the other two
19 individuals. He comes upon Mr. Pauling.

20 THE COURT: In the area, yeah.

21 All right.

22 SOLICITOR SAMPSON: Mr. Pauling, there was never any
23 evidence that he had a gun ever outside of Mr. Tucker having
24 brought a gun to the apartment complex.

25 THE COURT: Okay.

1 SOLICITOR SAMPSON: Did I say that wrong?

2 MS. ZMROCZEK: And, and, Your Honor, I think that the
3 factual disputes with -- I mean I think there's no factual
4 dispute that Tucker was the one who introduced the gun to
5 this, and it -- Mr. Ricks, as he testified to, and as he
6 says on the 9-1-1 call, wrestles it away from him after it
7 was shot in the house. So, that's how he --.

8 THE COURT: And there is a dispute about the shooting
9 in the house?

10 SOLICITOR SAMPSON: Yes.

11 MS. ZMROCZEK: There is a dispute, correct. That's a
12 factual dispute.

13 THE COURT: And this -- and to who did the shooting in
14 the house?

15 MS. ZMROCZEK: Correct. Right. Well, I don't think
16 there's a dispute as to a shooting in the house. I think---

17 THE COURT: No, it's a---

18 MS. ZMROCZEK: I think it's disputed to---

19 THE COURT: As to who shot.

20 MS. ZMROCZEK: Correct.

21 THE COURT: Right.

22 SOLICITOR SAMPSON: But it's never Mr. Pauling, the
23 victim.

24 THE COURT: I understand.

25 (Pause.)

1 THE COURT: Can you-all discuss the apply --
2 applicability of Whitlee Jones, if any, to the State versus
3 Whitlee Jones, that was an opinion from May of 2016, as it
4 may relate to this case?

5 Basically, as I understand that case, it discusses that
6 the Court has to consider the, the elements of self-defense
7 in determining the defendant's entitlement to the Act's
8 immunity save for the duty to retreat. And so, as I, as I
9 read the duty of, of un -- as I read self-defense, there are
10 some duties that could be imposed upon the person who's
11 using the force in connection with the -- whatever, whatever
12 incident's occurring at that particular time. And if you
13 need a copy of it, I'll be happy to share a copy with you.

14 MS. ZMROCZEK: Could I have a copy, Your Honor, if I
15 may just briefly read it?

16 THE COURT: Sure.

17 And I know Ms., Ms. Sampson handed up a copy of it in
18 conjunction with -- I think there were four cases that she
19 handed up, State versus Curry, State versus Theodore
20 Manning, and State versus Whitlee Jones, and I guess maybe
21 that was it. Oh, State versus Douglas.

22 (Pause.)

23 THE COURT: Yes, ma'am.

24 MS. ZMROCZEK: Thank you.

25 Your Honor, I think that the Court in, in, in that

1 State v. Whitlee Jones, was considering almost exactly what,
2 what, what was being asked to consider in this case, and I
3 think that, excuse me, that the -- what the Court was --
4 under the statutory requirements of the Act, I think it
5 comes to presumptions. And so, I think that that's the
6 presumptions of the fear, the presumptions, this -- that,
7 that was kind of what the Court was addressing as far as
8 self-defense.

9 So, I think, as they probably did in this case, they,
10 they addressed whether or not that duty to retreat applied
11 when you're talking about a hearing under this, under this
12 Act. And I think that, as the Court properly ruled in its
13 conclusion, that Jones is -- in that case, they were talking
14 about whether it's a residence, you know, whether the person
15 was in the -- a place that they had a right to be.

16 Here, the testimony was, is that the incident occurred
17 150 feet from the residence, which actually I think that the
18 Court has determined still would qualify within the confines
19 of the residence. Obviously, there's nobody saying that he
20 was inside the house when he was doing this. Obviously, he
21 was very close to the house.

22 There's been no testimony that he was not allowed to be
23 at that, excuse me, at that apartment complex. In fact, he
24 frequented that apartment complex, had clothes, and
25 Miss Pelzer even testified that he had a key, that she made

1 a key for him.

2 And so, I think that, what, what -- in considering
3 self-defense in conjunction with this Act, I think what the
4 Act does and what the purpose of it was, it was to remove
5 that one requirement of the duty to retreat, which is
6 exactly what I think we have here. And he -- and -- I'm
7 sorry.

8 And he -- it's important to remember, especially in
9 this case, that this, the timing of all this that happened,
10 as we drag it out, especially including hearings, as we've
11 dragged it out over several months, that this -- the
12 timeline that the experts have been able to narrow down,
13 from the phone calls and the 9-1-1 calls and all the
14 evidence presented, we're talking about a time span of seven
15 minutes.

16 So, from the time that Mr. Ricks entered his house and
17 he was attacked, which -- and Miss Pelzer, I think, even
18 agrees that there was a fight, there was a window busted
19 out, at some point a gunshot was fired off, to the, to the
20 time that Mr. Pauling is, is shot, is, is seven minutes.
21 And, and that's a very short period of time.

22 So, so, what, what transpired in the house 150 to
23 200 yards away outside, I think it still goes to his state
24 of mind and as far as what -- when he talks about his fear
25 and what he was experiencing in -- within those seven

1 minutes. And I think that often gets lost when we break
2 cases down like this.

3 But, but that's why I wanted to bring the Court's
4 attention to, you know, he was trying to getaway, and he
5 didn't know if the other person had a gun. He didn't know
6 how many guns were involved. Yeah, at that time, he didn't
7 know much of anything.

8 So, I just want to make sure that the -- we remember
9 we're talking about a very, very short period of time.

10 Thank you.

11 THE COURT: Yes, ma'am.

12 SOLICITOR SAMPSON: Thank you, Your Honor.

13 As to your question as to how Jones is to be dealt with
14 in this particular case, I think there were differences
15 between this case and, and Jones. Part of the differences
16 are, in Jones, as the Court states, there wasn't -- the
17 facts were undisputed.

18 In this case, we have disputed facts as about almost
19 all of it, when the shot happened, when he armed himself,
20 why he armed himself. We have witnesses who say they were
21 able to get out of the front door, leave, and have no --
22 absolutely no altercation. Kiara Pelzer, her -- Xavier,
23 Rhianna, they all were able to leave. No problems. Only
24 the defendant had an issue in leaving.

25 Every part of self-defense is disputed in our case.

1 And when you have that, then you look to State v. Curry
2 where the Court said it's a quintessential jury issue or
3 question for the jury if there's an issue of fact as to
4 whether self-defense applied or not. And the State -- and
5 the statute shouldn't even be, be applied in those cases.

6 In Jones, the Court talks about the fact that there's
7 no dispute of fact in Jones. We don't have that in this
8 case.

9 So, I don't, I don't know that they're comparable in
10 terms of just saying as what the elements are in
11 self-defense, and if those are in our case as well because
12 our case is disputed as to almost all of that. But as, as
13 Your Court -- I think what you're asking me or what, what
14 you're asking us both is do we apply those to this case, and
15 I say yes, you do as well as the other two portions, which
16 is acting lawfully and being attacked and meeting force with
17 force because, as you read self-defense, none of those are
18 required, and the Act does add those elements as well as
19 these three.

20 And so, I think you have to take that in totality of
21 what the Act is if you are going to apply it, and because we
22 have a dispute of facts, I don't think it's applicable as
23 we've already discussed.

24 THE COURT: Considering all of the evidence in this
25 case and, and the case law, I'm, I'm gonna deny the, the

1 motion.

2 The -- as it relates to the provisions of the Act, I
3 don't believe that Subsection A applies. The -- while,
4 while they were some -- there was some activity within the
5 home, the dwelling, the actual acts that occurred were
6 outside of the dwelling. I don't think that they were part
7 of what, what could of been determined as to be the
8 curtilage of the residence. They were clearly out in the
9 open, open area in the apartment complex.

10 As to whether or not they had -- the victim and the
11 defendant had the right to be there, I would say that they
12 were both social guests. While they, while there may --
13 while there may have been some additional reasons why the
14 defendant believed that he had a right to be there, that he
15 had a key to the apartment, those things would -- relating
16 to trespass notice, it's very clear, that even, even if he
17 were a lawful resident of the apartment, that so was
18 Miss Pelzer and that they equally had the opportunity and
19 the right to invite people over to the, to the apartment,
20 and, in this particular instance, that was done. So, the --
21 so, the victim was a social, a social guest and had, and had
22 a right to be there as a social guest.

23 The -- part, part of the dispute, there were, there
24 were a couple things, I guess, that they were questions of
25 fact as to the fear of the defendant. One of those relates

1 to the issue of the shooting inside the apartment. There's
2 clearly a factual dispute as to who shot the gun and the
3 circumstances under which the gun was, was shot. There are
4 some witnesses who said that the defendant came in with a
5 gun and shot, and shot the gun towards the ceiling in the,
6 in the children's bedroom. The defendant's testimony, and
7 perhaps some other witnesses, dispute that and say that, say
8 that in the, in the course of any dispute or in the
9 darkness, they were shots fired and, and they don't know who
10 fired the shots.

11 So, I think that's clearly one question that would have
12 to be resolved by, by a jury. I don't -- I'm required to
13 consider the preponderance of the evidence. And when the
14 facts are disputed under the circumstances here, it becomes
15 a credibility call on the witnesses. I think that's more
16 appropriate for the fact finder being the jury. In my view,
17 it's, it's a 50/50, and if it's 50/50, that's not a
18 preponderance of the evidence.

19 The question of the defendant picking up the weapon as
20 he left the apartment, I, I do think, I do think that there
21 are inferences that can be drawn from the discussion
22 generally of people being able to leave the apartment and go
23 other places and to not run into anyone else or not to
24 engage, and not to, you know, engage in a, a fight in the
25 premises. You know, certainly there was the opportunity.

1 He, he came in a car. He could of left in a car. He could
2 of remained in the apartment, and having, having the gun,
3 if, if he had the gun, that's undisputed, he had the gun in
4 the apartment, if someone had come back, he could of used it
5 to defend himself at that particular point. You know, those
6 are all, those are all factual issues and factual questions
7 I think that the jury could resolve and also mitigate
8 against the finding of protection under the Act.

9 Considering the provisions of subsection C, clearly, if
10 he's walking through the premises, his testimony that he was
11 trying to go to another apartment where someone, where
12 someone he knew in order to call for help, and that he
13 encountered this person, and that he was armed, and that
14 there -- he, he says he was jumped, and the gun fell out and
15 they wrestled over the gun, and then there were shots, and
16 he retrieved the gun, the gun and shot the, the victim.

17 For me, the, the factor relating to that was the
18 photographs of the placement of the shell casings and the,
19 the distance between where the shell casings were initially
20 located and the ultimate place of the, of the victim, that
21 indicates that it was not -- it seems to indicate that it
22 was not a close, close encounter, that either someone was
23 leaving or retreating or running away particularly with the
24 victim being shot in the back.

25 You know, those are also factors that lead me to

1 believe that, that, at the time the shooting occurred, that
2 there was -- he was no longer meeting deadly force with
3 deadly force. You know, if, if -- and I understand that,
4 that there was, that there was a struggle and that they were
5 struggling over the gun that the defendant brought with him
6 as he was leaving the apartment. And I understand that the
7 argument and the inference could be that he took the gun
8 with him to protect himself while he was moving from one
9 place to another cause he didn't know where they went. I
10 understand all that.

11 But I, I -- as I've stated, I think that those issues
12 are -- end up being credibility issues. They end up being
13 issues as to what inferences can be drawn from the totality
14 of the circumstances and whether there was a reasonable fear
15 of great bodily harm or death at the time that he left the
16 apartment knowing that at least whoever was -- someone who
17 left the apartment was no longer armed.

18 And so, under those circumstances, I find that it's,
19 that it's a 50/50 call, and so, therefore, the default is --
20 the defendant is not proven self-defense or proven
21 entitlement to the, proven entitlement to protection under
22 the Act by preponderance of the evidence.

23 And so, I'll deny the motion again on those grounds.

24 Is there anything further?

25 SOLICITOR SAMPSON: Not from the State, Your Honor.

1 MS. ZMROCZEK: Nothing, Your Honor.

2 THE COURT: And I understand all the exhibits will
3 be -- remain available for whoever needs them. I would
4 allow you to, Ms. Zmroczek, to, if you can print off or
5 extract or the State can extract that particular phone call
6 and put it on a disk.

7 MS. ZMROCZEK: I will do that today, Your Honor.

8 THE COURT: And we will -- that would then be Defense
9 Exhibit No.---

10 THE COURT REPORTER: Twenty-seven.

11 THE COURT: ---27 to which there's no objection by the
12 State.

13 Is that correct?

14 SOLICITOR SAMPSON: No, ma'am.

15 THE COURT: Okay. And so, that will be marked and
16 presented even though it may not be done at -- right at this
17 moment.

18 It's also my understanding that the State has provided
19 notice to the defense that the trial would take place -- is
20 it the week of October the 3rd?

21 SOLICITOR SAMPSON: October 10th.

22 THE COURT: October 10th.

23 Okay. All right. The week of October 10th and that
24 you-all have resolved whatever discovery issues may have or
25 may still be pending, or if you need to resolve those, then

1 you need to see the chief administrative judge who is Judge
2 McMahon.

3 Is there anything else?

4 SOLICITOR SAMPSON: No, ma'am.

5 MS. ZMROCZEK: Nothing, nothing further, Your Honor.

6 THE COURT: Okay. With that, then we're adjourned on
7 this particular hearing.

8 SOLICITOR SAMPSON: Thank you, Your Honor.

9 MS. ZMROCZEK: Thank you.

10 THE COURT: Thank you.

11 And I do not intend to do a written order. I think, as
12 long as I've stated on the record, you're protected.

13 MS. ZMROCZEK: I think that that -- I think that --.

14 SOLICITOR SAMPSON: Yes, ma'am.

15 (WHEREUPON, the disk was marked as Defendant's Exhibit
16 No. 27 and received into evidence at this time.)

17

18 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

19

20

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24

25

C E R T I F I C A T E

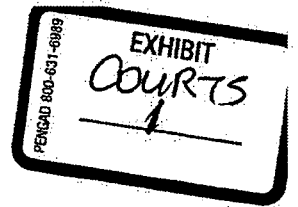
I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 12th day of September, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 5th, 2016

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

The State of South Carolina)

-vs-)

Channen Ricks,)

Defendant.)

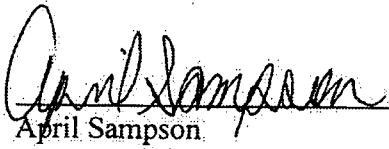
IN THE COURT OF GENERAL SESSIONS

**STIPULATIONS FOR THE PURPOSE OF
HEARING PURSUANT TO S.C. CODE 16-11-440**
Indictment Number: 2016-GS-40-2836

The Defendant, by and through his attorney, Aimee Zmroczek, stipulates to the following for purposes of this hearing:

- 1) A custodian of records is not needed to authenticate the 911 tape recordings, and they are to be considered authentic and admissible for the purposes of this hearing;
- 2) A custodian of records is not needed to authenticate the cellphone records for the Defendant's phone obtained from Cleartalk, and they are to be considered authentic and admissible for the purposes of this hearing;
- 3) The RCSD officer who downloaded the records from the cellphones of Channen Ricks, Travis Tucker, and Thomas Pauling is not needed to authenticate records, and they are to be considered authentic and admissible for the purposes of this hearing;
- 4) No one saw Thomas Pauling with a weapon and he did not possess a weapon on May 25, 2014;
- 5) Thomas Pauling was shot with a .40 handgun and died at [REDACTED]
[REDACTED];
- 6) Ballistics examination results indicate the bullets recovered from Pauling's body match the shell casings found at the scene;

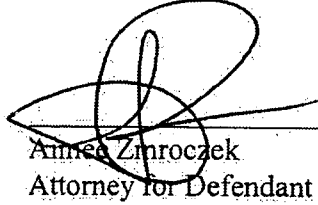
- 7) A custodian of records is not needed to authenticate the business records obtained from Richland Village Apartments, and they are to be considered authentic and admissible for the purposes of this hearing;
- 8) A custodian of records is not needed to authenticate the business records obtained from Master's Inn and they are to be considered authentic for the purposes of this hearing.



April Sampson
Assistant Solicitor

Columbia, South Carolina

This 15th of August, 2016



Annecia Zimroczek
Attorney for Defendant

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
3) 2016-GS-40-02836

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Channen F. Ricks,)
8 Defendant.)

9 October 10-13, 2016
10 Columbia, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a
15 jury.

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

18 APRIL W. SAMPSON, ASSISTANT SOLICITOR
19 JUSTIN T. WILLIAMS, ASSISTANT SOLICITOR
20 Attorney for the Plaintiff

21 AIMEE J. ZMROCZEK, ESQ.
22 Attorney for the Defendant

23
24
25 DEBORAH M. McCURDY, RPR
Official Court Reporter

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OCTOBER 10, 2016

(WHEREUPON, the proceedings commenced at
12:32 p.m.)

THE COURT: Let the record reflect the
Defendant is present. Is the Defendant ready for
the jury to come select? The State is ready?

MS. SAMPSON: Yes, sir.

THE COURT: Very well. Let's bring them up.

MS. SAMPSON: While we are doing that, can I
put something on the record?

THE COURT: Sure.

MS. SAMPSON: In chambers we had discussed the
Giglio material that we had given.

THE COURT: Yes.

MS. SAMPSON: You asked me to confer with the
counsel for the Sheriff's Department. It is my
understanding that she most likely does want to be
heard.

THE COURT: Okay.

MS. SAMPSON: And we would like to do so this
afternoon when we come back for the trial.

THE COURT: That's fine. I will be happy to
hear from her. Thank you.

MS. SAMPSON: Thank you, Your Honor.

1 (WHEREUPON, the jury came into open
2 court at 12:36 p.m.)

3 THE BAILIFF: The jury is present, Your Honor.

4 THE COURT: Thank you, ladies and gentlemen.
5 Good afternoon. My name is Markley Dennis. I'm a
6 circuit court judge from the Ninth Judicial
7 Circuit, which is comprised of Charleston and
8 Berkeley County. I have been assigned this week to
9 conduct a term of General Sessions Court. And you
10 have been now qualified and selected to help us
11 resolve some of the disputes, both in Common Pleas
12 and General Sessions, and we need your help in a
13 case. And I am going to share with you the parties
14 involved.

15 First I will identify the Defendant. "The
16 Defendant" is simply a term that is used to
17 describe a designated party against whom a claim is
18 made. And this is a criminal dispute, so obviously
19 the first party, the entity making the claim, is
20 the State of South Carolina. And they have made a
21 claim against Channen Ricks, who is the Defendant.

22 Mr. Ricks is seated at the table to my left.
23 Mr. Ricks, if you would please stand and face the
24 jury panel for me. Turn and face them.

25 (Defendant complies.)

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

3 (Defendant complies.)

4 THE COURT: Are there any members of the jury
5 panel who are related by blood or marriage, have
6 any business dealings with, socially or casually
7 acquainted with Mr. Ricks? If so, please stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: Thank you. There are none.

10 THE JUROR: Your Honor?

11 THE COURT: Yes?

12 THE JUROR: I know the Defendant's family.

13 THE COURT: All right. If you will stand.

14 (Juror complies.)

15 THE COURT: What is your name, please?

16 THE JUROR: Juror Number 188, Berline
17 McDaniel-Smith.

18 THE COURT: How do you know him?

19 THE JUROR: My nephew was involved in a crime
20 with him.

21 THE COURT: Okay.

22 THE JUROR: And I also know the family.

23 THE COURT: All right. And would that
24 influence or affect you in this dispute?

25 THE JUROR: No, sir.

1 THE COURT: Okay. Thank you. Would you base
2 your decision on the evidence and the law and be
3 fair to both sides?

4 THE JUROR: Yes, sir.

5 THE COURT: Okay. Thank you, ma'am.

6 (Juror seated.)

7 THE COURT: Anyone else?

8 (WHEREUPON, there was no response.)

9 THE COURT: There appear to be none.

10 Mr. Ricks is represented by Ms. Zmroczek. If
11 you would identify yourself and your law firm,
12 please.

13 (Ms. Zmroczek stands.)

14 MS. ZMROCZEK: Thank you. My name is Amy
15 Zmroczek. I have an office here in Columbia. I
16 practice throughout the state, and additionally in
17 federal court.

18 THE COURT: And is your law firm AJZ?

19 MS. ZMROCZEK: AJZ Law Firm. I am a sole
20 practitioner.

21 THE COURT: Thank you so much.

22 (Ms. Zmroczek is seated.)

23 THE COURT: Are there any members of the jury
24 panel who are related by blood or marriage, have
25 any business dealings with, socially or casually

1 acquainted with, ever been represented by
2 Ms. Zmroczek or her law firm? If so, please stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: Thank you. There appear to be
5 none.

6 The State of South Carolina in disputes,
7 criminal disputes throughout the state, is
8 represented by a Circuit Solicitor. The Circuit
9 Solicitor for the Fifth Circuit is Dan Johnson.

10 Are there any members of the jury panel
11 related by blood or marriage, have any business
12 dealings with, socially or casually acquainted
13 with, ever been represented by Solicitor Johnson?
14 If so, please stand.

15 (WHEREUPON, there was no response.)

16 THE COURT: There are none.

17 Solicitors have Assistant Solicitors that
18 assist them in performing their duties, and we have
19 several here.

20 The State is being represented by Ms. Sampson.
21 If you will identify yourself and anyone who will
22 be assisting you, please.

23 (Ms. Sampson and Mr. Williams stand.)

24 MS. SAMPSON: My name is April Sampson. I am
25 an Assistant Solicitor, and I will be assisted by

1 Justin Williams, who is also an Assistant Solicitor
2 in our office.

3 THE COURT: Thank you so much.

4 (Ms. Sampson and Mr. Williams are seated.)

5 THE COURT: Are there any members of the jury
6 panel related by blood or marriage, have any
7 business dealings with, socially or casually
8 acquainted with, ever been represented by Ms. April
9 Sampson or Mr. Justin Williams? Please stand.

10 (Juror stands.)

11 THE COURT: Yes?

12 THE JUROR: 171. Amy Love. I am a neighbor
13 of Justin Williams.

14 THE COURT: Will that influence you?

15 MR. LOVE: I don't think so.

16 THE COURT: And I appreciate your answer, and
17 there is nothing wrong with that answer. Would
18 you -- but it is -- and it is a very human
19 response. My question to you would be, would your
20 knowledge of Mr. Williams and contact with him
21 influence how you view the evidence and the law and
22 the application of the law to the evidence?

23 THE JUROR: No.

24 THE COURT: And your decision would be based
25 on the evidence and the law and fair to both sides?

1 THE JUROR: Correct.

2 THE COURT: And your number again?

3 THE JUROR: 171.

4 THE COURT: Thank you, ma'am. You may be
5 seated.

6 (Juror seated.)

7 (Juror stands.)

8 THE COURT: Yes, ma'am?

9 THE JUROR: Juror 253, Larcennia Simpson. And
10 I went to college with Justin Williams.

11 THE COURT: Would that affect you, ma'am?

12 THE JUROR: No.

13 THE COURT: And would you base your decision
14 on the evidence and the law and would the decision
15 be fair to both sides?

16 THE JUROR: Yes.

17 THE COURT: And your number again?

18 THE JUROR: 253.

19 THE COURT: Thank you.

20 (Juror seated.)

21 (Juror stands.)

22 THE COURT: Yes, sir?

23 THE JUROR: 137. I went to undergrad law
24 school with Mr. Williams.

25 THE COURT: Would that affect or influence you

1. in any way, sir?

2. THE JUROR: No, Your Honor.

3. THE COURT: Would you base your decision on
4. the evidence and the law, and would that decision
5. be fair to both sides?

6. THE JUROR: Yes, Your Honor.

7. THE COURT: Thank you, sir.

8. (Juror seated.)

9. THE COURT: Anyone else?

10. (WHEREUPON, there was no response.)

11. THE COURT: Thank you. There appear to be
12. none.

13. I am going to identify a number of persons,
14. ladies and gentlemen. If you are related by blood
15. or marriage, have any business dealings with,
16. socially or casually acquainted with with any of
17. these persons, you need to stand and share that
18. information, please, with the Court.

19. Kiara Pelzer. Brianna Pelzer. Xavier
20. Richardson. Investigator David Goff. Travis
21. Tucker.

22. The following persons who are employed with
23. Richland County Sheriff's Department: Kerry
24. Johnson. Harold Bouknight. Larry Crutchlow. Don
25. Robinson. Robert Oates. Investigator Timothy Lee.

1 Mike Poole. Brian Metze. Master Deputy Aull.

2 David Collins. Rachel Grant.

3 Robert Dean, with the Richland County
4 Coroner's Office. Amy Durso, with Professional
5 Pathology Services. Tommy Goodwin. Justin C.
6 Green. Joy K. Smith. Ted Powell, also with the
7 Richland County Coroner's Office. Dorothy
8 Williams. Matthew Frost, who was formerly with the
9 Richland County Sheriff's Department. Tammy
10 DePace. Dominique Green. Latonya Lewis.
11 Jacquelyn Richburg. Whitney Berry, with the South
12 Carolina Law Enforcement Division, known as SLED.
13 Brian Parker, with Parker Electronics. Matthew
14 Gotlieb. Amanda Sharpe. Yuhanna Muhammad,
15 Columbia Fire Department. Dominique Boles.
16 Christopher Watkins, with Watkins Digital
17 Forensics. Derek Rhinehart. Laquanda Richardson.
18 Alvidia Jenkins Chambers. Records custodian with
19 South Carolina Department of Corrections.
20 Representative of Probation, Pardon and Parole
21 records. 9-1-1 operator, Kimberly Gathers.
22 Masters Inn employee -- don't know.

23 Does anyone have any connection with any of
24 those persons or any of the agencies that I have
25 mentioned? If so, please stand.

1 (WHEREUPON, there was no response.)

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

4 Are any members of the jury panel related by
5 blood or marriage with anyone employed with the
6 Solicitor's Office for the Fifth Circuit? It has
7 offices in Columbia, or Richland, and in Kershaw.
8 Any of those offices?

9 (Juror stands.)

10 THE COURT: Yes?

11 THE JUROR: Juror 54, Elizabeth Coble. My son
12 works for the Fifth Circuit Solicitor.

13 THE COURT: Would that affect you?

14 THE JUROR: It would not, no.

15 THE COURT: His name?

16 THE JUROR: Daniel Coble.

17 THE COURT: Has he had any connection or
18 involved in this case?

19 MS. SAMPSON: No, sir.

20 THE COURT: Would you base your decision on
21 the evidence and the law, and will that decision be
22 fair to both sides?

23 THE JUROR: Yes.

24 THE COURT: Thank you, ma'am. You may be
25 seated.

1 (Juror seated.)

2 THE COURT: Anyone else?

3 (WHEREUPON, there was no response.)

4 THE COURT: Thank you. There are none.

5 The dispute that brings us here, ladies and
6 gentlemen, is framed from this document that I am
7 holding in my hand, and it is what appears to you
8 to be a piece of paper. It is called an
9 indictment. And it is basically the accusations
10 against Mr. Ricks. It is not evidence. It won't
11 accompany you, those of you who are selected, to
12 your jury room, but it sets forth what he is
13 alleged to have done, and I need to share that with
14 you so I can ask you some questions.

15 It accuses Mr. Ricks of this: That he did, in
16 Richland County, on or about May 25th, 2014, kill
17 the victim, Thomas Pauling, with malice
18 aforethought by means of shooting and that the
19 victim died as a result of that shooting.

20 I share that with you to find out if any
21 member of the jury panel has heard anything, read
22 anything, you have any prior knowledge of this
23 dispute? If so, please stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: Thank you. There appear to be

1 none.

2 Is there anything about the nature of this
3 dispute, that is, someone being accused of the
4 crime of murder, that you, because of some strong
5 philosophy you have, something that may have
6 happened to you or a close family member in your
7 life, or anything that will affect your ability to
8 fairly and impartially apply your common sense,
9 your sense of logic and reason, analyze the
10 evidence, which consists of testimony of witnesses
11 and any exhibits that might be introduced through
12 their testimony, and at the appropriate time
13 deciding what you believe to be the truth, and then
14 once deciding those true facts from that evidence,
15 taking the law as I would give it to you at the
16 conclusion of the trial and applying that law
17 fairly and impartially to those facts? If you feel
18 there is anything in your background that would
19 affect your ability to perform that task, please
20 stand.

21 (WHEREUPON, there was no response.)

22 THE COURT: Thank you. There appear to be
23 none.

24 Does any member of the jury have any strong
25 feelings or strong philosophy, religious or moral

1 beliefs concerning firearms that would affect their
2 ability to fairly and impartially apply their
3 common sense and sense of logic and reason? If so,
4 please stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: Thank you. There appear to be
7 none.

8 Any member of the jury panel who lives close
9 to 1234 Universal Drive, Richland Village
10 Apartments? If so, please stand.

11 (Juror stands.)

12 THE COURT: Yes? And you have already spoken
13 earlier.

14 THE JUROR: Yes.

15 THE COURT: You live in the Richland Village
16 Apartments?

17 THE JUROR: No, sir, I live right down the
18 road.

19 THE COURT: Okay. Would that affect you or
20 influence you?

21 THE JUROR: No, sir.

22 THE COURT: Thank you, ma'am. And your
23 number -- name and number again? I'm sorry.

24 THE JUROR: 188, Berline McDaniel-Smith.

25 THE COURT: Thank you. Thank you,

1 Ms. McDaniel-Smith.

2 (Juror seated.)

3 THE COURT: Are there any members of the jury
4 panel that frequent an establishment called Torch?
5 If so, please stand.

6 (WHEREUPON, there was no response.)

7 THE COURT: Thank you. There appear to be
8 none.

9 Are there any members of the jury panel that
10 ever had to use force to protect themselves or
11 their property or another person? If so, please
12 stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: Thank you. There appear to be
15 none.

16 Any members of the jury panel, if there is
17 testimony about the use of alcohol or marijuana,
18 are there any members of the jury panel that would
19 feel that because of any strong beliefs or personal
20 philosophy, religious or moral philosophy that you
21 have, that would influence or affect your ability
22 to be fair and impartial in applying your common
23 sense, your sense of logic and reason? If so,
24 please stand.

25 (WHEREUPON, there was no response.)

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

3 Are there any members of the jury panel who
4 are members of organizations such as MADD, SADD --
5 Mothers Against Drunk Driving, Students Against
6 Drunk Driving; the Innocence Project, any similar
7 programs dealing with criminal acts, alleged
8 criminal acts, or crime in this country? If so,
9 please stand.

10 (WHEREUPON, there was no response.)

11 THE COURT: Thank you. There are none.

12 Are there any members of the jury panel
13 related by blood or marriage or have close personal
14 friends who now or formerly were employed with law
15 enforcement or involved in law enforcement in any
16 capacity? If so, please stand.

17 (Juror stands.)

18 THE COURT: Thank you. Yes?

19 THE JUROR: 275. I do have several family
20 members that are retired.

21 THE COURT: They don't presently work with law
22 enforcement? Were they retired from Richland
23 County law enforcement?

24 THE JUROR: Yes, sir.

25 THE COURT: Would that affect or influence you

1 in any way, ma'am?

2 THE JUROR: No, Your Honor.

3 THE COURT: Will you base your decision on the
4 evidence and the law, and will that decision be
5 fair to both sides?

6 THE JUROR: Yes, Your Honor.

7 THE COURT: Thank you very much. You may be
8 seated.

9 (Juror seated.)

10 THE COURT: Anyone else?

11 (Juror stands.)

12 THE COURT: Yes?

13 THE JUROR: Juror 293. I have several friends
14 that are law enforcement officers here, City of
15 Columbia, Richland County, Lexington County,
16 Charleston County, and myself. I used to work for
17 Department of Corrections, Your Honor.

18 THE COURT: Would that affect you in any way,
19 ma'am?

20 THE JUROR: No, sir.

21 THE COURT: Will you base your decisions on
22 the evidence and law, and will it be fair to both
23 sides?

24 THE JUROR: Yes, sir.

25 THE COURT: And your number again?

1 THE JUROR: 293.

2 THE COURT: Thank you. You may be seated.

3 (Juror seated.)

4 THE COURT: Anyone else?

5 (WHEREUPON, there was no response.)

6 THE COURT: Thank you. There appear to be
7 none.

8 Is there any member of the jury panel or your
9 immediate family that has ever had any dispute
10 involving law enforcement or anyone connected with
11 law enforcement? If so, please stand.

12 (WHEREUPON, there was no response.)

13 THE COURT: Thank you. There are none.

14 Are there any other specific questions from
15 the State, Solicitor?

16 MS. SAMPSON: No, sir.

17 THE COURT: Are there any other specific
18 questions?

19 MS. ZMROCZEK: Yes, Your Honor. If any member
20 of the jury panel has been the victim of a violent
21 crime.

22 THE COURT: Thank you so much, Ms. Zmroczek.

23 Any member of the jury panel ever been
24 involved in a crime of violence -- either you were
25 the victim, you were accused of committing the

1 offense, you were a witness, or had any connection
2 with that? If so, please stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: Thank you. There appear to be
5 none.

6 Anything else, Solicitor?

7 MS. SAMPSON: No, sir.

8 THE COURT: Anything else, Ms. Zmroczek?

9 MS. ZMROCZEK: No, sir.

10 THE COURT: The last question I have for you
11 is one that you probably heard in qualifications,
12 and you probably have gotten tired of me asking the
13 same question, would it influence you, can you base
14 your decision on the evidence and the law, but
15 really it is the fundamental part of what we are
16 about, you and I. And some of you will be selected
17 and become a judge with me in this case, and you
18 and I will work together to resolve the dispute --
19 you having the sole responsibility for determining
20 the facts from the evidence; my responsibility will
21 be the judge of the law, meaning that I would rule
22 on matters of law that may arise from time to time
23 during the trial, and also give you the law at the
24 conclusion. And we combine our efforts to reach a
25 decision in this case and resolve this dispute.

1 Just as I did when I left the practice of law
2 and became a judge, I took an oath to do something,
3 and you will take a similar oath, and that is that
4 we will be expected to apply our knowledge and
5 sense of logic and reason, fairly and impartially
6 performing the task that we are assigned. And we
7 make a commitment.

8 I have already made mine. And mine continues.
9 And I make it again. I am going to do the best job
10 I can possibly -- that is humanly possible to try
11 to be the fairest person I know how to be in
12 performing my task as a judge of the law.

13 But you will make a commitment, and that will
14 be the first act once you are sworn, and you will
15 take an oath and you will promise the State and you
16 will promise Mr. Ricks and you will promise the
17 Court that you will at the appropriate time apply
18 that knowledge and sense of logic and reason that
19 you bring with you this morning, and you will be
20 fair and impartial.

21 Is there anything that you have heard about
22 this dispute that would give you any concern about
23 your ability to make that commitment? If so,
24 please stand.

25 (WHEREUPON, there was no response.)

1 THE COURT: Thank you very much.

2 We are going to select a jury now. And each
3 side can excuse persons. The State can excuse
4 five. Mr. Ricks can excuse ten. And we will go
5 through the process.

6 When your name is called, do they -- where do
7 you want them to stand?

8 THE CLERK: In front of the microphone.

9 THE COURT: In front of the microphone? If
10 you will come and follow the clerk's instructions.
11 You will stand and face the State and Mr. Ricks.
12 And first the State will make a decision as to
13 whether or not they wish to seat you; and then
14 Mr. Ricks will make a determination of whether or
15 not he wishes to seat you.

16 If either side excuses you, don't be offended
17 by that. That is the process. Just return and
18 take your seat. If you are selected, then you will
19 be directed to fill a chair in the jury box. And
20 we will go through this process until we have
21 selected our 12 jurors.

22 And let's take two alternates, please. Okay,
23 thank you. I'll turn it over to you.

24 THE CLERK: Ladies and gentlemen of the jury
25 panel, as I call your number, please come to the

1 microphone located at the center of the courtroom.
2 At the microphone, please restate your number and
3 your place of occupation. And please bring any
4 personal items that you may have with you.

5 Juror Number 242.

6 (Juror approaches.)

7 THE JUROR: I'm Juror Number 242. Warehouse
8 supervisor.

9 THE CLERK: What says the State?

10 MS. SAMPSON: Please seat the juror.

11 THE CLERK: What says the Defense?

12 MS. ZMROCZEK: Please seat the juror.

13 THE CLERK: Please have a seat in the jury
14 box.

15 (Juror 242, a black male, was seated on
16 the jury.)

17 THE CLERK: Juror Number 119.

18 (Juror approaches.)

19 THE JUROR: Sarah Harley. Subway.

20 THE CLERK: What says the State?

21 MS. SAMPSON: Please excuse the juror.

22 THE CLERK: Please return to the back of the
23 courtroom.

24 (Juror 119, a white female, was excused
25 by the State.)

1 THE CLERK: Juror Number 66.

2 (Juror approaches.)

3 THE JUROR: My name is Rio Dequilanea. I work
4 at FM Manufacturing as appraiser.

5 THE CLERK: What says the State?

6 MS. SAMPSON: Please seat the juror.

7 THE CLERK: What says the Defense?

8 MS. ZMROCZEK: Please seat the juror.

9 THE CLERK: Please have a seat in the jury
10 box.

11 (Juror 66, an Asian male, was seated on
12 the jury.)

13 THE CLERK: Juror Number 293.

14 (Juror approaches.)

15 THE JUROR: Kelsey Wilson. Laboratory
16 specialist at Midlands Technical College.

17 THE CLERK: What says the State?

18 MS. SAMPSON: Please seat the juror.

19 THE CLERK: What says the Defense?

20 MS. ZMROCZEK: Please excuse the juror for
21 this trial.

22 THE CLERK: Please return to the back of the
23 courtroom.

24 (Juror 293, a white female, was excused
25 by the Defense.)

1 THE CLERK: Juror Number 256.

2 THE JUROR: My name is Camron Smith.

3 Corporate Tax Director at Blue Cross Blue Shield of
4 South Carolina.

5 THE CLERK: What says the State?

6 MS. SAMPSON: Please seat the juror.

7 THE CLERK: What says the Defense?

8 DEFENSE ATTORNEY: Please seat the juror.

9 THE CLERK: Please have a seat in the jury
10 box.

11 (Juror 256, a white male, was seated on
12 the jury.)

13 THE CLERK: Juror Number 183.

14 (Juror approaches.)

15 THE JUROR: I'm Juror Number 183, Danette
16 Mayer. I work -- I don't work anymore, I'm
17 retired -- I did work at Richland District School,
18 School District Two.

19 THE CLERK: What says the State?

20 MS. SAMPSON: Please seat the juror.

21 THE CLERK: What says the Defense?

22 MS. ZMROCZEK: Please seat the juror.

23 THE CLERK: Please have a seat in the jury
24 box.

25 (Juror 183, a white female, was seated

1 on the jury.)

2 THE CLERK: Juror Number 278.

3 (Juror approaches.)

4 THE JUROR: William Walkup, 278. I'm a
5 psychiatrist at Midlands Psychiatric Associates.

6 THE CLERK: What says the State?

7 MS. SAMPSON: Please excuse the juror.

8 THE CLERK: Please return to the back of the
9 courtroom.

10 (Juror 278, a white male, was excused by
11 the State.)

12 THE CLERK: Juror Number 286.

13 (Juror approaches.)

14 THE JUROR: 286, Lauren Weston. I'm a nanny.

15 THE CLERK: What says the State?

16 MS. SAMPSON: Please seat the juror.

17 THE CLERK: What says the Defense?

18 DEFENSE ATTORNEY: Please seat the juror.

19 THE CLERK: Please have a seat in the jury
20 box.

21 (Juror 286, a white female, was seated
22 on the jury.)

23 THE CLERK: Juror Number 23.

24 THE JUROR: Juror Number 23, Wanda Blackmon.
25 Retired army. Training specialist.

1 THE CLERK: What says the State?

2 MS. SAMPSON: Please seat the juror.

3 THE CLERK: What says the Defense?

4 MS. ZMROCZEK: Please seat the juror.

5 THE CLERK: Please have a seat in the jury
6 box.

7 (Juror 23, a black female, was seated on
8 the jury.)

9 THE CLERK: Juror Number 253.

10 THE JUROR: Juror 253. Larcennia Simpson.
11 Training specialist. United States Department of
12 Justice.

13 THE CLERK: What says the State?

14 MS. SAMPSON: Please seat the juror.

15 THE CLERK: What says the Defense?

16 MS. ZMROCZEK: Please excuse this juror.

17 THE CLERK: Please return to the back of the
18 courtroom.

19 (Juror 253, a black female, was excused
20 by the Defense.)

21 THE CLERK: Juror Number 148.

22 (Juror approaches.)

23 THE JUROR: Juror Number 148, Karen Jones.

24 I'm a physical analyst for the Department of Social
25 Services.

1 THE CLERK: What says the State?

2 MS. SAMPSON: Please seat the juror.

3 THE CLERK: What says the Defense?

4 MS. ZMROCZEK: Please swear the juror.

5 THE CLERK: Please have a seat in the jury
6 box.

7 (Juror 148, a black female, was seated
8 on the jury.)

9 THE CLERK: Juror Number 92.

10 (Juror approaches.)

11 THE JUROR: Juror Number 92, Paul Ford. I'm a
12 rural truck driver.

13 THE CLERK: What says the State?

14 MS. SAMPSON: Please excuse the juror.

15 THE CLERK: Please return to the back of the
16 courtroom.

17 (Juror 92, a black male, was excused by
18 the State.)

19 THE CLERK: Juror Number 137.

20 (Juror approaches.)

21 THE JUROR: Robert Jackman. I am an attorney
22 in a firm called Vernis and Bowling.

23 THE CLERK: What says the State?

24 MS. SAMPSON: Please seat the juror.

25 THE CLERK: What says the Defense?

1 MS. ZMROCZEK: Please seat the juror.

2 THE CLERK: Please have a seat in the jury
3 box.

4 (Juror 137, a white male, was seated on
5 the jury.)

6 THE CLERK: Juror Number 103.

7 THE JUROR: Juror 103, Delphia Giles. Retired
8 physical science teacher.

9 THE CLERK: What says the State?

10 MS. SAMPSON: Please seat the juror.

11 THE CLERK: What says the Defense?

12 MS. ZMROCZEK: Please seat the juror.

13 THE CLERK: Please have a seat in the jury
14 box.

15 (Juror 103, a black female, was seated
16 on the jury.)

17 THE CLERK: Juror Number 13.

18 (Juror approaches.)

19 THE JUROR: Juror 13. Kevin Babride.
20 Engineer.

21 THE CLERK: What says the State?

22 MS. SAMPSON: Please seat the juror.

23 THE CLERK: What says the Defense?

24 MS. ZMROCZEK: Please seat the juror.

25 THE CLERK: Please have a seat in the jury

1 box.

2 (Juror 13, an Asian Male, was seated on
3 the jury.)

4 THE JUROR: Juror Number 19.

5 (Juror approaches.)

6 THE JUROR: Juror Number 19, Justin Battle.
7 Warehouse associate.

8 THE CLERK: What says the State?

9 MS. SAMPSON: Please excuse the juror.

10 THE CLERK: Please return to the back of
11 courtroom.

12 (Juror 19, a black male, was excused by
13 the State.)

14 THE CLERK: Juror Number 221.

15 (Juror approaches.)

16 THE JUROR: Leatrice Peyton, Sales and
17 merchandise manager, Fort Jackson Main Exchange.

18 THE CLERK: What says the State?

19 MS. SAMPSON: Please seat the juror.

20 THE CLERK: What says the Defense?

21 MS. ZMROCZEK: Swear the juror.

22 THE CLERK: Please have a seat in the jury
23 box.

24 (Juror 221, a black female, was seated
25 on the jury.)

1 THE CLERK: Juror Number 275.

2 (Juror approaches.)

3 THE JUROR: Wakeelah Truesdale. Stay-at-home
4 mom.

5 THE CLERK: What says the State?

6 MS. SAMPSON: Please seat the juror.

7 THE CLERK: What says the Defense?

8 MS. ZMROCZEK: Please excuse this juror.

9 THE CLERK: Please return to the back of the
10 courtroom.

11 (Juror 275, a black female, was excused
12 by the Defense.)

13 THE CLERK: Juror Number 54.

14 (Juror approaches.)

15 THE JUROR: Juror 54, Elizabeth Coble. I
16 teach 3-year-olds at Shandon Presbyterian Child
17 Development Center.

18 THE CLERK: What says the State?

19 MS. SAMPSON: Please seat the juror.

20 THE CLERK: What says the Defense?

21 MS. ZMROCZEK: Please excuse this juror.

22 THE CLERK: Please return to the back of the
23 courtroom.

24 (Juror 54, a white female, was excused
25 by the Defense.)

1 THE CLERK: Juror 121.

2 (Juror approaches.)

3 THE JUROR: Juror 121, Kimberly Hauge-Kent.

4 And I am a business analyst at Palmetto Health.

5 THE CLERK: What says the State?

6 MS. SAMPSON: Please seat the juror.

7 THE CLERK: What says the Defense?

8 MS. ZMROCZEK: Please seat the juror.

9 THE CLERK: Please have a seat in the jury
10 box.

11 (Juror 121, a white female, was seated
12 on the jury.)

13 THE CLERK: Juror Number 147.

14 (Juror approaches.)

15 THE JUROR: 147.

16 THE COURT: The strikes are one and two for
17 the alternates.

18 THE JUROR: My name is Sara Johnson. And I
19 own a store, home furnishings and gift store.

20 THE CLERK: What says the State?

21 MS. SAMPSON: Please seat the juror.

22 THE CLERK: What says the Defense?

23 MS. ZMROCZEK: Please seat the juror.

24 THE CLERK: Please have a seat in the jury
25 box.

1 (Juror 147, a white female, was selected
2 as Alternate Number 1.)

3 THE CLERK: Juror Number 305.

4 THE JUROR: Hi. I'm Sharon Verba. I'm a
5 librarian at the University of South Carolina.

6 THE CLERK: What says the State?

7 MS. SAMPSON: Please seat the juror.

8 THE CLERK: What says the Defense?

9 MS. ZMROCZEK: Please swear the juror.

10 THE CLERK: Please have a seat in the jury
11 box.

12 (Juror 305, a white female, was selected
13 as Alternate Number 2.)

14 THE COURT: Thank you very much.

15 Are there any motions from the State regarding
16 the jury selection?

17 MS. SAMPSON: Not from the State, Your Honor.

18 THE COURT: Any motions from Mr. Ricks?

19 MS. ZMROCZEK: No, sir.

20 THE COURT: Ladies and gentlemen, those of you
21 that were not selected, thank you very much. Do
22 you want them to return downstairs?

23 THE CLERK: Yes, Your Honor.

24 THE COURT: If you will return to your jury
25 assembly room. I hope you have a good day. Thanks

1 again for your service.

2 (WHEREUPON, the remaining jury panel was
3 excused at 1:08 p.m.)

4 THE COURT: Ladies and gentlemen, those of you
5 who were selected, thank you very much for your
6 assistance as well.

7 There are several matters of law that we need
8 to resolve today. And typically what will happen,
9 most of the time any matters of law will be
10 resolved outside of your hearing with you not being
11 present. It is nothing private, it is just that,
12 just as when you begin your deliberations we won't
13 be present either when you begin, it just makes it
14 easier if you don't hear something, then you don't
15 have to say, Wait a minute, I am not supposed to
16 hear that.

17 There will be occasions, sometimes matters of
18 law that arise during the testimony of a witness,
19 typically what are called objections. You will
20 hear those, and we'll talk more about that later.

21 But rather than have you come back and sit in
22 the jury room and wait, the better thing to do --
23 we don't know exactly how long it is going to take.
24 There are a couple of matters that I have to
25 resolve that aren't related to this case this

1 afternoon as well. So we will give you the rest of
2 the day off, so to speak. You will get to go and
3 do what you need to do.

4 Please, when you come back, I would ask you to
5 return to your jury room, please, by 9:30 in the
6 morning. We will bring you in hopefully right at
7 9:30, if not shortly thereafter.

8 Do not -- and when you exit, you will exit
9 through the door. They will show you where you
10 need to return. Please, remember something. You
11 haven't heard any evidence in this case. You have
12 heard what I have shared with you as being alleged.
13 Don't conduct any independent research. And I know
14 you think, Well, of course not. I have had, over
15 my years -- I have been doing this now for almost
16 23 years -- but sometimes people go and they go on
17 the internet and they look. And that is fine, when
18 it is over. But if you do it before then, you will
19 have jeopardized this process, because in those
20 cases where persons -- and that has been disclosed,
21 we have to try it over. So it is that important.
22 Do not conduct any -- after you finish with this
23 case you are free to look at anything you want to
24 and conduct any independent research.

25 I share this with a jury too. Sometimes

1 what -- Google is wonderful. I wish I had it when
2 I was in school. But I will share this with you.
3 I was at home and I didn't have my computer. My
4 computer has access to Westlaw, which is how we
5 research our legal issues. But I said, Wait a
6 minute, I can Google it. So I Googled on my iPad
7 and, sure enough, there was the statute that I was
8 looking for. I had a matter coming up the next day
9 and I wanted to read it.

10 When I arrived at my office, I just pulled the
11 code section to look at it, and I pulled something
12 up. And guess what? It wasn't the law anymore.
13 It had been changed. And Google hadn't updated it.

14 So that is a good reason you just don't want
15 to do it, because you may get information that
16 really and truly is not correct and may not be
17 applicable to this situation.

18 Also, do not discuss this case with anyone.
19 Do not discuss this case among yourselves. Do not
20 discuss this case with anyone outside of the
21 courtroom. And do not allow anybody to talk about
22 this case in your presence. It probably won't
23 happen, but it is very -- that is equally very
24 important because, as you will hear, I will tell
25 you when you may begin your deliberations, and if

1 you start talking about something beforehand you
2 would really have started that process. So you are
3 going to make a commitment not to do that.

4 So, thank you for your patience with me in
5 that respect. And I appreciate your patience
6 today. I know it has been a long morning already.
7 But have a good afternoon.

8 Do not call the number that you have been
9 given because that message will not apply to you.
10 Just come directly to your jury room. And they
11 will show you where you need to come tomorrow
12 morning.

13 Have a great afternoon. And thanks again.
14 See you tomorrow.

15 (WHEREUPON, the jury is excused for the
16 day at 1:12 p.m.)

17 THE COURT: All right, anything from the State
18 before we recess?

19 MS. SAMPSON: No, sir, Your Honor.

20 THE COURT: Anything from the Defendant before
21 we recess, Ms. Zmroczek?

22 MS. ZMROCZEK: No, sir.

23 THE COURT: Thank you very much. Let's plan
24 to reconvene this group -- I think I mentioned to
25 Dan at 2:30. I am going to do the plea at 2:30, so

1 at 3:00 o'clock, if that suits everyone.

2 See y'all at 3:00 o'clock.

3 MS. SAMPSON: Thank you Judge.

4 MS. ZMROCZEK: Thank you, Judge.

5 THE COURT: I need to check, but I assume
6 Mr. Ricks is in custody?

7 MS. SAMPSON: Yes, sir.

8 MS. ZMROCZEK: Yes, sir.

9 THE COURT: I assumed that, but I just wanted
10 to make sure.

11 (WHEREUPON, a break was taken at 1:13
12 p.m.)

13 (WHEREUPON, the proceedings resumed at
14 3:35 p.m.)

15 THE COURT: Let the record reflect Mr. Ricks
16 present.

17 I'm sorry to delay everybody, but we are ready
18 to proceed.

19 (Pause.)

20 MS. ZMROCZEK: Does Your Honor want me to
21 review it after or before?

22 THE COURT: Later is fine. It is not a
23 problem.

24 MS. ZMROCZEK: Thank you.

25 (Pause.)

1 THE COURT: No, that is -- a Denno hearing is
2 more -- I don't think there is anything that we are
3 doing that --

4 MS. SAMPSON: It was the same witness, that is
5 why I was --

6 THE COURT: No, I am not going to -- a Denno
7 hearing is not --

8 MS. SAMPSON: All right.

9 THE COURT: So, no, absolutely not. Aside
10 from that -- preponderance of the evidence is a
11 totally different standard.

12 MS. ZMROCZEK: I didn't think it applied to
13 that, Your Honor.

14 THE COURT: Thank you. Okay. Do we want to
15 do the -- but I looked at the -- there is no
16 statement, is there?

17 MS. SAMPSON: There is no written statement,
18 Your Honor. There is some conversation between
19 Investigator Johnson and the Defendant, both prior
20 to him coming to the headquarters, and then once he
21 is at headquarters. There is no written statement.

22 THE COURT: Well, I guess you want the
23 hearing. Okay. We will go ahead and do that.

24 MS. SAMPSON: Before we do the hearing, can
25 I -- I need to put something on the record.

1 THE COURT: Sure.

2 MS. SAMPSON: During jury qualifications in
3 voir dire of the jury, one of the jurors did say
4 something to the effect of, I know him due to --

5 THE COURT: Some crime. I heard that.

6 MS. SAMPSON: And then -- Yes, Your Honor.
7 And then at the end Your Honor did ask them if
8 there is anything that they heard this morning that
9 would affect their ability to be fair and
10 impartial, and everyone -- no one said that it did.
11 So I believe that cured whatever issue there may
12 have been.

13 THE COURT: There wasn't a motion -- there has
14 been no motion for mistrial, so.

15 MS. SAMPSON: Correct. I just --

16 THE COURT: I understand. I appreciate it.
17 That is one of the -- I tried to cut her -- stop
18 her from talking, but she talked a little longer
19 than I thought. But I ask that question typically
20 anyway, but that was one of the reasons I wanted to
21 throw that in there, that there wasn't anything.
22 And, as I said, there were no motions made, and
23 I --

24 MS. ZMROCZEK: And, Your Honor, that was trial
25 strategy for me. I think that it was --

1 THE COURT: Sure. First of all, if he has had
2 a crime -- I didn't call his name out. I would
3 have called it. But he is listed as a potential
4 witness. And I typically -- it is not the -- I
5 know of one -- it didn't happen with me, it was
6 another person -- that self-defense was involved
7 and the Defendant chose not to testify. I don't
8 know how you do that, but be that as it may,
9 obviously that seems to be a major issue here,
10 so -- and there are two differing versions, so in
11 order to get that in there, obviously he is going
12 to testify, which if he has any crime, that is
13 going to be fair -- it may be fair game anyway, so.

14 MS. SAMPSON: That's fine.

15 THE COURT: So it wasn't any big deal to me.

16 MS. ZMROCZEK: And that is what I took into
17 consideration when deciding that, Your Honor.

18 THE COURT: I'm sure you did. And I will
19 never be so presumptuous to inject myself into
20 trial strategies because I haven't practiced law in
21 22 years, so.

22 All right.

23 MS. ZMROCZEK: And, Your Honor, just, I
24 guess -- I hopefully -- the reason I wanted to -- I
25 did file those two motions if y'all would like

1 filed copies, the ones -- I left them on your
2 table.

3 THE COURT: I have a motion to dismiss, to
4 give an instruction of spoliation.

5 MS. ZMROCZEK: Right.

6 THE COURT: And then a motion concerning the
7 gun possession and evidence, character of deceased.

8 MS. SAMPSON: I never even saw it. Sorry.

9 MS. ZMROCZEK: And I know we can start with
10 the Denno hearing, but since the Court -- just so
11 the Court has some background, I think that is a
12 factual background.

13 THE COURT: I have read it.

14 MS. ZMROCZEK: Okay. It kind of covered it.

15 THE COURT: I have incorporated the motions
16 for any review that is necessary. But one of the
17 things -- and I don't -- I am always -- it is
18 helpful to the Court, it gives me a heads-up of
19 what I need to look at during trial, but these are
20 in limine motions. And, frankly, there are
21 situations where the gun evidence may be admissible
22 under the rule. 404 clearly talks about that. So,
23 but I don't know what is going to happen and how it
24 is going to unfold. And I can't say yay or nay
25 until I hear it. So I am aware of it, and I am

1 aware of the position that you have taken. There
2 are certainly situations and certainly where
3 self-defense is involved and a person's right to
4 act on appearances and you take into consideration
5 what that person knew about the alleged victim. I
6 think that is all at least probative from my
7 perspective. I just don't know how it is going to
8 unfold. So, I mean, I will be happy to hear your
9 argument on it, but it is clearly set forth in your
10 motion. So I am aware of that.

11 The spoliation -- and I looked to see, and it
12 is a Ninth Circuit. Everything I have read talks,
13 at least discourages, although we have a spoliation
14 charge, I have just never given it because the
15 general law is that is almost a charge on the
16 facts, and I think that is prohibited by the state
17 constitution. Feds don't have that problem. You
18 deal with some things, and I think they --
19 obviously there are things that you must establish
20 or the evidence -- you don't have to establish
21 anything -- the evidence has to at least allow me
22 to conclude the State did or didn't do something,
23 and they were almost complicit in the evidence
24 being -- but clearly what I have seen over my
25 years -- and I don't have a total in-depth

1 knowledge of it -- you are entitled to all that,
2 you know, wouldn't that be helpful, why did the
3 State bring that, but to charge it that has it
4 there to take or discount -- I know there has been
5 some witness's absence and so you can infer that it
6 wouldn't have been beneficial.

7 But I hear you. I just, at this point, we
8 don't need to try that all the way. I'm not going
9 to -- I'll say this, I'm not going to dismiss the
10 case. That is one of the things that you asked me
11 to do. So I'm not going to dismiss the case.

12 MS. ZMROCZEK: And I think -- and, Your Honor,
13 the reason I do that, I do that and then I attach
14 the charge, because no way, I in no way expect or
15 anticipate the Court to do that in such a serious
16 matter, but -- and I understand it is in limine --
17 and I think that what Your Honor may see -- and
18 this is just another way to kind of give you a
19 heads-up, because obviously we have been involved
20 in this case -- we had a really long immunity
21 hearing, and Judge Lee said, You know what? It is
22 50/50. It is going to be up to the jury.

23 And I think that when the facts bear out -- I
24 think as the testimony comes out -- because
25 obviously you know nothing about what the facts

1 are. And who knows, maybe they changed this time
2 around.

3 THE COURT: There is a case -- and I would
4 have to go back and read it -- I think it happened
5 in Columbia. It was Judge Johnson, I think. It
6 was something he should have done, should have
7 directed a verdict, I think is what it was, as I
8 recall, on a -- obviously this is a Stand Your
9 Ground case, and I have had several immunity
10 hearings.

11 The one that -- I don't know any of the facts.
12 I tried one in Beaufort, and he ended up going to
13 trial ultimately because they appealed it and said,
14 no, that one was okay, and sent it back and they
15 convicted him of voluntary manslaughter. He was a
16 wrecker driver, and when the guy jumped on his
17 running board threatening him, he had the pistol
18 then. If he had shot him, I probably would have
19 granted it. But he waited for him to walk away,
20 and he shot him six times in the back.

21 I didn't think -- his theory was: He was
22 going to the car to get a weapon and I wanted to
23 stop him. That is a factual issue. And that is
24 what -- basically what Judge Lee said, I conclude
25 it may be self-defense, but it is not entitled to

1 immunity. So I understand it is going to depend on
2 that.

3 I incorporate your motion and all the
4 positions stated. Solicitor, I understand you
5 haven't seen it, but that is certainly -- you don't
6 have to argue it now --

7 MS. ZMROCZEK: Okay, good.

8 THE COURT: -- to preserve it for the future
9 should that become necessary, Ms. Zmroczek. And I
10 appreciate your thoroughness on that. And I
11 understand why you are doing it. If you don't ask
12 you are never going to get it.

13 MS. ZMROCZEK: Well, and sometimes, Your
14 Honor, if I don't ask I am going to forget.

15 THE COURT: Well, the bottom line is, I don't
16 have an aversion to trying to make some new law. I
17 think we can all do some things. And that is what
18 we are all about. So that is fine.

19 But, anyway, technically -- so right now your
20 motion to dismiss on spoliation is denied. We will
21 certainly revisit a lot of those points at the
22 motions for directed verdict.

23 MS. ZMROCZEK: Certainly. Thank you.

24 THE COURT: Thank you so much.

25 All right, Jackson v. Denno hearing?

1 MS. SAMPSON: Yes, Your Honor. At this point
2 the State would call Kerry Johnson to the stand.

3 THE COURT: Okay.

4 (Witness approaches.)

5 THE BAILIFF: Place your left hand on the
6 Bible, and raise your right hand, please.

7 (Witness complies.)

8 THE CLERK: Do you swear or affirm the
9 testimony you shall give this court will be the
10 truth, the whole truth, and nothing but the truth,
11 so help you God?

12 THE DEFENDANT: I do.

13 THE CLERK: Please have a seat there, sir.

14 (Witness seated.)

15 THE CLERK: And state your full name for the
16 record.

17 THE WITNESS: My name is Kerry -- K-E-R-R-Y --
18 Johnson.

19 KERRY JOHNSON,
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION(IN CAMERA)

22 BY MS. SAMPSON:

23 Q. Investigator Johnson, where do you work?

24 A. I am employed with the Richland County Sheriff's
25 Department.

1 Q. And how long have you been employed there?

2 A. Ten years.

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

4 A. I worked with the Lexington County Sheriff's
5 Department for about 18 years. Prior to that,
6 Columbia City Police for just under two years.

7 I have been in law enforcement since March 3rd
8 of 1986.

9 Q. And what is your current job designation?

10 A. I am the supervisor over the larceny unit in
11 investigations.

12 Q. Okay. And back in 2014, what was your position?

13 A. In 2014 I was assigned to the Special Victims Unit.
14 I investigated sexual assaults and child abuse,
15 elder abuse. But I had a dual role of a homicide
16 investigator. I'm not currently assigned to
17 homicide. But the week that you are on-call, if
18 you are the homicide, the primary homicide
19 investigator, you are subject to call-out for that
20 also, which is the case here.

21 Q. So that is how you became involved in this case?

22 A. Yes.

23 Q. And can you tell us how that happened?

24 A. On May the 25th of 2014, sometime that morning I
25 was contacted by Lieutenant Gary Maldonado, who

1 is -- I think he may have been a sergeant at the
2 time, maybe a lieutenant. But he had actually
3 responded out there first. It is kind of a common
4 practice to save the primary homicide investigator
5 in case we have another murder per chance. So once
6 Lieutenant Maldonado responded, along with David
7 Goff, they took some of the witnesses back to our
8 Pineview office off of Garners Ferry Road, which is
9 not far from the scene, and started doing some
10 interviews. And that is when they called me and I
11 responded there. So I'd have to go back and look
12 at exactly what time I got called.

13 Q. It is okay, I just wanted to confirm how you got
14 involved with the case.

15 A. Yes, ma'am.

16 Q. So I'm going to speed up a little bit just so we
17 can get to the meat of the Jackson v. Denno
18 hearing.

19 You became aware that Mr. Ricks was a suspect;
20 correct?

21 A. I did.

22 Q. Okay. And so what did you do based on that?

23 A. After reading and talking to Investigator Goff and
24 Investigator Maldonado and reading the statements
25 that they had taken, I went back out to the scene

1 because I had not been there yet. I wanted to go
2 see the scene myself.

3 While at the scene, I got a call from the
4 front desk stating that Channen Ricks' mother
5 wanted to talk to the lead investigator involved in
6 the case.

7 I got her number -- or I called her or she
8 called me, I don't remember which, I'll have to
9 check my notes. And she explained to me that
10 Channen would be calling me, which he did, a short
11 time later.

12 Q. And did he give you his name? How did you know it
13 was Channen Ricks?

14 A. Well, I'm familiar with Channen from past dealings.
15 I knew exactly what he looked like. I have talked
16 to him on occasions. I knew what he sounded like.
17 And, according to my notes here, he called me at
18 11:17 that morning from a phone number. And he was
19 crying. Very emotional. And I told him I needed
20 to meet with him and talk to him.

21 And he kept repeating: I'm no murderer. I'm
22 no murderer. I didn't take a gun over there.

23 Q. And let me interrupt you. At that time was he
24 under arrest?

25 A. He was not.

1 Q. And he is talking to you on the phone, so he is not
2 in custody?

3 A. That's correct.

4 Q. Did he say anything else at that time?

5 A. Again, I have been in law enforcement a while. I
6 let him talk for a minute. I tried to get him to
7 calm down.

8 And I asked him, quote: Well, how many times
9 did you shoot?

10 And his answer was: I don't know, man, it all
11 happened so fast. And he is still crying at this
12 point.

13 I also asked him: Well, what did you do with
14 the gun, or, where is the gun?

15 And he answered: I don't know what I did with
16 it. I was drunk.

17 He kept telling me that he was not a murderer.
18 And I told him I understood, I just needed to talk
19 to him.

20 Again, it was about 11:17 when he called me.
21 So I told him that I would give him until 1:00
22 o'clock to meet with me. And 1:00 o'clock came and
23 went. And I called this number back that he called
24 me on at 1:14 and 2:04 p.m., and it went to the
25 voicemail each time.

1 Q. And so did you ever talk to him again on May 25th?

2 A. Not on May 25th, no.

3 Q. When was the next time you spoke to Mr. Ricks?

4 A. The next day on May 26th.

5 Q. And how did that occur?

6 A. I was actually interviewing Travis Tucker, who was
7 there with our victim, Thomas Pauling. And I was
8 interviewing Travis Tucker at Pineview. And
9 Channen called me from the same number that he had
10 called me from the day before and said that he was
11 going to turn himself in, but he wanted to talk to
12 his mother.

13 And at 12:07 p.m. I received a call from the
14 front desk that Channen, along with several family
15 members, were out in the front parking lot for --
16 to turn himself in.

17 Q. And what happened? What did you -- how did -- what
18 happened at that point?

19 A. I went -- excuse me, I have a thing in my throat.
20 I went to the Sheriff's Department. Went to the
21 front parking lot. Saw Channen standing there,
22 along with several family members. I observed him
23 to be -- he was very sluggish, I mean, just really
24 moving slow. And he was crying from time to time.

25 And I explained to him that I was going to

1 handcuff him and take him around back, which I did.

2 Q. At that point did you tell him he was under arrest?

3 A. Yes.

4 Q. Did you at that point advise him of his rights?

5 A. Once we got inside -- thank you -- once we got
6 inside to the office, I told him that I would be --
7 I was going to read him the warrant and that I
8 wanted to talk to him.

9 And before I was able to read him his rights,
10 he just kept repeating: I'm not a murderer. I
11 didn't have a gun with me. And he was crying,
12 sobbing the whole time.

13 Q. And is he saying that out in the parking lot or as
14 y'all are going inside or --

15 A. While we were going inside and when we sat down. I
16 didn't ask him any questions until I read him his
17 rights.

18 MS. SAMPSON: Beg the Court's indulgence.

19 THE COURT: Sure.

20 (Pause.)

21 BY MS. SAMPSON:

22 Q. I am going to show you what has been marked as
23 State's Exhibit Number 51 and ask you if you
24 recognize it?

25 A. I do. Also, when I had gone in the back door, if I

1 remember correctly, this was a Sunday or a county
2 holiday. There was nobody there. And Investigator
3 Ty Jordan was there, I think just picking up some
4 paperwork. He wasn't working. He was familiar
5 with Channen also. And because of the severity of
6 the crime, I wanted another witness to be there
7 during my interview with him, so I asked
8 Investigator Jordan if he would mind sitting in
9 while I talked to him, and he did.

10 This is the Advice of Rights form that I read
11 to Channen and checked off each time I read a line.
12 And Channen signed it and Investigator Jordan
13 witnessed it.

14 Q. And can you read off what rights you advised him
15 of?

16 A. At the top it has got Channen Ricks' name. The
17 place is Richland County Sheriff's Department.
18 May 26th, 2014.

19 Before we ask you any questions, you must
20 understand your rights. And I checked that off.

21 You have the right to remain silent. I
22 checked that off.

23 Anything you say can be used against you in
24 court. I checked that off.

25 You have the right to talk to a lawyer for

1 advice before we ask you any questions and to have
2 a lawyer with you during any questioning. I
3 checked that off.

4 If you cannot afford a lawyer, one will be
5 appointed for you before any questioning, if you
6 wish. I checked that off.

7 If you decide to answer questions now without
8 a lawyer present, you still have the right to stop
9 answering at any time. You also have the right to
10 stop answering at any time until you talk to a
11 lawyer. I checked that off.

12 I explained to him that if he signed up
13 underneath that, that that meant his rights were
14 read to him, but up underneath that is the waiver
15 of rights.

16 Q. I want to stop you. Did he sign where it says that
17 he was read his rights?

18 A. He did. Up underneath that is the Waiver of
19 Rights. It says:

20 I have read this statement of my rights and
21 understand what my rights are. I am willing to
22 talk and answer questions. I understand and know
23 what I am doing. No promises have been made to me
24 and no pressure or coercion of any kind has been
25 used against me.

1 He agreed to talk. He agreed to waive his
2 rights at that time. And then signed his name.
3 And of course I witnessed it and Investigator
4 Jordan witnessed it.

5 Q. And is that a fair and accurate copy of what you --

6 A. Yes.

7 Q. -- had him sign?

8 MS. SAMPSON: At this time I would ask to
9 introduce State's Exhibit 51 for the purposes of
10 this hearing, Your Honor.

11 THE COURT: Is there any objection?

12 MS. ZMROCZEK: Not for the purposes of the
13 hearing.

14 THE COURT: Without objection, State's 51 is
15 admitted. Thank you.

16 (WHEREUPON, State's Exhibit No. 51 was
17 marked for identification only.)

18 BY MS. SAMPSON:

19 Q. All right. So once you read him his rights, then
20 what happened?

21 A. Again, Channen was very emotional. I asked him,
22 frankly, was he on any type of drugs. And he
23 admitted that he had been smoking some marijuana.
24 He said that he had not slept hardly any at all.
25 And he was --

1 Q. And I skipped along a little bit. This incident
2 occurred around 5:00 o'clock in the morning;
3 correct?

4 A. The day before, yes.

5 Q. On the 25th?

6 A. Correct.

7 Q. And you are talking to him on the 26th?

8 A. Correct.

9 Q. Okay.

10 A. It was somewhat of a difficult interview because he
11 was so emotional. He just kept shaking his head.
12 In fact, this picture here in my follow-up really
13 demonstrates his demeanor at that time. He just
14 sat there with his hand on his head.

15 He indicated to me that somebody had hit him
16 while he was in Kiara's apartment. And he showed
17 me that his lip was busted.

18 At that time I took -- I think my cell phone
19 and took a picture. I asked him to let me take a
20 picture of him. I took a picture of his whole
21 person, which we are trained to do. And then I
22 took -- had him pull his lips back, and I took a
23 picture of a small cut on his lip.

24 The more I explained to him why I was charging
25 him based on the statements of the witnesses and

1 based on the evidence at the scene and based on the
2 conversation that we had the day before, he got
3 real upset, because I explained to him that the way
4 he answered was in essence a confession to me, that
5 he didn't know how many times he shot, and that he
6 didn't remember what he did with the gun because he
7 was drunk.

8 At that time he became upset with that and
9 said that he felt like he needed to talk to a
10 lawyer at that point.

11 Q. And I am going to stop you. And you may have said
12 this, but I just want to make clear. Did he give
13 you a version of what had happened as far as when
14 he entered the apartment?

15 A. Not much. He said that they jumped him once he got
16 in and they got into a fight. But I asked him what
17 happened after that, and he said he couldn't
18 remember.

19 Q. Did he mention anything about using a key?

20 A. He said he had a key to Kiara's apartment, and he
21 didn't say anything about using it. He just kept
22 wanting me to know that he had a key to Kiara's
23 apartment.

24 Q. Did he tell you whether he could remember anything
25 after entering the apartment and getting hit?

1 A. He said that he got punched in the face by one of
2 the two males that he was fighting, and that he got
3 a busted lip. He said he became -- I'm sorry --
4 said he couldn't remember what he said to me the
5 day before. He could not remember what happened
6 after he fought with the people in the living room.

7 Q. And then at some point you said -- I know you have
8 already said this -- he got upset and decided he
9 didn't want to talk any further?

10 A. Yeah. He was somewhat apologetic about it. He
11 just said, you know, I'll talk to you, but I just
12 don't think I need to talk without an attorney,
13 which of course all questioning stopped at that
14 point.

15 Q. And during the conversation where he was talking to
16 you, did you force him to talk to you?

17 A. Absolutely not, no.

18 Q. Did you keep him from going to the restroom?

19 A. No, ma'am.

20 Q. Did you deny him any food or water?

21 A. No.

22 Q. Did you in any way force him to do anything he
23 didn't want to do at that point?

24 A. No.

25 Q. And I think you said this, but, in fact, you took

1 pictures of him?

2 A. I took a picture of -- he had pointed out to me
3 that he had a busted lip. So I wanted to document
4 that.

5 Q. And he allowed you to do that?

6 A. He did.

7 MS. SAMPSON: Beg the Court's indulgence.

8 THE COURT: Certainly.

9 (Pause.)

10 BY MS. SAMPSON:

11 Q. And because he asked for a lawyer, did you ever get
12 to put his statement down in writing?

13 A. We never did a statement. We didn't get to that
14 point.

15 MS. SAMPSON: No further questions, Your
16 Honor.

17 THE COURT: Cross-examination?

18 MS. ZMROCZEK: Thank you.

19 CROSS-EXAMINATION(IN CAMERA)

20 BY MS. ZMROCZEK:

21 Q. Investigator Johnson, I know I have asked you this
22 before, but tell me again. So when he called you
23 the 25th of May -- and you said he confessed to
24 you?

25 A. I said in essence he confessed.

1 Q. Okay. So --

2 A. Let me repeat what I said.

3 Q. Thank you.

4 A. Excuse me one second.

5 At 11:17 Channen Ricks called my cell phone
6 from an (803)603-8998 number and was crying. He
7 said several times while he was crying: I ain't no
8 murderer, man. I didn't take a gun over there.

9 During the conversation I asked: How many
10 times did you shoot?

11 And he answered: I don't know, man. It all
12 happened so fast. He never said: I didn't shoot.

13 I also asked him: Where is the gun?

14 And he answered: I don't know what I did with
15 it. I was drunk.

16 Q. So that is the -- those are the statements that you
17 relied on to form your opinion of a confession?

18 A. In my opinion, that was an admission that he was
19 involved in it, yes.

20 Q. Okay. So let me ask the question maybe a little
21 bit more direct.

22 I ain't know no murder, man. I didn't take a
23 gun over there. I don't know how many times that I
24 shot. It all happened so fast. I don't know where
25 the gun -- I don't know what I did with the gun. I

1 was drunk.

2 Those -- are those the statements that he made
3 to you on the phone?

4 A. Correct.

5 Q. And those are the statements that you say amounted
6 to a confession, so you swore out a warrant?

7 A. I swore out a warrant based on probable cause,
8 based on the evidence at the scene and based on the
9 statements of witnesses. I was not there. I
10 don't -- I didn't see what happened. I relied
11 solely on the crime scene evidence and solely on
12 the statements of witnesses who were there and saw
13 what happened.

14 Q. And you have seen a copy of the warrant?

15 A. Yes.

16 Q. You would agree with me that the warrant says: The
17 Defendant did call Investigator Kerry Johnson by
18 phone and during conversation did admit that he
19 shot the victim?

20 A. Correct.

21 Q. So it was also partly based on your conversation
22 with him?

23 A. Partly.

24 Q. Okay.

25 A. But just to make it clear, I did not sign the

1 warrant on him based simply on those two
2 statements.

3 Q. I'm sorry?

4 A. I did not sign the warrant on him based simply on
5 those two statements.

6 Q. Certainly. And then you said the next day when you
7 actually put him under arrest, he was very
8 sluggish?

9 A. He was.

10 Q. He was crying?

11 A. A lot, yes.

12 Q. Okay. And he hadn't slept?

13 A. According to him he had not slept and he smoked
14 marijuana.

15 Q. And he had smoked marijuana?

16 A. Uh-huh.

17 Q. And you were able to say that -- or able to get
18 from him that -- the statement that he made then is
19 that they jumped on him?

20 A. He stated that when he arrived at the apartment he
21 knocked on the door several times, but nobody came
22 to the door. He added that he had a key to the
23 door, but that he usually knocks first so that,
24 quote, she can bring the boy to the door to meet
25 me, meaning his child by Kiara.

1 He said that when he tried to enter the door,
2 someone was behind the door blocking the door and
3 wouldn't let him in, so he forced his way past the
4 person. And immediately somebody that was on the
5 floor grabbed his leg and the other person began to
6 fight with him.

7 He stated that it was dark in the apartment
8 and he could not see the person, that the person
9 standing was trying to pull -- he could see that
10 the person standing was trying to pull out a gun,
11 so he fought with that person, but doesn't remember
12 anything after that.

13 Q. Okay. And those would be the -- those would be the
14 statements that you intend to introduce to the
15 jury?

16 A. Yes.

17 Q. Okay.

18 MS. ZMROCZEK: Your Honor, I don't have any
19 more questions. I do just have some clarification.

20 THE COURT: Redirect?

21 MS. SAMPSON: No, sir.

22 THE COURT: You may come down.

23 (Witness steps down.)

24 THE COURT: Are there any additional
25 witnesses?

1 MS. SAMPSON: No, sir.

2 THE COURT: Okay. Do you wish to call any
3 witnesses?

4 MS. ZMROCZEK: I don't. I don't, Your Honor.

5 THE COURT: Do you have a motion?

6 MS. ZMROCZEK: Your Honor, the statements as
7 presented, obviously I have no problem with them.
8 What I do have a problem with and what I want to
9 caution the witnesses prior to getting in front of
10 a jury are two things.

11 One, Mr. Johnson says over and over that he
12 and other officers are very familiar with
13 Mr. Ricks.

14 THE COURT: Yes.

15 MS. ZMROCZEK: I believe that that is
16 improper.

17 THE COURT: I assume the Solicitor is not
18 going to ask that question.

19 MS. SAMPSON: Your Honor, I wouldn't -- I
20 mean, for the purposes of this hearing I did, but
21 not in front of a jury. Correct, Your Honor.

22 THE COURT: Well, I assume he is not going to
23 say that, and I would caution him because he could
24 jeopardize the whole trial of this case, obviously.
25 So I would agree with you, that would be highly

1 prejudicial and would be improper, frankly.

2 MS. ZMROCZEK: And then the other part, Your
3 Honor, I would -- I just don't know if -- I have
4 not had a situation like this where someone has
5 made an oral statement. I do with City of
6 Columbia, but they record all their interviews and
7 Richland County doesn't, which that is their
8 policy, that is fine, but my problem is that when
9 these -- Ms. Sampson asked -- and maybe she is just
10 doing it for purposes of this hearing, but when she
11 says, Well, so it wasn't reduced to writing, and
12 then he says, He asked for a lawyer, at what point
13 does Doyle v. Ohio --

14 THE COURT: It stops. But, again, I
15 appreciate all of this discussion, Ms. Zmroczek. I
16 guess my question is, are you moving to suppress
17 the statements? Because, frankly, as you have
18 alluded to, they really are -- based on what I have
19 read about your recitation of the facts, it really
20 supports his version of it.

21 MS. ZMROCZEK: Absolutely. So we are not
22 moving to --

23 THE COURT: All right. Well, then that being
24 said, anything else would be subject to reasonable
25 objections that would be made from time to time,

1 and obviously I understand he may be able to be
2 qualified to say to him it was a confession. I
3 doubt I would allow him to testify under 701 the
4 term "confession." It is what it is. You know,
5 the jury will conclude that as to whether it was a
6 confession because, frankly, that term
7 "confession", to me it has double connotation.

8 Number One, maybe he confessed to shooting,
9 but not confessed to murder. And therein lies the
10 problem with just the term "confession." I don't
11 think there is any question he is admitting the
12 shooting. He is going to admit he shot him. So
13 that is really redundant to what the purpose is.

14 So I would limit it to that extent, Solicitor,
15 that the witness is not entitled to inject: I
16 considered it a "confession."

17 That is what he said. And he is just
18 reporting what he said. Okay? I don't quarrel
19 with his assessment. I think he is entitled to
20 make that. But I think it would be go beyond what
21 would be permitted in that situation.

22 Okay?

23 MS. SAMPSON: Yes, sir.

24 THE COURT: All right. Anything else?

25 MS. ZMROCZEK: No.

1 THE COURT: Okay. Do we have any other issues
2 then?

3 MS. ZMROCZEK: Not with statements, Your
4 Honor. And I think that we --

5 THE COURT: And let me say something. The
6 call -- so that we are clear -- when he called him,
7 he asked to call. That is all -- that is fair
8 game. Everything that was said in that statement
9 is fair, because while he is certainly asking
10 questions, he asked to do that. So that part is
11 fine.

12 The part that I'm talking about with
13 restriction gets a little closer is when he brought
14 him in to interrogate him. He is clearly in
15 custody at that point.

16 Okay? All right.

17 MS. ZMROCZEK: Thank you. And I think that --
18 I mean, that is all the issues I think with that
19 statement.

20 Your Honor, we tried to -- since we have
21 obviously been dealing with this for a long time.

22 THE COURT: Yes, you have.

23 MS. ZMROCZEK: I think that we came up with
24 some stipulations.

25 THE COURT: Y'all can work on those when we

1 break. Have you got them?

2 MS. SAMPSON: We have them. I just did not
3 bring them into the courtroom.

4 THE COURT: That's okay. Why don't we plan
5 to -- let's get together at 9:00 o'clock.

6 MS. ZMROCZEK: And we can e-mail them to you
7 as well.

8 THE COURT: That's fine.

9 MS. ZMROCZEK: And I wanted to put on the
10 record, because I think there was maybe some
11 confusion with Ms. Aull because she said he is a
12 chain witness, and I told them already, we are not
13 contesting chain.

14 THE COURT: Well, y'all talk among yourselves
15 there, and whatever you need to do. We'll just
16 make a statement as to any evidence that
17 specifically when it comes to that there is no
18 challenge as to chain. Okay? And that way I think
19 it will be clearer rather than just say a blanket,
20 no challenge to chain. We don't know how --
21 everybody -- y'all -- the beauty and the
22 frightening thing, it is like retrying -- I have
23 got to retry a case in Horry after spending four
24 days listening to all of it, it gets very difficult
25 on retrial, and basically the immunity hearing is a

1 retrial.

2 So I understand you all have been there, but I
3 think the easiest thing to do is just when that
4 item comes up, if it is an item that would require
5 a chain, just simply say, there is no challenge to
6 chain. Okay?

7 MS. SAMPSON: Thank you, Your Honor.

8 THE COURT: Thank you very much.

9 MS. SAMPSON: And I just want to make sure, as
10 far as the motions, running it through my head, the
11 404, we will just deal with that as its comes up?

12 THE COURT: The 404, I think I articulated
13 there are certainly situations where that is very
14 pertinent. I can't rule on that in a vacuum. I
15 will have to hear it in the context of the
16 testimony.

17 MS. SAMPSON: I was just going through in my
18 head the motions list.

19 THE COURT: Yes, the 404, the issue is noted,
20 and it may be admissible, it may not be, I don't
21 know. Okay?

22 MS. SAMPSON: And the only other thing, I
23 don't think either one of us needs to renew our
24 reciprocal Rule 5 on the record. We have been in
25 constant communication as far as discovery goes. I

1 think that she has turned over what she is required
2 to, and I have turned over I think everything that
3 I was supposed to on Rule 5 as well.

4 THE COURT: And I understand all that. And we
5 all know, and we have read the records of some that
6 did. I don't think there is any -- anybody is
7 intending to hide anything. But we know about the
8 person in Greenwood. They suddenly found something
9 years later.

10 MS. ZMROCZEK: Yes, I think that that -- for
11 pretrial, I think that is it.

12 THE COURT: Okay, good. Thank you very much.

13 MS. SAMPSON: Thank you, Your Honor.

14 THE COURT: Then if that be the case, the
15 stipulations y'all have resolved you are going to
16 e-mail them, meet me here at 9:15.

17 Okay, thank you.

18 MS. ZMROCZEK: Thank you.

19 THE COURT: I'll be here before if you need me
20 before. I am not requiring everybody else to be.

21 Thank you.

22 (WHEREUPON, the proceedings were
23 concluded at 4:49 p.m.

24 OCTOBER 11, 2016

25 (WHEREUPON, the proceedings commenced at

1 9:22 a.m.)

2 THE COURT: Let the record reflect that Mr.
3 Ricks is present. I received a copy of the
4 stipulations. Has that been signed and filed?

5 MS. SAMPSON: It hasn't been filed, Your
6 Honor. The original is right here.

7 THE COURT: We will make it Court's Exhibit
8 Number 1 for purposes of the proceeding.

9 You have reviewed that stipulation with your
10 client?

11 MS. ZMROCZEK: I have, Your Honor, and I also
12 signed it.

13 THE COURT: Okay, good. Thank you very much.

14 MS. SAMPSON: I think it needs to be -- it's
15 not Court's Exhibit 1. It's Court's Exhibit?

16 COURT REPORTER: 6.

17 THE COURT: 6?

18 MS. SAMPSON: 6. We had prior Court Exhibits
19 from the pretrial, so we're trying to keep it
20 clean.

21 THE COURT: Court Exhibit what?

22 THE COURT REPORTER: 6.

23 THE COURT: I'd like to know what -- Court's
24 Exhibits are my exhibits, so how did you introduce
25 five Court's Exhibits without showing them to me,

1 Solicitor?

2 MS. SAMPSON: Well, we can start over, Your
3 Honor.

4 THE COURT: Well, I mean, I just need to know
5 what's a Court Exhibit before it becomes one
6 because that's mine.

7 MS. SAMPSON: For the record, when we had the
8 pretrial hearing in front of Judge Lee, we
9 introduced Court's Exhibits at that time in the
10 pretrial. We can start over with the numbers.

11 THE COURT: No. What I'd like to do because
12 these are -- these were pertinent to Judge Lee's
13 trial. I don't know, what is the pertinence to my
14 trial?

15 MS. SAMPSON: It's just normally when we do a
16 pretrial -- and I understand what you're saying.

17 THE COURT: This isn't normal. You had a
18 trial. That decision was made. That's a trial.
19 It's over. This is a new trial. So, I mean, I
20 don't have any problem with it being a part of the
21 record, I'm just stating I just need to know
22 what -- why is this necessary?

23 MS. SAMPSON: My only concern was because that
24 issue could be appealed, will go with this one for
25 appellate purposes.

1 THE COURT: I understand that. I understand
2 that. That's the beauty of it. Just -- I'll give
3 you an analogy. We have civil proceedings all the
4 time. There are motions made and another judge
5 tries it. You know how it's reported? Two judges.
6 That's how this would be reported, two judges. Two
7 separate proceedings. So -- I mean, I don't have
8 any problem with it. It's just redundant as far as
9 I'm concerned because it's already a part of the
10 record.

11 MS. SAMPSON: And we can do it as Court's
12 Exhibit 1 if Your Honor prefers for purposes of
13 this trial.

14 THE COURT: That trial is already compacted.
15 There is a transcript, I assume, of that trial that
16 would exist; correct?

17 MS. SAMPSON: There will be one.

18 THE COURT: I mean, there's a court reporter.
19 You'll order the transcript?

20 MS. SAMPSON: Yes, sir.

21 THE COURT: I mean, I don't have any problem
22 with it, but repetition. And the reason I'm saying
23 this, my brothers and sisters on the Court of
24 Appeals have said please don't give us so much to
25 read and don't duplicate things. Because what will

1 happen now, there will be a Court's Exhibit in
2 Judge Lee's trial and a Court's Exhibit in this
3 trial. So now we have repetition. So that's all
4 I'm saying.

5 But I don't know how it proceeds and what
6 you're going to need of these documents. I'm not
7 complaining. I just need to know why it's part of
8 it. If this just simply relates itself to the
9 trial that's already been conducted, it doesn't
10 need to be a Court's Exhibit.

11 MS. SAMPSON: It is just for this trial.

12 THE COURT: All right, that's fine. Then this
13 will be Court's Exhibit 1 for my trial. Those
14 Court's Exhibits stand on their own. Thank you.

15 MS. SAMPSON: Okay.

16 THE COURT: Were you the trial counsel, Ms.
17 Zmroczek?

18 MS. ZMROCZEK: Yes, sir.

19 THE COURT: All right. You don't have any --
20 you agree your record is protected by what took
21 place with Judge Lee for purposes of review?

22 MS. ZMROCZEK: I do.

23 THE COURT: Thank you.

24 Solicitor, I don't fault you for being
25 thorough, don't misunderstand me.

1 (WHEREUPON, Court's Exhibit No. 1 was
2 marked for identification only.)

3 MS. ZMROCZEK: Oh, one more thing.

4 THE COURT: Are those going to be used during
5 opening statements all this equipment?

6 MS. SAMPSON: No. In fact, Your Honor, we'll
7 move it because --

8 THE COURT: Because I come down and talk to
9 the jury, and I don't want to run into all that
10 stuff.

11 MS. SAMPSON: I had no idea you did that, so
12 we'll move it.

13 THE COURT: Thank you very much.

14 MS. ZMROCZEK: It was important. Oh, one
15 thing that we forgot yesterday is that we were
16 going to move to sequester the witnesses. And I
17 know that they have some that are -- like, I think
18 they're calling one like right away, but so after
19 opening, I just --

20 THE COURT: No, sequestration includes
21 openings.

22 MS. ZMROCZEK: Okay, good.

23 THE COURT: So if there's a motion for
24 sequestration -- does the State oppose a motion for
25 sequestration?

1 MS. SAMPSON: The only -- we would ask that
2 the victim's family be allowed to stay.

3 THE COURT: Victim's family stays, and the
4 chief investigator officer stays as well.

5 MS. ZMROCZEK: Yes. Thank you.

6 THE COURT: All right. Any other witnesses
7 other than the victim's family and the chief
8 Investigating officer will have to be outside of
9 the courtroom.

10 MS. SAMPSON: And I have my EMS witness, but
11 she will leave in just a minute, Your Honor.

12 THE COURT: That's fine. Not a problem.

13 (Pause.)

14 THE COURT: Solicitor, are you ready?

15 MS. SAMPSON: Yes, sir.

16 THE COURT: Is the Defendant ready?

17 MS. ZMROCZEK: Yes.

18 THE COURT: Okay. Let's bring in our jury
19 then.

20 (WHEREUPON, the jury came into open
21 court at 9:42 a.m.)

22 THE BAILIFF: The jury is seated, Your Honor.

23 THE COURT: Thank you so much.

24 And good morning, ladies and gentlemen. I
25 hope you had a good rest of yesterday. And, again,

1 thank you for your patience with the process
2 yesterday. We're now going to resume the matter
3 that we commenced when you were selected yesterday.
4 And let me, before we -- before I ask the clerk to
5 administer your oath, there are a number of seats
6 that are available. And I think our alternates
7 here sit on the back row; is that correct?

8 THE BAILIFF: Yes.

9 THE COURT: The alternates are Sara Johnson
10 and Sharon Verba?

11 (Ms. Johnson and Ms. Verba nod affirmatively.)

12 THE COURT: You have the luxury of having an
13 entire row. That's yours. You may occupy any of
14 those seats that you wish during the trial. You're
15 an alternate. That term really doesn't have much
16 significance other than the designated role for
17 your seatings. At the end of the trial, if the
18 first 12 are able to continue, then you will not
19 participate in the final deliberation. But I wish
20 to assure you that it's not uncommon for us to move
21 alternates onto the jury panel, so please know that
22 you are very much a part of the jury. And I'm sure
23 that that will not detract from your attention to
24 this process, and I appreciate that and thank you
25 in advance.

1 The only other -- I would ask the other 12 not
2 to occupy any of the seats on the back row.
3 There's nothing sacred about it. It just --
4 frankly, it's easier if I note there are no empty
5 chairs in the first grouping, then I can understand
6 that everyone is present.

7 The only other assigned seat is occupied by
8 this gentleman on the first row on the far right,
9 my right. And that will be occupied by your
10 presiding juror. I call them presiding juror. In
11 fact, one of your trial judges years ago when I
12 started, he was -- I had the great fortune and
13 pleasure of sitting with him in one of our training
14 weeks. He later became the Chief Justice of the
15 Supreme Court and will serve until December the
16 31st. That's Chief Justice Pleicones.

17 I had never -- I practiced law for 21 years --
18 had never heard the term presiding juror until I
19 sat with him. And the more I thought about it, the
20 more I thought, that really is a very good term.
21 And I have used it for the last 22 years now. I
22 guess I plagiarized a little bit by using his term,
23 but, be that as it may. Another term we use, and
24 probably most persons are familiar with, is
25 foreman, forelady, foreperson. A presiding juror

1 is -- somebody has to be responsible for signing
2 verdict forms that will be submitted. Somebody has
3 to be responsible for receiving any exhibits that
4 might be introduced, then when the jury has
5 completed its deliberations, returning those
6 exhibits to the Court. There may be occasions
7 where there needs to be some written communication
8 from the jury. The presiding juror serves
9 basically as a clerk for the jury to prepare that
10 document for submission to the Court. Other than
11 that, you really don't have any other duties or
12 responsibilities. It doesn't give you any other
13 overriding power. Justice Pleicones said -- you
14 don't want any extensive campaigning and speeches,
15 but at some point -- the statute allows me to
16 appoint or you to select. I let the jury pick
17 their presiding juror. At some point, if you will
18 do that, and just once you've done that, if you
19 will let us know who your presiding juror is. Once
20 that person has been identified, then I'd simply
21 ask that that individual occupy that seat. Until
22 that is done, you feel free to sit in any of the
23 seats that are there, except the back row, when you
24 come in and out -- when you come into the
25 courtroom.

1 What's different about a presiding juror?
2 What's unique? I don't know that there is
3 anything. I assure you each one of you are
4 qualified. The only persons that are not eligible
5 are our alternates as long as they are alternates.
6 Of course, if they move into the panel, they would
7 be if you haven't selected your presiding juror by
8 then. My observation over the years is I think a
9 presiding juror facilitates the deliberations and
10 discussions. Some persons by nature and by job, by
11 experience, are better facilitators than others.
12 That's why I let you pick your presiding juror, and
13 you select it from your panel. And I thank you for
14 doing that.

15 The next item now that we need to deal with is
16 probably one of the most important things that you
17 will do. And that's the oath that you will take.
18 I told you that you will make a commitment to the
19 State and to the Defendant in this case, Mr. Ricks.
20 And that will occur now.

21 If you would help me, please, Madam Clerk,
22 administer that oath.

23 Thank you.

24 THE CLERK: Ladies and gentlemen of the jury,
25 please stand and raise your right hand to be sworn.

1 (All jurors comply.)

2 THE CLERK: At the end of the statement I'm
3 about to give you, please respond by saying: I do.

4 Do you swear or affirm that you shall well and
5 truly try, and a true deliverance make, between the
6 State of South Carolina and the Defendant at bar,
7 whom you shall have in charge, and a true verdict
8 give according to the law and the evidence, so help
9 you God?

10 THE JURY: I do.

11 THE CLERK: You may be seated.

12 (Jurors comply.)

13 THE COURT: Thank you very much.

14 And thank you very much, ladies and gentlemen.
15 By virtue of that oath, as I mentioned to you, this
16 is a beautiful process. It works and it has worked
17 for a long time, since this country was founded.
18 And it has been my observation, both as an attorney
19 and as a judge, it is an incredibly wonderful
20 process. And I attribute that and that basic
21 credit to this great process to people like you,
22 because this is not something you chose to do, this
23 is something that you accepted as being a
24 responsibility as a citizen of this state and, more
25 particularly, of this county. And I thank you in

1 advance for that. And I thank you for your
2 willingness to participate in that.

3 As I tell jurors when I qualify the jury,
4 you've already spoken volumes about yourselves.
5 For instance -- and you spoke volumes about
6 yourself with me. Remember all the questions that
7 we asked and some jurors stood up, maybe some of
8 you did, and I said, Will that influence you? Will
9 it affect your decision? And each of you, if you
10 did respond, you said no. And then you heard me
11 ask the question, Will you base your decision on
12 the evidence and the law? You just heard that in
13 the last part of that oath. And will it be fair to
14 both sides?

15 You could have removed yourself very simply.
16 You could have said, Well, I can't be fair. And I
17 wouldn't have questioned you. I would have
18 accepted that. Why? Because you took an oath.
19 You took an oath to respond truthfully to the
20 questions that would be propounded to you this
21 week.

22 And so you've already said something about
23 you. You've said, Okay, I honestly know it
24 wouldn't affect me and I can be fair and impartial.

25 And the beauty of being a judge in many

1 ways -- I say that sincerely -- we're human, we
2 bring our human traits and our tendencies here with
3 us, but we have to be -- when we assume the
4 responsibility and role as a judge, we have to do
5 something. And I'll confess to you, it's not
6 always easy. I have to do it every day. And I
7 have to remind myself every day that I have
8 promised the persons that are appearing before me
9 that I'm going to set aside all of my bias and
10 prejudice to the extent that it's humanly possible
11 and I'm going to deliver and try to make my
12 decisions using basically my common sense and my
13 sense of logic and my knowledge and I'm going to be
14 the fairest person I know how to be. We each have
15 to do that, because if we don't, then our human
16 nature takes over. So we have to be conscious of
17 that. And you have to be conscious of that. In
18 other words, you have become a judge with me.

19 And one of the things that we must always
20 remember when we assume this role, we don't have
21 any friends to reward, nor do we have any enemies
22 to punish in this process. We're here to perform a
23 task which we've accepted -- you just accepted.
24 Mine, to be the judge of the law, preside over the
25 trial, to make rulings on matters of law that may

1 arise and to be fair and impartial in those
2 rulings. You, to make decisions on the facts of
3 this case and decide what you believe to be the
4 truth. And you have to be fair and impartial and
5 you have to -- you promise that you'll decide that
6 from the evidence which is in the trial. And the
7 evidence, folks, will consist of the testimony of
8 witnesses and exhibits that might be introduced to
9 that testimony and nothing else.

10 Now, that's not all you're going to hear,
11 obviously. There are four parts of this process.
12 And you will hear only in one the evidence. The
13 other three, you'll hear from the lawyers twice and
14 you'll hear from me once. They're important.
15 Because you don't hear evidence, don't think they
16 aren't important -- we'll talk about that in just a
17 moment -- but the only one that you will be
18 analyzing, the only one that you will be using that
19 sense of logic and reason, your life experiences,
20 is when you evaluate the evidence.

21 I'll assure you, without knowing any of you,
22 that you have -- you are extremely qualified to
23 perform the task that you have accepted. In fact,
24 there's no one in the world more qualified than
25 you; that is, unless you can convince me there's

1 somebody out there that can apply your sense of
2 logic and reason and your life experiences better
3 than you can. I don't think that person exists.

4 You've brought everything you're going to
5 need. You have all the tools. You brought that
6 knowledge, that sense of logic and reasoning. You
7 brought something else, though, that is equally
8 important. You brought an open mind. I would
9 submit that that really is one of the most critical
10 factors of performing your task because you have to
11 do something that is not always easy. Some of
12 us -- and I confess to being one, I'm kind of a
13 bottom line person, hurry up and get to the point.
14 I know people that -- and maybe you are -- are
15 detail persons. They want to take in everything
16 that's being said and they are meticulous about it.
17 You can't be a bottom line person as a juror. You
18 have to be a detail person.

19 So if you happen to have that tendency, you
20 have to fight that, because if you start reaching
21 any conclusions before I give you an instruction to
22 begin your deliberations, you will have violated
23 your commitment you just made because you would
24 have commenced your deliberations. And that
25 process must -- must wait until the conclusion. In

1 fact, ladies and gentlemen, it's the last thing
2 that I will tell you before you leave this
3 courtroom to commence that process. So until you
4 receive that instruction, you must keep that open
5 mind. And I know that you will, you will keep that
6 open mind.

7 Now, let's talk about the process. There are
8 four distinct parts. In just a moment when I
9 finish my opening remarks, the attorneys will come
10 to you and give you basically an overview of the
11 dispute. We call that an opening statement. It
12 will be extremely helpful to you when we move
13 through the trial of this case.

14 And then after you've heard the evidence, they
15 come back again and, unlike the opening statement,
16 you now have heard the evidence, but it's proper
17 for them to discuss that evidence with you and
18 suggest reasonable inferences that you may draw
19 from that evidence. I'm confident that you'll find
20 their remarks extremely important and very
21 beneficial. They are officers of this court and
22 they have a very important role and responsibility
23 in this process of dispute resolution. Give them
24 your attention, but please remember their remarks,
25 while very important, should never be considered

1 evidence by you.

2 Following the opening statements, then the
3 State will present its case against Mr. Ricks.
4 Why? Because the State makes the allegations. And
5 we'll talk about this in my charge, but in this
6 great country, when a charging agent, such as the
7 State, makes the allegations or accusations against
8 an individual, that party and that party alone, no
9 one else -- I can give you -- maybe some of you
10 have served on a jury before. If you have served
11 in a civil case, the process is the same, but there
12 are a couple of differences.

13 One, in a civil case, there may be occasions,
14 limited, but occasions, when a person who -- as I
15 said, the Defendant is simply a term used to
16 designate a party against whom a claim is made --
17 when the Defendant may have to prove something.
18 Not so in a criminal dispute. The persons accused
19 have no burden whatsoever. They don't have to
20 present anything, they don't have to say anything,
21 they don't have to do one thing at all. Why?
22 Because the State of South Carolina bears the sole
23 burden. So you will never look to the Defendant to
24 prove or disprove a thing, because if you do, that
25 would be contrary to the law and therefore

1 violative of your oath. You will look to the
2 State. And because the State has the burden of
3 proof, they go first.

4 Now, what do they have to prove? They have
5 charged and accused the Defendant of the crime of
6 murder. And I'll define murder for you and give
7 you the elements of the charge of murder at the
8 conclusion of this trial. You, then, will be
9 tasked with going back and deciding whether or not
10 you're convinced. And the standard -- therein is
11 the second difference between a civil process and a
12 criminal process. The burden of proof that you
13 will be instructed to apply is beyond a reasonable
14 doubt.

15 Now, what does that mean? It's simply a doubt
16 that would cause a conscientious and sincere juror
17 searching for the truth in a case to hesitate to
18 act. We'll talk more about that and I'll explain
19 more about the burden of proof during the charge,
20 but that's basically a nutshell sort of definition
21 of what reasonable doubt is.

22 The burden of proof in a civil trial is called
23 the preponderance or greater weight of the
24 evidence. And that, simply stated, is a
25 probability standard. So the burden of proof of

1 beyond a reasonable doubt is greater than a
2 probability standard. It's not just he was
3 probably guilty, certainly not might be guilty,
4 it's guilty beyond a reasonable doubt.

5 Guilty. What does that term mean? It simply
6 means this. As to each element of the crime
7 charged when you analyze it, you're convinced, each
8 one of you, that the State has satisfied that
9 through evidence and that element has been
10 established. If that's the case, then you must
11 return a verdict of guilty. Why? Because the
12 State has met its burden of proof.

13 On the other hand, if the State fails to
14 convince you of any one element to that standard,
15 then you must return a verdict of not guilty.

16 And that's simply what a verdict in a criminal
17 dispute means. Guilty -- the State, the charging
18 agency, satisfied that jury as to each element of
19 that crime. Not guilty means that the jury was not
20 convinced as to one or more because if it failed on
21 one, you must return a verdict of not guilty.

22 Now, after the State has presented its case --
23 and let's talk about the evidence. You know, I
24 told you you need to keep that open mind. And
25 you're going to judge the credibility and

1 believability of witnesses. That's your task. And
2 we know that that means, and I will tell you in the
3 charge, just because testimony is not contradicted
4 directly doesn't necessarily render it undisputed.
5 Why? Because it's always credibility,
6 believability, probability of what one has
7 testified to. Those are the assessments and at the
8 appropriate time that you will make of that
9 testimony. There may be something about body
10 language, there may be something about
11 inconsistency that gives you pause and says, Huh,
12 in my experience in life, that generally becomes
13 suspect.

14 Remember that notation that you made. Just
15 don't go to the next step: I don't believe that.
16 Why? Because when you go back to your
17 deliberations and you discuss that, your fellow
18 jurors may be able to allay that concern, may be
19 able to give you an explanation that would be
20 something other than it's not credible or
21 believable. But certainly make the mental note, I
22 need to talk about this with my fellow jurors
23 because this gives me some concern. Or, vice
24 versa, Oh, that's absolutely true, because every
25 time I have noticed that and the emphasis in the

1 voice. There may be something that your fellow
2 jurors can share with you to say, Well, wait a
3 minute, that might not necessarily apply. Again,
4 make these mental notes. Just don't reach the
5 ultimate conclusion until you have been asked and
6 instructed to begin your deliberations.

7 At the conclusion of the State's case, the
8 Defendant, while he has nothing to prove or
9 disprove, still has the right to present any
10 additional testimony for your consideration or
11 evidence for your consideration. Obviously, a very
12 simple and logical reason you don't want to make
13 any decisions on the facts until you've heard all
14 of the evidence. So that's another reason, a
15 fundamental reason that you want to keep that open
16 mind.

17 Now, at the conclusion of the evidence, the
18 attorneys will come and discuss with you, as I've
19 already stated, in the closing arguments where they
20 will talk about the evidence and suggest reasonable
21 inferences that you may draw from that evidence.
22 And, again, those remarks will be extremely helpful
23 and beneficial.

24 Following that, in the last stage -- and there
25 is some debate about whether this should be done

1 before the closing arguments, and some of my
2 brothers and sisters have kind of experimented with
3 that and changed the order a little bit, but I
4 traditionally follow it because that's the typical
5 order, but please note that your decision -- and
6 that's a very logical reason and another basis for
7 why you don't want to make any decisions, because
8 you haven't heard the law. And your decision has
9 to be based on the evidence and the law.

10 So the last thing that we say to you will be
11 the law. And we'll talk about it. We'll talk
12 about the elements of the crime of murder. We'll
13 take about some other aspects that may be involved
14 in this case. And then you will be instructed to
15 begin your deliberations and perform the task that
16 each one of you accepted. And that is to try this
17 case and render a decision which is fair to the
18 State and fair to the Defendant based on the
19 evidence and the law.

20 And I thank you for the privilege of serving
21 with you as a juror and a judge. And I look
22 forward to trying this case with you.

23 Thank you for your attention to my remarks.
24 And now please give that same attention to the
25 attorneys as they give their opening statements.

1 Solicitor, you may continue.

2 OPENING STATEMENT

3 MR. WILLIAMS: May it please the Court, Your
4 Honor?

5 THE COURT: Yes.

6 MR. WILLIAMS: Murder. Murder.. Murder. The
7 State will prove that the Defendant, Channen Ricks,
8 murdered Thomas Pauling by shooting him three times
9 in the back taking his life on May 25th, 2014.

10 As a result of the Defendant's actions, Thomas
11 Pauling's family's hopes for any future with him
12 were cut short by the sharp knife of a short life.
13 Thomas Pauling died at 23 years old.

14 Ladies and gentlemen of the jury, as you know,
15 this is a murder trial. And while the Defendant is
16 here and the State is here, Thomas Pauling is not.
17 And I would ask you in the course of this trial,
18 you remember Thomas Pauling and you remember his
19 family.

20 To the facts. A couple of days before
21 May 24th, 2014, the Defendant and the mother of his
22 child, Kiara Pelzer, broke up. They were in an
23 off-and-on relationship. A couple of days before
24 May 24th, they called it quits.

25 On May 24th, 2014, the Defendant made plans

1 for a birthday celebration. It's important to note
2 that all the lay witnesses in this trial know each
3 other in some way, shape, or form. The Defendant
4 made plans for his birthday celebration. He
5 reached out to his friends. He's well known in a
6 certain group, and so word got around.

7 On that night, the Defendant -- the Decedent,
8 Thomas Pauling, Travis Tucker, and other friends
9 went to a local nightclub called Club Torch. Kiara
10 Pelzer also went to Club Torch, along with her
11 cousin, Brianna Pelzer. It was a night of
12 celebration.

13 As the night transcended into the morning, the
14 early morning hours of Sunday May 25th, 2014, the
15 Defendant left the club.

16 Simultaneously, Kiara Pelzer, the mother of
17 the Defendant's child, made arrangements with
18 Travis Tucker to go back to their house -- go back
19 to Kiara Pelzer's house to hook up.

20 Kiara left the club, went back to her house.
21 Travis Tucker was riding with Thomas Pauling. They
22 were hanging out together that night. Travis made
23 arrangements for he and Thomas to be dropped off at
24 Kiara's house.

25 Once they got there, Kiara had went to the

1 store to go get something to drink. While waiting
2 on Kiara, Thomas and Travis were let in by Xavier
3 Richardson. That's the Defendant's nephew.

4 What you will notice during the course of this
5 trial is that these families are intertwined by
6 Kiara and the Defendant's young son. So you have
7 Xavier Richardson at Kiara's house babysitting her
8 children. You have Brianna Pelzer at Kiara's
9 house. They were spending the night together
10 because they hung out earlier that night into the
11 morning. We have Travis Tucker there, invited by
12 Kiara. We have Thomas Pauling there, who was
13 riding along with Travis Tucker. These were the
14 parties that were at 501 Richland Village early
15 Sunday morning, May 25th, 2014.

16 Once Kiara comes back to her apartment, she
17 and Travis go to her room to do what grown folks
18 do. Thomas Pauling is asleep on the floor.
19 Remember, he's only there tagging along.

20 Brianna Pelzer, Kiara's cousin, and Xavier
21 Richardson, along with Kiara's two children, are in
22 Kiara's daughter's bedroom asleep. Suddenly, there
23 is a knock at the door(indicating). That was the
24 Defendant, Channen Ricks.

25 The State will show you that once Channen left

1 Club Torch, he had intentions to hook up with
2 someone. The State will show you there were
3 several communications who he planned to hook up
4 with. The State will show you that those plans did
5 not include Kiara Pelzer.

6 Knock at the door(indicating). The Defendant.
7 Kiara is startled. Travis Tucker is startled.
8 Keep in mind, these people knew each other. Travis
9 knew that Kiara and Channen had a baby together.
10 Travis gets out of the bed, attempts to put his
11 clothes on, goes into the front room and grabs a
12 pistol. Kiara is still in her room unclothed.

13 Channen makes his way into the front door. He
14 is confronted by Travis Tucker. A struggle ensues
15 over the gun. At some point, Thomas wakes up. The
16 struggle continues. Eventually, Channen is able to
17 wrestle the gun from Travis Tucker. At that point,
18 Travis Tucker flees the apartment.

19 During the struggle, Kiara comes out of her
20 bedroom. She has a towel wrapped around her, or
21 sheet, if you will. She was trying to calm down
22 the altercation. She was unsuccessful. She was
23 actually hit in the process.

24 After realizing she could not calm down the
25 altercation, she attempted to get into her

1 daughter's room. She knocks on the door and she is
2 let in.

3 Still upset by what he found, Channen, with
4 Travis Tucker's gun, goes into Kiara's daughter's
5 room. He and Kiara have a heated discussion.

6 The State will prove to you because Channen
7 was upset by what we saw, he fired one round into
8 the roof. Boom(indicating). A round ejects from
9 the gun, falls -- goes to the ceiling and then an
10 empty shell falls in the daughter's room.

11 At some point, while Channen is in Kiara's
12 daughter's room, Thomas Pauling flees the
13 apartment. Remember, Thomas Pauling was just
14 tagging along. He was fast asleep when all this
15 happened. Kiara Pelzer will tell you that she saw
16 someone cut through the hallway, enter her back
17 room and go through her back window. She will also
18 tell you that at some point Channen also flees the
19 apartment through her back window.

20 After Channen fires a round into the roof,
21 Kiara grabs up her children and she tells Brianna
22 and Xavier, We need to leave the apartment. So
23 they leave.

24 Ladies and gentlemen, at that time, while
25 they're leaving, they hear three to four gunshots.

1 Pow, pow, pow, pow(indicating). What they did not
2 know is that Channen Ricks encountered Thomas
3 Pauling and shot him three times in the back.

4 All of this happened in a matter of minutes.
5 What was supposed to be a fun night escalated to
6 the untimely demise of Thomas Pauling. Thomas
7 Pauling, who was in the wrong place at the wrong
8 time. Thomas Pauling, who was not sleeping with
9 Kiara Pelzer. Thomas Pauling, who was known by the
10 Defendant, Channen Ricks, because they grew up
11 together and were considered friends.

12 After the shooting, Channen runs away. He
13 calls 9-1-1. You are going to hear all that. Law
14 enforcement arrives to the scene and they find
15 Thomas Pauling's lifeless body face-down in the
16 apartment complex of Richland Village.

17 Law enforcement conducts an investigation.
18 After hearing what happened, interviewing Kiara
19 Pelzer, interviewing Brianna Pelzer, interviewing
20 Xavier Richardson, interviewing Travis Tucker, they
21 come to the conclusion that Channen Ricks is the
22 prime suspect. They make contact with Channen
23 Ricks. He is also interviewed. Ultimately, he is
24 charged with the murder of Thomas Pauling.

25 Again, ladies and gentlemen of the jury,

1 you're going to hear from the State and the State's
2 witnesses, but you're not going to hear from Thomas
3 Pauling.

4 I would ask as you consider the evidence that
5 the State puts forth that you remember Thomas
6 Pauling and remember his family.

7 We believe that we will prove this case. We
8 will prove that Channen Ricks murdered Thomas
9 Pauling beyond a reasonable doubt.

10 We ask for your full attention to this matter.

11 Thank you.

12 THE COURT: Thank you, Solicitor.

13 Ms. Zmroczek, you may proceed.

14 MS. ZMROCZEK: May it please the Court?

15 THE COURT: Yes, ma'am.

16 OPENING STATEMENT

17 MS. ZMROCZEK: Good morning.

18 Seven minutes. Seven minutes. Thomas
19 Pauling's life tragically ends. Channen Ricks'
20 life is forever changed. Seven minutes. Because
21 Channen was set up, surprised, and scared for his
22 life.

23 Ladies and gentlemen, how Thomas Pauling's
24 life ended is tragic. But it's also not in
25 question. Thomas Pauling was shot by Channen Ricks

1 in a struggle over a gun that Thomas Pauling's best
2 friend's brother brought to the house where Channen
3 Ricks was that night. He was shot over a struggle
4 of the gun.

5 The forensic evidence, the things that can't
6 be remembered differently and changed, the forensic
7 evidence will help you see that.

8 To get to why Thomas Pauling was shot, we have
9 to go back. Seven minutes. How long -- that's how
10 long this story that Assistant Solicitor Williams
11 told. And I was trying to think of how to grasp
12 seven minutes, how to put that into context. I
13 used to say I could run a mile in seven minutes,
14 but that was a long time ago. I was sitting trying
15 to think how to conceptualize seven minutes. It
16 takes seven minutes to brew half a cup of coffee --
17 half a pot, excuse me. Six cups. Seven minutes.

18 He was set up by Kiara Pelzer. And you'll
19 hear her sit on this stand -- and I don't know what
20 kind of version she's going to tell this time, but
21 you'll get to hear it, and you'll get to hear all
22 her other versions, because I assure you, hell hath
23 no fury like a woman scorned.

24 And what my fear is, is that somehow their
25 relationship and who or who wasn't cheating and who

1 or who wasn't being nice to each other is going to
2 somehow affect these seven minutes. Because that's
3 what the State and the Government want you to focus
4 on, is that he was texting a girl or some girl on
5 his birthday, on his 26th birthday, the night that
6 had nothing but endless possibilities. Because
7 even though he had a child with Kiara Pelzer, she
8 wasn't pleased with him.

9 And you'll get to read the text messages. And
10 let me tell you, these text messages will flesh out
11 the kind of relationship that they had and the kind
12 of person that she was. The kind of person that
13 would text him -- him, Channen Ricks -- at 4:30 in
14 the morning, after she's already set up for Travis
15 Tucker and his gun to come over, she texts him.
16 The mother of his child -- his child -- and her
17 daughter, who he was raising. And she said, Come
18 on over.

19 And then you'll hear about a year later when
20 they're talking on the phone, he said, Why would
21 you do that? To get even.

22 Channen Ricks did not murder Thomas Pauling.
23 And, yes, Thomas Pauling cannot come back, and that
24 is tragic. But it is also not murder.

25 The judge told you that for the next three or

1 four days, you are going to get to sit here and
2 listen to evidence and look at evidence and read
3 evidence and judge witnesses' credibility and their
4 demeanor. And you don't get to ask questions. So
5 I ask that you bear with us, because how we get
6 that evidence out is we ask the questions. And
7 sometimes, you may be thinking, All right,
8 Ms. Zmroczek, we got your point, move on. Okay,
9 Ms. Sampson, Mr. Williams, we hear what you're
10 saying, let's keep going. But you can't do that.
11 So I ask that you bear with us. Because there are
12 some questions that are going to be tough, but they
13 have to be asked, because Channen Ricks' and Thomas
14 Pauling's families deserve that.

15 And Channen's mom, she can't be in the
16 courtroom. Witnesses are sequestered, so when
17 witnesses testify, they can't be in the courtroom
18 until then. So, yes, his family is here, but
19 they're outside. That doesn't mean that they care
20 any less than Thomas Pauling's family does. But
21 it's not about rewarding. It's not about emotion.
22 It's about the facts.

23 And the facts, as they will be proven from
24 this witness stand from text messages, from the
25 mind of the woman who set this up, Kiara Pelzer,

1 from the man who brought a gun into a home with a
2 less than 6-month-old infant and a young woman
3 because he wanted to have sex. Even though she
4 invited Channen Ricks over.

5 You'll hear the 9-1-1 call. The State didn't
6 get it. The investigator didn't get it. We got
7 it. And what that 9-1-1 call says -- we didn't get
8 the first one. They didn't preserve it. We got
9 the second one. Because when you call 9-1-1 and
10 the phone hangs up, they call back. And you'll get
11 to hear -- within ten minutes of this incident,
12 you'll get to hear the words that came out of his
13 mouth. Because when he came home that night, where
14 he had a key, where he stayed, where he had
15 clothes, he goes into the door, he gets jumped, not
16 by one, by two. So you can be an innocent
17 bystander because you're not having sex with Kiara
18 Pelzer, but your choice to be there with a man you
19 know has a gun, and then to attack Channen Ricks.
20 And I assure you a gun goes off in that house.
21 There will be no question as to who shoots that gun
22 and when the gun is wrestled away. And those are
23 the questions that you get to decide.

24 And when Channen finally gets that gun after
25 it's been shot by Travis Tucker and he's got -- all

1 he's thinking about is his kids. He doesn't know
2 who these people are at the time. Because,
3 remember, we're talking seven minutes. And he's
4 walking to a friend's apartment because he has no
5 idea what's going on at this point. And he gets
6 jumped by Travis Tucker, who's drunk and high and
7 wants that gun back.

8 And, yes, there is a struggle. And, yes,
9 Channen shoots him. And, yes, some of them are --
10 some in the side, some were in the back. You'll
11 see the directions of the bullets. The pathologist
12 will tell you. We can't change that. But the
13 directions of those bullets will tell you that a
14 struggle ensued.

15 Ladies and gentlemen, there was no malice,
16 there was no murder. Channen Ricks was set up and
17 scared for his life. And it's that seven minutes,
18 within those seven minutes when Thomas Pauling was
19 shot over a struggle for a gun.

20 We thank you also for your kind attention.
21 And in a few days I'm going to come back up and I'm
22 going to ask that you find him innocent of murder
23 because he was acting in self-defense.

24 Thank you.

25 THE COURT: You may call your first witness,

1 Solicitor.

2 MS. SAMPSON: Thank you, Your Honor. The
3 State would call Larry Crutchlow.

4 (Witness approaches.)

5 THE BAILIFF: Place your left hand on the
6 Bible, and raise your right hand, please.

7 (Witness complies.)

8 THE CLERK: Do you solemnly swear or affirm
9 the testimony you give in this case will be the
10 truth, the whole truth, and nothing but the truth,
11 so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Please have a seat, and state your
14 full name for the record.

15 (Witness seated.)

16 THE WITNESS: Corporal Larry Crutchlow.

17 LARRY CRUTCHLOW,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. SAMPSON:

21 Q. Corporal Crutchlow, where do you currently work?

22 A. Richland County Sheriff's Department.

23 Q. How long have you worked there?

24 A. Approximately seven years.

25 Q. And what are your duties at the Sheriff's

- 1 Department?
- 2 A. I'm a patrol supervisor.
- 3 Q. And what does that mean?
- 4 A. I run a shift of officers. So each day you have
- 5 two shifts, you have two supervisors.
- 6 Q. And currently you are on night duty; is that
- 7 correct?
- 8 A. Yes, ma'am.
- 9 Q. So you are just coming off?
- 10 A. Yes, ma'am.
- 11 Q. Back in May of 2014, what were your duties then?
- 12 A. I was a master deputy assigned to Region One.
- 13 Q. And what does a master deputy do?
- 14 A. They fill in for the shift supervisor whenever they
- 15 are not there.
- 16 Q. Are you on patrol? Are you at headquarters?
- 17 A. You're on patrol.
- 18 Q. And on patrol, what does that mean?
- 19 A. Respond to 9-1-1 calls, calls for service, traffic
- 20 enforcement, crime prevention.
- 21 Q. Just anything pretty much?
- 22 A. Yes, ma'am.
- 23 Q. And back on May 25th of 2015, how did you become
- 24 associated with this case?
- 25 A. The night shift had just relieved us -- I'm sorry,

1 the day shift had just relieved us, so I was on the
2 way home, and a shots fired call came out at 1234
3 Universal.

4 Q. And I see that you're looking down at something.

5 A. I'm sorry, I'm looking at my report just to make
6 sure.

7 Q. And does your report help refresh your memory since
8 this happened two years ago?

9 A. Yes, ma'am.

10 Q. And looking at that report, what time did you
11 receive the call?

12 A. Approximately 5:30, 5:32.

13 Q. A.m. or p.m.?

14 A. A.m.

15 Q. So based on getting that 9-1-1 call -- and I think
16 you said to 1234 Universal Drive?

17 A. Yes, ma'am.

18 Q. Do you know what that is? Is it an apartment
19 complex?

20 A. It's an apartment complex.

21 Q. And did you go to that apartment complex?

22 A. Yes, ma'am.

23 Q. And what did you do once you got there?

24 A. I circled around looking for a possible victim.
25 They said there were shots fired and they said

1 there was possibly one person hit.

2 Q. Did you know whether it was male or female?

3 A. No, ma'am.

4 Q. So you're just looking for what?

5 A. Someone lying on the ground.

6 Q. And I interrupted you. You went to the apartment
7 complex. Are you driving or walking?

8 A. Driving. I circled around one time. There was no
9 one outside. I couldn't see anything.

10 Q. And when you say no one outside, do you mean anyone
11 laying or no one at all?

12 A. I didn't observe anyone outside.

13 Q. No one was walking --

14 A. The first --

15 Q. -- around?

16 A. No, ma'am. The first circle around. The second
17 circle around is when I observed a male subject
18 that was lying on the ground hunched over on, what
19 do you call it, the curb that you pull up to,
20 hunched over kind of on his stomach.

21 Q. I'm going to stop you a minute. You said the first
22 time you go around. Do you have your lights on?

23 A. My marker lights were on.

24 Q. What do you mean by marker?

25 A. My blue stationary lights were on.

1 Q. And then the second time, do you do anything
2 different?

3 A. No, ma'am.

4 Q. Do you use your search lights or anything?

5 A. I had my search light on as well both times.

6 Q. Okay.

7 A. It was a very -- that night, it was very dark and
8 very foggy.

9 Q. Okay. Was it misting or raining or anything?

10 A. It was, yes.

11 Q. So when you see -- you said you saw someone laying
12 on the ground?

13 A. Yes, ma'am.

14 Q. Were they sitting up or laying down?

15 A. They were laying down on their stomach.

16 Q. Could you tell whether they were breathing?

17 A. Not initially. I got out of the vehicle.

18 Q. And what did you do once you got out of the
19 vehicle?

20 A. I checked for a pulse.

21 Q. Did you find one?

22 A. No.

23 Q. Based on that, what did you do?

24 A. I called for an ambulance to respond.

25 Q. Did you see anything else on the person? Did you

1 check for wounds or anything like that?

2 A. Yes, ma'am, I did check for wounds briefly. I
3 didn't pull shirts back or anything like that. I
4 believe I observed three gunshot wounds.

5 Q. And was the person on their stomach or on their
6 back?

7 A. They were on their stomach.

8 Q. So all you could see was their back?

9 A. Yes, ma'am.

10 Q. And you said you saw three wounds to the back?

11 A. Yes.

12 Q. So what did you do at that point? I think you said
13 you called --

14 A. I called for an ambulance. But I did -- I
15 rolled -- because the way they were lying, I did
16 roll him just so I could get my fingers up
17 underneath the carotid artery to feel for a pulse.

18 Q. And could you tell if it was a male or female at
19 that point?

20 A. It was a male.

21 Q. Black or white?

22 A. Black male.

23 Q. So what did you do while waiting for people to show
24 up?

25 A. I secured the crime scene, meaning I set up crime

1 scene tape. I did a quick preliminary search to
2 see if there was any evidence. I started setting
3 up tape to keep people, you know, from coming
4 inside of the crime scene and contaminate it.

5 Q. And I'm going to stop you there. When you say
6 tape, are you talking about that yellow tape we're
7 all familiar with?

8 A. Yes, ma'am.

9 Q. That yellow with crime scene on it?

10 A. Yes, ma'am.

11 Q. Where did you wrap that around, do you remember?

12 A. I don't remember exactly where it was wrapped
13 around. However, when I walked -- I walked out
14 with the preliminary search, I found some shell
15 casings. And I basically -- I went probably about
16 six feet beyond that. I didn't see anything in a
17 complete circle.

18 Q. And so I guess what I mean, you don't just put
19 crime scene around the body, you do the entire
20 area; correct?

21 A. Yes, ma'am.

22 Q. And you said -- you skipped a little bit. You put
23 pink ribbon around the --

24 A. Yes, ma'am, so it's -- the visibility, I didn't
25 want to take a chance of anybody or me not

1 remembering where the shell casings were. I put
2 some pink flagging tape around each shell casing.

3 Q. And did you put it around anything else?

4 A. Let me refer to my report real quick. I put it
5 around where there were some pools of blood.

6 MS. ZMROCZEK: Your Honor, I have no objection
7 to that being introduced.

8 THE COURT: Very well. Thank you.

9 MS. ZMROCZEK: When she presents them, if I
10 may move?

11 THE COURT: Absolutely. Feel free, anywhere
12 you wish.

13 MS. SAMPSON: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MS. SAMPSON:

16 Q. I am going to show you what's been marked as
17 State's Exhibit Numbers 40 through 42, 54 through
18 56, and 75. I want you to look at all of those.
19 You don't have to say what they are, I just want
20 you to look at them.

21 A. (Witness complies.)

22 Q. Were you able to look at them all?

23 A. Yes, ma'am.

24 Q. And do all of those accurately reflect the way the
25 scene looked on the night -- or on the morning that

1 you saw it?

2 A. Yes, they do.

3 MS. SAMPSON: At this time we'd ask to
4 introduce State's Exhibit Numbers 75, 54 through
5 56, and 40 through 42.

6 THE COURT: Without objection, State's 40
7 through 42, 54 through 56, and 75 are admitted.

8 (WHEREUPON, State's Exhibit Nos. 40-42
9 were marked for identification and
10 received into evidence.)

11 (WHEREUPON, State's Exhibit Nos. 54-56
12 were marked for identification and
13 received into evidence.)

14 (WHEREUPON, State's Exhibit No. 75 was
15 marked for identification and received
16 into evidence.)

17 BY MS. SAMPSON:

18 Q. Can you step down?

19 (Witness steps down.)

20 Q. I am going to ask you -- I'm going to stand here
21 and you stand over there -- if you can keep your
22 voice up so the court reporter can hear you. Can
23 tell the jury what this is?

24 A. It's the crime scene tape. My vehicle is there.
25 This is the flagging tape that I put down marking

1 the evidence.

2 Q. Okay. And you said this yellow crime tape, is that
3 the tape that you're talking about that you put up?

4 A. Yes, ma'am.

5 Q. And these are pink, I don't want to call them
6 ribbons, but --

7 A. Yes, ma'am.

8 THE COURT: Excuse me a second, Solicitor.

9 Ladies and gentlemen of the jury, I know the
10 objects are small and some of our eyes are better
11 than others, but anything that is admitted into
12 evidence will accompany you to your jury room, so
13 you'll have an opportunity to study them very
14 closely and in detail when that -- during your
15 deliberations. I just want to let you know that
16 this will not be the only time that you have the
17 opportunity to review them.

18 Thank you.

19 Excuse me, Solicitor.

20 MS. SAMPSON: Thank you, Your Honor.

21 BY MS. SAMPSON:

22 Q. And this is -- is this -- what is this?

23 A. Let me get a little closer. It's flagging tape
24 around shell casings.

25 Q. It's just a close-up of what the other one showed?

1 A. Yes, ma'am. Another close-up.

2 Q. And this one -- and, again, it's hard to see. Are
3 those the bullet casings that you're talking about
4 in State's Exhibit Number 55?

5 A. Yes, ma'am.

6 Q. And that's the pink ribbon?

7 A. Yes, ma'am.

8 Q. And State's Exhibit Number 54, what is this?

9 A. That's a watch of the crime scene.

10 Q. And this, again, is the crime scene tape that you
11 put up?

12 A. Yes, ma'am.

13 Q. And, again, it reflects the pink ribbon?

14 A. Yes, ma'am.

15 Q. Did anyone while you were there, other than law
16 enforcement or personnel, come into the crime scene

17 --

18 A. No, ma'am.

19 Q. -- that you taped off?

20 A. No.

21 Q. What does State's Exhibit Number 42 show?

22 A. It's just the opposite view of the crime scene.

23 Q. So that would be that same tape from the other
24 side?

25 A. Yes, ma'am.

1 Q. And then State's Exhibit 41?

2 A. It is just a different angle. It is the flagging
3 tape.

4 Q. And, again, does it have crime scene tape?

5 A. Yes, ma'am.

6 Q. And what is that?

7 A. That is the body.

8 MS. SAMPSON: And, for the record, I pointed
9 to 41 in the left corner -- or excuse me, right
10 corner.

11 BY MS. SAMPSON:

12 Q. And State's Exhibit 40?

13 A. That would be the other side of the crime scene.

14 Q. You may sit down.

15 (Witness returns to witness stand.)

16 Q. And I think I asked you this. Once you put the
17 tape up, were any other parties allowed into the
18 crime scene?

19 A. None other than emergency medical personnel.

20 Q. And what do you all do when you start a crime scene
21 in order to show who went into the scene?

22 A. Start a log that indicates the person's name, the
23 time they went in, the time they went out, and the
24 purpose for their entry.

25 Q. And if, say, someone ran into there that wasn't

1 supposed to, would that be noted on that log?

2 A. It would.

3 Q. So to the best of your knowledge, that log was
4 started when you got there?

5 A. Yes, ma'am, I started it.

6 Q. Did any other -- who was the next officer that
7 came, do you remember?

8 A. Deputy Frost.

9 Q. Pretty close in time to yourself?

10 A. Yes, ma'am.

11 Q. And I believe you said you came at 5:32; is that
12 correct?

13 A. Yes, ma'am, approximately.

14 Q. Approximately.

15 MS. SAMPSON: No further questions, Your
16 Honor.

17 THE COURT: Cross-examination?

18 MS. ZMROCZEK: Thank you.

19 CROSS-EXAMINATION

20 BY MS. ZMROCZEK:

21 Q. Good morning.

22 A. Good morning.

23 Q. Is it corporal?

24 A. Yes, ma'am.

25 Q. Sorry. I had to stay up all night. I'll try to

1 make this quick. You put up the crime scene tape
2 and you marked the evidence because you don't want
3 it to be manipulated; right?

4 A. Correct.

5 Q. Because that kind of helps us use physical evidence
6 to find out what happened; right?

7 A. Yes, ma'am.

8 Q. When you were driving through the complex, did you
9 come down this way once?

10 A. Yes, ma'am.

11 Q. And then I think you said you did a second loop?

12 A. There's two loops in that apartment complex,
13 there's an inner loop and an outer loop. I drove
14 the outer loop, and then I drove the inner loop.

15 Q. And then after you drove the inner loop, you --

16 A. That's when I observed the body.

17 Q. You observed Mr. Pauling; right?

18 A. Yes, ma'am.

19 Q. Okay. And you do a report -- I think you have
20 it -- so you can remember what happened; right?

21 A. Yes, ma'am.

22 Q. And you put all the important information in there
23 so you can recall it two or however many years
24 later; correct?

25 A. Yes, ma'am.

1 Q. And in that report, you put that communications
2 were getting conflicting information; right?

3 A. Yes, ma'am.

4 Q. And when you say communications -- so how do you
5 know to respond to a scene? Tell the jury that.

6 A. Well, our dispatchers are -- the 9-1-1 center
7 dispatches us to calls to -- on different regions.

8 Q. Okay. And if I can ask you, I'm extremely hard of
9 hearing.

10 A. I'm sorry.

11 Q. It's okay. I'm standing close to you and it's hard
12 for me to hear. It was hard back there, too. So
13 9-1-1 -- someone calls 9-1-1; right?

14 A. Yes, ma'am.

15 Q. And then they decide who they need to alert?

16 A. Yes, ma'am.

17 Q. Can more than one person call 9-1-1?

18 A. Yes, ma'am.

19 Q. And so when you're saying you're getting
20 conflicting information, on this night there was
21 more than one call; correct?

22 A. Yes, ma'am.

23 Q. And they record all those?

24 A. Yes, ma'am.

25 Q. And they do a log; right?

- 1 A. How do you mean a log?
- 2 Q. That they print out kind of their communications?
- 3 A. They have that ability, yes.
- 4 Q. An incident detail report. Sorry. Right?
- 5 A. Yes, ma'am.
- 6 Q. And so you have a call number; right?
- 7 A. Yes.
- 8 Q. What's your number?
- 9 A. Now or then?
- 10 Q. What was it then?
- 11 A. 111.
- 12 Q. Okay. So when you got to the scene, you would
- 13 say -- you would check in, you would say 111, 10,
- 14 whatever, whatever the code is; right?
- 15 A. Let them know I'm in the area, yes, ma'am.
- 16 Q. And they would document that?
- 17 A. Yes, ma'am.
- 18 Q. Okay. You stated that you put up the crime scene
- 19 tape to keep people out?
- 20 A. Correct.
- 21 Q. There was a -- by the time that you got there, it
- 22 had started to lighten up a little bit?
- 23 A. No, ma'am. It didn't lighten up for -- I'm not
- 24 exactly sure how long it was. It didn't lighten up
- 25 right away, no.

- 1 Q. Okay. Did a crowd start forming?
- 2 A. Once the crime scene tape got up, yes.
- 3 Q. Once the crime scene tape got up, a crowd --
- 4 onlookers started coming; right?
- 5 A. That's correct.
- 6 Q. And, in fact, some of them were actually
- 7 videotaping what was going on with their phones;
- 8 right?
- 9 A. Yes, ma'am.
- 10 Q. Were y'all able to get any of those phones?
- 11 A. No, ma'am.
- 12 Q. Okay. But you weren't the lead investigator?
- 13 A. No, ma'am.
- 14 Q. In fact, you were off duty -- you were about to go
- 15 off duty; right?
- 16 A. I technically was.
- 17 Q. Technically you were off duty, but you just
- 18 happened to be there, so you --
- 19 A. Well, I wasn't going to pass it because I had to
- 20 pass it on the way home.
- 21 Q. Okay. And you -- I think you and Deputy Frost or
- 22 Officer Frost were one of the first two people
- 23 there; correct?
- 24 A. I was the first one. Frost was second.
- 25 Q. You were the first one. And you said the

1 visibility was low?

2 A. Yes, ma'am.

3 Q. So these pictures obviously weren't taken right
4 when you got there; right?

5 A. No, ma'am. That was taken when the crime scene got
6 there.

7 Q. But when you got there, it was dark?

8 A. Yes, ma'am.

9 Q. Hard to -- I think you said it was misty?

10 A. It was fog.

11 Q. Foggy. And a little bit rainy?

12 A. A little misty.

13 MS. ZMROCZEK: Beg the Court's indulgence.

14 THE COURT: Certainly.

15 (Pause.)

16 BY MS. ZMROCZEK:

17 Q. And the two things that you marked -- you marked
18 four shell casings; right?

19 A. Yes, ma'am.

20 Q. Okay. When you go -- you went to the academy?

21 A. Yes, ma'am.

22 Q. They teach you firearm training?

23 A. Yes, ma'am.

24 Q. In fact, you have to continue with firearm
25 proficiency; right?

1 A. Yes, ma'am.

2 Q. So when you shoot a gun, what -- how do those shell
3 casings get on the ground?

4 A. They eject.

5 Q. Do they eject the same way?

6 A. It depends on the type of gun.

7 Q. It depends on what?

8 A. It depends on the type of gun, the way you're
9 holding the gun. Some eject to the left, some
10 eject to the right. If you're holding it -- it
11 ejects several different ways.

12 Q. There are lots of different variables?

13 A. Yes, ma'am.

14 Q. And then the shell casing can also be moved if
15 there is any kind of foot traffic or any vehicle
16 traffic if they are in the road; right?

17 A. Yes, ma'am.

18 Q. And I think you stated that you found these in the
19 road; correct?

20 A. Yes, ma'am.

21 Q. And then you marked two other areas that at the
22 time you believed were blood; right?

23 A. Yes, ma'am.

24 Q. Those were the only crime scene important pieces of
25 physical evidence that you saw, in addition to

1 Mr. Pauling? '

2 A. Yes, ma'am. At the time, given the light, yes.

3 Q. And you just marked those so that the crime scene
4 people could come and do their job?

5 A. I just wanted to make sure that what I saw, it
6 didn't -- I didn't forget where it was so I could
7 tell them where it was.

8 Q. Thank you.

9 MS. ZMROCZEK: I have no further questions,
10 Your Honor.

11 THE COURT: Redirect, Solicitor?

12 MS. SAMPSON: Just briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. SAMPSON:

15 Q. Corporal Crutchlow, the bullet casings, you didn't
16 move those, did you?

17 A. No, ma'am.

18 Q. When you marked them, that's where they were when
19 you found them?

20 A. Yes, ma'am.

21 Q. And Ms. Zmroczek asked you about in your report
22 there was some mention about conflicting
23 information?

24 A. That's correct.

25 Q. That information that you're getting, it's only as

1 good as what's given to 9-1-1; correct?

2 A. Yes, ma'am.

3 Q. And then lastly she asked you about what you did.

4 What did you do because there were so many people
5 around in terms of the body?

6 A. I asked EMS for a sterile blanket and I laid it
7 over the body so they were not photographing the
8 body.

9 Q. And whatever they were photographing, Mr. Pauling
10 was already dead at that point; correct?

11 A. Yes, ma'am.

12 MS. SAMPSON: No further questions, Your
13 Honor.

14 THE COURT: Recross?

15 MS. ZMROCZEK: None.

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

17 MS. ZMROCZEK: May we approach briefly, Your
18 Honor?

19 THE COURT: Sure.

20 You may step down.

21 Do you wish the witness to be excused?

22 MS. SAMPSON: Yes, Your Honor.

23 THE COURT: Any objection?

24 MS. ZMROCZEK: No objection.

25 THE COURT: You're also free to leave, sir.

1 Thank you, sir.

2 THE WITNESS: Yes, sir.

3 (Witness excused.)

4 (WHEREUPON, a bench conference was held
5 in the presence of the jury but out of
6 the hearing of the jury.)

7 THE COURT: Call your next witness.

8 MR. WILLIAMS: The State calls Tommy Goodwin.

9 (Witness approaches.)

10 THE BAILIFF: Place your left hand on the
11 Bible, and raise your right hand, please.

12 (Witness complies.)

13 THE CLERK: Do you solemnly swear or affirm
14 the testimony you give in this case will be the
15 truth, the whole truth, and nothing but the truth,
16 so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Please have a seat, and state your
19 full name for the record.

20 (Witness seated.)

21 THE WITNESS: Tommy Goodwin.

22 TOMMY GOODWIN,
23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. WILLIAMS:

1 Q. Good morning, Tommy.

2 A. Good morning.

3 Q. How are you doing today?

4 A. I'm doing all right.

5 Q. I'm going to ask you to talk to the jurors. I'm
6 going to ask you the questions and you answer the
7 questions. Is that okay?

8 A. That's all right.

9 Q. All right. What do you do for a living, Tommy?

10 A. I work at EXIT Homes. I'm a student, a full-time
11 student at the University of South Carolina.

12 Q. Okay. What are you studying at USC?

13 A. Mathematics and applied sciences.

14 Q. Who came here with you today?

15 A. My mom.

16 Q. Why is that?

17 A. She was the one -- I live with my mom.

18 Q. You all have a pretty good relationship; right?

19 A. Yes, sir.

20 Q. Tell me what you were doing back on the early
21 morning of May 25th, 2014.

22 A. I was in my home all day.

23 Q. Where do you live?

24 A. Richland Village.

25 Q. Okay. Continue.

1 A. I was at my home all day that day after class.
2 That's essentially what I did all day. I stayed
3 home. Other than that -- I don't do too much going
4 around, so I was home all day, and then I went to
5 sleep that night.

6 Q. Did something disturb your sleep that night?

7 A. Yes, sir.

8 Q. What was it?

9 A. Gun fire.

10 Q. Can you describe what you heard?

11 A. I believe I heard like four shots. I heard four
12 shots that night, which I believed to be a
13 .40 caliber. It was too loud to be a 9, a 9mm or
14 low caliber. So once I heard the shots, it woke me
15 up. I rolled over off my bed onto the floor.

16 Q. And why did you do that?

17 A. I never heard shots in my neighborhood before that
18 time, so it startled me. And then they were close,
19 I know they were close because -- they installed
20 these new window things in the neighborhood. And
21 the echo was really loud, but I could still tell it
22 was close enough, you know, near my apartment. So
23 I rolled over out of my bed. And I stayed on the
24 floor for a few seconds, few seconds maybe, it
25 could have been maybe a minute or two, just to make

1 sure that it wasn't happening anymore.

2 And after that, shortly after, I peeked out of
3 my window and -- just to see what was going on.

4 And it was this guy up on the hill and he was
5 talking to another guy, he was on the ground. And
6 I couldn't see the man who was on the ground.
7 There was a vehicle in front of him, so I couldn't
8 see him.

9 And he was telling the guy to get up. He was
10 like, Bruh, come on, get up. And the guy on the
11 ground was moaning. And he took a step back like
12 he was about to leave. He took like two steps and
13 he was about to leave. And he turned around and
14 came back to the guy and was like, Come on. Come
15 on, Bruh, get up. And the dude like groaned one
16 more time. And I guess that's when he died, or
17 whatever. And the dude -- and the man who was
18 standing over him took off running.

19 And I went in my mom room and I said, Mom, I
20 think somebody just got shot.

21 And she said, I thought I heard shots too.

22 I said, Yeah, there was two guys up on the
23 hill. She told me to call the police. After that,
24 I was like, Mom, I don't know. But I ended up
25 calling the police telling them what happened out

1 there.

2 MR. WILLIAMS: I am showing the witness
3 State's Exhibit 112 previously marked for
4 identification purposes.

5 BY MR. WILLIAMS:

6 Q. Tommy, can you identify this document?

7 A. Yes, sir.

8 Q. What is it?

9 A. Richland Village.

10 Q. And is it a fair and accurate depiction of an
11 aerial view of Richland Village?

12 A. Yes, sir.

13 MR. WILLIAMS: Your Honor, at this time the
14 State would move to enter State's Exhibit 112 into
15 evidence.

16 THE COURT: Any objection?

17 MS. ZMROCZEK: No objection.

18 THE COURT: Without objection, Exhibit 112 is
19 admitted. Thank you.

20 (WHEREUPON, State's Exhibit No. 112 was
21 marked for identification and received
22 into evidence.)

23 MR. WILLIAMS: Your Honor, may we publish to
24 the jury?

25 THE COURT: You may.

1 (Exhibit published to jury.)

2 BY MR. WILLIAMS:

3 Q. Tommy, would you mind stepping down?

4 (Witness steps down.)

5 MR. WILLIAMS: Mr. Bailiff, is there a pointer
6 in the courtroom?

7 BY MR. WILLIAMS:

8 Q. Tommy, could you point to the jury where you live?

9 A. Right here(indicating).

10 Q. Okay. And what apartment building is that?

11 A. 6.

12 Q. All right. And can you point to the jury where you
13 observed two men?

14 A. (Indicating.)

15 Q. What direction did you see the man who was running
16 off run in?

17 A. He ran --

18 THE COURT REPORTER: I'm sorry, I can't hear
19 you.

20 THE COURT: You need to speak up, please, sir.

21 BY THE WITNESS:

22 A. He ran this way between --

23 BY MR. WILLIAMS:

24 Q. I believe that's 8.

25 A. 8? He ran between Building 8 and 7.

1 Q. Okay. In what direction, Tommy?

2 A. Heading this way. I guess about this map here, he
3 would be heading west on the map.

4 Q. Is it fair to say that he is going towards Building
5 9?

6 A. Yes, sir. That's that way.

7 Q. Okay. Thank you. You may take your seat.

8 (Witness returns to witness stand.)

9 MR. WILLIAMS: I'm showing the witness State's
10 Exhibit 109.

11 BY MR. WILLIAMS:

12 Q. Tommy, you had the opportunity to listen to this
13 9-1-1 call; correct?

14 A. Yes, sir.

15 Q. Okay. And was that call the same call you made
16 over two years ago?

17 A. Yes, sir.

18 Q. And it fairly and accurately depicts that phone
19 call you made to 9-1-1?

20 A. Yes, sir.

21 MR. WILLIAMS: Your Honor, the State would
22 move to enter State's Exhibit 109 into evidence.

23 THE COURT: Any objection?

24 MS. ZMROCZEK: No objection.

25 THE COURT: Without objection, State's 109 is

1 admitted.

2 (WHEREUPON, State's Exhibit No. 109 was
3 marked for identification and received
4 into evidence.)

5 MR. WILLIAMS: Your Honor, the State would ask
6 to publish this call to the jury?

7 THE COURT: You may do so.

8 Again, while the Solicitor is setting this up,
9 that will be -- it's admitted into evidence.
10 Typically, what -- so that you will know, you'll
11 have a chance to hear this again should you need
12 to. The only difference is we would bring you back
13 in the courtroom to replay it. But you will have
14 an opportunity to hear it if that becomes
15 necessary.

16 (9-1-1 call played in open court.)

17 MR. WILLIAMS: Your Honor, this --

18 THE COURT: Put it on the box in front of the
19 jury. Maybe -- if it's loud enough, I think you
20 can hear it. There's nothing on the screen, is it?

21 MR. WILLIAMS: No, Your Honor.

22 (9-1-1 call continued.)

23 BY MR. WILLIAMS:

24 Q. Tommy, was that the substance of your call?

25 A. Yes, sir.

1 MR. WILLIAMS: Beg the Court's indulgence,
2 Your Honor?

3 THE COURT: Yes, sir.

4 (Pause.)

5 BY MR. WILLIAMS:

6 Q. Tommy, could you describe the clothing of the male
7 standing over the decedent?

8 A. I could only see his shirt clearly, but he had on a
9 black and white striped shirt, which I assume it
10 was black, it was dark, but it was either black or
11 a really dark hue or a dark blue, or something like
12 that. It appeared to be black and white striped.
13 I think black and white striped.

14 Q. All right, Tommy, thank you for your testimony.
15 Please answer any questions of Ms. Zmroczek at this
16 time.

17 THE COURT: You may cross-examine.

18 MS. ZMROCZEK: Thank you. Briefly.

19 CROSS-EXAMINATION

20 BY MS. ZMROCZEK:

21 Q. Good morning, Mr. Goodwin.

22 A. Good morning.

23 Q. You made that call that we just listened to at
24 5:28; right?

25 A. Yes, ma'am.

1 Q. And that was about five -- I think -- and correct
2 me if I'm wrong -- you say it was about five
3 minutes after you heard the shots?

4 A. Yes, ma'am.

5 Q. And so in between -- let me turn the microphone for
6 the recording.

7 A. Yes, ma'am.

8 Q. In between the -- hearing the shots -- and you said
9 you heard how many?

10 A. Four.

11 Q. Four. And you heard them, I think you described
12 pow, pow, pow, pow?

13 A. Yes, ma'am.

14 Q. Rapid succession; right?

15 A. Yes, ma'am.

16 Q. But you didn't see any of that?

17 A. No, ma'am.

18 Q. Okay. So what you did see -- so you looked out the
19 window; right?

20 A. Yes, ma'am.

21 Q. And you see the guy in the dark striped shirt?

22 A. Yes, ma'am.

23 Q. Alternating stripes with white; correct?

24 A. Yes, ma'am.

25 Q. Excuse me. And he was trying to get the person to

1 get up?

2 A. He was telling him to, Come on, get up. Then
3 that's what he did, he was telling him, Come on,
4 get up. Like he -- the dude on the ground was
5 groaning, you know, like I guess he had been the
6 one was shot, so he was groaning. And he had --
7 the one who was standing over him telling him to
8 get up, like, Come on, Bruh, he had took a few
9 steps back like he was about to leave him, but he
10 came back and said, Come on, Bruh, get up. Like,
11 Come on. And the dude groaned like one or two more
12 times and I guess he was out. That's when the guy
13 ran.

14 Q. And that's when the guy ran; right?

15 A. Yes.

16 Q. And those are the two people that you saw?

17 A. Yes. I couldn't quite see the other guy who was on
18 the ground because there was a car in front of him,
19 but I knew was somebody was there.

20 Q. So when you say that -- so you didn't see any
21 other -- I mean, you heard or at least knew that
22 there was that one guy on the ground and then the
23 guy in the striped shirt?

24 A. Yes, ma'am.

25 Q. Okay. And obviously it woke you up, so you looked

1 at the clock to figure out what time it was?

2 A. No, ma'am, actually. I just knew it was that
3 morning. It was still dark outside. I went to
4 sleep when it was dark. So I just knew it had to
5 be that time of the morning. I didn't really look
6 at the clock.

7 Q. Right, right, right. And we have the clock from
8 the 9-1-1 call.

9 A. Yeah.

10 Q. But you're guesstimating?

11 A. Yeah.

12 Q. About five minutes is accurate?

13 A. Yes, ma'am.

14 Q. Okay. To kind of gather your thoughts and to get
15 up? It was no longer than that; right?

16 A. Yes, ma'am.

17 Q. All right. Thank you so much.

18 MS. ZMROCZEK: No further questions.

19 THE COURT: Redirect, Solicitor?

20 MR. WILLIAMS: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. WILLIAMS:

23 Q. Mr. Goodwin, besides the individual you saw in that
24 black and white striped shirt, did you see anyone
25 else?

1 A. No, sir.

2 Q. Did you see anyone else come out there up until the
3 time the police showed up?

4 A. No, sir.

5 MR. WILLIAMS: No further questions from the
6 State, Your Honor.

7 THE COURT: Okay. Any recross?

8 MS. ZMROCZEK: (Nods negatively.)

9 THE COURT: Thank you. You may come down.

10 MR. WILLIAMS: Your Honor, may this witness be
11 excused?

12 THE COURT: Any objection?

13 MS. ZMROCZEK: Your Honor, we have no
14 objection.

15 THE COURT: You are also free to leave, sir.
16 Thank you very much.

17 (Witness excused.)

18 THE COURT: All right, ladies and gentlemen,
19 at this point we'll take a recess. Please do not
20 begin your deliberations. Don't discuss the case.
21 We'll be with you in about 10 or 15 minutes. You
22 may retire to your jury room.

23 Thank you.

24 THE BAILIFF: Everyone remain seated until the
25 jury leaves, please.

1 THE COURT: Thank you, sir.

2 (WHEREUPON, the jury retires to the jury
3 room at 11:03 a.m.)

4 THE COURT: Anything from the State before we
5 recess?

6 MS. SAMPSON: No, sir.

7 THE COURT: Anything from Defense?

8 MS. ZMROCZEK: No, sir, Your Honor.

9 THE COURT: Thank you. We'll be at ease for
10 about 15 minutes. Thank you.

11 (WHEREUPON, a recess was taken at 11:04
12 a.m.)

13 (WHEREUPON, the proceedings resumed at
14 11:20 a.m.)

15 THE COURT: Is the State ready?

16 MR. WILLIAMS: Yes, Your Honor.

17 THE COURT: Is the Defendant ready?

18 MS. ZMROCZEK: Yes, Your Honor.

19 THE COURT: Let the record reflect Mr. Ricks
20 is present.

21 Okay. Let's bring in our jury, please. Thank
22 you.

23 While they're coming in, just to expedite, are
24 there any witnesses that you will -- that either of
25 you want to be retained after they testify?

1 MR. WILLIAMS: None from the State, Your
2 Honor.

3 THE COURT: Do you have any objection to any
4 of them being excused?

5 MS. ZMROCZEK: I don't.

6 THE COURT: Unless I hear from you otherwise,
7 I'm going to tell the witness they are free to
8 leave.

9 MS. ZMROCZEK: Right.

10 THE COURT: That will expedite things, if
11 that's agreeable with everybody.

12 MS. ZMROCZEK: Absolutely. And I was going to
13 say that, yes.

14 THE COURT: Okay.

15 (WHEREUPON, the jury came into open
16 court at 11:22 a.m.)

17 THE COURT: Thank you, ladies and gentlemen.
18 I took sociology, one course of sociology when I
19 was an undergrad. I should have taken more, but
20 watching juries over the years, it is a great study
21 to watch the dynamics and how they move to the same
22 seat. Some don't, some do. And that's fine if
23 everybody wants to retain seats. Some states you
24 are assigned a seat. We're not here, but if people
25 do want to keep them, that will be fine.

1 I notice that you had to wait for some jurors.
2 Have you been selected as the presiding juror?

3 THE JUROR: I have that honor, Your Honor.

4 THE COURT: I figured you might be. And your
5 name and number, please?

6 THE FOREMAN: Robert Jackman, 137.

7 THE COURT: Thank you, Mr. Jackman.

8 And thank you very much, ladies and gentlemen,
9 for taking of that. And please give your attention
10 now to the next witness.

11 Solicitor, may call your next witness.

12 MR. WILLIAMS: Thank you, Your Honor. The
13 State calls Yuhanna Muhammad.

14 THE COURT: Okay.

15 (Witness approaches.)

16 THE BAILIFF: Place your left hand on the
17 Bible, and raise your right hand, please.

18 (Witness complies.)

19 THE CLERK: Do you solemnly swear or affirm
20 that the testimony you give in this case will be
21 the truth, the whole truth, and nothing but the
22 truth, so help you God?

23 THE WITNESS: Yes, ma'am.

24 THE CLERK: Please have a seat, and state your
25 full name for the record.

1 (Witness seated.)

2 THE WITNESS: Good morning, everyone.

3 YUHANNA MUHAMMAD,

4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WILLIAMS:

7 Q. Good morning, Yuhanna. Could you please state your
8 occupation?

9 A. Currently --

10 Q. You might want to back up.

11 A. Yeah. I'm a firefighter with Columbia Fire
12 Department in South Carolina.

13 Q. If you would, answer my questions to the jury.

14 A. Okay.

15 Q. All right. How long have you been a firefighter?

16 A. Going on nine years now.

17 Q. And what exactly do you do as a firefighter?

18 A. Render basic life support, BLS, fire suppression,
19 fire investigation, medical.

20 Q. Do you remember responding to 1234 Universal Drive
21 on May 25th, 2014?

22 A. Yes, sir.

23 Q. And, Yuhanna, are you referencing a report? Are
24 you referencing a report? Do you have a report up
25 there?

1 A. Yes, sir, I do.

2 Q. Okay. And will that report aid in refreshing your
3 memory about this incident?

4 A. Yes, it does.

5 Q. Tell me what happened, Yuhanna.

6 A. On that night, I was on Engine 30. We were
7 dispatched to 1234 Universal Drive for gunshots.
8 Upon arrival, Richland County sheriffs was already
9 on scene. There was a John Doe approximately in
10 his mid-20's laying prone -- that's facedown --
11 with three gunshot wounds to the back. The patient
12 had no pulse, was not breathing. Richland County
13 EMS pronounced the suspect dead at approximately
14 0555. EMS was notified of an active crime scene,
15 and that ended our patient care and we transferred
16 it to the police and Richland County EMS.

17 Q. Okay. So is that all you did that morning?

18 A. Yes, sir.

19 Q. You said night, but it was actually morning?

20 A. It was the morning, yes.

21 Q. I understand. How long were you at the scene?

22 A. Approximately 30 or 45 minutes.

23 Q. Was the crime scene tape already up when you
24 arrived?

25 A. It was going up upon our arrival and they were

1 notifying us about the crime scene just about the
2 same time.

3 Q. Who did you see within the boundary of that crime
4 scene tape?

5 A. Just the victim and the police.

6 Q. Okay. Was there anyone else, like a civilian,
7 within that boundary?

8 A. Not that I can recall.

9 Q. Was there anything else of significance that you
10 observed?

11 A. No, sir, just what I reported in my report.

12 MR. WILLIAMS: Thank you very much. Please
13 answer any questions from Ms. Zmroczek.

14 THE COURT: Cross-examination?

15 MS. ZMROCZEK: I have no questions.

16 THE COURT: Thank you. You may step down, and
17 you are free to leave, sir.

18 THE WITNESS: All right.

19 (Witness excused.)

20 THE COURT: Call your next witness.

21 MS. SAMPSON: The State calls Amanda Sharpe.
22 I believe she's in the restroom. We may have to
23 switch if she's not --

24 THE COURT: That's fine.

25 MS. SAMPSON: We're actually going to switch,

1 Your Honor, to Master Deputy Aull, A-U-L-L.

2 THE COURT: Okay.

3 (Witness approaches.)

4 THE BAILIFF: Place your left hand on the
5 Bible, and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: Do you solemnly swear or affirm
8 the testimony you give in this case will be the
9 truth, the whole truth, and nothing but the truth,
10 so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Please have a seat, and state your
13 full name for the record.

14 (Witness seated.)

15 THE WITNESS: Corporal Sheila Aull, with the
16 Richland County Sheriff's Department.

17 SHEILA AULL,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WILLIAMS:

21 Q. Good morning, Corporal Aull.

22 A. Good morning.

23 Q. I want to ask you a few questions, please. Answer
24 those questions to the jury, okay?

25 How long have you been with the Richland

1 County Sheriff's Department?

2 A. Fourteen years.

3 Q. And in those 14 years, how many positions have you
4 held? I'm asking because at the time of this
5 incident, you were a master deputy, now you're a
6 corporal.

7 A. All the way from a reserve deputy to a senior
8 deputy to deputy, master deputy, and a corporal.

9 Q. Okay. And what were your responsibilities as a
10 master deputy?

11 A. To supervise my troops when the corporal wasn't
12 available.

13 Q. How many troops were under your command?

14 A. Approximately -- anywhere from three to five.

15 Q. I want to take you back to May 25th, 2014. Do you
16 remember responding to 1234 Universal Drive that
17 morning?

18 A. Yes.

19 Q. Okay. Why did you respond to that incident
20 location?

21 A. To maintain a crime scene log.

22 Q. Okay. Could you explain to the jury what a
23 crime -- what's a crime scene log?

24 A. A crime scene log is a log sheet that we start any
25 time that there's a crime that's been committed to

1 make sure that nobody enters the scene without us
2 writing down their name or what time they get
3 there, what time they leave and what they're there
4 for.

5 Q. Why is that important?

6 A. To ensure that the right people are coming into the
7 scene and no stray people, in other words, are
8 coming -- that don't need to be coming into that
9 would interrupt the investigation.

10 Q. Do you remember how long you were at the incident
11 location?

12 A. My crime scene log that I have showed that I was
13 there from 6:10 until 8:25.

14 Q. You have your crime scene log in front of you?

15 A. That's correct.

16 Q. Would that document help refresh your memory about
17 this incident?

18 A. Yes, it would.

19 Q. Were you the only one responsible for maintaining
20 the crime scene log?

21 A. No, I was not.

22 Q. Who else was responsible for that?

23 A. Master Deputy Crutchlow and Deputy Frost.

24 Q. And what were their responsibilities as it pertains
25 to the crime scene log?

- 1 A. Master Deputy Crutchlow was the one who started the
2 crime scene log, and Deputy Frost continued the
3 crime scene log. In other words, took over the
4 crime scene log from Master Deputy Crutchlow. And
5 I took over the crime scene log from Deputy Frost.
- 6 Q. So is it fair to say that the crime scene log is
7 maintained by the most senior deputy at the scene?
- 8 A. No, not necessarily.
- 9 Q. In this particular incident, is that the case,
10 though?
- 11 A. That would be correct.
- 12 Q. Were you the last one to have responsibility of the
13 crime scene log?
- 14 A. Yes, that's correct.
- 15 Q. What did you observe while you were on the scene?
- 16 A. Just the correct people, like EMS and the coroner,
17 people that needed to be there to respond, come in
18 and do their job and to leave.
- 19 Q. Did you observe any civilians within the boundaries
20 of the crime scene?
- 21 A. No, I did not.
- 22 Q. Did you observe any law enforcement, EMS, or fire
23 department personnel disturb any items within the
24 crime scene boundary?
- 25 A. No.

1 Q. Did you disturb any evidence within the crime scene
2 boundary?

3 A. No.

4 MR. WILLIAMS: I'm showing the witness State's
5 Exhibit 108 previously marked for identification
6 purposes.

7 BY MR. WILLIAMS:

8 Q. Master Deputy -- excuse me, Corporal Aull, could
9 you identify this document?

10 A. This is the crime scene log that was started and
11 continued and ended during the crime scene for the
12 Case Number 1405078325 at the 1234 Universal Drive
13 location.

14 Q. Is it a fair and accurate depiction of the crime
15 scene log at the time you completed it?

16 A. Yes, that would be correct.

17 Q. And it hasn't changed in any way, has it?

18 A. No.

19 MR. WILLIAMS: Your Honor, the State would
20 move to enter State's Exhibit 108 into evidence.

21 MS. ZMROCZEK: May I look at it?

22 THE COURT: Sure.

23 (Pause.)

24 MS. ZMROCZEK: I have no objection.

25 THE COURT: Very well. State's Exhibit 108 is

1 admitted without objection.

2 (WHEREUPON, State's Exhibit No. 108 was
3 marked for identification and received
4 into evidence.)

5 MR. WILLIAMS: Your Honor, permission to
6 publish to the jury?

7 THE COURT: You may.

8 And when that is done, ladies and gentlemen,
9 you can review it and just pass it down, but,
10 remember, you'll have an opportunity to study it in
11 more detail if it becomes necessary.

12 Excuse me, Solicitor.

13 MR. WILLIAMS: Yes, Your Honor. Thank you.

14 (Exhibit published to jury.)

15 BY MR. WILLIAMS:

16 Q. Last question, Corporal Aull. If there was someone
17 that attempted to disturb that crime scene, what
18 would you do?

19 A. I would immediately apprehend them and hold them
20 for investigation.

21 Q. That did not happen in this incident, did it?

22 A. That's correct.

23 MR. WILLIAMS: Beg the Court's indulgence,
24 Your Honor.

25 THE COURT: Certainly.

1 (Pause.)

2 MR. WILLIAMS: Nothing else from this witness
3 from the State, Your Honor.

4 Please answer any questions from Ms. Zmroczek.

5 THE COURT: You may cross-examine, Ms.
6 Zmroczek.

7 MS. ZMROCZEK: Thank you. Just briefly. I
8 have one to mark.

9 (WHEREUPON, Defendant's Exhibit No. 28
10 was marked for identification only.)

11 CROSS-EXAMINATION

12 BY MS. ZMROCZEK:

13 Q. Good morning.

14 A. Morning.

15 Q. There are several crime scene logs. I think yours
16 is two pages; right?

17 A. That's right.

18 Q. Have you actually seen a third page?

19 A. No, ma'am.

20 Q. I want to show you what's marked as Defendant's 28.
21 Have you seen that one?

22 A. No, ma'am.

23 Q. Okay. So when a crime scene log gets started, it
24 gets started by the first person on the scene;
25 right?

1 A. Yes, ma'am.

2 Q. So, before that, nobody knows who has driven
3 through the crime scene or if the wind has moved
4 items or if people have run over items; right?

5 A. We're only aware of what we see.

6 Q. So you secure it once it's started; correct?

7 A. Yes, ma'am. We usually secure it as soon as
8 possible.

9 Q. As soon as possible?

10 A. Yes, ma'am.

11 Q. Obviously you're not there when it happens, so I
12 think that -- I forgot what State's Exhibit it is,
13 but the crime scene log in this case started at
14 5:44; right?

15 A. Yes, ma'am.

16 Q. Okay. So prior to 5:44, we don't know who was
17 driving through or who was walking through;
18 correct?

19 A. I don't know, ma'am. I was only there to continue
20 the crime scene log.

21 MS. ZMROCZEK: Thank you. I have no further
22 questions.

23 THE COURT: Redirect?

24 MR. WILLIAMS: Briefly, Your Honor. I'm
25 showing the witness Defendant's Exhibit 28.

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Did you have any involvement in maintaining this crime scene log?

A. I did not see that one. However, the handwriting I'm familiar with, Deputy Frost's handwriting.

Q. Right. You're aware there were two different crime scenes; right?

A. Yes.

Q. And your role in this case was only for the parking lot crime scene?

A. That's correct.

MR. WILLIAMS: Nothing else for this witness, Your Honor.

THE COURT: Any recross?

MS. ZMROCZEK: (Nods negatively.)

THE COURT: Thank you. You may step down and you are free to leave. Thank you, Corporal.

(Witness excused.)

THE COURT: Call your next witness.

MR. WILLIAMS: The State calls Robert Dean, Your Honor.

(Witness approaches.)

THE BAILIFF: Place your left hand on the Bible, and raise your right hand, please.

1 (Witness complies.)

2 THE CLERK: Do you solemnly swear or affirm
3 the testimony you give in this case will be the
4 truth, the whole truth, and nothing but the truth,
5 so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please have a seat, and state your
8 full name for the record.

9 (Witness seated.)

10 THE WITNESS: My name is Robert Dean.

11 THE COURT: Proceed.

12 ROBERT DEAN,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. WILLIAMS:

16 Q. Mr. Dean, I'm going to ask you a couple of
17 questions. If you would, please, address the jury
18 when you're answering. What's your occupation?

19 A. I'm a deputy coroner for Richland County.

20 Q. How long have you held that position?

21 A. I've been with the coroner's office for 11 years.

22 Q. And when you first started, did you start off as a
23 deputy coroner?

24 A. Yes, sir, I did.

25 Q. And what does a deputy coroner do?

1 A. A deputy coroner investigates all death that is not
2 natural or if there's any question. So, basically,
3 all homicides, suicides, traffic accidents, sudden
4 infant death syndromes. So any death that's not
5 deemed natural in nature.

6 Q. Do you recall responding to 112 -- excuse me, 1234
7 Universal Drive on May 25th, 2014?

8 A. Yes, sir, I do.

9 Q. Why were you -- why did you respond to that
10 incident location?

11 A. I received a call from our Columbia central
12 dispatch that EMS had responded to a shooting
13 victim at that location and pronounced dead on
14 arrival, at which time we were activated.

15 Q. And what did you do once you arrived at that crime
16 scene?

17 A. I arrived at the, I believe it was the Richland
18 Village Apartments, and found that the Sheriff's
19 Department was on the scene and had already
20 established a crime scene. At that point in time,
21 I just took external -- outside the taped perimeter
22 photographs waiting on the crime scene unit to
23 arrive from the Sheriff's Department.

24 Q. Was there a crime scene boundary set once you
25 arrived?

1 A. Yes, sir, it was taped.

2 Q. Who did you see within that boundary?

3 A. There was nobody within the boundary.

4 Q. Do you remember who set the boundary?

5 A. No. I believe it was Deputy Sheriff Crutchlow, I
6 believe it was. He was one of the first ones on
7 the scene when I arrived.

8 Q. And what was the purpose of you taking pictures of
9 the crime scene?

10 A. Just to document all evidence that may be within
11 the curtilage of the crime scene. I do generals,
12 mids, and then take close-ups. So just to put
13 everything in perspective of what we see when we
14 first get there to give you an idea for future
15 reference.

16 Q. What did you notice of any significance about the
17 crime scene?

18 A. That there was a decedent found that was lying
19 down, facedown on the pavement between -- next to a
20 car and was covered by an EMS sheet inside the
21 parking lot of the complex.

22 Q. And you may have already testified to this, but was
23 he deceased when you arrived?

24 A. Yes, sir, he was.

25 Q. Did you see anything significant about his body?

1 A. Did notice that after examination, after we worked
2 into -- when crime scene just got there, we started
3 processing into the body. And once we got to the
4 body, I did my assessment and did identify
5 penetrating wounds to his back that are consistent
6 with gunshots.

7 Q. And once you identified those wounds, what did you
8 do next?

9 A. At that point in time, started documenting and
10 processed. And then the body is secured inside a
11 body bag with one of our seals and we transported
12 him to Richland, where an autopsy was performed by
13 Dr. Amy Durso.

14 Q. Okay. I just want to clarify something. You
15 transported the body?

16 A. No. We have night -- we have a body transport
17 service, that's Knight's Removal, also known as
18 Knight's Systems. And Mitch Melton, I believe, was
19 our transport officer at that time. But it was
20 secured and transported by him to Richland.

21 Q. And what happened next?

22 A. At that point in time, I returned to the office and
23 began my report -- to get a report down because
24 they can't do an autopsy without our report there
25 to allow the pathologist to know what happened.

1 Q. Were you present at the autopsy?

2 A. No, sir, I was not.

3 MR. WILLIAMS: At this time, I'm going to show
4 the witness State's Exhibit 52, 53, 57 through 72.
5 I've already showed these exhibits to Defense
6 counsel, Your Honor.

7 THE COURT: Very well.

8 BY MR. WILLIAMS:

9 Q. Can you go through those pictures and tell me
10 whether or not you recognize them?

11 A. I do recognize these initial pictures here of the
12 actual crime scene in the parking lot where the
13 decedent was found. I recognize some of these
14 pictures are mine as identifying by the date and
15 time at the bottom. I recognize the pictures that
16 I took of the decedent's hand. Ring. Yes, sir, I
17 recognize every one of those photos.

18 Q. Thank you, Investigator Dean.

19 MR. WILLIAMS: Your Honor, at this time the
20 State moves to enter State's Exhibit 52, 53, and 57
21 through 72. Before I do that --

22 THE COURT: Without objection, State's 52, 53,
23 57 through 72 are admitted, each being a
24 photograph.

25 MR. WILLIAMS: Thank you, Your Honor.

1 (WHEREUPON, State's Exhibit Nos. 52-53
2 were marked for identification and
3 received into evidence.)

4 (WHEREUPON, State's Exhibit Nos. 57-72
5 were marked for identification and
6 received into evidence.)

7 BY MR. WILLIAMS:

8 Q. I want to just sort of talk through some of these
9 with you, okay?

10 A. Yes, sir.

11 Q. Why did you take a picture of the decedent's hand?

12 A. To identify that he was wearing a ring, the one
13 that was silver and black in color, just to
14 identify a personal belonging that was on the
15 individual's body.

16 Q. Why did you take a picture of the gunshot wounds to
17 his back?

18 A. Just to document what we found when we arrived on
19 the scene.

20 Q. Why did you take this picture, State's Exhibit 64?

21 A. That's a general overview when I got there looking
22 around. Just to show the curtilage area of outside
23 of the perimeter. That's looking -- that's a
24 well-worn path that looks back towards, I believe
25 that's like Building 5 in that back corner back

1 there. But just to show the area as a whole.

2 Q. When you say "well-worn path," what do you mean by
3 that?

4 A. It looks like it is very heavy foot traffic around
5 the building that is just consistent with people
6 walking through a well-worn path. It's just well
7 used for foot traffic.

8 Q. Did you look for any evidence in that well-worn
9 path?

10 A. Yes, sir.

11 Q. Did you find anything?

12 A. No, sir.

13 Q. Why did you take this picture, State's Exhibit 52?

14 A. This was inside the complex pointing out back
15 towards Universal Drive. This is where I was like
16 panning around. This would have been in a sequence
17 of some other photographs. But really to show --
18 if you notice there's pink tape laying on the
19 roadway. That was where shell casings were
20 identified by the crime scene unit.

21 Q. Did you observe anyone disturbing those shell
22 casings?

23 A. Absolutely not.

24 MR. WILLIAMS: Your Honor, permission to
25 publish State's Exhibit 52, 53, and 57 through 72

1 to the jury?

2 THE COURT: You may.

3 MR. WILLIAMS: Beg the Court's indulgence?

4 THE COURT: Certainly.

5 (Pause.)

6 BY MR. WILLIAMS:

7 Q. Investigator Dean, did you notice any red marks in
8 the parking lot?

9 A. There was a few splotches, but I believe it was
10 identified as paint afterwards, and it had a
11 pinkish hue to it. Initially, when it was daylight
12 arising, we thought it may have been blood. But
13 after further review and looking at it further, I
14 believe it was identified as paint.

15 Q. Did you see any other areas that could have been
16 blood, any other splotches or sprinklings that
17 could have been blood?

18 A. Not off the top of my head, no, sir, I don't
19 recall.

20 MR. WILLIAMS: No further questions for this
21 witness, Your Honor.

22 MS. ZMROCZEK: Judge, may I get them back? I
23 know that they were published to the jury, but may
24 I get the pictures?

25 THE COURT: You may return them. Again,

1 ladies and gentlemen, those will be available to
2 you when you to go your jury room. They're really
3 not necessary now. Thank you.

4 MS. ZMROCZEK: Thank you, Your Honor. I'll
5 give them back, I promise.

6 CROSS-EXAMINATION

7 BY MS. ZMROCZEK:

8 Q. The pictures that you took, you said that when you
9 take a picture, you like to kind of take an overall
10 view; right?

11 A. Yes, ma'am.

12 Q. And then you get a little bit closer?

13 A. Yes, ma'am.

14 Q. And then you get a little bit closer?

15 A. Yes, ma'am.

16 Q. It kind of puts things in perspective; right?

17 A. Absolutely.

18 Q. And that's how you're trained to do it; right?

19 A. Yes, ma'am.

20 Q. So when you're taking pictures of, like of overall
21 views, you're including the general area; right?

22 A. Yes, ma'am.

23 Q. And also looking for things that may be of
24 evidentiary value?

25 A. Yes, ma'am.

1 Q. And sometimes you take pictures of things that are
2 evidentiary value that you don't even know of;
3 right?

4 A. Sometimes, yes, ma'am.

5 Q. And that's why you take kind of the whole outer
6 range; right?

7 A. Yes, ma'am.

8 Q. I'm showing you State's 57. And you took that
9 picture; right?

10 A. Yes, ma'am.

11 Q. Okay. And 57 has a little pink tag right there?

12 A. Yes, ma'am.

13 Q. That was prior to the crime scene team getting
14 there; right?

15 A. No, ma'am. The crime scene team was already there.

16 Q. Okay. So they just hadn't -- but once they get
17 there and they put markers, they will eventually
18 get like a letter or a number; right?

19 A. Yes, ma'am. That was just -- like you say, we're
20 taking group -- we're doing general photos around
21 looking for things of evidentiary value. When we
22 came across, that was a quick tag to mark, yes,
23 this is something we need to look at further or
24 that is evidence in itself.

25 Q. Okay. And the crime scene tape that was already

1 put up by Investigator Crutchlow was put up back
2 here; correct?

3 A. Yes, ma'am.

4 Q. Okay. And so this area here and this area here
5 were within the crime scene tape; right?

6 A. Yes, ma'am.

7 Q. So this area here -- and it's kind of -- it's got
8 sand or mud?

9 A. I do not remember. I know there was -- it looks
10 like wet pavement.

11 Q. Wet pavement, right.

12 A. Yes, ma'am.

13 Q. And then -- I'm talking about this area right here,
14 maybe a little dirt?

15 A. It could be.

16 Q. Okay. And so those are places -- say, if there
17 were a scuffle or a fight, those were places that
18 things of evidentiary value could be found too;
19 right?

20 A. It's possible, yes.

21 Q. That could be -- that could help be indicative that
22 something disturbed that area in the pavement;
23 correct?

24 A. At the pink tape, yes, ma'am.

25 Q. Okay. And I'm showing you State's 52. And this is

1 that same area that we're talking about?

2 A. Yes, ma'am.

3 Q. Okay.

4 A. From that -- yes, from that side.

5 Q. Right, from a different side?

6 A. Correct.

7 Q. But this is that kind of little muddy area that's
8 right off the grass area?

9 A. Yes, ma'am.

10 Q. Okay. And it was marked off, so there weren't
11 people well-worn -- well-wearing this path, it was
12 protected; right?

13 A. While I was there, yes, ma'am.

14 Q. While you were there?

15 A. Yes, ma'am.

16 Q. And you responded on behalf of the Coroner's
17 Office?

18 A. Yes, ma'am.

19 Q. Y'all had a team of people that work; correct?

20 A. Yes, ma'am.

21 Q. Do sometimes all y'all get sent out or just a few?

22 A. Just a few. It depends on what the case -- if it
23 was a child death, then there's three of us that
24 respond. Cases like this, it'd usually be to
25 respond the deputy that's on-call, which I was at

1 the time, and the supervisor will sometimes come
2 out.

3 Q. Okay. And then y'all generate a report?

4 A. Yes, ma'am.

5 Q. And you put facts that are known to you?

6 A. Yes, ma'am.

7 Q. And in your report you put that deputies were
8 informed that an altercation involving the decedent
9 started outside of Building 5 at the same complex?

10 A. The initial report was there was an altercation
11 outside of Building 5, around Building 5.

12 Q. Okay.

13 A. Yes, ma'am.

14 Q. And do y'all collect personal belongings or?

15 A. If it's not -- when we have a case like this that's
16 a homicide, if the DNA Retention Act is in place,
17 we do not remove anything off the body except -- of
18 evidence. That evidence is collected at autopsy.
19 So that's why I documented the ring. Any of his
20 personal belongings on the body is documented
21 before they are ever moved. So nothing was taken
22 off his body.

23 Q. And did you find identification on the body?

24 A. Yes, ma'am.

25 MR. WILLIAMS: Objection, Your Honor. Your

1 Honor, may we approach?

2 THE COURT: What's the basis of the objection?

3 MR. WILLIAMS: I believe Defense counsel is
4 about to go into an area that's --

5 THE COURT: I can't anticipate that. What's
6 the basis of the objection to that question? I
7 overrule the objection.

8 Ask your next question.

9 MS. ZMROCZEK: That was my last question, if
10 they found identification.

11 THE COURT: Restate your question.

12 MS. ZMROCZEK: Okay.

13 BY MS. ZMROCZEK:

14 Q. Did y'all find identification?

15 A. Yes, ma'am.

16 MS. ZMROCZEK: That's all, Your Honor.

17 THE COURT: Thank you.

18 BY MS. ZMROCZEK:

19 Q. And then -- so then what you do is just make sure
20 that the body gets taken to the hospital or to the
21 place to get the autopsy done?

22 A. Yes, ma'am. The majority of all ours are performed
23 at Richland.

24 Q. And then that's all -- and that's all that y'all
25 do?

1 A. Yes, ma'am, that is our curtilage.

2 MS. ZMROCZEK: Thank you.

3 THE COURT: Redirect, Solicitor?

4 REDIRECT EXAMINATION

5 BY MR. WILLIAMS:

6 Q. Investigator Dean, your supervisor was there on the
7 scene?

8 A. Yes, sir.

9 Q. What did he do?

10 A. He basically just was there really pretty much as a
11 sounding board. I reported to him what I had found
12 and they are there for support and if there's
13 anything else we may have forgotten or suggestions.
14 So he was just really there as supervisor.

15 Q. Did he make a report?

16 A. No, sir.

17 Q. In that well-worn path area, was there anything
18 significant to you that looked like a struggle, a
19 fight, or altercation occurred?

20 A. No, sir.

21 Q. Was the ground disturbed in any way?

22 A. No, sir.

23 MR. WILLIAMS: No further questions for this
24 witness, Your Honor.

25 THE COURT: Recross?

1 MS. ZMROCZEK: Yes, briefly.

2 RECROSS-EXAMINATION

3 BY MS. ZMROCZEK:

4 Q. I think he asked you about the well-worn path?

5 A. Yes.

6 Q. Can you show -- which well-worn path? Can you show
7 me which picture is the well-worn path just so
8 we're not --

9 A. Actually, that's the beginning of the well-worn
10 path there, the first picture.

11 Q. Oh, okay.

12 THE COURT: What exhibit number is that,
13 please?

14 THE WITNESS: 64, sir.

15 THE COURT: Thank you.

16 BY MS. ZMROCZEK:

17 Q. Thank you. So 64 is the well-worn path that we're
18 talking about?

19 A. Looking back towards Building 5.

20 Q. Okay. Yes, looking back towards Building 5?

21 A. Yes, ma'am.

22 Q. And I think I already asked you about 52. That is
23 a completely --

24 A. Yes, ma'am.

25 Q. That's a completely different area than this?

1 A. That's inside the parking lot at this time.

2 Q. Thank you.

3 MS. ZMROCZEK: Thank you, Your Honor.

4 THE COURT: All right. You may come down.

5 You're free to leave, sir. Thank you.

6 THE WITNESS: Thank you, sir.

7 (Witness excused.)

8 THE COURT: Okay. Call your next witness.

9 MS. SAMPSON: The State calls Amanda Sharpe.

10 (Witness approaches.)

11 THE BAILIFF: Place your left hand on the

12 Bible, and raise your right hand, please.

13 (Witness complies.)

14 THE CLERK: Do you solemnly swear or affirm
15 the testimony you give in this case will be the
16 truth, the whole truth, and nothing but the truth,
17 so help you God?

18 THE WITNESS: Yes, ma'am.

19 THE CLERK: Please have a seat, and state your
20 full name for the record.

21 (Witness seated.)

22 AMANDA SHARPE,
23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MS. SAMPSON:

2 Q. Good morning, ma'am. It's still morning, just
3 barely. Where do you work?

4 A. Richland County EMS.

5 Q. And how long have you worked there?

6 A. Eleven years.

7 Q. And what do you do at EMS?

8 A. I'm a paramedic.

9 Q. And what do paramedics do?

10 A. Advanced life support.

11 Q. Are you in an ambulance, or how does that work?

12 A. Yes, we are in ambulances.

13 Q. All right. And so do you receive calls and go --
14 or how do you go to a scene?

15 A. A call comes through the radio and we respond with
16 lights and sirens.

17 Q. And back in May of 2014, were you working at EMS?

18 A. Yes, ma'am.

19 Q. Okay. And do you work by yourself or do you have a
20 partner?

21 A. I have a partner.

22 Q. And at that time, do you remember who your partner
23 was?

24 A. Yes, Matthew Gottlieb.

25 Q. And does one of you drive and one of you ride

1 passenger, or does that change?

2 A. With a 9-1-1 service, we both have patches, so
3 we're both certified.

4 Q. So on this particular day, were one of you driving
5 and one passenger, or do you remember?

6 A. Yes.

7 Q. Okay. Who was driving?

8 A. I believe Matt Gottlieb was driving.

9 Q. So do you remember where you went when you first
10 got to Richland Village Apartments?

11 A. I believe I responded to the officers on scene.

12 Q. And did you respond to two different people or just
13 one? Do you remember?

14 A. I believe I responded to the main officer. I can't
15 believe -- I can't remember the name.

16 Q. And was there one report or two reports generated
17 that day?

18 A. There were two, but one was for the DOA and another
19 patient that was injured.

20 Q. And would seeing your report help refresh your
21 memory of what happened that day?

22 A. Sure.

23 Q. I'm going to show you one report.

24 THE COURT: Let's have it marked for
25 identification, please.

1 (WHEREUPON, State's Exhibit No. 113 was
2 marked for identification only.)

3 THE COURT: Thank you.

4 MS. SAMPSON: No problem.

5 BY MS. SAMPSON:

6 Q. I want to show you what has been marked as State's
7 Exhibit 113. Do you recognize that?

8 A. Yes, ma'am.

9 Q. And is that -- that's your report?

10 A. Yes, ma'am.

11 Q. And when you get done, who writes the report, you
12 or Matthew?

13 A. This is my report.

14 Q. And so did you see someone besides the dead body?

15 A. Yes, ma'am.

16 Q. Who else did you take care of?

17 A. This individual, Ms. Kiara Pelzer.

18 Q. Okay. And did she have any injuries?

19 A. Yes, she had a contusion and a laceration to the
20 left ear.

21 Q. Okay. And what did you -- did she need an
22 ambulance?

23 A. No, she refused ambulance transport.

24 Q. And was it profusely bleeding or need stitches or
25 anything like that?

- 1 A. No.
- 2 Q. Was she ambulatory?
- 3 A. Yes.
- 4 Q. And what does ambulatory mean?
- 5 A. She was walking around.
- 6 Q. And as for when you arrived to the other scene
- 7 where the body was at, did you go to -- and I
- 8 should rephrase it. Was everybody at one place
- 9 when you went there, both Ms. Pelzer and the dead
- 10 body?
- 11 A. No.
- 12 Q. Okay. Where was Ms. Pelzer?
- 13 A. Ms. Pelzer was in a different location inside a
- 14 residence.
- 15 Q. But at the apartment complex?
- 16 A. Yes.
- 17 Q. So at the place where the dead body was, what did
- 18 you do when you got there?
- 19 A. I spoke with the officer and he gave me the details
- 20 of what was going on. And I went to the dead body.
- 21 And we just put the leads on to indicate that the
- 22 patient was in sessile and he was dead.
- 23 Q. Did you touch anything besides the body?
- 24 A. No.
- 25 Q. And what did you do once you determined that he

1 was, in fact, dead?

2 A. We were told it was a possible crime scene and we
3 were to leave.

4 Q. And did you do that?

5 A. Yes.

6 Q. So you didn't touch any bullet -- shell casings,
7 any bullets, anything like that?

8 A. No, ma'am.

9 MS. SAMPSON: No further questions, Your
10 Honor.

11 THE COURT: Cross-examination?

12 MS. ZMROCZEK: Just briefly.

13 CROSS-EXAMINATION

14 BY MS. ZMROCZEK:

15 Q. Do you still have that -- your report up there?

16 A. Yes, ma'am.

17 Q. Okay. When y'all go and treat somebody, do you
18 give them a trauma score?

19 A. Yes.

20 Q. On the -- the little bit of knowledge I think I
21 have -- is it the Glasgow?

22 A. Yes.

23 Q. Okay. And what are y'all looking for when you rate
24 somebody on that?

25 A. Whether they are conscious and alert, whether they

1 are capable of answering our questions
2 appropriately, whether they are basically
3 ambulatory and in their right state of mind, and
4 have they lost consciousness or not. And just the
5 basic -- if they are able to follow simple
6 directions.

7 Q. Okay. And you're given a chart to follow; right?

8 A. Yes, ma'am.

9 Q. A range of scores?

10 A. Yes, ma'am.

11 Q. So what's the best score somebody can get?

12 A. The RTS, which is the trauma score, is a 12, and
13 the GCS, which is your Glasgow, is a 15.

14 Q. And you treated Ms. Pelzer, Kiara Pelzer?

15 A. Yes, ma'am.

16 Q. And what was her trauma score?

17 A. She had an RTS of 12 and a GCS of 15.

18 Q. So the very best you can be?

19 A. Yes, ma'am.

20 Q. And, in fact, she told you -- in your report, you
21 noted no apparent distress?

22 A. That's right.

23 Q. Why do y'all note -- why do you note behaviors, and
24 things like that?

25 A. To determine whether they are disoriented or not.

1 Q. So what does "no apparent distress" mean? What are
2 the kind of things that you're looking for when
3 somebody is in distress?

4 A. Whether they're having difficulty breathing, if
5 they're acting delusional, or if they're unable to
6 determine whether they are in their -- we are
7 unable to determine if they're in their right state
8 of mind, which is are they able to tell us if --
9 today's date, where they are at, the time of day,
10 just general simple questions, if they can answer
11 those simple questions.

12 Q. If somebody is crying or breathing heavily or
13 stuttering or shaking, would that be noted in your
14 report?

15 A. Yes, ma'am.

16 Q. And so that wasn't the case here?

17 A. Not at the time.

18 Q. And I think it says a contusion. Is that a bruise?

19 A. Pretty much.

20 Q. And then a laceration to the left ear?

21 A. A small cut.

22 Q. Okay. So you were treating her because -- you kind
23 of ask questions so that you know what kind of
24 medical treatment to provide; right?

25 A. Yes, ma'am.

1 Q. And so you were told that she was punched in the
2 head during an assault?

3 A. Yes, ma'am.

4 Q. Denied any other problem?

5 A. Yes, ma'am.

6 Q. And then denied the need for transport?

7 A. Yes, ma'am.

8 Q. So y'all didn't take her anywhere?

9 A. No, ma'am, we did not transport her by ambulance.

10 MS. ZMROCZEK: Thank you.

11 THE COURT: Redirect?

12 MS. SAMPSON: No, sir.

13 THE COURT: Thank you. You may step down, Ms.
14 Sharpe. You are free to leave. Just leave the
15 report.

16 THE WITNESS: Okay.

17 THE COURT: Thank you.

18 (Witness excused.)

19 THE COURT: Call your next witness.

20 MS. SAMPSON: The State calls Investigator
21 Timothy Lee.

22 THE COURT: Okay.

23 MS. SAMPSON: Your Honor, may we approach?

24 THE COURT: Sure.

25 MS. SAMPSON: For scheduling.

1 (WHEREUPON, a bench conference was held
2 in the presence of the jury, but outside
3 the hearing of the jury.)

4 (Witness approaches.)

5 THE BAILIFF: Place your left hand on the
6 Bible, and raise your right hand, please.

7 (Witness complies.)

8 THE CLERK: Do you solemnly swear or affirm
9 the testimony you give in this case will be the
10 truth, the whole truth, and nothing but the truth,
11 so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Please have a seat, and state your
14 full name for the record.

15 (Witness seated.)

16 THE WITNESS: Investigator Timothy Lee, L-E-E.

17 TIMOTHY LEE,

18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. SAMPSON:

21 Q. Investigator Lee, where do you currently work?

22 A. I'm with the Crime Scene Unit at Richland County.

23 Q. And how long have you been there?

24 A. Been with the county 21 years. I've been with
25 crime scene for nine years.

1 Q. Before you were with the Crime Scene Unit, where
2 were you?

3 A. On patrol.

4 Q. And as a crime scene investigator, do you get
5 training?

6 A. We do.

7 Q. What kind of training have you had?

8 A. There is an extensive in-house training that is ten
9 phases. It covers everything from basic crime
10 scene processing to latent print developing, shoe
11 impression. You have to go through these phases --
12 four phases first and then ten total. We also
13 attend courses. I've attended over 500 hours of
14 courses over the years, ranging from blood pattern
15 analysis to crime scene processing, shooting
16 reconstruction, latent prints, and photography. It
17 covers just the basics of the ten courses that we
18 go through. This just enhances what we already do.

19 Q. Do you get any certification?

20 A. I'm currently a certified crime scene investigator
21 through International Association of
22 Identification, which is kind of a governing party
23 that administers testing and stuff for us.

24 Q. And how did you get that type of certification?

25 A. Study, and then apply. And they have people that

1 actually test. At the time, there was a SLED agent
2 that gave these tests.

3 Q. And do you always have to go through training every
4 year?

5 A. Every year we try to do some sort of training. It
6 depends on the budget. But in order to maintain
7 your certification for crime scene investigator, it
8 is every four years you have to retest on that.

9 Q. So you currently have your certification?

10 A. I do, yes. Next year I'll retest on that. I'm
11 currently studying for a crime scene analyst, which
12 is the next phase up. And there is three phases
13 that we usually go for: Investigator, analyst, and
14 so forth.

15 MS. SAMPSON: At this time, Your Honor, we'd
16 ask that Investigator Lee be determined as an
17 expert in the field of crime scene investigation.

18 MS. ZMROCZEK: No objection.

19 THE COURT: I'll allow him to render opinions
20 on that. I'm not sure it's an expertise
21 requirement. He'll permitted to render opinion
22 under 701, if necessary.

23 MS. SAMPSON: Thank you, Your Honor.

24 BY MS. SAMPSON:

25 Q. Investigator Lee, how do you normally get told to

1 come to a scene?

2 A. We are either contacted by the desk sergeant
3 directly or they are given our number at the scene
4 and the officers will contact us and advise what
5 they have.

6 Q. And in this particular case back in May of 2014,
7 how were you notified?

8 A. I was contacted by -- she is now Corporal Aull, at
9 the time she was Master Deputy Sheila Aull, and she
10 advised that she had a death-involved shooting and
11 needed me to respond.

12 Q. And did you do that?

13 A. I did.

14 Q. Do you remember about what time you got there?

15 A. I got there at 6:50 a.m.

16 Q. And what was the first thing you did when you
17 arrived?

18 A. When we get on scene, we get briefed as to what
19 they found. I observed the scene to be roped off
20 with crime scene tape. Sheila was -- Deputy Aull
21 was maintaining the crime scene log. The log has
22 everybody that goes in and out of the actual scene.
23 She advised that there was a male subject that was
24 deceased near the Number 8 building, had been
25 involved in a shooting. And they had some evidence

1 that they had on the parking lot that they put pink
2 tape. Sometimes First Responders will just use
3 whatever they have on hand. They had some pink
4 tape that they marked so nobody would step on the
5 evidence.

6 Q. And when you were there, did anyone assist you
7 while you were doing your job?

8 A. Investigator Holt was the night crime scene person,
9 and he got there just a couple of minutes before I
10 did, so he stayed and helped with measurements,
11 marking of the evidence, and just overall having
12 another set of eyes to see if we missed anything.

13 Q. Now, when you say you marked the evidence, do you
14 move it at all?

15 A. No.

16 Q. And I think you testified earlier, but were the
17 bullet casings already, at least, marked or secured
18 in some manner?

19 A. Right. They had been marked with pink tape. And
20 what we'll do is we'll bring markers in that either
21 say 1 or A, or so forth. And they are triangle
22 markers. They hold up better for our pictures with
23 those.

24 Q. And were you able to observe the victim?

25 A. I was.

1/ Q. And where was he?

2 A. He was between a green Honda Accord and a white
3 Buick Century lying at the edge of the curb by the
4 Number 8 building.

5 Q. Were you able to observe any injuries?

6 A. It appeared that he had several impacts to his back
7 and there was blood on his shirt.

8 Q. And at some point was his body turned over?

9 A. Right. We ended up moving him. Coroner Robbie
10 Dean helped me with that. We marked four wounds on
11 his body, and we photographed those. It appeared
12 he had been shot at least four times.

13 Q. Were there any to the front of his body?

14 A. I don't believe there were to the front. I think
15 they were just to the back and near the armpit area
16 on the one side.

17 Q. Is it your job or someone else's job to determine
18 the trajectory of the bullet?

19 A. Usually, it is going to be the pathologist that is
20 able to assist us based on the wound track. That
21 will give us a better understanding. When a body
22 on is on the ground, it's hard to say where they
23 were positioned at. If a person is in motion or a
24 vehicle is in motion, you can't get an exact
25 trajectory, but the pathologist can give a better

1 angle based on the wound path. So we rely on the
2 pathologist.

3 Q. So would it be fair to say it's not your job to
4 determine how the bullet entered or how it exited?

5 A. Sometimes we're not able to, no.

6 Q. And in this case you didn't make that
7 determination, did you?

8 A. No.

9 Q. So after looking at the body, what did you do?

10 A. Well, we ended up removing the items that he had in
11 his pockets and we inventoried that. We ended up
12 putting paper bags over the hands to preserve any
13 trace evidence. And body removal ended up
14 transporting the body to the morgue for autopsy.

15 We took measurements of the remaining
16 evidence. There were some stains that were on the
17 pavement that we marked with markers. And then
18 there was four shell casings, fired cartridge
19 casings. We marked them, measured them, and
20 collected that.

21 Q. And we keep talking about casings. Is there a
22 difference between a casing and a bullet?

23 A. Yes.

24 Q. What's the difference?

25 A. A bullet is what comes out of the actual gun when

1 it's fired. The casing is what's left and it's
2 ejected out.

3 Q. And so you didn't see bullets, you just saw
4 casings?

5 A. That's correct.

6 Q. Was anything swabbed on the scene?

7 A. Yes. We swabbed what we believed at the time was
8 reddish-brown stains that were near the body. We
9 thought they could have been blood. It turned out
10 they were not. Different surfaces will retain
11 stuff differently. Pavement is very coarse, so at
12 the time it looked like it was blood, but it
13 wasn't. It was probably paint or something that
14 had dripped onto the pavement and been there for a
15 while.

16 Q. And when you take swabs, they are tested later
17 normally?

18 A. Sometimes, yes.

19 Q. Do you submit them to evidence?

20 A. We submit it for hold, and it's going to be up to
21 the lead investigator to do what they want with
22 those.

23 Q. Did you take any measurements at this scene?

24 A. I did.

25 Q. What measurements did you take?

1 A. We triangulated from two different points, to the
2 cartridge casings, to the red-brown stains, and to
3 the body.

4 Q. When --

5 A. That way if we needed to come back, we could
6 reconstruct the scene.

7 Q. I'm sorry to interrupt you. When you say
8 triangulate, what do you mean by that?

9 A. Triangulation is just as it sounds. You use two
10 points and you measure down to the item that you're
11 wanting to, so it makes almost a triangle in a
12 sense.

13 Q. And why are you doing that?

14 A. It's more accurate of a way to measure. If we need
15 to come back, we can say this point to this point,
16 so many feet is where this casing was at. Wherever
17 this blood stain was at or red-brown stain was at
18 is where the body was at.

19 Q. And you did that in this case; correct?

20 A. That's correct, yes.

21 Q. And did you -- you said you placed markers?

22 A. Uh-huh.

23 Q. How does that work? A, B? How do you do that?

24 A. It can be a number, it could be a letter. Mine
25 were AA, AB. And they're just little tent markers,

1 little yellow tent markers that sit on the ground.

2 Q. And I'm going to show you some photographs.

3 (Pause.)

4 Q. I'm showing you what's been marked as State's
5 Exhibit 73 through 79 and ask you to look at those.

6 A. It is four photographs of the victim, injuries that
7 he sustained. Also, of the bag that we put over
8 the hand, and my initials and date and time. And
9 then there's two overall shots of the parking lot
10 with markers of the cartridge casings that we
11 located.

12 Q. Do these photographs in front of you accurately
13 depict what you saw back on May 25th of 2014?

14 A. They do.

15 MS. SAMPSON: At this time, Your Honor, we
16 would ask to introduce State's 73 through 79 into
17 evidence.

18 THE COURT: Is there any objection?

19 MS. ZMROCZEK: No objection.

20 THE COURT: Without objection, State's 73
21 through 79 are admitted, each being a photograph.

22 (WHEREUPON, State's Exhibit Nos. 73-79
23 were marked for identification and
24 received into evidence.)
25

1 BY MS. SAMPSON:

2 Q. Some of these the jurors have already seen, so I'm
3 just going to go over a few of them with you.

4 A. Okay.

5 Q. State's Exhibit Number 74, what does that show?

6 A. It is going to be four markers of -- it should be
7 the fired cartridge casings. And, yes, they are
8 AD, AF, G and H.

9 Q. And the jury has some pictures without the markers.
10 Those are the markers you're talking about, the
11 yellow things?

12 A. The yellow triangular markers we use.

13 Q. State's Exhibit Number 79, what does that show?

14 A. This is a picture of the victim's knees.

15 Q. And do you see anything on his knees?

16 A. There are injuries to the knees, yes.

17 Q. Do those look fresh or old?

18 A. They look fresh.

19 Q. State's Exhibit Number 78?

20 A. That's a picture of his hands. There appears to be
21 injuries on the hand as well.

22 Q. And those are on the inside of his hand, not his
23 knuckles; correct?

24 A. Right.

25 Q. State's Exhibit 77?

1 A. That's a bag we put over the hand to preserve trace
2 evidence. And also just the front torso area of
3 the body.

4 Q. And that bag, did you place that there?

5 A. I did.

6 Q. Why did you do that?

7 A. To protect any evidence that could be underneath
8 the fingernails and on the hands. We need to swab
9 that at a later time.

10 Q. And state's Exhibit 76?

11 A. That's another picture of the bag over the hands.

12 Q. And, again, you put your -- the date and all of
13 that?

14 A. Date and my initials, yes, ma'am.

15 Q. And in your notes, did you check to see if there
16 were any shoe tracks or tire tracks?

17 A. One moment, let me look at my notes.

18 (Pause.)

19 A. No.

20 Q. No, you didn't note it or, no, you didn't see any?

21 A. There wasn't anything to note, no tire track for
22 shoe track impressions. His shoes were
23 photographed.

24 Q. And you were looking for those things; correct?

25 A. Well, we looked around for anything that could

1 indicate another party being there. Being an
2 apartment complex and a high traffic apartment
3 complex, there could be a lot of different aspects
4 to the tire track or even shoe track impressions.

5 Q. And you didn't find any, though?

6 A. None were noted, no.

7 Q. And did you do anything else in this scene where
8 the body was located?

9 A. That was all. I did the collection, the
10 documentation, the measurements, and the removal of
11 the body.

12 Q. And did you make a diagram or handwritten drawing?

13 A. Yes.

14 Q. I show you what's been marked as State's Exhibit
15 114 and ask if you recognize that?

16 A. Yes. This is -- we use a program called ScenePD,
17 and it's like a CAD system, in order to be able to
18 diagram everything. It is useful because it's
19 clear based off of our hand sketches, and it just
20 helps to see the scene a little bit better.

21 Q. And the second page, what does that have on it?

22 A. That is going to be the measurements of everything
23 that we took.

24 Q. And does this fairly and accurately depict what you
25 printed and made from this scene?

1 A. From my sketch, yes, not from measurements.

2 MS. SAMPSON: At this time, Your Honor, we'd
3 ask to introduce State's Exhibit Number 114 into
4 evidence.

5 THE COURT: Any objection?

6 MS. ZMROCZEK: No objection.

7 THE COURT: Without objection, State's 114 is
8 admitted.

9 (WHEREUPON, State's Exhibit No. 114 was
10 marked for identification and received
11 into evidence.)

12 BY MS. SAMPSON:

13 Q. And I'm going to show -- the jury will have this,
14 but the yellow -- are those the yellow markers?

15 A. Those are markers, yes.

16 Q. The yellow on here. And these are just your -- you
17 don't put the type of car or anything; correct?

18 A. No.

19 Q. And you actually put the drawing of the body?

20 A. Yes.

21 Q. And then the trees?

22 A. Yes.

23 Q. So there's a computer that helps you generate this?

24 A. Right, and it has certain symbols. It will be
25 almost a bird's-eye view of the scene. It just

1 gives you a better idea of how the layout was.

2 Q. And on here because -- I need it closer, I can
3 barely see it. These four right here, these bottom
4 four yellow ones in the middle of the parking lot,
5 are these the bullet casings?

6 A. The cartridge casings, yes, ma'am.

7 Q. And where you have red marks, those are what you
8 thought was blood initially?

9 A. Red-brown stains, yes, ma'am.

10 Q. And then the other two yellow markers at the end of
11 the parking lot, what are those?

12 A. Those are triangulation markers that we used on the
13 ends of the handicapped parking.

14 Q. And why did do that?

15 A. Those are stationary, they should never move --
16 unlike a tree that can grow -- water meters, curbs,
17 cement buildings, the corner of cement buildings.
18 If we couldn't get at what we needed to get at, we
19 could change to different structures in order to
20 get an accurate measurement. Ten years from now,
21 that tree is going to grow, it's going to change,
22 and it's going to change the measurements.

23 Q. And is that all that you did at the scene of the
24 body?

25 A. Right then, yes.

1 Q. Did you also go to the apartment?

2 A. I did. I was contacted by Sergeant Bouknight to
3 come over to assist at Apartment 501.

4 Q. And what did you do there?

5 A. I looked for any impacts in projectiles. We were
6 told there was a gun that was fired inside the
7 apartment, so I helped him try to find an impact or
8 a hole.

9 Q. And where were you looking?

10 A. All over. We didn't really know at the time. We
11 just knew that a weapon had been fired.

12 Q. You didn't find anything initially, did you?

13 A. I did not.

14 MS. SAMPSON: Beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 (Pause.)

17 BY MS. SAMPSON:

18 Q. Oh, and one more question. All this happened in
19 Richland County; correct?

20 A. It did, yes.

21 MS. SAMPSON: Nothing further as this time,
22 Your Honor.

23 THE COURT: Cross-examine?

24 MS. ZMROCZEK: Your Honor, I'm looking for a
25 picture. I think they already have it in. So if I

1 may?

2 THE COURT: Sure.

3 (Pause.)

4 CROSS-EXAMINATION

5 BY MS. ZMROCZEK:

6 Q. Hi.

7 A. Good morning.

8 Q. How are you?

9 A. I'm good, thank you.

10 Q. You said that you're certified with the IAI?

11 A. That's correct.

12 Q. And that is -- they put you through tests and
13 training; right?

14 A. That's correct.

15 Q. And I believe that you said -- have you received
16 training on crime scene reconstruction?

17 A. I have.

18 Q. So what you do is you kind of take an overall
19 picture. You have all -- I think you took 129
20 pictures; right?

21 A. Probably.

22 Q. And so you have the overview of kind of what
23 happened. So crime scene reconstruction helps you
24 reconstruct what happened?

25 A. In certain aspects, yes. Not every scene is a

1 reconstruction scene. Most scenes are
2 documentation scenes.

3 Q. Documentation?

4 A. Yes.

5 Q. The reason that you mark and look for shell casings
6 is what?

7 A. It's evidence.

8 Q. Okay. And can it help you understand what
9 happened?

10 A. It can.

11 Q. Okay. How -- you received some training in how
12 cartridges are ejected?

13 A. Yes.

14 Q. And typically, how are they ejected?

15 A. Usually, to the right and back --

16 Q. To the --

17 A. -- is the standard.

18 Q. So to the right and back?

19 A. Is the standard ejection, but depends on the
20 weapon.

21 Q. There are other variables?

22 A. There are, yes.

23 Q. I'm showing you what has been marked for
24 identification as Defendant's 21. Do you recognize
25 that?

1 A. It's premarked evidence in the parking lot.

2 MS. ZMROCZEK: Your Honor, at this time, we
3 move Defendant's 21 into evidence.

4 THE COURT: Any objection?

5 MS. SAMPSON: Without objection.

6 THE COURT: Without objection, Defendant's 21
7 is admitted.

8 (WHEREUPON, Defendant's Exhibit No. 21
9 was marked for identification and
10 received into evidence.)

11 BY MS. ZMROCZEK:

12 Q. And I'm going to direct you to the bottom half of
13 this picture.

14 A. Okay.

15 Q. Okay. You said that you were looking for shoe
16 prints or other things to help identify potential
17 evidence or potential things -- or things of
18 potential evidentiary value; correct?

19 A. We could look for that.

20 Q. Okay.

21 A. Tire track impressions if there was a vehicle that
22 maybe left out at a high rate of speed, stuff like
23 that.

24 Q. At a closer look at the bottom of Defendant's 21,
25 is it possible that there may have been some shoe

1 impressions?

2 A. I don't know what that is. Based on that, there
3 could be some shoe impressions. It could be old
4 shoe impressions. It's possible.

5 Q. Okay. And that was within the -- these pictures
6 are taken within the taped off area; right?

7 A. Correct. But it's an apartment complex. It's a
8 public area.

9 Q. Certainly. And I think there was a fresh rain or
10 mist that morning?

11 A. It's possible.

12 Q. Okay.

13 A. It was cloudy and wet, yes.

14 Q. You took pictures of the shoes that Mr. Pauling was
15 wearing; correct?

16 A. While he was on the ground, yes.

17 Q. While he was on the ground? And I know that we're
18 trying to find one, but for the sake of time, do
19 you recall what, if anything, you saw on the bottom
20 of those shoes?

21 A. There's dirt in the treads.

22 Q. There's dirt?

23 A. Uh-huh.

24 Q. In the tread of those shoes?

25 A. Yes, ma'am. It's not caked on, or anything, but

1 there is some dirt.

2 Q. Right. Not caked on?

3 A. Right.

4 Q. But it is noticeable on the shoe?

5 A. Sure.

6 MS. ZMROCZEK: Thank you. I have no further
7 questions.

8 THE WITNESS: Thank you.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MS. SAMPSON:

12 Q. Investigator Lee?

13 A. Yes, ma'am.

14 Q. Do you still have Defendant's Exhibit 21?

15 A. Do what?

16 Q. This is 21? Yes, this is Defendant's 21. Is this
17 what she -- I couldn't see. This is what she was
18 pointing at?

19 A. Yes.

20 Q. Now, you're just looking at a photograph?

21 A. Yes.

22 Q. When you were live on the scene, did that indicate
23 to you fresh shoe tracks?

24 A. I don't remember. If it did, I would have
25 documented it.

1 Q. Exactly. If it had been in your mind fresh shoe
2 tracks, you would have documented it?

3 A. Yes, ma'am.

4 Q. Did you?

5 A. No, it's not documented.

6 MS. SAMPSON: No further questions.

7 THE COURT: Recross?

8 MS. ZMROCZEK: Thank you.

9 RECROSS-EXAMINATION

10 BY MS. ZMROCZEK:

11 Q. I'm handing you what's been marked for
12 identification as Defendant's 29 and 30.

13 A. Yes, these are my two photos.

14 MS. ZMROCZEK: Your Honor, at this time, we
15 would move Defendant's 29 and 30.

16 THE COURT: Is there any objection?

17 MS. SAMPSON: No, sir.

18 THE COURT: Without objection, 29 and 30 are
19 admitted.

20 MS. ZMROCZEK: Thank you.

21 (WHEREUPON, Defendant's Exhibit Nos.

22 29-30 were marked for identification and
23 received into evidence.)

24 BY MS. ZMROCZEK:

25 Q. And these are the photos of the shoes?

1 A. Yes.

2 Q. Okay. And that's what you saw that morning?

3 A. Right. The shoe is not what the marker is for.

4 Q. Right.

5 A. The marker is for the body.

6 Q. Right, right, right. The marker is for the body.

7 But you happened to identify the shoes in there?

8 A. Correct, yes, ma'am.

9 MS. ZMROCZEK: Thank you. I have no further
10 questions.

11 THE COURT: All right. You may come down,
12 sir.

13 MS. SAMPSON: May the witness be excused, Your
14 Honor?

15 THE COURT: He is excused. You're free to
16 leave, Mr. Lee.

17 (Witness excused.)

18 THE COURT: At this point, ladies and
19 gentlemen, we will recess for lunch. Please
20 remember you are not at liberty to discuss this
21 case among yourselves, nor are you permitted to
22 talk with anyone outside of the courtroom or permit
23 anyone to talk with you about the case.

24 Have a good lunch. I would ask you to return
25 to your jury room, please, by 2:00 o'clock. We'll

1 resume the trial at that time.

2 Thank you.

3 The exhibits? Just pass them back up, that
4 will be fine. Again, you'll have them with you
5 when you go to your jury room.

6 Thank you very much. Have a good lunch.

7 (WHEREUPON, the jury is excused for
8 lunch at 12:31 p.m.)

9 THE COURT: Anything from the State before we
10 recess?

11 MS. SAMPSON: No, sir.

12 THE COURT: Anything from the Defense?

13 MS. ZMROCZEK: No, sir -- well, actually, yes,
14 briefly. And I think I know why Mr. Williams
15 objected, and I wanted to put this on the record.

16 THE COURT: Put what on the record?

17 MS. ZMROCZEK: Ms. Sampson and I had wanted to
18 talk -- we were talking about -- they had agreed
19 not to go into any prior SCDC information.

20 THE COURT: Ms. Zmroczek, we don't need to put
21 all this on the record. You didn't ask the
22 question. There was no renewed objection. I ruled
23 on it based on what I heard. So, thank you.

24 MS. ZMROCZEK: Thank you.

25 THE COURT: Anything else?

1 MS. ZMROCZEK: No.

2 THE COURT: All right. How many witnesses do
3 you anticipate calling?

4 MS. SAMPSON: This afternoon, we have --

5 THE COURT: No, period.

6 MS. SAMPSON: Left?

7 THE COURT: Yes, because I -- what I want you
8 to understand, I don't want to stop early. I mean,
9 this is fine today. This is perfect. This is not
10 a problem. But I want to have witnesses ready so
11 we can keep rolling. How many do you have -- do
12 you anticipate?

13 MS. SAMPSON: We have 21 more. Some are just
14 as short, like EMS.

15 THE COURT: Well, you know, at some point, you
16 guys are getting cumulative, you really are.
17 You're setting up a scene that really is not an
18 issue in this case. I mean, you're spending a lot
19 of time on -- and I don't know what everybody has
20 got to do, but we've had about three witnesses to
21 testify to basically the same thing. So let's keep
22 it moving, Solicitor. That's just all I'm saying.

23 And, also, I don't generally interrupt or deny
24 passing photographs, but if it doesn't have
25 something to do with the testimony, and there are

1 numerous photographs -- I'm not suggesting you did
2 this as a ploy, but it distracts, it takes away,
3 and that one we were still having people looking at
4 it three or four witnesses removed. So let's keep
5 that in mind. If it's a couple of photographs, I
6 don't have problem. But if it's a good volume of
7 them, unless it's something you really -- and my
8 feeling is most of -- and I'm sure you will, if
9 it's something in that photograph that you want,
10 you are going to have testimony about that and it
11 is going to be shown to the jury at that time.
12 Otherwise, let's don't pass them.

13 MR. WILLIAMS: Absolutely, Your Honor.

14 THE COURT: I'm not trying to try your case
15 for you. I'm just thinking about the jury, and
16 they get sidetracked on things.

17 Thank you so much.

18 MR. WILLIAMS: Yes, Your Honor.

19 THE COURT: You bet. And, please, I'm not
20 complaining about anything. Y'all are doing a fine
21 job.

22 MR. WILLIAMS: Thank you, Your Honor.

23 THE COURT: All right. We'll see you at 2:00
24 o'clock.

25 MS. SAMPSON: Thank you, Your Honor.

1 (WHEREUPON, a lunch recess was taken at
2 12:34 p.m.)

3 (WHEREUPON, the proceedings resumed at
4 2:07 p.m.)

5 THE COURT: All right, let the record reflect
6 Mr. Ricks is present.

7 Is the Defendant ready to proceed?

8 MS. ZMROCZEK: We are, Your Honor.

9 THE COURT: The State is ready to continue?

10 MR. WILLIAMS: Yes, Your Honor.

11 THE COURT: All right, let's invite the jury
12 to return, please. Thank you.

13 (WHEREUPON, the jury came into open
14 court at 2:08 p.m.)

15 THE BAILIFF: The jury is seated, Your Honor.

16 THE COURT: Thank you so much.

17 Thank you, ladies and gentlemen. I hope you
18 had a good lunch. We are ready to continue now.
19 Please give your attention to the next witness.

20 Solicitor, you may call your next witness.

21 MR. WILLIAMS: Thank you, Your Honor. The
22 State calls David Goff to the stand.

23 (Witness approaches.)

24 THE BAILIFF: Place your left hand on the
25 Bible, and raise your right hand, please.

1 (Witness complies.)

2 THE CLERK: Do you solemnly swear or affirm
3 the testimony you give in this case will be the
4 truth, the whole truth, and nothing but the truth,
5 so help you God?

6 THE WITNESS: I do.

7 THE COURT: Please have a seat, and state your
8 full name for the record.

9 DAVID GOFF,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WILLIAMS:

13 Q. Investigator Goff, what is your profession?

14 A. I'm a detective for the Richland County Sheriff's
15 Department.

16 Q. How long have you served in that capacity?

17 A. As an investigator, probably 26 years. As a total,
18 about 31.

19 Q. And what do you do as an investigator for the
20 county?

21 A. I investigate motor vehicle thefts and arson
22 investigations.

23 Q. Is there any time that you would investigate or
24 participate in a crime other than motor vehicle
25 thefts or arsons?

1 A. Yes, sir. If I am working the evening shift or be
2 on-call, I'll go out and handle whatever comes
3 down, get it started, interview, check the crime
4 scenes, that kind of stuff.

5 Q. And I know the jury may be familiar with the
6 statement being on-call, but what does that mean
7 for an investigator with the Sheriff's Department?

8 A. We do seven -- a week rotation. During that seven
9 -- that one week -- seven weeks -- I meant to say
10 one week, we work from 3:30 until 7:30 the next
11 morning. Rotate. I may work midnight til 7:00 in
12 the morning, and the next night I may work from
13 3:00 to midnight.

14 Q. And when you're serving in that on-call capacity,
15 what responsibilities do you have when you're
16 called to the scene of a crime?

17 A. One, to make sure everything is handled. If we
18 have any witnesses, any evidence to be passed on.

19 Q. At what point do you pass that evidence on or those
20 witnesses on to the primary investigator?

21 A. Soon as they get on scene, when they come in.

22 Q. All right. I want to take you back to May 25th,
23 2014. Do you remember what you were doing that
24 day?

25 A. Working evening shift.

1 Q. Okay. Were you ever called to the scene of a
2 crime?

3 A. Yes.

4 Q. Okay. Where were you called?

5 A. Universal Drive. I think 1234 Universal Drive.

6 Q. And is that Richland Village?

7 A. Yes, it is.

8 Q. Okay. So could you tell the jury what happened
9 when you were called and what you did?

10 A. I received a call from the on-call sergeant that
11 said there had been a shooting at that address and
12 I needed to respond.

13 I arrived and met with Sergeant Maldonado. We
14 then gathered any witnesses that we had, tried to
15 get them to one side so we could talk to them, and
16 kind of wait for them to, you know, secure the
17 scene with the uniform officers and wait for crime
18 scene to arrive.

19 Q. Okay. Did you have the opportunity to touch or
20 disturb any evidence at the scene?

21 A. I didn't touch anything, no.

22 Q. Do you remember who you interviewed?

23 A. No, I could not.

24 Q. Would it refresh your memory if I showed you the
25 statements that you took that day?

1 A. Yes.

2 MR. WILLIAMS: Your Honor, I'm showing the
3 witness State's Exhibit 1 marked for identification
4 purposes, and State's Exhibit 115, marked for
5 identification purposes.

6 THE COURT: Okay.

7 BY MR. WILLIAMS:

8 Q. Please take your time and review those documents
9 and answer when you're ready.

10 A. Yes.

11 Q. Okay. So who did you interview that morning?

12 A. I interviewed a Brianna Pelzer and a Xavier
13 Richardson.

14 Q. Was that the extent of your involvement with this
15 case?

16 A. Yes, sir.

17 Q. And what did you do with those statements once they
18 were taken?

19 A. They were turned over to the lead investigator.

20 Q. Who was the lead investigator in this case?

21 A. Investigator Kerry Johnson.

22 MR. WILLIAMS: I beg the Court's indulgence,
23 Your Honor.

24 THE COURT: All right.

25 (Pause.)

1 BY MR. WILLIAMS:

2 Q. Investigator Goff, I have a few more questions.

3 A. Yes, sir.

4 Q. I want to talk about those statements. Would you
5 explain the process that you go through when you
6 take a statement from a witness?

7 A. What I do is -- I like to take them in the office
8 so I can type from my handwriting, it's not that
9 well. Just ask them the basic questions, what they
10 saw, you know, do they know what caused it, do they
11 know who did it. Basically, who, what, when,
12 where, how questions.

13 Q. Does the witness have the opportunity to review
14 your typed statement?

15 A. Yes.

16 Q. And once they review it, what do they do next?

17 A. They sign it, then I sign it under their name.

18 Q. And did you do that in this case?

19 A. Yes, I did. And they're also notarized.

20 Q. Okay.

21 MR. WILLIAMS: Your Honor, no further
22 questions for this witness at this time.

23 THE COURT: Very well.

24 Cross-examine?

25 MS. ZMROCZEK: I have no questions.

1 THE COURT: Thank you. You may step down, and
2 you are free to leave.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Thank you, sir.

5 (Witness is excused.)

6 MS. SAMPSON: The State would call -- can he
7 be excused? I'm sorry.

8 THE COURT: Yes. Thank you.

9 MS. SAMPSON: The State would call Whitney
10 Berry.

11 (Witness approaches.)

12 THE BAILIFF: Place your left hand on the
13 Bible, and raise your right hand, please.

14 (Witness complies.)

15 THE CLERK: Do you solemnly swear or affirm
16 the testimony you give in this case will be the
17 truth, the whole truth, and nothing but the truth,
18 so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Please have a seat, and state your
21 full name for the record.

22 THE WITNESS: My name is Whitney Berry,
23 B-E-R-R-Y.

24 WHITNEY BERRY,
25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MS. SAMPSON:

3 Q. Ms. Berry, where do you work?

4 A. I work for the South Carolina Law Enforcement
5 Division, also referred to as SLED.

6 Q. And what do you do there?

7 A. I'm a forensic chemist in the Trace Evidence
8 Department, where I specialize in gunshot residue
9 analysis.

10 Q. And what is gunshot residue analysis?

11 A. Gunshot residue is the primer residue that comes
12 out of a gun whenever it's discharged. So the
13 primer actually comes out of the cartridge where
14 the bullet is.

15 What we're looking for when we do gunshot
16 residue analysis are those primer particles. So
17 we're looking for that that has come out of a gun
18 or could be associated with coming out of a gun.

19 Q. And do you get training in order to analyze this?

20 A. Yes, I do.

21 Q. What training do you have?

22 A. I have a Bachelor of Science in chemistry. I also
23 completed SLED's 9-month in-house training program
24 on gunshot residue analysis, which included many
25 breakdown practical tests and examinations, as well

1 as a mock court scenario.

2 I have also attended Hooke College of Applied
3 Sciences up in Westmont, Illinois. I've taken both
4 their scanning electron microscopy course and their
5 gunshot residue analysis course.

6 Q. And is there any certification for these?

7 A. No, there's not.

8 Q. And is your testing ongoing? I mean, excuse me, is
9 your education ongoing?

10 A. We do have a proficiency testing program at SLED,
11 where every year we are required to do a
12 proficiency test given to us by an outside entity.
13 And we have to be evaluated based on our results.

14 MS. SAMPSON: And at this time, Your Honor,
15 I'd ask that Ms. Berry be qualified as an expert in
16 the field of gunshot residue analysis.

17 THE COURT: Do you care to examine her as to
18 her qualifications?

19 MS. ZMROCZEK: No objection, Your Honor.

20 THE COURT: She will be permitted to render
21 opinions in that area.

22 MS. SAMPSON: Thank you, Your Honor.

23 BY MS. SAMPSON:

24 Q. And I kind of took things a little bit backwards.
25 Will you explain what gunshot residue is? And I

1 need you to break it down to like a third grader,
2 because that's sort of where I am with this. So
3 gunshot residue is made up of different particles;
4 correct?

5 A. Yes, ma'am.

6 Q. Can you explain what those are?

7 A. Yes, ma'am. So the primer that we're looking at is
8 going to contain three metal elements: Lead,
9 barium, and antimony. So when you think of metal,
10 you can think of like metal shavings or metal
11 flakes.

12 What happens when it is under the high heat
13 and pressure of the explosion that happens when you
14 pull the trigger on a firearm is those metal
15 shavings or metal flakes are going to vaporize and
16 they are going to turn into liquid metal. So they
17 are going to become molten in the air.

18 Now, because the air is cooler than the metal,
19 it is going to cool back down. And when it cools
20 back down, it is going to cool back into a molten
21 or rounded shape.

22 And what we're looking for are particles that
23 contain lead, barium, and antimony and are round or
24 molten in their shape.

25 Q. So you're looking for two different things, not

1 just the elements, but the shape of the elements?

2 A. Yes.

3 Q. And what -- how do you get items to look at? How
4 does that come to you?

5 A. We issue gunshot residue collection kits free of
6 charge to any agency that wishes to pick them up.
7 In most kits is included a set of disposable
8 gloves, a set of instructions on how we recommend
9 that you collect the kits, a worksheet that we need
10 filled out, including all pertinent information
11 about the person that you're collecting it from.
12 It also includes four sample collector vials. I
13 think I have one. Four of these. And they are
14 labeled for different parts of the hand. And that
15 would be the right palm, the right back of the
16 hand, the left palm, and the left back.

17 Inside each one of these little vials is a
18 particle lift. That's what we call a big black
19 spot in the middle. It is basically double-sided
20 tape. And all that's going to do is pick up any
21 particulate matter that is on the person's hands or
22 any other surface that it is being used on.

23 So to collect someone, we just dab it all over
24 the area that they want a sample. And then they
25 would put the lid back on, they would put it back

1 in the envelope it came in, they would seal it, and
2 submit it to SLED for analysis.

3 Q. Okay. So I want to speed ahead to this case. Did
4 you receive a gunshot residue kit in this case?

5 A. Yes, ma'am.

6 Q. And who was it -- do you remember who it was?

7 A. I'd need to consult my report.

8 Q. Do you have a copy of your report?

9 A. Yes, I do.

10 Q. Would looking at it help refresh your memory?

11 A. Yes, ma'am.

12 Q. Go ahead and look at it.

13 A. I received a gunshot residue kit from a Thomas A.
14 Pauling.

15 Q. Okay. And so when you get the kit, what did you do
16 with it?

17 A. Whenever we get evidence at SLED, the first thing,
18 as an analyst, I do is I make sure that the seal is
19 intact so the evidence hasn't been tampered with
20 and everything is how it was when it was submitted.
21 So whenever something is submitted, a piece of SLED
22 evidence tape goes over it, the person who is
23 submitting it has to initial and date that. If for
24 any reason that is not filled out or it is broken,
25 then we have a potential problem with the chain of

1 custody and we go back and we track down what
2 happened there before we analyze it.

3 So in this case, I don't have any notes saying
4 there were any problems with it, so everything was
5 intact and sealed and initialed like it should have
6 been.

7 Q. So then you broke the seal and conducted your
8 analysis?

9 A. Yes, then I would break the seal.

10 Q. Then what did you -- what did your analysis find?

11 A. My analysis -- and, again, I'm using the electron
12 microscope. So while the particles on the sticky
13 tab may be microscopic and you may not be able to
14 see them with the naked eye, we use an electron
15 microscope and we can see them. So not only can we
16 see the shape and see how many there might be, but
17 we can also run an X-ray detector over it that is
18 going to tell us what it is made out of. So that
19 is how we can tell if metals are present in it.

20 So in this specific case, what we found is one
21 round particle that is associated with gunshot
22 residue on the hands of Mr. Pauling.

23 Q. So what is the difference of a finding of one round
24 particle associated with gunshot residue and a
25 finding of gunshot residue?

- 1 A. So gunshot residue is our 3-component particle that
2 has all three -- lead, barium, antimony --
3 together. And an associated particle is a single
4 component particle. So it would be just round lead
5 or just round barium or just round antimony. So
6 that could indicate that there is gunshot residue
7 or that someone has come into contact with
8 something that had gunshot residue on it, but those
9 elements are also somewhat common in the general
10 environment.
- 11 Q. So would it be fair to say it would be like if you
12 saw oxygen on something, you couldn't say it was
13 water without seeing also two components of
14 hydrogen?
- 15 A. That's correct.
- 16 Q. Okay. So in this case, all you found was one round
17 particle of -- was it antimony?
- 18 A. I believe it was antimony, yes.
- 19 Q. And just to be clear, do you -- as a general rule,
20 does your office normally test victim's clothing or
21 their hands of who you know for sure had been shot?
- 22 A. We do not test victim clothing at all. And victim,
23 in the terms of our laboratory, is somebody who has
24 sustained a gunshot wound. So in some cases it
25 could be a person who was a victim or it could be

1 someone who might have been at one point a suspect.
2 So we don't really discriminate. But if they have
3 sustained a gunshot wound, we are not going to
4 analyze their clothing.

5 Q. And why not?

6 A. We are not going to analyze their clothing because
7 we expect there to be gunshot residue on their
8 clothing. The majority of the gunshot residue
9 is -- or primer residue is actually going to follow
10 the path of the projectile or bullet towards its
11 intended destination.

12 So if you think of a cone, there's going to be
13 a cone coming out of the front of the gun, and
14 anything in front of that cone could possibly have
15 gunshot residue on it. So the majority is going to
16 follow the path of that bullet.

17 Q. So if somebody is shot, it would be fair to say you
18 would assume they would have gunshot residue on
19 them?

20 A. Yes.

21 MS. SAMPSON: Beg the Court's indulgence.

22 THE COURT: Yes, certainly.

23 (Pause.)

24 BY MS. SAMPSON:

25 Q. And can you talk to me a little bit about -- can

1 gunshot residue be transferred?

2 A. Yes, ma'am.

3 Q. How does that occur?

4 A. Gunshot residue, aside from being microscopic, is
5 also very fragile. So if you think about being in
6 your kitchen at home and having baking flour on
7 your hands. It's very fine and covers your hands
8 and you can see it, but every time you touch
9 something, a little bit comes off. You can't say
10 exactly how much came off, but some of it came off.
11 And gunshot residue is very similar.

12 So you have this potential amount of particles
13 on your hands or on the surface, and then as other
14 things come into contact with that, a little bit
15 can come off. So if I have gunshot residue on my
16 hand and I touch right here, some of it could have
17 come off to this area. Someone else could come
18 behind me and they could touch that area and they
19 could potentially have some on their hands now.

20 Q. So having one round particle of antimony simply
21 means you have a particle associated with gunshot
22 residue on you; correct?

23 A. Yes, ma'am.

24 Q. It doesn't mean that you shot a gun, does it?

25 A. No, ma'am.

1 Q. It doesn't mean you were near a gun that was fired?

2 A. Not necessarily, no.

3 Q. Not necessarily. It could be, though?

4 A. It could be.

5 MS. SAMPSON: No further questions, Your
6 Honor.

7 THE COURT: Cross-examine?

8 MS. ZMROCZEK: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. ZMROCZEK:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Antimony -- and you say that is commonly found in
14 the wild or in the air?

15 A. In the environment.

16 Q. In the environment. Where is antimony commonly
17 found?

18 A. Specifically, antimony can be found in certain
19 solders. It can be found in certain ammunitions,
20 obviously. There has been some discussion on
21 whether or not it has been added or removed from
22 nail gun primers. Whenever you use a nail gun,
23 there's also primer in those. It can also
24 potentially come from any sort of thing that would
25 have a primer in it, so that could include

1 pyrotechnic for fireworks, potentially a flare gun,
2 potentially an airbag. All of those could
3 potentially have that in them.

4 Q. All right. And you said that it was very fragile?

5 A. Yes, ma'am.

6 Q. So if it's raining or if you're touching the
7 ground, it could come off of your hands; right?

8 A. Yes, ma'am.

9 Q. And you said -- I believe you described the cone
10 shape. The gunshot residue kind of follows the
11 bullet; right?

12 A. Yes, ma'am.

13 Q. So if you were shot from behind and you were
14 expecting to see gunshot residue from somebody on
15 their hands who was shot, just from being shot,
16 they would generally have to have their hands back
17 there; right?

18 A. In most cases, yes.

19 Q. Okay. So there are other ways to get it on your
20 hands, though; right?

21 A. Yes, ma'am.

22 Q. In you're standing close to a gun that's been
23 fired?

24 A. Yes, ma'am.

25 Q. If you handle a gun that's been fired?

1 A. Yes, ma'am.

2 Q. For example, if you are struggling over a gun and
3 you pick it up and it's been recently fired, that
4 could get gunshot residue on somebody hands?

5 A. They could potentially get that on their hands,
6 yes.

7 Q. And do y'all have -- when you look for the three
8 particle levels, do y'all have like cut-off levels?
9 When you run it through the electron microscope, do
10 you have numbers? Like, is there a -- like a
11 threshold, that's what I'm looking for. Is there a
12 threshold number that you're looking for?

13 A. In what respect? Are you meaning for the elemental
14 fragments or --

15 Q. Yes, the elemental fragments.

16 A. Okay. There is and there isn't. It's -- if we
17 have a particle that shows three components and we
18 can clearly pull out those three components, we're
19 not going to look at what percentage is lead versus
20 barium versus antimony because all three are
21 present.

22 Now, in some cases we get particles with lead
23 and antimony in them together or you have a whole
24 lot of lead and you have very little antimony
25 that's showing up. And the reason for that is

1 because with the electron microscope, what you're
2 trying to do is penetrate through that metal to see
3 what is inside of it. So it doesn't always go all
4 the way through, or sometimes it goes all the way
5 through and goes underneath it.

6 So with that, you can see that there is lead
7 and antimony, but maybe it's 90 percent lead and 10
8 percent antimony. And based on analyst's
9 discretion, that particle may just be called a
10 round lead as opposed to consistent particle.

11 Q. But in here, we had a consistent particle?

12 A. We had an associated --

13 Q. I mean, an associated particle?

14 A. Yes, ma'am.

15 Q. And that was on Mr. Pauling's hands?

16 A. Yes, ma'am.

17 Q. And that could have come from being -- firing a
18 gun?

19 A. Yes, ma'am.

20 Q. Standing next to a gun that was fired?

21 A. Yes, ma'am.

22 Q. Or touching a gun that had recently been fired?

23 A. Yes, ma'am.

24 MS. ZMROCZEK: Thank you.

25 THE COURT: Redirect?

1 MS. SAMPSON: Just one question, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. SAMPSON:

4 Q. Ms. Zmroczek just asked you a bunch of ways that it
5 could get on your hands. Could it also get on your
6 hands from being shot at?

7 A. It can get on your hands from getting shot at. In
8 our laboratory, we have looked at probably a few
9 hundred cases at this point. About 80 percent of
10 our victims or people who have been shot at are
11 positive for gunshot residue.

12 MS. SAMPSON: No further questions, Your
13 Honor.

14 THE COURT: Recross?

15 MS. ZMROCZEK: Just one follow-up.

16 RECROSS-EXAMINATION

17 BY MS. ZMROCZEK:

18 Q. And when they're shot at in the back, do you expect
19 to see it on their hands?

20 A. In the few cases that I've have worked where
21 somebody has been shot in the back, I haven't
22 necessarily seen large amounts of gunshot residue
23 on their hands. It's not to say that they're
24 always negative, but that's not a common occurrence
25 as if they are shot in the front.

1 MS. ZMROCZEK: Thank you.

2 THE COURT: Okay. You may come down, and you
3 are free to leave, Ms. Berry. Thank you very much.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 THE COURT: Call your next witness.

7 MR. WILLIAMS: The State calls Jacquelyn
8 Richburg.

9 (Witness approaches.)

10 THE BAILIFF: Place your left hand on the
11 Bible, and raise your right hand, please.

12 (Witness complies.)

13 THE CLERK: Do you solemnly swear or affirm
14 the testimony you give in this case will be the
15 truth, the whole truth, and nothing but the truth,
16 so help you God?

17 THE WITNESS: I will.

18 THE CLERK: Please have a seat, and state your
19 full name for the record.

20 THE WITNESS: Jacquelyn Richburg.

21 JACQUELYN RICHBURG,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WILLIAMS:

25 Q. Good afternoon, Ms. Richburg.

1 A. Hi.

2 Q. Could you explain to the jury what you do for a
3 living?

4 A. I am the deputy director for the 9-1-1
5 Communications Center.

6 Q. What does the 9-1-1 Communication Center do?

7 A. We take in emergency calls, non-emergency calls and
8 dispatch them out to the police, fire, and EMS.

9 Q. Could you explain the process of what happens when
10 a call is made and received and dispatched?

11 A. Well, the call comes in -- all of our phone calls
12 and radio traffic is recorded. And when a call
13 comes in, it's collected and stored in our
14 database, and it's kept there for 90 days.

15 Q. What happens when multiple calls come in reporting
16 the same incident? How is that information
17 communicated to law enforcement?

18 A. Mostly, if it's -- if they're giving the same
19 address, then the call is attached to that call.
20 But if it's not the same address, then another call
21 is entered into the case.

22 Q. I just want to make sure I'm understanding you
23 correctly. If an address is not listed or
24 mentioned in the first call, but it's mentioned in
25 a second call, subsequent call, then that

1 information is attached, is that what you're
2 staying?

3 A. Sometimes. Sometimes we'll get a call from a
4 landline and it will give us the address. And then
5 sometimes we will get a call from a cell phone and
6 it won't give us the address, it will give us the
7 tower address. Then you have to ask specific
8 questions to determine where the caller is.

9 Q. Who do you ask those questions to? Is it to the
10 caller?

11 A. Yes.

12 Q. What will happen if the caller does not give that
13 information?

14 A. We'll try to call -- if the phone is disconnected,
15 we'll try to call back. But if they don't give it
16 to us, then we'll do a lat and long search and it
17 will give us within two or three blocks radius of
18 where the call is.

19 Q. Is it possible for your dispatchers to take a call
20 and not be able to ascertain the location?

21 A. Yes.

22 Q. What will happen to that call? How would it be
23 stored or identified in storage?

24 A. We will attempt to dispatch the call out without an
25 address, like an approximate address. We will

1 dispatch units out to the location and they'll just
2 kind of circle the area. Sometimes that's
3 effective and sometimes it's not.

4 Q. Let's talk about retrieving the phone call. After
5 an incident occurs, how would I retrieve a phone
6 call where the caller did not give identifying
7 information, such as their name or their address?

8 A. It depends on what the requester is requesting. If
9 they say they want the phone call for a particular
10 phone number, we could pull it that way, or if they
11 give us an address, we can pull it that way. If
12 they give us a name, we can pull it that way as
13 well. If they didn't give us a name, then we
14 wouldn't be able to pull it.

15 Q. So is it fair to say if the proper information is
16 not given by the caller, then a requester, such as
17 the Solicitor's Office, or anyone else, would not
18 be able to get that phone call?

19 A. Right.

20 Q. You had an opportunity to listen to two 9-1-1 phone
21 calls that your dispatchers took regarding this
22 case?

23 A. Yes.

24 Q. And were those phone calls taken and -- were they
25 taken and are they an accurate reflection of how

1 your dispatchers retrieve phone calls -- or take
2 phone calls?

3 A. Yes.

4 Q. And were they stored in the normal course of
5 business?

6 A. Yes.

7 Q. Okay.

8 MR. WILLIAMS: Your Honor, at this time, the
9 State -- and those phone calls are State's Exhibit
10 110 and State's Exhibit 111.

11 MS. ZMROCZEK: No objection, Your Honor.

12 THE COURT: Very well. State's 110 and 111
13 are admitted without objection.

14 MR. WILLIAMS: Thank you, Your Honor.

15 (WHEREUPON, State's Exhibit Nos. 110-111
16 were marked for identification and
17 received into evidence.)

18 MR. WILLIAMS: Court's indulgence.

19 THE COURT: Certainly.

20 (Pause.)

21 MR. WILLIAMS: No further questions for this
22 witness.

23 THE COURT: Very well. Cross-examination?

24 CROSS-EXAMINATION

25

1 BY MS. ZMROCZEK:

2 Q. Good afternoon.

3 A. Hi.

4 Q. You said how long are the phone calls stored?

5 A. Ninety days.

6 Q. Ninety days?

7 A. Yes.

8 Q. And y'all work closely with law enforcement; right?

9 A. Yes.

10 Q. And they know their phone calls are within 90 days;
11 correct?

12 A. Yes.

13 Q. When did you first receive a request from anyone in
14 law enforcement or the State about this -- getting
15 a copy of these calls?

16 A. I'm sorry, what was the first part of your
17 question?

18 Q. Certainly. When was the first time that you recall
19 receiving a request for these calls?

20 A. I'm not sure. I have to look at the information.

21 Q. If I show you the request, would it refresh your
22 recollection?

23 A. Yes.

24 (Pause.)

25 A. Okay.

1 Q. Does that refresh your recollection?

2 A. Yes.

3 Q. So when's the first time you got a request from the
4 State to get a copy of these calls?

5 A. April 17th.

6 Q. Of what year?

7 A. Of 2014 -- actually, that's not right. April 17th
8 of 2015.

9 Q. 2015. And I know that the request is dated, but
10 that's actually before the event happened; right?

11 A. That's true.

12 Q. So the e-mail request was almost a year later -- or
13 11 months later; right?

14 A. Yes.

15 Q. And at that time, those tapes had already been
16 destroyed; correct?

17 A. Yes.

18 Q. But you had also received a request from a defense
19 attorney to request a copy of those as well; right?

20 A. Yes.

21 Q. Okay. And so that's how we have the tapes that we
22 have -- or the CDs we have today; right?

23 A. Yes.

24 Q. And you said sometimes if they are called from a
25 landline, you can get the address because it comes

1 up automatically; right?

2 A. Yes, that's correct.

3 Q. But if it's called from a cell phone, what are the
4 ways that you can get a location off of there?

5 A. We can do a lat and long, and it will give us an
6 approximate location, within three to four blocks.

7 Q. Okay. And were you asked to do that in this case?

8 A. Do you have the closed incident report?

9 Q. I do.

10 (Pause.)

11 A. No.

12 Q. Okay. You were able to get a latitude and
13 longitude on one of the calls that came from a cell
14 phone, though; right?

15 A. Yes.

16 Q. Okay. And the closed incident report, how does
17 that work?

18 A. It -- what the dispatcher or the call taker does is
19 they will verify the information that comes up on
20 the monitor, and then they will add comments to the
21 call, whatever the caller is giving them the
22 information, they'll add it to the call.

23 Q. Okay. And it documents the time?

24 A. Yes.

25 Q. And so in this case you had a call come in at

- 1 5:38:49 -- excuse me, 5:39:02, and it documents the
2 number, correct, of the person that's calling?
- 3 A. Yes.
- 4 Q. And tell the jury what that number is?
- 5 A. It's 363-1412.
- 6 Q. And does it give a name?
- 7 A. No, it just says a male caller.
- 8 Q. Okay. And that's kind of a little bit further down
9 on the incident report, so is that the first call
10 that would have come in?
- 11 A. No.
- 12 Q. Okay. So that came in after you got the initial --
- 13 A. Right, yes.
- 14 Q. Okay. So what happens is when initial calls, when
15 they call about shots fired, is it oftentimes that
16 you get more than one call?
- 17 A. Yes.
- 18 Q. Which happened in this case?
- 19 A. Yes.
- 20 Q. And you try to take all the information and put it
21 on one screen so everybody kind of knows what's
22 going on?
- 23 A. That's correct.
- 24 Q. And that's the information that gets sent to the
25 officers or whoever needs to be dispatched;

1 correct?

2 A. Yes.

3 Q. And you said that if you lose connection that you
4 try to call back?

5 A. Yes.

6 Q. And do you lose connection because people hang up?

7 A. That's correct.

8 Q. Or sometimes there are bad connections?

9 A. That's correct.

10 Q. But y'all will continue to call back; right?

11 A. Yes.

12 MS. ZMROCZEK: Thank you. No further
13 questions.

14 THE JUROR: Redirect?

15 MR. WILLIAMS: Briefly, Your Honor.

16 THE COURT: Sure.

17 REDIRECT EXAMINATION

18 BY MR. WILLIAMS:

19 Q. Ms. Richburg?

20 A. Yes.

21 Q. If a caller identified themselves in the closed --
22 identified themselves on the call, would they be
23 listed on the closed incident report?

24 A. Yes.

25 Q. And do you remember when the first call regarding

1 this incident came in? I have the closed incident
2 report if it would refresh your memory.

3 A. Okay. If I can look at it.

4 (Pause.)

5 A. I'm not seeing a caller name on this one.

6 Q. I can give you a better copy.

7 A. Okay.

8 Q. This is the beginning of the same report you're
9 looking at.

10 A. Okay.

11 (Pause.)

12 A. Okay.

13 Q. All right. Who is the first?

14 A. Tommy Goodwin.

15 Q. Tommy Goodwin. And what time was that call made?

16 A. At 5:28.

17 Q. And what you're saying is, the reason his name is
18 listed is because he gave it?

19 A. Yes.

20 Q. But if I were to call and didn't give my name, my
21 name wouldn't be there?

22 A. Well, if you would call in on a cell phone, your
23 name would not be here. But if you called in on a
24 landline, your name will be here, or if you gave
25 the information.

1 Q. Okay. All right.

2 MR. WILLIAMS: No further questions from the
3 State, Your Honor.

4 THE COURT: Recross?

5 MS. ZMROCZEK: Very briefly.

6 RECROSS-EXAMINATION

7 BY MS. ZMROCZEK:

8 Q. So if you call from a landline and that number is
9 assigned to the name, it would pop up?

10 A. Yes.

11 MS. ZMROCZEK: Okay. Thank you. I have no
12 further questions.

13 THE COURT: All right. You may step down,
14 Ms. Richburg, and you're free to leave. Thank you.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: Call your next witness, please.

18 MS. SAMPSON: The State would call Mike Poole.

19 (Witness approaches.)

20 THE BAILIFF: Place your left hand on the
21 Bible, and raise your right hand, please.

22 (Witness complies.)

23 THE CLERK: Do you solemnly swear or affirm
24 the testimony you give in this case will be the
25 truth, the whole truth, and nothing but the truth,

1 so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please have a seat, and state your
4 full name.

5 (Witness seated.)

6 THE WITNESS: Michael Poole.

7 MICHAEL POOLE,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SAMPSON:

11 Q. Give me one second, Investigator Poole.

12 (Pause.)

13 Q. Investigator Poole, sorry about that. Good
14 afternoon. Where do you work?

15 A. Richland County Sheriff's Department.

16 Q. And how long have you worked there?

17 A. Thirty-nine years.

18 Q. And what is your role at the Sheriff's Department?

19 A. I do forensics and video collection.

20 Q. And how long have you been doing that?

21 A. About three years.

22 Q. Prior to that, what were you doing?

23 A. I worked in narcotics for 27 years.

24 Q. So you've just recently -- I wouldn't say recently,
25 but in your career recently been doing forensics?

1 A. Correct.

2 Q. What is that?

3 A. I do computer forensics from an applications-type
4 thing and I do -- I collect videos from crime
5 scenes.

6 Q. So how does that work when they ask you? Do they
7 call you up, or how does that work?

8 A. They'll call me up or e-mail me or notify me some
9 way, and I just go out to the scene and collect it
10 and put it on a CD and give it to them.

11 Q. And do you remember how you got involved in this
12 case?

13 A. I think while I was at a meeting -- we have two
14 meetings a week to go over just what's going on.
15 And I think it happened over the weekend or
16 happened a day earlier and they asked me at the
17 meeting to go out there.

18 Q. And do you remember where you went?

19 A. I went to 1234 Universal Drive.

20 Q. And what did you do once you got there?

21 A. I collected a video from the DVR.

22 Q. And how do you do that?

23 A. Basically you -- it's software in the DVR. It's
24 like a computer, basically, and you -- I use a
25 thumb drive and put it in and download it. You put

1 in the start date, end date, times, and the camera
2 you want and just download it to a thumb drive.
3 And then I transfer it usually to a CD or DVD and
4 give it to the investigator.

5 Q. And in this particular apartment complex, was there
6 only one camera, or how many?

7 A. I don't remember, but there were a lot of cameras,
8 though.

9 Q. So did you download all of them?

10 A. No, I kind of watched them. They had told me what
11 to look for, somebody running and I kind of watched
12 --

13 Q. I'm going to stop you. When you say "they," who?

14 A. I think Investigator Johnson.

15 Q. Okay.

16 A. And I kind of watched for the cameras to see what
17 were pertinent that show the people running in
18 general.

19 Q. Okay. And what did you do once you saw that?

20 A. I put the start time, end time, and downloaded
21 those cameras.

22 Q. And while you're doing that, do you write down or
23 do anything?

24 A. I usually take notes on where I'm at and what time
25 I got there, what I'm doing.

1 Q. And did you do that in this case?

2 A. I did.

3 Q. Do you remember what you wrote down?

4 A. I think I wrote down the camera numbers. I took
5 and I wrote down -- when I got there, I was told
6 there was a camera facing the victim's apartment.
7 I thought that was a good one to get. And I was
8 informed when I got there and I could tell by
9 watching the video that camera was inoperable.

10 Q. I'm going to have you repeat that because you talk
11 really fast.

12 A. I'm sorry. When I got there, I was informed that
13 there was a camera facing the victim's apartment,
14 so I was kind of excited there might be some good
15 video. And then they told me that camera was not
16 working. And when I viewed the video on the
17 screen, I could see that camera wasn't working, so
18 I couldn't collect it because there wasn't video
19 for that camera.

20 Q. And, again, you said "they." Who is "they"?

21 A. The apartment -- the management.

22 Q. So were they there when you were?

23 A. Yes.

24 Q. And did you make any notations about that camera
25 not working?

1 A. I wrote it on my notes that that camera was not
2 operating.

3 Q. And do you remember how many cameras you did
4 download?

5 A. I don't recall, six or eight. I don't recall.

6 Q. If I showed you your report, would that help
7 refresh your memory?

8 A. Yes.

9 (Pause.)

10 Q. Can you take a look at that and tell me what it is?

11 A. It's the little notes I took when I got there.

12 Q. And does it tell you how many cameras you
13 downloaded?

14 A. Seven.

15 Q. And --

16 A. And I indicated DVR time. The DVR was an hour off
17 from daylight savings time or something. It was an
18 hour behind.

19 Q. When you say camera, you mean Camera 7 or seven
20 cameras?

21 A. Seven different cameras. Camera 10, 9, 8, 11, 5,
22 8, 9.

23 Q. So you're repeating some of them?

24 A. It's different times. It was actually six cameras.
25 One camera had two different timeframes.

1 Q. Okay. So six cameras, actually. You're just
2 noting -- are your notes showing the times that you
3 recorded?

4 A. Yes, ma'am.

5 Q. And do you record the whole thing or did you break
6 it up? What I mean by that is, did you record the
7 whole five minutes even though it only showed
8 movement at certain times or did you break it up?

9 A. Some of them I broke up. I think one of them I
10 broke up, but some I recorded it straight through.

11 Q. Did you -- how do record that? You put it on a
12 thumb drive, I think you said?

13 A. Yes, ma'am.

14 Q. Then what do you do with the thumb drive?

15 A. I bring it back in the office and I transfer it to
16 a CD or DVD. If it will fit on a CD, I put it on a
17 CD. But a lot of the videos are huge, you have to
18 use DVDs.

19 Q. And did you do that in this case?

20 A. I did.

21 Q. And then what did you do with it?

22 A. I gave it to Investigator Johnson.

23 Q. I'm going to show you what has been previously
24 marked State's Exhibit 17. Prior to today, we
25 reviewed the video together, didn't we?

1 A. Yes, ma'am.

2 Q. Okay. And that is that DVD that we used to
3 video -- to watch that?

4 A. Yes, ma'am.

5 Q. Did that fairly and accurately depict what you
6 downloaded back in May of 2014?

7 A. Yes, it did.

8 Q. And is that kept in the normal course of your
9 business at the Sheriff's Department?

10 A. Not with me, by Investigator Johnson, yes, ma'am.

11 MS. SAMPSON: At this time, Your Honor, we'd
12 ask that we introduce State's Exhibit 17 into
13 evidence.

14 THE COURT: Any objection?

15 MS. ZMROCZEK: No objection, Your Honor.

16 THE COURT: Without objection, it is admitted.

17 (WHEREUPON, State's Exhibit No. 17 was
18 marked for identification and received
19 into evidence.)

20 MS. SAMPSON: Beg the Court's indulgence.

21 THE COURT: Yes, ma'am.

22 (Pause.)

23 MS. SAMPSON: Thank you. No further questions
24 at this time.

25 THE COURT: Cross-examine?

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q. Investigator Poole, you had an opportunity to view State's 17?

A. Yes, ma'am.

Q. And you say that this contains everything that you downloaded; right?

A. Yes, ma'am.

Q. Okay. So if we put this DVD in, we should be able to see Camera 10?

A. I don't know if I downloaded 10 or not. Let me check.

(Pause.)

A. I think so, yes, ma'am. I indicated that I downloaded it.

Q. You indicated that you downloaded it, so we should expect to see it on there?

A. Yes, ma'am.

Q. And if we don't see it on there, what could be an explanation for that?

A. It might have been copied over. It may have been copied over, I don't know.

Q. It's just been copied over?

A. I guess, ma'am. I'd have to look at it and do some research on it.

- 1 Q. Okay. And you've actually been asked to do that,
2 to have that done in the last couple of years,
3 haven't you, with this case?
- 4 A. I don't recall being asked to do that, no.
- 5 Q. All right. When you were going to get the camera
6 and view the video, you got to pick and choose
7 which cameras you thought were applicable; right?
- 8 A. Yes, ma'am.
- 9 Q. So you didn't save that for anybody else to view,
10 you just downloaded what you thought was
11 applicable?
- 12 A. I was told what to look for and I looked for what
13 they told me to look for and I downloaded what I
14 saw, what they told me to look for.
- 15 Q. You've been an investigator for how long?
- 16 A. Since like '84.
- 17 Q. And you went to school?
- 18 A. Yes, ma'am.
- 19 Q. And they told you how to preserve evidence?
- 20 A. Yes, ma'am.
- 21 Q. And you know that defense attorneys like to view it
22 as well?
- 23 A. Yes, ma'am.
- 24 Q. And you know that sometimes, you can overlook
25 things? We're all human; right?

- 1 A. Yes, ma'am.
- 2 Q. Sometimes things can be missed?
- 3 A. Yes, ma'am.
- 4 Q. So the better practice would be to download the
5 time period so that it can be viewed at any time;
6 right? By anybody?
- 7 A. I did. It's on a disk, you can view it.
- 8 Q. Right, right. The times that you selected are on
9 the disk that we can view; right?
- 10 A. Yes, ma'am. I could download a week, but it
11 wouldn't fit on the disk.
- 12 Q. Right, it wouldn't fit on the disk?
- 13 A. The video is huge, the file size. We have storage
14 issues with it.
- 15 Q. I'm sorry, you have storage issues?
- 16 A. Yes, ma'am. My video is too big to fit on one DVD
17 or keep at the office. It fills the hard drive up.
18 The video is huge in file size.
- 19 Q. But there are external hard drives, certainly;
20 right?
- 21 A. Yes, ma'am.
- 22 Q. And those are things that are available to Richland
23 County?
- 24 A. Yes, ma'am.
- 25 Q. Because you want to make sure that you preserve all

1 of the evidence; right?

2 A. I preserved the evidence I was asked to collect on
3 disk.

4 Q. Right. And the specific times that you have?

5 A. Yes, ma'am.

6 Q. And it's your testimony that on this video is
7 Camera 10?

8 A. It is my recollection it is, yes, ma'am.

9 Q. And you documented the times 4:16 to 4:18?

10 A. Yes, ma'am.

11 Q. And we understand that that's an hour off. It
12 didn't collect the daylight savings time?

13 A. Yes, that's the time, it's just an hour off.

14 Q. Okay. So when it says 4:16, it is actually 5:16?

15 A. I think it is actually 3:16. Let me check.

16 (Pause.)

17 A. You're right. The DVR was an hour slow, so it's
18 actually -- the actual real time was an hour
19 further.

20 Q. Okay. So the real time would be an hour further?

21 A. Right.

22 Q. All right. So Camera 10 on there we should see
23 4:16:56 to 4:18:12; right?

24 A. Correct.

25 Q. Which was really 5:16 to 5:18:12?

- 1 A. That would be correct.
- 2 Q. And then Camera 9 shows 4:19:37 to 4:19:40?
- 3 A. Yes, ma'am.
- 4 Q. Camera 8, 4:20:02 to 4:20:18?
- 5 A. Yes, ma'am.
- 6 Q. Camera 11, 4:20:14 to 4:20:34?
- 7 A. 35. Bad handwriting, I guess.
- 8 Q. Camera 5, 4:20:15 to 4:21?
- 9 A. Correct.
- 10 Q. Camera 8, 4:25:02 to 4:25:16?
- 11 A. What camera is that?
- 12 Q. 8.
- 13 A. I have got 4:25:38 to 4:25:50.
- 14 Q. And then what do you have for Camera 9?
- 15 A. 4:25:38 to 4:25:58.
- 16 Q. 58, okay. And so each one of those cameras that's
- 17 on that disk, we should see some movement or some
- 18 people running; correct?
- 19 A. Yes, ma'am.
- 20 Q. And when did you gather all of this data?
- 21 A. I believe on the 25th day, or maybe -- it was the
- 22 Tuesday after the crime, I believe. I'm not sure
- 23 what date that is.
- 24 Q. And then you have a system within your department
- 25 that every case file, it gets uploaded to a

1 program; right?

2 A. Yes, ma'am.

3 Q. So all of the documents are in the same place?

4 A. Yes, ma'am.

5 Q. And when did you upload your report?

6 A. I didn't.

7 Q. I'm sorry?

8 A. I did not.

9 Q. Okay. And did you do any other -- were you asked
10 to do any other video collection?

11 A. This is all I recall doing.

12 Q. Were you asked to go to Club Torch and look at
13 their videos?

14 A. I don't recall doing that, no.

15 MS. ZMROCZEK: Thank you.

16 THE COURT: Redirect?

17 MS. SAMPSON: No, sir.

18 THE COURT: You may come down, and you are
19 free to leave. Thank you.

20 (Witness excused.)

21 THE COURT: Call your next witness, please.

22 MS. SAMPSON: The State would call Rachel
23 Grant.

24 (Witness approaches.)

25 THE BAILIFF: Place your left hand on the

1 Bible, and raise your right hand, please.

2 (Witness complies.)

3 THE CLERK: Do you solemnly swear or affirm
4 the testimony you give in this case will be the
5 truth, the whole truth, and nothing but the truth,
6 so help you God?

7 THE WITNESS: I do.

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

10 (Witness seated.)

11 THE WITNESS: Rachel Grant.

12 RACHEL GRANT,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. SAMPSON:

16 Q. Good afternoon, Ms. Grant.

17 A. Good afternoon.

18 Q. All right. Where do you work?

19 A. I am employed with the Richland County Sheriff's
20 Department.

21 Q. How long have you worked there?

22 A. Over eight and a half years.

23 Q. And what is your job there?

24 A. I'm the DNA technical leader over the DNA
25 laboratory.

1 Q. And what do you do?

2 A. Basically I perform case work, and also I'm in
3 charge of overseeing the technical functions of the
4 laboratory.

5 Q. And what do you guys process there?

6 A. Our job basically is to develop DNA profiles from
7 materials left behind at a crime scene. We do that
8 in several ways. We do physical examinations,
9 microscopic, by chemical analysis, generate data,
10 interpret that data, and generate reports based on
11 those interpretations.

12 Q. And in order to do that, did you have to get
13 training?

14 A. Yes.

15 Q. What training do you have?

16 A. To be a DNA analyst you, first of all, have to have
17 a specific degree. I have a biology degree from
18 the University -- Winthrop University, a biology
19 major, chemistry minor. And then I have a Master's
20 Degree in forensic serology and DNA from University
21 of Florida.

22 Since starting my employment with Richland
23 County, I've undergone extensive training in
24 forensic DNA and serology and I have successfully
25 completed competency set forth by the FBI and the

1 DNA Advisory Board.

2 Q. And do you have ongoing education?

3 A. I do.

4 Q. What is that?

5 A. Basically I'm required to attend professional
6 conferences yearly. And then also we are
7 proficiency tested twice a year.

8 Q. Have you been certified as an expert in DNA
9 analysis before?

10 A. I have.

11 MS. SAMPSON: At this time, Your Honor, I'd
12 ask that Ms. Grant be qualified as an expert in the
13 field of DNA analysis.

14 MS. ZMROCZEK: No objection, Your Honor.

15 THE COURT: Very well, she will be permitted
16 to render opinions in that area, Solicitor.

17 MS. SAMPSON: Thank you, Your Honor.

18 BY MS. SAMPSON:

19 Q. So how do you -- I want to just move you to this
20 case in particular. How does evidence get to you?

21 A. Basically, evidence is logged into our evidence and
22 property room. It is then picked up by a person
23 from the DNA department, usually, our DNA
24 technician. She will do some preliminary testing
25 and cutting of that evidence. And then it's

1 transferred to the DNA analyst on that case.

2 Q. And do you test everything or do you have to get
3 requests to test things?

4 A. We receive written requests. And that's basically
5 requesting items that we will run, and that's how
6 we decide -- or basically which items we'll run for
7 analysis.

8 Q. And did you receive a request in this case?

9 A. Yes, I did.

10 Q. And what did you test?

11 A. In this particular case, I tested some fingernail
12 scrapings, a buccal swab from Channen Ricks.

13 THE COURT REPORTER: I'm sorry, what?

14 A. A buccal swab from Channen Ricks. And then there
15 was a few other additional swabs in this case.

16 Q. Okay. I'm going to talk about each individual
17 thing. Fingernail scrapings, who were they from?

18 A. My understanding, they were from the victim, Thomas
19 Pauling.

20 Q. And how do you get fingernail scrapings?

21 A. So in DNA world, a fingernail scraping is known as
22 an intimate sample. And basically, from my
23 understanding, they take a clean, almost
24 toothpick-type contraption and they scrape under
25 the fingernails.

1 At that point, we are looking for any DNA that
2 is not belonging or attributable to the victim, so
3 it is an intimate sample, something that we expect
4 to see the victim on, we are looking for foreign
5 DNA at that point.

6 Q. And in this particular case, you had fingernail
7 scrapings from Thomas Pauling?

8 A. That's correct.

9 Q. Were you able to extract any DNA from those
10 fingernail scrapings?

11 A. From Items 11 and 12, yes, I was.

12 Q. And once you have DNA, then what do you -- do you
13 compare it to anything?

14 A. Yes.

15 Q. What do you compare it to?

16 A. We -- in order to make a conclusion, we have to
17 compare what we develop in the laboratory to a
18 known standard. A known standard is just someone's
19 known DNA profile. And that is usually obtained --
20 it's called a buccal scab. It is basically a
21 sterile swab. It is put inside someone's mouth,
22 like their known saliva sample. And then we run
23 that and make a comparison from evidence to that
24 standard.

25 Q. And in this case, you had a buccal swab from the

1 Defendant, Channen Ricks; correct?

2 A. That's correct.

3 Q. And you ran that against the DNA that was found
4 under the fingernails?

5 A. Correct, we compared the two.

6 Q. And was there a match?

7 A. No.

8 Q. And was there a match to anyone that you had
9 available to test for what was under the
10 fingernail?

11 A. No.

12 Q. For both 11 and 12?

13 A. Well, Item 11, I developed a mixture, which just
14 means there's more than one person present.
15 However, Channen Ricks is excluded. Whereas,
16 Item 12, which is the other fingernail scraping,
17 even though an attempt to extract and develop a
18 profile, there was no result developed from that
19 particular nail scraping.

20 Q. So in conclusion, just to make sure I understand,
21 his right hand -- right hand was scraped and DNA
22 was found, but Mr. Ricks was eliminated as a
23 contributor to that DNA?

24 A. That's correct.

25 Q. And there were some swabs also given to you, Test

1 Marker A, B, and C? I have BA, AC, and AD, I'm
2 sorry.

3 A. Yes. Correct.

4 Q. And what were those things submitted to you to be
5 tested for?

6 A. Those particular swabs were to have presumptive
7 testing for blood.

8 Q. And did they come back as blood?

9 A. No.

10 Q. What's the presumptive test that is used?

11 A. In our laboratory, we use a presumptive test called
12 the Kastle-Meyer, or also known as phenolphthalein.
13 And basically it is a presumptive test for blood.
14 It is not species specific, so if it was any type
15 of blood, say, dog blood, human blood, horse blood,
16 there would be no difference between the two.
17 However, if it's positive, we're going to go ahead
18 and cut that sample and run it straight through
19 DNA -- for the DNA analysis process. But if it's
20 negative, then at that point, it's not blood.

21 Q. And this one was negative for blood; correct?

22 A. That's correct.

23 MS. SAMPSON: Beg the Court's indulgence.

24 THE COURT: Certainly.

25 (Pause.)

1 MS. SAMPSON: No further questions, Your
2 Honor.

3 THE COURT: Do you have any questions?

4 MS. ZMROCZEK: No questions.

5 THE COURT: Thank you. You may step down, and
6 you free to leave. Thank you.

7 (Witness excused.)

8 THE COURT: Call your next witness.

9 MS. SAMPSON: The State would call David
10 Collins.

11 (Witness approaches.)

12 THE BAILIFF: Place your left hand on the
13 Bible, and raise your right hand, please.

14 (Witness complies.)

15 THE CLERK: Do you solemnly swear or affirm
16 the testimony you give in this case will be the
17 truth, the whole truth, and nothing but the truth,
18 so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Please have a seat, and state your
21 full name for the record.

22 (Witness seated.)

23 THE WITNESS: David Jeffrey Collins.

24 DAVID J. COLLINS,
25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SAMPSON:

Q. Good afternoon, Investigator -- is it Investigator Collins? I never know what to call you.

A. Yes.

Q. Where do you work?

A. I work for the Richland County Sheriff's Department.

Q. And what do you do there?

A. I work in the forensic sciences laboratory. Specifically, I work in the firearms tool mark section.

Q. And how long have you been working there?

A. I've been at that department, in that section for 14 years.

Q. And what did you do prior to that?

A. I was in a similar position at the State Law Enforcement Division, or SLED, forensics laboratory for 12 years prior to that.

Q. So approximately 26 years you've been doing gun testing, and that kind of thing?

A. Yes --

Q. Ballistics?

A. Yes, I've been a firearms tool marks examiner for 26 years.

1 Q. And do you have training in order to do that?

2 A. Yes, I do.

3 Q. What training do you have?

4 A. When I became employed at SLED, I entered what is
5 essentially an on-the-job training program for
6 firearms and tool marks examiners. This program is
7 about two and a half years in length, something
8 like an apprenticeship. There are no schools that
9 you can go to to learn how to be a firearms and
10 tool marks examiner. It's all essentially
11 on-the-job training. I completed that training in
12 1993, and then began working cases on my own at
13 SLED.

14 In addition to that training, I have received
15 continuing education and training in my field of
16 expertise from various -- I've been to various
17 schools in various aspects of firearms and tool
18 marks examination and shooting scene
19 reconstruction.

20 I'm also a member of our professional
21 association, which is the Association of Firearms
22 and Tool Marks Examiners. Through that
23 association, I receive continuing updates in our
24 field of expertise and also attend training
25 seminars, as often as possible, provided by the

1 organization.

2 Q. And have you ever been qualified as an expert in
3 the field of ballistics examination?

4 A. I have been qualified as a -- and testified as an
5 expert witness in firearms examination in the
6 circuit courts of South Carolina in excess of 200
7 times. I have also been qualified as an expert and
8 testified in such cases in the states of North
9 Carolina and Georgia, and also testified in the
10 federal courts system and the military court
11 system.

12 MS. SAMPSON: At this time, Your Honor, we'd
13 ask that Investigator Collins be qualified as an
14 expert in the field of firearms and tool marks
15 examination.

16 MS. ZMROCZEK: No objection.

17 THE COURT: Very well. He will be permitted
18 to render opinions in those areas.

19 MS. SAMPSON: Thank you, Your Honor.

20 BY MS. SAMPSON:

21 Q. All right, Investigator Collins, how do you become
22 associated with a case? Does somebody call you, or
23 how does that work?

24 A. We receive a request for examination from the
25 investigator, or through the course of examining

1 what evidence has been submitted from the evidence
2 room, we may determine on our own that a case needs
3 to be examined.

4 Q. And did that happen in this case?

5 A. In this case, I believe we received an actual
6 request from the investigator.

7 Q. Okay. So what do you do when you get a request?

8 A. We will pull the evidence from the evidence room.
9 And the first thing we do when we start examining
10 the evidence is we'll take notes as to its
11 condition as it was received. We will photograph
12 the evidence and document its condition as we
13 received it. Then we will perform any kind of
14 other specialized examinations that we can to
15 determine as much as we can from the evidence.

16 Q. In this case, what was the first thing you did?

17 A. Well, after our initial receipt of the evidence,
18 which included a number of fired projectiles and
19 fired cartridge cases, I took measurements and
20 weights of the projectiles. I examined the
21 cartridge cases. All of this in order to determine
22 what caliber of firearm would have fired the
23 particular items.

24 In cases where we do not have any firearm
25 submitted, we will examine the bullets

1 independently. We'll compare them microscopically
2 with each other to determine whether or not they
3 were fired from one gun or from multiple firearms.

4 The way that we can do this is that when a
5 firearm is manufactured, there are machine
6 processes that are employed that leave behind
7 microscopic defects inside the barrel of the gun.
8 These defects and their location are random and
9 unique to each particular firearm. So when a
10 bullet is fired from a barrel, they are marked by
11 the barrel in a way that is unique to that
12 particular gun, much in the same way that a
13 fingerprint is unique to a person. I would compare
14 them side by side with each other under the
15 comparison microscope to determine if they have the
16 same markings or not.

17 And, again, when we don't have the firearm
18 submitted, then we'll take measurements of markings
19 left by the particular firearm that are left on the
20 rifling grooves in the barrel in order to determine
21 if possible a list of the possible source or brands
22 of the firearm that have fired this particular
23 projectile.

24 We do the same thing with cartridge cases. We
25 will compare them with each other microscopically

1 and look for areas of agreement that would indicate
2 that those cartridge cases were or were not fired
3 by one gun.

4 Q. In this case, did you receive bullets?

5 A. I received a total of five items that consisted of
6 a total of six separate objects. And that would
7 include a piece of gray metal, a fired bullet
8 jacket, another -- a fired -- intact fired bullet,
9 another bullet jacket, and then a bullet jacket
10 fragment with another piece of gray metal.

11 Q. And what's the difference between a bullet jacket
12 and a bullet?

13 A. In the case of many bullets designed for use in
14 handguns, they will often have a jacket material,
15 such as copper or a brass-type material surrounding
16 lead core. It is not uncommon for these types of
17 projectiles, when they strike an object or person,
18 to become separated from each other. The jacket
19 material will peel away from the core and leave two
20 separate items or more than two separates items.

21 Q. I am going to hand you what has been marked as
22 State's Exhibit Number 116 and ask you if you
23 recognize it?

24 A. This package bears my markings where I placed them
25 on the seal. Would you like me to open it?

1 Q. Yes. Do you have -- do you need scissors?

2 A. I have it.

3 Q. And you said -- while you're doing that, you said
4 that you marked it. Do you always mark it when you
5 close it back up?

6 A. It is standard laboratory procedure when you close
7 a container and seal a container in which you
8 receive evidence that you place tamper-indicating
9 evidence tape across that seal and then you initial
10 and date that seal. This does bear my marking and
11 date.

12 Q. And before showing it to the jury, does it all look
13 like it appeared to you on the date that you put it
14 in that envelope?

15 A. Yes. And on each of these individual interior
16 containers also bear my initials, the item number
17 to be assigned to the evidence in the laboratory,
18 and the case number. My initials and date are also
19 on the heat-sealed pouch where I placed them back
20 in the pouch after receipt.

21 MS. SAMPSON: At this time, Your Honor, we'd
22 ask that State's Exhibit 116 be introduced into
23 evidence. It is my understanding Defense has no
24 objection.

25 THE COURT: Without objection, State's 116 is

1 admitted.

2 (WHEREUPON, State's Exhibit No. 116 was
3 marked for identification and received
4 into evidence.)

5 BY MS. SAMPSON:

6 Q. And I see that you're opening it. I'm going to put
7 it all back in there. Does each one contain an
8 item? Can you explain that?

9 A. Each of these containers contains a projectile or
10 portions of a projectile that were recovered at
11 autopsy. These containers are labeled in a manner
12 consistent with what we received from the pathology
13 section or whoever performed the autopsy.

14 Q. Do you clean them or do anything to them when you
15 get them?

16 A. I do clean them so that I can handle them without
17 gloves, because handling this type of evidence with
18 gloves can sometimes lead to dropping them or
19 otherwise losing a grip on them. So we try to
20 clean them in a way that allows us to handle them
21 without gloves.

22 Before that, if there's any material on them
23 that needs to be removed, we will carefully remove
24 that material. We soak them in a very dilute
25 solution of bleach and water to sanitize them. And

1 then from that point forward we can handle them
2 without having rubber gloves on.

3 Each of these would have been examined for the
4 need to potentially bend the jacket material back
5 so that we can gain access to where we need to
6 microscopically examine them. Sometimes the jacket
7 material will peel back and cover up what we need
8 to look at.

9 In that case, if we're going to have to do
10 that, we would photograph the item before we alter
11 it in such a condition.

12 Q. And which one are you looking at?

13 A. This is what is listed as Item 5 from my report.
14 And it is a lead bullet core. This is the interior
15 portion of the bullet that was fired. It has no
16 jacketing material left on it.

17 Q. You can hold it up if you want.

18 A. This is from my report as Item 6. This is a bullet
19 jacket that has been separated from the core. In
20 other words, it has no core material in it. This
21 is the copper out of a bullet jacket.

22 This item is Item 8 from my report. This is
23 another bullet jacket, again separated from its
24 core.

25 This is Item 7 from my report. This is an

1 intact but damaged and distorted fired bullet. It
2 has the jacketing, in other words, and the core are
3 still joined together.

4 This is Item 9 from my report, which is a
5 fragment of a jacketing material and a lead portion
6 consistent with a bullet core. These were all
7 submitted as one item.

8 Q. And was everything you just went over -- Items 5,
9 6, 7, 8, and 9 -- those were all removed from the
10 body of Thomas Pauling; correct?

11 A. That is what the package indicates, yes.

12 Q. And does it say on the packaging where each piece
13 was taken from? You don't need to go over that.

14 A. Yes, it does.

15 Q. And that would have come from the coroner; correct?

16 A. These would be --

17 Q. Telling you where they were located?

18 A. They would have been removed by the medical
19 examiner or pathologist at autopsy.

20 Q. And I called it coroner, I'm sorry, I meant the
21 pathologist. She would be the one who would tell
22 you where each one was found within the body?

23 A. Yes.

24 Q. You can put them all back in.

25 (Pause.)

1 Q. I'm going to show you what is marked as State's
2 Exhibit Number 117. And if you could do the same
3 thing you just did with 116. Before you open it,
4 dose that look like what was given to you?

5 A. Yes, ma'am. My initials and date are also on the
6 seal of this item. This does appear to be the
7 evidence that I examined. There is one item here
8 that is indicated it has been repackaged, which
9 means we sent one of these items to SLED to be
10 entered into a database to be compared to these
11 other cases, so it would not -- it should not be in
12 -- it should not actually be in this package.

13 Q. And does that fairly and accurately depict the way
14 that you placed it into evidence after you tested
15 it?

16 A. Yes.

17 MS. SAMPSON: At this time, we'd ask to
18 introduce State's 117 into evidence.

19 THE COURT: Any objection?

20 MS. ZMROCZEK: No.

21 THE COURT: Without objection, 117 is
22 admitted.

23 (WHEREUPON, State's Exhibit No. 117 was
24 marked for identification and received
25 into evidence.)

1 BY MS. SAMPSON:

2 Q. And what does that contain, cartridge casings?

3 A. This item would contain three fired .40 caliber,
4 .40 Smith & Wesson caliber cartridge cases.

5 Here is one of the .40 caliber cartridge
6 cases.

7 Q. You don't have to go through all of them. Don't
8 they all look the same?

9 A. Very similar. I mean, some of them may have been
10 slightly crushed from damage they would receive at
11 the crime scene or not, but they're all very
12 similar in appearance.

13 Q. And you just said damage to the -- what do you mean
14 by damage to them?

15 A. They can be -- sometimes cartridge cases get
16 stepped on or run over by vehicles or somehow
17 otherwise slightly crushed. This usually does not
18 have an impact on our ability to use them for
19 examination purposes. The areas that we would be
20 focused on are largely protected from that type of
21 damage.

22 Q. And you don't know -- when you say they're damaged,
23 you don't know when they got damaged?

24 A. No, I do not. This package does contain three
25 fired .40 Smith & Wesson caliber cartridges --

1 cartridge cases, rather, my Item Numbers 21, 23,
2 and 24.

3 Q. And I believe you said one of them, which you did
4 examine, was sent to SLED, you did not receive that
5 back?

6 A. It is not in this package. It should not be in
7 this package.

8 Q. All together, how many were given to you to
9 examine?

10 A. I received a total of five fired .40 Smith & Wesson
11 caliber cartridge cases.

12 Q. And were you told where they were taken from on the
13 scene?

14 A. I do not recall.

15 Q. But they were all in association with this case?

16 A. Yes.

17 Q. And the bullets that were found in Thomas Pauling,
18 can you make any conclusions about those bullets?

19 A. Yes, I can.

20 Q. Or bullet fragments? And what conclusions did you
21 make?

22 A. Out of the items that were submitted, the jacket
23 portions and the fired bullet that still had the
24 jacket material on it were microscopically compared
25 with each other, and I was able to determine that

1 the Item 6 bullet jacket, the Item 7 bullet, the
2 Item 8 bullet jacket, and the Item 9 bullet jacket
3 fragment were all fired by the same gun. Those
4 markings I was looking for left by the rifling in
5 the barrel left considerable matching defects I was
6 able to use to determine they had been fired by one
7 gun.

8 Additionally, I took measurements of the
9 impressions left by the rifling of the firearm and
10 the number of rifling grooves evident in the
11 firearm barrel, and the number of them, and put
12 that information into a database service that was
13 provided to us by the FBI, and it is also mirrored
14 in other databases. That information was used to
15 produce a list of possible brands of firearms that
16 could have fired these particular bullets. I was
17 able to determine that they were consistent -- or
18 most consistent with them having been fired from a
19 .40 caliber firearm. So that information was added
20 as well.

21 And when I produced that list, it had a very
22 short number of possible source firearms listed.
23 Out of .40 Smith & Wesson caliber, and 10mm auto
24 had to be listed also because I couldn't exclude
25 it, Smith & Wesson was the only brand that came up

1 on that list.

2 Q. So all five that you received came from the same
3 gun; correct?

4 A. All five jacket or jacket fragment portions were
5 fired by one gun. The two lead portions that I
6 received that were by themselves, that were either
7 fragments of a bullet or the core of the bullet, I
8 was unable to determine if they were fired by the
9 same gun that fired the bullet jackets because the
10 bullet core does not come into contact with the
11 barrel. Therefore, they would not have been marked
12 in a way that is unique to that particular gun. So
13 those items are actually unsuitable for any kind of
14 identification purposes.

15 Q. I hand you what has been marked as State's Exhibit
16 118. Do you recognize that?

17 A. Yes. This also bears my initials and date on the
18 seal where I sealed it. This indicates that it
19 contains my Item 29 from my report, which would
20 have been one of the other remaining fired
21 cartridges.

22 Q. And where does it say -- does it say where that one
23 came from?

24 A. Front bedroom floor is what is listed on the label.

25 Q. So just to make sure I understand everything you

1 said, all of the casings that were given to you
2 came from the same gun?

3 A. That is correct.

4 Q. And all of the bullets or bullet fragments that
5 were given to you came from the same gun?

6 A. Actually, I do not believe I discussed cartridge
7 cases as far as my identification themselves, but,
8 yes, I did perform comparisons on the cartridge
9 cases independently of the bullets and was able to
10 determine that based on the markings left by the
11 firearm on them when they were fired from a gun
12 that they were also fired by one gun and they were
13 also consistent with .40 caliber ammunition.

14 MS. SAMPSON: Beg the Court's indulgence.

15 THE COURT: Certainly.

16 (Pause.)

17 MS. SAMPSON: No further questions.

18 THE COURT: Cross-examine?

19 MS. ZMROCZEK: Briefly.

20 CROSS-EXAMINATION

21 BY MS. ZMROCZEK:

22 Q. Investigator Collins, let me show you what has been
23 marked for identification as Defendant's 31 and ask
24 you if you recognize that?

25 A. Yes, this is a copy of the photograph that I took

1 documenting the condition of these items when I
2 received them from the laboratory.

3 MS. ZMROCZEK: Your Honor, at this time, we
4 would move Defendant's 31 into evidence.

5 MS. SAMPSON: Without objection.

6 THE COURT: Without objection, Defendant's 31
7 is admitted.

8 (WHEREUPON, Defendant's Exhibit No. 31
9 was marked for identification and
10 received into evidence.)

11 BY MS. ZMROCZEK:

12 Q. So what you did is basically you took all of the
13 cartridges and then the cartridge casings -- or
14 the -- so the cartridges are the bullets; right?

15 A. The bullets or projectiles are a different type of
16 evidence than cartridges. Cartridges are an
17 unfired unit of ammunition, such as a bullet in a
18 cartridge case ready to be fired. What you have
19 represented there are projectiles or fragments of
20 projectiles and fired cartridge cases.

21 Q. Are you able to tell the projectiles by what type
22 of -- what I mean, what is a hollow point?

23 A. A hollow point projectile is a bullet that is
24 designed to expand on impact of soft tissue. It
25 has a hollow cavity in the nose and upon impact of

1 soft tissue, the pressure -- the fluids in the
2 tissue causes that cavity to open up and spread
3 back. The common term we use is mushroom.
4 Sometimes they work, sometimes they don't. But it
5 is not uncommon to encounter hollow point bullets
6 occasionally.

7 Q. Would you classify those as hollow points?

8 A. The items that are intact enough for me to be able
9 to determine what they are, yes, they were
10 consistent with hollow point ammunition.

11 Q. And are those -- those are the type of bullets that
12 can do -- they can do the most damage; right?

13 A. They are designed to do more damage than a full
14 metal jacket or a closed jacket.

15 Q. And then the cartridge -- excuse me, the casings,
16 specifically Items 21 and 22, you didn't squish
17 those, did you?

18 A. No, I did not.

19 Q. Okay. But -- and they weren't squished when they
20 came out of the gun; right?

21 A. No, they were not.

22 Q. Okay. So when they came out of the gun, they were
23 more similar to Items 23, 24, and 25?

24 A. Yes, they would have been intact.

25 Q. Intact?

1 A. Yes.

2 Q. So Items 21 and 22 were deformed?

3 A. Yes.

4 Q. So either somebody stepped on them?

5 A. It would have to be somebody very large, very
6 heavy, and very hard-soled boots to damage it to
7 that extent. The damage that we see here is most
8 consistent with what we see with cartridge cases
9 that have been run over by a vehicle.

10 Q. Thank you. Most consistent with casings that have
11 been run over by a vehicle. Because they're in the
12 road, and obviously when you're driving you don't
13 see them; right?

14 A. Correct.

15 Q. And so you run over them. And does that have the
16 opportunity to manipulate their location?

17 A. Oh, it can, yes.

18 Q. Okay. So we can't tell from -- if these bullets --
19 if these casings have been manipulated, we don't
20 know if they landed where they were found because
21 they've been, at least, we know run over or stepped
22 on by a very large person?

23 A. Yes, they have -- these do indicate by their
24 appearance that they have been damaged. The nature
25 of that damage would indicate -- I don't know that

1 you could use that as a means of locating where
2 they were initially -- where they initially came to
3 rest when they were fired.

4 Q. Okay. You said it much better than I did. And
5 typically when you fire -- what is the typical
6 direction of a casing?

7 A. The type of firearm that would have been consistent
8 with being the source of item for these, typically
9 they eject to the right, perhaps slightly to the
10 rear, but generally to the right side of the
11 shooter.

12 Q. To the right side of the shooter, slightly to the
13 rear?

14 A. Sometimes slightly to the rear.

15 Q. And what is the distance that it goes?

16 A. That varies depending on the ammunition in the
17 firearm. Without actually doing a testing with the
18 specific gun and this specific type of ammunition,
19 I can't give you a really exact answer on that.
20 They can go several feet.

21 Q. Okay. And does it also matter how the gun is being
22 held when it's being fired?

23 A. Yes, it does. It depends on the orientation of the
24 gun. If it's being held vertically, it can be one
25 side or the other. The height of the firearm above

1 the ground can have a bearing on that, what
2 happens. And, also, how strongly the person is
3 gripping the firearm can impact the -- actually the
4 direction and the distance the cartridge is
5 ejected.

6 Q. So, for example, if I'm on the ground and I'm
7 firing, it could be different than if I'm standing
8 and firing?

9 A. There would be some -- there's some differences,
10 they may be slight. Without -- again, without
11 testing the firearm, I do not know.

12 Q. So in this case, there was no testing done to
13 say -- to be able to say where the shooter was
14 standing?

15 A. We did not have enough to go on to be able to
16 examine to make that determination.

17 Q. And then the damage to 21 and 22 obviously
18 indicates that they were most likely rolled over by
19 a vehicle?

20 A. The appearance is consistent with what I've seen
21 with cartridge cases that have been run over by a
22 vehicle.

23 MS. ZMROCZEK: Thank you. I have no further
24 questions.

25 THE COURT: Redirect?

1 MS. SAMPSON: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. SAMPSON:

4 Q. Ms. Zmroczek just went over the damage to the
5 casings. Could something be damaged and stay
6 exactly where it was?

7 A. It can, yes.

8 Q. So if it got ran over, it could be ran over and
9 stayed exactly in the same position as it was
10 before it was run over?

11 A. It may move an inch or two, but, yes, it could be
12 very close to -- it could be very close to that
13 location. There's no way to predict what's going
14 to happen.

15 Q. Exactly. There's no way to tell how far it went;
16 correct?

17 A. That's correct.

18 Q. And there's no way to tell if it stayed still?

19 A. That is correct.

20 Q. As far as with the trajectory -- and I think I
21 understand this -- when a gun shoots, it ejects the
22 cartridge, I think you said it ejected it to the
23 right?

24 A. Typically, these types of firearms would eject the
25 cartridge case to the right of the shooter.

1 Q. The right of the shooter?

2 A. If the person -- if the shooter was directing the
3 firearm in this direction, the cartridge case would
4 eject to the right. Or if he -- if you want to
5 look at it as the clock position method, if
6 12:00 o'clock is the direction the gun is being
7 fired, typically it would eject to the
8 3:00 o'clock, perhaps the 5:00 o'clock position,
9 but varying again from firearm to firearm. And
10 without testing this particular firearm, I don't
11 know exactly what would happen.

12 Q. Is there an estimate on a .40? Is that what we
13 believe this was based on the casings?

14 A. Yes, it's a .40 -- and cartridge casings also bear
15 specific class characteristics or markings on them
16 that are fairly unique to a particular line of
17 Smith & Wesson brand firearm. I do have that
18 information, but without the gun to test, I
19 couldn't really tell.

20 Q. And, roughly, is there an estimate how far those
21 particular guns eject the casings?

22 A. Again, they could go several feet.

23 Q. Okay. There's no way to know?

24 A. There's no way to know. And the issue that we run
25 into with ejection patterns, if you will, from

1 firearms is the surface onto which the cartridge
2 case falls whether it's going to roll. If they
3 fall into grass, they're going to tend to stay very
4 close to where they initially fell. It's like
5 falling into shag carpet. If they fall onto a
6 paved surface, they may bounce somewhat, several
7 inches or a couple or a few feet before they come
8 to rest.

9 Q. So grass would impede the ability of the casing to
10 keep moving?

11 A. Grass tends to make them -- they tend to stay
12 closer to where they initially impact. Again, it
13 comes back to how closely cut is the grass. A lot
14 of things -- there are so many variables that come
15 into play with this that it's hard to really make
16 any kind of determination as to where the shooter
17 was with any degree of accuracy without doing a lot
18 of testing under those same circumstances under
19 which the gun was fired.

20 Q. And if multiple shots were fired, would you expect
21 those cartridges to be close to each other or
22 further away from each other? In a rapid
23 succession?

24 A. It depends on what the shooter was doing at the
25 time. Is the shooter moving as well, in which case

1 that's going to spread the cartridge cases out. So
2 it -- we try -- there's very little we can actually
3 do with an ejection pattern of cartridge cases, if
4 you will, without a lot of information.

5 Q. Correct. So it would be fair to say that rapid
6 succession may make a bullet casing come into a
7 line or at least be grouped together if the person
8 is moving?

9 A. Yes, if it's moving in one direction, they may
10 string out in a line-type pattern. But, again,
11 there may be some variations as to where they end
12 up.

13 MS. SAMPSON: Beg the Court's indulgence.

14 (Pause.)

15 BY MS. SAMPSON:

16 Q. Let me show you what has been introduced as
17 State's -- Defendant's Exhibit 21. Those are the
18 bullet casings that were found on the scene.

19 A. I see markers on the ground.

20 Q. The pink markers are bullet casings. Is that what
21 you would expect to find if a gun were shot in a
22 linear path?

23 A. It could be.

24 Q. Could be?

25 A. Again, without -- this is the type of -- because of

1 the surface that you're dealing with, it's a
2 concrete surface, and all the variables involved, I
3 would hesitate to place the shooter anywhere
4 specifically in this parking lot.

5 Q. So it would take asking the shooter to know exactly
6 where he was; correct?

7 A. I would base -- I would be more comfortable with
8 that, yes.

9 Q. And, in fact, if the bullet casings are on that
10 pavement and got ran over, that could damage them?

11 A. Yes.

12 MS. SAMPSON: Beg the Court's indulgence.

13 (Pause.)

14 MS. SAMPSON: No more questions, Your Honor.

15 THE COURT: Recross?

16 MS. ZMROCZEK: None, thank you.

17 THE COURT: Thank you. You may come down, and
18 you are free to leave, Mr. Collins. Thank you.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 THE COURT: At this point, ladies and
22 gentlemen, we'll take a recess. I will let you go
23 to your jury room for about 15 minutes. Do not
24 begin your deliberations. We will be with you
25 soon.

1 Thank you.

2 (WHEREUPON, the jury retires to the jury
3 room at 3:36 p.m.)

4 THE COURT: Anything from the State before we
5 recess?

6 MS. SAMPSON: No, sir, Your Honor.

7 THE COURT: Anything from the Defendant?

8 MS. ZMROCZEK: Nothing.

9 THE COURT: We'll be at ease for 15 minutes.

10 MS. ZMROCZEK: Thank you.

11 THE COURT: Thank you.

12 (WHEREUPON, a break was taken at 3:37
13 p.m.)

14 THE COURT: Is everybody ready?

15 MS. SAMPSON: We are ready, Your Honor.

16 MR. WILLIAMS: Yes, Your Honor.

17 THE COURT: Very good. Let the record reflect
18 Mr. Ricks is present.

19 Let's bring in our jury, please.

20 (WHEREUPON, the jury came into open
21 court at 3:52 p.m.)

22 THE BAILIFF: The jury is seated, Your
23 Honor.

24 THE COURT: Thank you very much, ladies and
25 gentlemen. We are ready to continue. Your next

1 witness, I think there will be some photographs, is
2 what you are planning?

3 MR. WILLIAMS: Correct.

4 THE COURT: So that is purpose of this scene
5 to help you visualize some of the testimony. So,
6 thank you very much.

7 Solicitor, thank you. You may call your next
8 witness.

9 MR. WILLIAMS: Thank you, Your Honor. The
10 State would call Harold Bouknight, Investigator
11 Bouknight, to the stand.

12 (Witness approaches.)

13 THE BAILIFF: Place your left hand on the
14 Bible, and raise your right hand, please.

15 (Witness complies.)

16 THE CLERK: Do you solemnly swear or affirm
17 the testimony you give in this case will be the
18 truth, the whole truth, and nothing but the truth,
19 so help you God?

20 THE WITNESS: I swear.

21 THE CLERK: Have a seat, and state your full
22 name for the record.

23 (Witness seated.)

24 THE WITNESS: Sergeant Harold Michael
25 Bouknight.

1 HAROLD M. BOUKNIGHT,
2 after being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Sergeant Bouknight, what is your position?

6 A. I'm a sergeant with the Richland County Sheriff's
7 Department Crime Scene Unit.

8 Q. How long have you worked in that position?

9 A. I've been with the Sheriff's Department since 2002
10 and been in crime scene since 2005.

11 Q. What type of training have you had in your position
12 as a crime scene analyst?

13 A. During my 11 years I have had our internal training
14 program, which took approximately 18 months to
15 complete, where I did written testing and
16 proficiency testing in all areas of crime scene
17 investigation that were: Photography, latent print
18 processing, evidence collection, footwear analysis,
19 fingerprint analysis, shooting incident
20 reconstruction, and blood stain analysis.

21 I have also attended seminars and training
22 classes ranging anywhere from 24 hours to 40 hours,
23 courses in blood stain analysis, crime scene
24 reconstruction, shooting incident reconstruction,
25 and I'm certified through the international

1 association for identification as a crime scene
2 investigator and a blood stain pattern examiner.

3 Q. Do you remember responding to 1234 Universal Drive,
4 Richland Village Apartments, Apartment 501?

5 A. Yes, sir. If I may refer to my notes just for
6 dates and times?

7 Q. If it will help you refresh your memory,
8 absolutely.

9 A. Yes, sir. I was contacted May 25th, early hours of
10 the morning. At that time I was the supervisor
11 on-call for our unit. Four of us, we rotate a week
12 on at a time, 24-hours a day. If there is a major
13 scene, then we're contacted to come out and assist,
14 especially something like a homicide or suspicious
15 death. We'll go out and provide an extra set of
16 eyes, extra hands, make determinations of any
17 questions.

18 I was contacted by Investigator Lee informing
19 me that he had a shooting victim and he needed some
20 help processing the scene.

21 Q. What did you do?

22 A. Whenever I got there I spoke to Investigator Lee,
23 and he told me that the apartments still needed to
24 be processed. The parking lot was taken care of.
25 I photographed the exterior and interior of the

1 apartment. Located -- the first time I went there
2 I located a fired cartridge casing in one of the
3 bedrooms. I photographed and marked it. We'll use
4 what we call tent markers, and they'll have
5 letters, numbers, or multiple letters or numbers on
6 them to where we can place something in a scene from
7 a general photograph. I used Tent Marker A to mark
8 that and photograph and collect it.

9 Later on I was contacted by Investigator
10 Johnson, and he told me that there were -- I needed
11 to respond back, that an impact point had been
12 located in the ceiling. Judging by the angle, the
13 height of the ceiling with my height, it was at
14 a -- such an oblique angle that it was hard to see.
15 Finally was able to locate it and photograph it
16 also with a sticky marker, Marker A, and then
17 remove that section of the sheetrock to look for a
18 secondary impact where -- when a projectile goes
19 through, it is going to continue going unless
20 something gets in its way. If it is something
21 sturdy enough to stop it, we'll have a secondary
22 impact, and it may penetrate, which penetrate means
23 to go into and not exit; and perforate, it goes all
24 the way through. And whenever I opened it up, I
25 was able to see daylight coming through where the

1 roof had been perforated by the projectile, so I
2 didn't need to look any further for it. I knew it
3 had gone off into the great beyond.

4 And at that point I finished everything up and
5 went back and processed the fired cartridge casing
6 I collected back at our headquarters for --
7 processed it for latent prints and swabbed it for
8 DNA.

9 Q. Were you able to take any pictures?

10 A. Yes, sir, I took photographs, like I said, of the
11 exterior and interior showing the fired cartridge
12 casing and the impact point.

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

15 THE COURT: Yes, you may.

16 (Complies.)

17 BY MR. WILLIAMS:

18 Q. All right, Sergeant Bouknight, I'm going to show
19 you a series of photographs here. I'm showing you
20 State's Exhibit 2, State's Exhibit 3, State's
21 Exhibit 4, and State's Exhibit 5. Do you recognize
22 these photographs?

23 A. Yes, sir. These are photographs that I took of the
24 interior of the apartment showing the bedroom and
25 the fired cartridge casing at the impact point in

1 the ceiling.

2 Q. And do those photos fairly and accurately depict
3 the interior of the apartment when you took the
4 photos that day?

5 A. Yes, sir.

6 MR. WILLIAMS: Your Honor, as this time the
7 State would move to enter State's Exhibit 2, 3, 4,
8 and 5 into evidence.

9 THE COURT: Without objection, State's 2, 3,
10 4, and 5 are admitted.

11 (WHEREUPON, State's Exhibit Nos. 2-5
12 were marked for identification and
13 received into evidence.)

14 BY MR. WILLIAMS:

15 Q. Sergeant Bouknight, I am now going to show you
16 State's Exhibits 10, 11, 12, 13, 14, 15, and 16.
17 And please look through those exhibits, sir.

18 A. Yes, sir. Those are also photos showing the
19 interior of the apartment and the ceiling with the
20 impact point.

21 Q. All right. And do these photos fairly and
22 accurately depict the interior of the apartment at
23 the time you took the photos?

24 A. Yes, sir.

25 MR. WILLIAMS: Your Honor, at this time the

1 State would move to enter State's Exhibits 10, 11,
2 12, 13, 14, 15, and 16.

3 THE COURT: 10 through 16 are admitted without
4 objection, each being a photograph.

5 (WHEREUPON, State's Exhibit Nos. 10-16
6 were marked for identification and
7 received into evidence.)

8 MR. WILLIAMS: Thank you, Your Honor.

9 BY MR. WILLIAMS:

10 Q. All right, Investigator Bouknight, I am going to
11 show you State's Exhibit 26, 27, 28, 29, 31, and
12 36. Please look through those photos, please, sir.

13 A. Yes, sir. It is -- 26 is showing the exterior of
14 the apartment, and then the others are the interior
15 of the impact point in the ceiling and roof.

16 Q. All right. And do those photos fairly and
17 accurately depict the exterior and the interior and
18 the impact point of the apartment as you took the
19 pictures that day?

20 A. Yes, sir.

21 MR. WILLIAMS: Your Honor, at this time the
22 State would move to enter State's Exhibits 26, 27,
23 28, 29, 31, and 36 into evidence at this time.

24 THE COURT: State's 26 through 29, 31, and 36
25 are admitted without objection.

1 (WHEREUPON, State's Exhibit Nos. 26-29
2 were marked for identification and
3 received into evidence.)

4 (WHEREUPON, State's Exhibit No. 31 was
5 marked for identification and received
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 36 was
8 marked for identification and received
9 into evidence.)

10 BY MR. WILLIAMS:

11 Q. Finally, Investigator Bouknight, I'm going to show
12 you State's Exhibits 102 through 107. Please look
13 at these photos, sir.

14 A. Yes, sir.

15 Q. All right.

16 MR. WILLIAMS: Your Honor, at this time the
17 State would move to enter State's Exhibits 102
18 through -- I'm getting ahead of myself.

19 BY MR. WILLIAMS:

20 Q. Do these photos fairly and accurately depict the
21 exterior and interior of the apartment as you took
22 the photos that night?

23 A. Yes, sir.

24 MR. WILLIAMS: All right. The State would
25 move to enter State's Exhibit 102 through 107 into

1 evidence.

2 THE COURT: State's 102 through 107 are
3 admitted without objection.

4 (WHEREUPON, State's Exhibit Nos. 102-107
5 were marked for identification and
6 received into evidence.)

7 MR. WILLIAMS: Your Honor, at this time the
8 State seeks permission to publish State's Exhibit 3
9 to the jury.

10 THE COURT: You may do so.

11 MR. WILLIAMS: Thank you, Your Honor.

12 (Complies.)

13 BY MR. WILLIAMS:

14 Q. Investigator Bouknight, please tell the jury what
15 this picture depicts?

16 A. That is the impact point in the ceiling. Front
17 bedroom.

18 MR. WILLIAMS: Your Honor, the State is
19 publishing State's Exhibit 15 to the jury.

20 THE COURT: Okay.

21 (Complies.)

22 BY MR. WILLIAMS:

23 Q. What does that picture depict?

24 A. That is also the impact point down at the bottom
25 and the lamp that would be from the ceiling.

1 Q. And what is this, Investigator Bouknight?

2 A. That is the impact point.

3 Q. What about this picture, State's Exhibit 28?

4 A. If you remember when I told you that there were
5 scaled markers we use to show the evidence and
6 general photographs, that A with the square cutout,
7 that is marking the fired cartridge casing.

8 Q. And where did you find Marker A, the casing?

9 A. That was in the front bedroom on the floor.

10 Q. And please describe State's Exhibit 36.

11 A. That is a photograph. Whenever I said that the
12 projectile was going to keep going unless something
13 stronger than its force gets in the way to stop it,
14 that is the sunlight coming through, so I knew that
15 the projectile had exited the roof.

16 Q. All right. Thank you, Sergeant Bouknight. Now,
17 based on the photos I just showed you, where would
18 the shooter have to stand in order for the round to
19 go through the ceiling?

20 A. I can't give an exact location within the room,
21 just in the room, because with the cartridge casing
22 there and the impact -- the cartridge casing can
23 be -- can move. It is mobile evidence. It can be
24 knocked around, or anything like that. The impact
25 point is not moving, but for it to travel at an

1 upward angle like that, the person -- and with the
2 height of those ceilings, the person would have to
3 be in that room because they can't be out of the
4 room and have it -- the bullet come in and curve
5 upward to go out. Whenever the -- no matter which
6 way the gun is pointing, when the gun goes off the
7 bullet is going to travel in a straight line unless
8 it is acted on by outside force.

9 Q. Could you identify this for me, Sergeant Bouknight?

10 A. Yes, sir, that is the fired cartridge casing. It
11 is the .40 caliber from the front bedroom floor
12 marked as A.

13 Q. Okay. So that is the round by the yellow marker?

14 A. The fired cartridge casing by the Yellow Marker A,
15 yes, sir.

16 Q. Could you open that for me and identify it?

17 A. It appears to be the same cartridge casing. It is
18 in an envelope that I wrote "fired cartridge case"
19 and A on it.

20 Q. And what did you do once you collected it?

21 A. I brought it back to our headquarters to process it
22 for fingerprints and swab it for DNA. I did not
23 get any fingerprints off of it. And the swab was
24 turned in for DNA analysis by the DNA analyst.

25 MR. WILLIAMS: Your Honor, at this time the

1 State move to enter State's Exhibit 118 into
2 evidence.

3 THE COURT: Without objection, State's 118 is
4 admitted.

5 (WHEREUPON, State's Exhibit No. 118 was
6 marked for identification and received
7 into evidence.)

8 MR. WILLIAMS: No further questions for this
9 witness, Your Honor.

10 THE COURT: Cross-examine?

11 MS. ZMROCZEK: Yes, sir.

12 CROSS-EXAMINATION

13 BY MS. ZMROCZEK:

14 Q. Investigator Bouknight, I'm showing you what has
15 been entered as State's 4. This is the front --
16 what you described as the front bedroom?

17 A. Yes, ma'am.

18 Q. And where -- you took these pictures; right?

19 A. Yes, ma'am.

20 Q. Did you take this from the door?

21 A. Yes, ma'am, I believe so.

22 Q. And where is the light fixture?

23 A. It is in approximately the center.

24 Q. If you don't mind stepping down, but keep your
25 voice up, so that we kind of orient us to the room.

1 Take us into that room, if you can.

2 (Witness steps down.)

3 A. Door frame, and then -- I'm trying to picture it,
4 show this in a 3-dimensional space in a
5 2-dimensional photograph. In this area would be
6 the light. Approximately in the center of the
7 room.

8 Q. Okay, keep standing right there. I am going to put
9 29 up because that may be a better -- we don't have
10 a picture of the light in the room; right?

11 A. Correct.

12 Q. Okay. So help us here. So if this is the door
13 handle; right? Where is the door handle in there?
14 Oh, yes, I do. Just not in there. There we go.
15 Door handle.

16 A. It is going to be generally in this area straight
17 up.

18 Q. Okay. So the light is generally straight up. But
19 where the oblique entrance wound was -- entrance
20 area, not wound.

21 A. Impact point.

22 Q. Impact point. Would be where?

23 A. Towards me. Towards us from the light.

24 Q. From the light. Okay. So closer to the door?

25 A. Yes.

1 Q. Okay. So closer to the door. That was my
2 question. Okay. You can have a seat. Thank you.

3 A. Okay.

4 (Witness returns to witness stand.)

5 Q. And, oblique means slanting or diagonal; right?

6 A. Yes, ma'am. When I was saying the oblique angle is
7 from the angle I was looking at it, not the impact
8 angle itself.

9 Q. And you didn't do any trajectory examination in
10 this case, did you?

11 A. No, ma'am.

12 Q. You weren't asked to do that?

13 A. No, ma'am.

14 Q. All right. And the casing that was found, you
15 don't know what or whom that hit to bounce off of
16 where it landed; right?

17 A. I couldn't speculate what happened, how that
18 cartridge casing ended up where it was.

19 Q. So the bottom line is that we don't know where the
20 person who shot that shot inside the house was
21 standing, do we?

22 A. In that bedroom.

23 Q. In that bedroom. But we don't know where?

24 A. No.

25 Q. So in that bedroom means inside the door?

1 A. Yes, ma'am.

2 Q. Okay. You also -- you took State's 13. Do you
3 recognize that one?

4 A. Yes, ma'am.

5 Q. And this was outside of the front door?

6 A. Yes, ma'am.

7 Q. Of Apartment 501?

8 A. Yes, ma'am.

9 Q. And did you do any testing of any of the things or
10 items that were on the ground outside?

11 A. No, ma'am.

12 Q. And showing you State's Exhibit 2, at what vantage
13 point is this photograph taken?

14 A. That is the front -- the front door would be to
15 your -- our right from this location.

16 Q. The front door would be to the right of that
17 photograph?

18 A. Yes, ma'am, from the photographer's right.

19 Q. And I'm going to show you what has been marked as
20 Defense Exhibit 23 and ask -- I know it is not
21 drawn to scale, but is that a layout of the
22 apartment?

23 A. It looks pretty close, yes, ma'am.

24 MS. ZMROCZEK: Your Honor, at this time we
25 move Defendant's 23 into evidence.

1 THE COURT: Is there any objection?

2 MR. WILLIAMS: Without objection, Your Honor.

3 THE COURT: Defendant's 23 is admitted without
4 objection.

5 (WHEREUPON, Defendant's Exhibit No. 23
6 was marked for identification and
7 received into evidence.)

8 BY MS. ZMROCZEK:

9 Q. So we can kind of start over. This is certainly
10 not drawn to scale; right? Not at all?

11 A. I don't know.

12 Q. So the front door is not -- it is kind of on the
13 side; correct?

14 A. Yes, ma'am.

15 Q. Okay. So the picture, then, Number 2, with that
16 kind of orientation, where would you be standing to
17 take this picture? Would that be from here looking
18 that way?

19 A. Yes, ma'am.

20 Q. Okay. All right. And then we have Bedroom -- you
21 call the Bedroom 1 where you photographed and found
22 the casing?

23 A. That is the front bedroom, is how I refer to it.

24 Q. The front bedroom. Okay, the front bedroom. And
25 then there is a separate bedroom?

1 A. I call the back bedroom.

2 Q. Back bedroom. Okay. And one had -- the front
3 bedroom, Bedroom 1, had all the child's stuff in
4 it; correct?

5 A. Yes, ma'am.

6 Q. And then Bedroom 2, the back bedroom, had all the
7 adult stuff and a crib in it; correct?

8 A. Yes, ma'am.

9 Q. And you took this picture as well, State's 12?

10 A. Yes, ma'am.

11 Q. And that is Bedroom 2; right?

12 A. Yes, ma'am.

13 Q. All right. And I know this is a -- State's 14 is
14 kind of further away of Bedroom 2; correct?

15 A. Yes.

16 Q. Where would Bedroom 1 be?

17 A. To the right.

18 Q. Over here? This area?

19 A. I believe that we're still in the living room
20 there, so it is going to be forward and right.

21 Q. Forward and right. Okay.

22 MS. ZMROCZEK: Thank you. I have no further
23 questions.

24 MR. WILLIAMS: Brief redirect, Your Honor.

25 THE COURT: All right, you may do so.

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Sergeant Bouknight, let me show you Defense Exhibit 23. All right. Is this what you describe as the front bedroom?

A. Yes, sir.

Q. Okay. All right. I just want to make sure I understand you correctly. Would the shooter -- or could the shooter have been anywhere else other than the four walls of this room?

A. No, sir.

MR. WILLIAMS: No further questions, Your Honor.

THE COURT: Recross?

MS. ZMROCZEK: None, thank you.

THE COURT: Thank you. All right, you may step down, sir.

THE WITNESS: Thank you, sir.

THE COURT: And you are free to leave as well.

THE WITNESS: Thank you, sir.

THE COURT: Yes, sir.

(Witness excused.)

THE COURT: Call your next witness.

MS. SAMPSON: The State calls Investigator Oates.

1 (Witness approaches.)

2 THE BAILIFF: Place your left hand on the
3 Bible, and raise your right hand, please.

4 (Witness complies.)

5 THE CLERK: Do you solemnly swear or affirm
6 the testimony you give in this case will be the
7 truth, the whole truth, and nothing but the truth,
8 so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Please have a seat, and state your
11 full name.

12 (Witness seated.)

13 THE WITNESS: Robert Oates, O-A-T-E-S.

14 MS. SAMPSON: Beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 (Pause.)

17 MS. SAMPSON: Sorry, Your Honor.

18 ROBERT OATES,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. SAMPSON:

22 Q. Investigator -- Investigator; right? Or have I
23 been calling you wrong?

24 A. Investigator is fine.

25 Q. Okay. What do you do at the Sheriff's Department?

1 A. Crime scene investigator at the Richland County
2 Sheriff's Department.

3 Q. Sorry. How long have you been doing that?

4 A. Twelve years.

5 Q. And before that where did your work?

6 A. I was a deputy on patrol with Richland Sheriff's
7 Department.

8 Q. So as an investigator what is your job?

9 A. My job as a crime scene investigator of course is
10 to respond to any and all crime scenes in Richland
11 County, protect that scene, and protect the
12 integrity of the evidence, document that evidence
13 with photographs by using markers, metric tools,
14 special light types of objects, and collecting
15 those and preserving those for trial.

16 I also perform analysis within our crime lab
17 for fingerprints on certain objects and also DNA.

18 Q. I will just move you ahead. Back in May of 2014,
19 was that your job at the time?

20 A. Yes.

21 Q. Okay. And how did you become involved in this
22 case?

23 A. I responded to the hospital and attended the
24 autopsy.

25 Q. How did you know to go to the hospital?

1 A. It is our procedure once there is a death that has
2 been documented, it is communicated to an on-call
3 person, and that was me that day to respond to the
4 hospital that morning to attend.

5 Q. And what did you do once you were there?

6 A. Okay. The reason we respond to the hospital is
7 because there is evidence at the scene, but there
8 is also evidence on the body or inside the body.
9 So we respond to document that and collect evidence
10 just like we would at another crime scene.

11 Q. And did you stay for the entire autopsy?

12 A. Yes, I did.

13 Q. What did you collect from the hospital?

14 A. Okay. There are standard items or pieces of
15 evidence that we do collect. And that is
16 post-mortem fingerprint for identification, that is
17 palm prints. We also collect gunshot residue if a
18 gun has been involved. We use a gunshot residue
19 kit and we will collect that. And also nail
20 scrapings up under the fingernails for skin cells.
21 We'll scrape those and we will put in a separate
22 container marked right and left hand. A buccal
23 swab in the mouth, basically for DNA, like for
24 saliva. So we use that also for identification.
25 And then we will collect projectiles, fragments,

1 clothing, jewelry, anything like that involved.

2 Q. And you collected these items in this case?

3 A. I did, yes.

4 Q. I will show you what is marked State's Exhibit 119,
5 and ask if you recognize it?

6 A. Yes, this is the GSR kit that I collected.

7 Q. And did you do that?

8 A. I collected it, yes, and took it into our evidence.

9 Q. And is it in the same basic format as you submitted
10 it?

11 A. Yes, it is in same envelope, yes.

12 MS. SAMPSON: At this time I would ask to
13 introduce State's Exhibit 119 into evidence.

14 THE COURT: 119?

15 MS. SAMPSON: Yes, sir.

16 THE COURT: Without objection.

17 (WHEREUPON, State's Exhibit No. 119 was
18 marked for identification and received
19 into evidence.)

20 BY MS. SAMPSON:

21 Q. Is that the gunshot residue kit you collected?

22 A. Yes, it is.

23 Q. And is it in the same condition?

24 A. It is in the same container, the collection
25 container.

1 Q. And they have already heard from Whitney Berry.
2 Did you do it in the manner that SLED has told you
3 to do it in terms of how to collect it?

4 A. Yes.

5 Q. You can put it in there. I show you what is marked
6 State's Exhibit 120, and ask if you recognize that?

7 A. Yes, this is the buccal swab that I collected.

8 Q. And is it in the same condition as when you
9 collected it?

10 A. Yes.

11 MS. SAMPSON: At this time we would ask that
12 State's Exhibit 120 be introduced into evidence.

13 THE COURT: Without objection, State's 120 is
14 admitted.

15 (WHEREUPON, State's Exhibit No. 120 was
16 marked for identification and received
17 into evidence.)

18 BY MS. SAMPSON:

19 Q. I show you what has been marked as State's Exhibit
20 121.

21 A. Yes, it is. This is the silver and black men's
22 ring and gold earring collected from the victim.

23 Q. And is it in the same condition as when you
24 received it?

25 A. Yes, it is.

1 MS. SAMPSON: At this time we would ask to
2 introduce State's Exhibit 121.

3 THE COURT: State's 121 is admitted without
4 objection.

5 (WHEREUPON, State's Exhibit No. 121 was
6 marked for identification and received
7 into evidence.)

8 BY MS. SAMPSON:

9 Q. You can go ahead and take it out. And so you
10 individually put everything into plastic bags?

11 A. Actually, the Coroner's Office, once this is taken
12 from the body, has to sign a chain of custody form
13 from the ME before I can get a hold of it. So they
14 actually do this packaging prior to me touching it.
15 Then I have to sign the chain of custody.

16 Q. I will ask you, the ring that is in here, can you
17 tell me what is on it?

18 A. It appears to be a cross.

19 Q. It is black and silver?

20 A. Yes.

21 Q. And did you photograph this?

22 A. I don't think so.

23 Q. Okay. The last two. State's Exhibit 122 and 123.
24 Can you start with 122? Do you recognize that?

25 A. Yes. This is going to be the -- when the body is

1 transported from the scene, the hands are bagged
2 with paper bags in order to protect the hands. Of
3 course, we collect GSR, any kind of trace evidence.
4 At autopsy when the body bag is open we -- I
5 collect before I do any other processing of the
6 hands, I collect the bags. And that is what these
7 are, two paper bags marked right hand and left
8 hand.

9 Q. Is that in the same condition as you saw it or as
10 you sealed it?

11 A. Yes, it is.

12 MS. SAMPSON: We ask to introduce State's
13 Exhibit Number 122 into evidence.

14 THE COURT: Without objection, State's 122 is
15 admitted.

16 (WHEREUPON, State's Exhibit No. 122 was
17 marked for identification and received
18 into evidence.)

19 BY MS. SAMPSON:

20 Q. And 123, do you recognize that?

21 A. Yes.

22 Q. And what is that?

23 A. These are the right and left hand fingernail
24 scraping kits.

25 Q. Did you collect that?

1 A. I did.

2 Q. How did you collect the nail scrapings?

3 A. Our -- television would make it seem that it is
4 very complicated, and it is not. With us, it is an
5 8.5 x 11 sheet of paper basically to catch any
6 trace evidence, that is marked right hand, left
7 hand. And basically we place the victim's hands up
8 under that to drop or catch any kind of trace
9 evidence. We use a large wooden toothpick,
10 basically, oversized, it is basically made to
11 scrape up under the fingernails. And that is how
12 we collect evidence. We put it in individual
13 envelopes and mark it right and left.

14 Q. And is it in the same condition as when you took
15 the fingernail scrapings?

16 A. Yes.

17 MS. SAMPSON: At this time we would ask to
18 introduce State's Exhibit 123 into evidence.

19 THE COURT: State's 123 is admitted without
20 objection.

21 (WHEREUPON, State's Exhibit No. 123 was
22 marked for identification and received
23 into evidence.)

24 BY MS. SAMPSON:

25 Q. Did you also collect clothing?

1 A. Yes, sir, I did.

2 Q. What did you collect?

3 A. I collected black and white sneakers, white jean
4 shorts, short pants, black belt, black and gray
5 underwear, a black T-shirt, a white tank top shirt,
6 black socks, of course the white and black ring,
7 and the yellow earring.

8 Q. And I think you said that you also collected the
9 projectiles that were removed from the victim?

10 A. Yes, I did.

11 Q. And those have already been introduced in evidence.
12 What did you do with the clothing once you obtained
13 it?

14 A. Okay. The clothing was placed into a biohazard bag
15 and it was transported back to our Sheriff's
16 Department crime lab facility. In our crime scene
17 garage, or crime lab garage, we have three drying
18 chambers, and it was placed in the drying chamber
19 to dry out because it was wet.

20 Q. And did you photograph it?

21 A. Yes, I did, after they were dry.

22 Q. I am going to show you what just got marked as
23 State's 124. You do not need to open it right now,
24 but can you tell us what that is?

25 A. Yes, this is the box that -- this is the box that I

1 placed all the clothing into after it dried.

2 Q. And is this in the same condition as when you
3 sealed it?

4 A. Yes. Yes.

5 Q. And how do you know that?

6 A. Well, the -- what we do is, after placing the crime
7 scene tape across the top and the bottom of the box
8 for integrity purposes, my initials go across the
9 tape, and the date. If it is disturbed I would
10 know.

11 Q. And is that on those boxes?

12 A. Yes, it is.

13 MS. SAMPSON: I ask to introduce State's
14 Exhibit 124.

15 THE COURT: State's 124 is admitted without
16 objection.

17 (WHEREUPON, State's Exhibit No. 124 was
18 marked for identification and received
19 into evidence.)

20 BY MS. SAMPSON:

21 Q. And this contains all the clothing items; correct?

22 A. It does, yes.

23 Q. And how do you know that?

24 A. It is on our evidence label. Each individual item
25 that is inside this container is on the outside of

1 this.

2 Q. And you say that you took photographs; correct?

3 A. Yes.

4 Q. I am going to show you what has been marked State's
5 Exhibits 80 through 82 and ask if you recognize
6 these?

7 A. Yes.

8 Q. And what are those -- Well, are they fair and
9 accurate depictions of what you saw the date that
10 you took the clothes into the property?

11 A. Yes, they are.

12 MS. SAMPSON: At this time we would ask to
13 introduce State's Exhibits 80 through 82 into
14 evidence.

15 THE COURT: 80 through 82 are admitted without
16 objection, being photographs.

17 (WHEREUPON, State's Exhibit Nos. 80-82
18 were marked for identification and
19 received into evidence.)

20 MS. SAMPSON: Thank you, Your Honor.

21 BY MS. SAMPSON:

22 Q. If you need to step down, you can.

23 A. No, I'm good.

24 Q. I am going to start with State's Exhibit Number 80.
25 What is this?

1 A. This is the photograph of the front of the black
2 T-shirt.

3 Q. And were you able to look at it in person?

4 A. Yes, I was.

5 Q. Did you find any bullet holes in the front of the
6 shirt?

7 A. I found some disturbances, yes.

8 Q. Did you find bullet holes?

9 A. Disturbances is what we call the bullet holes, yes.

10 Q. In the front?

11 A. In the front, yes.

12 Q. And what is State's Exhibit Number 82?

13 A. This is a white tank, T-shirt, tank top T-shirt,
14 with reddish-brown stains or blood.

15 Q. And I see you marked these. Are those holes?

16 A. Yes, they are. They are disturbances, or holes, in
17 the fabric.

18 Q. And I showed you initially on State's Exhibit
19 Number 80 to the front. This is the back.

20 A. Yes. They are also disturbances, or bullet holes,
21 through the back also.

22 Q. To the back?

23 A. Yes.

24 Q. In determining the trajectory or any of that, is
25 that on you or on the coroner -- I mean, on the

1 pathologist?

2 A. That's right. That's okay. Yes.

3 Q. So you can't determine if those are entrance or
4 exit wounds, can you?

5 A. You are correct.

6 Q. That would be all for you at this time.

7 THE COURT: Cross-examine?

8 MS. ZMROCZEK: I have no questions.

9 THE COURT: Thank you very much. You may step
10 down, and you are free to leave, sir.

11 THE WITNESS: All right, thank you.

12 (Witness excused.)

13 THE COURT: Call your next witness.

14 MS. SAMPSON: Your Honor?

15 THE COURT: That is the final witness for the
16 day?

17 MS. SAMPSON: Yes, sir.

18 THE COURT: Ladies and gentlemen, that
19 concludes the testimony for the day. You get a
20 little break and get off a little early.

21 I ask you to please return to your jury room
22 by 9:30 in the morning. Please remember you are
23 not at liberty to discuss this case among
24 yourselves or with anyone outside the courtroom.
25 And now, unlike yesterday, you have now heard

1 testimony and you obviously, I'm sure if there is
2 somebody at home the first question is, What is
3 this case about? And the temptation will be there
4 to discuss that. That would be -- you cannot talk
5 about it, because if you do, as I stated yesterday,
6 you will have commenced your deliberations. And we
7 will finish this case either tomorrow or Thursday,
8 I'm confident. Then if you want to talk about it,
9 you certainly can. But until then, please do not
10 talk about it.

11 I doubt -- I don't know whether there will be
12 any coverage on the news, but if there is any,
13 please do not watch that and do not -- if there is
14 any -- if you are accustomed to reading the
15 newspaper, don't read any articles about it if
16 there should be any. I don't know that there will
17 be, but if there are, you can read them later, but
18 do not read them now.

19 Have a good evening. And just return to your
20 jury room by 9:30.

21 Thank you very much.

22 (WHEREUPON, the jury is excused for the
23 day at 4:36 p.m.)

24 THE COURT: Anything from the State before we
25 recess?

1 MS. SAMPSON: Not from the State, Your Honor.

2 THE COURT: Anything from the Defendant?

3 MS. ZMROCZEK: No, sir.

4 THE COURT: You mentioned something about a
5 subpoena. Is there an issue we need to put on the
6 record now, or do you want to wait until in the
7 morning?

8 MS. ZMROCZEK: Well, I guess we can put it on
9 the record now, but if he shows up -- well, if he
10 shows up tomorrow it won't be an issue, but it is
11 my understanding that Travis Tucker, who obviously
12 they talked about -- we've been talking about him,
13 he was the one who brought the gun, and the one who
14 was engaging in sexual activity with Kiara Pelzer.
15 He was subpoenaed. He was subpoenaed for the
16 immunity hearing, and he didn't show. It is my
17 understanding he is still under subpoena for this
18 trial. And he is not going to show. He told the
19 State he is not going to show.

20 THE COURT: Was he served with another
21 subpoena?

22 MS. SAMPSON: His initial subpoena had the
23 date for the hearing and for the trial, so we only
24 had to serve him one time.

25 THE COURT: I see. Well, it will be up to the

1 State to call. They are the one -- you are the one
2 that had the subpoena issued; correct?

3 MS. SAMPSON: Correct.

4 THE COURT: Okay. That's where we are. Thank
5 you very much. Okay.

6 MS. ZMROCZEK: Correct.

7 MS. SAMPSON: Thank you.

8 THE COURT: Have a good evening. See you
9 tomorrow at 9:30.

10 (WHEREUPON, the proceedings concluded at
11 4:38 p.m.)

12 OCTOBER 12, 2016

13 (WHEREUPON, the proceedings commenced at
14 9:33 a.m.)

15 THE COURT: All right. Let the record reflect
16 Mr. Ricks is present.

17 Good morning, sir.

18 MS. ZMROCZEK: I read the materials that I was
19 provided. I don't foresee using them.

20 THE COURT: All right. I'm glad you mentioned
21 that because I thought about it, you need to put on
22 the record that in response to one of your
23 requests -- and I'll just use for the purpose so
24 that everybody will know, the Giglio material,
25 which I was provided and reviewed, and then talked

)

1 with the lawyer for the Sheriff's Office concerning
2 this, and we prior to the trial handed to Defense
3 counsel all the material concerning at least one
4 person.

5 MS. ZMROCZEK: Correct.

6 THE COURT: And my cursory review did not
7 reveal any conflict, but the subject matter was
8 subject -- it was basically persons saying that
9 somebody did X and somebody did Y. So I wanted
10 to -- I thought there might be something, but --
11 and I didn't want to make -- it would not be proper
12 for me to make the call as to whether it had any
13 probative value, so we delivered that to Defense
14 counsel. As I understand it, you concur that there
15 really is nothing that needs to be disclosed in
16 that material?

17 MS. ZMROCZEK: Correct. Correct.

18 THE COURT: Thank you so much. Appreciate it.

19 Okay. Are we ready -- is the State ready to
20 proceed?

21 MS. SAMPSON: Yes, sir.

22 THE COURT: Let's bring in our jury, please.

23 THE BAILIFF: Yes, sir.

24 (WHEREUPON, the jury came into open
25 court at 9:38 a.m.)

1 THE BAILIFF: The jury is seated, Your Honor.

2 THE COURT: Thank you, Mr. Addison.

3 Appreciate it.

4 Thank you very much, ladies and gentlemen. I
5 hope you had a good evening. We're ready now to
6 continue the matter, and I would ask you to give
7 your attention, please, to the next witness.

8 Solicitor, good morning. You may call your
9 next witness.

10 MR. WILLIAMS: Thank you, Your Honor. May it
11 please the Court?

12 The State calls Brianna Pelzer.

13 (Witness approaches.)

14 THE BAILIFF: Place your left hand on the
15 Bible, and raise your right hand, please.

16 (Witness complies.)

17 THE CLERK: Do you solemnly swear or affirm
18 the testimony you give in this case will be the
19 truth, the whole truth, and nothing but the truth,
20 so help you God?

21 THE WITNESS: Yes.

22 THE CLERK: Please have a seat, and state your
23 full name for the record.

24 (Witness seated.)

25 BRIANNA PELZER,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WILLIAMS:

4 Q. State your name, please.

5 A. Brianna Pelzer.

6 Q. I'm going to ask you to make sure you speak into
7 the mic so the court reporter can hear you and the
8 jurors can hear you. I'm going to ask you a couple
9 of questions, and when you answer, please direct
10 answer to the jury, okay? You got it?

11 A. Uh-huh.

12 Q. All right. And I'm going to need some verbal
13 answers. Uh-huh and shaking your head won't work.
14 So, yes, no, or an explanation, okay?

15 A. Yes.

16 Q. Thank you. How old are you?

17 A. Twenty-four.

18 Q. How do you know -- or how did you know Thomas
19 Pauling?

20 A. That's my cousin.

21 Q. Were you all -- did you all grow up in the same
22 neighborhood?

23 A. No.

24 MS. ZMROCZEK: Your Honor, I'm having a little
25 trouble hearing.

1 MR. WILLIAMS: You have to speak into the
2 microphone.

3 THE COURT: Speak a little louder, please.

4 THE WITNESS: Okay.

5 BY MR. WILLIAMS:

6 Q. That's good. Just like that. Do you feel like you
7 know him fairly well, though?

8 A. Yes.

9 Q. How do you know the Defendant, Channen Ricks?

10 A. Through the neighborhood, and that's my cousin's
11 father.

12 Q. Okay. Do you feel like you know him fairly well?

13 A. Yes.

14 Q. How do you know Kiara Pelzer?

15 A. That's my cousin.

16 Q. How do you know Travis Tucker?

17 A. The neighborhood.

18 Q. How long have you known all these people?

19 A. My cousin, Kiara, all my life. Thomas, mostly all
20 my life. Channen, mostly all my -- everybody,
21 mostly all my life.

22 Q. I want to take you back to May 24th, 2014. How old
23 were you then?

24 A. Twenty-two.

25 Q. And what were you doing on that day?

- 1 A. That day?
- 2 Q. Yes.
- 3 A. Hanging out with my cousin.
- 4 Q. Who?
- 5 A. Kiara.
- 6 Q. What were you all doing?
- 7 A. I don't remember that.
- 8 Q. Okay. What time did you go over to her house?
- 9 A. I don't remember.
- 10 Q. Was it day or night?
- 11 A. Day.
- 12 Q. Did you stay through the night?
- 13 A. Yes.
- 14 Q. What do you all do once you got there?
- 15 A. Got ready to go out to the club.
- 16 Q. Okay. Why were you going out?
- 17 A. Because she wanted to go out.
- 18 Q. Was there a special occasion?
- 19 A. No.
- 20 Q. Okay. How much do you know about her relationship
- 21 with Channen, the Defendant?
- 22 A. That is her child's father.
- 23 Q. Do you know whether or not they were in a
- 24 relationship on that day?
- 25 A. I don't think that they were.

1 Q. How do you know that?

2 A. It wasn't the same. Like their actions towards
3 each other wasn't like they were in a relationship.

4 Q. What actions?

5 A. How you would act in a relationship or out of a
6 relationship.

7 Q. How would you act in a relationship, in your
8 opinion?

9 A. Together.

10 Q. How would you act if you were not in a
11 relationship?

12 MS. ZMROCZEK: Your Honor, I'm going to object
13 to how she would react to it if she were in a
14 relationship.

15 THE COURT: I'm going to allow some leeway in
16 this matter. Overruled.

17 MR. WILLIAMS: Thank you, Your Honor.

18 BY MR. WILLIAMS:

19 Q. Answer the question, please.

20 A. I don't know.

21 Q. But in your opinion, you don't think they were
22 together?

23 A. No.

24 Q. All right. So tell the jury what you all were
25 doing in preparation to go out to the club?

- 1 A. Getting dressed at her house.
- 2 Q. Were you excited?
- 3 A. Yes.
- 4 Q. Why?
- 5 A. Because we hadn't been out in a while.
- 6 Q. What were your expectations for that night?
- 7 A. To go out and have a good time.
- 8 Q. Were you drinking?
- 9 A. Maybe one or two drinks.
- 10 Q. How long did you all stay out?
- 11 A. A while, till like 4:00 in the morning.
- 12 Q. What time did you all get to Club Torch?
- 13 A. Like 10:00, 11:00 maybe.
- 14 Q. Okay. Who did you see once you got there?
- 15 A. People from our neighborhood and Channen.
- 16 Q. Okay. Do you remember seeing Thomas there?
- 17 A. No, not in the club.
- 18 Q. Was Travis Tucker there?
- 19 A. Not in the club. We saw him when we were leaving.
- 20 Q. Where did you see him?
- 21 A. At Bojangles' across the street from the club.
- 22 Q. Okay. Was there any interaction between you,
- 23 Thomas, or Travis?
- 24 A. We all were talking.
- 25 Q. Okay. What happened next?

- 1 A. We went to Kiara's house.
- 2 Q. Was the night over at that time?
- 3 A. Yes.
- 4 Q. Okay. What happened after you got back to Kiara's
- 5 house?
- 6 A. Me and Xavier and the kids were chilling.
- 7 Q. Who is Xavier?
- 8 A. Channen's nephew.
- 9 Q. Why was he at Kiara's house?
- 10 A. He was babysitting.
- 11 Q. Who was he babysitting?
- 12 A. Kiara's kids.
- 13 Q. And around what time is it -- at that moment, what
- 14 time is it? If you remember.
- 15 A. Maybe 4:00 or 5:00. I don't exactly remember.
- 16 Q. When you say chilling, what does that mean?
- 17 A. Talking, sitting around watching TV.
- 18 Q. Okay. What happened after you stopped chilling?
- 19 A. We were in a room and we heard a knock at the door.
- 20 Q. What room were you in?
- 21 A. The kids' room.
- 22 Q. Okay. Who were you in that room with?
- 23 A. Xavier and Kiara's two kids.
- 24 Q. What were you doing in that room?
- 25 A. Chilling. Talking on the phone.

1 Q. Do you remember what time you heard a knock at the
2 door?

3 A. I don't.

4 Q. What did you do once you heard that knock?

5 A. Nothing for a while. Well, it was a couple of
6 knocks. And then I tried to tell Kiara that
7 somebody was knocking.

8 Q. Where was Kiara at this time?

9 A. In her room.

10 Q. Was she in there alone?

11 A. No.

12 Q. Who was she in there with?

13 A. Travis.

14 Q. Who else was in the house at that time?

15 A. Thomas, me, Xavier, and the kids.

16 Q. Okay. I may have skipped this question. What time
17 did Thomas and Travis arrive at Kiara's house?

18 A. I don't remember exactly, but it was kind of right
19 after we got there.

20 Q. Okay. Who let them in?

21 A. We all did.

22 Q. Who is included in the we?

23 A. Me and her.

24 Q. Who is me?

25 A. Me and her.

- 1 Q. I'm sorry, who's her?
- 2 A. Kiara.
- 3 Q. Were you expecting them?
- 4 A. Yes.
- 5 Q. Why is that?
- 6 A. We were at Bojangles' all talking, and then she
- 7 invited them over.
- 8 Q. Why did she do that?
- 9 A. I have no clue.
- 10 Q. Okay. What happened once you all let them in?
- 11 A. We went in the room, me and Xavier and the kids,
- 12 and they went in her room.
- 13 Q. Who is they?
- 14 A. Kiara and Travis.
- 15 Q. Where was Thomas during all of this?
- 16 A. In the living room.
- 17 Q. What was he doing?
- 18 A. Sleeping on the floor.
- 19 Q. Let's go back to the knock at the door. Was the
- 20 door eventually answered?
- 21 A. Yes.
- 22 Q. Who answered the door?
- 23 A. I don't know.
- 24 Q. What happened after the door was answered?
- 25 A. I heard yelling, fussing, tousling. And then Kiara

- 1 knocked at the door that we were at telling us to
2 open it. And Xavier opened the door and Channen
3 followed behind her. They were arguing. And then
4 he left out. And we got ready and left the house,
5 and we heard gunshots as we were leaving the house.
- 6 Q. Okay. I want to go back to when you said you heard
7 yelling and tousling. Whose voice or voices did
8 you hear?
- 9 A. Channen and Kiara and Travis.
- 10 Q. Did you not hear Thomas's voice?
- 11 A. No, sir.
- 12 Q. Could you identify Thomas's voice if you heard it?
- 13 A. Yes, sir.
- 14 Q. What happened once Channen entered the kids' room?
- 15 A. Him and Kiara were arguing.
- 16 Q. Was Channen crying?
- 17 A. I'm not sure.
- 18 Q. Was Kiara crying?
- 19 A. I'm not sure.
- 20 Q. Could you tell whether or not either one of them
21 were upset?
- 22 A. Yes.
- 23 Q. Did both of them seem upset?
- 24 A. Yes.
- 25 Q. What else did you hear while you were in the room?

1 A. That's it.

2 Q. Did you hear a gunshot?

3 A. No.

4 Q. So while you were in your bed -- let me -- strike
5 that. While you were in that room, the only thing
6 you heard was arguing?

7 A. Yes.

8 Q. Where were you in that room?

9 A. In the bed.

10 Q. Could you see from where you were in the bed?

11 A. Yes.

12 Q. Okay. So describe to me everything you saw.

13 A. Kiara and Channen arguing, and that was it.

14 Q. How long did that last?

15 A. Not long at all.

16 Q. Could you quantify that, put it into seconds or
17 minutes when you say not long. And I'm referring
18 to the argument between Kiara and Channen.

19 A. Maybe a minute, at the most, if that.

20 Q. Why did Channen leave?

21 A. I'm not sure. I guess he was upset.

22 Q. Where did he go once he left?

23 A. I'm not sure.

24 Q. Why did you all leave?

25 A. We were scared.

- 1 Q. What were you scared of?
- 2 A. I don't know.
- 3 Q. I'm sorry?
- 4 A. I'm not sure. It was just a lot going on.
- 5 Q. How did you all leave the apartment?
- 6 A. In her car.
- 7 Q. Who gathered the children?
- 8 A. We all did.
- 9 Q. Was Xavier with you?
- 10 A. Yes.
- 11 Q. Did he appear scared as well?
- 12 A. Yes.
- 13 Q. What did you do once you left the apartment?
- 14 A. Went to Channen's mom's house.
- 15 Q. Okay. Do you remember giving a statement about
- 16 this incident?
- 17 A. Yes.
- 18 Q. If I gave you that statement, do you think it would
- 19 help refresh your memory about what happened that
- 20 night?
- 21 A. I remember.
- 22 Q. Okay. I'm going to give it to you and let you read
- 23 over it just in case there are some things you
- 24 forgot.
- 25 MR. WILLIAMS: Your Honor, I'm showing the

1 witness what has been marked State's Exhibit 115
2 for identification purposes.

3 THE COURT: Okay.

4 BY MR. WILLIAMS:

5 Q. Is that your name here?

6 A. Yes.

7 Q. Okay. And that's your signature at the bottom,
8 right?

9 A. Yes.

10 Q. I want you to read that silently to yourself, okay?
11 (Pause.)

12 Q. Do you remember making that statement?

13 A. I don't. Honestly, I don't.

14 Q. Okay. Would you agree that your statement at that
15 time was closer to this incident happening?

16 A. Yes.

17 Q. Would you agree that that statement would have more
18 details and facts that actually happened than what
19 you remember today?

20 A. Yes.

21 Q. Okay. So was there a gunshot in the room?

22 A. I don't remember, honestly.

23 Q. What does your statement say?

24 A. Channen -- Channen then turned around and walked
25 out the door, and that is when I heard one gunshot.

- 1 Q. Was that -- was that gunshot connected to the
2 gunshots you heard while you all were leaving the
3 apartment?
- 4 A. Outside, yes.
- 5 Q. Okay. So when you heard that gunshot, where were
6 you?
- 7 A. In the room.
- 8 Q. Okay. When you heard the other gunshots, where
9 were you?
- 10 A. Leaving out of the house.
- 11 Q. Okay. So you were no longer in the room?
- 12 A. No.
- 13 Q. So it would be fair to say that the first gunshot
14 happened prior to the second gunshot?
- 15 A. Correct.
- 16 Q. What happened once you got to Channen's mother's
17 house?
- 18 A. We all drove back to her house, Kiara's house.
- 19 Q. Why did you do that?
- 20 A. To see what was going on.
- 21 Q. What did you find?
- 22 A. Police, ambulance everywhere.
- 23 Q. What did you do next?
- 24 A. Walked over there to see what was going on, and I
25 saw Thomas's body on the ground.

1 MR. WILLIAMS: No further questions for this
2 witness, Your Honor.

3 THE COURT: Cross-examine?

4 CROSS-EXAMINATION

5 BY MS. ZMROCZEK:

6 Q. Good morning, Ms. Pelzer.

7 A. Good morning.

8 Q. You knew Channen and Kiara had a child together?

9 A. Uh-huh.

10 Q. I'm sorry, you have to say yes or no.

11 A. Yes.

12 Q. Just because she's taking it down. You knew that
13 he had -- he, Channen, had a key to the house?

14 A. Yes.

15 Q. You knew that he stayed there often?

16 A. Yes.

17 Q. You knew that their relationship had its ups and
18 downs?

19 A. Yes.

20 Q. You knew that they both had issues with deciding
21 whether or not they wanted to be together?

22 A. Yes.

23 Q. Okay. So that night, your phone number, was that
24 (803)238-4832?

25 A. I don't think so.

- 1 Q. Do you remember what your number was?
- 2 A. A 979 number.
- 3 Q. A 979 number? Let me ask you this, when y'all were
- 4 out at the club, did you have a cell phone?
- 5 A. Yes.
- 6 Q. Did Kiara have a cell phone?
- 7 A. Yes.
- 8 Q. Did Kiara's cell phone go dead after a while?
- 9 A. I don't remember.
- 10 Q. Okay. Was she using your cell phone to text?
- 11 A. I don't -- I honestly don't remember it.
- 12 Q. If there are texts from your phone to Travis
- 13 Tucker's phone, would that be you or her using it?
- 14 A. It would be her, but I know I didn't have a 238
- 15 number.
- 16 Q. Okay. But if there's a phone number that's yours
- 17 and there are phone records that show that your
- 18 phone was contacting Travis's phone, would that be
- 19 you or would that be her?
- 20 A. That would be her.
- 21 Q. So she used your phone when hers went dead?
- 22 A. I honestly don't remember.
- 23 Q. Okay. You went to Club Torch?
- 24 A. Uh-huh. Yes.
- 25 Q. Do you recall what you were wearing? Did you have

1 on a black dress or a white dress?

2 A. White.

3 Q. You had on a white dress?

4 A. (Nods affirmatively.)

5 Q. And Xavier was at home with the kids?

6 A. Yes.

7 Q. And with the kids, we are talking about Nivaya?

8 A. Yes.

9 Q. She is Kiara's daughter?

10 A. Yes.

11 Q. But Channen spent a lot of time with her?

12 A. Yes.

13 Q. Help raising her because her dad was not making --

14 I know it's making a little noise -- because her

15 dad is no longer here; right?

16 A. Yes.

17 Q. And so Channen was helping raise Nivaya?

18 A. Yes.

19 Q. And then they also had a son together named Aiden?

20 A. Yes.

21 Q. And he's a young -- how old was Aiden at the time
22 approximately?

23 A. I don't even think he was one yet.

24 Q. He was under six months? Or around six months?

25 A. Maybe.

1 Q. Okay. He was little?

2 A. Yes.

3 Q. Couldn't walk?

4 A. No.

5 Q. Okay. And then you remember when you got back to
6 the -- to 501, to Kiara's apartment?

7 A. Yes.

8 Q. And at that time, were Travis and Thomas there?

9 A. No.

10 Q. They came later?

11 A. Yes.

12 Q. Did you and Xavier leave the apartment at any time?

13 A. No.

14 Q. Y'all didn't go up to the store to get chips?

15 A. No.

16 Q. Okay. Do you recall seeing Thomas on the floor?

17 A. Yes.

18 Q. Okay. I am going to show you a picture that has
19 been marked for ID as Defendant's 2 and ask if you
20 recognize this picture?

21 A. Yes.

22 Q. And does that fairly and accurately reflect what
23 you saw that early morning?

24 A. Yes.

25 MS. ZMROCZEK: Your Honor, at this time, we

1 would move Defendant's 2 into evidence.

2 MR. WILLIAMS: Without objection, Your Honor.

3 THE COURT: Without objection, Defendant's 2
4 is admitted.

5 (WHEREUPON, Defendant's Exhibit No. 2
6 was marked for identification and
7 received into evidence.)

8 BY MS. ZMROCZEK:

9 Q. Do you mind showing the jury -- show the jury what
10 it is we're looking at here.

11 A. Thomas laying on the floor.

12 Q. This is Thomas here laying on the floor?

13 A. Yes.

14 Q. And do you know -- did you take this picture?

15 A. No.

16 Q. Did Xavier take this picture?

17 A. I honestly don't know.

18 Q. Okay. But you know that's who -- that's Thomas
19 laying on the floor?

20 A. Yes.

21 Q. And where is the couch in relation to this?

22 A. It's one right here and one right here(indicating).

23 Q. Okay. And where is the door in relation to where
24 he is, the front door?

25 A. Like, this is the couch and that's the front

1 door(indicating).

2 Q. Okay. Do you recall after you left the apartment,
3 it was Kiara driving?

4 A. Yes.

5 Q. Do you recall what she had on at that time?

6 A. I don't.

7 Q. Were you sitting in the front or the back?

8 A. Front.

9 Q. And where was Xavier?

10 A. In the back.

11 Q. And where were the kids?

12 A. In the back.

13 Q. And how fast were y'all driving?

14 A. Maybe a little over the speed limit.

15 Q. Okay. How long did it take for you to get from
16 Kiara's apartment to -- where did y'all go?

17 A. Channen's mom's.

18 Q. How long did that take?

19 A. Maybe seven, eight, ten. Not even ten minutes,
20 about seven minutes.

21 Q. Okay. You get to Channen's mom's house. And she
22 gets in the car?

23 A. Kiara got out to go in the house, and then both of
24 them came out, and she followed us to the house.

25 Q. In a separate car?

- 1 A. Uh-huh. Yes.
- 2 Q. Okay. And so y'all get back to Richland Village?
- 3 A. Yes.
- 4 Q. You see all the police?
- 5 A. Yes.
- 6 Q. Has anyone called 9-1-1 at this point?
- 7 A. No, I don't -- I think his mom did.
- 8 Q. Okay. I want to talk about the statement that you
- 9 gave. Do you still have that in front of you?
- 10 A. Yes.
- 11 Q. And this was taken May 25th; correct? If you look
- 12 at the page, it has the date for you.
- 13 A. Yes.
- 14 Q. And it says at 8 -- 0830 hours, that's 8:30 in the
- 15 morning?
- 16 A. Yes.
- 17 Q. And so this is just a few hours after getting back
- 18 to the apartment; right?
- 19 A. Yes.
- 20 Q. The incident is very fresh in your mind at that
- 21 time; right?
- 22 A. Yes.
- 23 Q. And does your copy have your signature on it?
- 24 A. Yes.
- 25 Q. So they typed this up for you?

1 A. Yes.

2 Q. And you were able to read through it?

3 A. Yes.

4 Q. And they said, If there's anything wrong, you make
5 corrections so that we can fix it; right?

6 A. Yes.

7 Q. And so you read the whole thing?

8 A. Yes.

9 Q. And you signed it?

10 A. Yes.

11 Q. So everything in here is correct as you remember it
12 at 8:30 on May 25th?

13 A. Yes.

14 Q. And on 8:30, May 25th, you told the police that you
15 heard both Travis and Thomas yelling at Channen --
16 or and Channen?

17 A. I heard all of them yelling and screaming, but I
18 didn't hear Thomas's voice.

19 Q. Okay. Do you still have the paper in front of you?

20 A. Uh-huh.

21 Q. I'm going to show you this line right here. You
22 told the police that you heard Travis and Thomas
23 yelling; correct?

24 A. I don't remember that.

25 MS. ZMROCZEK: Your Honor, at this point, we

1 would move State's Exhibit into evidence.

2 THE COURT: Any objection?

3 MR. WILLIAMS: Without objection, Your Honor.

4 THE COURT: Without objection, it is admitted.

5 (WHEREUPON, State's Exhibit No. 115 was

6 marked for identification and received

7 into evidence.)

8 BY MS. ZMROCZEK:

9 Q. You told them that you turned around and Channen --
10 or Channen turned around and walked out the door;
11 right?

12 A. Yes, walked out of the room.

13 Q. Out of the room. And then you heard a gunshot in
14 the house?

15 A. Yes.

16 Q. Okay.

17 A. Or outside the house. I don't know if he was still
18 in the house or outside the house, but I heard a
19 gunshot when I was in there.

20 Q. When you were in the room? Okay. Who brought the
21 gun that night?

22 A. Travis.

23 Q. How many guns were in that house that night?

24 A. I'm not sure. Only one, I'm guessing.

25 Q. One? One gun? And that is --

1 A. That's what I saw.

2 Q. That's what you saw?

3 A. Yes.

4 Q. And that came with Travis?

5 A. Yes.

6 MS. ZMROCZEK: Beg the Court's indulgence.

7 THE COURT: Certainly.

8 (Pause.)

9 MS. ZMROCZEK: No further questions.

10 THE COURT: Redirect?

11 MR. WILLIAMS: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. WILLIAMS:

14 Q. Ms. Pelzer, who fired that one shot in the house?

15 A. I'm not sure.

16 MR. WILLIAMS: No further questions from the
17 State.

18 THE COURT: Any recross?

19 MS. ZMROCZEK: (Nods negatively.)

20 THE COURT: Thank you, ma'am. You may step
21 down.

22 (Witness steps down.)

23 MR. WILLIAMS: Your Honor, may Ms. Pelzer be
24 excused?

25 THE COURT: I have no objection. She's free

1 to leave if she wants to.

2 MR. WILLIAMS: Thank you, Your Honor.

3 (Witness excused.)

4 MR. WILLIAMS: Your Honor, at this time, the
5 State is going to call Kiara Pelzer.

6 THE COURT: Okay.

7 (Witness approaches.)

8 THE BAILIFF: Place your left hand on the
9 Bible, and raise your right hand, please.

10 (Witness complies.)

11 THE CLERK: Do you solemnly swear or affirm
12 the testimony you give in this case will be the
13 truth, the whole truth, and nothing but the truth,
14 so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Have a seat in the witness stand,
17 and state your full name for the record.

18 (Witness seated.)

19 THE WITNESS: Kiara Pelzer.

20 KIARA PELZER,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WILLIAMS:

24 Q. Good morning, Ms. Pelzer.

25 A. Good morning.

1 Q. How old are you?

2 A. Twenty-five.

3 Q. How old were you on May 24th, 2014?

4 A. Twenty-four.

5 Q. How do you know the Defendant, Channen Ricks?

6 A. That is my son's father.

7 Q. How long have you known him?

8 A. A good while. Since I was little.

9 Q. Okay. How did you know Thomas Pauling?

10 A. We went through elementary school, middle school,
11 and high school together. And he's a part of my
12 family.

13 Q. How long have you known Travis Tucker?

14 A. Since middle school.

15 Q. Tell the jury what happened on the night of
16 May 24th, 2014.

17 A. Me and my cousin -- me and my cousin, Brianna, went
18 to Club Torch. Xavier watched my kids. We were at
19 the back of the club so no one could see us.

20 And -- well, before we got in the club, we saw
21 Travis. And he was telling me that Channen was
22 inside the club. And I told him I knew that
23 already. And then he was -- he asked me could we
24 see each other after the club, and I told him yeah.
25 So we exchanged numbers, and he left the club. But

1 me and Brianna went inside the club. And we were
2 just standing on the back wall and talking.

3 And when -- we left around maybe 4:00 in the
4 morning. And we went to the gas station and we
5 were just sitting the car. And --

6 Q. Go ahead.

7 A. And I called -- I texted Travis and asked him where
8 he was, and he said they were going to a different
9 club and he would text me when he was about to
10 leave.

11 So I called Channen and I asked Channen where
12 he was, and he told me -- no, he kept asking me why
13 and hanging up in my face.

14 So I got out. I pumped gas. And we left the
15 gas station and we were riding Garners Ferry Road.
16 And I called Channen again and asked him where he
17 was. And he told me, Don't worry about it, he
18 alone.

19 And then he asked me where Aiden was. And I
20 told him, Don't worry about it, I think. I think
21 that's what I said.

22 And we left -- oh, and that's when Travis
23 called and said he was going to come to my house
24 instead of me coming with him because his friend
25 didn't answer the phone or something. So I told

1 him that was fine.

2 So I went -- I rode past Channen's mom's house
3 to see if the car was in the yard, and it wasn't.
4 So I called him again, and he said the same exact
5 thing, he was alone and hung up in my face.

6 And so we went to the house, and Travis and
7 Thomas was already there, because he called and
8 asked me which apartment I stayed in. I told him,
9 ██████████ And I said, Somebody will open the door for
10 you. So I told Xavier to open the door. And when
11 I got there, Xavier was in the living room talking
12 to them.

13 And I went inside and we started talking for a
14 little while. And Brianna and Xavier used my car
15 to go to the store. And when they came back,
16 Thomas was already asleep on the floor, so me and
17 Travis was in the room.

18 And -- well, I didn't hear when they came
19 back. I honestly didn't hear when they came back.

20 And so after we got finished doing whatever,
21 we heard someone at the door. And my phone was in
22 the living room on the charger on the chair. And
23 Xavier and Brianna was inside my kids' room with my
24 kids.

25 So Travis was saying, I got to go get my gun,

1 it's in the corner in the living room, which was
2 like by the front door.

3 And I told him, Don't move. I was like,
4 Because if you move, they can see you through the
5 blinds. They can look through the blinds and see
6 that someone is moving in the house.

7 So when -- he went to the corner anyway, and I
8 went back in the room, because I was standing like
9 in the hallway. I went back inside the room to
10 look for something to put on.

11 And when I was in the room -- I was in the
12 closet looking for something to put on, and that's
13 when I heard a whole bunch of commotion inside the
14 living room, so I grabbed a blanket and I wrapped
15 it around me. And when I went in the living room,
16 it was Channen, Travis, and Thomas. They were
17 fighting. So I told them they needed to stop. And
18 Travis was doing something with the gun in the
19 corner.

20 And so Channen was saying, Put the gun up. My
21 little kids in the other room. So he went over
22 there and he took the gun from Travis. And they
23 all was fighting.

24 And I was like in the hallway, like trying to
25 get in the kids' room with my kids and my cousin

1 and nephew, but they had the door locked.

2 So when I finally got in -- when I went inside
3 the room, I was telling them to call -- I was like,
4 Call somebody. I was like -- and they were saying
5 they couldn't find any phone or they didn't know
6 where it was. So we was looking all over the room.

7 And Channen came inside the room and he was
8 yelling. He was saying, I can't believe you in
9 here with my kids and something something, and then
10 he shot in the ceiling. And then I think I ducked
11 on the side of the wall or something.

12 And when he shot, he left. But before,
13 someone ran past the room and ran out of the -- out
14 of my room window. And I thought they broke the
15 glass, I thought they kicked the glass in, but they
16 just lift the window up and they ran through the
17 blinds.

18 So when he left, we left, and we went to get
19 his mom. And when we came back, we went to the
20 back -- to the building behind mine and we saw
21 Thomas on the ground. And that's when they came to
22 question us.

23 Q. Why were you calling Channen and texting Channen
24 that night?

25 A. To make sure he wasn't coming over there.

- 1 Q. Why would you need to do that?
- 2 A. Because I had Travis over there.
- 3 Q. Were you and Channen in a relationship at the time?
- 4 A. No.
- 5 Q. When did you end your relationship?
- 6 A. I'm not sure, but I know it was before my son was
- 7 born.
- 8 Q. How old was your son at the time?
- 9 A. Three and a half, four months.
- 10 Q. How often would Channen stay over to your house?
- 11 A. Whenever he felt like it. If we were on good
- 12 terms, he would stay. If we were on bad terms, he
- 13 wouldn't stay.
- 14 Q. Were you seeing other men during this time?
- 15 A. No. I just started talking back to Travis that
- 16 night.
- 17 Q. Do you know whether or not Channen was seeing other
- 18 women?
- 19 A. Yeah, I knew.
- 20 Q. How do you know that?
- 21 A. People told me, and I went through his phone. I
- 22 knew a couple of the girls.
- 23 Q. Was that the reason you all were not together?
- 24 A. Yes.
- 25 Q. Why would he come over to your house even though

- 1 you all were not together?
- 2 A. I have no idea.
- 3 Q. Would you let him in sometimes?
- 4 A. Yes.
- 5 Q. Why would you do that?
- 6 A. To see his son.
- 7 Q. Would you say he has a pretty good relationship
- 8 with his son?
- 9 A. Yes.
- 10 Q. Would you say you have a pretty good relationship
- 11 with his family?
- 12 A. Yes.
- 13 Q. At any time would you ever try to keep him from
- 14 seeing his son?
- 15 A. No.
- 16 Q. Why were you seeing Travis that night?
- 17 A. Because I hadn't seen him in a minute. And he said
- 18 he wanted to get up -- he wanted to chill.
- 19 Q. Have you and him -- you and Travis had relations in
- 20 the past?
- 21 A. We did.
- 22 Q. You talked about the fight in the front room. Were
- 23 you injured at all during that fight?
- 24 A. Yeah, I got hit once in my ear.
- 25 Q. Who hit you?

- 1 A. I'm not sure.
- 2 Q. Were you hit any other time during that?
- 3 A. No.
- 4 Q. How many guns were in the house that night?
- 5 A. I saw one.
- 6 Q. Who had that gun?
- 7 A. Travis.
- 8 Q. How was Channen able to take that gun from Travis?
- 9 A. He just -- he basically just took it out his hand.
- 10 Q. What did Travis do then?
- 11 A. I'm not sure.
- 12 Q. What did Channen do once he had the gun?
- 13 A. He was saying something, he was talking, but I'm
- 14 not sure what he was saying.
- 15 Q. Where was Thomas when Channen took the gun from
- 16 Travis?
- 17 A. Standing against the wall.
- 18 Q. Did Thomas have a gun?
- 19 A. No, I didn't see one.
- 20 Q. Did Channen have the gun when he was in your
- 21 children's room?
- 22 A. He did.
- 23 Q. Where were Thomas and Travis while you all were in
- 24 your children's room?
- 25 A. They were still in the living room.

- 1 Q. And what were they doing?
- 2 A. They was talking -- they was saying something, but
- 3 they wasn't in there for long because when -- like
- 4 soon as Channen shot in the ceiling, he ran past
- 5 the room.
- 6 Q. Who is he?
- 7 A. Thomas.
- 8 Q. Were the lights on in the house?
- 9 A. Yeah, they were on.
- 10 Q. Did Channen know who Thomas and Travis were?
- 11 A. Yes.
- 12 Q. Did Channen and Thomas have a relationship?
- 13 A. I know they knew each other. Yeah, they were
- 14 friends.
- 15 Q. Did you see Travis leave the apartment?
- 16 A. No, I didn't see him.
- 17 Q. Were you or your children or anyone else in the
- 18 house fearful of Travis or Thomas that night?
- 19 A. No.
- 20 Q. What caused you to leave your home that night?
- 21 A. Because I thought someone was going to come back.
- 22 Q. Someone like who?
- 23 A. Anybody. Any one of them.
- 24 Q. Any one of them?
- 25 A. Like Travis, Thomas, or Channen.

1 Q. Why would Travis come back?

2 A. Actually, I don't think -- he left without his
3 shoes and his shirt, so I'm not sure if he would
4 have come back for that or not.

5 Q. Why would Thomas come back?

6 A. I'm not sure.

7 Q. What about Channen, why would he come back?

8 A. Because he was mad.

9 Q. Why didn't you attempt to leave once you got in the
10 room with your children?

11 A. Because I would have had to use the front or the
12 back door and they were in the living room.

13 Q. Why didn't you leave before Channen shot?

14 A. He was standing like in front of the doorway.

15 Q. Was he preventing you from leaving?

16 A. No, but he had the gun. That was preventing me
17 from leaving.

18 Q. Were you scared of him?

19 A. At that point, yes.

20 Q. Why?

21 A. Because he had a gun.

22 Q. He didn't point the gun at you, did he?

23 A. Not really. Well, he had the gun -- like, when
24 he -- he went up -- it was enough pointing when he
25 did this, and then went up, and he shot up.

1 Q. Did Travis point the gun to you that night?

2 A. No.

3 Q. Have you been in communication with Channen after
4 this incident?

5 A. Yes.

6 Q. Why is that?

7 A. Because he's my son's father.

8 Q. And what does that mean to you?

9 A. I mean, my son needs to know who his father is, so.

10 Q. Has this been a difficult situation for you?

11 A. Yes.

12 Q. Were you trying to set Channen up that night?

13 A. No.

14 Q. Were you angry at Channen that night before he came
15 over?

16 A. No. I know we weren't talking, but I wasn't angry.

17 MR. WILLIAMS: Beg the Court's indulgence,
18 Your Honor.

19 THE COURT: Certainly.

20 (Pause.)

21 BY MR. WILLIAMS:

22 Q. One last question, Ms. Pelzer. Were the lights
23 bright enough in your apartment for you to see the
24 faces of everyone in the front room?

25 A. Yes.

1 MR. WILLIAMS: No further questions, Your
2 Honor.

3 THE COURT: Cross-examine?

4 MS. ZMROCZEK: Thank you.

5 CROSS-EXAMINATION

6 BY MS. ZMROCZEK:

7 Q. Ms. Pelzer, how long had you and Channen been
8 dating?

9 A. A few months.

10 Q. And your son was four and a half months old at the
11 time?

12 A. Three and a half, four months.

13 Q. Okay. You gave him a key to the apartment?

14 A. Yes.

15 Q. He had clothes there?

16 A. Not really. A little bit, a shirt, pair of boxers,
17 pair of shoes.

18 Q. He had some clothes there?

19 A. Yes.

20 Q. He stayed there when y'all were weren't fighting?

21 A. Yes.

22 Q. I'm sorry?

23 A. I said yes.

24 Q. Okay. You stated that you called or texted -- you
25 were -- it was Channen's birthday?

- 1 A. Yes.
- 2 Q. Okay. You texted him at midnight?
- 3 A. Yes.
- 4 Q. Told him you loved him?
- 5 A. Told him happy birthday.
- 6 Q. And that you loved him?
- 7 A. Yes.
- 8 Q. And, in fact, you've seen the text messages from
- 9 your phone; right?
- 10 A. Yeah, I saw them.
- 11 Q. Okay. And those accurately reflect the things that
- 12 you said?
- 13 A. Correct.
- 14 Q. In fact, those text messages between you and
- 15 Channen go back a few weeks; right?
- 16 A. Yes.
- 17 Q. Or at least a week?
- 18 A. Yes.
- 19 Q. Okay. And so throughout these text messages, we
- 20 can see some of the things that you say to Channen
- 21 and some of the things that he says back; right?
- 22 A. Correct.
- 23 Q. And some of the things that you say to him are,
- 24 You'll never see your son again?
- 25 A. Yes.

1 Q. Because you were -- you used to tell him that a
2 lot; right?

3 A. All the time.

4 Q. All the time?

5 A. Uh-huh.

6 Q. Because you knew that that would hurt him?

7 A. Yes.

8 Q. Because he loved Aiden?

9 A. Yes.

10 Q. He loved Nivaya?

11 A. Yes.

12 Q. And Nivaya is your daughter; right?

13 A. She is.

14 Q. But he was helping raise her?

15 A. Yes.

16 Q. And he was good to them?

17 A. Yes.

18 Q. And y'all had troubles because he couldn't decide
19 if he wanted to marry you or be in an exclusive
20 relationship with you; right?

21 A. I don't know about the married part, but be in a
22 relationship, yes.

23 Q. Okay. The exclusive part was where the problem
24 was; right?

25 A. Yes.

- 1 Q. But a lot of times, you used text messages to get
2 him angry because you knew he would come over and
3 talk about it; right?
- 4 A. No.
- 5 Q. So you wouldn't tell him that the baby doesn't have
6 any diapers, go get me diapers?
- 7 A. That was the truth.
- 8 Q. Okay. And he would go do that?
- 9 A. Sometimes.
- 10 Q. Okay. And he wasn't on your lease, we know that;
11 right?
- 12 A. No, he wasn't.
- 13 Q. Okay. But you had given him a key?
- 14 A. Yes.
- 15 Q. And he had -- and he was welcome at your apartment?
- 16 A. When we were on good terms.
- 17 Q. Okay. When you were on good terms. Let me talk
18 about that night for a little bit. You were
19 texting and calling Channen from your phone?
- 20 A. Correct.
- 21 Q. At --
- 22 A. No, not from my phone.
- 23 Q. Okay, I'm sorry.
- 24 A. From Brianna's phone. That night?
- 25 Q. Yeah, that night.

1 A. Yeah, my phone went dead.

2 Q. So at some point you were texting from your phone,
3 and then it went dead?

4 A. Yes.

5 Q. And then you were texting him from Brianna's phone?

6 A. Correct.

7 Q. Okay. And calling him? If there were calls from
8 Brianna's phone, that would have been you calling
9 him; right?

10 A. Correct.

11 Q. Not Brianna?

12 A. Correct.

13 Q. And if there were calls or text messages from
14 Brianna's phone to Travis, that would have been
15 you; right?

16 A. Correct.

17 Q. Okay. I want to talk about the text messages from
18 right before. And you said, You going to BB's
19 house? Who is BB?

20 A. His mother.

21 Q. So you even said I believe on direct that you drove
22 by his mom's house?

23 A. That's correct.

24 Q. Why -- and you said you were looking for him why?

25 A. I didn't say I was looking for him. I was looking

- 1 to see if the car was in the yard.
- 2 Q. Okay. Why were you looking to see if his car was
- 3 in the yard?
- 4 A. Because he told me he was alone.
- 5 Q. And it was his birthday?
- 6 A. Correct.
- 7 Q. And -- I'm sorry?
- 8 A. I said correct.
- 9 Q. And you asked him if he was going to get laid that
- 10 night; right?
- 11 A. No, I didn't.
- 12 Q. Okay. You recall seeing him at the club, or you
- 13 did not see him at the club?
- 14 A. Yeah, I saw him.
- 15 Q. And what dress did you have on?
- 16 A. I'm not sure.
- 17 Q. Okay. Brianna had on a white dress?
- 18 A. Yeah, she had on a white dress.
- 19 Q. Is it possible you had on a black dress?
- 20 A. Yeah.
- 21 Q. Okay. And he had told you that he was going to
- 22 Club Torch; right?
- 23 A. He did.
- 24 Q. Is that why you went to Club Torch?
- 25 A. Yes.

1 Q. Okay. Did you want to see him?

2 A. No.

3 Q. Okay. But you just went there because he had told
4 you that he was going there?

5 A. Yes.

6 Q. And Club Torch is fairly close to your house;
7 right?

8 A. It is.

9 (Pause.)

10 Q. I'm going to show you Defendant's 6 and 7. Is 6
11 the map of -- the directions from Club Torch or how
12 close Club Torch is to your apartment?

13 A. It is.

14 Q. And is 7 your apartment to Channen's mom's house?

15 A. It is.

16 MS. ZMROCZEK: Your Honor, at this time, we
17 would move Defendant's 6 and 7.

18 THE COURT: Any objection?)

19 MR. WILLIAMS: None from the State, Your
20 Honor.

21 THE COURT: Without objection, Defendant's 6
22 and 7 are admitted.

23 (WHEREUPON, Defendant's Exhibit Nos. 6-7
24 were marked for identification and
25 received into evidence.)

- 1 BY MS. ZMROCZEK:
- 2 Q. So Club Torch is on 720 Hazelwood; right?
- 3 A. Correct.
- 4 Q. And your apartment is 1234 Universal Drive?
- 5 A. Correct.
- 6 Q. So that's, driving distance, about three minutes?
- 7 It's less than two miles; right?
- 8 A. Correct.
- 9 Q. Okay. And then you left Club Torch at what time?
- 10 A. 4:00 something, 4:00 in the morning. I don't know
- 11 what time it was. It was like 4:30, somewhere in
- 12 there.
- 13 Q. Did you make any stops before you got to your
- 14 apartment?
- 15 A. Yes, I went to the gas station.
- 16 Q. Okay. And did you see anybody at the gas station?
- 17 A. No.
- 18 Q. All right. You were still texting Channen or
- 19 calling Channen at that point?
- 20 A. Yes.
- 21 Q. Okay. Then you go home and Travis and Thomas are
- 22 already there?
- 23 A. They were.
- 24 Q. And was Travis -- was Thomas asleep on the floor,
- 25 you said?

- 1 A. No, he was eating.
- 2 Q. He was eating?
- 3 A. Sonic's.
- 4 Q. So he was eating Sonic on the couch?
- 5 A. Yes.
- 6 Q. And Brianna and Xavier left?
- 7 A. They did.
- 8 Q. And then you went to the room?
- 9 A. We did.
- 10 Q. Okay. Just you and Travis; right?
- 11 A. Yes.
- 12 Q. And then you said that you heard a knock?
- 13 A. I did.
- 14 Q. Okay. And is it common for Channen to knock before
- 15 he came in?
- 16 A. Sometimes. Sometimes he would knock on the room
- 17 window, sometimes he would call.
- 18 Q. Okay. But he would always let you know before he
- 19 used his key to get in; right?
- 20 A. Uh-huh. Yes.
- 21 Q. All right. So that was just common habit for him?
- 22 A. Uh-huh.
- 23 Q. So he knocked on the door and nobody answered;
- 24 right?
- 25 A. No.

- 1 Q. And you said that -- and all the lights were on?
- 2 A. I didn't say the lights were on.
- 3 Q. Okay. So they weren't on?
- 4 A. The kitchen light was on.
- 5 Q. Okay.
- 6 A. And I think the TV -- I don't know if the TV was on
- 7 or not.
- 8 Q. Okay. So he knocked. Nobody answers. He tries to
- 9 come in with his key; right?
- 10 A. I don't know. I was in my room.
- 11 Q. You don't know, you were in your room?
- 12 A. Yes.
- 13 Q. But typically if he had knocked and you didn't
- 14 answer, he would use his key to come in; right?
- 15 A. Yeah.
- 16 Q. So the next thing you hear, you hear the door open?
- 17 A. I didn't hear anything, I was inside the closet.
- 18 Q. Okay. So you're in the closet. What's going on in
- 19 the living room?
- 20 A. They were fighting.
- 21 Q. They were fighting. And who was fighting?
- 22 A. Channen, Travis, and Thomas.
- 23 Q. So the three of them were fighting?
- 24 A. Yes.
- 25 Q. It was -- Travis and Thomas were together; right?

- 1 A. Yes, they were together.
- 2 Q. Those two are as close as brothers; right?
- 3 A. Yes.
- 4 Q. I mean, they're always together?
- 5 A. Yes.
- 6 Q. And then Channen knew -- he knew both of them, I
- 7 think; right?
- 8 A. Correct.
- 9 Q. I think he was more friends with Thomas; right?
- 10 A. Correct.
- 11 Q. But definitely Thomas and Travis were closer than
- 12 anybody?
- 13 A. That's correct.
- 14 Q. And so Channen is coming in. Travis and Thomas are
- 15 in there?
- 16 A. Yes.
- 17 Q. Travis says, I'm going to get my gun; right?
- 18 A. Yes, that was before Channen came in.
- 19 Q. Okay. So was Thomas asleep on the floor or was he
- 20 awake by the time y'all knew Channen was at the
- 21 door?
- 22 A. He was still asleep and Travis was saying, bro, get
- 23 up. Bro, get up.
- 24 Q. Okay. All right. So Travis was waking him up?
- 25 A. Yes, he was.

- 1 Q. Why did Travis have that gun?
- 2 A. I'm not sure. I guess for his protection.
- 3 Q. Okay. Travis was the only person that had a gun;
- 4 right?
- 5 A. Correct.
- 6 Q. In this whole scenario?
- 7 A. Correct.
- 8 Q. He brought that gun to your apartment?
- 9 A. He did.
- 10 Q. With you in there?
- 11 A. Yes.
- 12 Q. And your kids in there?
- 13 A. Yes.
- 14 Q. And Channen didn't know that they were there?
- 15 A. No, he didn't.
- 16 Q. Even though you had invited Thomas and Travis,
- 17 Channen did not know they were there; right?
- 18 A. Correct.
- 19 Q. So that caught him off guard?
- 20 A. Correct.
- 21 Q. And then when he goes to open the door, he gets
- 22 jumped or they fight him?
- 23 A. They were fighting.
- 24 Q. Okay. They were fighting. Do you recall
- 25 speaking -- so you leave after this?

1 A. Uh-huh, I left.

2 Q. Okay. And you drive -- I'm showing you Defendant's
3 7. You drive from your apartment to Frasier
4 Street?

5 A. Correct.

6 Q. Because that's where Channen's mom is?

7 A. Correct.

8 Q. And you're close with his family?

9 A. Correct.

10 Q. And you drive all the way there?

11 A. Uh-huh.

12 Q. And you knew that, according to your statement
13 today, that Channen had shot a gun?

14 A. Correct.

15 Q. And that you had heard gunshots after?

16 A. I did.

17 Q. When did you call 9-1-1?

18 A. I don't think I ever called 9-1-1.

19 Q. Okay. You go pick up his mom, y'all go back to the
20 apartment?

21 A. Correct.

22 Q. You see all the police?

23 A. Correct.

24 Q. You walked up to Investigator Frost or Deputy
25 Frost?

- 1 A. I don't know who. I walked up to the firefighter
2 first.
- 3 Q. You walk up to a firefighter first?
- 4 A. Uh-huh.
- 5 Q. And then he told you to go to the police?
- 6 A. He told me to go to EMS because my ear was
7 bleeding.
- 8 Q. You went to EMS?
- 9 A. Yes.
- 10 Q. And they asked you who hit you?
- 11 A. Yes.
- 12 Q. You didn't remember?
- 13 A. No.
- 14 Q. You refused any treatment?
- 15 A. Yes.
- 16 Q. Okay. So then after EMS, you go and talk to the
17 police?
- 18 A. Yes.
- 19 Q. And he asked you a bunch of questions?
- 20 A. He did.
- 21 Q. And you said, That's my cousin?
- 22 A. I did.
- 23 Q. And you told him -- him, the police officer -- that
24 Thomas and Travis were in the master bedroom when
25 Channen came in?

- 1 A. No, I didn't.
- 2 Q. Okay. And you told him that the door to the master
3 bedroom was locked?
- 4 A. No, I didn't.
- 5 Q. All right. You told him that Channen said that he
6 was going to get a gun?
- 7 A. No, I didn't.
- 8 Q. All right. You told Investigator Frost that you
9 couldn't open the door to the front bedroom?
- 10 A. Yeah -- to my kids' room?
- 11 Q. Right?
- 12 A. Yes.
- 13 Q. Okay. You told Investigator Frost as you rolled up
14 on the scene when you first talked to him -- this
15 is the first police officer you talked to; right?
- 16 A. I'm not even sure. I don't know none of their
17 names.
- 18 Q. Right. But you remember talking to somebody at the
19 scene?
- 20 A. Yes.
- 21 Q. Okay. And you told him that you heard a gunshot
22 and you heard glass break?
- 23 A. Uh-huh. Yes.
- 24 Q. But you didn't see who shot the gun?
- 25 A. No, I didn't. I don't know if I told him that.

1 I'm not sure.

2 Q. All right. You told him you were trying to get
3 into a room?

4 A. Yes.

5 Q. Okay. But then a little bit later on that day, at
6 8:30, you get taken down to the station?

7 A. Yes.

8 Q. And the police are questioning you?

9 A. Correct.

10 Q. And then that's when you -- at the end of that
11 statement, that's when you say that, Channen was in
12 the bedroom when I heard a gunshot?

13 A. Yes.

14 Q. Okay.

15 A. Was that a question or something?

16 Q. I'm sorry?

17 A. Was it a question?

18 Q. Well, you wrote out -- let's talk about that. When
19 you're giving a statement, do they just ask you,
20 Write down what you remember, or are they asking
21 you questions while you're typing -- while they're
22 doing your statement?

23 A. They told me to tell them what I remember, and then
24 he asked me questions at the end.

25 Q. Okay. And you told him that -- when you wrote that

1 statement down, you told them, Travis told me that
2 he hoped that my baby daddy didn't come home
3 because he and his bro, Thomas, stay strapped?

4 A. Correct.

5 Q. What's that mean?

6 A. They stayed with guns.

7 Q. Okay. And that he said he didn't want to have to
8 kill somebody?

9 A. Correct.

10 Q. Who is he?

11 A. That's what Travis said.

12 Q. That was Travis?

13 A. Yes.

14 Q. He and Thomas told you -- or he said they always
15 had guns?

16 A. That's what Travis said.

17 Q. That's what Travis said?

18 A. Yes.

19 Q. And Travis said he didn't want to have to kill
20 anybody?

21 A. Correct.

22 Q. Okay. It was very chaotic?

23 A. Correct.

24 Q. This all happened very quickly?

25 A. It did.

1 Q. From the time that Channen got to the apartment to
2 the time that he left out, less than five minutes?

3 A. What it felt like.

4 Q. He didn't know they were in the apartment?

5 A. No, he didn't know.

6 Q. Okay. You and Channen have been talking or in a
7 relationship since then; right?

8 A. We been talking.

9 Q. Okay. He's been in jail?

10 A. Yes.

11 Q. The whole time?

12 A. Yes.

13 Q. But you've been getting phone calls?

14 A. Yes.

15 Q. And you've been answering them?

16 A. Yes.

17 Q. And you've been writing letters?

18 A. Yes.

19 Q. And do you recall a specific phone call? I believe
20 I played it for you before.

21 A. Talking about -- yeah.

22 Q. And that was in April of 2015?

23 A. Correct.

24 Q. Where Channen was talking to you and he was asking
25 you some questions about why you did this to him;

1 right?

2 A. Correct.

3 Q. And you said -- you told him you needed to get
4 even?

5 A. Yes.

6 Q. Because you were mad at him?

7 A. I was.

8 Q. Because he was not faithful?

9 A. At all.

10 Q. At all. And you were mad?

11 A. Yes.

12 Q. And when he asked you why would you do this, you
13 said, I want to get even -- I wanted to get even?

14 A. Correct.

15 Q. You didn't intend for anybody to get hurt?

16 A. I didn't.

17 Q. But you definitely wanted to get even?

18 A. I did.

19 Q. Okay.

20 MS. ZMROCZEK: Beg the Court's indulgence.

21 THE COURT: Certainly.

22 (Pause.)

23 BY MS. ZMROCZEK:

24 Q. Do you remember talking about -- we were talking
25 about how you would text message him?

1 A. Yes.

2 Q. And you remember writing him letters in jail?

3 A. It was so long ago, I don't remember, but -- yeah,
4 I remember writing him, but not none of the
5 letters.

6 Q. Okay. And you don't remember exactly what they
7 say?

8 A. No, I don't.

9 Q. I'll ask you, and if you don't recall, I'll show
10 them to you, okay?

11 A. All right.

12 Q. But one of the things that you wrote him is that
13 you miss texting him all day long -- and, pardon,
14 these are your words -- fucking wit ya and making
15 you mad, then turn around and be nice to you, laugh
16 out loud, the good times; right?

17 A. Yeah.

18 Q. Okay. So you would admit that you would send him
19 text messages?

20 A. Yes.

21 Q. And then turn around and --

22 A. Sometimes, not all the time.

23 Q. Sometimes?

24 A. Yeah.

25 Q. And turn around and say nice things?

1 A. Yes.

2 Q. And that's what y'all did throughout the course of
3 your relationship?

4 A. Yes.

5 Q. Okay. And then you wrote him another letter that
6 said that you never wanted any of this to happen
7 once you got to the house with Travis; right?

8 A. Correct.

9 Q. And that you just wanted to take him home, all you
10 were doing was thinking about Channen from the time
11 that you started talking to the boy outside of the
12 club?

13 A. Correct.

14 Q. You'd never done anything like that the whole time
15 y'all were talking, meaning you hadn't cheated on
16 him?

17 A. No.

18 Q. Okay. I could be out with Bri and somebody would
19 be trying to talk to her and you would always think
20 about Channen?

21 A. Yes.

22 Q. Okay. You saw it as just wanting your family and
23 you were tired of going from person to person?

24 A. Correct.

25 Q. But that night, on his birthday, you had had

1 enough?

2 A. Yeah.

3 Q. And you wanted to get even with him?

4 A. I did.

5 MS. ZMROCZEK: I have no further questions.

6 THE COURT: Redirect?

7 MR. WILLIAMS: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. WILLIAMS:

10 Q. Kiara, what do you mean by getting even with
11 Channen?

12 A. Like making him feel my pain from what he put me
13 through.

14 Q. Okay. What did he put you through?

15 A. Different females he was talking to would come and
16 tell me that they -- tell me like random stuff or
17 like --

18 THE COURT REPORTER: I'm sorry, I didn't hear
19 you.

20 A. I'm sorry. Tell me random stuff. Or, like, from
21 him basically cheating when we were in a
22 relationship.

23 Q. So are you referring -- would you describe that as
24 emotional pain, mental pain, or physical pain?

25 A. Emotional.

1 Q. Was it -- when you say you wanted to get even, did
2 you want anyone to get hurt?

3 A. I didn't.

4 Q. Why didn't your relationship with Channen work out?

5 A. Because he wanted to talk to several girls at one
6 time.

7 Q. Would you have wanted it to work out?

8 A. Yeah, I would have.

9 Q. Was it your goal or intent for you all to be
10 monogamous? To have a relationship where it was
11 just you and him?

12 A. Yes, at one point.

13 Q. All right. When you called him and went by his
14 mother's house, what was your goal?

15 A. I just wanted to see where he was.

16 Q. And why is that again?

17 A. Because I was going to be with Travis.

18 Q. And you wouldn't want him to come over there?

19 A. No.

20 Q. Do you remember the text message Ms. Zmroczek asked
21 you about?

22 A. Which one?

23 Q. I'll show you.

24 (Pause.)

25 MR. WILLIAMS: I'm showing the witness State's

1 Exhibit 126.

2 THE COURT: Okay.

3 MR. WILLIAMS: Previously marked for
4 identification purposes.

5 BY MR. WILLIAMS:

6 Q. Can you read that for me?

7 A. Boi, lay u at bb house. I'm bout to cum or u wit
8 yo bitch.

9 Q. What does that mean?

10 A. Boi, lay u is like stop lying, basically.

11 Q. Was it ever your intent through the communication
12 with Channen that night to actually meet with him?

13 A. No.

14 Q. Do you remember giving a statement to the
15 investigator?

16 A. I do.

17 Q. Were you given the opportunity to review that
18 statement?

19 A. I was.

20 Q. You had an opportunity to make any corrections?

21 A. I did.

22 Q. What do you remember about the fighting that took
23 place in your front living room? Let me ask it
24 this way. Who was fighting who?

25 A. Well, Channen was basically fighting Travis and

1 then he hit Thomas.

2 Q. Who initiated the fight?

3 A. Channen.

4 Q. Was Thomas trying to identify himself to Channen?

5 A. He was.

6 Q. Did Thomas -- did you see Thomas hit Channen?

7 A. No.

8 Q. Did you see Channen hit Thomas?

9 A. Yes, I saw him hit Thomas.

10 Q. How many written statements did you give?

11 A. One.

12 Q. How many officers did you talk to?

13 A. Inside the room? I think it was two of them in the
14 room with me.

15 Q. Did you talk to one officer outside the room?

16 A. At my home, back to my apartment.

17 Q. Were you given the opportunity to review your
18 statement at that time? At your apartment?

19 A. No.

20 Q. What was the officer wearing?

21 A. I'm not sure.

22 Q. Do you know whether or not it was a uniform?

23 A. I think he was wearing a shirt and tie, I think.

24 Q. When were you given an opportunity to review the
25 statement?

1 A. When I came here -- you talking about to read back
2 over it?

3 Q. No, when you first gave it?

4 A. Oh, at the room. That was it.

5 MR. WILLIAMS: Your Honor, I beg the Court's
6 indulgence.

7 (Pause.)

8 MR. WILLIAMS: I'm showing the witness State's
9 Exhibit 9.

10 BY MR. WILLIAMS:

11 Q. What's the date of that statement, Ms. Pelzer?

12 A. May 25th, 2014.

13 Q. Is that the day that you told law enforcement that
14 Channen hit Thomas?

15 A. I didn't tell -- I don't know if I told them that.

16 Q. Can you read that for me?

17 A. It says, Thomas was saying if we could -- if we --
18 Channen went up to Thomas and started fighting with
19 him and knocked him down.

20 Q. So today is not the first time you said that?

21 A. No, it's not.

22 MR. WILLIAMS: No further questions, Your
23 Honor.

24 THE COURT: Recross?

25 MS. ZMROCZEK: Yes, very briefly.

1 THE COURT: Sure.

2 RECROSS-EXAMINATION

3 BY MS. ZMROCZEK:

4 Q. Ms. Pelzer, you said you didn't want anybody to get
5 hurt that night?

6 A. I didn't.

7 Q. You didn't bring a gun; right?

8 A. No.

9 Q. That was Travis?

10 A. Yes.

11 Q. And Travis is the one that got up to get the gun?

12 A. He did.

13 Q. And travis is the one that introduced the gun into
14 this situation?

15 A. He did.

16 Q. But you're the one who wanted to get even, in your
17 words I believe, Make Channen feel your pain?

18 A. Correct.

19 MS. ZMROCZEK: Thank you.

20 THE COURT: You may come down.

21 (Witness steps down.)

22 THE COURT: Do you wish the witness to be
23 excused?

24 MR. WILLIAMS: Please, Your Honor.

25 THE COURT: Any objection?

1 MS. ZMROCZEK: None.

2 THE COURT: Ms. Pelzer, you're free to leave
3 too. Thank you.

4 (Ms. Pelzer excused.)

5 THE COURT: Ladies and gentlemen, at this
6 point we'll take a recess. I will let you go to
7 your jury room. Do not begin your deliberations.
8 We will be with you in about 15 minutes.

9 Thank you.

10 (WHEREUPON, the jury retires to the jury
11 room at 10:49 a.m.)

12 THE COURT: Anything from the State before we
13 recess?

14 MS. SAMPSON: No, sir.

15 THE COURT: Anything from the Defendant?

16 MS. ZMROCZEK: Nothing.

17 THE COURT: We'll be at ease about 15 minutes.

18 Thank you.

19 (WHEREUPON, a break was taken at 10:50
20 a.m.)

21 THE COURT: Is the State ready to proceed?

22 MR. WILLIAMS: Yes, Your Honor.

23 THE COURT: And the Defense is ready?

24 MS. ZMROCZEK: Yes, sir.

25 THE COURT: Let's bring in our jury, Mr.

1 Addison. Thank you so much.

2 THE BAILIFF: Yes, sir.

3 (WHEREUPON, the jury enters the
4 courtroom at 11:06 a.m.)

5 THE BAILIFF: The jury is seated, Your Honor.

6 THE COURT: Thank you, Mr. Addison.

7 Appreciate that.

8 Thank you, ladies and gentlemen. We're ready
9 to continue.

10 Solicitor, you may call your next witness.

11 MR. WILLIAMS: Thank you, Your Honor. The
12 State would call Xavier Richardson.

13 (Witness approaches.)

14 THE BAILIFF: Place your left hand on the
15 Bible, and raise your right hand, please.

16 (Witness complies.)

17 THE CLERK: Do you solemnly swear or affirm
18 the testimony you give in this case will be the
19 truth, the whole truth, and nothing but the truth,
20 so help you God?

21 THE WITNESS: Yes, ma'am, I do.

22 THE CLERK: Have a seat, and state your full
23 name for the record.

24 (Witness seated.)

25 XAVIER RICHARDSON,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WILLIAMS:

4 Q. Good morning, Xavier.

5 A. Good morning.

6 Q. How old were you at the time of this incident?

7 A. I want to say 17.

8 Q. Seventeen. How do you know the Defendant, Channen
9 Ricks?

10 A. That's my uncle.

11 Q. How do you know Brianna Pelzer?

12 A. Through Kiara.

13 Q. How do you know Kiara?

14 A. Through my uncle.

15 Q. Did you know Thomas Pauling?

16 A. No.

17 Q. No? Do you know Travis Tucker?

18 A. No. I mean, through Kiara, but not right now.

19 Q. What were you doing on the night of May 24th, 2014?

20 A. Babysitting.

21 Q. Who were you babysitting for?

22 A. I was babysitting for Kiara.

23 Q. Okay. Do you remember what time you came to the
24 house?

25 A. I want to say she picked me up around

1 11:00 o'clock.

2 Q. 11:00 p.m.?

3 A. Yes, 11:00 p.m.

4 Q. If you would, speak up a little bit for us. Maybe
5 move the microphone closer.

6 A. Oh, gotcha.

7 Q. Thank you, sir. Where does Kiara live?

8 A. In -- where she lived? In Richland Village at the
9 time.

10 Q. Do you remember the apartment complex -- the
11 apartment number?

12 A. No.

13 Q. All right. So what did you do once you got there?

14 A. I guess, I went -- I just how lounged around, I
15 guess, because I was used to babysitting kids. So
16 I just kind of lounged around in the house
17 basically.

18 Q. Who was there when you got there?

19 A. Bri was there getting dressed and the kids were
20 there.

21 Q. When you say Bri, who are you referring to?

22 A. Brianna Pelzer, I'm sorry.

23 Q. Do you remember what time Brianna and Kiara left
24 the apartment?

25 A. I don't know the time. If I had to place a time, I

1 would say like shortly after we got there, probably
2 like between 11:30 and 11:45, I would say. I don't
3 remember.

4 Q. Do you remember what time they came back?

5 A. They returned, I would say, around 12:00,
6 shortly -- because they asked me for some money to
7 get in, and I didn't have any, so they left again
8 and then came back. But I would say if had to put
9 a time, 12:00.

10 Q. When did they come back after that?

11 A. I would say around one hour or two later. They
12 came back periodically, so.

13 Q. Okay. So they left and returned -- they left and
14 returned multiple times?

15 A. Uh-huh.

16 Q. When was the last time they came back?

17 A. The last time -- the last time they came back, I
18 would probably say, like, really -- it was really
19 late. I would say around 3:00ish, between 3:00 and
20 4:00.

21 Q. So when you say late, you really mean early in the
22 morning?

23 A. Yeah, early in the morning.

24 Q. So what did they do when they came back?

25 A. When -- well, when they came back, that's when, you

1 know, Thomas and Travis was already there. That
2 was the last time they came back. They were out
3 before that. And then I just texted Kiara to
4 let --

5 THE COURT REPORTER: I'm sorry, you need to
6 speak up.

7 A. Okay. They left. When they came back, Thomas
8 and -- you know, Thomas and Travis was already
9 there. I texted Kiara to come home because I
10 didn't know her company, and she came home.

11 BY MR. WILLIAMS:

12 Q. Who let them in?

13 A. Me. I let them in.

14 Q. How did you know to let them in?

15 A. She did state when she came back the second time
16 that two people were coming over, so I knew that
17 she had company coming over.

18 Q. I gotcha. What did you do once they arrived?

19 A. I just sat there with the kids. I didn't do
20 anything.

21 Q. Okay. Where were you and the children at this
22 time?

23 A. I was on the couch with the kids, but then me and
24 kids transitioned to the room.

25 MR. WILLIAMS: I'm showing the witness

1 Defendant's Exhibit 2.

2 BY MR. WILLIAMS:

3 Q. Do you remember taking that picture?

4 A. Yes. This was the picture that I took when Kiara
5 came back to -- me and Bri went to the store with
6 me and we returned and we found him on the floor.

7 Q. Why did you take that picture?

8 A. Because his pants was down and it was funny, so me
9 and Bri took a picture.

10 Q. Okay. Was he asleep at the time?

11 A. I wouldn't say sleep, but he was -- he was like
12 kind of drunk, but he wasn't like fully sleep. He
13 was what you could say trying to go to sleep, I
14 would say.

15 Q. I couldn't hear what you said.

16 A. I would say he was trying, but he wasn't fully
17 sleep.

18 Q. Okay. When did you exit the living room to go to
19 the kids' room for the night?

20 A. I kind of exited shortly before they arrived, so I
21 would say -- they kind of arrived between like --
22 late 3:00ish, going on 4:00. I would say probably
23 around 3:30 a.m., I went in the room with the kids.
24 But they were first sleep on the couch in the
25 living room, but when they came, I kind of

1 transitioned into the room due to, you know, I
2 didn't know them, so.

3 Q. Were you uncomfortable with them being there?

4 A. I kind of were because I didn't -- I told Kiara not
5 to invite them, so I kind of was uncomfortable.
6 But, then again, it wasn't -- you know, it wasn't
7 my house, so I just, you know.

8 Q. Why did you tell Kiara not to invite them?

9 A. Because when she stated that she had friends coming
10 over, she didn't say kind of why, and I told her
11 not to because I was under the impression her and
12 my uncle was together, which they were.

13 Q. And she did it anyway?

14 A. Yes.

15 Q. Did you hear a knock -- or when did you hear a
16 knock at the door once you retired to the bedroom
17 for the evening?

18 A. Well, it was that night. But I heard -- I don't
19 know the time verbatim, but I know it had to have
20 been like around 5:00ish, I would say. I did hear
21 a knock, but I didn't -- you know, I didn't proceed
22 to go open the door because, once again, I didn't
23 really try to involve myself too much in the
24 situation because it wasn't, you know, my place to
25 do that.

1 Q. Was there a time you looked out of the window?

2 A. No.

3 Q. Did you know who was knocking at the door?

4 A. I recognized the voice. I knew it was my uncle
5 knocking to come inside, asking her to come inside.

6 Q. Why didn't you tell him she had company?

7 A. Why I didn't?

8 Q. Right.

9 A. Because it wasn't my place. And I already stressed
10 the fact to her not to have the company, so I just
11 didn't.

12 Q. At that time, did you think your uncle was in any
13 danger?

14 A. Before they were coming -- before they came to the
15 house, Kiara did state to Bri, they was talking
16 back and forth, she was like, He said he was going
17 to like -- the Travis guy, she said, He said he was
18 going to bring a gun, but I told him not to because
19 there was no need for that.

20 And so right there, I was like, oh, yeah, you
21 don't bring any guys over here. I told that to her
22 previously before that, but I said it again.

23 And then she was like, Oh, but he's not going
24 to bring it, or nothing like that. You know, he's
25 just -- he didn't want Channen to come, but she was

1 saying that Channen wasn't coming, my uncle wasn't
2 coming, because he was out and doing his own thing.

3 And I was just like, you know, at that time,
4 so. The only reason I was still there was because
5 it really was late at night.

6 Q. Were you concerned for your uncle's safety?

7 A. Before because I was -- because I heard that he was
8 going to bring a gun, but then again, she said no.
9 So I really wasn't concerned because I was under
10 the impression that he wasn't coming. I just said
11 if there was anything to, you know, transform, then
12 I wasn't going to be a part of it, basically.

13 Q. What did you do when your uncle got there, the
14 Defendant, Channen Ricks?

15 A. I kept doing what I was doing before he got there.
16 I just was laying down with the kids.

17 Q. What happened next?

18 A. It's really -- it's really a lot because I really
19 wasn't in the area. I would say I was trying to
20 exit the area, but I got up when he was knocking on
21 the door. When Kiara entered the room, I got up
22 and I was looking at them from in the room. And
23 then I was walking out, I kind of seen him pacing
24 with the gun. And that's when I asked him, I was
25 like, What are you doing? And then he didn't

1 speak. He didn't really say nothing at all. So
2 that's when I was kind of concerned.

3 Q. Who is he?

4 A. Travis.

5 Q. What did you see next?

6 A. I didn't -- I just seen Kiara grab a towel and
7 cover up and him just pacing back and forth.

8 Q. Was your uncle in the room at that time?

9 A. I would assume not because he wasn't -- you know,
10 there wasn't any kind of movement as far as going
11 towards, you know, the living room. He was just
12 pacing back and forth.

13 Q. Where was Thomas at this time?

14 A. I didn't see him because I was still in the room.

15 Q. What did you do next?

16 A. I closed the door because the kids -- I went back
17 in the room with the kids.

18 Q. Okay. Was there a knock at the children's door at
19 any point in time?

20 A. Yes. It was Kiara saying open the door, let her
21 in.

22 Q. Who let her in?

23 A. I can't remember. I think I let her in because I
24 think Bri was kind of farther back in the room.

25 And I think I opened the door and walked back to,

1 you know, where I was back with the kids.

2 Q. Where were you?

3 A. I was kind of at the foot of the bed, you know,
4 because Bri was actually in the bed with the kids.
5 And I was at the foot of the bed, kind of like
6 laying on the floor.

7 Q. And this was -- whose room was this?

8 A. This was the kids' room.

9 Q. When did your uncle come into the room?

10 A. He -- Kiara came in and then he came in shortly
11 after her. And then he was like crying and upset
12 asking her why she was doing that and, you know,
13 stuff like that.

14 Q. What happened next?

15 A. It was just -- once again, it was a lot to, you
16 know, take in at that time because, you know, it
17 was really crazy. But I know after he was asking
18 her all those questions, whatever, they was both
19 arguing back and forth -- well, not arguing, but he
20 was upset yelling at her, then she was just like
21 looking very -- like with this glaze on her face.

22 Q. Surprised?

23 A. Yeah, basically. And she was just -- they were
24 just arguing. And so when they started arguing, I
25 really didn't pay too much attention because, at

1 that time, you know, Travis and Thomas, they were
2 still in the house.

3 Q. How do you know that?

4 A. Because I heard them fumbling around in the living
5 room. I don't know what -- you know, as far as
6 them -- I don't know what they were doing, but I
7 just know I heard people in the house.

8 Q. Okay. What happened after that?

9 A. I don't know. As far as in the room, they were
10 just arguing. I kind of just mind my business. I
11 was still laying on the floor, so I didn't really
12 --

13 Q. Have you seen them argue like that before?

14 A. I mean, it wasn't -- it was something different,
15 but due to the fact that someone was, you know,
16 cheating on their boyfriend, so it was a different
17 kind of argument, but it wasn't anything like out
18 of the ordinary. It's what you would expect, if
19 someone was cheating on you, you'd be upset.

20 Q. So how long were they there arguing?

21 A. It was very -- it was short. Like, I can't
22 remember verbatim because it was so long ago, but
23 it wasn't a long argument.

24 Q. When did Channen leave the room?

25 A. He left shortly because Kiara told him to leave.

1 She was like, you know, Leave.

2 Q. Did you hear a gunshot at any point while you were
3 in the room?

4 A. I did hear a gunshot. I don't know whether it in
5 the room or outside the room because, once again, I
6 was on the floor.

7 Q. Were you looking at your uncle and Kiara?

8 A. When they -- when he first entered, but as far as
9 like through -- you know, watching them argue, no,
10 I wasn't. I was worried mostly about the kids.

11 Q. What did he have in his hand?

12 A. I don't remember verbatim. I mean, I seen him walk
13 in, but I seen him walk in and start arguing with
14 Kiara. So I really wasn't, you know, paying
15 attention exactly.

16 Q. Did you notice anything in his hand?

17 A. I didn't notice.

18 Q. When did you leave the room?

19 A. When Kiara came back in shortly and rushed all of
20 us to get our stuff and leave.

21 Q. Why did she do that?

22 A. I mean, I guess it was a stage of panic. She was
23 just like, Let's go, let's go, let's go.

24 Q. What did you do after you all left?

25 A. Went and got my grandma.

1 Q. Why did you go get her?

2 A. Because Kiara said let's get her, so we went and
3 got her.

4 Q. And what happened next?

5 A. My grandma got in the car and we drove back to
6 Richland Village. And from there, that's when we
7 found out, you know, everything else about, you
8 know, the death of Thomas.

9 Q. Did you see Thomas with a gun that night?

10 A. No, I didn't see Thomas with a gun. I seen Travis
11 with a gun.

12 Q. Did you notice when Thomas and Travis left the
13 apartment?

14 A. No.

15 Q. Were they there when you all left?

16 A. I can't say exactly because I wasn't worried about
17 the people that was there. I just kind of left.
18 You know, I just rushed out and got in the car.

19 Q. Were you scared?

20 A. I mean, I was. I was -- you know, I was a little
21 younger and I was kind of like scared because I
22 didn't know because he did have a gun. And I was
23 scared that, you know, if he shot, it would hit me
24 or the kids. So I was scared, but -- so that's why
25 I did leave fast, but I wasn't too scared to where

1 I couldn't help the kids.

2 Q. I gotcha. I'm a little confused, help me out.

3 When you left, was there anyone in the front living
4 room?

5 A. Not -- I didn't see anyone in the front living
6 room.

7 Q. When your uncle left, was there anyone else in the
8 house besides you and children and Kiara?

9 A. That's the thing. I don't know exactly. Kiara
10 told me to leave, in which -- I don't know --
11 honestly I have no opinion, but I'm pretty sure
12 they probably did, but I didn't see it with my own
13 eyes, so that's why I'm not stating. You know, I
14 don't want to say that.

15 MR. WILLIAMS: All right. No further
16 questions, Your Honor.

17 THE COURT: Cross-examine?

18 MS. ZMROCZEK: Just briefly.

19 THE COURT: Sure.

20 CROSS-EXAMINATION

21 BY MS. ZMROCZEK:

22 Q. You didn't see Channen with a gun?

23 A. No. I didn't see him.

24 Q. Okay. And this happened really fast?

25 A. It really did.

- 1 Q. Okay. And you took this picture; right?
- 2 A. Yes, I did.
- 3 Q. And there was nothing wrong with your phone; right?
- 4 So if it says 5:07 a.m., that's what time?
- 5 A. Yes.
- 6 Q. And you took that when you got back from the store?
- 7 A. Yes, ma'am.
- 8 Q. Okay. And his shoes were off?
- 9 A. Kind of, yes, ma'am.
- 10 Q. Okay. And when they were in -- I know it slows
- 11 down when we talk about it, but when they were in
- 12 the room, that was a short period of time; right?
- 13 A. Yes, ma'am, that was.
- 14 Q. Okay. And then you heard that gunshot -- you heard
- 15 it, but you didn't see it; right?
- 16 A. Yes. I was worried about me and the kids. I
- 17 didn't really look around.
- 18 Q. And the only person you saw with a gun in their
- 19 hand was Travis?
- 20 A. Yes, ma'am.
- 21 Q. Okay. You told Kiara not to have them come over?
- 22 A. I did.
- 23 Q. She told you that he was going to bring a gun?
- 24 A. She stated to Bri, she was like, Travis said that
- 25 he was going to bring one. And then she said that

1 she told him not to. And so I was just like -- at
2 that moment I was like, That might not be a good
3 idea. I did say previously, you know, that she
4 shouldn't bring them because of the fact, you know,
5 I was under the impression her and my uncle was
6 together, which they were. So I was kind of like,
7 Don't do that, you know, but she did say that he
8 wasn't so, I kind of like let it go.

9 Q. Okay. Were you talking with Channen that evening,
10 with your uncle?

11 A. I wasn't. I didn't really -- you know, like it was
12 his birthday, so I didn't really, you know, bother
13 him.

14 Q. Okay. You knew -- did you have any recollection if
15 he and Kiara were talking?

16 A. I did assume they was -- they were talking because
17 she knew where he was going to be on his birthday,
18 so I would assume they was talking.

19 Q. And she had talked to you about that?

20 A. Yes, she did.

21 Q. This wasn't a surprise to her, like she knew where
22 he was going?

23 A. Yes, she knew where he was going, that's why she
24 was going where he was.

25 Q. That's why she was going where he was; right?

- 1 A. Uh-huh.
- 2 Q. Okay. And when Channen comes over or home, did
- 3 he -- where did you live at the time?
- 4 A. I lived at 1029 Frasier Street with my grandma.
- 5 Q. And?
- 6 A. His mom.
- 7 Q. His mom. And did he stay there sometimes?
- 8 A. He stayed there sometimes, but mostly he would stay
- 9 with Kiara. He stayed there, you know,
- 10 periodically, sometimes. You know, a long day or
- 11 if he bring me home from work, he would probably
- 12 stay there. Most of the time, he stayed with
- 13 Kiara.
- 14 Q. Okay. And did have a car?
- 15 A. He drove my grandmother's car.
- 16 Q. He drove your grandmother's car? Okay. And so he
- 17 would stay at both places?
- 18 A. Uh-huh.
- 19 Q. All right. But he often stayed over there?
- 20 A. Yes, ma'am, mostly at Kiara's.
- 21 Q. You saw Travis pacing back and forth with the gun?
- 22 A. Yes, ma'am.
- 23 Q. Where was this?
- 24 A. This was kind of --
- 25 Q. Hang on. Let's make it easier for you. I'm going

1 to show you what's in evidence as Defendant's 23.

2 Is that the layout of the apartment?

3 A. Yes.

4 Q. Okay. So point to the jury, show them where he,
5 Travis, was pacing back and forth?

6 A. In this area, behind the chair, kind of in the
7 little hallway.

8 Q. In that little hallway?

9 A. Uh-huh. Yes, ma'am.

10 Q. Okay. So it was in the hallway between the two
11 rooms?

12 A. Yes.

13 Q. And so Thomas was somewhere out here?

14 A. Yes.

15 Q. And was he awake at that point?

16 A. I didn't --

17 Q. You didn't see?

18 A. I didn't see him because I was still in the doorway
19 looking out into Kiara and Travis.

20 Q. How many lights were on at this point?

21 A. That I know of? The kitchen light. The kitchen
22 light is kind of behind -- you know, you able to
23 see everything into the living room and the
24 hallway, a little bit into the hallway.

25 Q. A little bit into the hallway.

1 A. It was kind of dark a little bit in that hallway,
2 but you were able to see.

3 Q. So you're able to see the kitchen light?

4 A. Uh-huh.

5 Q. And so when you saw Travis pacing this hallway, you
6 shut the door?

7 A. Yes, with the gun. You know, when I seen the gun,
8 I shut the door.

9 Q. Okay. What was his demeanor?

10 A. It was kind of -- it was very, I would say -- I
11 want to say on the brink of like scared, nervous,
12 like really nervous, like, you know, someone who
13 got caught.

14 Q. Somebody who got caught?

15 A. Yes.

16 Q. Okay. When Channen came into the house, did you --
17 you didn't see him enter; right?

18 A. No.

19 Q. You knew he had a key?

20 A. Yes, I knew.

21 Q. Okay. Did you hear anything after he entered?

22 A. A lot of like fighting.

23 Q. Lot of fighting.

24 A. A lot of crying, but that's all I really heard.

25 Q. And where was -- Kiara wasn't in there, was she?

1 A. No, she wasn't in there at first because she was on
2 the other side of the door, but then I opened it up
3 to let her in because she knocked.

4 Q. Okay. And when y'all left, did you leave before or
5 after Travis and Thomas?

6 A. I would -- I don't know exactly who left or know
7 what time. I knew that I heard them in the living
8 room and then also I heard Kiara telling my uncle
9 to leave the house. And so right after she told
10 him to leave, she left out with him. And then she
11 came back in and told us to, you know, gather our
12 stuff. So if I had to say when we left, I would
13 say we kind of left at the same time. But then
14 again, like, I don't know.

15 Q. Then again, this all happened very quickly?

16 A. Very fast. So I don't really -- I can't really
17 place who left first.

18 Q. And you never saw the gun in Channen's hand?

19 A. No.

20 Q. And you don't know who shot that --

21 A. No.

22 Q. -- ceiling?

23 A. No.

24 Q. And you do know that the only person you saw with
25 the gun was Travis?

1 A. Correct.

2 MS. ZMROCZEK: Beg the Court's indulgence.

3 THE COURT: Yes.

4 (Pause.)

5 MS. ZMROCZEK: Thank you. No more questions.

6 THE COURT: Redirect, Solicitor?

7 MR. WILLIAMS: None, Your Honor.

8 THE COURT: Thank you. You may come down, Mr.
9 Richardson. You're free to leave if you choose.

10 (Witness excused.)

11 THE COURT: Call your next witness, please.

12 MR. WILLIAMS: The State calls Latonya Lewis.

13 (Witness approaches.)

14 THE BAILIFF: Place your left hand on the
15 Bible, and raise your right hand, please.

16 (Witness complies.)

17 THE CLERK: Do you solemnly swear or affirm
18 the testimony you give in this case will be the
19 truth, the whole truth, and nothing but the truth,
20 so help you God?

21 THE WITNESS: Yes, ma'am.

22 THE CLERK: Please have a seat, and state your
23 full name for the record.

24 THE WITNESS: Latonya Lewis.

25 LATONYA LEWIS,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WILLIAMS:

4 Q. Good morning, Ms. Lewis.

5 A. Hi.

6 Q. Where did you live on May 24, 2014?

7 A. You said where did I live?

8 Q. Where?

9 THE COURT: Ms. Lewis, you need to move a
10 little closer to the mic, please. That's good.
11 Thank you very much.

12 A. I actually was still living on True Street, but I
13 was moving into the house on Plymouth. I cannot
14 remember exactly the address.

15 Q. How far is that away from Richland Village
16 Apartment complex?

17 A. I'm not for sure.

18 Q. Is it close? Is it far?

19 A. I don't even know where Richland Village is.

20 Q. Okay. What of any significance happened on the
21 early morning of May the 25th, 2014?

22 A. Me and my grandson -- I had just come back from
23 Tennessee from picking up my grandson, so we was in
24 the house sleeping. And I would say between 6:00,
25 7:00 in the morning, we got a boom on the door.

1 Someone knocked on the door. I got up to see who
2 was at the door. And a young man was at the door
3 with no shirt on, some black jeans that was wet.
4 No shoes. He had on socks. And you could tell he
5 had been scuffling, like his back was dirty and he
6 had like whelps on his back. And he came in and --
7 he asked me could he come in. I knew who he was.

8 Q. Who was it? Do you remember his name?

9 A. Travis. And he asked me could he come in. And I
10 asked yeah, was everything okay. I said, Is
11 everything okay? He said, Yes. I looked out the
12 door because I thought somebody was maybe after him
13 or something.

14 So he came in. And by him being wet, I guess
15 he decided he was going to sit on the floor of the
16 couch. So he sat on the floor of the couch -- sat
17 by the couch on the floor. And he asked could he
18 use the phone. And I said yes. I said, Is
19 everything okay? He said, Yes. I said, Do you
20 need me to take you somewhere? He said, No, I'm
21 fixing to call my ride to come get me. And so he
22 used the phone. He made one phone call. No one
23 answered. He made a second phone call. Someone
24 answered that phone because he asked them were they
25 okay. And I don't know what they said on the other.

1 end. They talked a few minutes. He hung up and he
2 made another phone call where no one answered. But
3 he sat on the floor for a few minutes before he got
4 up. And he left. And I don't know where.

5 Q. Did you see who picked him up?

6 A. No. And, honestly, when I looked out the door --
7 because I looked out the door right behind him, it
8 was just like he disappeared. I didn't see
9 anything, so.

10 Q. Thank you, Ms. Lewis.

11 MR. WILLIAMS: No further questions of this
12 witness, Your Honor.

13 THE COURT: Any questions?

14 MS. ZMROCZEK: No questions.

15 THE COURT: Thank you. You may step down.
16 You're free to leave, ma'am.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 THE COURT: Call your next witness.

20 MS. SAMPSON: May we approach, Your Honor?

21 THE COURT: Sure.

22 (WHEREUPON, a bench conference was held
23 in the presence of the jury but out of
24 the hearing of the jury.)

25 THE COURT: All right. Thank you very much.

1 Appreciate it.

2 Ladies and gentlemen, logistical circumstances
3 have arisen and we're going to have to take a lunch
4 break a little early. Sorry. Maybe you'll get
5 there before everybody else does. Have a good
6 lunch.

7 I'd ask you to please return to your jury room
8 by -- let's say 1:15, so that will make sure
9 that -- the people that are coming are supposed to
10 be here at 1:00 o'clock. That will give you a
11 little bit extra, but we will keep it moving. Have
12 a good lunch.

13 Remember, do not discuss the case among
14 yourselves and don't allow anybody to talk about it
15 with you.

16 I will see you at 1:15. Thank you.

17 (WHEREUPON, the jury is excused for
18 lunch at 11:36 a.m.)

19 THE COURT: Anything from the State before we
20 recess, Solicitor?

21 MS. SAMPSON: Your Honor, as we discussed
22 yesterday, Travis Tucker has been subpoenaed. He
23 is not here. At this point, we would ask for a
24 bench warrant.

25 THE COURT: I'll grant it, but just for the

1 purposes of protecting everything in this case, as
2 I understand the subpoena that was issued required
3 him to be at the immunity hearing, and he didn't
4 show up then. Why didn't the State issue a bench
5 warrant at that time so he would have been in jail
6 for purposes of this trial?

7 MS. SAMPSON: At that point we chose not to
8 call him for the immunity hearing, so.

9 THE COURT: He didn't honor a bench warrant,
10 did he? Excuse me, he didn't honor a subpoena, did
11 he?

12 MS. SAMPSON: He came to the courthouse. We
13 chose not to call him. He was under subpoena to be
14 at the trial as well. Because this was August, we
15 served a subpoena to be here in October as well.
16 He did not come. He came then, we decided not to
17 call him because it was her case, not ours, we just
18 decided not to call him. So he didn't not show
19 then. He has not shown now.

20 THE COURT: All right. The bench warrant will
21 be issued. I'll be happy to sign it. Thank you.

22 MS. SAMPSON: Thank you.

23 THE COURT: Thank you very much. We will be
24 at ease until 1:15.

25 (WHEREUPON, a lunch break was taken at

1 11:37 a.m.)

2 (WHEREUPON, the proceedings resumed at
3 1:17 p.m.)

4 THE COURT: Are we ready?

5 MR. WILLIAMS: Yes, sir.

6 MS. ZMROCZEK: Yes, sir.

7 THE COURT: Let the record reflect Mr. Ricks
8 is present.

9 Bring in our jury, please.

10 (WHEREUPON, the jury came into open
11 court at 1:22 p.m.)

12 THE BAILIFF: The jury is seated, Your Honor.

13 THE COURT: Thank you, Mr. Addison.

14 I hope you had a good lunch. We're ready to
15 continue.

16 Solicitor, call your next witness.

17 MS. SAMPSON: Thank you, Your Honor. The
18 State would call Brian Parker.

19 (Witness approaches.)

20 THE BAILIFF: Place your left hand on the
21 Bible, and raise your right hand, please.

22 (Witness complies.)

23 THE CLERK: Do you solemnly swear or affirm
24 the testimony you give in this case will be the
25 truth, the whole truth, and nothing but the truth,

1 so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please have a seat, and state your
4 full name.

5 (Witness seated.)

6 BRIAN PARKER,
7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. SAMPSON:

10 Q. Could you spell first name?

11 A. B-R-I-A-N.

12 Q. Mr. Parker, where do you work?

13 A. Parker Electronics.

14 Q. And what is that?

15 A. We install video surveillance systems.

16 Q. And do you maintain them or if something is broken,
17 fix them?

18 A. Sales, service, and installation.

19 Q. Okay. And I'm just going to move it along. Do you
20 maintain or service the cameras at Richland Village
21 Apartment complex?

22 A. Yes.

23 Q. And back in May of 2014, did you also service
24 those?

25 A. Yes.

1 Q. Do you remember when or if you had to do any repair
2 to any cameras in June of 2014?

3 A. Well, without looking at the paperwork.

4 Q. Would seeing the bill would help refresh your
5 memory?

6 A. Yes.

7 Q. I'm going to show you what has been marked State's
8 Exhibit 127. Do you recognize that?

9 A. Yes.

10 Q. And what is that?

11 A. Just -- what did I do?

12 Q. What is that in your hand?

13 A. This is an invoice for work done --

14 Q. And is that --

15 A. -- or completed.

16 Q. I'm sorry, say it again.

17 A. Work completed, yes.

18 Q. Is that a fair and accurate copy of the invoice?

19 A. Yes.

20 Q. Is it in the same condition as when you made it?

21 A. Yes.

22 MS. SAMPSON: At this time we would ask to
23 introduce State's Exhibit Number 127 into evidence.

24 THE COURT: Any objection?

25 MS. ZMROCZEK: No objection.

1 THE COURT: Without objection, State's 127 is
2 admitted.

3 (WHEREUPON, State's Exhibit No. 127 was
4 marked for identification and received
5 into evidence.)

6 BY MS. SAMPSON:

7 Q. Can you tell the jury what you did?

8 A. It's hard to -- my glasses aren't very good. I'm
9 not able to read this real well.

10 Q. Oh, you don't have to read from it. Or do you need
11 to?

12 A. Yes, I do. Hold on.

13 Q. I can read it for you and you can tell me if it's
14 correct.

15 A. That would be great. I apologize.

16 Q. That's okay. It says, On June 12th of 2014,
17 performed trouble shooting on system due to one
18 camera out?

19 A. Right.

20 Q. Is that correct?

21 A. Right.

22 Q. Is that what you remember doing?

23 A. Sure.

24 Q. And then we found a fuse blown?

25 A. Right.