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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Benjamin H. Culbertson, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HERBIE VAL SINGLETON, JR.

APPELLANT

APPELLATE CASE NO 2016-002079

RECORD ON APPEAL

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***THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT #40 (RECORDED STATEMENT OF HERBIE SINGLETON)**

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) 2016-GS-10-00592
 COUNTY OF CHARLESTON) 2016-GS-10-02437

STATE OF SOUTH CAROLINA,)
)
 Plaintiff,) **Transcript of Record**
)
 vs.)
) September 19-23, 2016
)
 HERBIE VALL SINGLETON,)
 JR.,)
)
 Defendant.)

B E F O R E:

Honorable Benjamin H. Culbertson
 Charleston County Courthouse
 Charleston, South Carolina

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1 MR. OSBORNE: If we could do the *Jackson v. Denno*.

2 THE COURT: All right. Anything preliminary before the
3 State calls their first witness?

4 MR. OSBORNE: No, Your Honor.

5 THE COURT: All right. Now, is this a written, recorded
6 or ---

7 MR. OSBORNE: It's recorded; audio recorded not video.

8 THE COURT: Audio recorded. All right. The State can
9 call your first witness.

10 MR. OSBORNE: The State calls Detective Burckhardt.

11 MR. SMILEY: Some of them are recorded and some are not.

12 MR. OSBORNE: What I'm gonna be seeking to introduce
13 through this detective is audio recorded. Another detective
14 picks up the interview midway; it's also audio recorded.
15 There is an oral statement made to the responding officer who
16 detained him and I would seek to introduce that as well, but
17 that's separate from the audio recorded statement.

18 THE COURT: Okay. So, we've got two *Jackson v. Denno*?

19 MR. OSBORNE: Yes, Your Honor.

20 THE COURT: All right. So, this one then we'll go
21 forward on the audio? All right.

22 MR. OSBORNE: The State calls Detective Richard
23 Burckhardt.

24 RICHARD BURCKHARDT, HAVING BEEN SWORN

25 TESTIFIES AS FOLLOWS:

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RICHARD BURCKHARDT - DIRECT BY OSBORNE

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1 CLERK: Have a seat please. Give me your full name and
2 spell your last please.

3 MR. BURCKHARDT: My name is Richard Burckhardt. B-U-R-C-
4 K-H-A-R-D-T.

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

6 THE COURT: Yes.

7 STATE'S EXHIBIT NUMBER FORTY

8 MARKED FOR IDENTIFICATION

9 DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. OSBORNE:

10 Q: Just so we can cue this up, Mr. Burckhardt, can you take
11 a look at State's Exhibit Number Forty and tell me if you
12 recognize this?

13 A: It's gonna be an interview, a digital interview with the
14 Defendant, Herbie Singleton.

15 Q: Okay. And how do you know that CD contains that digital
16 interview?

17 A: My initials are on it as well as reviewed it previous.

18 MR. OSBORNE: Your Honor, we're just gonna go and cue up
19 that CD; it takes a minute.

20 BY MR. OSBORNE:

21 Q: All right. Mr. Burckhardt, tell the Judge where do you
22 currently work?

23 A: I'm employed in Federal Court right across the street and
24 a Court Security Officer with the U.S. Marshall Service.

25 Q: And prior to having that job, where did you work?

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RICHARD BURCKHARDT - DIRECT BY OSBORNE

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1 A: I retired, November will be a year, from the Charleston
2 Police Department after twenty-seven years.

3 Q: All right. During that twenty-seven years with
4 Charleston Police Department, what type of assignments did you
5 have?

6 A: So, after attending the Criminal Justice Academy, I came
7 back to the City and worked in Uniform Patrol Division in
8 various areas of the city for several years. Moved on from
9 there to narcotics unit at the time. I was assigned to Drug
10 Enforcement Administration for about four or five years. I
11 left there, came back to the City and moved into the Central
12 Investigative Unit and that is where I spent the last
13 seventeen years of my career.

14 Q: All right. On December the 18th of 2014, were you
15 working that evening?

16 A: Yes.

17 Q: And what was your assignment that night?

18 A: I was in the Violent Crime Unit.

19 Q: Okay. Did you have the occasion to interview the
20 Defendant in this case, Herbie Singleton?

21 A: I did.

22 Q: And just briefly tell the Judge how that came about?

23 A: It was actually, when this incident occurred, I believe I
24 was on the way home at the time that it happened. I was
25 leaving downtown going across the Ashley River Bridge. We

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RICHARD BURCKHARDT - DIRECT BY OSBORNE

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1 were toned out, the alert tone came from dispatchers to
2 respond to the shooting in the Ardmore Subdivision. I
3 responded to the scene myself and several other investigators
4 as well as several CPD uniformed officers. And when I arrived
5 on the scene, was briefed by the officers that a drive-by
6 shooting had just taken place at a residence on Acacia Street.
7 The victim at that point had already been transported to the
8 hospital, because I'm pretty sure I didn't have any
9 interaction with him at that time, and started to gather
10 information. The immediate information that came out was the
11 car driven by the suspects or occupied by the suspects was a
12 car identified immediately by the victim as that belonging to
13 the Defendant.

14 Q: Okay.

15 A: And they broadcasted his name over the radio.

16 Q: Okay.

17 A: As well as the description of the vehicle.

18 Q: Was the Defendant located?

19 A: He was later on, approximately an hour or so later, maybe
20 an hour and a half; I'm not exactly sure.

21 Q: Okay. And you -- I'm sorry, go ahead?

22 A: It really wasn't that long after.

23 Q: Okay. Located by Charleston Police?

24 A: Yes.

25 Q: And you were notified that he was located?

1 A: Yes.

2 Q: Now, do you happen to know, at the time in which he was
3 located, was there probable cause to arrest him at that time?

4 A: Yes, he was -- he was asked -- the officer that located
5 him, I asked him to bring him to CPD headquarters for a formal
6 interview.

7 Q: Okay. Do you know which officer that was?

8 A: Officer Fry, as I recall.

9 Q: All right. So, did you respond to the station to meet
10 with the Defendant?

11 A: I did. I went to headquarters.

12 Q: All right. So, when you got to headquarters, just tell
13 the Judge, was the Defendant already in the interview room?

14 A: Yes.

15 Q: Okay. Did you sit down and talk to him?

16 A: I did.

17 Q: All right. What's, what's some of the first things that
18 you did whenever you sat down and talked to him?

19 A: As I would do with any individual in that situation, I
20 explained to him that we had an incident that had occurred,
21 criminal incident and that I needed to talk with him in depth
22 about it, furthermore about it, but before we could get
23 started, I was going to issue his Miranda Warning.

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

25 THE COURT: All right.

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RICHARD BURCKHARDT - DIRECT BY OSBORNE

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1 STATE'S EXHIBIT NUMBER FORTY-ONE

2 MARKED FOR IDENTIFICATION

3 BY MR. OSBORNE:

4 Q: I'm showing you what's been marked as State's Exhibit
5 Forty-one; can you take a look at that and tell me if you
6 recognize it?

7 A: This is the standard Miranda Warning issued to all
8 individuals being read their rights.

9 Q: Okay.

10 A: It's got the date and time and it's got my signature as
11 well as the Defendant's.

12 Q: All right. I'm gonna put this up on the overhead. Do
13 you happen to recall the time that the shooting came out?

14 A: I believe it was somewhere in the neighborhood of 4:30,
15 4:35.

16 Q: Okay. And what is the date and time that you advised him
17 of his Miranda Warnings?

18 A: That's gonna be -- 6 o'clock is the time, 6 o'clock P.M.,
19 and it was the same day as the incident, the 18th of December,
20 2014.

21 Q: Is that 6 o'clock or what does that say?

22 A: 1800 hours.

23 Q: Okay. And is that your signature there by the Warning
24 Officer?

25 A: Yes.

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RICHARD BURCKHARDT - DIRECT BY OSBORNE

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1 Q: And whose signature is that above suspect's signature?

2 A: The Defendant, Herbie Singleton.

3 Q: And on the back of that card, what is that?

4 A: Those are the five warnings that are read to every
5 individual who is being issued his rights, and typically I'll
6 read it exactly the way it's stated on the card.

7 Q: Okay. And did you do that in this case? Did you read
8 those rights exactly as they appear on the card?

9 A: Yes.

10 Q: Okay. Can you read those rights for the record?

11 A: So, number one states you have the right to remain
12 silent. Number two states anything you say can or will be
13 used against you in a court of law. The third item is you
14 have the right to talk with a lawyer and have him present
15 during questioning. Number four, if you cannot afford to hire
16 a lawyer, one will be appointed to represent you before any
17 questioning if you wish one. And number five is if you decide
18 to answer questions without a lawyer present, you have the
19 right to stop answering questions at any time if you so
20 choose.

21 Q: All right. So, correct me if I'm wrong, at this point,
22 you had advised the Defendant of his Miranda Rights, you had
23 told him that you were questioning about a shooting incident?

24 A: Yes.

25 Q: After you advised him of his Miranda Rights, did he

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RICHARD BURCKHARDT - DIRECT BY OSBORNE

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1 indicate that he wanted to talk to you about it?

2 A: He did.

3 Q: Did you talk to him about it?

4 A: I did.

5 Q: All right. How long would you estimate the interview
6 with Mr. Singleton went?

7 A: I was in the room with him approximately thirty minutes
8 or so.

9 Q: All right. During the interview, did the Defendant
10 appear to be intoxicated or under the influence of drugs?

11 A: No.

12 Q: Did the Defendant appear to have any physical or mental
13 disability that would have impaired his ability to understand
14 what was being said to him?

15 A: No.

16 Q: Prior to or during your interview with the Defendant, did
17 you offer him any bathroom breaks?

18 A: I believe I did.

19 Q: Was the Defendant denied access to a telephone, food or
20 drinks?

21 A: No.

22 Q: Were any threats or any promises made in exchange for his
23 statement?

24 A: No.

25 Q: All right. When you first started getting into the

1 interview with Mr. Singleton, do you recall what was said
2 during the first portions of the interview?

3 A: His responses or the questions? Yeah, I told him he
4 basically denied any knowledge of anything that had transpired
5 and we went round and round with that for quite some time, I
6 would imagine.

7 MR. OSBORNE: Your Honor, at this time, I would like to
8 publish State's Exhibit Forty.

9 THE COURT: All right. Any objections?

10 MR. SMILEY: No objection.

11 THE COURT: All right. Okay.

12 *****OFF THE RECORD*****

13 (REPORTER'S NOTE: State's Exhibit Forty played for the Court.
14 Not transcribed herein.)

15 (On the Record.)

16 BY MR. OSBORNE:

17 Q: I just want to stop you real quick. So it sounds like
18 you had already been talking to him prior to this; is that
19 correct?

20 A: Yes.

21 Q: Is that portion of the interview captured or memorialized
22 in any way?

23 A: No.

24 Q: All right. Explain to the Judge what happened?

25 A: We -- the way our interview room is set up is that we

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RICHARD BURCKHARDT - DIRECT BY OSBORNE

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1 have a -- it's audio visual room recorder, camera, and we
2 believe that -- we'd been having a lot of technical issues at
3 the time with both our interview rooms. It was my
4 understanding that I believe when we put the Defendant in that
5 room with that camera was on and operating and it wasn't
6 videoed. In addition, typically we put our handheld digital
7 recorder down, my batteries in that particular unit were bad
8 so we were having some technical problems with the very start
9 of that interview and this picks it up from where I had the
10 battery changed.

11 Q: Okay. So, in the uncaptured portion of an interview, at
12 any point did the Defendant request an attorney?

13 A: No.

14 Q: At any point did he say that he didn't want to talk to
15 you or wanted to remain silent?

16 A: No.

17 Q: Does he give any incriminating statements during that
18 portion of the interview that's not recorded?

19 A: No.

20 *****OFF THE RECORD*****

21 (REPORTER'S NOTE: Continued playing State's Exhibit Forty for
22 the Court. Not transcribed herein.)

23 (On the Record.)

24 MR. OSBORNE: And, Your Honor, just to clarify, there are
25 gonna be certain portions of that statement where it goes

1 blank, we've redacted what we thought to be some prejudicial
2 comments made by the Defendant.

3 THE COURT: All right. Hold for a second.

4 MR. SMILEY: So, the last part of this you took out?

5 MR. OSBORNE: Yeah. Anything that's not on that
6 transcript, that you don't see on here, we've redacted.

7 MR. SMILEY: Who is Monty to you -- who is Monty to you -
8 - is that on there? Did you stop the tape where you wanted
9 the redaction to start or was it -- did it cut off early, I
10 guess is what I'm asking, about Monty getting shot, because
11 we're not objecting to it. As a matter of fact, under the
12 doctrine of completeness, I'd ask that that be played.

13 MR. OSBORNE: If you'd like to hear it again, I'll play
14 it again, the last few seconds of it.

15 MR. SMILEY: I just am not making a motion to have that
16 taken out under the doctrine of completeness. I would like
17 the whole statement to be put in at that point. And what I'm
18 asking till 447 in there as -- is when Detective Burckhardt is
19 questioning Mr. Singleton about who the person pled guilty in
20 this case, Monty, about his real name.

21 THE COURT: Well, for the purposes of this *Jackson v.*
22 *Denno* let's do it unredacted. If the Defense objects to any
23 redaction, let's go ahead and do an unredacted audio.

24 MR. OSBORNE: All right. I believe that we're on the
25 same page with that. I think I might've misspoke. Do you

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RICHARD BURCKHARDT - DIRECT BY OSBORNE

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1 mind if we just play the last ten seconds again?

2 MR. SMILEY: That's what I was asking. The only part of
3 that first part I wanted to hear was cut off. I was like,
4 wait.

5 THE COURT: All right. Let's go ahead and just put the
6 unredacted in but you can pick it up from where you left off
7 on this one.

8 MR. OSBORNE: Okay.

9 THE COURT: If you can do that. I don't know if you can
10 do that or if you know where to start it.

11 MR. SMILEY: And for the purposes of *Jackson v. Denno* I'm
12 not arguing about it, it's just that when you said redacted, I
13 just wanted to make sure ---

14 THE COURT: Well, he said the redacted portions that they
15 thought were incriminating.

16 STATE'S EXHIBIT NUMBER EIGHTY

17 MARKED FOR IDENTIFICATION

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

19 BY MR. OSBORNE:

20 Q: I'm showing you what's been marked as State's Exhibit
21 Eighty. Do you recognize the handwriting on this?

22 A: That's my handwriting.

23 Q: Okay. What does this CD contain?

24 A: That's the interview with the Defendant Herbie Singleton.

25 Q: Okay. Has anything been redacted from this CD? Did you

1 redact anything prior to giving it to me?

2 A: I didn't redact anything.

3 THE COURT: Is that marked for identification or ---

4 MR. OSBORNE: For identification only, State's Exhibit
5 Eighty.

6 THE COURT: Okay. All right. Go ahead.

7 MR. OSBORNE: And, Your Honor, I'm just gonna play the
8 last fifteen seconds of clip number one so they can hear that
9 to make sure ---

10 THE COURT: All right. That's good.

11 *****OFF THE RECORD*****

12 (REPORTER'S NOTE: State's Exhibit Number 80 played for the
13 Court. Not transcribed herein.)

14 (On the record.)

15 BY MR. OSBORNE:

16 Q: All right. So, the interview stops right there. Just
17 play the first few seconds of the second clip.

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

19 (REPORTER'S NOTE: Continued playing State's Exhibit Number 80
20 for the Court. Not transcribed herein.)

21 (On the record.)

22 BY MR. OSBORNE:

23 Q: Is that what happened, did it shut off -- did you shut it
24 off or did it shut off on its own?

25 A: I'm not exactly sure. We had to change batteries on it.

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RICHARD BURCKHARDT - DIRECT BY OSBORNE

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1 Q: Okay. During that break in the interview, during that
2 period, did the Defendant request an attorney?

3 A: No.

4 Q: Did he say that he didn't want to talk anymore?

5 A: No.

6 Q: Did he request to remain silent, to terminate the
7 interview?

8 A: No.

9 *****OFF THE RECORD*****

10 (REPORTER'S NOTE: Continued playing of State's Exhibit 80.
11 Not transcribed herein.)

12 (On the Record.)

13 MR. OSBORNE: All right. Your Honor, that's at 22
14 seconds. I have listened to this. There is four minutes of
15 silence. If it's okay, I'll skip ahead to 4:55 seconds.

16 THE COURT: Any objection?

17 MR. SMILEY: No objection, Judge.

18 THE COURT: All right. Go ahead.

19 *****OFF THE RECORD*****

20 (REPORTER'S NOTE: Continued playing State's Exhibit Number 80
21 for the Court. Not transcribed herein.)

22 (On the record.)

23 MR. OSBORNE: All right. Your Honor, if it's okay, for
24 the next four minutes, it's nothing but silence, I'll skip
25 ahead.

1 THE COURT: Any objection?

2 MR. SMILEY: Without objection, Your Honor.

3 THE COURT: All right.

4 MR. OSBORNE: 27:03 is where we'll pick back up.

5 *****OFF THE RECORD*****

6 (REPORTER'S NOTE: Continued playing of State's Exhibit 80 for
7 the Court. Not transcribed herein.)

8 (On the Record.)

9 MR. OSBORNE: Your Honor, the next twenty minutes of
10 silence, if it's okay, I'll go on and skip ahead to 48:18.

11 MR. SMILEY: No objection.

12 THE COURT: All right. Go ahead.

13 *****OFF THE RECORD*****

14 (REPORTER'S NOTE: Continued playing of State's Exhibit
15 Eighty. Not transcribed herein.)

16 (On the Record.)

17 MR. OSBORNE: All right. Your Honor, for the next hour
18 there's silence. There is a four-minute interaction between
19 Detective Burkhardt, the Defendant and Crime Scene Technician
20 Renee Charles.

21 BY MR. OSBORNE:

22 Q: Do you recall what was going on during that four minutes,
23 Detective Burckhardt, with Crime Scene Technician Renee
24 Charles?

25 A: I'm trying to recall what was requested from the

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RICHARD BURCKHARDT - DIRECT BY OSBORNE

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1 technician.

2 MR. OSBORNE: All right. Your Honor, I think we can
3 agree that this -- all they did was took GSR and there's
4 nothing incriminating that occurs during that four minutes and
5 if it's okay, I'll skip past that?

6 THE COURT: Any objection.

7 MR. SMILEY: Without objection, Your Honor.

8 THE COURT: All right. So, you're gonna skip forward to
9 when?

10 MR. OSBORNE: I'm gonna skip forward if it's okay, to
11 2:48 and this is -- well, you know what, if it's okay, Your
12 Honor, this witness doesn't have anything else to do with the
13 interview. So from the State's position, if y'all want to
14 hear anything else from this witness, I won't have no further
15 questions.

16 THE COURT: So that would be it? Are we skipping forward
17 on the statement or that will be it as far as -- or we just
18 gonna stop here and let him cross examine the witness thus
19 far?

20 MR. OSBORNE: Yes, Your Honor.

21 THE COURT: Okay. All right. My understanding is
22 Detective Burckhardt has finished testifying as far as direct
23 on *Jackson v. Denno*, correct?

24 MR. OSBORNE: That's correct.

25 THE COURT: All right. Any cross examination?

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1 MR. SMILEY: Yes, sir.

2 THE COURT: All right.

3 CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. SMILEY:

4 Q: I hope I don't have to introduce myself, Detective
5 Burckhardt, we've been doing this a long time.

6 A: Yes, sir.

7 Q: We're almost done doing this. This is one of your last
8 cases, right?

9 A: I have a few more.

10 Q: Okay. Is -- if I understand correctly, Officer Fry
11 brought Herbie to the station?

12 A: Yes.

13 Q: And placed him in the interview room before you got
14 there?

15 A: That's my recollection.

16 Q: And when you arrived, it was decided that you would
17 interview Herbie, correct?

18 A: I initiated the interview, yes, sir.

19 Q: And he was in the interview room that has a video/audio
20 camera?

21 A: When it's working.

22 Q: Well, my first question was he was in a room that a
23 video/audio camera?

24 A: Yes, sir.

25 Q: That you activated before you went into the room?

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1 A: I'm not so sure I had activated it. There was other
2 detectives and officers that I think the request by have been
3 to boot it and therein lies the problem.

4 Q: Your understanding is when you went into see Herbie for
5 the first time that the audio/video camera was running?

6 A: I believed this was being recorded, that was being
7 recorded.

8 Q: And as backup you carry around hand-held recorders?

9 A: We do.

10 Q: And that was started when you went into the room, also.

11 A: I believe it was, yes.

12 Q: To the best of your recollection, that was your intention
13 to have the audio/video camera going and to have your backup
14 going?

15 A: And the reason we carry the handheld is because of the
16 issues we were having.

17 Q: So we got audio/video going that's built into the system
18 and as a backup, because you've been having problems, you're
19 using a handheld recording device also?

20 A: Right.

21 Q: All right. When you first got in the room -- well, let's
22 just let me get -- finish that issue, I guess. There is a
23 period of time that we don't hear on this -- this audio
24 recording, correct?

25 A: Correct.

1 Q: And in fact your audio/video camera or mechanism didn't
2 work at all?

3 A: No.

4 Q: Throughout this whole process?

5 A: That's correct.

6 Q: And you did not realize that until after this process was
7 done?

8 A: Correct.

9 Q: So you believed it was recording and after it was over
10 with, you couldn't go back and start over that -- those hours
11 nor would you want to; you realized it just wasn't recording?

12 A: Right.

13 Q: Okay. After a period of time, you realized, maybe you
14 didn't. You realized your backup wasn't recording also?

15 A: The handheld, right.

16 Q: And that's when you replaced the batteries?

17 A: Yes.

18 Q: And that's when we began to hear the audio that we're
19 hearing today?

20 A: That's what you're hearing now.

21 Q: Right. And my first question is, how long a period of
22 time to the -- to the best of your recollection of what you
23 remember was not recorded by your backup audio?

24 A: So what we're missing probably is fifteen minutes
25 thereabouts. It's my issuance of his Miranda Warning when we

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1 started. He initially gave us somewhat of his timeline which
2 you heard me address in the recorded interview. We kept going
3 back and it was because of that, that's what was being
4 discussed that it wasn't recorded.

5 Q: Okay. So there's about fifteen or twenty -- fifteen,
6 twenty something like that at the beginning that even your
7 backup doesn't have, correct?

8 A: Correct.

9 Q: And it's pretty important stuff of course ---

10 A: Sure it is.

11 Q: --- that's the Miranda. Was there other than you and Mr.
12 Singleton, was there anyone else present in the interview room
13 during those first fifteen minutes?

14 A: Not initially, no.

15 Q: So when you pulled out your standard Miranda card, it's
16 just you and Herbie, correct?

17 A: Correct.

18 Q: And you personally read him the Miranda Warnings?

19 A: Yes.

20 Q: And then flipped it over and him sign it?

21 A: Correct.

22 Q: And you signed it and dated it?

23 A: Yes.

24 Q: But we don't have a witness ---

25 A: No.

1 Q: --- because there wasn't one there?

2 A: Right.

3 Q: It wasn't your standard procedure as you read each one of
4 the warnings or admonitions to have them initialed?

5 A: I have and I haven't. It hasn't exactly been -- we don't
6 do it exactly the same all of the time.

7 Q: I understand. Is your recollection, from your standard
8 practice is you would read those warnings to them before you
9 told -- asked them to sign the back, correct?

10 A: Yeah, he's read the one through five first.

11 Q: Okay.

12 A: And then he's asked to sign. He's asked if he
13 understands and then he's asked to sign.

14 Q: Okay. My question and maybe I poorly asked question. Do
15 you have a specific recollection in this case of doing your
16 standard of reading each one of those to him before he signed
17 the back?

18 A: Yes.

19 Q: Okay. If there was another detective available and in
20 the room, would you have had him witness it?

21 A: I probably would like to have done that.

22 Q: All right. Before the recording picks up, you asked
23 Herbie the question, would you like to waive your rights and
24 speak to me.

25 A: Before the what now?

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1 Q: Before the recording picks up because we're asking about
2 stuff that's not recorded right now so I've got ---

3 A: Yeah, I read him his rights and asked him if you
4 understand one through five and then you want to talk about it
5 and moved into our basic conversation.

6 Q: So you read him his rights?

7 A: Yes.

8 Q: Looked over the card, y'all filled them out to show that
9 he'd been read his rights and he signed it?

10 A: Asked him to sign.

11 Q: You asked him to sign it?

12 A: Uh-huh (affirmative response).

13 Q: And then after that was done, then you asked him, would
14 you like to waive your rights to speak to me, correct?

15 A: Correct.

16 Q: And he indicated he did?

17 A: He did.

18 Q: All right. The interview with Herbie began at about 6
19 o'clock; is that correct?

20 A: Yeah, I think 6:00 P.M. is indicated on the Miranda card.

21 Q: Okay. For your period that you're interviewing Herbie
22 lasted until about 8:30 or 9:30 somewhere in that area?

23 A: Thereabouts.

24 Q: Okay.

25 A: With breaks.

1 Q: Right. I understand there's breaks, but he was in that
2 room ---

3 A: Correct.

4 Q: --- by himself or when I say by himself, without any lay
5 people from 6:30 to 9:30?

6 A: Correct.

7 Q: Of course. he had water and bathroom breaks, but he was
8 in the interview room?

9 A: Correct.

10 Q: Had he been told he was under arrest?

11 A: Not -- not initially, no.

12 Q: Okay. So, at 9:30 about when your part ends ---

13 A: Uh-huh (affirmative response).

14 Q: --- he hadn't been told hey, look, you're under arrest
15 for attempted murder?

16 A: Not at that time.

17 Q: Okay. In fact he told you he wanted to go home, right?

18 A: Right.

19 Q: Your response, and correct me if I'm wrong, is you ain't
20 going home until we get this figured out?

21 A: Yes.

22 Q: So, at that point in time, the only hope for Herbie to go
23 home is that -- is if he continued to cooperate with you?

24 A: He wasn't going home. I mean at that point in time, it
25 was getting pretty bad for him with the situation.

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1 Q: Okay. All right. So, when you told him, hey, you ain't
2 going home unless you ---

3 A: If got up to leave, he wouldn't have been free to leave.

4 Q: Okay. Very good. However, to have him to continue to
5 cooperate -- he said he wanted to go home and you were like,
6 you ain't going home anytime until I get this timeline figured
7 out, correct? Didn't that ---

8 A: Something to that affect, yeah.

9 Q: And I know there are some periods of time of silence and
10 anything is -- other than the evidence tech coming in to take
11 the gunshot residue ---

12 A: Right.

13 Q: --- between 6:00 and 9:30 was the only contact Herbie had
14 with anyone was with you, correct?

15 A: At some point, Detective Krasowski and Bailey came in to
16 pick up on the interview. It was a continuance of my
17 interview.

18 Q: At the end of your interview, they came in?

19 A: When I stepped out, they continued.

20 Q: Okay. So, that would be at the 9:30 mark?

21 A: I'd guess thereabouts.

22 Q: Okay. I beg the Court's indulgence.

23 THE COURT: All right.

24 Q: That's all I have for Detective Burckhardt.

25 THE COURT: Redirect?

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RICHARD BURCKHARDT - REDIRECT BY OSBORNE

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1 MR. OSBORNE: Briefly, Your Honor.

2 REDIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. OSBORNE:

3 Q: So, did you tell him -- did you tell the Defendant that
4 if you just give us a timeline, you'll be free to go?

5 A: No.

6 Q: Why didn't you tell him that?

7 A: He wasn't free to go.

8 Q: Did you make any promise at all to induce him to give a
9 statement?

10 A: No.

11 Q: No further questions, Your Honor.

12 THE COURT: All right. You may step down. Call your
13 next witness.

14 MR. OSBORNE: The State calls Detective Paul Krasowski.

15 CLERK: Place your left hand on the Bible and raise your
16 right hand?

17 PAUL KRASOWSKI, HAVING BEEN SWORN

18 TESTIFIES AS FOLLOWS:

19 CLERK: Have a seat please. State your full name and
20 please spell your last?

21 MR. KRASOWSKI: Paul Krasowski. Krasowski is spelled K-
22 R-A-S-O-W-S-K-I.

23 DIRECT EXAMINATION OF PAUL KRASOWSKI BY MR. OSBORNE:

24 Q: All right. Detective, can you tell the Judge where you
25 work and how long you've worked there?

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PAUL KRASOWSKI - DIRECT BY OSBORNE

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1 A: I work for the City of Charleston Police Department.

2 I've been there for a little over ten years now.

3 Q: All right. Let's just get right into December the 18th
4 of 2014 were you working that day?

5 A: I was. I was just ending my shift around the time this
6 call went out.

7 Q: And were you a detective then?

8 A: I was.

9 Q: And what type of cases did you work?

10 A: At that point, I was in the Violent Crimes Unit. We
11 worked shootings, aggravated assaults, theft investigations,
12 and homicides.

13 Q: Did you have the occasion to become involved in the
14 investigation of this Defendant?

15 A: I did.

16 Q: How did that come about?

17 A: I was actually on my way home when the call went out and
18 I was very close to the neighborhood entrance when that call
19 was toned out and so I was better equipped to respond. There
20 were patrol officers that had responded quicker than me, but I
21 was right in the mix of that initial response.

22 Q: Okay. At any point, did you learn that the Defendant had
23 been detained and brought to the station?

24 A: So I was off the radio for a little while. I didn't
25 learn of that; it was a little bit after the fact. I was off

1 the radio for a period of time collecting other statements and
2 providing an escort.

3 Q: Okay. So did you ever respond to the station where the
4 Defendant was?

5 A: I did. After I collected additional statements and going
6 to the hospital to provide an escort for the victim's family,
7 I went back to the station and reconvened with the other
8 detectives working the case.

9 Q: All right. Did you ever have the occasion to speak to
10 the Defendant?

11 A: I did.

12 Q: How did that come about?

13 A: So it was part way through the interview with Detective
14 Burckhardt, he wasn't -- he only had limited success in the
15 interview room and so myself and Detective Bailey had an
16 attempt as well.

17 Q: All right. Is that common for other detectives to
18 interview a defendant after some other detective already had?

19 A: It is. It can be. A lot of these investigations are
20 essentially a team effort, a team response in assisting in any
21 way we can and here it was Detective Burckhardt, like I said,
22 was having limited success, so we just were, you know, try a
23 different approach, different -- different appearance and to
24 see what would happen.

25 Q: All right. During your interview with the Defendant, did

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1 he appear intoxicated or under the influence of drugs?

2 A: He did not.

3 Q: Did the Defendant appear to have any physical or mental
4 disability that would have impaired his ability to understand
5 what was being said to him?

6 A: He did not.

7 Q: Prior to or during your interview with the Defendant, did
8 you offer him any breaks, bathroom or otherwise?

9 A: I believe so. There were numerous breaks between --
10 through our interview portion with him.

11 Q: All right. Was the Defendant denied access to a
12 telephone or food?

13 A: No.

14 Q: Were there any promises or threats made in exchange for a
15 statement?

16 A: No.

17 MR. OSBORNE: All right. Your Honor, at this time, we'd
18 like to continue the statement; it's Exhibit Eighty and as
19 we're picking up at 2:48:50?

20 THE COURT: All right.

21 *****OFF THE RECORD*****

22 (REPORTER'S NOTE: Continued playing State's Exhibit Eighty
23 for the Court. Not transcribed herein.)

24 (On the Record.)

25 BY MR. OSBORNE:

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1 Q: All right. That first voice, whose voice is that?

2 A: That's Detective Bailey's voice.

3 Q: And that second voice, whose voice is that?

4 A: That's my voice.

5 Q: During your entire interview with the Defendant, was
6 Detective Bailey ever alone with him?

7 A: Detective Bailey was never alone. There was a moment
8 when I was alone, but Detective Bailey was never alone. I was
9 always in the room.

10 Q: Okay.

11 *****OFF THE RECORD*****

12 (REPORTER'S NOTE: Continued playing State's Exhibit Eighty
13 for the Court. Not transcribed herein.)

14 (On the Record.)

15 MR. OSBORNE: All right. Your Honor, if there's no
16 objection, we'll move -- there's twenty-two minutes of
17 silence. We'll move it to 3:17:35.

18 MR. SMILEY: No objection, Your Honor, but before we go
19 to the next part, could we take a two-minute break and go to
20 the restroom. It won't take me but a second, but I really got
21 to go?

22 MR. OSBORNE: No objection.

23 THE COURT: All right. Let's take about a five-minute
24 recess and we'll come back.

25 You can step down, but you can't discuss your testimony

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1 with anybody.

2 A: Yes, sir.

3 THE COURT: All right.

4 (RECESS - 3:34 P.M.)

5 *****OFF THE RECORD*****

6 (On the Record - 3:55 P.M.)

7 THE COURT: Please be seated. All right. Before we
8 recessed, I understood we were going to skip forward to where?

9 MR. OSBORNE: Yes, Your Honor, skip forward to 3:17:35.

10 THE COURT: All right. Any objection?

11 MR. SMILEY: No objection, Your Honor.

12 THE COURT: All right. Let's go ahead.

13 *****OFF THE RECORD*****

14 (REPORTER'S NOTE: Continued playing State's Exhibit Eighty
15 for the Court. Not transcribed herein.)

16 (On the Record.)

17 MR. OSBORNE: Your Honor, if there's no objection,
18 there's silence for about three minutes. We can move ahead to
19 3:29:23?

20 MR. SMILEY: No objection.

21 THE COURT: All right.

22 *****OFF THE RECORD*****

23 (REPORTER'S NOTE: Continued playing State's Exhibit Eighty
24 for the Court. Not transcribed herein.)

25 (On the Record.)

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1 MR. OSBORNE: Your Honor, if there's no objection, we can
2 move ahead to 3:44:46?

3 MR. SMILEY: No objection.

4 THE COURT: All right.

5 *****OFF THE RECORD*****

6 (REPORTER'S NOTE: Continued playing State's Exhibit Eighty
7 for the Court. Not transcribed herein.)

8 **(On the Record.)**

9 MR. OSBORNE: Now, Your Honor, for our purposes, we
10 wouldn't intend on introducing anything after this. I don't
11 think there's anything of substance and everything after this
12 is him talking about other individuals, basically the criminal
13 element in Ardmore. I can continue to play that though if ---

14 MR. SMILEY: No, if he doesn't intend to introduce it,
15 Your Honor, we don't want that in and we certainly would be
16 glad to stop right there.

17 THE COURT: All right. So that's the extent of the audio
18 statement?

19 MR. OSBORNE: Yes, Your Honor.

20 THE COURT: All right. Any further direct examination of
21 this witness?

22 MR. OSBORNE: No, Your Honor.

23 THE COURT: All right. Cross examination?

24 CROSS EXAMINATION OF PAUL KRASOWSKI BY MS. SMILEY:

25 Q: Detective, you sort of took over the interview from

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- 1 Detective Burckhardt?
- 2 A: Yeah, I would say so.
- 3 Q: Or you and I guess Detective Bailey then just yourself?
- 4 A: Yes.
- 5 Q: Okay. How long -- I know it was the tape but by your
6 estimation, how much time did you end up spending with my
7 client in that room that night?
- 8 A: I think it was just under an hour.
- 9 Q: Okay. Because I think we've got testimony that
10 Burckhardt left roughly 9:30ish and you were there till 10:30
11 to 11:00, somewhere in there; does that seem right?
- 12 A: Yeah, I recall saying it was 10 o'clock and then there
13 was a continuation of that, so ---
- 14 Q: I think you said it was 10:38 when he signed Antonio
15 Barrett's picture and so another ten or fifteen minutes after
16 that, y'all were done?
- 17 A: Yes, sir.
- 18 Q: All right. So, say 11 o'clock; fair enough?
- 19 A: Yes.
- 20 Q: All right. So, at any point in time, did you re-
21 Mirandize Mr. Singleton?
- 22 A: No, sir.
- 23 Q: Were you aware that he had been Mirandized?
- 24 A: Yes, I was.
- 25 Q: Now, I'm just trying to flip back -- just one moment.

1 And there's a point in time in this interview where Herbie
2 starts telling you that he wants to go home, right?

3 A: There were a few times that he ---

4 Q: Right. And right before he gives you the name of Antonio
5 Barrett, there's discussion about whether he is going to be
6 out for Christmas or not?

7 A: Yes.

8 Q: Didn't you tell him that unless you start telling me some
9 different information or some information that corroborates
10 what else I'm hearing, you're gonna be in jail for Christmas?

11 A: Well, I said that he might be in jail through Christmas.

12 Q: With Court's permission, I'm gonna ask you, would it
13 refresh your memory to look at, I guess we could call it a
14 transcript or interpretation of the -- or we could listen to
15 it. I'm trying to figure out how to do this, Your Honor, the
16 best way. I've got the transcript, I don't want call it a
17 transcript; it's not a transcript per se. I have a typed up
18 version of what has been said on the tape and we can roll back
19 the tape to a certain point, but I'd prefer to try to refresh
20 his memory from the verbatim ---

21 THE COURT: Where did that come from?

22 MR. OSBORNE: Your Honor, I had an intern do this. I
23 sent them an email several months ago asking if we could just
24 agree that's what was being said. I agree that that's what
25 was said.

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1 THE COURT: Okay. Well, I mean, but if you can't really
2 use it to refresh his memory unless he had some participation
3 in its preparation. So, the best thing is probably gonna be
4 to play it back.

5 BY MR. SMILEY:

6 Q: I'm gonna ask that you listen to this replayed part about
7 Christmas and what have you. It starts a little before that.

8 *****OFF THE RECORD*****

9 (REPORTER'S NOTE: Replays portion of State's Exhibit Eighty
10 for the Court. Not transcribed herein.)

11 (On the Record.)

12 BY MR. SMILEY:

13 Q: Okay. So you told him, if you continue to do this,
14 you're not going to be free for Christmas, correct?

15 A: That's correct.

16 Q: All right. And right before that, you told him, if you
17 don't tell me more about this person, it's gonna be all on
18 you, correct?

19 A: That's correct.

20 Q: All right. At the point in time -- at any point in time,
21 did you realize the audio and video wasn't working; had y'all
22 discovered that yet?

23 A: I guess I was -- I guess I knew because the recorder was
24 in there, but I'm not positive; I don't recall.

25 Q: All right. Not recalling is fine. I'm just trying to

1 see if y'all had the discussion ---

2 A: So, that was the first the system -- it was newly
3 installed and we were having issues with that, so we had the
4 backup device typically. So I just -- I can't remember
5 though. I knew it was out or ---

6 Q: All right. Other than signing the photograph of Antonio
7 Barrett, was there any other written -- anything else written
8 by Mr. Singleton that night?

9 A: I don't believe so.

10 Q: So this is the totality of the, the statement that you
11 were involved in with the audio recording?

12 A: Yes, sir.

13 Q: Okay. I beg the Court's indulgence?

14 THE COURT: All right.

15 MR. SMILEY: That's all I have for this witness, Your
16 Honor.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION OF PAUL KRASOWSKI BY MR. OSBORNE:

19 Q: Did you make any promises to him?

20 A: I did not.

21 Q: Did you tell him if he just told you what happened, he'd
22 be home for Christmas?

23 A: I did not.

24 Q: No further questions.

25 THE COURT: All right. You may step down.

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1 The State can call your next witness.

2 MR. OSBORNE: Your Honor, that concludes this portion of
3 the *Denno* hearing. We have one responding officer outside who
4 the State would allege he made a quick statement -- the
5 Defendant made a quick statement to him.

6 THE COURT: That's the second *Jackson v. Denno* Hearing,
7 right?

8 MR. OSBORNE: Yes, Your Honor. It's actually
9 chronologically precludes to this portion.

10 THE COURT: All right. First, before we move on to that,
11 Mr. Smiley, anything the Defense wants to put up with regard
12 to the audio?

13 MR. SMILEY: We do not, Your Honor.

14 THE COURT: All right. All right. So let's move into
15 the second *Jackson v. Denno* hearing for -- it's just an oral
16 statement; is that correct?

17 MR. OSBORNE: That's correct, Your Honor.

18 THE COURT: All right. The State can call your first
19 witness?

20 MR. OSBORNE: The State calls Officer Nathan Fry.

21 NATHANIEL FRY, HAVING BEEN SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Have a seat please. Give us your full name and
24 spell your last please.

25 MR. FRY: My full name is Nathaniel Fry. Last name is

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NATHANIEL FRY - DIRECT BY OSBORNE

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1 spelled F-R-Y.

2 DIRECT EXAMINATION OF NATHANIEL FRY BY MR. OSBORNE:

3 Q: Good afternoon, Officer Fry. Where do you work?

4 A: City of Charleston Police Department.

5 Q: Okay. And we're just gonna get right into it here. Were
6 you working with the City of Charleston Police Department on
7 December the 18th of 2014?

8 A: I was.

9 Q: And what was your assignment then?

10 A: I was on the flex squad at the time which I still am and
11 on street patrol.

12 Q: Okay. Did you have the occasion to respond to a shooting
13 call for service?

14 A: I did.

15 Q: Okay. Just tell the Judge briefly what your involvement
16 was in the investigation early on.

17 A: Initially when the call came out, it came out that a
18 shooting had just occurred and I was not in the neighborhood
19 where the shooting happened at the time, so I responded to
20 the, I guess the outer parts of the surrounding streets within
21 the neighborhood. I did not directly go to the scene of the
22 incident, but I was waiting for updates to come out as far as
23 possible suspects and possibly look for that.

24 Q: Okay. Did an update come out with a possible suspect?

25 A: It did.

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1 Q: And what was broadcast?

2 A: The suspect's name by the name of Herbie Singleton was
3 broadcast out over the radio and a possible vehicle, a grayish
4 silver sedan vehicle with a black bumper.

5 Q: Okay. You were talking about the neighborhood that the
6 shooting occurred; what neighborhood was that?

7 A: That was in the Ardmore neighborhood.

8 Q: Are you familiar with that neighborhood?

9 A: I am.

10 Q: Did you work that neighborhood often?

11 A: I was on the Community Action Team for roughly
12 approximately three years or so where I was directly assigned
13 to the Ardmore area.

14 Q: When you heard that suspect description or suspect name
15 and the vehicle description get broadcasted, were you familiar
16 with him?

17 A: Over my course of my time patrolling Ardmore
18 neighborhood, I was aware of the subject named Herbie
19 Singleton that lived at [REDACTED] Street.

20 Q: Okay. Did you respond to that location?

21 A: I did.

22 Q: All right. While at [REDACTED], did you find the
23 vehicle?

24 A: When I first arrived at the residence, I did not observe
25 the suspect's vehicle in the front yard. So I decided -- I

1 exited my vehicle and then I walked up to the residence,
2 knocked on the door and I was greeted by Mr. Singleton's
3 father, and I asked if Herbie was home and he said no. I
4 explained to him that there was a shooting incident several
5 blocks away within the neighborhood and Herbie's car may be
6 involved. I asked if they could make contact -- if there was
7 a way they could make contact with him and bring him back to
8 the residence or have him return and I believe his mother or
9 his father made a phone call and was able to speak with Herbie
10 and they advised me that he was on his way back to the
11 residence.

12 Q: Okay. Did you wait for him?

13 A: I did.

14 Q: All right. And the Defendant is Herbie Singleton?

15 A: Correct.

16 Q: Did he ever arrive at the house?

17 A: He arrive at approximately maybe twenty minutes later. I
18 stood outside the residence on the street, actually where my
19 police cruiser was and just waited for him to return and he
20 showed up about twenty minutes later. He was walking down
21 [REDACTED] Street from White Oak, which is further down the
22 street from where the residence is. I don't know where he
23 came from. He was on foot. His car was nowhere to be seen
24 and he just kind of popped up from somewhere.

25 Q: All right. So, you waited for him to come to you?

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NATHANIEL FRY - DIRECT BY OSBORNE

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1 A: Correct.

2 Q: Did you approach him at all?

3 A: No, I stayed at the residence because his mother and
4 father were out there.

5 Q: And as he approached you, did you say anything to him?

6 A: I waited until we were in close distance for speaking. I
7 wasn't going to yell or anything and when he walked up to me,
8 I advised him that there was a shooting several blocks away
9 and an investigation was ongoing and his car may be involved.

10 Q: Okay. Did he say anything in response to that?

11 A: I asked him where his car was at the time. He said that
12 his girlfriend had the car somewhere on King Street. I asked,
13 do you know the address, he was not able to provide the
14 address or a landmark or cross street to where his girlfriend
15 resides.

16 Q: Okay. So, let's just talk about that real briefly. When
17 he made that comment to say that his girlfriend has the car,
18 was he in custody at that moment?

19 A: No, he was not.

20 Q: All right. What did you do then?

21 A: Based on his response and all the -- everything that was
22 going on with the initial investigation where we were at, I
23 contacted my supervisor, who was also in contact with a
24 Central Detective. I let him know that he responded back to
25 the residence and due to his car possibly involved and him

1 possibly driving the vehicle, he was detained and placed in
2 handcuffs at that time.

3 Q: And what did you do with him then?

4 A: He was placed in the rear of my vehicle and through the
5 speaking with the central detectives and my supervisor, they
6 advised me to take him down to headquarters for questioning
7 regarding the incident.

8 Q: Okay. So is it fair to say, once you placed him in
9 handcuffs and in the backseat of the police vehicle, he was
10 not free to go?

11 A: Correct.

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

13 THE COURT: Cross examination?

14 CROSS EXAMINATION OF NATHANIEL FRY BY MR. SMILEY:

15 Q: Officer Fry, when you went to the Singleton residence
16 your purpose of going there was to find Herbie, right?

17 A: Correct.

18 Q: And to bring him to the station?

19 A: Correct.

20 Q: So, when you told Mr. and Mrs. Singleton if they could
21 help find him and they made phone calls, your intention was to
22 wait for him to put him in custody, right?

23 A: Based off of what we knew at the time, correct?

24 Q: Right, you were there to pick him up and put him into
25 custody?

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NATHANIEL FRY - CROSS BY SMILEY

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- 1 A: Correct.
- 2 Q: And he came there and when he came there, I understand
3 from your testimony, you started to ask him questions before
4 he had actually been put in cuffs?
- 5 A: Correct.
- 6 Q: All right. Now, Herbie -- did you ever tell him -- you
7 never told him though you're under arrest, just that you got
8 to go down to the station with me, right?
- 9 A: He was never told that he was under arrest, but we had
10 enough based off of what was learned in the initial
11 investigation -- technically, he was under arrest.
- 12 Q: Okay. As soon as you saw him, he was going to the
13 station if you could get your hands on him, correct?
- 14 A: Willingly, hopefully, yes.
- 15 Q: Yeah, well, if he had said huh-huh, I ain't going, it
16 would have been unwilling, but fortunately ---
- 17 A: Correct.
- 18 Q: --- he cooperated. All right. And the only question
19 that you asked him is where his car was, correct?
- 20 A: True.
- 21 Q: And that's when he was in close proximity to you?
- 22 A: Yes, he was standing right in front of me.
- 23 Q: All right. And basically you had control of him at that
24 point, you weren't worried about him taking off on you or
25 anything like that, correct?

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NATHANIEL FRY - REDIRECT BY OSBORNE

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1 A: Not really, no.

2 Q: All right. Had you read him his Miranda Warnings at that
3 point in time?

4 A: No, I hadn't.

5 Q: And he answered that question and you followed up with
6 the second question about what streets there were downtown or
7 King Street, something to that effect about where the car
8 could be found?

9 A: Correct.

10 Q: And then was he placed in custody and put in the car?

11 A: After that he was.

12 Q: And you asked him nothing between then and when you got
13 to the station?

14 A: No, there was no other conversation.

15 Q: Okay. He didn't make any excited utterances or anything
16 like that; he just sat in the car and you drove him to the
17 station and dropped him off?

18 A: Correct.

19 Q: All right.

20 MR. SMILEY: Nothing further, Your Honor.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION OF NATHANIEL FRY BY MR. OSBORNE:

23 Q: Did you make the decision to place him in the handcuffs
24 and bring him to the station?

25 A: No, that decision was made by my supervisor and the

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1 detectives.

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

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

4 You can call your next witness.

5 MR. OSBORNE: The State has no further witnesses for the
6 *Denno* Hearings.

7 THE COURT: All right. Anything from the Defense?

8 MR. SMILEY: No, sir.

9 BY THE COURT:

10 THE COURT: All right. Any motions?

11 MR. SMILEY: Could I beg the Court's indulgence for one
12 moment?

13 THE COURT: All right.

14 MR. SMILEY: Your Honor, in doing the analysis for --
15 there's two statements I guess that we've got to do an
16 analysis of for *Jackson v. Denno*. I think it's clear in the
17 recorded statement that Herbie is in custody the entire time
18 that he's there, he's detained. He's not free to leave
19 because he expresses his desire to want to go home and is told
20 that he can't and, in so many words. So, I think custody was
21 certainly established there.

22 It would be helpful if the video had recorded the Miranda
23 and if we had a witness to Miranda or at least my client's
24 initials on the front, but he certainly did sign the card. So
25 he's acknowledged his admonitions, for lack of any other

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1 evidence put up on our behalf, the State's put that forward.
2 And so then it becomes to the free, voluntary and knowing
3 statement without any threats or any inducements that overcome
4 his will. Your Honor, in -- in that certain not any threats
5 other than you will be spending Christmas again, but I don't
6 want to mischaracterize that. I think it's clear that the
7 officers were trying to get him to talk, but at the same time
8 not -- and when I say threats, I use it in the lightest sense
9 of the term. There is some inducement that is offered that if
10 you want to be free for Christmas, you need to continue
11 talking to us. It was very late in the interview. That
12 interview had been going on for a good four hours by the time
13 that comes up. The length of the interview gives me some
14 pause that it stops and starts, stops and starts, and there's
15 not any Miranda, but after listening to the testimony that --
16 I have in all candor believe that we don't have a basis to
17 challenge that statement what has been testified. So, we're
18 not objecting to the audio statement that has been made.

19 As to the second statement, Your Honor, the one -- the
20 oral statement made to Officer Fry. That I believe Officer --
21 I think from his testimony, Officer Fry is at the Singletons'
22 residence for the purpose to bring -- to put Mr. Singleton
23 into custody and I think he testified to that and that is --
24 he testified that Herbie was -- luckily Herbie was
25 cooperating, but if Herbie had said I don't want to go with

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1 you -- he's was going with you the moment you saw him.
2 Therefore, I would argue that he is in custody, not free to
3 leave, from the moment he's standing in front of that officer.
4 He's not Mirandized. He is asked a question, which is
5 interrogation, which he gave an answer. I believe that that
6 statement cannot be used as being freely, voluntarily and
7 knowingly made since he was not read his Miranda and I would
8 argue he was in custody as soon as he got in front of that
9 officer, but custody at the time of the questioning and,
10 therefore, I'd move to have that second statement, the oral
11 statement to Detective Fry, suppressed.

12 THE COURT: All right. I'll hear from the State.

13 MR. SMILEY: And I think it is a violation to his
14 constitutional fifth amendment right, Your Honor and the
15 constitution of South Carolina.

16 THE COURT: All right.

17 MR. OSBORNE: Your Honor, like Mr. Smiley said, Miranda
18 is triggered by custody and interrogation. I think quite
19 honestly, I don't know that the statement really pushes the
20 law for us that much. I mean, he says the same thing when he
21 gets to the station. But, having said that, he wasn't in
22 custody at that time. He approached the officer ---

23 THE COURT: Well, I mean, the officer said he was going
24 to take him in custody.

25 MR. OSBORNE: And I'm having Ms. Ginsberg look it up now,

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1 I think it's a subjective view point and not an objective view
2 point whether he's in custody or not. It's been a while since
3 I've researched that, but I would agree with Your Honor, I
4 mean, he was definitely going to be taken into custody.

5 THE COURT: All right. Well, there's no objection to the
6 audio recorded statement, so -- and I find under *Jackson v.*
7 *Denno* that it was given voluntarily and so it is admissible.

8 I want to take the motion to suppress the oral statement
9 under advisement and I want to take a look at it right quick
10 to see. I'm pretty sure I know how I'm gonna rule, but I want
11 to take a look at something first. So I'll just take that
12 under advisement right now. Okay?

13 All right. Now, the I guess motion to ---

14 MR. SMILEY: Quash.

15 THE COURT: --- quash indictment. All right.

16 MOTIONS:

17 MR. SMILEY: And, Your Honor, that has to do with the --
18 let me rearrange my thought for a moment. That has to do with
19 the second indictment in this case that we really haven't
20 talked about and that's the indictment for obstruction of
21 justice under the common law and I've got two arguments to
22 that, Your Honor. I think it's important in this case to
23 understand that Mr. Singleton is a principal because he is
24 alleged -- I guess it's real hard to explain to Your Honor
25 without giving a little more background. Antonio Barrett is

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1 alive as you're gonna find -- and if I misstate I something,
2 David, I believe will correct me. But Antonio Barrett has
3 nothing to do with this case. Antonio Barrett, the next day
4 is arrested, charged with attempted murder. And so that
5 night, Herbie provided the name of someone other than the
6 shooter. The shooter is Lamont Gregg, he's already had his
7 trial, subsequently pled guilty while the jury was out, just
8 so you'll have a little context of what we're talking about as
9 far as the obstruction indictment. Mr. Osborne, in his
10 indictments allege that that statement of Antonio Barrett
11 obstructed justice in this case. And so Mr. Singleton is
12 charged with attempted murder and obstruction.

13 My first argument starts with what it really is, is
14 misprision of a felony, but he can't be charged with that
15 because under the common law there's been an exception carved
16 out that protects -- one can't be charged with misprision if
17 they're a principal because of concerns about their fifth
18 amendment rights about self-incrimination. Obstruction of
19 justice is also a common law that's -- I think that is -- that
20 has been applied in South Carolina in thirty-nine or forty
21 cases all dealing with public officials. In three of the --
22 three statutes have been enacted that's superseded obstruction
23 of justice and they all have to do with administration of
24 justice. Excuse me. And they are Section 16-9-330 which is
25 about a refusal to obey a subpoena; 340, intimidation of court

1 officials and jurors; or 350 attempting to influence a juror
2 through written or oral communications. It doesn't mean that
3 -- or they did not repeal the -- expressly the legislature did
4 not do away with the common law obstruction of justice. But I
5 think in this case, he lies to the officer, to the detective
6 as he then is charged with obstruction of justice in a case
7 which he is charged as the principal. I think that same
8 exception was drawn over to obstruction of justice. First of
9 all, because it leads to a chilling effect from talking to the
10 police if you -- there -- each time you talk to a police if
11 you don't tell them something that they believe to be true or
12 know to be false that you can then be charged with obstruction
13 of justice. I don't think anybody tells a true statement to
14 the police in this case the first time out. They get charged
15 with obstruction, I don't think that was the intent of the
16 common law usage in this case. I think obstruction of justice
17 has been used in place of misprision because in misprision
18 there's a case that specifically said you can't use it for a
19 principal and that's not quoting a certain -- trying
20 summarily, I'm getting a little tired, Judge, but summarily
21 trying to put your fingers on misprision and I believe that's
22 in an older case. Misprision was not used for a lot of the
23 twentieth century and it seems to have been revived about the
24 1980s and everybody was thought it was dead. And the Supreme
25 Court said, no, it's still there, but they cited that

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1 exception. It said principals can't be charged. I think the
2 same should be said of obstruction.

3 I'm gonna dovetail into my second argument by the case
4 that lays down what I believe to be a current law and that's
5 *State v. Cogsdale*, [sic] which is 273 S.E. -- S.C. 563, it's a
6 decision from 1979, which is about the same time the
7 misprision statute, not statute, common law was started to be
8 put back into use. *Cogsdale* has to do with a Magistrate who
9 wasn't sending the old copies of the tickets to Columbia and
10 so peoples' licenses weren't being suspended and there was
11 misdemeanor offenses about that. However, rather than
12 charging with those and I guess I should give you the
13 statutory section which makes the failure to report certain
14 traffic convictions a misdemeanor punishable by thirty days or
15 a fine of \$100 does not remove any violation from the realm of
16 a common law crime for that statutory offense and that was the
17 -- he could've been charged with 56-1-500, 56-1-560 and 56-5-
18 2970 about the failure to send in the yellow copies is a
19 misdemeanor. The State chose to go forward with an
20 obstruction of justice prosecution on twenty-one counts. They
21 didn't go forward with the specific section of law, they went
22 forward on obstruction of justice, because they couldn't go
23 forward on both because if they had gone for it on the one, it
24 would not've made sense to go back and forth. It's just
25 common sense and I know I'm starting to not make sense, but

1 I'm trying to get back on track. It's common sense that
2 obstruction of justice should not be applied to a principal in
3 a case in this kind of situation where the allegation is not
4 threatening jurors, not threatening a policeman, but lying,
5 because it truly -- misprision where he's trying to -- in and
6 around the misprision by calling it obstruction of justice.

7 I think *Cogsdale* also, going into my second argument, is
8 a element that's assumed, that's talked about in the case. It
9 doesn't list it quote/unquote as an element and it's -- but
10 it's very clear -- and I want to get to that. It says -- and
11 in quoting *Cogsdale*, the Trial Judge, in instructing the jury
12 as to the elements necessary to make up the offense of
13 obstructing justice said -- and this first sentence I think is
14 real important even though it's not seemed to be called an
15 element -- there is an obstruction of justice, there must be
16 an intentional failure to perform a duty which would
17 constitute obstruction of justice. And I would argue that
18 that duty is when someone takes an oath to administer justice,
19 whether it is a lawyer, whether it's a judge, whether it's a
20 magistrate, whether -- it is someone who is a part of the
21 administration of justice, a public official, whether
22 appointed or elected. It, it -- I would argue the
23 constitution does not provide that there is a duty on the
24 ordinary citizen to come forward when they are charged with a
25 crime and give a truthful statement.

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1 THE COURT: Well, I mean, I understand that there's not a
2 duty to come forward, but when you're questioned, don't you
3 have a duty to either say nothing or tell the truth. I mean
4 isn't providing false information to police, an obstruction,
5 if you knowingly provide false information, even though you
6 don't have to provide any information? You can say, I'm not
7 talking, but if you give false information, isn't that
8 obstruction?

9 MR. SMILEY: Actually, I think that would be misprision
10 of a felony, but you can't be charged with it because you're
11 being charged as a principal. I would argue with you, Your
12 Honor, unless there's a duty to administer justice, there's
13 not a duty for an ordinary citizen to tell the police anything
14 or to tell them a lie.

15 THE COURT: So, you're saying that an ordinary citizen
16 cannot be convicted for obstruction of justice?

17 MR. SMILEY: Well, I can tell you that and there's
18 thirty-nine cases in South Carolina that have been reported.

19 THE COURT: I see.

20 MR. SMILEY: In those thirty-nine reported cases, Your
21 Honor, not one single case is about an ordinary citizen. It
22 is the common usage of obstruction of justice has been where
23 there is a public official and the reason is because they have
24 a duty towards the administration of justice. When they
25 codified the obstruction of justice, they looked towards the

1 administration of justice rather the influencing of jurors and
2 what have you, subpoenas, rather than an ordinary citizen
3 sitting in front of a police officer at the station. I think
4 it has the same effect of removing the requirement from
5 misprision that you be -- you have -- you can't be a principal
6 or accessory, that they might as well charge him with
7 misprision and override that because that's what it really is.
8 This isn't him going out and taking an action; it's him
9 speaking with an officer and not being truthful. This happens
10 with every police officer. I believe we even gonna have
11 testimony in this case about, I expect you to lie to me for a
12 certain degree -- I don't those are the exact words, but
13 something to that effect -- is part of the job. I agree, I
14 wish my client hadn't said a word. I mean, because I've got
15 the largemouth bass on the wall -- bass on the wall that says
16 if I'd kept my mouth shut, I wouldn't be here. But when they
17 do speak to a officer, I don't know that they have been
18 inferred a duty to administer justice and not to obstruct and
19 that, just in that situation, Your Honor, I just -- there's
20 not any common usage in South Carolina that I could find.

21 Now, the Federal Laws then codified it. This statute is
22 very different, so I couldn't find comparisons to the -- to
23 any of the federal statutes because I just don't think it
24 applies because they specifically addressed it. In there, I
25 will agree, it is a crime in the federal system to tell a

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1 federal officer a lie when you engage with them and it's
2 called obstruction of justice, but that's by statute and not
3 by common law, Your Honor. I think it makes a difference.

4 I think I've gone on long enough.

5 THE COURT: All right.

6 MR. OSBORNE: Well, and briefly, Your Honor, unless you
7 want me to give you more, the statute is broadly written for a
8 reason. It says any acts which prevents obstruction, impedes
9 or hinders the administration of justice. It does not invoke
10 a duty. Now, and that's actually what I was gonna say, Your
11 Honor. If -- and I will agree with him. This isn't
12 misprision of a felony. And if it's not, then an individual
13 who is being charged with a crime can come in -- and it's not
14 just lying. He didn't just lie; he falsely accused an
15 individual. When Detective Krasowski showed him a lineup, he
16 pointed out the individual. That individual was subsequently
17 charged with attempted murder, he spent, if I remember
18 correctly, three weeks in jail and ---

19 MR. SMILEY: And I apologize for -- I didn't go into that
20 because I don't know that that is germane.

21 MR. OSBORNE: It is germane because that's justice.
22 That's what -- that's why it's so broadly written. He spent
23 three weeks in jail. I indicted him for attempted murder
24 based solely off of his statement and nothing else.

25 And, Your Honor, the only reason why it hasn't come up, I

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1 would argue on the Court of Appeals, well I would argue and
2 that's been -- it has come up, *State v. Needs*, that's 333 S.C.
3 134, that's a layman. That's the case stands for this, if I
4 read it right. The Defendant comes in, she gives a false
5 alibi for an individual. The prosecution prosecutes her for
6 accessory after the fact, misprision of a felony and
7 obstruction of justice. And now it was brought up on appeal
8 for prosecutorial misconduct, but on appeal, the Appellate
9 Court said -- they upheld the convictions. So, that does
10 stand for the proposition ---

11 THE COURT: Was there a challenge to the obstruction of
12 justice charge?

13 MR. OSBORNE: Specifically no, there wasn't, Your Honor.
14 Specifically, no, but we have convicted people in this
15 courthouse for lying to the police and it's not just a lie. I
16 think it would have to be a material lie. It has to be something
17 ---

18 THE COURT: What I mean have you convicted them for
19 obstruction of justice because, I mean, there is a crime for
20 providing false information or something of that nature, isn't
21 there?

22 MR. OSBORNE: For filing a false police report.

23 THE COURT: Okay.

24 MR. OSBORNE: And from that I would argue that the
25 individual has to initiate contact with the police and he

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1 didn't initiate contact; the police came to him.

2 THE COURT: All right.

3 MR. OSBORNE: But yeah, when -- but when we prosecuted
4 that crime and got convictions, it has been for material lies,
5 not just I didn't do it. Of course, we wouldn't prosecute
6 those cases. But when it's a material lie it enters a -- and
7 this is about the most material lie, I would think. That's
8 why we're going had with obstruction.

9 THE COURT: All right. Anything in reply?

10 MR. SMILEY: And I didn't want to get into this Antonio
11 Barrett, they knew Lamont Gregg was the shooter the night of
12 the crime. It's not his fault that the police followed up --
13 I mean, it's fault for Antonio Barrett, but they knew who the
14 shooter was within twenty-four hours. They went down to the
15 hospital and talked to the individual that got shot in the
16 behind and he says, Monty, Monty is the person that had it out
17 for me. He's the person. I disagree that it was his
18 misinformation on that one night that led to Mr. Barrett's
19 continued incarceration and indictment.

20 MR. OSBORNE: I do have to correct him on that.

21 MR. SMILEY: If I'm wrong -- don't get upset ---

22 MR. OSBORNE: I'm not getting upset, sorry ---

23 THE COURT: All right.

24 MR. OSBORNE: What happened at the hospital was the
25 victim said, I think he was asked, who would want to do this

1 to you and he said Monty, but that alone wouldn't have meant
2 that Monty didn't shoot him. That just established a motive.
3 But while you will hear during trial is all these Ardmore guys
4 and it's so hard to, to learn like what faction is with what
5 faction at any given time.

6 THE COURT: But I mean was Monty identified as the
7 shooter and charged prior to the indictment of the other
8 person?

9 MR. OSBORNE: No, Your Honor, absolutely not.

10 THE COURT: Okay.

11 MR. OSBORNE: His name had come up early on and that's
12 why -- but they went with what Herbie said, they charged
13 Antonio Barrett. But it wasn't long before Antonio's family
14 started contacted the police department and they started to
15 realize that they might have the wrong guy. That's when I was
16 notified; that's what -- that's why we entered proffer
17 agreements with the other two codefendants in this case and
18 then we realized we got the wrong guy.

19 THE COURT: All right. Anything further in reply?

20 MR. SMILEY: There's a lot, Your Honor. I'm gonna sit
21 down because I don't want to just start a tit-for-tat and
22 that's what it's gonna revolve to.

23 THE COURT: Well, I mean, do you disagree with him that
24 Antonio-Barrett was not in -- or that Monty was not identified
25 as the shooter and indicted prior to Antonio Barrett's

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1 indictment?

2 MR. SMILEY: I don't know when Monty was indicted.

3 Right. The proffer started well before he was indicted,

4 Antonio Barrett ---

5 THE COURT: I mean, my question is, did they -- did they
6 indict Antonio Barrett as the shooter after they were pursuing
7 Monty as the shooter?

8 MR. SMILEY: Absolutely.

9 MR. OSBORNE: There were two individuals that were
10 brought in for a proffer. The first individual who hadn't
11 given a statement came in and there was -- I've got the dates
12 right here, Your Honor. All right. Barrett, Antonio Barrett
13 was arrested on December the 19th of 2014. He bonded out on
14 February the 13th of 2015. Corley, one of the codefendants,
15 proffered on April the 24th of 2015. That's the first time
16 that we hear Lamont Gregg. Corley did not cooperate ---

17 THE COURT: Who is Lamont Gregg; that's Monty?

18 MR. OSBORNE: He's the actual shooter.

19 MR. SMILEY: He's the convicted shooter.

20 THE COURT: All right. Go ahead.

21 MR. OSBORNE: So, that was the first information that we
22 had, that my office had or the police had that Monty was the
23 shooter. I had Singleton, who had cooperated that night;
24 Corley doesn't come in until much later for a proffer; Green
25 comes in on May the 4th when -- and I indicted him. Then

1 Green come in ---

2 THE COURT: You indicted?

3 MR. OSBORNE: Antonio Barrett.

4 THE COURT: Okay.

5 MR. OSBORNE: Then Green comes in on May the 14th or on
6 May the 4th. Once -- let me sure I have that date right. No,
7 I'm sorry. Green came in for a proffer on July the 31st. At
8 that date, I had two people that were in the car that were
9 telling me Antonio is not the guy and that Monty's the guy and
10 Herbie is lying to me. At that point, Detective Burckhardt
11 was in there for that proffer, he went ahead with the
12 obstruction of justice charges, I dismissed the charges
13 against Antonio Barrett.

14 THE COURT: I got you. All right. I'm gonna deny the
15 motion to quash the indictment. I think they can go forward
16 on it.

17 All right. Anything further?

18 MR. SMILEY: No, Your Honor.

19 THE COURT: All right. So, all I've got is the motion to
20 suppress the oral statement and I'm taking that under
21 advisement.

22 MR. OSBORNE: Your Honor, may I just say one thing in
23 regards to that? Ms. Ginsburg looked it up and I was wrong;
24 it is an objective test; is that correct? So I'm not so sure.
25 I think he may have been in custody for that moment.

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1 THE COURT: Well, I don't know if he was in custody, but
2 he was certainly the prime suspect, I mean, he was ---

3 MR. OSBORNE: He was going?

4 THE COURT: He was going, yeah, I know that. Okay. And
5 so you're saying that it is an objective test?

6 MR. OSBORNE: It's a reasonable personal standard.

7 THE COURT: See, that was -- that was my understanding,
8 too. All right. That being the case, I'm gonna go ahead and
9 grant the motion to suppress the oral statement given to
10 Officer Fry, which was basically when he said, where's your
11 car, and he said my girlfriend, it's down on King Street. I'm
12 gonna suppress that. All right.

13 MR. SMILEY: Thank you very much, Your Honor.

14 THE COURT: All right. Anything further?

15 MR. OSBORNE: No, Your Honor.

16 THE COURT: All right. We'll get started tomorrow
17 morning. I'll try to take the bench right at 9:30. Well
18 first let me ask, anything else preliminary that we need to
19 get to before we get ---

20 MR. SMILEY: No, Your Honor.

21 THE COURT: All right.

22 (RECESS - 5:12 P.M.)

23 *****OFF THE RECORD*****

24 END OF DAY ONE.

25

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1 **SEPTEMBER 20, 2016 - DAY TWO**

2 (On the Record - 9:33 A.M.)

3 BY THE COURT:

4 THE COURT: Thank you very much. Please be seated.

5 All right. As I understand, we'll bring the Jury in,
6 I'll do the opening charges, opening statements and get right
7 into the case.

8 Anything else preliminary from the State before we get
9 started?

10 MR. OSBORNE: No, Your Honor.

11 Anything from the Defense?

12 MR. SMILEY: No, sir.

13 THE COURT: All right. Anything from the State before we
14 bring the Jury in?

15 MR. OSBORNE: No, Your Honor.

16 THE COURT: Anything from the Defense?

17 MR. SMILEY: No, sir.

18 THE COURT: All right. Now, there was a request by
19 someone to take notes. I generally would allow that unless
20 there's an objection from either side. I'll give them
21 instructions on note taking. Any objections from the State?

22 MR. OSBORNE: No, Your Honor.

23 THE COURT: Any objection?

24 MR. SMILEY: No, sir.

25 THE COURT: All right. Let's go ahead and bring the Jury

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1 in.

2 (REPORTER'S NOTE: Jury enters courtroom. 9:36 A.M.)

3 THE COURT: You can be seated.

4 BAILIFF: All jurors present, Your Honor.

5 THE COURT: Thank you very much.

6 Welcome back, ladies and gentlemen. I appreciate, number
7 one, I want to thank everybody for being on time. It is a
8 great assistance to the Court when you're on time and I want
9 to thank you for that. I hope everyone had a good evening.

10 We're getting ready to start the trial of the case of the
11 State of South Carolina V. Herbie Val Singleton, Jr. As I
12 told you in voir dire though and as you might've been told
13 during jury qualifications, just like witnesses, jurors are
14 constantly taking oaths, so -- hold on for one second. All
15 right. So, if I could please get all members of the jury --
16 well, let's go ahead and get those handed out. Go ahead and
17 hand them out.

18 All right. As I was saying, as you might learn or if you
19 haven't already learned, just like witnesses, jurors are
20 constantly taking oaths. So I'll need all members of the Jury
21 to please stand and raise your right hand while the Clerk
22 administers the oath for you to serve as jurors on this
23 particular case.

24 (REPORTER'S NOTE: Jury is duly sworn.)

25 CLERK: Thank you. If you accepted this oath please have

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1 a seat; if not, please remain standing.

2 THE COURT: Very well. Any member of the jury that did
3 not respond to the oath by saying I do, please stand.

4 Thank you very much, ladies and gentlemen.

5 All right. As I told you, we're getting ready to start
6 the case of the State of South Carolina v. Herbie Vall
7 Singleton, Jr. Now, before we begin this trial, I want to
8 give you some preliminary instructions: I know from watching
9 movies, T.V. shows, reading books, things of that nature,
10 trials are often full of a lot of suspense, a lot of action
11 and while that might be the case in this trial, it probably
12 won't be. The primary function of this trial is a search for
13 the truth, what happened. That is often slow, deliberate,
14 repetitive process, the exact opposite of what you might be
15 accustomed to when you watch movies or read books or watch
16 T.V. shows or things of that nature. However, I do hope you
17 find the trial educational. I hope you do find it
18 entertaining and I want to thank you from the outset for being
19 here and serving as jurors in this case.

20 The attorneys appearing before you are advocates for the
21 parties they represent, but first and foremost, they're
22 officers of the Court. They are sworn to uphold the
23 integrity and the fairness of our judicial system and to help
24 you in a search for the truth. You can expect them to be
25 professional, competent and ethical in the representation of

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1 their clients' answers.

2 Now what I'll now say to you is intended to serve as an
3 introduction to the trial of this case. These remarks are not
4 a charge on the law. I will instruct you on the law
5 applicable to this case at the end of the trial before you
6 retire to consider your verdict. This is merely an
7 explanation of the procedure we'll follow in the trial of this
8 case so that you may better understand what is happening.

9 Now, the Defendant is charged by two indictments in this
10 case. He is charged by one indictment with attempted murder
11 and he is charged by another indictment with obstruction of
12 justice. Now, the indictments are simply the charges by which
13 this case is brought into this court and they are not in any
14 sense evidence of any of the allegations contained in them.
15 The Defendant has pled not guilty to these indictments. The
16 State therefore has the burden of proving each of the elements
17 of each indictment beyond a reasonable doubt. It will be your
18 duty, ladies and gentlemen, to determine and decide whether or
19 not the State has met that burden. Your purpose as jurors is
20 to find and determine the facts of this case. You are the
21 sole judge of the facts of this case. If at any time I make a
22 comment regarding the facts of this case, you must disregard
23 my comments. You are to determine the facts from the
24 testimony you hear and the other evidence introduced during
25 the trial of this case. It is up to you to determine the

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1 inferences which you feel may properly be drawn from that
2 evidence. It is especially important that you perform your
3 duty of determining the facts diligently and conscientiously
4 because ordinarily, there is no way to reverse an erroneous
5 determination of the facts by a jury.

6 On the other hand, and with equal emphasis, the same law
7 that makes you the judge of the facts of this case, makes me
8 the judge of the law. The law as given by the Court is the
9 only law that you can consider. You must accept and follow
10 the law as I give it to you even though you may disagree with
11 it. Just as I cannot tell you what the facts of this case
12 are, you cannot disagree with me about the law to be applied
13 in this case. Your job is to take the law as I give it to you
14 and apply it to the facts as you find those facts to be from
15 the testimony, witnesses and any other evidence that is
16 introduced during the trial. After doing that you will then
17 render your verdict, a true and just verdict under the solemn
18 oath that you just took as jurors.

19 Until I advise you to begin your deliberations, you must
20 not discuss this case with anyone, that's including your
21 fellow jurors. Do not discuss it with any friends or family
22 members or anyone involved in the case. After the case is
23 submitted to you, you can then discuss the case, but only in
24 the jury room with your fellow jurors. The attorneys and
25 parties to this case have been advised that they're not to

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1 talk to you at all. So, if you see one of the attorneys or
2 one of the witnesses and they don't speak to you, they're not
3 being rude, they're just following the instructions of the
4 Court. Now, you're not to read or listen to any news reports
5 about the case, if there are any. This includes anything that
6 might be in the newspaper or on the internet, the radio or the
7 television. You cannot consider anything that you may have
8 read or heard about the case outside of the courtroom, whether
9 that be before or during the trial of this case.

10 It is important that you keep an open mind and not decide
11 any issue in this case until all of the evidence has been
12 presented to you, the parties have made their closing
13 arguments and I've instructed you on the law to be applied in
14 this case. It is your solemn responsibility to determine the
15 guilt or innocence of the Defendant and your verdict must be
16 based solely on the evidence as it is presented to you during
17 this trial and on the law as I instruct you during and at the
18 close of the trial.

19 Now, in just a moment, the Solicitor will make what's
20 called an opening statement in which the Solicitor will
21 explain to you the issues in this case or at least what the
22 Solicitor thinks the issues in this case are. The attorney
23 for the Defendant may also make an opening statement although
24 the attorneys -- the Defendant's attorney is not required to
25 do so. What the attorneys tell you during their opening

1 statements is not evidence in this case. It is only their
2 contention as to what the issues in this case are. The
3 evidence in this case will be presented to you by the
4 testimony of sworn witnesses from the witness stand and any
5 other exhibits that may be introduced into evidence.

6 Now, in determining what the true facts are, you must
7 decide whether or not the testimony of a witness is
8 believable. It will be my responsibility to rule as a matter
9 of law as to whether certain testimony is admissible at all or
10 not, but once testimony is admitted into evidence, whether or
11 not you believe it is solely for you to determine. In
12 deciding whether to believe a witness, you have the right to
13 consider the interest of any witness, the bias of any witness,
14 the prejudice of any witness, the opportunity for the witness
15 to have seen the matters and things about which the witness
16 may testify and the way the witness acts on the witness stand.
17 You have the right to consider anything that is in the record
18 that will help you evaluate the testimony of the witness.
19 That means that it is your duty to pay close attention to
20 these witnesses, to observe the witnesses, to listen to the
21 witnesses, and to pay close attention to the attorneys and to
22 the Court. Don't let your thoughts wander but give strict
23 attention to the testimony in this case. So at the end of all
24 the testimony, after the arguments of counsel and a charge on
25 the law by the Court, you will then be in a position to

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1 determine what the facts are and to apply the law to those
2 facts and thus render a true and just verdict.

3 Now, I understand that there was a request by some or by
4 one or more of you to take notes during the trial of this case
5 and I will allow you to take notes. However, there are some
6 instructions I must give you on notetaking.

7 Number one, you have been given a notepad and a writing
8 utensil. You will need to write your name on the first page
9 of the note because you can only use your notepad, you cannot
10 use anyone else's. When you leave the courtroom, you'll leave
11 your notepads in the jury box and when you come back into the
12 courtroom, you'll be given your pad back. You cannot share
13 your notes with anyone at this point in time, number one.

14 Number two, you are not required to take notes if you
15 choose not to take notes. Some people are better listeners
16 and do not need to take notes, some people want to take notes
17 to refresh their memory. So, you are allowed to take notes,
18 but you are not required to take notes.

19 Number three, do not try to write down everything a
20 witness says. The purpose of notetaking is for you to jot
21 down something that will remind you of something you think is
22 important at a later time. If you try to write down
23 everything, you may miss part of the testimony and you may
24 fail to observe the witness when the witness is testifying.
25 So don't try to write everything down, but if you hear some

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OPENING BY OSBORNE

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1 testimony or observe something that you think is important,
2 just jot a quick not in your notepad to refresh your memory at
3 a later time.

4 All right. Is there any further instructions or
5 challenges from the State on the opening charges?

6 MR. OSBORNE: No, Your Honor.

7 THE COURT: Any from the Defense?

8 MR. SMILEY: No, sir.

9 THE COURT: All right. Ladies and gentlemen, we will
10 begin the trial of this case with the opening statements and
11 as I told you, these opening statements are not evidence in
12 this case, it is simply the attorneys' contention as to what
13 they think the issues in this case are.

14 All right, sir.

15 MR. OSBORNE: Thank you, Your Honor, may it please the
16 Court?

17 THE COURT: Yes, sir.

18 OPENING STATEMENT BY OSBORNE:

19 MR. OSBORNE: Ardmore. Ardmore is a neighborhood in West
20 Ashley. If you're coming down 17 towards Ravenel, it's right
21 behind Pep Boys. Ardmore is one of the more dangerous
22 neighborhoods in Charleston. If you choose to disrespect
23 Ardmore, it could cost you your life. That's the lesson that
24 Dontaviha Patterson, the victim in this case now knows all too
25 well.

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1 On December the 18th of 2014, at about 4:50 P.M.,
2 Dontaviha was at this house in Ardmore. He was at the carport
3 with his girlfriend, Mia Singleton. They were sitting on the
4 chair and they were watching a movie on the laptop. His
5 mother, Jamie Patterson, was also in the carport. She was
6 sitting in the car listening to music. At that time, gunshots
7 rang out. Dontaviha was shot. Dontaviha just happened to
8 look up in enough time to see a vehicle leaving the area, a
9 vehicle that he knew all too well. While he screamed, his
10 mother, Jamie Patterson, and his girlfriend, Mia, grabbed him,
11 they rushed him inside the house. Dontaviha's two younger
12 sisters were also inside the house. They grabbed the two
13 younger sisters, they brought to them to a hallway away from
14 the windows. They were afraid the car might come back and
15 finish the job. They called the police. The police arrived,
16 the EMS arrived. They transported Dontaviha to MUSC where he
17 was treated for a single gunshot wound.

18 Now, I told you that Dontaviha knew the car, well he also
19 knew the driver. The driver of that car was this man, Herbie
20 Singleton. Herbie and Dontaviha were friends, but that all
21 changed in a dramatic way. To explain to you why that changed
22 so dramatically, I got to tell you a little bit about
23 Dontaviha. Dontaviha is an aspiring artist, a rappist, and he
24 goes by -- or rapper, and he goes by the nickname of Mazerati.
25 Even though Dontaviha lived in Ardmore, he's not -- he's not

1 Ardmore guy. He's a downtown guy. He had moved to Ardmore in
2 August of 2014 a few months before the incident. Now what
3 Dontaviha didn't know that he would find out later is that he
4 actually knew someone from Ardmore. He knew the Defendant,
5 Herbie. They knew each other from the past. They went to
6 high school together. When Dontaviha moved into Ardmore,
7 you're gonna hear that there's basically two sections to
8 Ardmore, what people in Ardmore refer to as the bottom of
9 Ardmore and the top of Ardmore. I'm gonna show you a map
10 throughout this trial and the map is kind of flipped but the
11 bottom of Ardmore is the side that's closest to 17. The top
12 of Ardmore is the closest -- is the side that's closest to 61.
13 They're divided by the bicycle path. When Dontaviha moved
14 into Ardmore, he moved into the top of Ardmore. He found out
15 that Herbie lived in the bottom of Ardmore. They sort of
16 rekindled their friendship. Herbie introduced him to other
17 guys in Ardmore. He introduced him to one guy named Lamont
18 Gregg or Monty. Monty is also a bottom of Ardmore guy what
19 you'll hear they often called the Moe, bottom of the Moe.

20 By all accounts, all three of them were friends. They
21 hung out together, they rode around in Herbie's car together,
22 but the catalyst that changed their friendship occurred on
23 October the 28th that same year. On that day, Mazerati and
24 Monty decided they were gonna pawn off a laptop. It was a
25 laptop that was given to Dontaviha just a few weeks earlier by

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OPENING BY OSBORNE

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1 one of his friends. Now, what Monty and Dontaviha apparently
2 didn't know is that that laptop was stolen from a burglary,
3 stolen in a burglary just a few -- a couple of months earlier.
4 Monty and Dontaviha went to the Money Man Pawn and they pawned
5 the laptop. Dontaviha was too young to pawn it and so Monty
6 pawned it. When the police found out about it, they arrested
7 him. On November 18th, Lamont Gregg was arrested for
8 obtaining goods by false pretenses, basically pawning the
9 laptop. He bonded out the very next day. That would've been
10 around November the 19th, around Thanksgiving. He then
11 approached Dontaviha. He was looking for that \$75. And after
12 all it cost him a charge. Dontaviha looked at him and said
13 no. He did worse than that; he laughed at him. He
14 disrespected him. It didn't take long for word to circulate
15 throughout Ardmore that Dontaviha was disrespecting Ardmore
16 and he was basically out there saying F the Moe. When this
17 Defendant caught wind of that, their relationship changed
18 dramatically and you'll see that, it went from bad to worse.

19 Now, after Dontaviha was shot, he spoke to the police.
20 He told them about Herbie and he told them about Monty. It
21 didn't take the police long to locate the Defendant, Herbie,
22 and also the vehicle. They brought him in and they talked to
23 him. They asked him what happened and he lied. He lied and
24 he lied. He first tried to put it on his girlfriend. When
25 they confronted him with the evidence, he then said yes, okay

1 I was just trying the car during the shooting. He didn't
2 mention anything about the disagreement with the victim. When
3 they asked him who the shooter was, he identified a man by the
4 name of Antonio Barrett, an innocent man. He actually ended
5 up getting Antonio arrested. Antonio spent about a few weeks
6 in jail because of that.

7 The police continued to work it and they found out who
8 the real shooter was. It turned out to be none other than a
9 his home boy, Monty.

10 Now at the end of this trial, I'm gonna ask you to hold
11 him accountable. Hold him accountable for his decision to pin
12 this crime on an innocent man and hold him accountable for his
13 decision to drive his home boy, Monty, over there to kill him
14 all for disrespecting the Moe. I'm gonna ask you to find him
15 guilty of obstruction of justice as well as attempted murder.

16 Thank you.

17 MR. SMILEY: If it please the Court, Your Honor?

18 THE COURT: All right, Mr. Smiley.

19 OPENING STATEMENT BY SMILEY:

20 MR. SMILEY: Ladies and gentlemen, first let me to
21 introduce myself because yesterday I didn't get an
22 opportunity, my name is Jim Smiley. I've been in private
23 practice here in Charleston for about twenty-three years and
24 my co-counsel, Ms. Laree Hensley, she's been in practice for
25 about seventeen years in private practice. We're not

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1 partners. We have a deal where if she has a case to be tried,
2 I join her; and when I have a case to be tried, she joins me.
3 Just so you'll understand who we are. All right? And we have
4 the pleasure of representing Mr. Herbert Singleton -- Herbie
5 Singleton.

6 Now, in this case, his first charge that the State has to
7 prove -- well, not first, but one of the charges they have to
8 prove is attempted murder. In this case there's one thing we
9 know for sure, that Lamont Gregg shot Mazerati and his name is
10 Dontaviha Patterson, but because there's so many names that'
11 gonna around, Mazerati is a pretty distinctive name. I'm
12 gonna call Dontaviha Patterson, and I think the State will
13 too, a lot, Mazerati.

14 So, we know that the gunman in this case -- it's
15 undisputed, is Lamont Gregg. He has had a legal proceeding in
16 which he entered a plea of being the gunman. We know that, so
17 why are we here as to Herbie? It is the State's intention that
18 there was preplan, a plan to go commit this crime and that's
19 gonna be what y'all will have to determine. Was there a
20 preplan? It's pretty simple, not easy, but it's pretty
21 simple. So as we're going through this trial and the evidence
22 is being laid out, I'm glad you have a notebook because as you
23 hear evidence from the stand that supports a preplan, write it
24 down. I encourage you to write it down because they have to
25 show that before the shot was fired that Herbie Singleton

1 conspired, aided, abetted, in some form or fashion or at least
2 had knowledge and became part of the plan to shoot Dontaviha
3 Patterson, a/k/a Mazerati. And I'm gonna submit to you that
4 that evidence is going to be scant, but I need you to look for
5 it. It is gonna be the position of the State -- I mean not
6 the State, excuse me -- by the people, me and Ms. Hensley
7 representing Mr. Singleton, that there was no preplan. Just
8 look for that evidence. This isn't guessing games; this isn't
9 speculation; this is about evidence, what evidence can they
10 produce?

11 Now, in his opening, he's brought up about disrespecting
12 Ardmore. I'm gonna submit that the evidence doesn't support
13 that. I think the evidence is gonna be clearly supportive
14 from this stand that the reason Lamont Gregg shot Dontaviha
15 Patterson is because Dontaviha and his mother took him down to
16 a pawn shop and asked him to pawn a stolen laptop. It's --
17 Lamont pawned that laptop for him not knowing without the
18 exact knowledge that it was stolen. That resulted in Lamont
19 being arrested. Lamont was not happy that Mazerati set him up
20 and as retaliation, he fired a shot that hit Mazerati. I'm
21 gonna ask you to look for that evidence.

22 Now, the second charge is just as important in this case,
23 is obstruction of justice because you will hear evidence that
24 shortly after the shooting, Herbie was taken down to the
25 station, that he was under arrest for driving that car, that

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1 he spoke to the officers and he gave them a bunch of malarkey
2 at the beginning, there's no doubt about that. I think the
3 evidence will support that, but in the end he came clean and
4 named himself as the driver of the car and he named the other
5 two passengers, his friends, Elijah Waring and Kevin Corley.
6 He also named a gunman. He didn't name Lamont Gregg. He
7 named a gentleman named Antonio Barrett and that was a lie, no
8 doubt about that, but that in and of itself is not obstruction
9 of justice. The evidence is gonna show and the Judge is gonna
10 instruct you that obstruction of justice is to intentionally
11 commit an act which prevented, obstructed, in other words
12 stopped, impeded, just slowed the progress, or hindered the
13 administration of justice. So, the question will be the lie
14 that he told, did it cause any of those events. Again, write
15 it down. At the end of the trial, you're gonna find that it
16 did not and, on each of the charges, he's gonna be entitled to
17 a jury verdict just to seek the truth.

18 Everybody in this case, as officers of the Court, we have
19 different jobs. And I always try to take a moment to explain
20 our jobs. It appears that myself, it seems we have the same
21 job as Mr. Osborne and Ms. Ginsburg; that's just not true.
22 Let me start with Detective -- forgive me if I mispronounce
23 it; I always get it wrong -- say if for me.

24 MR. KRASOWSKI: Krasowski.

25 MR. SMILEY: Krasowski. I'm gonna get it right the rest

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1 of the trial. Detective Krasowski, he's got a job. He is the
2 police. His job is to go, when a crime is committed, to
3 investigate and make arrests. That's his job. It doesn't
4 stop there. Upon probable cause he puts people in custody.
5 That doesn't mean that they're guilty; that means he has
6 probable cause, some evidence, to make the arrest. Then the
7 case is turned over to the State. The Solicitor's job is to
8 seek justice. They're a representative of the State of South
9 Carolina. They use those big resources of the police
10 department, their investigators, SLED, FBI, it could any
11 agency to seek to do justice, whatever that may be. For
12 instance, if the evidence supports dismissing a charge, it
13 should be dismissed because that's justice before it comes
14 here. Sometimes there's guilty pleas in which a plea bargain
15 is offered to a Defendant. Sometimes, it's a trial. In this
16 case, it has been determined by the State, Mr. Osborne and his
17 office, that the appropriate remedy is to come here.

18 Now, Ms. Hensley and myself, our job is to represent
19 Herbie Singleton. Now, that's not -- our job is not to do
20 justice even though that's probably as an officer of the
21 Court, probably it's included in that job, but our job is to
22 zealously represent our client within the bounds of the law
23 and the oath that we took to do it in an ethical way. And, I
24 will assure you in our combined thirty-some odd years, we have
25 had many, many battles and I will also assure you that I take

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OPENING BY SMILEY

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1 pride in doing that in a zealous and ethical way.

2 Now, the Court Reporter Clerk -- Court Reporter, see, I
3 even get it messed up. The Clerk of Court, her job is to make
4 sure the indictments get here and make sure our technology is
5 together, to bring y'all here and to make sure that your needs
6 through the Bailiffs, who also work with the Clerk of Court
7 are met. His Honor is the Judge in this case and his job is
8 several fold. The first job is to keep both Mr. Osborne, Ms.
9 Ginsburg, Ms. Hensley and myself on the right track, following
10 the rules, be civil to one another and to make the trial
11 proceed in a efficient fashion. He is also the gatekeeper.
12 He's like the umpire of the rules and the law. Before we all
13 get to hear testimony, it has to be deemed to meet
14 constitutional and statutory hurdles before y'all can hear it
15 because we want to give -- it is the goal of all parties to
16 make sure y'all get what we call good evidence, evidence that
17 doesn't violate the rules. That, as the gatekeeper, is his
18 job. It is also to instruct you on what the law is. He is
19 the judge of law. I may quote law at some point in the trial.
20 Mr. Osborne might quote it at some point in the trial, but the
21 buck stops with Judge Culbertson. Whatever he says goes. So
22 if I misstate it, it's not intentional. If Mr. Osborne
23 misstates it, it's not intentional. And please do always
24 defer to Judge Culbertson. The Court Reporter probably has
25 the hardest job which is to take down everything that's said

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1 and it's hard to do when we talk on top of each other and I
2 will admit I have my times that I do that with witnesses and
3 with the attorney, but she's taking down every word that is
4 said.

5 Now, this case is gonna take a little while. There's
6 gonna be a whole lot of stuff flying around in this case, I
7 think, that may be relevant, may not be relevant, and that's
8 why I ask you to keep your eye on the ball. This case is very
9 simple. Was there a plan -- a preplan to between Herbert
10 Singleton, Herbie, Lamont Gregg, thee admitted gunman, and any
11 other parties, and there were two more in the car. He doesn't
12 have to establish if with the other two, but they were charged
13 in this case, this E.J. or Elijah Waring, and he has another
14 nickname Quay, they'll explain that, and Kevin Corley. All
15 right. So, is there a preplan?

16 Now did he hinder, stop, obstruct or prevent justice by
17 his lie. Thank you for your time. I know I've probably
18 talked too long already. I will sit down. Thank you for your
19 time.

20 THE COURT: All right. Ladies and gentlemen, we'll now
21 begin the evidentiary portion of the trial with the calling of
22 the State's first witness.

23 MR. OSBORNE: Thank you, Your Honor. The State calls
24 Officer Matthew Shier.

25 MATTHEW SHIER, HAVING BEEN SWORN

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MATTHEW SHIER - DIRECT BY OSBORNE

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1 TESTIFIES AS FOLLOWS:

2 CLERK: Thank you. Please have a seat. And, for the
3 record, if you could state your first and last name and spell
4 out your last name, please.

5 MR. SHIER: First name is Matthew; last name is Shier.
6 S-H-I-E-R.

7 DIRECT EXAMINATION OF MATTHEW SHIER BY MR. OSBORNE:

8 Q: Good morning. Officer Shier, tell the Jury where you
9 work?

10 A: I work with the City of Charleston Police Department.

11 Q: And how long have you worked there?

12 A: Five years.

13 Q: During your time there, what are some of the various
14 assignments that you've held?

15 A: I'm currently in investigations for West Ashley. I've
16 also done patrol training.

17 Q: Okay. So, you went from patrol to investigations?

18 A: Yes, sir.

19 Q: Okay. Back in December of 2014, what was your assignment
20 then?

21 A: I was assigned to the Ardmore Subdivision on patrol.

22 Q: Okay. And Ardmore, is that in West Ashley?

23 A: Yes.

24 Q: So, were you working on the evening of December the 18th
25 of 2014?

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MATTHEW SHIER - DIRECT BY OSBORNE

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1 A: Yes, sir.

2 Q: And what was, I think you said your assignment on that
3 specific day, was it to patrol Ardmore?

4 A: Yes, sir.

5 Q: Okay. Did you have the occasion to respond to a shooting
6 call for service?

7 A: Yes, sir.

8 Q: And where were you dispatched?

9 A: To [REDACTED] Acacia Street.

10 Q: Is that in the City and County of Charleston?

11 A: Yes, sir.

12 Q: All right. What time did the call come in?

13 A: Approximately 4:51; it was in the P.M. when the call came
14 in.

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

16 THE COURT: Yes.

17 BY MR. OSBORNE:

18 Q: Officer, I'm showing you what's been marked as State's
19 Exhibit One. Can you take a look at that and tell me if you
20 recognize it?

21 A: Yes, sir.

22 Q: And what is

23 A: That's the overhead shot of the Ardmore Subdivision.

24 MR. OSBORNE: All right. Your Honor, at this time, I'd
25 seek to admit State's Exhibit One into evidence and publish

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MATTHEW SHIER - DIRECT BY OSBORNE

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1 for the Jury?

2 THE COURT: Any objections?

3 MS. HENSLEY: No objection, Your Honor.

4 THE COURT: All right. State's Exhibit Number One
5 admitted into evidence without objection.

6 STATE'S EXHIBIT NUMBER ONE

7 ADMITTED INTO EVIDENCE

8 BY MR. OSBORNE:

9 Q: Okay. And I think you can actually draw on that tablet
10 right there in front of you?

11 A: Okay.

12 Q: Just so we can give the Jury some bearing, do you see
13 Savannah Highway on there?

14 A: Yes, sir.

15 Q: Can you mark that on the tablet?

16 A: Yes, sir.

17 Q: Okay. Do you happen to know where the Pep Boys is?

18 A: Yes, sir.

19 Q: Can you just circle that?

20 A: Okay.

21 Q: All right. So you said you responded to [REDACTED] Acacia?

22 A: Yes, sir.

23 Q: All right. Can you just put an X on where that is on the
24 map, about?

25 A: Okay.

1 Q: Okay.

2 A: You want me to go to like 17 or ---

3 Q: Just go ahead and do the [REDACTED] Acacia. Okay. So you said
4 you responded to that location?

5 A: Yes, sir.

6 Q: All right. Just walk the Jury through what happened when
7 you got there on the scene?

8 A: So when I arrived on the scene, I parked a couple of
9 houses down from the incident location. I waited for backup
10 which was right behind me. Officer Ivery and I got out of our
11 vehicles and started running down the street to attempt to
12 find the victim. When we located [REDACTED] Acacia Street, we saw
13 an open air carport. We ran inside the carport because that's
14 where we were told the victim was shot. We didn't locate the
15 victim there. We walked around the front of the house where I
16 observed a female standing in the front doorway, who advised
17 me to come inside that the victim was inside.

18 Q: Do you remember or know the identity of the female?

19 A: I believe it turned out to be his mom, the victim's mom.

20 Q: Okay. Can you mark on the map where you parked
21 originally?

22 A: I believe we were in that area.

23 Q: Okay. So probably obvious, I'm just assuming you waited
24 for backup because of the nature of the call?

25 A: Yes, sir. You don't know, you know, if the shooter is

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MATTHEW SHIER - DIRECT BY OSBORNE

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1 still on scene, so we like to wait for a second unit to
2 arrive.

3 MR. OSBORNE: Okay. Your Honor, may I approach the
4 witness?

5 THE COURT: Yes.

6 BY MR. OSBORNE:

7 Q: I'm showing you what's been marked as State's Exhibit
8 Two. Can you take a look at that and tell me if you recognize
9 it?

10 A: Yes, sir.

11 Q: And what is it?

12 A: That's [REDACTED] Acacia Street.

13 Q: Okay. The incident location?

14 A: Yes, sir.

15 MR. OSBORNE: Your Honor, I'd seek to admit State's
16 Exhibit Three and publish to the Jury?

17 THE COURT: Any objections?

18 MS. HENSLEY: No objection.

19 THE COURT: All right. State's Exhibit Two admitted into
20 evidence without objection.

21 STATE'S EXHIBIT NUMBER TWO

22 ADMITTED INTO EVIDENCE

23 BY MR. OSBORNE:

24 Q: All right. I'm showing you State's Two. Tell the Jury
25 what is that?

1 A: That's the incident location, [REDACTED] Acacia Street.

2 Q: Okay. So you said the -- the victim's mother was
3 directing you inside the house?

4 A: Yes, sir.

5 Q: Tell the Jury what was her demeanor or how was she
6 behaving?

7 A: Extremely frantic, was very shaken up, obviously.

8 Q: Did you go into the house?

9 A: Yes, sir.

10 Q: And did you see the victim in there?

11 A: Yes, sir.

12 Q: Where was he?

13 A: He was in a hallway, when you walk in the door on the
14 left-hand side, there's a long hallway, he was laying down in
15 that hallway.

16 Q: Did you notice any injuries to him?

17 A: He had a white towel covering his lower back to probably
18 his knees. There was -- he said that he was shot.

19 Q: Okay. And victim's name; do you recall?

20 A: Dontaviha Patterson.

21 Q: And I think you said earlier, there was Officer Ivery?

22 A: Yes, sir.

23 Q: All right. And did you speak to the victim?

24 A: Yes, sir.

25 Q: After you spoke with him, what did you do?

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MATTHEW SHIER - DIRECT BY OSBORNE

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1 A: After speaking with him, I asked him questions like, you
2 know, what's your name, where were you shot so I could relay
3 that information to EMS. Then I asked if he knew who did it
4 to which he said it was Herbie Singleton.

5 MS. HENSLEY: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. OSBORNE:

8 Q: Don't get into what he told you. Okay? After you spoke
9 to him, what did you do?

10 A: After I spoke to him, I broadcast the description of the
11 suspect's car over the air.

12 Q: Okay. And what was that description?

13 A: That description was Herbie Singleton's sedan.

14 Q: All right. Did you request EMS respond to the scene?

15 A: Yes, sir.

16 Q: And did they?

17 A: Yes, sir.

18 Q: Do you know if the victim's clothing was collected?

19 A: Yes, it was collected.

20 Q: By whom?

21 A: Our Crime Scene Unit; I can't remember which crime scene
22 detective it was.

23 Q: Did they collect that on the scene?

24 A: Yes, sir.

25 Q: Might that have been because the EMS cut it off or you're

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MATTHEW SHIER - CROSS BY HENSLEY

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1 not sure?

2 A: I can't recall.

3 Q: Okay. Do you know what happened to the victim?

4 A: Yes, sir. Once EMS arrived on the scene, they evaluated
5 him and transported him to the Medical University.

6 Q: All right. What did you do after the victim left?

7 A: After the victim left, I stayed in the area for pretty
8 much the remainder of my shift, which that day was from 4:00
9 P.M. to 2:00 A.M.

10 Q: And why did you stay there until 2:00 A.M.?

11 A: Anytime there's a shooting violent crime, we have to
12 maintain a high presence in the area where the incident
13 occurred just to prevent any further potential incidents.

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

15 THE COURT: All right. Cross examination?

16 MS. HENSLEY: Thank you.

17 CROSS EXAMINATION OF MATTHEW SHIER BY MS. HENSLEY:

18 Q: Good morning.

19 A: Good morning.

20 Q: I'm Laree Hensley. I don't believe we've met ---

21 A: No, ma'am.

22 Q: --- we spoke briefly outside. I'm Herbie Singleton's
23 lawyer. So you were the first officer on the scene; is that
24 correct?

25 A: Yes, ma'am.

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MATTHEW SHIER - CROSS BY HENSLEY

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1 Q: And you came in and sort of secured the scene before
2 anybody else?

3 A: Yes, ma'am.

4 Q: You didn't actually collect any evidence or anything like
5 that?

6 A: No, ma'am.

7 Q: And you didn't obtain any evidence about being any sort
8 of a preplan about this shooting, did you?

9 A: No, ma'am.

10 Q: That's all the questions I have. Thank you so much.

11 A: Thank you, ma'am.

12 THE COURT: Redirect?

13 MR. OSBORNE: No, Your Honor.

14 THE COURT: All right, sir, you may step down.

15 A: Thank you, sir.

16 MR. OSBORNE: And, Your Honor, may this witness be
17 released?

18 THE COURT: Any objections?

19 MS. HENSLEY: No objection.

20 THE COURT: All right. He's free to go.

21 A: Thank you.

22 THE COURT: All right. State can call your next witness.

23 MR. OSBORNE: State calls Officer Nathan Fry.

24 NATHAN FRY, HAVING BEEN SWORN

25 TESTIFIES AS FOLLOWS:

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NATE FRY - DIRECT BY OSBORNE

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1 CLERK: Thank you. Please have a seat. And, for the
2 record, if you could you state your first and last name and
3 spell your last name, please.

4 MR. FRY: Officer Nate Fry. Last name is spelled F-R-Y.

5 DIRECT EXAMINATION OF NATE FRY BY MR. OSBORNE:

6 Q: All right. Officer, introduce yourself very quickly to
7 the jury. Where do you work?

8 A: I work at the City of Charleston Police Department. I
9 work in the Team Four Section, which covers all of West Ashley
10 and I've been with the department for a little over nine years
11 now.

12 Q: Okay. How long have you worked in West Ashley?

13 A: I want to say approximately five or six years in West
14 Ashley alone.

15 Q: And while you've worked at West Ashley have you had
16 different assignments?

17 A: I have. When I first got transferred from downtown to
18 West Ashley, I was on the, what we call our CAT team, which
19 stands for Community Action Team. While I was on that team,
20 I'd say approximately three -- a little over three years and
21 then now I've been assigned to our Flex Squad, which is more
22 of an experienced group that handles priority calls
23 essentially and whenever we have a rash of crimes, whether it
24 be from minor or serious crimes, we are told to handle those.

25 Q: Okay. Have you received any sort of specialized training

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NATE FRY - DIRECT BY OSBORNE

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1 in interdiction or police work?

2 A: I've taken somewhere between eighty and a hundred hours
3 of narcotics interdiction and commercial interdiction type
4 training classes. I'm also a patrol training officer and have
5 been for almost three years now.

6 Q: All right. While you were on the, I think you said Flex
7 Team, CAT Team?

8 A: I was on the CAT Team before the Flex Team.

9 Q: Okay. While you were on the CAT Team, were you ever
10 assigned to the Ardmore Subdivision?

11 A: Yes, I was for the duration that I was on the CAT Team, I
12 was directly assigned to the Ardmore neighborhood.

13 Q: All right. Officer, I'm now showing you what's been
14 marked as State's Exhibit One. Can you -- well, let's just
15 talk about the Ardmore Subdivision a little bit. How long did
16 you work there?

17 A: For a little over three years, the entire time that I was
18 on the Community Action Team.

19 Q: Okay. Now do you know of any nicknames that residents or
20 other individuals refer to Ardmore as?

21 A: It usually is called the Moe, just short for Ardmore.

22 Q: Do you know of an area that's referred to as the Hole?

23 A: I do.

24 Q: Can you circle that on the computer?

25 A: (Complies with request.)

1 Q: All right. How would you describe Ardmore; is it a quiet
2 neighborhood?

3 A: When I first joined the CAT Team, like I said, a little
4 over three years ago, the CAT Team was generated in West
5 Ashley ---

6 MR. SMILEY: Objection, Your Honor. May we approach?

7 THE COURT: All right.

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

10 THE COURT: Overruled.

11 BY MR. OSBORNE:

12 Q: So you were describing Ardmore?

13 A: When I first got on the CAT Team, the CAT Team was
14 generated as a response to the violent crime that was
15 occurring in West Ashley. The CAT Team was a squad based off
16 of six officers and two of those were put into three
17 neighborhoods. Those three neighborhoods were statistically
18 the three worst crime-driven neighborhoods in West Ashley and
19 Ardmore was one of those three neighborhoods and I got
20 assigned the Ardmore neighborhood.

21 Q: Okay. What type of crimes?

22 A: Ranging from minimal to serious crimes. When I first
23 joined there was a lot -- it was mainly known for your violent
24 crime, for your shootings, your aggravated assaults, murders,
25 burglaries, those types of crimes.

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NATE FRY - DIRECT BY OSBORNE

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1 Q: All right. And let's be fair, I mean, I would assume you
2 worked this area that there were also innocent citizens who
3 lived there as well?

4 A: Of course. The entire neighborhood, there are good law
5 abiding citizens in that neighborhood. You just -- when you
6 work that neighborhood, you learn the criminal activity and
7 the people involved in criminal activity. You get to know
8 those people and you also get to know the law abiding citizens
9 that can hopefully help you out during those investigations
10 when crime occurs.

11 Q: All right. So when there was a crime, was part of your
12 responsibilities to gather intelligence and investigate the
13 crime?

14 A: Correct.

15 Q: Okay. Let's move to December the 18th of 2014. Were you
16 working that day?

17 A: I was.

18 Q: And what was your assignment that day?

19 A: I was on the Flex Squad at that time.

20 Q: Okay. The Flex Squad, did that have similar
21 responsibilities as the CAT Team?

22 A: The CAT Team is directly in the neighborhood, those three
23 neighborhoods that they were assigned to. The Flex Squad
24 reports to our lieutenant over West Ashley, and we are -- we
25 have the ability to patrol the entire area of West Ashley

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NATE FRY - DIRECT BY OSBORNE

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1 depending on the crime at that time.

2 Q: Okay. On that day, did you have the occasion to respond
3 to a shooting call for service?

4 A: I did.

5 Q: All right. Did you actually respond to 1515 Acacia?

6 A: I did not. At the time that the call went out at
7 approximately 4:50 in the afternoon, I was not in the
8 neighborhood at the time. So, when I responded I started to
9 patrol the outer streets of where the incident location
10 actually occurred in hopes to receive further information on a
11 possible suspect or a vehicle that may be involved. So that
12 way I can see and maybe hope to come in contact with them.

13 Q: All right. While you were patrolling, did you hear a
14 suspect description being broadcast over the radio?

15 A: I did. Shortly after the call came out a suspect named
16 was Herbie Singleton.

17 Q: All right. Did you hear a vehicle description being
18 broadcasted?

19 A: I did. A gray or silver-in-color sedan with a black
20 bumper was the dispatched.

21 Q: Okay. Did you have the occasion to locate the Defendant?

22 A: At the time, no.

23 Q: Okay. Later on, did you have the occasion to locate the
24 Defendant?

25 A: Yes, I did.

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NATE FRY - DIRECT BY OSBORNE

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1 Q: Okay. And where did you locate him?

2 A: I responded over to his residence at [REDACTED]
3 Street and, at the time when I arrived on scene, he was not
4 there.

5 MR. OSBORNE: Your Honor -- Your Honor, may I approach
6 the witness?

7 THE COURT: All right.

8 BY MR. OSBORNE:

9 Q: I'm showing you what's been marked as State's Exhibit
10 Three. Can you take a look at that?

11 A: Okay.

12 Q: Do you recognize it?

13 A: I do.

14 Q: What is it?

15 A: That is the residence of the Defendant, Herbie Singleton.

16 Q: Okay. This is where you located him?

17 A: Yes.

18 MR. OSBORNE: Your Honor, at this time, I would like to
19 publish State's Exhibit Three?

20 THE COURT: Any objection?

21 MR. SMILEY: No objection.

22 THE COURT: All right. State's Exhibit Three admitted
23 into evidence without objection.

24 STATE'S EXHIBIT NUMBER THREE

25 ADMITTED INTO EVIDENCE

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NATE FRY - CROSS BY SMILEY

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1 BY MR. OSBORNE:

2 Q: Okay. Tell the Jury what that's a photograph of?

3 A: That is the view of Herbie Singleton's residence facing
4 looking at the residence from [REDACTED] Street.

5 Q: All right. When you located -- and Herbie Singleton, do
6 you see him in the courtroom here today?

7 A: I do.

8 Q: Can you point him out and tell the Jury what he's
9 wearing?

10 A: He is sitting on the table to the left of me wearing a
11 beige-colored shirt.

12 MR. OSBORNE: Your Honor, let the record reflect the
13 witness has identified the Defendant.

14 BY MR. OSBORNE:

15 Q: Okay. When you located him, did you have the occasion to
16 transport him somewhere?

17 A: Yes, when he arrived at the time of the investigation, we
18 had enough that he was going to go down to the station.

19 Q: And did you take him to the station?

20 A: Yes, I did.

21 Q: No further questions.

22 THE COURT: Cross examination.

23 CROSS EXAMINATION OF NATE FRY BY MR. SMILEY:

24 Q: Ardmore is an economically disadvantaged neighborhood?

25 A: I would say it has its good people, there's just certain

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NATE FRY - CROSS BY SMILEY

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- 1 elements in certain areas.
- 2 Q: There's some rundown houses in there?
- 3 A: Yes, there are.
- 4 Q: And the, of course, there's some people who have lived
- 5 there a long time?
- 6 A: Very long time.
- 7 Q: And the neighborhood had become a problem not from those
- 8 longstanding neighbors but people who have moved in; is that a
- 9 fair statement?
- 10 A: I think so.
- 11 Q: All right. The Hole, that's down the end of [REDACTED]
- 12 Street and Sequoia?
- 13 A: Correct.
- 14 Q: And it's a set of apartments?
- 15 A: Correct.
- 16 Q: You said that the CAT Team had three neighborhoods?
- 17 A: Correct.
- 18 Q: One is Ardmore; what are the other two?
- 19 A: The other two neighborhoods were Ashleyville/Maryville
- 20 Subdivision and Hazelwood Subdivision.
- 21 Q: Now, if I understand correctly, you were directed to go
- 22 to Mr. Singleton's residence there on [REDACTED], correct?
- 23 A: I chose to go there.
- 24 Q: Okay. And Herbie walked up to you and you took him into
- 25 custody?

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NATE FRY - REDIRECT BY OSBORNE

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1 A: Correct.

2 MR. SMILEY: I beg the Court's indulgence

3 THE COURT: All right.

4 MR. SMILEY: Nothing further, Your Honor.

5 THE COURT: Redirect?

6 MR. OSBORNE: Just one question, Your Honor.

7 REDIRECT EXAMINATION OF NATE FRYE BY MR. OSBORNE:

8 Q: I believe Mr. Smiley asked you people that just move into
9 Ardmore sometimes caused problems in Ardmore?

10 A: Sometimes.

11 Q: Is the flipside true; people that have been there for a
12 while also sometimes cause problems?

13 A: Definitely.

14 Q: No further questions.

15 THE COURT: All right. You may step down.

16 State can call your next witness.

17 MS. GINSBURG: Thank you, Judge. The State calls Officer
18 Kai Ivery.

19 MR. SMILEY: Your Honor, we have Officer Fry under
20 subpoena also, but we will release him.

21 THE COURT: Release him from the subpoena?

22 MR. SMILEY: Yes, we don't have any reason to call him at
23 this point.

24 THE COURT: All right. He's free to go. Thank you.

25 KAI IVERY, HAVING BEEN SWORN TESTIFIES AS

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KAI IVERY - DIRECT BY GINSBURG

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1 FOLLOWS:

2 CLERK: Please have a seat. And, for the record, if you
3 could state your first and last name and spell out your last
4 name, please.

5 MR. IVERY: My name is Kai Ivery. Last name I-V-E-R-Y.

6 DIRECT EXAMINATION OF KAI IVERY BY MR. OSBORNE:

7 Q: Hey, Mr. Ivery.

8 A: Hello.

9 Q: Can you just briefly tell the Jury where you're currently
10 employed?

11 A: I currently work for the City of Charleston Police
12 Department and a member of the Community Action Team.

13 Q: How long have you been working for CPD as part of the --
14 is it the CAT Team; is that what --

15 A: Yes, we call it the CAT Team. I've, I've been at the
16 department a little over four years.

17 Q: Are you assigned to a specific team in a specific
18 neighborhood?

19 A: Yes. The CAT Team works -- well where I work is in West
20 Ashley and we are assigned a neighborhood and my neighborhood
21 was Ardmore.

22 Q: Can you tell us -- we just spoke to Officer Fry --
23 briefly, what are the duties of someone on the CAT Team?

24 A: Like I said, I worked over in Ardmore for two years and
25 all you do is you control the scene but yay in and day out

1 every shift you're over there getting to know the people that
2 live there, look at what the problems are and just building
3 rapport with the community.

4 Q: Okay. So, you said you previously worked in the Ardmore
5 area. Were you working in the Ardmore area in December of
6 2014?

7 A: That's correct.

8 Q: Okay. I'm gonna show you what's been marked as State's
9 Exhibit One. Can you tell us what that is?

10 A: That's a map of Ardmore.

11 Q: Okay. And would you -- do you know another name people
12 call Ardmore?

13 A: I do not.

14 Q: And you said how long were you in the Ardmore area?

15 A: About two years.

16 Q: Okay. Were you working in the Ardmore area on the CAT
17 Team December 18th of 2014?

18 A: That's correct, I was working there.

19 Q: Did you have the occasion to respond to a call from
20 dispatch in regards to a shooting at [REDACTED] Acacia Street?

21 A: Yes, ma'am, I did.

22 Q: What county is that in?

23 A: That's in the County of Charleston.

24 Q: Okay. I'm gonna show you what's been marked as State's
25 Exhibit Two. Can you tell me what this is?

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1 A: That's the incident location at 1515 Acacia.

2 Q: Okay. Upon arriving at this location, what did you do?

3 A: The first thing we did was we secured the scene and made
4 sure that no -- no one else was actively trying to assault
5 someone and we contacted the victim who was located inside the
6 house.

7 Q: Okay. When you saw the victim in the house, tell the
8 Jury what you saw?

9 A: He was lying face down in the hallway and there was blood
10 coming from his buttocks area.

11 Q: And did you speak with the victim ---

12 A: I did.

13 Q: --- Dontaviha Patterson?

14 A: Yes.

15 Q: Upon speaking with the victim, what did you do?

16 A: We asked him if he knew who did it and ---

17 MS. HENSLEY: Objection, Your Honor.

18 THE COURT: Sustained.

19 BY MS. GINSBURG:

20 Q: Unfortunately you can't go into what he said, but from
21 what you learned, what did you do next?

22 A: Okay. Well -- well what we learned next was that he had
23 been shot and I, I was the one who was trying to put out the
24 description of the person who had -- who had -- that shooter.

25 Q: What type of description did you receive?

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1 A: That -- he gave me ---

2 MS. HENSLEY: Objection, Your Honor.

3 THE COURT: No. All right. I'm gonna allow that. I'll
4 give some instructions. Ladies and gentlemen, typically
5 hearsay evidence is not admissible. In other words, you can't
6 say what someone else said because the other person is not
7 here subject to cross examination as to whether or not it's
8 true, untrue or the circumstances. However, there is an
9 exception when a statement is given not for the truth of the
10 matter asserted but to explain why someone took an action. So
11 I'm gonna allow this testimony not because of what was said to
12 this officer is true or not true because we don't know, but to
13 explain why the officer took the action that he took and
14 that's the sole reason I'm admitting this testimony is to
15 explain why he did what he did. All right. Go ahead.

16 MS. GINSBURG: Thank you, Your Honor.

17 BY MS. GINSBURG:

18 Q: Upon receiving the information of the vehicle
19 description, what did you do next?

20 A: I told dispatch that, that we were looking for a suspect
21 vehicle that was a small gray car with a black bumper.

22 Q: Did you -- being a part of the CAT Team for two years in
23 this neighborhood, what, what did you know about this vehicle?

24 A: I knew that this vehicle was one that I had seen around
25 the neighborhood before and I knew that it belonged to Herbie

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1 Singleton.

2 Q: Okay. Did you end up going to that residence?

3 A: I did.

4 Q: Where exactly does Herbie Singleton live?

5 A: He lives in Ardmore about a few blocks away from this
6 incident location.

7 Q: Do you recall the street?

8 A: On [REDACTED] Street,

9 Q: Okay. I'm gonna be showing what's marked as State's
10 Exhibit Forty-Three. Can you tell the Jury what this is?

11 A: That is the -- that is the residence where Herbie
12 Singleton lives on [REDACTED].

13 Q: So once you got to this residence, what did you do?

14 A: I located a gray vehicle with a black bumper in the
15 driveway of that residence.

16 STATE'S EXHIBIT NUMBER FORTY-THREE

17 MARKED FOR IDENTIFICATION

18 BY MS. GINSBURG:

19 Q: Just to backtrack a little bit. I would like to show you
20 another photograph just for identification purposes only.

21 Your Honor, may I approach?

22 THE COURT: All right.

23 Q: Officer Ivery, can you tell me what this is; do you know?

24 A: That is the Lamont Gregg's house.

25 MS. GINSBURG: Okay. May I publish this for the Jury,

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1 Your Honor?

2 THE COURT: Has it been identified?

3 MS. GINSBURG: Lamont Gregg's house.

4 THE COURT: But I mean, what is the ---

5 MS. GINSBURG: Oh, I'm sorry, State's Exhibit Forty-three
6 for identification purposes.

7 THE COURT: State's Exhibit ---

8 MS. GINSBURG: Forty-three, Judge.

9 THE COURT: --- Forty-three. Any objections to State's
10 Exhibit Forty-three?

11 MR. SMILEY: Is it being entered, Your Honor?

12 MS. GINSBURG: No, just for ID purposes.

13 THE COURT: But you can't publish it to the Jury unless
14 it's admitted.

15 MS. GINSBURG: Oh, I'm sorry then. I was trying to do it
16 just so you could see it, but never mind. I'm sorry.

17 THE COURT: All right.

18 BY MS. GINSBURG:

19 Q: Do you know the address of this house, Mr. Ivery?

20 A: Yes, that was [REDACTED] Street, I'm sorry, [REDACTED]
21 [REDACTED] Street.

22 Q: Where is this location in, in conjunction to what we just
23 saw, Mr. Singleton's home?

24 A: It's across the street and a few houses over from this
25 house.

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1 Q: From this house?

2 A: That's correct.

3 Q: So, let's get back to you went to this home. Whose home
4 is this again?

5 A: That's Herbie Singleton's house.

6 Q: And what did you observe when you first arrived at Herbie
7 Singleton's house again?

8 A: I saw the suspect vehicle, a gray compact car with a
9 black bumper, in the driveway.

10 Q: I'd like to show you what's been marked as State's
11 Exhibit Four. May I approach, Your Honor?

12 THE COURT: All right.

13 Q: Excuse me. Can you tell me, Officer Ivery, what this is?

14 A: That is a gray compact car with a black bumper. It's the
15 same one that was in that driveway.

16 MS. GINSBURG: Your Honor, at this time, I'd like to
17 admit this as State's Exhibit Four?

18 THE COURT: Any objection?

19 MS. HENSLEY: Without objection, Your Honor.

20 THE COURT: State's Exhibit Number Four is admitted into
21 evidence without objection.

22 STATE'S EXHIBIT NUMBER FOUR

23 ADMITTED INTO EVIDENCE

24 MS. GINSBURG: Thank you, Your Honor.

25 BY MS. GINSBURG:

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1 Q: Excuse me. And is this the vehicle that you noticed in
2 that driveway?

3 A: Yes.

4 Q: What did you do next after you noticed the vehicle in the
5 driveway?

6 A: I notified the other officers in the area that I -- that
7 that was the suspect vehicle that I had found in the driveway
8 and notified a supervisor and we approached the house.

9 Q: All right. Seeing this as the vehicle of interest, what
10 did you do next?

11 A: We had the vehicle -- well, we spoke with his father, who
12 provided a key and the vehicle was towed to our crime scene
13 office.

14 Q: So after the vehicle was towed to the crime scene, did
15 this end your involvement in this case?

16 A: That's correct.

17 MS. GINSBURG: Thank you, Your Honor. No further
18 questions.

19 THE COURT: All right. Cross examination?

20 CROSS EXAMINATION OF KAI IVERY BY MS. HENSLEY:

21 Q: Good morning, Officer Ivery. I'm Laree Hensley. I'm
22 Herbie Singleton's lawyer. It's good to see you.

23 A: You as well.

24 Q: So you were second on the scene with Officer Shier; is
25 that correct?

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KAI IVERY - CROSS BY HENSLEY

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1 A: That's correct.

2 Q: And y'all went in and observed the victim and what was
3 going on with the victim and then you made some other calls;
4 is that right?

5 A: Yes.

6 Q: And then eventually, not right then, but eventually you
7 responded to Mr. Singleton's residence on [REDACTED] and
8 located the vehicle?

9 A: Yes, I did.

10 Q: Now, at no time were you dispatched to Lamont Gregg's
11 home, catty-corner across from Mr. Singleton's home that
12 night?

13 A: Not that I remember.

14 Q: Okay. Thank you, that's all the questions I have.

15 THE COURT: Redirect?

16 MS. GINSBURG: Not at this time, Judge, thank you.

17 THE COURT: All right. You may step down.

18 MS. GINSBURG: Your Honor, may Officer Ivery be released?

19 MS. HENSLEY: Without objection.

20 THE COURT: All right. He's free to go. Thank you very
21 much.

22 MS. GINSBURG: Thank you.

23 THE COURT: State can call your next witness.

24 MS. GINSBURG: The State calls Officer McKelvey.

25 GARLAND MCKELVEY, HAVING BEEN SWORN

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1 THE COURT: Cross examination.

2 MR. SMILEY: I don't have any questions for this witness.

3 THE COURT: All right. You may step down.

4 MS. GINSBURG: Thank you. Can he be excused, Your Honor?

5 THE COURT: Any objection?

6 MR. SMILEY: No objection.

7 THE COURT: You're free to go.

8 The State can call your next witness.

9 MS. GINSBURG: Thank you, Your Honor. The State calls
10 Jamie Patterson.

11 JAMIE PATTERSON, HAVING BEEN SWORN

12 TESTIFIES AS FOLLOWS:

13 CLERK: Please have a seat. And for the record, if you
14 could state your first and last name and spell out your last
15 name, please.

16 MR. PATTERSON: Jamie Patterson, P-A-T-T-E-R-S-O-N.

17 MS. GINSBURG: Your Honor, may I proceed?

18 THE COURT: Yes.

19 MS. GINSBURG: Thank you, Your Honor.

20 DIRECT EXAMINATION OF JAMIE PATTERSON MS. GINSBURG:

21 Q: Hi, Ms. Patterson.

22 A: Hello.

23 Q: How old are you?

24 A: Thirty-five.

25 Q: And are you from Charleston?

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- 1 A: Yes.
- 2 Q: Were you born and raised here?
- 3 A: Yes.
- 4 Q: Ms. Patterson, where do you currently work?
- 5 A: I work at the school district now -- for the school
- 6 district now.
- 7 Q: What do you do at the school district?
- 8 A: I work in the cafeteria.
- 9 Q: Ms. Patterson, do you have any children, and if so, what
- 10 are their names and ages?
- 11 A: I have four kids, Dontaviha Patterson, he's nineteen;
- 12 Rodney Elvis, he's eighteen; Kateese (spelled phonetically)
- 13 S. , she's fourteen; and Javier (spelled phonetically)
- 14 S. , twelve.
- 15 Q: You have a lot to handle then, huh?
- 16 A: Yeah.
- 17 Q: What area do you live in now?
- 18 A: I live in the Goose Creek area now.
- 19 Q: And in December of 2014, what area did you live in?
- 20 A: West Ashley.
- 21 Q: Did you live in the -- was it called the Ardmore
- 22 neighborhood?
- 23 A: Yeah.
- 24 Q: What was the address that you lived in in December of
- 25 2014?

1 A: [REDACTED] Acacia Street.

2 Q: Who lived with you in that house on Acacia Street?

3 A: It was me, Dontaviha, Rodney, Javier and Kateese.

4 Q: And, Ms. Patterson, why did you end up moving from that
5 house?

6 A: Dontaviha got shot.

7 Q: You mentioned your son was shot, can you walk us through
8 that day leading up to the shooting?

9 A: Like from when I got up?

10 Q: As far back as you remember from when they got up until
11 it happened?

12 A: I got up to get my kids ready for school and Dontaviha
13 didn't want to go to school that day so I just left him at the
14 house and went to work. And then after I got off, I did a
15 couple of errands and then I went back home and then my girls
16 came from school, but I was sitting -- Dontaviha was sitting
17 under the carport with his girlfriend. And then I walked in
18 the house and then I walked back out to talk to them under the
19 carport. And after I left from them, I went and sit in my
20 truck to listen to music. Dontaviha came by the truck to talk
21 to me, I don't remember what we were talking about or whatever
22 but he -- and that's when he went back under the carport and
23 sat down and his girlfriend was sitting on his lap. I was
24 still sitting in the car listening to music and I, I got on
25 the phone with my friend and he -- I had just hung up with him

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- 1 because he had made me upset and then I had my head lowered
2 down looking at my phone and then like not even ten -- not
3 even ten, fifteen minutes, probably a couple of seconds later,
4 I just heard gunshots and I held my head up and I saw they
5 backing around in the car and then that's when Dontaviha
6 yelled my name and then that's when I jump up and come ask him
7 what was wrong and he said he had just get shoot.
- 8 Q: Okay. You said you were listening to music in your car,
9 you heard gunshots, where did you hear the gunshots from?
- 10 A: Like from -- like -- well, when I looked up ---
- 11 Q: Uh-huh (affirmative response).
- 12 A: --- I mean, I saw the car and it was coming from the car.
13 The gunshots were coming from the car.
- 14 Q: Did you -- what was -- can you describe the car; what
15 kind of car was it or color?
- 16 A: I don't know the name of the car but it was a gray car
17 with a black bumper.
- 18 Q: Do you -- you said you recognized the car. How did you
19 recognize the car?
- 20 A: Because it used to be at my house.
- 21 Q: And whose car was that?
- 22 A: Herbie.
- 23 Q: You said after hearing the shots, Dontaviha yelled. What
24 did -- and then what happened after the shots, after you heard
25 Dontaviha yell; what did you do next?

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1 A: I just went and like jump out the car and I ran over to
2 him and asked him what was wrong and he tells me he had just
3 get shoot. Then I asked him where he get shoot at and then he
4 told me -- well, he told me in the -- he told me in the ass,
5 but he said, you know, I called it -- and then I told him, I
6 said you got -- you got to try to get up so I can get you in
7 the house because I didn't want them to come back and he said
8 he couldn't move. He couldn't move to try to get in the
9 house, so I told him, I say you got to at least try to get up
10 so I can pull you in the house and then that's when I held him
11 and he held around my neck and then I got him into the house
12 and laid him on the hardwood floor and told him the rest of
13 kids to stay inside the hall.

14 Q: So you -- the rest of your kids, your daughters were in
15 the home at that time?

16 A: Yeah, they were home.

17 Q: Okay. So you got Dontaviha and yourself inside, what did
18 you do after that?

19 A: I tied something around his leg to keep the blood from
20 coming out. I can't remember if I called 911, then tied it,
21 but I know I tied something around his leg and then called 911
22 to ask them to send EMS because my son was hurt, my son was
23 shot.

24 Q: And did you speak with 911 the entire time?

25 A: I didn't speak with them the whole call because --

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1 because I was frustrated and then his girlfriend got on the
2 phone.

3 Q: But were you near the phone when his girlfriend was
4 speaking to 911?

5 A: Oh, yeah.

6 MS. GINSBURG: Your Honor, may I approach Ms. Patterson?

7 THE COURT: All right.

8 BY MS. GINSBURG:

9 Q: Ms. Patterson, I'm showing you what's been marked as
10 State's Exhibit Thirty-three. You can take it out if you
11 like. Do you recognize what this is?

12 A: Yes, that's the 911 call.

13 Q: How do you know it's the 911 call?

14 A: Because they had me listen to it and then initial my
15 initials right here.

16 MS. GINSBURG: Your Honor, at this time, I'd like to move
17 State's Exhibit Thirty-three into evidence and publish to the
18 Jury.

19 THE COURT: Any objection.

20 MR. SMILEY: May we approach, Your Honor?

21 THE COURT: All right.

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

24 THE COURT: State's Exhibit Thirty-three is admitted into
25 evidence over Defendant's objection.

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1 STATE'S EXHIBIT NUMBER THIRTY-THREE

2 ADMITTED INTO EVIDENCE

3 MS. GINSBURG: Bear with me one moment.

4 THE COURT: Hold for a second. Let me see the attorneys.

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

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

8 (REPORTER'S NOTE: State's Exhibit Thirty-three played for the
9 Jury. Not transcribed herein.)

10 (On the Record.)

11 BY MS. GINSBURG:

12 Q: Is that your voice, Ms. Patterson?

13 A: Uh-huh (affirmative response).

14 *******OFF THE RECCORD*******

15 (REPORTER'S NOTE: Continued playing of State's Thirty-three
16 for the Jury. Not transcribed herein.)

17 **(On the Record.)**

18 MS. HENSLEY: Your Honor, I would just renew my objection
19 as to this part of the 911 tape.

20 THE COURT: All right. Overruled. Go ahead.

21 MS. GINSBURG: Thank you, Your Honor.

22 *******OFF THE RECORD*******

23 (REPORTER'S NOTE: Continued playing of State's Thirty-three
24 for the Jury. Not transcribed herein.)

25 **(On the Record.)**

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1 BY MS. GINSBURG:

2 Q: Ms. Patterson, after you called 911, what happened?

3 A: You mean did the officer come?

4 Q: Right.

5 A: Yeah, the officer came, right behind the officer the EMS
6 crew came and they walked in the hallway and they started
7 working on Dontaviha. They had cut his pants and stuff off of
8 him to see where the wound was at.

9 Q: Did you speak with the officers on scene?

10 A: Uh-huh (affirmative response).

11 Q: What happened with Dontaviha and EMS; you said they ---

12 A: I didn't go -- I didn't go in the EMS.

13 Q: Okay.

14 A: The officer took me to the hospital.

15 Q: Okay. And did you speak to anyone while you were at the
16 hospital?

17 A: No, I spoke to someone at the house.

18 Q: Okay.

19 A: I spoke to the officer at the house.

20 Q: Ms. Patterson, I'm going to be showing you State's
21 Exhibits Five, Six and Seven. Your Honor, may I approach?

22 THE COURT: Yes.

23 Q: Ms. Patterson, can you tell me what these pictures are
24 and how you know them?

25 A: That's my -- that's my white truck.

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1 Q: Okay.

2 A: And that's the house I was living in and that's the chair
3 under the carport and that's the chair under the carport that
4 Dontaviha was sitting in.

5 Q: You said the house that you were living at at [REDACTED] ---

6 A: Yeah, [REDACTED] Acacia Street.

7 Q: Okay. And what's the last one?

8 A: It's the chair with the bullet hole in it.

9 MS. GINSBURG: Your Honor, at this time, I'm seeking to
10 admit State's Exhibits Five, Six and Seven into evidence.

11 THE COURT: Any objection?

12 MS. HENSLEY: No objection, Your Honor.

13 THE COURT: All right. State's Exhibits Five, Six and
14 Seven are admitted into evidence without objection.

15 STATE'S EXHIBIT NUMBERS FIVE, SIX AND SEVEN

16 ADMITTED INTO EVIDENCE

17 MS. GINSBURG: Thank you, Your Honor. May I publish
18 these to the Jury?

19 THE COURT: Yes.

20 BY MS. GINSBURG:

21 Q: First, Ms. Patterson, I'd like to show you what's already
22 admitted into evidence as State's Exhibit Five. Can you tell
23 the Jury what this is?

24 A: It's my truck.

25 Q: Is this ---

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- 1 A: That's the vehicle I was sitting in.
- 2 Q: That's the vehicle. What house is this?
- 3 A: That's the one that's on Acacia, [REDACTED] Acacia.
- 4 Q: And that's the house that you stayed at with your
5 children?
- 6 A: Yes.
- 7 Q: Now I'm showing you what's been marked as State's Exhibit
8 Five. This is a close up. What is this again?
- 9 A: That's my truck.
- 10 Q: And what were you doing in that truck that day, December
11 18th, 2014?
- 12 A: Just sitting in it listening to music.
- 13 Q: All right. And now I'd like to show you State's Exhibit
14 Six. Can you tell the Jury what we're looking at right here?
- 15 A: That's the chair Dontaviha was sitting in when he got
16 shot.
- 17 Q: And where is that; where is that located?
- 18 A: That's at [REDACTED] Acacia Street right inside the carport.
- 19 Q: All right. This is the carport. Okay. Now I'd like to
20 show you State's Exhibit Four that's already been admitted
21 into evidence. Can you tell me -- tell the Jury actually,
22 what is this?
- 23 A: That's the car. That's Herbie Singleton car.
- 24 Q: Where did you see that car?
- 25 A: That was the car I saw ride past when they was shooting.

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1 Q: Okay. Now, I'd like to show you State's Exhibit Seven.

2 Can you tell me -- tell the Jury, excuse me, what this is?

3 A: That's the chair Dontaviha was sitting in.

4 Q: Okay. And can you -- let me go back to State's Exhibit
5 Two and you said you were sitting in this car; is that right?

6 A: Yes, ma'am.

7 Q: Can you tell the Jury from where you're sitting, so this
8 is the driver's seat right here, where you saw the car go by?
9 Was it this way or from that way?

10 A: I was facing the roadway, not the house.

11 Q: Okay. So you were facing the roadway?

12 A: Yeah ---

13 Q: In what direction?

14 A: Like this the road.

15 Q: Okay.

16 A: And this my car.

17 Q: Okay.

18 A: So, I was facing like how the car sitting.

19 Q: Okay. So from that picture, can you -- can you use that
20 screen in front of you and draw an arrow from where -- from
21 what side you saw the car coming from?

22 A: This way (indicating).

23 Q: Okay. Thank you so much, Ms. Patterson. I have a few
24 more questions for you. Ms. Patterson, you identified the
25 vehicle that drove by your home that day, it's State's Exhibit

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1 Four, as Herbie Singleton's. How do you know Herbie
2 Singleton?

3 A: Through my son.

4 Q: Were they friends?

5 A: I mean, I would think because they just always be
6 together.

7 Q: They would always be together?

8 A: Uh-huh (affirmative response).

9 Q: Do you also know anyone named Lamont Gregg or Monty?

10 A: I only know by his dad. I know Herbie mostly because he
11 used to be at my house, but Monty, he's never been to my
12 house.

13 Q: He's never been in your house. You said Herbie used to
14 visit your house. Did he know that the kids also lived in
15 your house?

16 A: Yeah.

17 Q: And did you -- how long after the shooting did you live
18 in this house?

19 A: Well, I couldn't -- they wouldn't let me move so I was
20 like staying at my mother's house because I was -- I'm on
21 Section VIII, so they didn't allow me -- the landlord wouldn't
22 let me out my lease.

23 Q: Okay.

24 A: So I had to stay there until my lease up, but I had my
25 kids -- me and my kids was at my momma house or either at my

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JAMIE PATTERSON - CROSS BY HENSLEY

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1 sister's house.

2 Q: So you stayed at your mother's house?

3 A: Like I had to take them back and forth to school because
4 I didn't want them -- they didn't want to be there.

5 Q: Okay. I beg the Court's indulgence?

6 THE COURT: All right.

7 Q: No further questions at this time, Ms. Patterson. Please
8 answer anything Ms. Hensley has to ask you. Thank you.

9 A: Okay.

10 THE COURT: Cross examination.

11 MS. HENSLEY: Thank you, Your Honor.

12 CROSS EXAMINATION OF JAMIE PATTERSON BY MS. HENSLEY:

13 Q: Good morning, Ms. Patterson. I'm Laree Hensley. I'm
14 Herbie Singleton's lawyer. How are you today?

15 A: Fine.

16 Q: I've just got a few questions for you. Now, you said
17 that Dontaviha didn't want to go to school that day, correct?

18 A: Yes.

19 Q: But in fact Dontaviha wasn't attending school then, he'd
20 been kicked out of West Ashley High School at that time,
21 hadn't he?

22 A: No.

23 Q: So you think Dontaviha was attending school then?

24 A: He was attending school, he just didn't want to go that
25 day because -- I don't know why. He didn't get kicked out of

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- 1 West Ashley High until after the fact.
- 2 Q: And you ---
- 3 A: He actually moved to the Summit Program.
- 4 Q: But he wasn't in the Summit Program then?
- 5 A: He was still in -- he was still in school.
- 6 Q: And you were familiar with Lamont Gregg, correct?
- 7 A: With who?
- 8 Q: Lamont Gregg, Monty?
- 9 A: I just knew -- I didn't know him like that, I just knew
- 10 him through Dontaviha. But I didn't -- I didn't see him not
- 11 but one time.
- 12 Q: And the time that you saw him was the time that you drove
- 13 Dontaviha and Lamont to the Pawn Shop, correct?
- 14 A: Uh-huh (affirmative response). That was the only time I
- 15 saw him.
- 16 Q: And that time you drove -- you picked Dontaviha and
- 17 Lamont up at your house; is that right?
- 18 A: No. Lamont was never at my house.
- 19 Q: Okay.
- 20 A: Dontaviha was at my house, and Lamont, I picked him up
- 21 off of [REDACTED] where he lived at.
- 22 Q: And ---
- 23 A: Lamont never knew where I lived at.
- 24 Q: You drove them, correct?
- 25 A: I took them to where ---

1 Q: And you took them to the pawn shop and you knew that they
2 were going there to pawn the laptop that Dontaviha had,
3 correct?

4 A: Yes.

5 Q: And you didn't go in the pawn shop, correct?

6 A: I can't remember if I did or not because my girls was
7 with me.

8 Q: So you had your children with you and then after that you
9 took Monty to work; is that right?

10 A: Yes.

11 Q: And you knew they were going in there to pawn the laptop,
12 correct?

13 A: Yes.

14 Q: Now, you remember speaking to the police officer at the
15 scene at your house -- I know it was pretty chaotic -- but
16 after your son had already gone to the hospital?

17 A: You said did I speak to them?

18 Q: Yes?

19 A: I don't think we speak long, but I spoke to them.

20 Q: And you remember telling that police officer that your
21 son didn't have a phone, correct?

22 A: He didn't have a phone that was on.

23 Q: You told him that you'd taken his phone because he
24 wouldn't get his school work done; do you remember that?

25 A: Yeah, but he didn't have a phone. He had made -- I don't

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1 know where he got the phone from that they had. He didn't
2 have the phone that I purchased.

3 Q: And that's what you told them; he doesn't have a phone.
4 I took his phone from him because he doesn't get his
5 schoolwork done, correct?

6 A: Uh-huh.

7 Q: And the day y'all went to the pawn shop, tell me a little
8 bit about that. Whose idea was that?

9 A: I guess his and Monty's; I don't know.

10 Q: Dontaviha's and Monty's?

11 A: I guess so. He just asked me to come -- he just asked me
12 when I could give him and Monty a ride to the pawn shop and I
13 said okay and then he asked me -- he said Monty asked me if it
14 was okay if I dropped him off to work and I said okay. So
15 that's what I did.

16 Q: And they had the laptop with them, right?

17 A: I assume they did.

18 Q: I mean, you could see the laptop; they didn't have it
19 hidden or anything, did they?

20 A: Not that I know of.

21 Q: And you also spoke to the police at the hospital,
22 correct, you went to the hospital after your son got to the
23 hospital?

24 A: I can't remember if I spoke to the police at the
25 hospital.

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1 Q: Do you remember talking to the police about the reason
2 for the shooting and telling the police that it was about a
3 laptop; do you remember that?

4 A: No, I never told them that.

5 Q: Okay. I beg the Court's indulgence?

6 THE COURT: All right.

7 MS. HENSLEY: I beg the Court's indulgence, Your Honor.

8 THE COURT: All right.

9 MR. OSBORNE: May we approach, Your Honor.

10 THE COURT: All right.

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

13 THE COURT: All right. Ladies and gentlemen, we're gonna
14 take a short break. It's a good time to take about a five or
15 ten-minute break, our morning break. Leave your notepads in
16 the jury box. Do not take them with you. Do not discuss the
17 case even among yourselves at this point in time. We're gonna
18 take about five. We need to set up some stuff and that's why
19 we're taking a break at this time. So I'll excuse you back to
20 the jury room and give you an opportunity to stretch your
21 legs, get something to drink, whatever the case may be, but
22 don't discuss the case even among yourselves. Make sure you
23 leave all pads here in the jury box. Thank you very much.

24 (REPORTER'S NOTE: Jury exits courtroom. 11:12 A.M. The
25 following takes place outside the presence of the Jury.)

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1 THE COURT: All right. Ms. Patterson, we're still in the
2 middle of your testimony. So what the law states is that you
3 cannot discuss your testimony with anyone, even the State's
4 attorneys or anyone in the -- at all, whether that be to what
5 you've testified to thus far or what you anticipate testifying
6 to in the future. Okay?

7 A: Okay.

8 THE COURT: So don't speak with anyone regarding your
9 testimony.

10 Also I didn't do this earlier. This is the note -- which
11 it was brought to me late, but this is the note from the
12 foreperson requesting to take notes. I'm gonna put that as
13 Court's Exhibit Two?

14 COURT REPORTER: Yes, sir.

15 THE COURT: Court's Exhibit Two.

16 COURT'S EXHIBIT NUMBER TWO

17 MARKED FOR IDENTIFICATION

18 THE COURT: All right. Anything the State wants to place
19 on the record before we take a break?

20 MS. GINSBURG: Not at this time, Your Honor.

21 THE COURT: All right. Anything from the defense?

22 MR. SMILEY: No, sir.

23 THE COURT: All right. Let's take about a ten-minute
24 break.

25 You can step down, but -- I'm trying to think, I know

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1 we've got the witnesses sequestered. So don't -- don't talk
2 to anybody, okay?

3 A: All right.

4 THE COURT: You can step down, but you can't speak with
5 anyone. All right.

6 (RECESS - 11:14 A.M.)

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

8 (On the Record - 11:28 A.M.)

9 THE COURT: Thank you very much. Please be seated.

10 Ms. Patterson, if you'd come back up and have a seat;
11 you're still under oath.

12 All right. Anything from the State before we bring the
13 Jury back in?

14 MS. GINSBURG: Nothing else, Your Honor.

15 THE COURT: Anything from the Defense?

16 MS. HENSLEY: No, Your Honor.

17 THE COURT: All right. Let's go ahead and bring the Jury
18 in. Thank you.

19 (REPORTER'S NOTE: Jury enters courtroom. 11:30 A.M.)

20 BAILIFF: All jurors present, Your Honor.

21 THE COURT: Thank you very much.

22 All right. Ladies and gentlemen, welcome back. Please
23 make sure you have your own notepads and do not have anyone
24 else's notepad. All right?

25 We're ready to resume the trial of the case. We'll

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1 continue with cross examination.

2 MS. HENSLEY: Thank you, Your Honor.

3 BY MS. HENSLEY:

4 Q: Ms. Patterson, before we took the break, I was asking you
5 if you remembered going to the hospital after your son got
6 shot and meeting with the police officer about -- on the night
7 of the shooting, right?

8 A: Uh-huh (affirmative response).

9 Q: Is that a yes?

10 A: Yes.

11 THE COURT: Excuse me, you need to say yes or no. Thank
12 you.

13 Q: And I asked if you remembered telling one of the police
14 officer at that time that you thought this happened over a
15 laptop and you said no, right?

16 A: Yes.

17 Q: I'm just gonna play for you a little bit of that
18 interview. I know it's been a long time ago and it's hard to
19 remember everything that you said.

20 A: Okay.

21 Q: We're just gonna see if maybe you'll -- you can hear your
22 voice and recognize this. Okay?

23 A: All right.

24 MR. SMILEY: Can you hear that?

25 A: No, not really, a little bit.

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1 THE COURT: Okay. Let's -- let me see the attorneys for
2 a second.

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

5 DEFENDANT'S EXHIBIT NUMBER ONE

6 MARKED FOR IDENTIFICATION

7 BY MS. HENSLEY:

8 Q: I'm sorry, Ms. Patterson.

9 A: That's okay.

10 Q: I'm not good at all this technology so I wanted -- I want
11 to be sure that you can hear. Okay?

12 A: Okay.

13 Q: Hang on a second. And this a tape that was made the
14 night of the shooting at the hospital with you in Dontaviha's
15 hospital room. Okay?

16 A: Okay.

17 Q: And we're gonna mark this in a minute for identification
18 purposes as Defendant's Exhibit Number One. Okay?

19 A: All right.

20 Q: I just want you to listen and see if you recognize your
21 voice. Okay?

22 A: All right.

23 *****OFF THE RECORD*****

24 (REPORTER'S NOTE: Portion of Defendant's Exhibit Number One
25 is played in the presence of Jury. Not transcribed herein.)

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1 (On the Record.)

2 BY MS. HENSLEY:

3 Q: Is that your voice?

4 A: Yes.

5 Q: It is your voice?

6 A: Yes.

7 Q: Okay. And I'm just gonna play a little bit more and If
8 you can ---

9 MR. SMILEY: Laree, the Jury cannot hear it, just so you
10 know.

11 *****OFF THE RECORD*****

12 (REPORTER'S NOTE: Portion of Defendant's Exhibit One played
13 in the presence of Jury. Not transcribed herein.)

14 (On the Record.)

15 BY MS. HENSLEY:

16 Q: You did recognize that as your voice?

17 A: Yes.

18 Q: Okay. And I think we'll just pass -- pass the statement
19 that I was gonna ask you about, so I'm just gonna back up just
20 a little bit. Okay?

21 A: Okay.

22 *****OFF THE RECORD*****

23 (REPORTER'S NOTE: Portion of Defendant's Exhibit One played
24 in the presence of Jury. Not transcribed herein.)

25 (On the Record.)

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1 BY MS. HENSLEY:

2 Q: Was that you saying I think it's over a laptop?

3 A: Yeah.

4 Q: Okay. And the laptop that you were talking about was the
5 laptop that got pawned at the Money Man Pawn Shop?

6 A: Yeah, they had done it, I don't know.

7 Q: Well, you had told the police, Officer -- do you remember
8 during that conversation you told the police officer that you
9 would recognize Monty?

10 A: That's because I took him and Dontaviha to where they
11 wanted to go but he has never been to my house.

12 Q: I understand, but you told the police officer that you
13 could pick him out of a photo, correct?

14 A: Actually, I may can pick him out of a photo.

15 Q: And you told the police officer you actually knew where
16 Monty lived, correct?

17 A: Yeah.

18 Q: And you told the police officer that he lived on
19 [REDACTED], correct?

20 A: Yeah, that's where I pick him up from. And I only know
21 that because of Dontaviha?

22 Q: Correct. So, on the night of that shooting, you had told
23 the police officer that -- Monty's name, correct?

24 A: And I told him that because my son -- so that's how I
25 found out his name.

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1 Q: I understand and you had also told the police officer
2 where Monty lived, correct?

3 A: Yes, because ---

4 Q: On [REDACTED], right?

5 A: Uh-huh (affirmative response).

6 Q: Yes?

7 A: And the only reason I know this is because of Dontaviha.
8 Other than that night, I wouldn't have known.

9 Q: And you told the police officer this shooting was about a
10 laptop, correct?

11 A: And that came because of Dontaviha.

12 Q: Okay. Thank you. That's all the questions that I have.

13 THE COURT: Redirect?

14 MS. GINSBURG: Thank you, Your Honor. Just briefly.

15 REDIRECT EXAMINATION OF JAMIE PATTERSON BY MS. GINSBURG:

16 Q: Ms. Patterson, you testified earlier that Lamont never
17 knew where you lived; is that right?

18 A: Yes.

19 Q: Or Monty, I'm sorry. Monty has never been to your house
20 before, ever?

21 A: No.

22 Q: But Herbie's come to your house, hasn't he?

23 A: Herbie's been to my house many times.

24 Q: So, this is a dumb question, but obviously Herbie knows
25 where you live, isn't that right?

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1 A: Yes.

2 Q: Like Ms. Hensley was talking to you earlier about the
3 phone, Dontaviha's phone, right?

4 A: Yes.

5 MS. GINSBURG: Your Honor, I'd like to show Ms. Patterson
6 State's Exhibit Twelve just for identification purposes.

7 THE COURT: All right.

8 STATE'S EXHIBIT NUMBER TWELVE

9 MARKED FOR IDENTIFICATION

10 BY MS. GINSBURG:

11 Q: Ms. Patterson, do you recognize this?

12 A: Like what, as of Dontaviha. That's not the phone that I
13 bought him.

14 Q: Okay.

15 A: So, I wouldn't know who he got it from.

16 Q: Okay. So this isn't the phone that you bought Dontaviha?

17 A: No.

18 Q: Your son is seventeen, isn't he?

19 A: Yes, he's seventeen.

20 Q: Or he was at the time?

21 A: Yeah, he was seventeen at the time.

22 Q: So, he could've bought a phone and you didn't buy it;
23 isn't that right?

24 A: Yeah, he could have got it from anywhere. That's not the
25 one I bought him though. The one I bought him, I took from

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1 him.

2 Q: Now, you just heard the statement that Ms. Hensley played
3 about you said you thought it was about a laptop, right?

4 A: Uh-huh (affirmative response).

5 Q: But ---

6 THE COURT: Excuse me. You need to say yes or no. The
7 Court Reporter cannot pick up a uh-huh or hu-huh.

8 A: Yes.

9 THE COURT: Okay. Thank you.

10 Q: Do you know if it was for any other reason?

11 A: You talking about -- what this right here?

12 Q: Uh-huh (affirmative response). Yes, excuse me.

13 A: I mean, I wouldn't really know what it's over because
14 Dontaviha never told me nothing really. So, I never knew
15 there was anything going on.

16 Q: But you do know that it was Herbie Singleton's car that
17 night or that afternoon that came by?

18 A: Yeah, because the car been at my house before many times.

19 MS. GINSBURG: I beg the Court's indulgence?

20 THE COURT: All right.

21 MS. GINSBURG: No further questions at this time. Thank
22 you so much, Ms. Patterson.

23 THE COURT: You may step down.

24 MS. GINSBURG: Judge, may she be excused?

25 THE COURT: Any objection?

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1 MS. HENSLEY: No, sir.

2 THE COURT: All right. She's free to go.

3 All right. The State can call your next witness.

4 MS. GINSBURG: The State calls Jeff Miller.

5 JEFFREY MILLER, HAVING BEEN SWORN

6 TESTIFIES AS FOLLOWS:

7 CLERK: Thank you. Please have a seat. And for the
8 record, if you could state your first and last name and spell
9 out your last name, please.

10 MR. MILLER: Jeffrey Miller. M-I-L-L-E-R.

11 DIRECT EXAMINATION OF JEFFREY MILLER BY MS. GINSBURG:

12 Q: Hey, Mr. Miller, how are you?

13 A: Just fine.

14 Q: Is that Investigator or is it Officer Miller? I never
15 know.

16 A: Former officer; I'm an investigator now.

17 Q: Okay, former officer; investigator now. Where are you
18 currently employed?

19 A: Charleston Police Department.

20 Q: And how long have you been employed by CPD?

21 A: I've been with the department just over thirty years.

22 Q: And so what do you do at CPD?

23 A: I'm a Crime Scene Technician now.

24 Q: As a Crime Scene Technician, what do -- what are those
25 duties?

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1 A: We respond to calls for service, we take photographs to
2 document scenes, we collect physical evidence.

3 Q: Okay. To do your job, have you received any type of
4 training or certifications?

5 A: I've been to numerous schools from the FBI Academy,
6 Northwestern Traffic Institute, crime scene classes,
7 photography classes, latent print classes.

8 Q: Were you working as a crime scene technician on December
9 18th, 2014?

10 A: Yes.

11 Q: On that day, did you have the occasion to respond to [REDACTED]
12 Acacia Street that night?

13 A: Yes.

14 Q: When you arrived on the scene, can you tell the Jury what
15 you noticed?

16 A: Based on what I could see and the information I obtained
17 there was a -- the gentleman had been shot, he was sitting in
18 a chair and it was on the carport, and that the shots came
19 from Acacia Street, and he was sitting in the chair with a
20 person sitting in his lap.

21 Q: So, while you're at the scene, after you learned this
22 information, what did you do next?

23 A: Photographs were taken of the scene and then there was a
24 search conducted looking for any shell casings, any firearm
25 related evidence that might have been dropped, which would've

1 been shell casings or bullets.

2 Q: And did you collect any items while you were at [REDACTED]
3 Acacia Street?

4 A: For the search for the firearms evidence, nothing was
5 found, but I did collect the victim's clothing. He had gone
6 into the house and I picked up his clothing from inside the
7 house.

8 Q: And you said you took pictures as well before collecting
9 these items; is that right?

10 A: Yeah, photos were taken.

11 Q: I'd like to show you what's been marked as State's
12 Exhibit Eight and Nine for identification purposes.

13 Your Honor, may I approach?

14 THE COURT: Yes.

15 Q: Can you tell the Jury what these depict?

16 A: Number Eight is the photo showing the chair that the
17 victim was sitting in at the time he was hit with the bullet.
18 It's the same with Number Nine.

19 Q: May I approach. Thank you so much.

20 Your Honor, may I publish these to the Jury?

21 THE COURT: Have they been admitted into evidence?

22 MS. GINSBURG: Excuse me, Your Honor. May I submit these
23 into evidence, State's Exhibit Eight and Nine?

24 MR. SMILEY: No objection, Your Honor.

25 THE COURT: All right. State's Exhibit Eight and State's

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1 Exhibit Nine are admitted into evidence without objection.

2 STATE'S EXHIBIT NUMBER EIGHT AND NINE

3 ADMITTED INTO EVIDENCE

4 THE COURT: Now you can publish them.

5 MS. GINSBURG: Thank you, Your Honor.

6 BY MS. GINSBURG:

7 Q: I'd like to show you a few more exhibits that have been
8 previously admitted. State's Exhibit Five, Six, Seven and
9 Eight, so we're just gonna go in order here. You said you
10 arrived on the scene. Do you recall where this is, what we're
11 looking at?

12 A: From the photograph, behind me would be Acacia Street and
13 then that's the vehicle that's parked in the driveway and then
14 you can barely see the chair, just to the left of the
15 photograph.

16 Q: Okay. Now I'd like to show you State's Exhibit Six. Can
17 you tell me what this is?

18 A: Now this is inside the carport and you can see the chair
19 to the right.

20 Q: Okay. And State's Exhibit Seven, what are we looking at
21 here?

22 A: That's the side of the chair that the bullet hit, which
23 would be the -- from that photo, the car would be behind me
24 and then you see the bullet hole in the chair.

25 Q: Okay. Is that the bullet hole in the chair?

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1 A: Yes.

2 Q: Now I'd like to show you State's Exhibit Eight. Can you
3 tell us what we're looking at right here?

4 A: This is a photo, I placed a dowel rod through the chair
5 to show that -- now that does not actually show the path of
6 the bullet because the cushion would have been pushed down at
7 the time with somebody sitting in it. I just used the dowel
8 rod to show the hole that it passed through.

9 Q: Okay. This is really a straightforward question
10 obviously. Is this a dowel rod; is that what you're talking
11 about?

12 A: Yes.

13 Q: Okay. The last picture I'd like to show is State's
14 Exhibit Nine. Can you tell the Jury what we're looking at
15 here?

16 A: It's a photo from the side where you can see the dowel
17 rod going through the same -- the bullet hole.

18 Q: Thank you. Now I'd like to show you what's been marked
19 as State's Exhibit Ten, Eleven and Twelve for identification
20 purposes.

21 Your Honor, may I approach?

22 THE COURT: All right.

23 MS. GINSBURG: Thank you.

24 BY MS. GINSBURG:

25 Q: Can you please tell the Jury what Ten, Eleven and Twelve

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1 -- State's Ten, Eleven and Twelve -- you may need gloves,
2 maybe.

3 A: Yes.

4 Q: Oh, you have them? First, Investigator Miller, do you
5 recognize these items?

6 A: These are items that were collected -- this is the shorts
7 with belt, which is Number Ten. That's the sticker that I
8 placed on the item. And then these are the shorts and then I
9 also placed an actual tag or put the case number, the item
10 number and my initials are on it also.

11 Q: Could you do the same for Exhibit Eleven? Do you
12 recognize that?

13 A: These were a pair of athletic shorts.

14 Q: Does it contain your initials and seal?

15 A: Yes.

16 Q: And Exhibit Twelve, do you recognize that one as well?

17 A: Yeah. This is the cell phone I collected from the pants;
18 they were in the pocket.

19 Q: Thank you.

20 MS. GINSBURG: At this time, Your Honor, I'd like to seek
21 -- seek to admit State's Exhibits, Ten, Eleven and Twelve in
22 evidence.

23 THE COURT: Any objections?

24 MR. SMILEY: No objection.

25 THE COURT: State's Exhibits Ten, Eleven and Twelve are

1 admitted into evidence without objection.

2 MS. GINSBURG: Thank you, Your Honor.

3 STATE'S EXHIBIT NUMBERS TEN, ELEVEN AND TWELVE

4 ADMITTED INTO EVIDENCE

5 BY MS. GINSBURG:

6 Q: Investigator Miller -- I'm sorry, you already took the
7 gloves off. Do you mind showing me State's Exhibit Ten,
8 Eleven and Twelve?

9 A: Hold them up?

10 Q: Yes, please. Ten and Eleven.

11 A: Now, this is Number Ten, State's Ten. These are the
12 shorts with the belt and then there's my tag.

13 Q: Investigator Miller, this is a dumb question, but what is
14 that red stuff on the front of the pants? Can you explain?

15 A: It's blood.

16 Q: Can you show the Jury State's Exhibit Eleven?

17 A: These are the athletic shorts and here's the tag that I
18 actually placed on the item and clearly there's a hole in
19 these.

20 Q: In State's Exhibit Twelve, the phone, where did you
21 locate that again?

22 A: That was in pants pocket, the shorts.

23 Q: So, after collecting all these items, what do you do -- I
24 know you briefly discussed it, but what do you do once you
25 collect the items?

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1 A: Well, they're taken back to the office and then they're
2 bagged. Like I said, we put the stickers on them, we seal
3 them up and then they're held in evidence at the station.

4 Q: After you collected all these items, did this conclude
5 your involvement in this case?

6 A: I did respond to MUSC and I did do a gunshot residue
7 test.

8 Q: All right.

9 I beg the Court's indulgence?

10 THE COURT: All right.

11 Q: I have no further questions at this time. Please answer
12 anything Mr. Smiley has to ask you.

13 THE COURT: Cross examination?

14 CROSS EXAMINATION OF JEFFREY MILLER BY MR. SMILEY:

15 Q: Investigator Miller, I don't think we know each other.
16 Jim Smiley. How are you doing?

17 A: Good.

18 Q: All right. You're the evidence collector, right?

19 A: Correct.

20 Q: So you go to the scene and take photographs?

21 A: Yes.

22 Q: And any physical evidence that you're directed to or
23 anything having importance, you collect?

24 A: Yes.

25 Q: And in this case, you did a little bit more than just

1 collect, you took a wooden dowel to demonstrate what appeared
2 to be the path of the bullet, correct?

3 A: Well, the hole through the chair without having, you
4 know, the chair actually pushed down you couldn't show the
5 actual trajectory.

6 Q: Exactly. But there was a hole in the chair on the
7 outside and the inside that appeared to be a gun -- appeared
8 to be a bullet or projectile hole?

9 A: Correct.

10 Q: So you put a dowel through it, took pictures, to
11 demonstrate what could be the path of a projectile, correct?

12 A: Right.

13 Q: All right. As part of that evidence collection, you're
14 the fingerprint collector, too, correct?

15 A: Correct.

16 Q: But in this case, there weren't any fingerprints to be
17 collected?

18 A: Correct.

19 Q: So, there was no attempt to be made because there was
20 nothing to indicate that any of the perpetrators had actually
21 been to the house, right?

22 A: Correct.

23 Q: All right. As for the scene, as we showed, I think all
24 -- I'm gonna show you what's been entered as State's Exhibit
25 Five. That's a picture you took, correct?

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1 A: Yes.

2 Q: All right. And Acacia Street would be to -- out from the
3 grill of the car ---

4 A: Yes.

5 Q: --- if you extend it out -- so the car was facing the
6 road?

7 A: Correct.

8 Q: All right. Since you were at the scene, can you tell
9 this Jury about how far away the road was to the best of your
10 recollection?

11 A: Probably from the carport to the street, maybe fifty
12 feet.

13 Q: Okay. Fifty feet and then the chair was set back to a
14 certain degree in the carport?

15 A: Correct.

16 Q: And now you collected the items of clothing from Mr.
17 Patterson at MUSC?

18 A: No, he had gone into the house, so the clothing items
19 were in there.

20 Q: Okay. So they had taken them -- he had -- they had been
21 taken off, what was said to be what he was wearing at the time
22 of the shooting?

23 A: Correct.

24 Q: All right. Then one of the items you found has been
25 entered as State's Exhibit Number Twelve was the cell phone,

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JEFFREY MILLER - CROSS BY SMILEY

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1 right?

2 A: Yes.

3 Q: So it has several bags, right?

4 A: Yes.

5 Q: This -- could you tell the Jury which bag you placed it
6 in? Did you put them in all those bags? I guess I should ask
7 that question first?

8 A: If the phone can come apart, I take it apart and then
9 place the battery like in a small envelope, and then the
10 phone, of course the little envelope, and then go into this
11 yellow bag. That's the one that has my initials on it and
12 will have the sticker like you see on these.

13 Q: The printed out sticker that's handwritten.

14 A: That I fill in, correct.

15 Q: All right. The printed stickers on the outside, that's
16 done later?

17 A: Right, that's done by the Property Room for their storage
18 records.

19 Q: Okay. So once it gets to Property, they put on that --
20 what it is. So and you're -- I'm trying to find your initial
21 handwritten tag, can you show me? I know I seem fairly inept
22 here.

23 A: You've got to open it because ---

24 MR. SMILEY: Your Honor, permission to open?

25 THE COURT: Any objection?

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JEFFREY MILLER - CROSS BY SMILEY

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1 MR. OSBORNE: No.

2 THE COURT: Okay. What Exhibit is that, what number?

3 MR. SMILEY: This is Number Twelve that's been entered
4 into evidence.

5 THE COURT: All right. Go ahead.

6 BY MR. SMILEY:

7 Q: Do you need something to open it with or ---

8 A: Scissors or ---

9 Q: I'm not allowed to bring scissors to the courtroom. So
10 I'll have to ask -- there we go.

11 Permission to provide the witness with scissors?

12 THE COURT: Yes.

13 A: That's my sticker on it.

14 BY MR. SMILEY:

15 Q: All right. So -- okay. So when you collected it, you
16 just said where you collected it, the case number, and signed
17 by your name; you didn't identify it as being a Samsung Galaxy
18 III telephone at that point?

19 A: No, I just listed it as a Samsung cell phone.

20 Q: Okay. All right. So you listed it as a Samsung, but you
21 didn't write it there. So when they put this sticker on at
22 Forensic Services identifying it as a Samsung Galaxy III, that
23 would've been done by a different department, correct?

24 A: Let me see that. Yeah, that's a different -- that's the
25 analysis part of it.

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JEFFREY MILLER - CROSS BY SMILEY

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1 Q: I gotcha. All right. So, that phone, and it wasn't
2 taken apart at the time, it appeared to be in working order
3 when you collected it?

4 A: Correct.

5 Q: It was found in the pocket of the shorts that you
6 collected inside the home?

7 A: Correct.

8 Q: All right. And those shorts, from what -- the
9 information you obtained belong to Dontaviha Patterson or the
10 alleged victim in this case?

11 A: Correct.

12 Q: All right. We knew they weren't tampered with as -- you
13 have to do a lot to tamper with it. And I'll let you put it
14 back together if you don't mind. Thank you. I'll sort of
15 take these and put them back on the evidence table for you.
16 Thank you.

17 Now, that dowel that you took a picture of, is -- we got
18 a picture of it from looking at the chair left to right, but
19 we didn't get a picture of it showing whether it was
20 horizontal -- in a horizontal position, a lowered upper
21 position or an upward to lower position. Do you remember
22 relative position of the dowel running through the chair?

23 A: No, I just was showing that the -- basically to show
24 where the hole was.

25 Q: Right.

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JEFFREY MILLER - CROSS BY SMILEY

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1 A: And that it did pass through the chair.

2 Q: Okay. But from that, you could not determine the angle
3 that it passed through.

4 A: Correct.

5 Q: Fair enough. Did you collect any other evidence in this
6 case?

7 A: No.

8 Q: You weren't the evidence tech that was called to collect
9 evidence from an automobile?

10 A: No, I just did the scene.

11 Q: Just the scene. Very good.

12 The last couple of questions that are -- you didn't find
13 any projectiles at the scene?

14 A: Did not find any.

15 Q: You didn't find anywhere at the scene where a projectile
16 had struck anything other than the chair?

17 A: Correct.

18 Q: No casings were recovered from the scene?

19 A: Correct.

20 Q: All right. No DNA of any sort was collected at the
21 scene?

22 A: No.

23 Q: All right. You were sent to the hospital after you
24 finished processing Acacia Street, correct?

25 A: Correct.

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JEFFREY MILLER - REDIRECT BY GINSBURG

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1 Q: And the purpose of going down there was to collect
2 gunshot residue from Mr. Dontaviha Patterson, the alleged
3 victim?

4 A: Yes.

5 Q: And typically when you go to do that gunshot residue, you
6 would like to see that their hands were bagged as soon as
7 possible, correct?

8 A: Correct.

9 Q: In this case, they hadn't been bagged?

10 A: Correct.

11 Q: However, in an abundance of caution and because those
12 were your instructions, you collected -- attempted to collect
13 gunshot residue off anyway?

14 A: Yes.

15 Q: I appreciate it. That's all I have.

16 THE COURT: All right. Redirect?

17 MS. GINSBURG: Yes, Your Honor, briefly.

18 REDIRECT EXAMINATION OF JEFFREY MILLER BY MS. GINSBURG:

19 Q: Just briefly, Investigator Miller, you found State's
20 Exhibit Twelve in the victim's pocket; is that right?

21 A: Just the phone, yes.

22 Q: Right. When you collected it and you put it in this bag,
23 did you pull out the battery?

24 A: Yes, I actually take it apart so that it doesn't keep
25 receiving calls and -- right.

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JEFFREY MILLER - REDIRECT BY GINSBURG

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1 Q: Okay. You also -- it was determined you didn't find any
2 fingerprints, no fingerprints were collected, right?

3 A: Right.

4 Q: And no DNA was collected that night?

5 A: Correct.

6 Q: Is that surprising since this was a drive-by shooting?

7 A: Right, there was nothing to indicate that anything was
8 touched by any suspects and so no, there was no fingerprints.

9 Q: Okay. Then you said you did a GSR based on this
10 evidence?

11 A: Yes.

12 Q: Was there any evidence that the victim or anyone in that
13 carport fired a gun?

14 A: There was no firearm related anything found in the
15 carport, no.

16 MS. GINSBURG: I beg the Court's indulgence?

17 THE COURT: All right.

18 MS. GINSBURG: Nothing further, Your Honor.

19 THE COURT: All right. You may step down.

20 MS. GINSBURG: May he be excused?

21 THE COURT: Any objections?

22 MR. SMILEY: No objection, Your Honor.

23 A: Thank you.

24 THE COURT: Thank you.

25 Let me see the attorneys for a second.

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RANDALL UNTERBRINK - DIRECT BY GINSBURG

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1 MS. GINSBURG: Thank you, Your Honor. The State calls
2 Randall Unterbrink.

3 RANDALL UNTERBRINK, HAVING BEEN SWORN
4 TESTIFIES AS FOLLOWS:

5 CLERK: Please have a seat. And for the record if you
6 could state your first and last name and spell out your last
7 name, please.

8 MR. UNTERBRINK: My name is Randall Unterbrink, U-N-T-E-
9 R-B-R-I-N-K.

10 MS. GINSBURG: May we proceed, Your Honor.

11 THE COURT: All right. All right.

12 MS. GINSBURG: Thank you, Your Honor.

13 DIRECT EXAMINATION OF RANDALL UNTERBRINK BY MS. GINSBURG:

14 Q: Is it Investigator Unterbrink?

15 A: Crime Scene Technician.

16 Q: Crime Scene Technician. Okay. Every time it's
17 different. Crime Scene Technician Unterbrink, where are you
18 employed?

19 A: With the Charleston Police Department.

20 Q: How long have you been employed at CPD?

21 A: Twenty-six years.

22 Q: And I think I just answered it, but what do you do at
23 CPD?

24 A: Currently my assignment is with the Crime Scene Unit.

25 Q: Okay. And how long have you been in the Crime Scene Unit

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RANDALL UNTERBRINK - DIRECT BY GINSBURG

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1 as a crime scene tech?

2 A: A little over thirteen years.

3 Q: Can you tell the Jury briefly what some of your duties
4 and responsibilities are as a crime scene tech?

5 A: Our duties and responsibilities involve the
6 identification, the collection, and also the preservation of
7 evidence.

8 Q: Were you working as a crime scene tech on December the
9 19th, 2014?

10 A: I was.

11 Q: And did you have the occasion to compete a search warrant
12 on a 2001 Ford Escort in regards to this case?

13 A: I did.

14 Q: So after you received a search warrant for a vehicle,
15 what do you initially do?

16 A: When I receive a search warrant, I make an initial
17 inspection of the vehicle. It's, it's in a secure, enclosed
18 environment in a bay, and I take an overall view of the
19 vehicle, looking at all sides, see what's about it that
20 catches my interest perhaps; it could be a dent, it could be a
21 mark, it could be almost anything on it and after I get an
22 overall view, I begin to photograph the vehicle so that it can
23 be documented.

24 Q: So this is your initial inspection?

25 A: Yes.

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RANDALL UNTERBRINK - DIRECT BY GINSBURG

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1 Q: So what do you do after your initial inspection of the
2 exterior of the vehicle?

3 A: After the initial inspection, then I begin to take
4 photographs, like I say, and photograph it to document it. I
5 do the exterior and then I also do the interior.

6 Q: Do you also do further investigation as to the exterior?

7 A: The exterior, after we have photographed it, I begin to
8 process it primarily with black powder. The point of that is
9 to look for what's called latent fingerprints.

10 Q: And you can describe to the Jury how you process the
11 vehicle to receive those latent fingerprints?

12 A: We have -- it's a container of black powder, it's real
13 loose fine black powder and I take a small brush and I dab it
14 into that container so that there's a certain amount of that
15 powder on the brush and then through a twirling motion and you
16 can even consider it sort of like painting, but you go over a
17 surface and the black powder then, if there's a fingerprint
18 there, the powder will adhere to that print so it now becomes
19 visible. Latent means basically invisible but the black
20 powder makes it visible so that you can see that, and after I
21 am finished with that, I need to lift those prints, photograph
22 those prints and cement those prints.

23 Q: Did you find latent prints in this case?

24 A: I did.

25 Q: Your Honor, may I approach?

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RANDALL UNTERBRINK - DIRECT BY GINSBURG

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1 THE COURT: Yes.

2 STATE'S EXHIBIT NUMBER FIFTY

3 MARKED FOR IDENTIFICATION

4 Q: Right now I'm showing you what's been marked as State's
5 Exhibit Fifty for identification purposes only. Do you
6 recognize this exhibit?

7 A: I do.

8 Q: And what is this exhibit?

9 A: This has to do with those fingerprints that I lifted off
10 the car.

11 Q: And how do you recognize it?

12 A: I recognize it by my name, my initials being on the pouch
13 as well as my name being on the card.

14 Q: Thank you. After processing the exterior, taking
15 pictures and processing as being taking those prints, what do
16 you next?

17 A: My next step is the interior of the car where I am
18 photographing the interior. I'm also looking for prints on
19 the interior as well. And in accordance with the search
20 warrant, I'm looking for specific things that relate to that
21 search warrant.

22 Q: Okay. And once you collect evidence that's related to
23 that search warrant, what do you do?

24 A: After I've photographed it, I will then of course I need
25 to preserve it and so I will put each item in a individualized

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RANDALL UNTERBRINK - DIRECT BY GINSBURG

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1 bag. It could be an envelope, but it will be in another
2 container, something similar to this. And it is then logged
3 into a computer system where it is then transferred over to
4 the evidence room for long-term storage.

5 MS. GINSBURG: I beg the Court's indulgence?

6 THE COURT: All right.

7 MS. GINSBURG: Your Honor, may I approach?

8 THE COURT: Yes.

9 MS. GINSBURG: Thank you.

10 BY MS. GINSBURG:

11 Q: I will be showing you what's been marked as State's
12 Exhibit Sixteen through Thirty-two, as well as State's Exhibit
13 Thirty-six and Thirty-seven. Can you briefly go through
14 these?

15 A: Yes, ma'am.

16 Q: Thank you. Do you recognize these exhibits?

17 A: I do.

18 Q: How do you recognize these exhibits?

19 A: I recognize the photographs as being the ones that I
20 took. Also the other items have my initials on them, as we
21 mentioned earlier, it's just for identification and item
22 number.

23 Q: Thank you so much.

24 MS. GINSBURG: Your Honor, I would like to move State's
25 Exhibits Sixteen through Thirty-two and State's Exhibits

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1 Thirty-six and Thirty-seven into evidence?

2 MR. SMILEY: Without objection, Your Honor.

3 THE COURT: So Sixteen through Thirty-two and what was
4 the other?

5 MS. GINSBURG: Thirty-six and Thirty-seven, Judge.

6 THE COURT: All right. State's Exhibit Sixteen through
7 Thirty-two, State's Exhibit Thirty-six and State's Exhibit
8 Thirty-seven admitted into evidence without objection.

9 MS. GINSBURG: Thank you, Your Honor.

10 STATE'S EXHIBIT NUMBER SIXTEEN THROUGH THIRTY-TWO,

11 THIRTY-SIX AND THIRTY SEVEN

12 ADMITTED INTO EVIDENCE

13 MS. GINSBURG: May I approach the witness?

14 THE COURT: Yes.

15 BY MS. GINSBURG:

16 Q: Can you grab these for me really quick, as well as
17 Thirty-six and Thirty-seven? Thank you so much. We're gonna
18 go through these -- excuse me, through these rather quickly.
19 I'm showing you State's Exhibit Sixteen, can you tell the Jury
20 what this is?

21 A: That is the passenger side of the vehicle that we
22 mentioned.

23 Q: All right. I show you State's Exhibit Seventeen, what
24 are we seeing here?

25 A: Same side of the same vehicle. What has happened is I

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RANDALL UNTERBRINK - DIRECT BY GINSBURG

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1 have applied the black powder that I mentioned, which is why
2 you some of the darker substance on there, and also the white
3 object is where I'm attempting to lift that right there.

4 Q: Okay.

5 A: Attempting to lift a fingerprint from the surface of that
6 vehicle.

7 Q: Okay. I'm showing you now State's Exhibit Eighteen.
8 Explain to the Jury what we're seeing here, too?

9 A: Same thing. You'll see again the black powder that's on
10 the hood primarily here and I have one, two, three -- five
11 specific, easy to see, cards that I placed on there to lift
12 it. The transparency is sticky, sticky on the other side so
13 when I pull that off, the print comes with it.

14 Q: Thank you. And is this just a different angle of the
15 picture we just saw?

16 A: That's right. That's directly forward.

17 Q: Okay. Please just tell the Jury briefly what we're
18 looking at here.

19 A: This photograph shows the passenger side rear door.

20 Q: And State's Exhibit Twenty-one, just briefly what is
21 this?

22 A: The passenger side again at the front, front fender and
23 hood.

24 Q: And what are these numbers here?

25 A: There are a number of lifts that I attempted to make and

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RANDALL UNTERBRINK - DIRECT BY GINSBURG

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1 I need to separate them from one another so I simply number
2 them one, two, three and then in sequential order.
3 Q: State's Exhibit Twenty-two, what are we looking at here?
4 A: This is the rearview mirror, two latent prints being
5 lifted.
6 Q: Okay. And State's Exhibit Twenty-three, did you find
7 this in the vehicle?
8 A: I did.
9 Q: Can you tell, let me try to move this. Can you read that
10 name right there?
11 A: Herbie.
12 Q: Herbie. And is this -- and is this where you found that?
13 A: That's correct.
14 Q: I'm now showing you State's Exhibit Twenty-five. Can you
15 tell -- I'm sorry. Can you tell what this is?
16 A: That's an insurance document for the car.
17 Q: And did you find this in the vehicle as well?
18 A: I did.
19 Q: Can you tell the name on the front of this card right
20 here?
21 A: It says Herbie Singleton.
22 Q: Did you find this also in the vehicle, State's Exhibit
23 Twenty-six? Oops, I'm sorry.
24 A: Yes, I did.
25 Q: And State's Exhibit Twenty-seven, is this where you found

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RANDALL UNTERBRINK - DIRECT BY GINSBURG

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1 those items?

2 A: That's correct, glove box.

3 Q: In that glove box. And then State's Exhibit Twenty-
4 eight, was this also found in the vehicle?

5 A: Yes, ma'am.

6 Q: And do you recall whose name this is or could you read.
7 that for the Jury?

8 A: Colin Singleton.

9 Q: And State's Exhibit Twenty-nine, was also located in the
10 vehicle?

11 A: Yes, ma'am.

12 Q: And I hate to ask these ridiculous questions, but and
13 whose name is that?

14 A: Kevin Corley.

15 Q: And is this where those items were found in the backseat?

16 A: Yes, ma'am.

17 Q: And just last -- a couple more actually, I'm sorry. And
18 what is this showing, for the Jury, State's Exhibit Thirty-
19 one?

20 A: This is the front passenger door open and we've taken a
21 photograph of the contents as it appeared when I first opened
22 the door.

23 Q: Okay. And this is the same thing with just a different
24 angle as to the driver's side?

25 A: This is only now from the driver's side.

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RANDALL UNTERBRINK - CROSS BY SMILEY

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1 Q: Okay. And is this the exhibit that we just saw in a
2 picture previously?

3 A: It is.

4 Q: And that's State's Exhibit Thirty-six. State's Exhibit
5 Thirty-seven, was this that disciplinary action that you just
6 explained to the Jury previously.

7 A: Yes, ma'am.

8 Q: So after you completed searching -- conducting the search
9 warrant for the vehicle, did you do anything afterwards?

10 A: After that was completed, that pretty much summarizes my
11 efforts there. We did have also a canine go through the
12 vehicle as well, and then after that, that was it.

13 Q: That's your involvement?

14 A: Yes, ma'am.

15 Q: I beg the Court's indulgence?

16 THE COURT: All right.

17 Q: Nothing further from me. If you would -- if the Judge or
18 Mr. Smiley or Ms. Hensley, please answer them. Thank you.

19 THE COURT: Cross examination?

20 MR. SMILEY: Thank you, Your Honor.

21 CROSS EXAMINATION OF RANDALL UNTERBRINK BY MR. SMILEY:

22 Q: You're the evidence collector of the car, right?

23 A: Yes, sir.

24 Q: I'm sorry, I'm Jim Smiley. I represent Herbie Singleton.

25 A: Yes, sir.

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RANDALL UNTERBRINK - CROSS BY SMILEY

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1 Q: Before you looked at the car, were you told what you were
2 looking for?

3 A: Only when I received the search warrant, that's when I
4 became aware.

5 Q: Okay. So you -- I guess what I'm asking is when you
6 approached this car, they've told you what in relation to a
7 suspected crime it has?

8 A: Right.

9 Q: So you had an idea of what they're looking for or else
10 you'd be collecting everything possible, correct?

11 A: That's correct.

12 Q: All right. How many fingerprints did you end up
13 collecting?

14 A: Thirteen.

15 Q: All right. And they were, if I'm correct, eleven from
16 the exterior, two from the interior?

17 A: That's correct.

18 Q: All right. And we pretty much saw where they were all
19 collected, correct?

20 A: Yes.

21 Q: So, the passenger side, hood, inside mirror for the most
22 part?

23 A: For the most part, yes.

24 Q: Nothing was collected on the driver's side?

25 A: I don't think there was.

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RANDALL UNTERBRINK - CROSS BY SMILEY

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1 Q: All right. And this car had a whole bunch of stuff
2 inside, correct?

3 A: Yes, sir.

4 Q: And the things that had some names on them you collected,
5 right?

6 A: Yes.

7 Q: Did -- the canine, is that canine trained for drugs,
8 explosives, people, what -- I mean, you said you put a canine
9 through it, what kind of training did that canine have?

10 A: The canine is trained for the firearms ---

11 Q: Okay.

12 A: --- and so that's why he was sent through there.

13 Q: So, did he have a positive hit on anything?

14 A: Negative.

15 Q: All right. So, he went through the car and I would
16 assume that he's hitting on the smell of gun oil or gun powder
17 kind of thing?

18 A: Yes, sir.

19 Q: And he had a negative response and in searching the car
20 you did not find any weapons?

21 A: That's correct.

22 Q: You didn't find any shell casings?

23 A: That's correct.

24 Q: Or any projectiles?

25 A: No, sir.

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RANDALL UNTERBRINK - REDIRECT BY GINSBURG

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1 Q: Did you swab anything for DNA evidence in the car?

2 A: Yes, sir, I did.

3 Q: Where would -- where did you attempt to collect DNA
4 evidence?

5 A: Two different locations. One was from the collar of a
6 shirt, the other one was the rim of a water bottle that was on
7 the floorboard, and then also the sweat band of the hat was in
8 the backseat.

9 Q: All right. And you're just the collector, so once you
10 have properly documented it and made the collection, you take
11 it to the next step and drop it off and you're done?

12 A: It's dropped off at the evidence room and I'm done with
13 that.

14 Q: All right. I think that's all I have, but let me check
15 with co-counsel real quick.

16 A: Yes, sir.

17 MR. SMILEY: That's all I have, Your Honor.

18 THE COURT: All right. Anything on redirect?

19 MS. GINSBURG: Yes, Your Honor, briefly.

20 REDIRECT EXAMINATION OF RANDALL UNTERBRINK BY MS. GINSBURG:

21 Q: Just briefly, you mentioned you didn't find any weapons
22 or shell casings and that the canine was called to the scene;
23 is that correct?

24 A: Yes, ma'am.

25 Q: The canine only checks for guns or shell casings; is that

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RANDALL UNTERBRINK - REDIRECT BY GINSBURG

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1 right?

2 A: That's what it's looking for.

3 Q: Right. So, a canine can't say a gun was fired?

4 A: Canine can -- no -- do a search, it won't be able to say
5 if it's been fired or not.

6 Q: Okay.

7 MR. SMILEY: Objection, Your Honor. I don't think this
8 dog, unless they have a dog that can talk, so he could
9 indicate positive or he didn't say anything, correct?

10 MS. GINSBURG: I misspoke, Your Honor.

11 THE COURT: All right.

12 BY MS. GINSBURG:

13 Q: Can a canine indicate whether a gun was fired?

14 A: No.

15 Q: Okay. I know we're not talking about Lassie. Who makes
16 the decision of whether something is sent to SLED?

17 A: That would be one of the detectives.

18 Q: And can you -- I don't know if the Jury knows, can you
19 explain what SLED is and the acronym for SLED?

20 A: SLED is our State Law Enforcement Agency and so we send
21 some evidence up there for lab tests.

22 Q: In your job as a crime scene technician and law
23 enforcement officer, are you familiar with guns in general?

24 A: Yes, ma'am.

25 Q: So, are certain guns, will you expect shell casings to be

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NADA KERSTEIN - DIRECT BY GINSBURG

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1 fired and certain guns don't have shell casings?

2 MR. SMILEY: Objection, beyond -- first of all ---

3 THE COURT: Sustained.

4 MS. GINSBURG: Nothing further, Judge, thank you.

5 THE COURT: All right. You may step down.

6 MS. GINSBURG: Your Honor, may he be excused?

7 THE COURT: Any objection?

8 MR. SMILEY: No objection, Your Honor.

9 THE COURT: Then he's free to go. Thank you very much.
10 The State can call your next witness.

11 MS. GINSBURG: Thank you, Your Honor. The State calls
12 Nada Kerstein.

13 NADA KERSTEIN, HAVING BEEN SWORN

14 TESTIFIES AS FOLLOWS:

15 CLERK: Please have a seat. And for the record, if you
16 could state your first and last name and spell out your last
17 name, please.

18 MS. KERSTEIN: Nada Kerstein, K-E-R-S-T-E-I-N.

19 THE COURT: All right.

20 MS. GINSBURG: Thank you, Judge.

21 DIRECT EXAMINATION OF NADA KERSTEIN BY MS. GINSBURG:

22 Q: Ms. Kerstein, where are you currently employed?

23 A: I work for the City of Charleston Police Department.

24 Q: And how long have you been working for CPD?

25 A: I've been there since 2003.

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NADA KERSTEIN - DIRECT BY GINSBURG

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1 Q: What is your position at CPD?

2 A: I'm a latent print examiner in the Latent Print Division.

3 Q: As a latent print examiner, what are your duties in that
4 position?

5 A: I analyze and compare fingerprints that are lifted from
6 crime scenes for the purpose of identification and
7 elimination. I also classify and compare ten-print cards for
8 the records department. Ten-print cards are specific cards
9 that are designed to capture the ten fingers individually and
10 then at the bottom it has slats so you can see them
11 concurrently.

12 Q: Just briefly, can you tell the Jury a little bit about
13 your educational background?

14 A: I have an Associate's Degree in Criminal Justice.

15 Q: Okay. And have you had any specialized education or
16 training in regards to fingerprint analysis?

17 A: At the end of 2007 I transferred into the Latent Print
18 Division and I went through a formal training with the
19 examiners in there for a year and a half. I was released to
20 do case work in the middle of 2009. I have had over a dozen
21 classes specifically designed for fingerprint work. Most of
22 those classes are -- were at least forty-hour classes and all
23 of my examiners were experienced latent print people who had
24 been in the business for many years.

25 Q: Are you a member of any special organizations or

1 societies in regards to fingerprint analysis?

2 A: Yes, I'm a member of the IAI, which is the International
3 Association for Identification. The IAI holds my
4 certification as a latent print examiner and as a ten-print
5 examiner.

6 Q: When you make an analysis or analyze fingerprints, can
7 you tell the Jury what type of equipment you typically use?

8 A: Typically, I would be using magnifying glasses, pointers,
9 additional light source and I have several pieces of equipment
10 that can blow up the latent print a little bit more than a
11 magnifying glass can.

12 Q: You've discussed different types of fingerprints. Can
13 you explain what is a known print?

14 A: A known print is a reproduction of the friction radius on
15 your fingers and on your palms, also on your feet. They are
16 typically rolled either in printer's ink, can be done
17 electronically, and there is a ten print-card, which I
18 explained before that's designed specifically to capture the
19 ten fingers and then concurrently.

20 Q: Okay. And what is a latent print?

21 A: Latent means not readily seen by the naked eye. It's an
22 impression that can be left when you touch something. Usually
23 it needs to be developed with either a chemical or some type
24 of powder for it to be seen.

25 Q: Have you had the occasion to compare latent prints to

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1 known prints of an individual?

2 A: Yes.

3 Q: About how many times have you done this comparison?

4 A: With my training classes, case work, proficiency testing,
5 I would say that it's over a hundred-thousand, but I don't
6 have a definite number.

7 MR. SMILEY: Your Honor, we certainly would stipulate
8 that she is an expert in latent fingerprint analysis.

9 THE COURT: All right. Are you tendering her as an
10 expert?

11 MS. GINSBURG: Yes, Judge, I am.

12 THE COURT: All right. I find this witness to be an
13 expert in the field of latent print examination.

14 MS. GINSBURG: Thank you, Your Honor. I beg the Court's
15 indulgence?

16 THE COURT: All right.

17 BY MS. GINSBURG:

18 Q: Ms. Kerstein, in reference to this case, did you have --
19 excuse me, this case -- did you personally have the
20 opportunity to examine latent prints recovered from the
21 vehicle?

22 A: Yes, I did.

23 Q: Did you compare the latent prints lifted to any known
24 prints?

25 A: Yes, I did.

1 Q: And how many print cards were submitted in this case?

2 A: Can I look at my notes? Envelope Thirteen had thirteen
3 latent lift cards; Envelope Thirty-three had one latent lift
4 card.

5 Q: Okay. And of those print cards, do you have any
6 identifications?

7 A: Yes.

8 Q: I believe actually in front of you, State's Exhibit Fifty
9 that's been previously admitted, can you tell the Jury what is
10 this? What is this envelope?

11 A: This is an Envelope Thirteen. It was submitted on Case
12 1421575.

13 Q: And that's this case?

14 A: Yes.

15 Q: And in this case -- excuse me -- and these lift cards
16 were presented to CPD in 2014?

17 A: Yes. And I stated the number incorrectly, it was not
18 thirteen lift cards.

19 Q: How many is it; how many lift cards were there?

20 A: Twelve latent lift cards.

21 Q: Okay.

22 A: They skipped a number.

23 Q: Were you asked to compare those cards to the ten-print
24 cards bearing the name of Lamont Shaquille Gregg, Herbie
25 Singleton and Deonte Buggs?

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1 A: Yes.

2 Q: So you compared -- just to make the Jury understand a
3 little bit better, you compared the latent fingerprints on
4 State's Fifty, which came from the Ford Escort to the ten-
5 print card bearing the name of the names of those individuals
6 I just explained?

7 A: Yes.

8 Q: Can you go through these print cards submitted by Mr.
9 Unterbrink and explain to the Jury what, what, if anything,
10 you found?

11 A: Did you want these in order because they're not in order?

12 Q: Whatever is easiest for you?

13 A: Okay. Thank you. Latent lift Nine was identified to the
14 right palm of the ten-print card bearing the name Herbie
15 Singleton. Latent lift Eleven was identified to the number
16 two finger, which should be the right index finger, of the
17 latent lift card bearing the name Herbie Singleton. Latent
18 lift Twelve was identified to the number one finger of the
19 ten-print card bearing the name Herbie Singleton. Latent lift
20 Three was identified to the number ten finger of the latent
21 lift -- of the known print card bearing the name of Lamont
22 Gregg. Latent lift Thirteen was identified to the right palm
23 of the ten-print card bearing the name of Deonte Buggs.
24 Latent lift Five was identified to the number eight finger of
25 the ten-print card bearing the name Herbie Singleton. Latent

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1 lift Seven was identified to the right palm of the ten-print
2 card bearing the name Deonte Buggs. Latent lift Ten was not
3 identified. Latent lift Four was not identified. Latent lift
4 Eight was not identified. Latent lift Six was not identified
5 and latent lift One was not identified.

6 Q: Thank you, Ms. Kerstein. Once you conduct your
7 comparison, does CPD require a generation of a report listing
8 the results?

9 A: Yes.

10 Q: And is that in the normal and ordinary course of business
11 to generate those results?

12 A: Yes.

13 Q: Your Honor, may I approach?

14 THE COURT: Yes.

15 STATE'S EXHIBIT NUMBER FIFTY-TWO AND FIFTY THREE

16 MARKED FOR IDENTIFICATION

17 Q: I'm showing you what's been marked as State's Exhibit
18 Fifty-two and State's Exhibit Fifty-three just for
19 identification purposes only. Ms. Kerstein, can you tell us
20 those are and how you know?

21 A: This was the initial report by the lead examiner in case
22 1421575, and then there was a subsequent report by the lead
23 examiner on the same case.

24 Q: And those reports encompass what you just explained to be
25 the results in this case?

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1 A: Yes.

2 MS. GINSBURG: Your Honor, at this time, I'd like to seek
3 to admit State's Exhibit Fifty into evidence if I haven't done
4 so already?

5 THE COURT: Any objection?

6 MR. SMILEY: I'm not objecting to the fingerprints.

7 THE COURT: All right. State's Exhibit Number Fifty
8 admitted into evidence without objection.

9 MR. GIBBONS: Thank you, Your Honor.

10 STATE'S EXHIBIT NUMBER FIFTY

11 ADMITTED INTO EVIDENCE

12 BY MS. GINSBURG:

13 Q: After comparing these fingerprints or looking over the
14 results, did this conclude your involvement in this case?

15 A: Yes.

16 Q: I have nothing further from the State at this time.

17 THE COURT: All right. Cross examination?

18 CROSS EXAMINATION OF NADA KERSTEIN BY MR. SMILEY:

19 Q: I'm a little confused; forgive me. You didn't an
20 examination?

21 A: I was not the lead examiner; that would have been
22 Kathleen Butler.

23 Q: Okay.

24 A: She has since retired.

25 Q: Okay.

1 A: Part of the process when we have an identification is
2 that ---

3 Q: Let me stop for a second. I'm gonna let you get to all
4 of that, I promise, but my first question was, did you
5 actually do the comparisons?

6 A: Yes, I did.

7 Q: Okay. As long as you did the comparisons we're good.
8 Now, as the lead examiner, you were going to, is Ms. Butler
9 ---

10 A: Right.

11 Q: --- who is retired?

12 A: Correct.

13 Q: Okay. Now, if you'll explain it to the Jury -- I just
14 want to make sure we know who everybody is. All right.

15 A: Part of the process when we do a comparison is if there
16 is an identification that case has to be reviewed by a second
17 experienced examiner. A second set of eyes has to look at the
18 report, they have to look at the comparisons, they have to
19 make sure that everything was done correctly. I was the
20 verifier on this case.

21 Q: Okay. Because in the -- forgive me now, if I say
22 something wrong, please correct me. While I've been doing
23 this a long time, I'm not a fingerprint examiner, okay, and
24 I'm not trying to make out that I am. All right? But when
25 you're doing an examination and you have the collective latent

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1 and then you have a known print that you're examining it to,
2 correct?

3 A: Correct.

4 Q: And for it to be a match -- well, the first thing you got
5 to do is see if there's sufficient detail on the print that
6 was collected to see if a positive comparison can be made. I
7 know I probably didn't say it very well.

8 A: That's correct.

9 Q: So, and in this case, a lot of the prints -- some of the
10 prints lacked sufficient detail for any further comparison,
11 correct?

12 A: I believe the print that was on the bottle was non-
13 comparable.

14 Q: And it lacked sufficient detail ---

15 A: Correct.

16 Q: A print was lifted but it wasn't enough to be able to
17 make a comparison?

18 A: Correct, we couldn't do anything with it.

19 Q: The way I understand it every print is different. Right?

20 A: Yes.

21 Q: And unique except for identical twins, right, or even
22 they have a set of different prints?

23 A: Everybody has their own ---

24 Q: Everybody.

25 A: --- ridge arrangement, even identical twins.

1 Q: Okay. So, when you're making a comparison, you've got
2 ridges and swirls, correct?

3 A: There are characteristics within the print ---

4 Q: Yes, ma'am.

5 A: --- that we use when we're doing a comparison. We don't
6 call them swirls; we call them characteristics.

7 Q: Okay. But basically they're ridges and swirls?

8 A: Well, they are bifurcations, they are ridges, there are
9 ending ridges, there are some individual little units that we
10 call a dot.

11 Q: Okay. You can't make a positive identification unless
12 there is more than one of those characteristics that match,
13 correct?

14 A: Absolutely.

15 Q: Matter of fact, I believe the standard is and this is
16 where you might have to correct me, is seven to ten or
17 something to that affect?

18 A: There is no standard number in the United States. When
19 we're looking at ridge detail, we are looking at not only the
20 characteristics but we're looking at the whole picture. We're
21 looking at the pattern type, we're looking at the ridge slope.
22 If there are creases we can use those to help us when we're
23 doing comparisons. So, it's not just characteristics. They
24 have to be there. They're very important, but we have to look
25 at the entire picture.

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- 1 Q: They got to be in the same ---
- 2 A: They have to be in the same order.
- 3 Q: Thank you. And not only -- and so, Ms. Butler, did the
- 4 first report, right?
- 5 A: Yes, she was the lead examiner.
- 6 Q: And I believe she did that comparison shortly -- this
- 7 crime was alleged to have occurred on December 18th, 2014. I
- 8 believe she did a comparison shortly thereafter, correct?
- 9 A: Her report is dated December 22nd, so it would've been
- 10 within that timeframe.
- 11 Q: All right. And she was given I believe at that time,
- 12 three known print cards to compare the prints to; is that
- 13 correct?
- 14 A: She was not given cards. She gave them names.
- 15 Q: Okay. So during her analysis ---
- 16 A: Uh-huh (affirmative response).
- 17 Q: --- she was able to either from prints that were on file
- 18 in some capacity ---
- 19 A: Uh-huh (affirmative response).
- 20 Q: --- whether they were in a computer or a print card
- 21 already known, she was able to take the, the latent and pull
- 22 out cards for further comparison?
- 23 A: That is correct.
- 24 Q: I hope I said it right. And as a result of that, she
- 25 made her results and one of the prints, number three, came

1 back as a match to Lamont Gregg, correct?

2 A: There were several identifications on latent lift Three.
3 Identifier A was identified to the ten-print card bearing the
4 name Lamont Gregg, left little finger; and identifier B was
5 off of the left middle finger.

6 Q: Okay. And you're able to tell from the documentation
7 that was provided from the Crime Scene Tech Unterbrink where
8 that print was collected from, correct, what location?

9 A: Normally they'd write it on the card. We are not there
10 when they lift the prints so I can't say for certain.

11 Q: I understand, but when you're given a latent, he's
12 written a description of where it was collected, correct?

13 A: Yes, that is ---

14 Q: All right.

15 A: --- that is their standard operating procedure.

16 Q: And print card number three was collected from the rear
17 passenger door of the car in question?

18 A: Yes, it says near passenger rear door handle.

19 Q: Okay. There were two other known print cards at that
20 time that she was using for examinations, correct?

21 A: You're talking about ten-print cards?

22 Q: Yes, ma'am, on her report she lists the ten-print cards
23 she compared to?

24 A: Yes.

25 Q: And there were three people, correct?

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1 A: Yes, three people.

2 Q: Okay. And they were then Mr. Gregg, Mr. Singleton and

3 ---

4 A: Deonte Buggs.

5 Q: Thank you. Deonte Buggs. And that was done in four days

6 -- well, that report was dated four days after the alleged

7 crime. The alleged crime was December the 18th.

8 A: Right.

9 Q: Thank you. All right. Now since there was another

10 analysis done in this case, correct, further analysis in March

11 2016 a second report? You verified -- well let me back up so

12 I don't get everybody confused. You were -- you verified Ms.

13 Butler's report, okay, correct?

14 A: Yes. Uh-huh (affirmative response).

15 Q: Were you asked to verify any other reports?

16 A: No, she had two reports that were verified.

17 Q: So, may I approach the witness, Your Honor?

18 THE COURT: Yes.

19 Q: Forgive me. Two reports ---

20 A: I have one, three and four.

21 Q: But they were marked for identification ---

22 A: I just want to make sure I identify the right one.

23 MR. SMILEY: And for the record, Your Honor -- thank you.

24 For the record, Your Honor -- and you tell me, the report

25 we've been talking about that Ms. Butler did would be State's

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1 Exhibit Number Fifty-four; is that right?

2 MS. GINSBURG: Fifty-two.

3 MR. SMILEY: Fifty-two. I beg the Court's indulgence
4 just a second, I apologize. I'm getting a little confused
5 here.

6 Okay. And then -- again, I just got a little confused.
7 I apologize. And then you were asked ---

8 MS. GINSBURG: Judge, if he's gonna ask Ms. Kerstein to
9 look at a document, I'd like to see it first.

10 MR. SMILEY: Well, you've already put it in.

11 THE COURT: That's Exhibit Fifty-two?

12 MR. SMILEY: We're looking at Fifty-one. We've been
13 talking about Fifty-two; now we're gonna talk about Fifty-
14 three.

15 THE COURT: Okay.

16 MS. GINSBURG: My fault, I apologize.

17 THE COURT: No, neither one of those have been admitted.
18 They've just been marked for identification.

19 MR. SMILEY: Identification purposes.

20 THE COURT: All right.

21 BY MR. SMILEY:

22 Q: Okay. You were asked to verify a second report of Ms.
23 Butler's; is that correct?

24 A: Yes.

25 Q: All right. Why would you do a second analysis?

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- 1 A: Report Number One was what we called a Deferred Report.
2 That is an initial report and what gets reported out is what
3 went through the process of going through AFIS.
4 Q: Okay.
5 A: She reports out just those.
6 Q: Uh-huh (affirmative response).
7 A: Then we go back and look at all of the latents that were
8 not AFIS quality. They were comparable. We went back -- she
9 went back and compared them to all of the ten-print cards from
10 the first report and reported out anything that identified to
11 any of those ten-print cards.
12 Q: All right. I'm getting really confused, but the first
13 thing's based off AFIS; is that correct?
14 A: Yes.
15 Q: And AFIS since the Jury doesn't know is a data base of
16 fingerprints that are collected nationally; is that the
17 easiest way to ---
18 A: South Carolina only.
19 Q: South Carolina only?
20 A: Yes.
21 Q: All right. And then later, since the December 23rd
22 report was a preliminary ---
23 A: Yes.
24 Q: --- kind of report, a second report was done in January
25 of 2015 ---

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1 A: Correct.

2 Q: --- to confirm and that's where I'm getting confused ---

3 A: No, it's not a confirmation. The latents that were AFIS
4 quality is what gets reported out on the first report,
5 anything that was identified. The second report involves the
6 latents that were not AFIS quality, but they were comparable.
7 So ---

8 Q: So they had enough detail?

9 A: Correct.

10 Q: And then in that situation, she provided names to make
11 comparisons to?

12 A: It was the same ten-print cards that were used for the
13 first report is what was used to do the comparisons for the
14 second report. So anything that identified to any of those
15 ten-print cards were reported on that second report.

16 Q: Okay. Does the second report differ substantially from
17 the first report?

18 A: Not substantially. There was one identification.

19 Q: All right. Very good. I beg the Court's indulgence.

20 All right. Did the police -- well, you are the police so
21 that's ---

22 A: I'm not a sworn officer.

23 Q: You're not a -- but you work for the police department?

24 A: Yes.

25 Q: All right. Do investigators in this case give you names

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1 or ten-print cards to make examinations to?

2 A: Not in this case, no.

3 Q: Okay. So, you weren't provided anybody's -- I want you
4 to check on this person or that person?

5 A: No.

6 MR. SMILEY: That's all the questions I have, Your Honor.

7 THE COURT: All right. Redirect?

8 MS. GINSBURG: None, Judge, thank you.

9 THE COURT: You may step down.

10 MR. GIBBONS: Your Honor, may Ms. Kerstein be excused?

11 THE COURT: Any objection?

12 MR. SMILEY: No objection, Judge.

13 THE COURT: All right. She's free to go. The State can
14 call your next witness.

15 MS. GINSBURG: Thank you, Your Honor. The State calls
16 Dr. Gregory Hall.

17 DR. GREGORY HALL, HAVING BEEN SWORN

18 TESTIFIES AS FOLLOWS:

19 CLERK: Thank you. Please have a seat. And for the
20 record if you could state your first and last name and spell
21 out your last, please.

22 DR. HALL: Gregory Hall, H-A-L-L.

23 THE COURT: All right.

24 MS. GINSBURG: Thank you, Judge.

25 DIRECT EXAMINATION OF DR. GREGORY HALL BY MS. GINSBURG:

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GREGORY HALL - DIRECT BY GINSBURG

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1 Q: Dr. Hall, it's pretty obvious, but what's your
2 occupation?

3 A: I am an emergency physician.

4 Q: Just brief background, what medical school did you
5 attend?

6 A: I attended the University of Cincinnati.

7 Q: And are you licensed as a doctor here in the State of
8 South Carolina?

9 A: I am.

10 Q: Where do you currently work?

11 A: I'm an emergency physician at the Medical University of
12 South Carolina.

13 Q: How long have you been working at MUSC?

14 A: Four years.

15 Q: And is part of your duties to assist in the Emergency
16 Department?

17 A: Yes.

18 Q: On December 18th of 2014 were you working at MUSC at that
19 time?

20 A: Yes.

21 Q: On that day did you have the occasion to see Dontaviha
22 Patterson, the victim in this case?

23 A: Yes.

24 Q: Do you recall where you first saw Mr. Patterson?

25 A: Mr. Patterson was brought in as a trauma into my our Room

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1 2 which is one of our trauma resuscitation bays.

2 Q: Can you describe his condition at the time?

3 A: Mr. Patterson was brought in as a trauma. He was
4 reported as stable by EMS. He had sustained a gunshot wound
5 and on arrival his vital signs were stable, but obviously he
6 was in some pain and discomfort and obviously somewhat scared.

7 Q: Can you -- what's it mean to be categorized -- I'm sorry.

8 A: Sorry about that.

9 Q: You're fine. What does it mean to be categorized as
10 trauma?

11 A: At the Medical University of South Carolina we're a Level
12 One trauma center in the state. We have two sort of trauma
13 criteria or trauma protocols. We call patients that meet
14 certain mechanistic criteria, like a motor vehicle accident
15 with a car on a highway going highway speeds or a car that's
16 rolled over, we consider those trauma B patients. Those are
17 patients that don't have obvious signs of life-threatening
18 injury, but could, those are considered level B patients.
19 Level A traumas are patients that either have evidence of
20 severe trauma or, in this case, they have some sort of
21 penetrating trauma like a gunshot wound or a stab wound to the
22 torso, to the chest, to the abdomen, something like that.

23 Q: So, in this case was Mr. Patterson characterized as
24 Trauma A or Trauma B?

25 A: He was characterized as a level A trauma.

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1 Q: Upon his arrival to -- to the ER Department what did you
2 learn happened to Mr. Patterson in regard to treatment?

3 A: Prior to him arriving, our EMS agency in the county, they
4 called -- the paramedics called or radioed in to let us know
5 that -- that they were bringing in a patient who had been shot
6 in the torso, on posterior aspect. So, on arrival, we were
7 anticipating again level A trauma when they arrived.

8 Q: Okay. And so when you -- when Mr. Patterson arrived,
9 what did you begin to do?

10 A: Upon arrival, EMS gave reports. They did report that he
11 -- to our knowledge, to their knowledge he had been sitting
12 outside of his home. It was reported that there was a drive-
13 by shooting and that he had been struck in the buttock area.
14 At that point, after they gave the report, we moved him over
15 to our ED stretcher in the resuscitation bay at which point,
16 we initiated what we call ATLS, Advanced Trauma Life Support
17 protocol. Initially when -- when we initiate that protocol,
18 we do what's called a primary survey. We're looking for any
19 signs of any obvious life threatening injury that needs to be
20 taken care of immediately. That would include evaluating the
21 airway to make sure that a patient is able to breathe,
22 checking their breathing as well as checking their circulation
23 to make sure that they've got a good pulse and blood pressure,
24 and then from there we transition over to what we call our
25 secondary survey. After we've exposed the patient, we then

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1 look both front and back to see if there's any signs of any
2 injury or wounds anywhere on the body.

3 Q: Okay. So with your secondary survey of Mr. Patterson,
4 what wounds did you notice?

5 A: Mr. Patterson had a -- what appeared to be a projectile
6 injury with two wounds to the right buttock and then one wound
7 over the medial aspect of left buttock.

8 Q: Did you do anything with those wounds -- obviously, there
9 was two wounds to the right buttock and one wound to the left,
10 is it medial buttock?

11 A: The medial.

12 Q: Okay.

13 A: Medial aspect of the buttock.

14 Q: Okay. And what did you do after you noticed those
15 wounds?

16 A: At that point, it was not clear exactly how many times he
17 had been shot since there were three holes. Our anticipation
18 was that there may have been just one actual projectile and it
19 appeared as though the projectile went into the right buttock,
20 out the medial aspect of the right buttock into the left
21 buttock, and then we could actually feel a foreign body, what
22 felt like a projectile, at the base of the left buttock. At
23 that point, I believe the next thing we did was give Mr.
24 Patterson some pain medication and then probe the wounds with
25 essentially a Q-tip, a cotton-tipped applicator, to see if the

1 wounds all lined up and matched.

2 Q: Probing, can you explain what that means; what is it to
3 probe?

4 A: We took a Q-tip and basically inserted it into one hole;
5 it came out the medial aspect of the right butt and
6 immediately -- two things, immediately went into the medial
7 aspect of the left buttocks what appeared as though it was one
8 track.

9 Q: Okay. So after the probing and realizing it was a, a --
10 that it was connected; is that what you're saying?

11 A: Yes.

12 Q: What were -- what was the course of action for Mr.
13 Patterson?

14 A: I believe at that point given the location of the wounds
15 close to the anus and the rectum, obviously this was the tail
16 end of the bowel, there was concern that there could
17 potentially be a bowel injury. We did an x-ray fairly quickly
18 and saw that there was only one projectile or one apparent
19 ballistic fragment with some fragmentation of that larger
20 projectile. It was determined at that point in conjunction
21 with our trauma surgeons that we should do a CAT scan through
22 that area to get an idea of whether or not that projectile
23 might have injured the bowel.

24 Q: Okay. And then you mentioned that it was possible that
25 the projectile injured the rectum or the bowel area, why is

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1 that concerning?

2 A: If the -- if the projectile had injured the bowel,
3 specifically the rectum, the treatments initially for that
4 would have been to do what we call a diverting colostomy,
5 meaning we would've had to -- the surgeons in the operating
6 room would've had to reattach the large intestine to the
7 abdominal wall resulting in having to use a bag, what we call
8 a colostomy bag, to allow for the area that got injured to
9 heal and then at some point in the future, they would usually
10 reattach the bowel after the -- after the injured part had
11 healed.

12 Q: Okay. So you explained that an x-ray was performed, a CT
13 scan was performed, did you have to do anything else to
14 determine more about the injury?

15 A: After the CT scan was done, it appeared as though there
16 was fragments very close to the rectum, which increased the
17 suspicion that there might have been an injury to the rectum.
18 Also on examination there was some blood right there at the
19 anus, which was a concern for possible injury. So the
20 surgeons determined that they should take Mr. Patterson to the
21 operating room to put him under general anesthesia
22 essentially, put him to sleep so that they could fully
23 evaluate both the wound track as well as the bowel.

24 Q: Okay. So after he was taken for that procedure, was Mr.
25 Patterson subject to any other medical procedures that you

1 know of?

2 A: They -- my understanding reading the operative report
3 after the case, they did do what's called an anoscopy or
4 sigmoidoscopy where they take a camera and place it into the
5 anus to look at the bowel. Once they did that, they
6 determined that the bowel itself was okay and they did not
7 have to do a colostomy. They also cleaned and irrigated out
8 the wound tracks and I believe they put drains in the wound
9 tracks to allow the wounds to heal.

10 Q: Okay. Do you recall what happened with the projectile?

11 A: I do not. Reading the operative report, I did not see
12 any mention of the projectile.

13 Q: I beg the Court's indulgence?

14 THE COURT: All right.

15 Q: Did this end your involvement with Mr. Patterson?

16 A: Yes.

17 Q: Thank you so much. Please answer any questions that Mr.
18 Smiley or Ms. Hensley has for you. Thank you.

19 THE COURT: Cross examination?

20 CROSS EXAMINATION OF GREGORY HALL BY MR. SMILEY:

21 Q: Real quick. Basically, it turns out from your
22 examination he got shot in the butt from the right to the
23 left?

24 A: Yes.

25 Q: And as a result of probing it, it appears that it was one

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GREGORY HALL - CROSS BY SMILEY

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1 projectile?

2 A: Yes.

3 Q: And I know you talked about colostomy bags and all of
4 that stuff but that wasn't necessary in this case?

5 A: Fortunately, it wasn't necessary.

6 Q: Right. So no vital structures were struck; is that fair
7 to say, besides it hurting, I'm sure?

8 A: I'm sure. The, the concern was there, but no --
9 fortunately no vital structures were injured.

10 Q: That's all I have. Thank you.

11 THE COURT: Redirect?

12 MS. GINSBURG: No redirect, Judge.

13 THE COURT: All right. You may step down.

14 MS. GINSBURG: May Dr. Hall be excused, Your Honor?

15 THE COURT: Any objection?

16 MR. SMILEY: No objection.

17 THE COURT: All right. He's free to go. Thank you very
18 much.

19 MS. GINSBURG: Yes, Your Honor.

20 THE COURT: State can call your next witness.

21 MS. GINSBURG: Thank you, Your Honor. The State calls
22 Antonio Barrett.

23 ANTONIO BARRETT, HAVING BEEN SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: Thank you. Please have a seat. And for the

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ANTONIO BARRETT - DIRECT BY GINSBURG

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1 record, if you could state your first and last name and spell
2 out your last name, please.

3 MR. BARRETT: Antonio Barrett, B-A-R-R-E-T-T.

4 THE COURT: All right.

5 MS. GINSBURG: Thank you, Your Honor.

6 DIRECT EXAMINATION OF ANTONIO BARRETT BY MS. GINSBURG:

7 Q: Mr. Barrett, how old are you?

8 A: Nineteen.

9 Q: And do you currently work anywhere?

10 A: No, ma'am.

11 Q: Are you looking for a job?

12 A: Yes, ma'am.

13 Q: Are you from Charleston, South Carolina?

14 A: Yes, ma'am.

15 Q: Do you currently live here in Charleston?

16 A: Not at the moment.

17 Q: Where do you live now?

18 A: Atlanta.

19 Q: When you did live here in Charleston, what area of town
20 did you live?

21 A: West Ashley.

22 Q: Is there a specific neighborhood?

23 A: Ardmore.

24 Q: And what area of Ardmore did you live in? Do you recall
25 that, your street address?

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ANTONIO BARRETT - DIRECT BY GINSBURG

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- 1 A: Yes, ma'am.
- 2 Q: So you moved away, you're nineteen and you're looking for
3 a job; is that right?
- 4 A: Yes, ma'am.
- 5 Q: Do you have any other plans in life?
- 6 A: Go to college.
- 7 Q: Go to college. Antonio, do you know why you're here
8 today?
- 9 A: Yes, ma'am.
- 10 Q: What's your involvement in this case?
- 11 A: Nothing.
- 12 Q: Were you ever interviewed by the police in connection to
13 this case?
- 14 A: Yes, ma'am.
- 15 Q: Do you know Dontaviha Patterson or Mazerati as some
16 people call him?
- 17 A: Yes, ma'am.
- 18 Q: What was your relationship like?
- 19 A: Nothing.
- 20 Q: Nothing. Acquaintances, I guess, or friends?
- 21 A: We was just acquaintance.
- 22 THE COURT: I'm sorry, you're gonna need to speak up
23 please.
- 24 A: Acquaintance.
- 25 Q: Did you ever visit Mazerati's house?

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ANTONIO BARRETT - DIRECT BY GINSBURG

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- 1 A: No, ma'am.
- 2 Q: Did you ever hang out with him on the weekends?
- 3 A: No, ma'am.
- 4 Q: Do you know Herbie Singleton?
- 5 A: Yes, ma'am.
- 6 Q: How do you know Herbie Singleton?
- 7 A: Middle school.
- 8 Q: What's your relationship like with Herbie Singleton?
- 9 A: Nothing.
- 10 Q: So did you ever go to his house?
- 11 A: No, ma'am.
- 12 Q: Do you ever hang out with him on the weekends?
- 13 A: No, ma'am.
- 14 Q: Do you know anyone named Kevin Corley?
- 15 A: Yes, ma'am.
- 16 Q: How do you know Kevin?
- 17 A: Middle school.
- 18 Q: Were y'all tight?
- 19 A: No, ma'am.
- 20 Q: How about E.J. Green; do you know him?
- 21 A: Middle school.
- 22 Q: Were you guys friends?
- 23 A: No, ma'am.
- 24 Q: Does anyone call you by the name Trell?
- 25 A: No, ma'am.

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ANTONIO BARRETT - DIRECT BY GINSBURG

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- 1 Q: Or Trey?
- 2 A: No, ma'am.
- 3 Q: You never heard of that before? So you said that you're
- 4 here today because of -- you were interviewed by the police in
- 5 connection to this case. Will you tell me about your day
- 6 prior to the shooting that happened on December 18th, 2014?
- 7 A: Yes, I was home babysitting my nephews and niece.
- 8 Q: Did you go to school that day?
- 9 A: Yes, ma'am.
- 10 Q: And what time do you think you were home when you --
- 11 while you were babysitting your nephews and niece?
- 12 A: Around 3:00.
- 13 Q: Around 3:00. Where was that home located?
- 14 A: On West Robinhood.
- 15 Q: And how long were in the house at West Robinhood?
- 16 A: All night.
- 17 Q: All night. So, from 3:00 till -- what's all night?
- 18 A: Till the next day.
- 19 Q: Till the next day. So what happened the next day when
- 20 you went back to school?
- 21 A: They come arrest me.
- 22 Q: And where did you go after that when they arrested you?
- 23 A: To get questioned and then jail.
- 24 Q: Antonio, did you shoot anyone at [REDACTED] Acacia Street on
- 25 December 18th, 2014?

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ANTONIO BARRETT - CROSS BY HENSLEY

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1 A: No, ma'am.

2 Q: Did you shoot Dontaviha Patterson or Mazerati at that
3 time?

4 A: No, ma'am.

5 Q: Do you have any reason as to why Herbie Singleton called
6 out your name?

7 A: No, ma'am.

8 Q: Thank you so much. You were arrested for this, weren't
9 you?

10 A: Yes, ma'am.

11 Q: Do you recall how long you were in jail?

12 A: Two months.

13 Q: Two months. Nothing further at this time.

14 THE COURT: All right. Cross examination?

15 Q: Please answer anything Ms. Hensley has to ask. Thank
16 you.

17 A: Uh-huh (affirmative response).

18 CROSS EXAMINATION OF ANTONIO BARRETT BY MS. HENSLEY:

19 Q: Good afternoon, Antonio, how are you today?

20 A: Good.

21 Q: I'm Laree Hensley. I'm Herbie Singleton's lawyer. You
22 live in Georgia now; is that correct?

23 A: Yes, ma'am.

24 Q: But on December 18th, 2014 you lived here, right?

25 A: Yes, ma'am.

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ANTONIO BARRETT - CROSS BY HENSLEY

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1 Q: And you got arrested at school on December the 19th,
2 2014; is that right?

3 A: Yes, ma'am.

4 Q: And you were taken to the police station for questioning,
5 correct?

6 A: Yes, ma'am.

7 Q: And at that time, you told Detective Burkhardt that you
8 had nothing to do with this, correct?

9 A: Yes, ma'am.

10 Q: You told him just what you told this Jury here today,
11 that you were home babysitting, correct?

12 A: Yes, ma'am.

13 Q: And that after, after you finished babysitting that you
14 were home asleep?

15 A: Yes, ma'am.

16 Q: That you never got in the car with anybody and you
17 weren't involved in any shooting, correct?

18 A: Yes, ma'am.

19 Q: And you got locked up anyway, correct?

20 A: Yes, ma'am.

21 Q: And you stayed in jail until -- do you remember when in
22 February you got out of jail?

23 A: The day before Valentines.

24 Q: So February 13th, you stayed in jail from December the
25 19th, 2014 until February the 13th, 2015; is that right?

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ANTONIO BARRETT - CROSS BY HENSLEY

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1 A: Yes, ma'am.

2 Q: And you were aware -- also that you were indicted for
3 this crime; are you aware of that?

4 A: Yes, ma'am.

5 Q: And that was in -- on May the 4th, 2015; is that correct?

6 A: Uh-huh (affirmative response).

7 THE COURT: You need to answer yes or no.

8 A: Yes.

9 Q: I beg the Court's indulgence?

10 And at the time you were interviewed on December the
11 19th, 2014 at the police station, you told the detective then
12 that your mother was aware that you were at home, correct?

13 A: Yes, ma'am.

14 Q: And that your sisters were aware that you were at home,
15 correct?

16 A: Yes, ma'am.

17 Q: And during the time you were in jail, your family members
18 were also providing that information to the police, correct?

19 A: Yes, ma'am.

20 Q: I think that's all the questions I have, Antonio. Thank
21 you very much.

22 A: Yes, ma'am.

23 THE COURT: All right. Redirect?

24 MS. GINSBURG: Just briefly, Judge.

25 REDIRECT EXAMINATION OF ANTONIO BARRETT BY MS. GINSBURG:

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ANTONIO BARRETT - REDIRECT BY GINSBURG

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1 Q: Antonio, you say you spent about two months in jail and
2 you said -- what time -- what date did you get out?

3 A: February 13th.

4 Q: So from February 13th afterwards you were no -- till
5 after you were no longer in jail?

6 A: Yes, ma'am.

7 Q: Also, Antonio, what family member came into the police
8 station to talk to the police; do you remember?

9 A: Probably my mother.

10 Q: Who is your mother?

11 A: Barbara Barrett.

12 Q: Barbara Barrett?

13 A: Yes, ma'am.

14 Q: Do you know that your mom came into the police station?

15 A: The first thing she tell me when she come visit.

16 Q: She told you when she came to visit you in jail?

17 A: Yes, ma'am.

18 MS. GINSBURG: Nothing further at this time, Judge.

19 THE COURT: All right. You may step down.

20 BY THE COURT:

21 THE COURT: All right. Let's go ahead and take a short
22 break. It's a good time for us to take our afternoon break,
23 ladies and gentlemen. Please leave your pads in the jury box.
24 Do not discuss the case even among yourselves. We'll take
25 about a ten or fifteen-minute break then we'll bring you back

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BY THE COURT

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1 shortly. Thank you very much.

2 (REPORTER'S NOTE: Jury exits courtroom. 3:15 P.M.)

3 THE COURT: All right. Anything from the State before we
4 recess?

5 MR. OSBORNE: No, Your Honor.

6 THE COURT: Anything from the Defense?

7 MS. HENSLEY: No, Your Honor.

8 THE COURT: All right. We'll take about a ten or
9 fifteen-minute recess.

10 (RECESS - 3:16 P.M.)

11 *****OFF THE RECORD*****

12 (On the Record - 3:36 P.M.)

13 THE COURT: All right. Thank you very much. Please be
14 seated. Anything from the State before we bring the Jury in?

15 MR. OSBORNE: No, Your Honor.

16 THE COURT: Anything from the Defense?

17 MS. HENSLEY: No, Your Honor.

18 THE COURT: Let's go ahead and bring the jury in.

19 (REPORTER'S NOTE: Jury enters courtroom. 3:38 P.M.)

20 THE COURT: The State can call your next witness.

21 BAILIFF: All the jurors are present, Your Honor.

22 THE COURT: Thank you very much.

23 Ladies and gentlemen, welcome back. We're ready to
24 resume the trial of the case. Make sure you have your own
25 notepads.

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DAN ENGLISH - DIRECT BY OSBORNE

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1 Q: And then it's get logged into evidence?

2 A: Yes, sir.

3 Q: And so you were the evidence carrier in this case?

4 A: That would be correct, yes.

5 Q: All right. That's all I have. Thank you.

6 A: Thank you.

7 THE COURT: Redirect?

8 MS. GINSBURG: Nothing further, Judge.

9 THE COURT: All right. You may step down.

10 A: Thank you.

11 MS. GINSBURG: Ms. Gladwell, may she be excused, Your
12 Honor?

13 MR. SMILEY: Yes, sir.

14 THE COURT: All right. She's free to go.

15 MS. GINSBURG: Thank you.

16 THE COURT: The State can call your next witness.

17 MR. OSBORNE: The State calls Detective Dan English.

18 DAN ENGLISH, HAVING BEEN SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK: Thank you. Please have a seat. And for the
21 record, if you could state your first and last name and spell
22 out your last name.

23 MR. ENGLISH: Daniel English, E-N-G-L-I-S-H.

24 DIRECT EXAMINATION OF DAN ENGLISH BY MR. OSBORNE:

25 Q: Good afternoon. And tell the Jury where you work.

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DAN ENGLISH - DIRECT BY OSBORNE

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- 1 A: Charleston Police Department.
- 2 Q: And I called you as a detective but I understand there's
- 3 a recent promotion; is that correct?
- 4 A: You are correct.
- 5 Q: And you are a sergeant now?
- 6 A: Yes, sir.
- 7 Q: Have you received your new assignment?
- 8 A: Not yet.
- 9 Q: So, technically now you're still in central?
- 10 A: That's correct.
- 11 Q: Okay. So how long have you been at CPD?
- 12 A: I've been at CPD just a little over nine years.
- 13 Q: All right. During that time, what have been some of the
- 14 various assignments that you've had?
- 15 A: I've worked in patrol with various teams and I've been in
- 16 investigations in a couple of units, auto theft, robbery, and
- 17 now violent crimes.
- 18 Q: All right. So, you're in the Violent Crimes Unit now?
- 19 A: Yes, sir.
- 20 Q: All right. Let's go back to November the 19th of 2014.
- 21 What was your assignment back then?
- 22 A: My assignment back then was robbery.
- 23 Q: Okay. Were you working that night?
- 24 A: Yeah, that particular evening I was on night shift.
- 25 Q: All right. Did you have the occasion to become involved

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DAN ENGLISH - DIRECT BY OSBORNE

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1 in a burglary investigation?

2 A: I did.

3 Q: All right. How did that come about?

4 A: Essentially on night shift there's various calls and
5 things and on my shift I learned that an individual had been
6 arrested for obtaining goods by false pretenses. That --
7 those goods were connected to a burglary investigation so I
8 was asked to attempt to interview that individual.

9 Q: Okay. So even though you were a robbery detective, that
10 night they arrested an individual related to burglary, you
11 being the, what, duty detective, you would still help out?

12 A: Yes, sir.

13 Q: All right. Who was the individual that had been
14 arrested?

15 A: Lamont Gregg was his name.

16 Q: What was the date that the burglary occurred?

17 A: The burglary occurred on September 23rd, 2014.

18 Q: Okay. So maybe about a month-and-a-half earlier, I
19 guess?

20 A: Yes, sir.

21 Q: Do you know where the burglary occurred?

22 A: The burglary was at 511 Hartdale (spelled phonetically),
23 Apartment ■, which is in West Ashley.

24 Q: Okay. What were some of the items that were stolen
25 during the burglary?

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DAN ENGLISH - DIRECT BY OSBORNE

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1 A: An Xbox game console, a laptop computer, and various
2 other electronics.

3 Q: Okay. A laptop?

4 A: Uh-huh (affirmative response), yes, sir.

5 Q: At that point, had the burglary detectives developed a
6 suspect for the burglary investigation?

7 A: No, sir.

8 Q: Okay. Has anyone ever been charged with the burglary
9 itself?

10 A: No, sir.

11 Q: Was there any suspects ever developed from the burglary
12 itself?

13 A: No, sir.

14 Q: All right. What led to Lamont Gregg's arrest?

15 A: Okay. So the burglary occurred on September 25th, on
16 October 28th, Mr. Gregg pawned the laptop that was stolen from
17 the burglary at a West Ashley pawn shop. He presented the
18 laptop as his, received payment for the laptop, hence the
19 charge of obtaining goods, money, by false pretense.

20 Q: Okay. So basically when you pawn something you have to
21 sign something saying I own this.

22 A: That' right.

23 Q: And he did?

24 A: Right.

25 Q: All right. So, he was arrested, I think you said on the

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DAN ENGLISH - CROSS BY SMILEY

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1 night of or maybe early morning hours of November the 19th.

2 A: He was arrested on the 18th. I interviewed him on the
3 early morning hours of the 19th.

4 Q: Okay. And when did he bond out again?

5 A: That next day, the 19th.

6 Q: No further questions.

7 THE COURT: All right. Cross examination.

8 CROSS EXAMINATION OF DAN ENGLISH BY MR. SMILEY:

9 Q: Sergeant English, we've meet. Jim Smiley.

10 A: Yes, sir.

11 Q: And I represent Herbie along with Ms. Hensley. Okay.

12 So, Lamont Gregg is arrested for pawning a stolen laptop?

13 A: Yes, sir.

14 Q: That is from a burglary that happened September the 23rd,
15 2014?

16 A: Yes, sir.

17 Q: In that burglary there were several items taken, right?

18 A: Yes, sir.

19 Q: There's a -- I think you said it was a laptop, Xbox, a
20 cell phone; did you say the cell phone?

21 A: Various items, electronics, yes, sir.

22 Q: All right. Now, you interviewed Mr. Gregg?

23 A: That's correct.

24 Q: Did he speak to you?

25 A: He did.

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DAN ENGLISH - CROSS BY SMILEY

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1 Q: Did he tell you where he got the laptop from?

2 A: Yes, sir, he did.

3 Q: What did he tell you?

4 A: He told me that an acquaintance of his gave him the
5 laptop and asked him to pawn it for him, so he did.

6 Q: Okay. Did he provide a name?

7 A: He gave me a nickname which led to an identification.

8 Q: What was the nickname?

9 A: The nickname was Mazerati.

10 Q: Okay. Dontaviha Patterson?

11 A: Yes, sir.

12 Q: You've dealt with property crimes, even though you're in
13 robbery, you know about the pawn game -- the pawn shop game,
14 right?

15 A: I'm familiar with some property crimes.

16 Q: I just want to make sure before I ask you the next
17 question. When you pawn something, you've got to provide
18 identification?

19 A: Yes, sir. The pawn shop requires you to.

20 Q: All right. And so if you don't have identification, you
21 aren't pawning anything, right?

22 A: That would be right.

23 Q: In your experience as a police officer, if you don't have
24 a form of ID and you want to pawn something, you get somebody
25 else to go do it for you?

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DAN ENGLISH - CROSS BY SMILEY

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1 A: That's what -- that's what Mr. Gregg said in his
2 interview to me. I don't personally have experience with
3 that.

4 Q: All right. You didn't find it unusual?

5 A: No, sir.

6 Q: Beg the Court's indulgence?

7 THE COURT: All right.

8 Q: Now, when you pawn something, you, you get cash from the
9 pawn shop?

10 A: Yes, that's one thing you can get from them.

11 Q: Okay. And in this case, Mr. Gregg got \$75?

12 A: Yes, sir.

13 Q: When Mr. Gregg was speaking with you, his demeanor, he
14 wasn't happy about it, was he?

15 A: It as early in the morning; he was tired. He was rather
16 frustrated about the whole situation.

17 Q: And, and he wasn't happy that he was sitting there
18 because his buddy, Mazerati, had gotten him to pawn the stolen
19 laptop; is it fair to say?

20 A: Yes, sir.

21 Q: That's all I got.

22 THE COURT: Redirect?

23 MR. OSBORNE: Briefly, Your Honor.

24 REDIRECT EXAMINATION OF DAN ENGLISH BY MR. OSBORNE:

25 Q: All right. So, well let's talk about a couple more

1 things that Lamont Gregg said. Well, before I get into that,
2 having worked burglaries, do you if there's an age requirement
3 to pawn something off?

4 A: Mr. Gregg mentioned it being over seventeen, but I don't
5 personally know what the age requirement is.

6 Q: Okay. Did he say that's why he was the one that pawned
7 it?

8 A: Yeah, he told me that person wasn't of age and that he
9 was and he had an ID, so he pawned it.

10 Q: Okay. Did you ask Lamont if Mazerati -- in an attempt to
11 try and figure out who Mazerati was, did you ask Lamont if
12 Mazerati lived in Ardmore?

13 A: I did.

14 Q: What was his response?

15 A: He told me he lived on the other side.

16 Q: He lived on the other side?

17 A: Yes, sir.

18 Q: He lived in Ardmore but on the other side.

19 A: Yes, sir.

20 Q: How well did Lamont say he knew Mazerati?

21 A: Basically described him as an acquaintance, that he would
22 see him from time to time and he was friends with him on
23 Facebook; that's where the identification came from.

24 Q: No further questions.

25 THE COURT: All right. You may step down.

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DAN ENGLISH - REDIRECT BY OSBORNE

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1 MR. OSBORNE: May this witness be excused, Your Honor.

2 THE COURT: Any objection?

3 MR. SMILEY: No objection.

4 THE COURT: All right. He's free to go.

5 MR. OSBORNE: Your Honor, may we approach?

6 THE COURT: Yes.

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

9 BY THE COURT:

10 THE COURT: All right. Ladies and gentlemen, the
11 attorneys have told me that we're moving along pretty good on
12 this trial, but the next witness is gonna have -- be kind of
13 lengthy and so they said given the time of day, it's probably
14 a good time for us to go ahead and break for the day. So, I'm
15 gonna go ahead and break for the day and let you go home a
16 little bit early today. Leave your notepads in the jury box.
17 I'm gonna ask that you be back again at 9:15 tomorrow morning.

18 Now, I don't know procedurally how much longer this is
19 gone take. The attorneys have told me, they know more about
20 the case than I do, they tell we're progressing a little bit
21 ahead of schedule. However, just to make sure, I don't know
22 what your obligations are after 5 o'clock tomorrow, but just
23 in case, you might want to go ahead and make arrangements in
24 case we have to go over a little bit tomorrow. We might go a
25 little bit past 5:00. I don't know that, but if you have

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THOMAS BAILEY - DIRECT BY OSBORNE

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1 I want to thank you for your promptness in being here on time.

2 We're ready to proceed with the trial of the case at this
3 time. The State can call your next witness.

4 MR. OSBORNE: Thank you, Your Honor. The State calls
5 Detective Sergeant Thomas Bailey.

6 THOMAS BAILEY, HAVING BEEN SWORN
7 TESTIFIES AS FOLLOWS:

8 CLERK: Thank you. Please have a seat. And for the
9 record, if you could state your first and last name and spell
10 out your last name, please.

11 MR. BAILEY: Thomas Bailey, B-A-I-L-E-Y.

12 DIRECT EXAMINATION OF THOMAS BAILEY BY MR. OSBORNE:

13 Q: Thank you for coming in on such short notice, Sergeant
14 Bailey.

15 THE COURT: Excuse me for a minute. Let me see the
16 attorneys for a second.

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

19 THE COURT: I apologize. Go ahead.

20 MR. OSBORNE: Thank you, Your Honor.

21 BY MR. MR. OSBORNE:

22 Q: So, I know this is short notice, so I just want to talk
23 to you briefly about alibies and alibies in general -- alibies
24 specifically for this case and alibies in general.

25 A: Sure.

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THOMAS BAILEY - DIRECT BY OSBORNE

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1 Q: But let's just talk briefly about your background. Where
2 do you work?

3 A: I'm currently employed with the City of Charleston Police
4 Department.

5 Q: And what's your position now?

6 A: I'm the supervisor of our Robbery Investigations Unit.

7 Q: All right. Back in December of 2014, what was your
8 position then?

9 A: I was a member of our Violent Crimes Investigative Unit.
10 So, I was a detective with the Violent Crimes Unit.

11 Q: Okay. And now you're a Detective Sergeant in charge of
12 the Robbery Unit?

13 A: Yes, sir.

14 Q: Okay. So let's specifically talk about this case and
15 were you involved with this investigation -- with the shooting
16 investigation involving the Defendant?

17 A: I was.

18 Q: All right. Were you one of the three detectives who
19 interviewed the Defendant when he was arrested?

20 A: I did.

21 Q: All right. Now is it true that at any point when you
22 were speaking to the Defendant, Detective Krasowski was also
23 there?

24 A: He was present.

25 Q: Did you ever speak to him alone?

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THOMAS BAILEY - DIRECT BY OSBORNE

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1 A: I did not.

2 Q: Okay. So, whatever was said -- the Defendant said,
3 Detective Krasowski can testify to that?

4 A: Yes, sir.

5 Q: Okay. All right. Now, after speaking to the Defendant,
6 was anyone arrested based on his statement?

7 A: They were.

8 Q: Okay. Who was arrested?

9 A: Kevin Corley, Elijah Green and Antonio Barrett.

10 Q: All right. Do you know the date that Antonio Barrett was
11 arrested?

12 A: I believe it was December 19th, 2014.

13 Q: All right. On December the 23rd of 2014, did you receive
14 a message from an individual who identified himself as
15 Christopher Reed?

16 A: I did.

17 Q: And what was the nature of the -- what was the nature of
18 the message?

19 A: Basically the message said that Christopher Reed was the
20 future stepfather of Antonio Barrett and that he had
21 information on the shooting, that this case is involving.

22 Q: Okay. So, did Mr. Reed, being a relative of Antonio
23 Barrett, did you call him?

24 A: I called him back on the phone.

25 Q: Okay. Without getting into the specifics of what was

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- 1 said, basically what was the nature of that call?
- 2 A: Antonio Barrett had an alibi at the time of the shooting.
- 3 Q: Okay. Let's talk about alibi witnesses. You said you
- 4 work in the Violent Crimes Unit?
- 5 A: Yes, sir.
- 6 Q: During that time and I know this might be tough to
- 7 estimate, how many shootings would you say you worked?
- 8 A: The estimated shootings that I've been assigned to
- 9 primarily or assisted other detectives in, I would in the
- 10 ballpark of seventy-five to a hundred.
- 11 Q: All right. And but you've also worked many other violent
- 12 crimes?
- 13 A: Correct, robberies and other violent crimes, yes, sir.
- 14 Q: Is it uncommon for a family member to call up and provide
- 15 alibi information after an arrest had been made?
- 16 A: It is not uncommon.
- 17 Q: Is it uncommon for you to receive other phone calls from
- 18 various other individuals providing alibi information, after
- 19 an arrest is made?
- 20 A: That is not uncommon.
- 21 Q: All right. So it's not uncommon to receive a phone call
- 22 saying you got the wrong guy?
- 23 A: No, sir, that is not uncommon.
- 24 Q: All right. When you get that information or you get that
- 25 kind of call, do you just ignore it?

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THOMAS BAILEY - DIRECT BY OSBORNE

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1 A: No, sir.

2 Q: All right. What do you do?

3 A: When we get to those types of calls, we follow up on
4 those calls and, and call those individuals back and see what
5 information that can provide.

6 Q: Do you make attempts to try to meet them in person?

7 A: Absolutely. We try to get them to come to the police
8 station and provide a formal statement.

9 Q: Because after all, you don't know who you're talking to,
10 it's just someone who called, right?

11 A: Correct.

12 Q: Did you ask the individual to have the alibi witnesses
13 come to the station in this case?

14 A: I did. I told him to come to the station anytime and
15 they could speak with the detective and provide a formal
16 statement.

17 Q: Okay. Did anyone from Antonio Barrett's family or anyone
18 for that matter actually come to the station and provide an
19 alibi statement for Antonio Barrett.

20 A: No, sir.

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

22 THE COURT: All right. Cross examination?

23 CROSS EXAMINATION OF THOMAS BAILEY BY MR. SMILEY:

24 Q: Detective Baily, Jim Smiley. I represent Herbie
25 Singleton.

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THOMAS BAILEY - CROSS BY SMILEY

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- 1 A: Yes, sir.
- 2 Q: All right. So, before we get into the specifics, you
3 were involved in this case from the day that it began?
- 4 A: Correct.
- 5 Q: All right. I know you had involvement in speaking with
6 Mr. Singleton, right?
- 7 A: Yes, sir.
- 8 Q: Did you interview any of the other witnesses?
- 9 A: I interviewed a witness on scene and another witness at
10 the police station.
- 11 Q: All right. Then the phone call -- Mr. Barrett was
12 arrested the next day, correct?
- 13 A: Yes, sir.
- 14 Q: Did you -- were you involved in his interview process at
15 all?
- 16 A: I was not.
- 17 Q: Were you made aware that he was denying any involvement?
- 18 A: I believe, yes.
- 19 Q: Okay.
- 20 A: So, yes, sir.
- 21 Q: And, in fact, the phone call came in from Mr. Reed and
22 you returned it to see what information he could provide?
- 23 A: Correct.
- 24 Q: All right. Did he provide an address of where Mr.
25 Barrett was the day before, correct?

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THOMAS BAILEY - CROSS BY SMILEY

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1 A: Right, at his address.

2 Q: And that address was real close to the Ardmore
3 Subdivision, right?

4 A: It's in close proximity, yes, sir.

5 Q: All right. He provided an unrelated person that could
6 also vouch, correct?

7 A: Negative, no, sir.

8 Q: All right. And were you aware at that point when those
9 phone calls came in that the only piece of evidence linking
10 Mr. Barrett to the crime was the statement by Mr. Singleton
11 that night?

12 A: I'm not aware of all the specifics of the case. I know
13 what Mr. Singleton said. I don't know the ins and outs of
14 what the case detective had done.

15 Q: Okay. I guess my question is, when the calls came in --
16 when the call came in from Mr. Reed, did you give it any
17 validity?

18 A: Sure.

19 Q: Was any attempt -- did you make any attempt to contact
20 the neighbor?

21 A: I did not.

22 Q: That's all I have.

23 THE COURT: Redirect?

24 MR. OSBORNE: Just one question to piggy back off of
25 that.

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1 REDIRECT EXAMINATION OF THOMAS BAILEY BY MR. OSBORNE:

2 Q: Just so we're all on the same page, the Dad never said
3 that he was an alibi witness; is that correct?

4 A: He was not an alibi witness.

5 Q: He was saying that a neighbor was an alibi witness?

6 A: Yes, sir.

7 Q: And I think another family member?

8 A: Yes, sir.

9 Q: Okay. No further questions, Your Honor.

10 THE COURT: All right. You may step down.

11 The State may call your next witness.

12 MR. OSBORNE: The State calls Dontaviha Patterson.

13 DONTAVIHA PATTERSON, HAVING BEEN

14 SWORN TESTIFIES AS FOLLOWS:

15 CLERK: Thank you. Please have a seat. And for the
16 record, if you would state your first and last name and spell
17 out your last name.

18 MR. PATTERSON: Dontaviha Patterson, P-A-T-T-E-R-S-O-N.

19 DIRECT EXAMINATION OF DONTAVIHA PATTERSON BY MR. OSBORNE:

20 Q: All right. Dontaviha, let's introduce yourself to the
21 Jury. How old are you?

22 A: Nineteen.

23 Q: Where were you born?

24 A: Charleston, South Carolina.

25 Q: And is that pretty much where you've been raised?

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DONTAVIHA PATTERSON - DIRECT BY OSBORNE

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1 A: Yes, sir.

2 Q: Just tell the Jury what is some of the type of jobs that
3 you've had?

4 A: Captain's Carwash, Hurricane, DeSano's Pizza, Mellow
5 Mushroom and I worked at a construction job now.

6 Q: At a construction job now?

7 A: Yes, sir.

8 Q: Okay. Do you have any children?

9 A: No, sir.

10 Q: Are you married?

11 A: No.

12 Q: All right. Let's go ahead and get some stuff out of the
13 way. You've been arrested, haven't you?

14 A: Yes, sir.

15 Q: You've been charged with burglary, haven't you?

16 A: Yes, sir.

17 Q: Do you know -- is my office prosecuting that case?

18 A: Yes, sir.

19 Q: Do you know who in my office is prosecuting that case?

20 A: I think it was Stephanie. I don't know.

21 Q: Okay. Has anyone promised you anything in exchange for
22 your testimony here today?

23 A: No, sir.

24 Q: Has anyone told you that if you come in and say things in
25 a certain way that you'll get some kind of break for your

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- 1 burglary charge?
- 2 A: No.
- 3 Q: And just so we're on the same page, this burglary charge
- 4 is not related to this incident?
- 5 A: No, sir.
- 6 Q: We heard something about a laptop being taken and what
- 7 not; your burglary charge isn't tied into that?
- 8 A: No, sir.
- 9 Q: At the time you were arrested, were you in school?
- 10 A: No.
- 11 Q: You weren't in school?
- 12 A: I mean, I was in school but I wasn't in school. Like I
- 13 just had a -- I was just in the middle of transferring
- 14 schools.
- 15 Q: Okay.
- 16 A: So I had to wait on the school board.
- 17 Q: So, your attendance probably wasn't that great?
- 18 A: No, my attendance was good.
- 19 Q: Okay. All right. Let's go back to 2014. Where did you
- 20 live then?
- 21 A: [REDACTED] Acacia Street.
- 22 Q: And who did you live with?
- 23 A: My momma, my brother and my two sisters.
- 24 Q: Okay. That neighborhood that you had moved into, did you
- 25 become familiar with any nicknames for the neighborhood?

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DONTAVIHA PATTERSON - DIRECT BY OSBORNE

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1 A: The Moe.

2 Q: Okay. Were you familiar with or did you become familiar
3 with different sections of the neighborhood?

4 A: The Hole; that's about it, the Hole.

5 Q: Okay. Have you ever heard of the term top of Ardmore.

6 MR. SMILEY: Objection, Your Honor, move to strike?

7 THE COURT: Sustained.

8 BY MR. OSBORNE:

9 Q: I'm showing you what's already been marked and admitted
10 as State's Exhibit One. You mentioned the Hole. You can
11 circle on there, go ahead and circle where that is.

12 A: (Witness complies.)

13 Q: Okay. Do you see the bicycle path on there?

14 A: (Witness indicates on map.)

15 Q: Okay. Go ahead and do it all the way across. Okay. Are
16 you or are you not familiar with any terms for this area of
17 Ardmore?

18 A: The bottom.

19 Q: And how about this area of Ardmore?

20 A: That's the top of Ardmore.

21 Q: Okay. Where did you live?

22 A: At the top.

23 Q: Do you -- can you tell on that map where? If you can
24 just put an X; if you can't, that's fine?

25 A: Right here somewhere (indicating on map).

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- 1 Q: Okay. All right. Do you know someone nicknamed Bubba?
- 2 A: Yeah.
- 3 Q: All right. Now back in September of 2014, did Bubba give
- 4 you something?
- 5 A: A laptop.
- 6 Q: Okay. Other electronics?
- 7 A: Yeah, Xbox, PlayStation; that's about it.
- 8 Q: He just gave it to you? Did he just give it to you?
- 9 A: Yes, sir.
- 10 Q: Where did it come from?
- 11 A: I don't know.
- 12 Q: But you know now it was stolen in a burglary?
- 13 A: Yes, sir.
- 14 Q: Did you have anything to do with that burglary?
- 15 A: No, sir.
- 16 Q: Did you later find out that the laptop was stolen in the
- 17 burglary?
- 18 A: Yes, sir.
- 19 MS. HENSLEY: Objection, Your Honor.
- 20 THE COURT: Overruled. Go ahead.
- 21 BY MR. OSBORNE:
- 22 Q: Okay. So, you got this laptop back in September of 2014,
- 23 correct?
- 24 A: Yes, sir.
- 25 Q: All right. Let's talk about ---

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- 1 A: No, no.
- 2 Q: No?
- 3 A: I didn't get it in September.
- 4 Q: When did you get it?
- 5 A: I got it like in October.
- 6 Q: Okay. The beginning or the end of October?
- 7 A: Like the middle.
- 8 Q: Okay. All right. Let's talk about an individual by the
9 name of Herbie Singleton; do you know him?
- 10 A: Yes, sir.
- 11 Q: How long have you known him?
- 12 A: Since like ninth grade.
- 13 Q: Okay. How did you first meet him?
- 14 A: Garrett High School.
- 15 Q: At Garrett? Okay. Did you ever communicate with him
16 through Facebook?
- 17 A: Yes, sir.
- 18 Q: What was his Facebook name?
- 19 A: Moe Boy Herb.
- 20 Q: Moe Boy Herb?
- 21 A: Moe Boy Herb.
- 22 Q: Do you know where he's from?
- 23 A: Ardmore.
- 24 Q: Ardmore? Did Herbie live back in, in Ardmore back in
25 December of 2014?

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- 1 A: Yes, sir.
- 2 Q: Do you know about where he lived?
- 3 A: You want me to mark it?
- 4 Q: Yeah. He lived in the bottom of Ardmore?
- 5 A: Yes, sir.
- 6 Q: I'm showing you what's been marked as State's Exhibit
7 Three. Marked and admitted earlier. Do you know whose house
8 that is?
- 9 A: Yes, sir.
- 10 Q: Whose house is that?
- 11 A: Herbie Singleton.
- 12 Q: Okay. Did you often drive around with Herbie?
- 13 A: Yes, sir.
- 14 Q: In what car? Was it Herbie's car?
- 15 A: I mean, yeah.
- 16 Q: All right. I'm showing you what's been marked and
17 admitted as State's Exhibit Sixteen; do you recognize that?
- 18 A: Yes, sir.
- 19 Q: What is that photograph of?
- 20 A: Herbie's car.
- 21 Q: Okay. How many times a week from the time you moved into
22 Ardmore from August to prior to the shooting would you say you
23 had talked or seen Herbie?
- 24 A: I mean, around August, I start seeing him, but around
25 September -- I used to be with him most likely every day.

- 1 Q: Okay. Had he ever been to your house?
- 2 A: Yes, sir.
- 3 Q: And how many times would you estimate he had been to your
4 house?
- 5 A: Plenty of times.
- 6 Q: So, he knew exactly where you lived?
- 7 A: Yeah..
- 8 Q: Let's talk about the Lamont Gregg. Do you know that
9 individual?
- 10 A: Yes, sir.
- 11 Q: Does he go by any nicknames?
- 12 A: Monty.
- 13 Q: Does Lamont Gregg have a Facebook account?
- 14 A: Yes, sir.
- 15 Q: Did he have one back in 2014?
- 16 A: Yes, sir.
- 17 Q: And when did you first meet him?
- 18 A: Around the weekend of September when I took him to a
19 party.
- 20 Q: You met him at a party?
- 21 A: No, I took him to a party.
- 22 Q: How did you meet him?
- 23 A: Through Herbie.
- 24 Q: Herbie introduced you to him?
- 25 A: Yes, sir.

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DONTAVIHA PATTERSON - DIRECT BY OSBORNE

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1 Q: All right. So during that same time period, how many
2 times do you think you spoke or saw Lamont?

3 A: I would see him probably every other day or every day on
4 Evergreen.

5 Q: Okay. I'm gonna show you what's been marked -- Your
6 Honor, may I approach?

7 THE COURT: Yes.

8 Q: This is State's Exhibit Forty-three, can you take a look
9 at that and tell me if you recognize it?

10 A: Yes, sir.

11 Q: And what does that picture depict?

12 A: Monty's house.

13 MR. OSBORNE: Your Honor, at this time I would seek to
14 introduce State's Exhibit Forty-three into evidence?

15 THE COURT: Any objection?

16 MS. HENSLEY: No objection.

17 THE COURT: All right. State's Exhibit Forty-three
18 admitted into evidence without objection.

19 STATE'S EXHIBIT NUMBER FORTY-THREE

20 ADMITTED INTO EVIDENCE

21 BY MR. OSBORNE:

22 Q: State's Exhibit Forty-three, is that Monty's house?

23 A: Yes, sir.

24 Q: All right. Now we go back to State's Exhibit One, can
25 you mark on there where Monty lived?

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1 A: Here (indicating).

2 Q: Okay. All right. Did anything happen prior to the
3 shooting that changed your relationship between Monty and
4 Herbie?

5 A: Well, Monty, the laptop situation. With Herbie, I ain't
6 had a altercation with him, so ---

7 Q: Okay. Let's talk about the laptop and just walk the Jury
8 through that, how that came about?

9 A: Well, I do music and stuff, so a friend message me on
10 said he had a laptop he needed to sell so I -- so since I had
11 sell a laptop and I sold the Xbox and the PlayStation and I
12 kept the laptop to do music. And then one day me and Monty
13 decided to pawn it. So, I asked my mom to take us to the pawn
14 shop, pawned it and then we took him to work. During the time
15 period if I want to go back and get it out so I could start my
16 music back But some stuff happened with Monty and he was
17 nowhere in sight at the time, so, I mean, I get ---

18 Q: Let me just stop you right there. You said some stuff
19 happened to Monty; what happened to Monty?

20 A: He got shot.

21 Q: Did something else happen to Monty in reference to the
22 laptop?

23 A: Yeah, that's what I was trying to finish.

24 Q: Okay.

25 A: But he got shot so, I mean, he wasn't around for a minute

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1 but I guess during the time that he couldn't be able to be
2 around to go get it back out, then the police found out and --
3 and he got arrested.

4 Q: All right. When you, let me just ask you real quick.
5 When you went to the Money Man Pawn, did you wait outside?

6 A: No, sir.

7 Q: You went inside?

8 A: Yes, sir.

9 Q: Did your mom go inside, too?

10 A: Yes, sir, her and my little sisters went to look at some
11 games or something.

12 Q: All right. How much money did you get for the pawn?

13 A: We got a hundred dollars for it, I guess ---

14 Q: And the deal was y'all were gonna split it?

15 A: Yes, sir.

16 Q: So you split it with him; you gave him his half?

17 A: He gave me like probably \$30.

18 Q: All right. So he got arrested for the laptop. Did you
19 talk to him after he got out of jail?

20 A: I saw him in the section of White Oak Drive and
21 Evergreen.

22 Q: Can you mark White Oak and Evergreen on that map; mark
23 them a little bit bigger, I can barely see it.

24 A: (Witness complies.)

25 Q: Okay. So that's also in the bottom of Ardmore?

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1 A: Yes, sir.

2 Q: All right. About what time did you see him there, I mean

3 what time of the year was it; do you recall?

4 A: Close to Thanksgiving.

5 Q: Okay. Around Thanksgiving?

6 A: (Indicates affirmatively.)

7 Q: All right. What did Monty say to you?

8 A: He had want \$75 because he had to get ---

9 Q: So you gave him \$75, right?

10 A: No.

11 Q: What did you do?

12 A: I tell him no, I mean, I laughed at him.

13 Q: You laughed at him. All right. Did you see Monty again

14 after that encounter?

15 A: Yeah, I saw him like probably the beginning of December

16 inside the Hole.

17 Q: Okay. At the beginning of December you saw him in the

18 Hole. Go ahead and mark that again where the Hole is. All

19 right. Tell the Jury about that encounter.

20 A: I can mark it as I talk?

21 Q: Yeah, sure.

22 A: All right. I was with my little cousin and we was over

23 here on this side off of Cashew, but it's a cut through Cashew

24 to go to the Hole. So, we had walked through the Hole. And

25 Herbie and them was over there in the car, just minding they

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1 business and Monty came up Evergreen to go to the Hole and me
2 and Sequan (spelled phonetically) was walking towards
3 Evergreen and he was like, you still walking the streets, if I
4 see you again I'm gonna lay you out. And I just laughed, I
5 ain't even -- if I see you again, I'm gonna lay you out.

6 Q: I see you got him to lay you out?

7 A: Yeah.

8 Q: And you said Herbie and them were in the car. Who was
9 Herbie in the car with?

10 A: This girl -- RG (spelled phonetically)-- and that's all I
11 saw right there.

12 Q: Okay. So what was Herbie doing while that was going on?

13 A: I mean, he didn't know what was going on because he
14 didn't had talk to Monty until after they left and Monty ride
15 home. He just was sitting in his car like he always do.

16 Q: Okay. Let's go through December the 18th, the day of the
17 shooting. Tell the Jury where you woke up that day?

18 A: At my house.

19 Q: All right. Just walk the jury through your day leading
20 up to the shooting?

21 A: All right. Me and my momma had some altercations so she
22 doesn't want me stay at her house but we had worked everything
23' out that morning and we talk and then I called the Summit
24 Program because I had and had to go to alternative school. So
25 -- but I may go the Summit program but I didn't want to go

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1 back to school but something told me I wanna just to -- so, I
2 called the Summit Program and I got accepted back in school.
3 I called and talked with them and I got job interview and I
4 talked for my mom a little while and she went to work and she
5 let me stay in the house because I didn't want to start school
6 that day until the next day and then I did my daily routine,
7 like I stayed in the house until around 2 o'clock and I walked
8 to my girlfriend bus stop and let me see if I can -- I walked
9 to my girlfriend's bus stop.

10 Q: At some point do you get back to your house with your
11 girlfriend?

12 A: Yeah. I walked to her bus stop and we went to her house
13 and dropped her stuff off and then we walked back to my house.
14 Well, first we walked to her house and then we walked back to
15 my house and we stayed outside and we was chilling and stuff.
16 And then my mom came home and she went in the house and then
17 she was about to leave so I went to talk with her for a little
18 while and then I went back under the carport and watched a
19 movie with my girlfriend. And then my sister came home around
20 4:45 and probably like a couple of minutes after that I had
21 heard gunshots and then that's when I was hit.

22 Q: All right. Let me stop you right there. So you were
23 sitting in the carport with your girlfriend -- who is your
24 girlfriend again?

25 A: Mya Singleton.

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1 Q: Where does she live now?

2 A: She lives in Chicago now.

3 Q: Okay. So, while you were sitting in the carport with
4 your girlfriend, your mother was also in the carport listening
5 to music?

6 A: Yes, sir.

7 Q: At that time, did you receive a message from Moe Boy
8 Herb?

9 A: No, I received messages from that page that morning -- I
10 skipped that part.

11 Q: Okay.

12 A: But, yeah, back to the morning part of it.

13 Q: So -- go ahead.

14 A: I received a message, I forgot what it said, but I
15 received a message from him and so I texted back and then ---

16 Q: We'll get into that. So was it uncommon for you to
17 receive messages from Moe Boy Herb?

18 A: Yeah, well, it was kind of common to receive messages
19 like that Moe Boy Herb.

20 Q: Okay. I'm showing you what's been marked as State's
21 Exhibit Fifteen. Can you take a look at that? It's already
22 been marked and admitted into evidence. Is that an exhibit
23 showing those messages?

24 A: Yes, sir.

25 Q: All right. I'll take it. Let's look at some of those

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1 messages. Circling the first one, November the 6th of 2014.
2 Is that you BosLife Mazerati?
3 A: Yes, sir.
4 Q: Okay. Can you read that okay?
5 A: Yes, sir.
6 Q: All right. So what are you saying here?
7 A: I ask him where he at.
8 Q: All right. Try, if you could, just read it, you know, in
9 your own words, okay, or read it as it's showing on here and
10 after that, WYA; what is that?
11 A: Where you at?
12 Q: Okay. And then after that on November the 7th, what does
13 that say?
14 A: I asked him where he was going at.
15 Q: Okay. Now on December the 1st, read that message as you
16 typed it?
17 A: I say, Damn, why you telling people I say fuck Ardmore
18 and like I don't be having y'all on my mind.
19 Q: WTF, I don't be having y'all on my mind, right?
20 A: Yeah, but ---
21 Q: Okay. Now that was on December the 1st?
22 A: Yes, sir.
23 Q: So you Facebook message Herbie Singleton that message?
24 A: Yes, sir.
25 Q: Okay. On December 1st, you get a response back; is that

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- 1 correct?
- 2 A: Yes, sir.
- 3 Q: Can you make sense out of that?
- 4 A: Yeah.
- 5 Q: Okay. What's he saying?
- 6 A: Bra, you know how I rockin, you not on my mind, so don't
- 7 start this, that nigga been ---
- 8 Q: Okay. Looks like you might have a little problem
- 9 understanding that cause you responded back, what?
- 10 A: Yeah, I mean, yeah, back then I didn't understand it but
- 11 I just read it just now and I understand it.
- 12 Q: Oh, you just got it just now. Okay. So right after
- 13 that, Moe Boy Herb sends you another message. What is he
- 14 saying there?
- 15 A: Fuck you, you not on my mind.
- 16 Q: Okay. I'm a little confused about that by your response.
- 17 MR. SMILEY: Objection, Your Honor, I'd ask the
- 18 commentary be removed.
- 19 THE COURT: All right. Strike the last commentary.
- 20 BY MR. OSBORNE:
- 21 Q: Are you confused by his response?
- 22 A: No, I'm not confused, I did the question wrong because I
- 23 didn't -- I just -- I wouldn't -- I' trying to say ---
- 24 Q: I understand.
- 25 A: That wasn't even -- you can see how I'm saying that ---

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DONTAVIHA PATTERSON - DIRECT BY OSBORNE

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1 Q: Because as far as you knew, you two were still tight?

2 A: Yeah, we like brothers.

3 Q: Did that change when you read the message on December the
4 14th?

5 MS. HENSLEY: Objection, Your Honor. We haven't spoken
6 about the message on December 14th.

7 THE COURT: All right. Overruled. Go ahead.

8 BY MR. OSBORNE:

9 Q: What's the message on December 14th from Moe Boy Herb?

10 A: Pussy.

11 Q: Did your opinion about your relationship with Herbie
12 Singleton change when you read that message?

13 A: No, I just was confused about what was going on.

14 Q: Right. Because how do you respond to this on the same
15 day?

16 A: What?

17 Q: And how does he respond to that?

18 A: Pussy boy.

19 Q: Okay. How do you respond to that?

20 A: By telling him to suck my dick and call him a flam and
21 tell him he a church boy and I tell him to get out my inbox.

22 Q: Okay. A couple of days later, Herbie gets back with you;
23 what does he say?

24 A: Don't let me catch you slapping a bitch boy.

25 Q: You think he meant slipping?

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1 A: Yeah.

2 Q: All right. What does that mean; don't let me catch you
3 slipping?

4 MS. HENSLEY: Objection, Your Honor, speculation?

5 THE COURT: Overruled.

6 A: Go ahead? I guess on -- don't let me catch you walking
7 around with no scrap, I guess.

8 BY MR. OSBORNE:

9 Q: Without a scrap?

10 A: Yeah, I guess so.

11 Q: What's a scrap?

12 A: I don't know.

13 Q: All right. Now, I want you to just we'll stop the
14 messages right there for one quick second. Well you know,
15 we'll just keep going. All right. So he tells you he
16 doesn't want -- don't be slipping out there. All right? On
17 the same day, how do you respond to that?

18 A: I laugh and then I said you know where I be at. You know
19 where I live at. That's how I always talk to him. I'm from
20 downtown and ---

21 Q: All right. Looks like seven minutes later, how does he
22 respond?

23 A: He said get the fuck out of here.

24 Q: One minute later, how do you respond?

25 A: I say get out my inbox. I said get out my in box, y'all

1 don't be on mind, y'all not even worth wasting my time with it
2 and I'm not worrying about y'all.

3 Q: Y'all, you say I'm not worried about y'all?

4 A: Yeah.

5 Q: Who are you talking about?

6 A: Ardmore.

7 Q: Because you're from downtown?

8 A: Yes, sir.

9 Q: All right. Less than a minute later, how does he
10 respond?

11 A: Meet me on the track, man.

12 Q: On State's Exhibit One, mark the track?

13 A: (Witness complies.) Like that.

14 Q: Go back to Fifteen. After he tells you to meet him on
15 the track, how do you respond?

16 A: I say watching my sister. Y'all know where I live at.
17 And I tell them and about how they some clowns, and I ask him
18 did they say they gonna take my life, roll Friday. I gonna be
19 on Balsam after I fight and I tell them I'm gonna bring my
20 homeboys out the Forest.

21 Q: I'm not gonna let y'all take my life?

22 A: Yeah.

23 Q: How does he respond to that?

24 A: Bet.

25 Q: What times that mean?

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- 1 A: Like 10-4, right, say no more.
- 2 Q: All right. On the next message, what's the date on that?
- 3 A: December the 18th.
- 4 Q: The day of the shooting?
- 5 A: Yeah.
- 6 Q: What's the time on that?
- 7 A: 11:50 in the morning.
- 8 Q: Okay. So, what do you message him on that day?
- 9 A: Heard you were looking for real nigga, you know where I
- 10 am on Balsam Street.
- 11 Q: Okay. What did you mean by that?
- 12 A: I heard you were looking for me, I've been in your,
- 13 whatever, territory, I guess.
- 14 Q: And you heard he was looking for you?
- 15 A: Yeah.
- 16 Q: I'm showing the Jury State's Exhibit One. Show the Jury
- 17 where Balsam Street is on that -- Fifteen. Okay. That
- 18 message was at 11:50. When was the next message, what's the
- 19 time on the next message?
- 20 A: 12:32.
- 21 Q: Okay. So about forty minutes later, you get a message
- 22 from Moe Boy Herb. What does that message say?
- 23 A: Listen, that been Monty, so slide out my inbox, cause you
- 24 already know I roll and now this the person who page it is.
- 25 Q: How do you respond to that?

1 A: I say, Oh, I thought that been you. Well, everything
2 good, my bad, he should've state his name cause you know you
3 my brother. I thought you flipping but yeah, since if that
4 ain't been you, everything cool in my books.

5 Q: And what time was that message?

6 A: 12:53.

7 Q: Okay. And a few hours later you get shot?

8 A: Yes, sir.

9 Q: All right. When -- on the day of the shooting when you
10 -- well, you know what, let me back up real quick. On
11 December the 15th, you made efforts to try to get a scrap,
12 didn't you?

13 A: Yes, sir.

14 Q: You may extraordinary efforts, didn't you?

15 A: Yes, sir.

16 Q: You were contacting multiple people ---

17 A: Yes, sir.

18 Q: --- isn't that right?

19 A: Yes, sir.

20 Q: Starting on the 15th?

21 A: Yes, sir.

22 Q: Going on to a couple of days later?

23 A: Yes, sir.

24 Q: All right. So, back to the shooting, you were
25 transported to the hospital?

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- 1 A: Yes, sir.
- 2 Q: Okay. And tell the Jury what kind of injuries you
3 sustained?
- 4 A: A gun wound.
- 5 Q: A gunshot wound?
- 6 A: Yes, sir.
- 7 Q: Did you happen to see the vehicle leaving the area after
8 you were shot?
- 9 A: Yes, sir.
- 10 Q: And what vehicle was it?
- 11 A: A gray vehicle.
- 12 Q: And you've seen that vehicle before?
- 13 A: Yes, sir.
- 14 Q: Whose vehicle was it?
- 15 A: Herbie's.
- 16 Q: But you don't -- I mean, in all fairness, you couldn't
17 see who was in the car; is that right?
- 18 A: No, sir.
- 19 Q: Okay. Did they remove some bullet fragments from you?
- 20 A: On my first surgery.
- 21 Q: Not in your first surgery?
- 22 A: On my first surgery.
- 23 Q: Okay. Did you have to go back to the hospital?
- 24 A: Yes, sir, October 2015.
- 25 Q: And what did they do when you were at the hospital then?

1 A: Another surgery. I think they removed a bullet, I don't
2 know.

3 MR. OSBORNE: I beg the Court's indulgence?

4 THE COURT: All right.

5 MR. OSBORNE: No further questions.

6 THE COURT: All right. Cross examination?

7 MS. HENSLEY: Thank you, Your Honor. May it please the
8 Court?

9 CROSS EXAMINATION OF DONTAVIHA PATTERSON BY MS. HENSLEY:

10 Q: Good morning, Dontaviha. I'm Laree Hensley. I'm
11 Herbie's lawyer. How are you today?

12 A: All right, good.

13 Q: I just have a few questions for you. You and Mr. Osborne
14 talked a little bit about the burglary you'd been arrested
15 for. That happened in North Charleston, correct?

16 A: Yes, ma'am.

17 Q: And in that burglary, you and a friend got caught in a
18 house where y'all were stealing some property, right?

19 MR. OSBORNE: Objection, Your Honor, to the specifics of
20 the burglary.

21 THE COURT: Overruled. I'll allow it. Go ahead.

22 BY MS. HENSLEY:

23 Q: Is that right?

24 A: Yes, ma'am.

25 Q: And that was on November 9th, 2015, right?

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BY THE COURT

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1 A: Yes, ma'am.

2 Q: One of the things y'all were stealing that day was a
3 laptop, wasn't it?

4 A: To be honest ---

5 THE COURT: Hold for a second. Let me see the attorneys
6 for a second.

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

9 BY THE COURT:

10 THE COURT: All right. Ladies and gentlemen, we've got a
11 matter of law that we need to take up. So I'm gonna have to
12 excuse you back to the jury room. Please leave your pads in
13 the jury box and I'll tell you why we excuse you to the jury
14 room. It's not that we're hiding anything from you or keeping
15 anything from you, but as I told you in your opening -- in my
16 opening charges to you, you and you alone decide the facts of
17 this case and you decide those facts based exclusively on the
18 testimony and evidence of the witnesses. Now I decide the law
19 to be applied in this case. Well, sometimes when it -- when I
20 discuss the law with the attorneys, which we have to at this
21 point in time, it requires me to reference factual issues and
22 it requires the attorneys to reference factual issues. Well,
23 what we say is not evidence. So we don't want you to be
24 influenced by anything that I might say or that the attorneys
25 might say when we discuss the law to be applied to influence

BY THE COURT

1 your decision on the findings of the facts and that's why we
2 excuse back to the jury room. So it'll take just a few
3 minutes. If you'd please leave your pads in the jury box,
4 don't discuss the case even among yourselves.

5 (REPORTER'S NOTE: Jury exits courtroom. 10:30 A.M. The
6 following takes place outside the presence of the Jury.)

7 THE COURT: All right. I just thought I needed to advise
8 this witness of his rights.

9 Sir, your name, again?

10 MR. PATTERSON: Dontaviha Patterson.

11 THE COURT: All right. Mr. Patterson, you've been called
12 as a witness to testify in this case. Now, I now advise you
13 as a witness, you have the right to invoke the protections
14 given to you by the Fifth Amendment to the United States
15 Constitution. This amendment provides in part that no person
16 shall be compelled in any criminal case to be a witness
17 against himself. This provision means that you cannot be
18 required to -- that you cannot be required to be a witness
19 against yourself. This is a personal right which can only be
20 claimed by you. You have the right to refuse to answer any
21 question asked of you which you think gives you reasonable
22 cause to believe that the answer to the question, if given,
23 might tend to incriminate you.

24 MR. PATTERSON: Yes, sir.

25 THE COURT: If you wish to exercise this right when a

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BY THE COURT

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1 question is asked, you will state to the Court that you refuse
2 to answer the question because it may tend to incriminate you.
3 Do you understand that?

4 MR. PATTERSON: Yes, sir.

5 THE COURT: All right. I also advise you that you're
6 final decision maker on this issue of whether an answer to a
7 question will violate that protection. However, if you want
8 to assert your right, you tell me that you want to assert your
9 right to remain silent and then I will make a decision as to
10 whether or not you need to answer the question. Do you
11 understand that?

12 MR. PATTERSON: Yes, sir.

13 THE COURT: Do you have any questions you want to ask me
14 about that?

15 MR. PATTERSON: No, sir.

16 THE COURT: All right. Anything further the State wants
17 placed on the record in that regard?

18 MR. OSBORNE: No, Your Honor.

19 THE COURT: Anything further the Defense wants placed on
20 the record in that regard?

21 MS. HENSLEY: No, Your Honor.

22 THE COURT: Okay. All right.. Anything from the State
23 before we call the Jury in?

24 MR. OSBORNE: No, Your Honor.

25 THE COURT: Anything from the Defense before we call the

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1 Jury in?

2 MS. HENSLEY: No, Your Honor.

3 THE COURT: All right. Let's go ahead and bring the Jury
4 back in.

5 (REPORTER'S NOTE: Jury enters courtroom. 10:36 A.M.)

6 THE COURT: Ladies and gentlemen, welcome back. Please
7 make sure you have your own notepads and you do not have
8 anyone else's notepads.

9 Ms. Hensley, you can continue with your cross
10 examination.

11 MS. HENSLEY: Thank you, Your Honor.

12 BY MS. HENSLEY:

13 Q: Okay. I'm sorry, Dontaviha. We were talking about your
14 arrest from November the 9th, 2015.

15 A: Yes, ma'am.

16 Q: And in that arrest, one of the things that you were
17 accused of stealing in that burglary was a laptop, correct?

18 A: Yes, ma'am.

19 Q: Okay. Thank you. Now in December of 2014, you weren't
20 in school then, right?

21 A: I just had gotten back in school.

22 Q: Well, on December the 18th, 2014, you testified that you
23 had called to get accepted to Summit; is that right?

24 A: Yes, ma'am.

25 Q: And do you remember speaking with Sergeant -- with the

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- 1 detective at the hospital the night of the shooting?
- 2 A: Yes, ma'am.
- 3 Q: You remember telling him that you were going to get back
4 in Summit in January; do you remember that?
- 5 A: Yes, ma'am.
- 6 Q: So on December 18th, 2014, you weren't attending West
7 Ashley High School, right?
- 8 A: No, ma'am, I wasn't attending West Ashley since like the
9 week before Thanksgiving.
- 10 Q: Okay. Thank you. Now I just want to talk a little bit
11 about this Bubba fellow, okay?
- 12 A: Yes, ma'am.
- 13 Q: So in October of 2014, you met with Bubba, Bubba came by
14 your house; is that right?
- 15 A: I don't know the actual date, I just know it was in the
16 middle of October.
- 17 Q: In the middle of October. I'm not trying to pin you down
18 to a date. I'm really not trying to trick you, okay?
- 19 A: He don't know where I live at. He just called me and we
20 met up at his house; that's how it got started.
- 21 Q: And do you know Bubba's last name?
- 22 A: No, I don't even know his first name.
- 23 Q: Just Bubba is something that they call him?
- 24 A: Yes, ma'am.
- 25 Q: And Bubba gave you a laptop?

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1 A: Yes, ma'am.

2 Q: An Xbox?

3 A: Yes, ma'am.

4 Q: And a PlayStation?

5 A: Yes, ma'am.

6 Q: And you were gonna sell those and split the money with
7 Bubba? What was the reason Bubba gave them to you?

8 A: Yeah, he wanted me to sell them, I guess, that's what he
9 said, and split the money.

10 Q: Okay. And did you give Bubba any money?

11 A: Yeah, I sold the Xbox and the PlayStation.

12 Q: And you gave him the money for it?

13 A: Yes, ma'am. I mean, to be honest, I didn't split the
14 money. I gave him the money because I kept the laptop.

15 MS. HENSLEY: I beg the Court's indulgence?

16 THE COURT: All right.

17 BY MS. HENSLEY:

18 Q: You remember testifying in this courtroom on July the
19 20th of this year, just last month?

20 A: Yes, ma'am.

21 Q: And do you remember at that time when you were asked did
22 you give the money to Bubba, the half of it, you testified no,
23 I didn't see Bubba no more?

24 A: No, ma'am.

25 Q: You don't remember testifying to that? And if you did

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- 1 testify to that, that would've been -- you would've been
2 mistaken?
- 3 A: Probably. I mean, that was 2014.
- 4 Q: I understand it was a long time ago. Okay. So in
5 December of 2014, that's when you began having a problem with
6 Monty; is that correct?
- 7 A: I don't remember.
- 8 Q: And that was because Monty had gotten locked up?
- 9 A: Yes, ma'am.
- 10 Q: Because he had pawned the laptop, correct?
- 11 A: Yes, ma'am.
- 12 Q: And I just want to talk a little bit about that. So you
13 and Monty went together to pawn the laptop, correct?
- 14 A: Yes, ma'am.
- 15 Q: And was that because Monty needed some money?
- 16 A: That's what he said, so I was like we can pawn it and
17 split the money.
- 18 Q: Okay. And so you couldn't pawn it because you're not old
19 enough, right?
- 20 A: Yes, ma'am.
- 21 Q: You weren't then?
- 22 A: I was only seventeen.
- 23 Q: And so you and your mom and your sister and Monty went to
24 the pawn shop, correct?
- 25 A: Yes, ma'am.

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- 1 Q: Okay. And Monty signed the slip to get the money, right?
- 2 A: Yes, ma'am.
- 3 Q: And you took part of the money and Monty got \$30, right?
- 4 A: Yes, ma'am.
- 5 Q: Now after Monty got locked up, he wasn't very happy about
- 6 that, right?
- 7 A: No, ma'am.
- 8 Q: And so he told you he wanted \$75, right?
- 9 A: Yes, ma'am.
- 10 Q: But you told him you weren't gonna give him any money,
- 11 right?
- 12 A: Yes, ma'am.
- 13 Q: And that made him angry, right?
- 14 A: Yes, ma'am.
- 15 Q: And you knew that, that he was angry, right?
- 16 A: Yes, ma'am.
- 17 Q: And as a matter of fact, you had seen him and he had
- 18 threatened you, right?
- 19 A: Yes, ma'am.
- 20 Q: And that happened on -- do you remember the day that
- 21 happened?
- 22 A: No, ma'am.
- 23 Q: Do you remember talking to the police officer in the
- 24 hospital about that?
- 25 A: I don't remember talking to a police officer.

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1 Q: Do you remember the police officer in the hospital asking
2 you who would want to harm you and you saying Monty?

3 A: Yeah, I remember that.

4 Q: And do you remember telling him that the Saturday before
5 that -- the Saturday before the shooting, Monty had threatened
6 you?

7 A: Yes, ma'am.

8 Q: And that would've been -- the shooting was on a Thursday,
9 the Saturday before would have been ---

10 A: I got shot on Wednesday.

11 Q: You got shot on a Wednesday on December the 18th?

12 A: Yes, ma'am.

13 Q: The Saturday before would've been December 12 or 13?

14 A: Around that time.

15 Q: Okay. I beg the Court's indulgence?

16 THE COURT: All right.

17 Q: And I'm just gonna show you what's already been marked
18 and I believe admitted, State's Exhibit Forty-four. I beg the
19 Court's indulgence?

20 And I don't know if you've seen this before ---

21 A: Yes, ma'am.

22 Q: --- some Facebook messages. And this is a Facebook
23 message where you're trying to buy a gun, correct?

24 A: Yes, ma'am.

25 Q: And that's on, let's see, on December the 15th, 2014; is

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1 that right?

2 A: Yes, ma'am.

3 Q: And let me just put this up here. And that's you, right,
4 BosLife Mazerati Entertainment Group; is that right?

5 A: Yes, ma'am.

6 Q: And you're asking Jamez DeHotBoi Kelly does he know
7 somebody selling a scrap?

8 A: Yes, ma'am.

9 Q: And scrap, that means gun, right?

10 A: Yes, ma'am.

11 Q: And that was on December the 15th, right?

12 A: Yes, ma'am.

13 Q: And you said you needed one ASAP?

14 A: Yes, ma'am.

15 Q: And that's because Monty had threatened to lay you out,
16 correct?

17 A: Yes, ma'am.

18 Q: And you were here in this courtroom when Monty pled
19 guilty to shooting you, correct?

20 A: Yes, ma'am.

21 Q: And he also pled guilty to possessing -- possession of a
22 firearm during the commission of a violent crime, correct?

23 A: Yes, ma'am.

24 Q: Now, I just want to talk for a minute about these

25 Facebook messages that came from Moe Boy Herb's page. And

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1 we've already been through them all and I don't want to go
2 back through them all, but is it fair to say that when you
3 started receiving these messages from Moe Boy Herb calling you
4 names and saying don't let me catch you slipping, that that
5 was confusing to you?

6 A: To be honest, it was confusing, but Monty just had said
7 he said and it was the next day but probably two or three days
8 later so, yeah, because like, I don't see what Herbie had to
9 do with it because we never had no altercations and that day I
10 was going in the Hole and Monty had threatened me, I was going
11 to talk to Herbie, but I saw Monty and I knew we had had an
12 altercation so I had left, so I mean it was confusing -- Monty
13 blocked me off his page, so ---

14 Q: The only way Monty could contact you then would be from
15 somebody else's page, correct?

16 A: Yes, ma'am.

17 Q: So, when you got these last two messages on December the
18 18th that kind of cleared up that confusion, correct?

19 A: Yeah, that last one was.

20 Q: And that was the message from Herbie saying that was
21 Monty?

22 A: Yes, ma'am.

23 Q: Thank you. I beg the Court's indulgence?

24 THE COURT: All right.

25 Q: I'm sorry, just a couple more things, Dontaviha?

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1 A: Yes, ma'am.

2 Q: When you got to the hospital and the detective met with
3 you, that was on the night of December 18th, correct?

4 A: Yes, ma'am.

5 Q: And at that time, you told the detective that Monty was
6 the person that might want to hurt you, right?

7 A: Yes, ma'am.

8 Q: And you also told the detective where Monty lived; do you
9 remember that?

10 A: I don't remember.

11 Q: Telling him that -- you don't remember telling the
12 detective that -- the directions to his house, you turn on
13 Balsam Street and make that first right on Locust and go
14 straight down and he lives in that apartment, a gray
15 apartment-type thing?

16 A: I don't remember that.

17 Q: Well, you told them you didn't know Monty's last name
18 either, did you?

19 A: I didn't know his first name. I didn't know his name --
20 I knew him as Monty.

21 Q: But you gave them -- the police the information on how to
22 find him because you knew he was the last person shot on
23 [REDACTED] Street, right?

24 A: Yes, ma'am.

25 Q: And you told the police that then?

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1 A: I think so.

2 Q: And do you remember when the police were asking you on
3 December the 18th, on the night of the shooting, about Herbie,
4 do you remember telling the police officer Herbie is your
5 brother, that's your home boy?

6 A: Yes, ma'am.

7 Q: I think that's all the questions I have. Thank you,
8 Dontaviha.

9 A: Yes, ma'am.

10 THE COURT: All right. Redirect?

11 MR. OSBORNE: Briefly, Your Honor.

12 REDIRECT EXAMINATION OF DONTAVIHA PATTERSON BY MR. OSBORNE:

13 Q: So let's just address that one issue that you just talked
14 about. Monty blocked you?

15 A: Yes, ma'am, I mean, yes, sir.

16 Q: You didn't block Monty?

17 A: No, sir.

18 Q: I'm not super familiar with Facebook, but if someone
19 blocks you, they can unblock you, correct?

20 A: Yes, sir.

21 Q: Okay. So, he could still communicate with you; all he
22 had to do was unblock you, right?

23 A: Yes, sir.

24 Q: Okay. I just want to direct your attention briefly to
25 the last -- the message before the last and this -- read that

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1 message again from Moe Boy Herb?

2 A: He said, Listen, that was -- that was Monty, so slide out
3 my inbox cause you know how I rock and now this the person who
4 page it is.

5 Q: Okay. So he's saying that's Monty, wasn't me?

6 A: Yes, sir.

7 Q: Once you received that, is it fair to say that you
8 thought everything between you and Herbie were cool -- was
9 cool?

10 A: Yeah, because like I said we never had a altercation at
11 all.

12 Q: And that message right there reaffirmed that; is that
13 correct?

14 A: Yes, sir.

15 Q: And you received that message just an hour or two before
16 the shooting; isn't that right?

17 A: Four hours and fifteen minutes or four hours and a -- a
18 couple of hours.

19 Q: No further questions.

20 THE COURT: All right. You may step down.

21 State can call your next witness.

22 MR. OSBORNE: The State calls Kevin Corley.

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

25 BY THE COURT:

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BY THE COURT

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1 THE COURT: Ladies and gentlemen, the attorneys tell me
2 it's a good time for us to go ahead and take a break. I know
3 we just excused you on a matter of law a little while ago, but
4 we've been out here discussing things so we're gonna take a
5 short break. Leave your notepads in the jury box. We'll take
6 about a ten or fifteen-minute break and then we'll be back in
7 just a minute. Don't discuss the case even among yourselves.
8 Thank you very much.

9 (REPORTER'S NOTE: Jury exits courtroom. 10:56 A.M. The
10 following takes place outside the presence of the Jury.)

11 THE COURT: All right. Let's go ahead and get the next
12 witness and who is that?

13 MR. OSBORNE: It's Kevin Corley.

14 THE COURT: All right. Let's go ahead and get Mr.
15 Corley. All right. We don't need the -- I'm just gonna
16 question him.

17 Sir, you can just stand right there. You're Kevin
18 Corley?

19 MR. CORLEY: Yes, sir.

20 THE COURT: All right. Mr. Corley and your attorney is
21 here?

22 MR. CORLEY: Yes, sir.

23 THE COURT: All right. And your name?

24 MR. KING: Jason King.

25 THE COURT: All right. And what are the charges pending

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1 against Mr. Corley?

2 MR. KING: I believe it's a burglary second.

3 MR. OSBORNE: It's a burglary first with our office and
4 also attempted murder. The attempted murder is from this
5 investigation and the burglary first is something separate.

6 THE COURT: All right. All right. Mr. Corley, you've
7 been called to testify as a witness in this case against Mr.
8 Singleton. However, because these charges are pending against
9 you, I now advise you that as a witness, you have the right to
10 invoke protections given to you by the Fifth Amendment to the
11 United States Constitution. That amendment provides in part
12 that no person shall be compelled in any criminal case to be a
13 witness against himself. This provision means that you cannot
14 be required to be a witness against yourself. This is a
15 personal right which can only be claimed by you. You have the
16 right to refuse to answer any question asked of you which you
17 think gives you reasonable cause to believe that the answer to
18 the question, if given, might tend to incriminate you. If you
19 wish to exercise this right, when the question is asked, you
20 will state to the Court that you refuse to answer the question
21 because the answer might incriminate you; do you understand
22 that?

23 MR. CORLEY: Yes, sir.

24 THE COURT: All right. Now I also advise you that you
25 are not the final decision maker. If you are asked a question

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1 during your testimony whether it be from the State or whether
2 it be from the Defense in cross examination and you think that
3 it will incriminate you and you choose not to answer it, then
4 you invoke your right. You tell me that you refuse to answer
5 it because you think it might incriminate you. I will then
6 make a decision as to whether or not you're required to answer
7 that question. Do you understand that?

8 MR. CORLEY: Yes, sir.

9 THE COURT: All right. Do you have any questions you
10 want to ask me?

11 MR. CORLEY: No, sir.

12 THE COURT: All right. I'm give you an opportunity --
13 we're getting ready to take a short break. So this will give
14 you a short opportunity to ask any questions of your lawyer,
15 if you have any questions you want to ask him. Okay? All
16 right.

17 Anything further the State wants placed on the record in
18 that regard?

19 MR. OSBORNE: No, Your Honor.

20 THE COURT: Anything further the Defense wants placed on
21 the record?

22 MR. SMILEY: No, Your Honor.

23 THE COURT: All right. Let's take about a ten or
24 fifteen-minute break then we'll come back and resume the
25 trial.

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1 (RECESS - 10:56 A.M.)

2 *****OFF THE RECORD*****

3 (On the Record - 11:15 A.M.)

4 THE COURT: All right. Anything from the State before we
5 bring the Jury in?

6 MR. OSBORNE: No, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. SMILEY: No, sir.

9 THE COURT: Let's go ahead and bring the Jury in.

10 (REPORTER'S NOTE: Jury enters courtroom. 11:17 A.M.)

11 BAILIFF: All Jurors present, Your Honor.

12 THE COURT: Thank you very much.

13 Ladies and gentlemen, welcome back. Please make sure you
14 have your own pads.

15 The State can call your next witness.

16 MR. OSBORNE: The State calls Kevin Corley.

17 THE COURT: All right.

18 KEVIN CORLEY, HAVING BEEN SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK: Thank you. Please have a seat. And if you could
21 state your first and last name and spell out your last name.

22 MR. CORLEY: Kevin Corley, C-O-R-L-E-Y.

23 DIRECT EXAMINATION OF KEVIN CORLEY BY MR. OSBORNE:

24 Q: All right. Kevin, how old are you?

25 A: Nineteen.

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- 1 Q: Are you married?
- 2 A: No, sir.
- 3 Q: Any kids?
- 4 A: No, sir.
- 5 Q: Do you work?
- 6 A: Yes, sir.
- 7 Q: Where do you work?
- 8 A: Dunkin Donuts by Tanger Outlet.
- 9 Q: Okay, by Tanger. How long have you worked there?
- 10 A: About a week.
- 11 Q: All right. Where did you work before that?
- 12 A: Food Lion on Savannah Highway.
- 13 Q: Okay. Did you go to high school?
- 14 A: Yes, sir.
- 15 Q: And where was that?
- 16 A: I went to Garrett and I transferred to West Ashley High.
- 17 Q: Okay. Did you graduate?
- 18 A: No, sir.
- 19 Q: Where are you from?
- 20 A: West Ashley.
- 21 Q: Did you go grow up here in the Charleston area?
- 22 A: Yes, sir.
- 23 Q: Okay. Do you go to school now?
- 24 A: No, sir.
- 25 Q: Okay. All right. Kevin, I just want to get this out of

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1 the way. You were charged in this case right here; isn't that
2 correct?

3 A: Yes, sir.

4 Q: What charge are you facing now?

5 A: Attempted murder.

6 Q: Now when you picked up this charge, you also had a
7 burglary charge; is that correct?

8 A: Yes, sir.

9 Q: And those, both of those charges are still pending?

10 A: Yes, sir.

11 Q: After you were arrested on April the 24th, you entered
12 into a proffer agreement with the State?

13 A: Yes, sir.

14 Q: With me?

15 A: Yes, sir.

16 Q: I think my investigator Ray Haupt was there?

17 A: Yes, sir.

18 Q: And he spoke to you?

19 A: Yes, sir.

20 Q: All right. Explain to the Jury, what is a proffer
21 agreement; what does that mean to you?

22 A: It's me basically telling the truth about what happened
23 and I can't really remember the ---

24 Q: Okay. So you -- well, let me ask you this, does it mean
25 that I'm not gonna prosecute you for attempted murder or

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1 burglary?
2 A: No, sir.
3 Q: Have I promised you anything in exchange for your
4 testimony?
5 A: No, sir.
6 Q: A reduction of the charge or anything like that?
7 A: No, sir.
8 Q: Has anyone told you what to say today?
9 A: No, sir.
10 Q: All right. But, let's be honest, I mean, you are hoping
11 that this cooperation will somehow help you in the future?
12 A: Yes, sir.
13 Q: Is that fair to say?
14 A: Yes, sir.
15 Q: All right. Let's go to December of 2014. Where did you
16 live back then?
17 A: I was staying at Ponderosa.
18 Q: Okay. For the jury members who are not familiar with the
19 Ponderosa, where is that subdivision?
20 A: On Savannah Highway, it's closer to Ravenel.
21 Q: Okay. Outside of 526, you have to pass 526 to get there?
22 A: Yes, sir.
23 Q: All right. Let's just go through your events that day.
24 Where did you wake up that morning?
25 A: I woke up in Ardmore.

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- 1 Q: Do you remember whose house you woke up at?
- 2 A: Lizzie's house.
- 3 Q: Lizzie?
- 4 A: Yes, sir.
- 5 Q: Okay. Who is she?
- 6 A: At that time she was my best friend's sister.
- 7 Q: Okay. And who is your best friend?
- 8 A: Elijah Green.
- 9 Q: One of the codefendants in this case?
- 10 A: Yes, sir.
- 11 Q: And where does Ms. Lizzie live?
- 12 A: Ardmore, in the Hole.
- 13 Q: In the Hole? I'm showing you what's been marked State's
- 14 Exhibit One, can you get your bearings on that map and point
- 15 out where Ms. Lizzie lived?
- 16 A: (Indicates on map.)
- 17 Q: Okay. So you woke up there that morning, did E.J. spend
- 18 the night there as well?
- 19 A: Yes, sir.
- 20 Q: Was it common for you to spend the night at her house?
- 21 A: Yes, sir.
- 22 Q: All right. Let's talk quickly about E.J. What's your
- 23 relationship with him?
- 24 A: That's my best friend.
- 25 Q: And how long have you known him?

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1 A: Elementary school.
2 Q: Where does he live?
3 A: Ponderosa.
4 Q: The same subdivision as you?
5 A: Yes, sir.
6 Q: All right. Did you go to school that day?
7 A: Yes, sir.
8 Q: How did you get there?
9 A: Herbie took us.
10 Q: Okay. Let's talk about Herbie, who is Herbie?
11 A: At that time, he was my best friend, too.
12 Q: Okay. What's his full name or do you know it?
13 A: Herbie Singleton.
14 Q: And how long have you known him?
15 A: Middle School.
16 Q: And where does Herbie live?
17 A: Ardmore.
18 Q: Do you see Herbie in the courtroom here today?
19 A: Yes, sir.
20 Q: Can you point him out and describe what he's wearing?
21 A: He's over there in the green collared shirt.
22 Q: Did Herbie have a nickname?
23 A: Herb.
24 Q: How about a Facebook message or his name on his Facebook
25 message account?

- 1 A: Moe Boy Herb.
- 2 Q: You said you were friends with both of them, were you
3 better friends with E.J. or better friends with Herbie?
- 4 A: I would say about the same.
- 5 Q: All right. So you went to school that day. What did you
6 do after you got out of school?
- 7 A: Well, in the middle of me going to school, I have --
8 cause my grandma's funeral was that day, so I got out early.
9 I left school to go to my grandma's funeral and then once I
10 got to my grandma's funeral, I had had my momma drop me off by
11 St. Andrews Gardens and walked to -- through the Forest.
- 12 Q: Okay. St. Andrews Gardens is on 61, I think?
- 13 A: Yes, sir.
- 14 Q: And you can walk from there to Ms. Lizzie's apartment?
- 15 A: Yes, sir.
- 16 Q: Is that where you were headed?
- 17 A: Yes, sir.
- 18 Q: What was your plans for that day?
- 19 A: Play basketball.
- 20 Q: With who?
- 21 A: Elijah.
- 22 Q: You and Elijah were planning to go play basketball?
- 23 A: Yes, sir.
- 24 Q: Who were you gonna play basketball with?
- 25 A: It was me and a friend -- like a lot of people ---

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- 1 Q: All right. Where were you gonna go play basketball?
- 2 A: Ashley Oaks.
- 3 Q: All right. Can you tell the Jury where that is?
- 4 A: It's on 61.
- 5 Q: Okay. Near 526, the overpass?
- 6 A: Yes, sir.
- 7 Q: How were you planning on getting there?
- 8 A: Herbie was gonna take us.
- 9 Q: Herbie was gonna take you and Elijah to go play
- 10 basketball?
- 11 A: Yes, sir.
- 12 Q: Okay. Herbie was gonna play basketball, too?
- 13 A: He doesn't usually play basketball.
- 14 Q: He doesn't play basketball?
- 15 A: Huh-uh (negative response).
- 16 Q: All right. When you arrived at Ms. Lizzie's house, who
- 17 all was there?
- 18 A: Elijah was already there. About the time I was walking
- 19 through the back door, Herbie walked through the front.
- 20 Q: Okay. So Elijah was already there and you were coming in
- 21 through the back door, Herbie is coming in through the front
- 22 door?
- 23 A: Yes, sir.
- 24 Q: Okay. So, was there already an agreement for Herbie to
- 25 drive y'all there or did you ask him to drive you there once

1 you got there?

2 A: We asked him.

3 Q: You asked him once he showed up?

4 A: Yes, sir.

5 Q: All right. So, who all is in Ms. Lizzie's house at that
6 time?

7 A: Me, Elijah, Herbie and Lizzie.

8 Q: All right. Tell the Jury what happened then?

9 A: We got to get gas money so Herbie could take us and we
10 got \$7 from Lizzie and Herbie said he would be right back. He
11 came back right about five or ten minutes later with the car
12 and we left.

13 Q: Okay. Let me just stop you right there then. All right.
14 So y'all are all sitting there, do you know if when you first
15 arrived at Lizzie's apartment whether Herbie's car was there
16 at that time?

17 A: I do not know because I came in through the back.

18 Q: You came in through the back door. Okay. So you said
19 but at that some point, Herbie then left?

20 A: Yes, sir.

21 Q: Left you and Elijah in Ms. Lizzie's apartment?

22 A: Yes, sir.

23 Q: And then he came back?

24 A: Yes, sir.

25 Q: All right. So, I think you said -- and he was gone for

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- 1 how long again?
- 2 A: Five, ten minutes.
- 3 Q: Okay. And now you said that you three leave ---
- 4 A: Yes, sir.
- 5 Q: --- is that right? All right. When you walk outside of
- 6 Lizzie's apartment, do you see Herbie's car?
- 7 A: Yes, sir.
- 8 Q: I'm gonna show you what's been marked as State's Exhibit
- 9 Sixteen; do you recognize that?
- 10 A: Yes, sir.
- 11 Q: What is that a photograph of?
- 12 A: Herbie's car.
- 13 Q: Okay. And when you walked outside, where was his car
- 14 parked? State's Exhibit One.
- 15 A: In front of Lizzie's house, Lizzie's apartment.
- 16 Q: All right. Do you y'all all three get in the car?
- 17 A: Yes, sir.
- 18 Q: What is the seating arrangement?
- 19 A: I'm in the passenger seat, Herbie is driving, Elijah is
- 20 sitting behind me.
- 21 Q: Who is sitting behind you?
- 22 A: Elijah.
- 23 Q: Okay, Elijah. Herbie is driving and you're in the front
- 24 passenger seat?
- 25 A: Yes, sir.

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- 1 Q: Elijah is behind you?
- 2 A: Yes, sir.
- 3 Q: Is anyone sitting behind Herbie at that point?
- 4 A: No, sir.
- 5 Q: I'm gonna ask you a couple of quick questions about the
- 6 car. Do you know someone by the name of Deonte Buggs?
- 7 A: Yes, sir.
- 8 Q: Who is Deonte Buggs?
- 9 A: A friend of ours.
- 10 Q: Okay. Has Deonte Buggs ever been in that car before to
- 11 your knowledge?
- 12 A: Yes, sir.
- 13 Q: Was he in the car that day?
- 14 A: No, sir.
- 15 Q: Colin Singleton or Colin Singleton; do you know that
- 16 individual?
- 17 A: Yes, sir.
- 18 Q: And who is he?
- 19 A: That's Herbie's brother.
- 20 Q: Okay. Herbie's brother?
- 21 A: Yes, sir.
- 22 Q: Have you ever seen him in the car before?
- 23 A: Yes, sir.
- 24 Q: Was he in the car that day?
- 25 A: No, sir.

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- 1 Q: Well, how about Antonio Barrett, do you know him?
- 2 A: Yes, sir.
- 3 Q: Was he in the car that day?
- 4 A: No, sir.
- 5 Q: All right. Let's go back to State's Exhibit One. Y'all
- 6 all get in the car. Do y'all drive away or did Herbie drive
- 7 away?
- 8 A: Yes, sir.
- 9 Q: Which way do you head?
- 10 A: We go -- we went this way, made that turn on Balsam.
- 11 Q: All right. Let's stop right there. Okay. That would be
- 12 -- is that Sequoia and Balsam?
- 13 A: Yes, sir.
- 14 Q: So you came down Sequoia, took a left on Balsam. Did
- 15 anything -- did you see anyone standing at Sequoia and Balsam?
- 16 A: Yes, sir.
- 17 Q: Who did you see?
- 18 A: Monty.
- 19 Q: Who is Monty?
- 20 A: A friend of ours at that time.
- 21 Q: Okay. What was Monty doing?
- 22 A: Flagging us down.
- 23 Q: Okay.
- 24 A: He was waving us down.
- 25 Q: What was he wearing?

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1 A: I don't know that, what he was wearing -- everything they
2 was wearing.

3 Q: Okay. Do you know Monty's full name?

4 A: All I know is his first name.

5 Q: Which is?

6 A: Lamont.

7 Q: Lamont?

8 A: Yes, sir.

9 Q: Okay. How long have you known him?

10 A: Since middle school.

11 Q: How did you meet him?

12 A: In middle school or -- just seen him in classes.

13 Q: Okay. Does he have a Facebook account?

14 A: Not that I can remember.

15 Q: Okay. All right. So Lamont flags down the car. Does --
16 Herbie's driving. Does he pull over?

17 A: Yes, sir.

18 Q: After he pulls over, does Lamont come up to the car?

19 A: Yes, sir.

20 Q: Which -- let me go back to State's Exhibit Sixteen again.
21 That's a four-door car?

22 A: Yes, sir.

23 Q: All right. Go back to State's Exhibit One. Is -- which
24 -- does he come up to the window of the car?

25 A: Yes, sir.

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- 1 Q: Which window does he come up to?
- 2 A: The driver's side.
- 3 Q: Did you hear him say anything when he came up?
- 4 A: He needed a ride to Acacia Street.
- 5 Q: Okay. Does anyone respond to that?
- 6 A: Herbie.
- 7 Q: All right. What does Monty say then?
- 8 A: Nothing then, he just gets in the car.
- 9 Q: Okay. So, he said he wanted to Acacia Street?
- 10 A: Yes, sir.
- 11 Q: Did he say where specifically he wanted to go to Acacia
- 12 Street?
- 13 A: He said he wanted to go holla at Mazerati.
- 14 Q: He wanted to go holler at Mazerati?
- 15 A: Yes, sir.
- 16 Q: Okay. Do you know who Mazerati is?
- 17 A: Yes, sir.
- 18 Q: Who is that?
- 19 A: Dontaviha.
- 20 Q: Were you friends with him?
- 21 A: Not really. I knew him, but I don't want to say that we
- 22 were friends.
- 23 Q: Okay. Do you know about where he lived?
- 24 A: Yes, sir.
- 25 Q: Where did he live?

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1 A: On Acacia Street.

2 Q: Okay. All right. So when Monty told Herbie that he
3 wanted to go to Mazerati's house, what did you think about
4 that?

5 A: It was kind of odd.

6 Q: Why would that have been odd?

7 A: Because Monty said that he never did like Mazerati around
8 that time, so it was kind of odd for him to say that about
9 that he didn't like.

10 Q: What about Herbie, what was his feelings about Mazerati?

11 MR. SMILEY: Objection, Your Honor.

12 THE COURT: Sustained.

13 BY MR. OSBORNE:

14 Q: Had Herbie ever told you anything about Mazerati?

15 A: Yes, sir.

16 Q: What did he say?

17 A: That he wanted his one.

18 Q: That he wanted his what?

19 A: One.

20 Q: He wanted his one?

21 A: Yes, sir.

22 Q: Like o-n-e, one, the number one?

23 A: No, sir. I guess he wanted to fight.

24 Q: That the Defendant wanted to fight Mazerati?

25 A: Yes, sir.

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- 1 Q: When did he tell you that?
- 2 A: Around Thanksgiving.
- 3 Q: Around Thanksgiving?
- 4 A: Uh-huh (affirmative response).
- 5 Q: Did you overhear the Defendant say anything else about
- 6 Mazerati?
- 7 A: He wanted to go see ---
- 8 Q: Why did he -- why did the Defendant say he wanted to
- 9 fight Mazerati?
- 10 MR. SMILEY: Objection, Your Honor.
- 11 THE COURT: Overruled. I'll allow it.
- 12 A: I can't really remember.
- 13 BY MR. OSBORNE:
- 14 Q: Okay. So that's what -- that's why you were surprised?
- 15 A: Yes, sir.
- 16 Q: That he would want to holler at him. Okay. So, what
- 17 did -- did Herbie agree to take him to Mazerati's house?
- 18 A: Yes, sir.
- 19 Q: All right. Did Lamont get in the car?
- 20 A: Yes, sir.
- 21 Q: Which seat did he get into?
- 22 A: He sat behind Herbie.
- 23 Q: Okay. Rear driver's side?
- 24 A: (Indicates affirmatively.)
- 25 Q: All right. So, which way did Herbie drive from there?

- 1 A: (Indicating.)
- 2 Q: Okay. You're turning right there. Do you know what
- 3 street that is?
- 4 A: White Oak.
- 5 Q: Okay. Where did he go from there?
- 6 A: There (indicating).
- 7 Q: All right. From there? All right. Let me just stop you
- 8 mid-path right here. While you were on the way to Mazerati's
- 9 house, what was the conversation like in the car?
- 10 A: I really wasn't paying attention because I was talking --
- 11 me and E.J. was having a conversation. But it was like they
- 12 just was talking about Mazerati.
- 13 Q: All right. So let me just talk to you about what were
- 14 you and E.J. talking about?
- 15 A: Playing basketball.
- 16 Q: Okay. You said they were talking about Mazerati, Herbie
- 17 and Monty?
- 18 A: Uh-huh (affirmative response).
- 19 Q: Okay. As best you can recall, what were they saying?
- 20 A: Just like Bra's a clown.
- 21 Q: Said what now?
- 22 A: Bra's a clown.
- 23 Q: Bra's a clown?
- 24 A: Uh-huh (affirmative response).
- 25 Q: Who said that?

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- 1 A: Monty.
- 2 Q: Did Herbie ever inquire as to why he wanted to go to
3 Mazerati's house?
- 4 A: No, sir.
- 5 Q: Never asked?
- 6 A: (Indicates negatively.)
- 7 THE COURT: You have to give a verbal response.
- 8 A: No, sir.
- 9 Q: Did anything seem peculiar to you or not about their
10 conversation?
- 11 A: Yes, sir.
- 12 Q: Why?
- 13 A: Because if we don't like somebody, why you going to that
14 person house?
- 15 Q: All right. Just keep going on the path. Which way do
16 y'all go from there or he -- Herbie drive from there?
- 17 A: This way (indicating).
- 18 Q: Are you sure you turned there or you think he kept going
19 straight?
- 20 A: (No response.)
- 21 Q: If you don't know, you don't know. That's okay?
- 22 A: I don't -- I know we turned but I don't know if we went
23 all the way down of halfway down and then turned.
- 24 Q: Okay. All right. So then what happened from there?
- 25 A: We rolled up in front of the house before Mazerati's

1 house and Monty was like that's not the house and so we pull
2 up in front of the other house, Mazerati's house, and that's
3 when we heard shots.

4 Q: Okay. So, Herbie stopped the car in front of a house
5 prior to the house in which the gunshots were fired; is that
6 right?

7 A: Yes, sir.

8 Q: All right. What happened then when he stopped the car?
9 Was there any conversation in the car?

10 A: No, sir.

11 Q: All right. So he stopped the car at the house prior to
12 that one and then you said, pull up to the next house?

13 A: Yes, sir.

14 Q: All right. How fast was the car going when he pulled up
15 to the next house?

16 A: Not real fast.

17 Q: Not real fast?

18 A: Huh-uh (negative response).

19 Q: All right. So you get up to the next house -- well, let
20 me ask you this. On the path over there was anyone giving
21 Herbie directions on which way to go?

22 A: No, sir.

23 Q: Was Monty tell him to turn here and turn there?

24 MR. SMILEY: Objection, Your Honor, asked and answered.

25 THE COURT: Sustained.

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1 BY MR. OSBORNE:

2 Q: No one was giving him directions?

3 MR. SMILEY: Objection. Asked and answered?

4 THE COURT: Sustained.

5 BY MR. OSBORNE:

6 Q: Was anyone giving him directions?

7 A: No, sir.

8 Q: Was Monty giving him directions?

9 A: No, sir.

10 MR. SMILEY: Objection.

11 THE COURT: Sustained; asked and answered.

12 BY MR. OSBORNE:

13 Q: All right. You said that you had stopped or Herbie had
14 stopped in front of the house and then went up to the next
15 house?

16 A: Yes, sir.

17 Q: When it gets up to the next one -- the car gets up to the
18 next house, then what happens?

19 A: Before the car even stopped moving, we heard -- I looked
20 back because Monty was moving so fast and when I looked back,
21 I saw a black revolver and then that's when I heard the first
22 shot.

23 Q: Okay. Something drew your attention?

24 A: Yes, sir.

25 Q: What was that again, you said it real soft?

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- 1 A: Monty was moving kind of fast.
- 2 Q: Okay. And then you turned around?
- 3 A: Yes, sir.
- 4 Q: And what did you see again?
- 5 A: I saw a black revolver.
- 6 Q: All right. What happened then?
- 7 A: I heard shots and I dropped my phone.
- 8 Q: How many shots did you hear?
- 9 A: Three.
- 10 Q: You said you dropped your phone?
- 11 A: Yes, sir.
- 12 Q: And that was after the first shot?
- 13 A: Yes, sir.
- 14 Q: Is that because -- did the first shot startle you?
- 15 A: Yes, sir.
- 16 Q: What was the Defendant's reaction to the first shot?
- 17 A: Eyes forward.
- 18 Q: Eyes forward?
- 19 A: Yes, sir.
- 20 Q: Did he appear startled?
- 21 A: I didn't really get a good look at him.
- 22 Q: All right. So after the first shot, was the car stopped
- 23 or moving?
- 24 A: It was -- it stopped.
- 25 Q: Tell the Jury the succession of the shots. Were they --

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- 1 demonstrate it. Was it fast, was it slow, was there a pause
2 in between?
- 3 A: It was pow, pow, pow.
- 4 Q: After the first shot, the car was stopped?
- 5 A: Yes, sir.
- 6 Q: How about after the second shot?
- 7 A: The car started moving.
- 8 Q: How about after the third?
- 9 A: The car was already moving.
- 10 Q: How fast was the car moving then?
- 11 A: I'd say about like average speed.
- 12 Q: So that third shot, and perhaps the second too, I guess,
13 were fired when the car was moving?
- 14 A: Yes, sir.
- 15 Q: All right. What happened then?
- 16 A: We got to the corner, Monty hopped out, got out of the
17 car and we went back to the Hole.
- 18 Q: All right. Go ahead and using State's Exhibit One and
19 demonstrate which way the car went after the shots.
- 20 A: (Indicating.)
- 21 Q: Okay. And where did Monty jump out of the car?
- 22 A: (Indicating.)
- 23 Q: And I think you're showing White Oak and Acacia?
- 24 A: Yes, sir.
- 25 Q: And then Herbie took a left there on White Oak?

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- 1 A: Yes, sir.
- 2 Q: Where did he go from there?
- 3 A: Went back to the Hole.
- 4 Q: Okay. Went up and took a left on Evergreen?
- 5 A: Yes, sir.
- 6 Q: What was the conversation in the car after Monty jumped
7 out?
- 8 A: There wasn't no conversation.
- 9 Q: Nobody said anything?
- 10 A: No, sir.
- 11 Q: All right. What happened after you got out to The Hole?
- 12 A: Everybody split up.
- 13 Q: Which way did you go?
- 14 A: I went this way. I went behind the Hole and I went right
15 there (indicating).
- 16 Q: Which way did Elijah Green go?
- 17 A: He went with me.
- 18 Q: He went with you?
- 19 A: Yes, sir.
- 20 Q: Which way did Herbie go?
- 21 A: This way (indicating).
- 22 Q: Okay. He left the car there?
- 23 A: Yes, sir.
- 24 Q: All right. And what happened after that from what you
25 saw?

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1 A: Nothing, we just sat there and talked then we finally
2 went to Lizzie's house.

3 Q: Okay. You say you talked. Where did you talk at?

4 A: Who, me and Elijah?

5 Q: Yes.

6 A: Sat right there by the ditch.

7 Q: On the ditch?

8 A: Yes, sir.

9 Q: Okay. So there's a ditch behind Lizzie's apartment?

10 A: Yes, sir.

11 Q: Did Monty give you that gun?

12 A: No, sir.

13 Q: While you were back there in that ditch, did you get rid
14 of that gun?

15 A: No, sir.

16 MR. OSBORNE: I beg the Court's indulgence?

17 THE COURT: All right.

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

19 THE COURT: Cross examination?

20 CROSS EXAMINATION OF KEVIN CORLEY BY MR. SMILEY:

21 Q: You ended up at the police station -- I'm sorry, I'm Jim
22 Smiley. I'm one of the lawyers representing Herbie. Okay?

23 A: Okay.

24 Q: You ended up at the police station that night, right?

25 A: Yes, sir. No, the next day.

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- 1 Q: The next day, okay. And you spoke with the detective the
2 next day, right?
- 3 A: Yes, sir.
- 4 Q: And at that point in time, you were telling them you
5 weren't in that car, right?
- 6 A: Yes, sir.
- 7 Q: You didn't want anything to do with car, did you?
- 8 A: No, sir.
- 9 Q: You were quite surprised by that whole event, right?
- 10 A: Yes, sir.
- 11 Q: And those police were telling you you could be in trouble
12 for just being in that car, weren't they?
- 13 A: Yes, sir.
- 14 Q: It was a pretty scary situation for you, right?
- 15 A: Yes, sir.
- 16 Q: All right. Did they come in and ask you about Monty?
- 17 A: About who?
- 18 Q: About Monty, did you know Monty when you were at the
19 police station on the 19th?
- 20 A: They did not ask me about Monty.
- 21 Q: Okay. Did they ask you about Antonio Barrett?
- 22 A: Yes, sir.
- 23 Q: Okay. And did you indicate that you were with Antonio
24 Barrett at all the day before?
- 25 A: No, sir.

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- 1 Q: So you told them you weren't with him?
- 2 A: Yes, sir.
- 3 Q: All right. Now let's spend a little time talking about
- 4 Ms. Lizzie's. You go there a good bit, right?
- 5 A: Yes, sir.
- 6 Q: Is Ms. Lizzie a sort of sister to E.J. right?
- 7 A: Yes, sir.
- 8 Q: And she's got an apartment in what y'all call the Hole?
- 9 A: Yes, sir.
- 10 Q: And she allows you and Elijah and whoever to come stay
- 11 there, right?
- 12 A: Yes, sir.
- 13 Q: Okay. She's got a couple of children, too, doesn't she?
- 14 A: Yes, sir.
- 15 Q: She's a pretty nice lady to y'all, right?
- 16 A: Yes, sir.
- 17 Q: If I understand your testimony correctly, the night
- 18 before all this happened, you stayed there, right?
- 19 A: Yes, sir.
- 20 Q: Now, Ms. Lizzie was there, of course, right?
- 21 A: Yes, sir.
- 22 Q: Two kids, right?
- 23 A: Yes, sir.
- 24 Q: And E.J. was there?
- 25 A: Yes, sir.

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- 1 Q: Do you recall if Herbie stayed there?
- 2 A: He was there but then he left.
- 3 Q: Because he lives right down the street, right?
- 4 A: Yes, sir.
- 5 Q: So he was in and out that night, right?
- 6 A: Yes.
- 7 Q: Okay. Now, Herbie is the guy with the car, right?
- 8 A: Yes, sir.
- 9 Q: Everybody gets in Herbie's car; is that fair to say?
- 10 A: Yes, sir.
- 11 Q: As Herbie's driving through that neighborhood or somebody
- 12 uses his car driving through that neighborhood all the time;
- 13 fair to say?
- 14 A: Yes, sir.
- 15 Q: So, it's not so much that he's a taxi, he's just the guy
- 16 with the car, right?
- 17 A: Yes, sir.
- 18 Q: And he has a habit of taking people where they need to
- 19 go, right?
- 20 A: Yes, sir.
- 21 Q: He might ask you for gas money, but if you need to go
- 22 somewhere, he'll take you, right?
- 23 A: Yes, sir.
- 24 Q: As a matter of fact, he took you and Elijah to school the
- 25 next day, the three of y'all went to school together, right?

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- 1 A: Yes, sir.
- 2 Q: And that was a different kind of school day for you,
3 right?
- 4 A: Yes, sir.
- 5 Q: Because you didn't stay the whole day at school?
- 6 A: Right.
- 7 Q: Because you had went downtown to Emmanuel where your
8 grandmama's funeral was being held, right?
- 9 A: Yes, sir.
- 10 Q: So, you left school and went down there, but you had
11 planned after the funeral to meet up back at Ms. Lizzie's,
12 right?
- 13 A: Yes, sir.
- 14 Q: Okay. So your momma had dropped you off somewhere close
15 by and you walked over to Ms. Lizzie's, right?
- 16 A: Yes, sir.
- 17 Q: And you got there somewhere around 3:00, 3:30, something
18 like that, sound right?
- 19 A: Yes, sir.
- 20 Q: And E.J. was already there, right?
- 21 A: Yes, sir.
- 22 Q: And Ms. Lizzie was there, right?
- 23 A: Yes, sir.
- 24 Q: Her two kids were there, right?
- 25 A: I didn't know if they were. They were probably upstairs.

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1 Q: Okay. You didn't see them?

2 A: No, sir.

3 Q: All right. Fair enough. And you and Herbie came at the
4 same time, right?

5 A: Yes, sir.

6 Q: Because you came in the back door. Did you come through
7 the cut this way and went in the back door?

8 A: Yes, sir.

9 Q: All right. Because that ditch that you've talked about
10 behind it, that leads to a cut, right?

11 A: Yes, sir.

12 Q: And everybody uses that when you're heading towards that
13 direction?

14 A: Yes, sir.

15 Q: All right. So, the three of you get to the house and the
16 plan is to go play basketball, right?

17 A: Yes, sir.

18 Q: And I think you testified you didn't think Herbie was
19 playing, but he was certainly gonna take you over there,
20 right?

21 A: Yes, sir.

22 Q: As a matter of fact, he's the one that got the basketball
23 for you from Ms. Lizzie, right?

24 A: Yes, sir.

25 Q: And I think at first y'all were having trouble getting

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1 gas money, right?

2 A: Uh-huh (affirmative response).

3 Q: Because he was calling his momma for gas money; do you
4 remember that?

5 A: I do not.

6 Q: Okay. That's fine. But finally, Ms. Lizzie agreed to
7 give him \$7 for gas money, right?

8 A: Yes, sir.

9 Q: Now when they -- I'm skipping around a little bit, but
10 I'll come back around. When they searched the car, they found
11 some of your stuff in Herbie's car but that's not unusual, is
12 it?

13 A: Right.

14 Q: As a matter of fact, I think they found your school ID in
15 it, didn't they?

16 A: Yes, sir.

17 Q: You're probably in that car just about every day of the
18 week, right?

19 A: Yes, sir.

20 Q: You and E.J. and Herbie, right?

21 A: Yes, sir.

22 Q: Okay. Do you remember changing clothes at Ms. Lizzie's?

23 A: Yes, sir.

24 Q: You got out of your church clothes and put on your or
25 maybe you were already out of them, but you put on basketball

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- 1 clothes. E.J. did the same, right?
- 2 A: Yes, sir.
- 3 Q: Do you remember Herbie changing, too?
- 4 A: No, sir.
- 5 Q: All right. Do you remember that he didn't change or you
- 6 just don't remember?
- 7 A: I don't remember.
- 8 Q: Now, do you remember Ms. Lizzie leaving before y'all
- 9 left?
- 10 A: No, sir.
- 11 Q: You don't remember her running out to the store in
- 12 Herbie's car?
- 13 A: No, sir.
- 14 Q: All right. But you do remember Herbie leaving for about
- 15 five or ten minutes, right?
- 16 A: Yes, sir.
- 17 Q: As you said the night before, he lives right down the
- 18 street; he's in and out, right?
- 19 A: Yes, sir.
- 20 Q: Okay. He did not tell you where he was going or what he
- 21 was doing?
- 22 A: No, sir.
- 23 Q: Y'all weren't ready to leave yet?
- 24 A: No.
- 25 Q: All right. So you come in -- time to go play basketball,

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1 you got the 7 bucks, you've got the basketball, time to head
2 over to Ashley Oaks, right?
3 A: Yes, sir.
4 Q: Ashley Oaks is over there off of 61, right?
5 A: Yes, sir.
6 Q: Okay. So Ardmore is what, about four parallel streets,
7 two on each side, the bike path, they're all connected, right?
8 A: Yes, sir.
9 Q: So, there's a lot of different ways to get out of the
10 Hole to get over to White Oak, right?
11 A: Yes, sir.
12 Q: The general direction, you're heading away from Savannah
13 Highway, right?
14 A: Yes, sir.
15 Q: So when you come out of Ardmore, you hang a right, right?
16 A: Yes, sir.
17 Q: And I think that's Sequoia?
18 A: Yes, sir.
19 Q: And Sequoia dead ends, right?
20 A: Yes, sir.
21 Q: But before it does, there's Balsam Street, right?
22 A: Yes, sir.
23 Q: You're taking -- Herbie's taking a left and you're
24 sitting next to Herbie, Elijah is in the back seat and you see
25 Monty waving, flagging down the car, right?

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- 1 A: Yes, sir.
- 2 Q: That's not unusual because Herbie gives people rides all
3 the time, correct?
- 4 A: Yes, sir.
- 5 Q: Okay. And he came up, said hey, give me a lift over to
6 Acacia, right?
- 7 A: Yes, sir.
- 8 Q: And I believe you testified you heard something about
9 wanting to go to Mazerati's place?
- 10 A: Yes, sir.
- 11 Q: Okay. And so he hops in the only seat he can hop in, the
12 back seat, right?
- 13 A: Yes, sir.
- 14 Q: He wasn't hopping in your lap, was he?
- 15 A: Right.
- 16 Q: He didn't ask you to move over, did he?
- 17 A: Right.
- 18 Q: Thanks for the ride; he's popping in, right?
- 19 A: Yes, sir.
- 20 Q: You didn't pay much mind to that?
- 21 A: Right.
- 22 Q: You and Kevin were talking about basketball but all four
23 of you were right there in that space, right?
- 24 A: Yes, sir.
- 25 Q: And I believe the windows were down, right?

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- 1 A: Yes, sir.
- 2 Q: All four windows were down, weren't they?
- 3 A: I don't know if all four windows was down, but I know my
4 window was down.
- 5 Q: Your window was down, did you ever see Monty roll down
6 his window?
- 7 A: I don't know.
- 8 Q: Okay. You later saw Monty fire a gun, right?
- 9 A: Yes, sir.
- 10 Q: And the window was not down when he fired that gun, was
11 it?
- 12 A: The window was down.
- 13 Q: It was down, excuse me. You caught me messing up. The
14 window was down, right?
- 15 A: Yes, sir.
- 16 Q: All right. So he hops in, did you, before the shooting,
17 did you see Monty being strapped, having a gun?
- 18 A: Like before he started shooting?
- 19 Q: Yeah?
- 20 A: Before it started. When he was started reaching, it was
21 real fast and that's when I noticed that he had a gun.
- 22 Q: Right when it was happening?
- 23 A: Yes, sir.
- 24 Q: So, when He got in the car and you didn't go, oh crap,
25 Monty's getting in the car with a gun?

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- 1 A: Yes, sir.
- 2 Q: You didn't do that, did you?
- 3 A: No, sir.
- 4 Q: Nobody said, what you got a gun for or anything like
5 that?
- 6 A: No, sir.
- 7 Q: So it wasn't apparent he was armed was it?
- 8 THE COURT: You have to give a verbal response.
- 9 A: No, sir
- 10 Q: All right. And I'm getting a little fast. I will try to
11 slow down, all right?
- 12 A: Yes, sir.
- 13 Q: Okay. So you knew that Monty had a beef with Mazerati,
14 right?
- 15 A: Yes, sir.
- 16 Q: And you knew what that was about too, didn't you?
- 17 A: Yes, sir.
- 18 Q: It's because Mazerati had gotten Monty in trouble or
19 arrested for giving him a laptop to pawn that was stolen,
20 right?
- 21 A: Yes, sir.
- 22 Q: That was common knowledge?
- 23 A: Yes, sir.
- 24 Q: That Monty and him were not seeing eye-to-eye, right?
- 25 That's why you were a little surprised that he wanted to go

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- 1 over there, right?
- 2 A: Yes, sir.
- 3 Q: At no point did you hear a conversation in that car or at
- 4 Ms. Lizzie's where there was any kind of plan to go shoot
- 5 Maserati; you didn't hear anything to that effect, did you?
- 6 A: No, sir.
- 7 Q: The plan was for the three of y'all to go to Ashley Oaks
- 8 and play basketball, at least the two of y'all?
- 9 A: Yes, sir.
- 10 Q: And Herbie was taking you?
- 11 A: Yes, sir.
- 12 Q: And probably he was bringing you back, too, right,
- 13 probably?
- 14 A: Yes, sir.
- 15 Q: And I'm not gonna try to trick you up now with the map,
- 16 but when you were coming up on the house on Acacia Street ---
- 17 A: Yes, sir.
- 18 Q: --- it's gonna be on your left, right?
- 19 A: Yes, sir.
- 20 Q: So, you don't know exactly where -- or do you know where
- 21 Maserati lived?
- 22 A: I know Maserati. I had like an idea where he live at,
- 23 but I ---
- 24 Q: You had an idea?
- 25 A: Yes, sir.

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1 Q: Okay. And so when you drew on that map, you actually
2 made it so it never went past Mazerati's house so they
3 probably went down Mulberry all the way down and came around
4 that way, right?

5 A: Yes, sir.

6 Q: Those streets swing all the way around, right?

7 A: Yes, sir.

8 Q: And that cut at Locust sort of wouldn't get you the
9 easiest way to Mazerati's house, would it?

10 A: No, sir.

11 Q: It's easier just to swing on around, right?

12 A: Yes, sir.

13 Q: Okay. So he rolls up and Monty says, no, pull up some
14 more, right?

15 A: Yes, sir.

16 Q: Which he does because he didn't say no and he just jumps
17 out here, he pulls up to the next house where Mazerati lives,
18 right?

19 A: Yes, sir.

20 Q: You didn't see anybody in front of Mazerati's house, did
21 you?

22 A: No -- I can't really see so I didn't see nobody.

23 Q: You weren't really paying attention at that point, were
24 you?

25 A: Yes, sir.

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1 Q: I think you said you were looking at your phone and
2 talking to E.J. ---

3 A: Yes, sir.

4 Q: --- and that kind of stuff. Now the conversation in the
5 car going over there about Mazerati, you said Monty said
6 something about Mazerati being a, excuse my language, but a
7 pussy or something like that?

8 A: Herbie say that around Thanksgiving, but Monty said that
9 Mazerati was a clown.

10 Q: Okay. A clown. Thank you. So, but you didn't hear
11 Herbie saying anything back in return, he's just driving,
12 right?

13 A: Right.

14 Q: So, to say they were having a conversation, it was more
15 of a one-sided thing because Monty is the one in the back
16 saying he's a clown, right?

17 A: Yes, sir.

18 Q: Okay. Your alarm wasn't raised to the point that you
19 were going something bad is gonna happen, was it?

20 A: Right.

21 Q: You were just like, okay, we're gonna drop him off. I
22 don't quite get it but, you know, he wanted a ride, right?

23 A: Yes, sir.

24 Q: Okay. Now, you knew that Herb, Herbie hung out with
25 Mazerati, right?

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- 1 A: Yes, sir.
- 2 Q: I think they did some rap stuff together, right?
- 3 A: Yes, sir.
- 4 Q: And they were pretty good friends, right?
- 5 A: Yes, sir.
- 6 Q: Not to get you off track, but I want to make sure I cover
- 7 something. So let's talk about those charges that are pending
- 8 before I forget about it, okay?
- 9 A: Yes, sir.
- 10 Q: So you've got a burglary first charge pending against
- 11 you, right?
- 12 A: Yes, sir.
- 13 Q: And you know you're looking at fifteen to life on that,
- 14 right?
- 15 A: Yes, sir.
- 16 Q: And then you've got this attempted murder from this case
- 17 pending against you so you're looking at from zero to thirty
- 18 years on that, right?
- 19 A: Yes, sir.
- 20 Q: So you lied to the police, told a story I think is a
- 21 better way to put it, but the night -- the day that you were
- 22 taken into speak to the officers, you were willing to come and
- 23 sit down and talk to the prosecutors and clean things up,
- 24 right?
- 25 A: Yes, sir.

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1 Q: And you had your lawyer at that point, right?

2 A: Yes, sir.

3 Q: Okay. And I'm gonna have these marked as Defense Two for
4 identification.

5 DEFENDANT'S EXHIBIT NUMBER TWO

6 MARKED FOR IDENTIFICATION

7 Q: I'm gonna show you what I've had marked as Exhibit Two
8 for the Defense, see if you recognize it. Before you got
9 started talking to the police, did you have to go over this
10 document?

11 A: Yes, sir.

12 Q: All right. So in this document, they went over it and
13 read to you each part, right?

14 A: Yes, sir.

15 Q: And they say that this isn't a plea, a prosecution or
16 immunity agreement. They made clear that to you, right?

17 A: Yes, sir.

18 Q: And that you are agreeing to talk to them and nothing you
19 say is gonna be used against you as long as you're telling the
20 truth, right?

21 A: Yes, sir.

22 Q: Is that your understanding?

23 A: Yes, sir.

24 Q: And that if they believe you are lying to them, they do
25 certain things, right?

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1 A: Yes, sir.

2 Q: And one of them is they can use everything you just said
3 against you if you say something different later, right?

4 A: Yes, sir.

5 Q: And you understood that?

6 A: Yes, sir.

7 Q: And that if they wanted to, they could put you on
8 polygraph, right?

9 A: Yes, sir.

10 Q: And that you couldn't get re-arrested, you had to follow
11 the laws, right?

12 A: Yes, sir.

13 Q: But -- and not that I want the contents of what speaking
14 to you lawyer, let's be clear on that, but from speaking to
15 your lawyer, didn't you believe this was the first step in
16 getting some help on your charges?

17 A: Yes, sir.

18 Q: That's the point, right?

19 A: Yes, sir.

20 Q: Because you don't want to go to prison, do you?

21 A: No, sir.

22 Q: And those are pretty serious charges you're looking at,
23 aren't they?

24 A: Yes, sir.

25 Q: And so it's your hope by cooperating and coming in here

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- 1 and testifying that the State is gonna make it so you don't
2 have to go; that's your hope, right?
- 3 A: Yes, sir.
- 4 Q: And you hope -- we'll stop there. You're hoping to get a
5 benefit though, there's no doubt about that, right?
- 6 A: Yes, sir.
- 7 Q: And, and you met with them that first time, you wanted to
8 help, right?
- 9 A: Yes, sir.
- 10 Q: I think you even said you felt some pressure that you
11 really needed to give them something, right?
- 12 A: Yes, sir.
- 13 Q: And so your statement sort of evolved, right?
- 14 A: Yes, sir.
- 15 Q: And you didn't just meet with them one time, right?
- 16 A: No.
- 17 Q: You met with them a bunch. How many times you think you
18 sat down with the prosecutor and one form or fashion?
- 19 A: Two times, two or three times.
- 20 Q: Okay. You talked to them on the phone about things, too?
- 21 A: No, sir.
- 22 Q: All right. So, you've got the statement you told the
23 police, which was a bunch of malarkey, right?
- 24 A: Yes, sir.
- 25 Q: And I think you said you were scared, right?

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KEVIN CORLEY - CROSS BY SMILEY

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1 A: Yes, sir.

2 Q: Because the police were telling you, just being the car
3 could get you in trouble, right?

4 A: Yes, sir.

5 Q: But you knew you didn't have anything to do with it,
6 correct?

7 A: Yes, sir.

8 Q: You had no clue that Monty was gonna shoot Mazerati,
9 right, until it happened?

10 A: Correct.

11 Q: Pretty scary?

12 A: Yes, sir.

13 Q: E.J. the same way, from your conversations with him,
14 right?

15 A: Yes, sir.

16 Q: Herb the same way, y'all went straight back to the Hole,
17 didn't you?

18 A: Yes, sir.

19 Q: Got Lamont out of the car -- he jumped out right after
20 you left at the first place the car had to stop, which was
21 there at Mulberry and White Oak, right?

22 A: Yes, sir.

23 Q: As soon as it got to that stop sign, he's out, right?

24 A: Yes, sir.

25 Q: So you take a left, zipped down Evergreen, straight to

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1 the Hole, right?

2 A: Yes, sir.

3 Q: Basketball was off the table at that point?

4 A: Right.

5 Q: And during that drive, there's not any discussion about
6 what had happened; y'all just sort of sitting in shock, right?

7 A: Yes, sir.

8 Q: I beg the Court's indulgence for a minute. I beg the
9 Court's indulgence.

10 Just a couple more things I missed. A whole bunch of
11 stuff going on and sometimes I miss it. When you saw Monty
12 with the black revolver I think you said ---

13 A: Yes, sir.

14 Q: When he jumped out of the car, you saw him running away
15 with the revolver, right?

16 A: Yes, sir.

17 Q: You admitted to lying to the police the first time you
18 sat down with them, right?

19 A: Yes, sir.

20 Q: The information you gave them, you knew that -- did they
21 charge you with obstruction of justice?

22 A: No, sir.

23 Q: That's all I've got.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION OF KEVIN CORLEY BY MR. OSBORNE:

1 Q: Did you identified the wrong person?

2 A: In the car?

3 Q: Yeah, when you spoke to the police, did you point the
4 finger at the wrong person?

5 A: No, sir.

6 Q: Did you falsely accuse someone?

7 A: No, sir.

8 Q: Did you cost someone their freedom?

9 A: No, sir.

10 Q: All right. I miss things, too, sometimes. We, you spoke
11 to the police on the day that you were arrested and you told
12 them you didn't know anything about the shooting?

13 A: Yes, sir.

14 Q: Is that correct? Tell the Jury all of the changes that
15 you have made in your story since the day that we met on April
16 the 24th, 2015. Go ahead and list them all, tell them all.

17 A: That Monty point the gun at Herbie, that -- that's all I
18 can remember.

19 Q: Okay. Let's talk about that. During that meeting, you
20 made the comment that Monty pointed the gun at Herbie, go
21 ahead and elaborate on that.

22 A: I was basically trying to save Herbie because, at that
23 point in time, we were still friends and like I said, that was
24 my best friend at that time.

25 Q: You were trying to help him?

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KEVIN CORLEY - REDIRECT BY OSBORNE

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- 1 A: Yes, sir.
- 2 Q: Now, did that happen?
- 3 A: No, sir.
- 4 Q: Other than that, go ahead and tell all the other changes
5 in your story.
- 6 A: I told them that Monty -- when we had talked that time, I
7 didn't tell them that Monty had get out at the corner. I --
8 what else -- that I didn't see -- that I didn't see the gun.
9 That's all I can remember.
- 10 Q: Okay. So you changed the location which Monty got out of
11 the car?
- 12 A: Yes, sir.
- 13 Q: And you said that you didn't see a gun?
- 14 A: Yes, sir.
- 15 Q: Okay. Now, Mr. Smiley asked you if you said that, at
16 some point you said you felt pressured to add more to your
17 testimony or to your statement. I might have missed that.
18 When did you make that comment? When did you say that?
- 19 A: I didn't say that. I just had panicked, that's what it
20 was. I was under pressure that night.
- 21 Q: You felt the pressure of the charge?
- 22 A: Yes, sir.
- 23 Q: Okay. That's your attorney right there, Mr. Jason King?
- 24 A: Yes, sir.
- 25 Q: Brandon Todd?

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KEVIN CORLEY - REDIRECT BY OSBORNE

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1 A: Yes, sir.

2 Q: Were you told by Mr. King or anyone to say anything other
3 than the truth?

4 A: No, sir.

5 Q: All right. Mr. Smiley said everyone gets in Herbie's
6 car. Have you ever seen Antonio Barrett in Herbie's car?

7 A: No, sir.

8 Q: Now, Mr. Smiley said that part of the surprise that Monty
9 wanted to go over to Dontaviha's house was due to the fact
10 that Dontaviha had given him a laptop that caused him to get
11 arrested; is that correct?

12 A: Yes, sir.

13 Q: But isn't it true that another portion of the surprise
14 was the fact that you knew that Herbie had been making
15 threatening comments to the Defendant?

16 MR. SMILEY: Objection, Your Honor, this is serious
17 leading questions.

18 THE COURT: Sustained.

19 BY MR. OSBORNE:

20 Q: All right. Let's go, 'cause Mr. Smiley brought it up and
21 I think he's right, back to State's Exhibit One and he had
22 mentioned that it was possible that you came down and you
23 turned down Locust and I think your testimony was that -- and
24 then he mentioned, wasn't it possible that you went all the
25 way down. So is it possible that you didn't turn here and

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KEVIN CORLEY - REDIRECT BY OSBORNE

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1 you're just mistaken and you did go all the way down to
2 Locksley?

3 A: Yes, sir.

4 Q: Okay. He, Mr. Smiley, said you weren't alerted in any
5 way that anything bad was gonna happen when Monty asked to go
6 to Mazerati's house; is that correct?

7 A: Yes, sir.

8 Q: And you weren't alerted, correct?

9 A: No, sir,

10 Q: Okay. Now, had you been threatening Dontaviha?

11 A: No, sir.

12 Q: Had you been threatening Dontaviha for two-plus weeks on
13 Facebook?

14 MR. SMILEY: Objection again, Your Honor, leading.

15 THE COURT: Overruled.

16 BY MR. OSBORNE:

17 Q: Had Monty hacked your Facebook account and threatened
18 Dontaviha for two weeks on Facebook?

19 A: I don't know nothing about anything happening.

20 Q: No, I'm asking you did anyone hack your Facebook account
21 and threaten Dontaviha?

22 A: No, sir.

23 Q: No further questions.

24 BY THE COURT:

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

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BY THE COURT

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1 Ladies and gentlemen, we're gonna go ahead and break for
2 lunch now. We've ordered lunch for you today. Please leave
3 your notepads in the jury box. Do not discuss the case even
4 among yourselves at this point in time. It's still too early
5 for deliberations. I hope everybody has a good lunch. We'll
6 shorten it a little bit today since we brought lunch in for
7 you and we'll get started back probably in about an hour.
8 Okay? All right. We'll excuse you for lunch. Thank you very
9 much.

10 (REPORTER'S NOTE: Jury exits courtroom. 12:10 P.M. The
11 following takes place outside the presence of the Jury.)

12 THE COURT: All right. Anything from the State before we
13 recess for lunch?

14 MR. OSBORNE: No, Your Honor.

15 THE COURT: Anything from the Defense?

16 MR. SMILEY: No, sir.

17 THE COURT: All right. I'm gonna give them an hour, but
18 let's try to get back about 1:15. We're gonna try to get
19 started soon after that.

20 Are there any other State's witnesses that I'm gonna need
21 to question about self-incrimination?

22 MR. OSBORNE: No, Your Honor.

23 THE COURT: Okay. All right. We'll stand in recess.

24 (RECESS - 12:11 P.M.)

25 *****OFF THE RECORD*****

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1 **(On the Record - 1:17 P.M.)**

2 THE COURT: Thank you very much. Please be seated.

3 MR. SMILEY: Your Honor, we've been trying to work some
4 things out and shorten some things up at least cooperatively.

5 THE COURT: All right.

6 MR. SMILEY: So there's a couple of things. There's a
7 projectile that he's got a whole bunch of chain of custody
8 with but he still has one more witness, that will be a nurse
9 that retrieved the bullet from the operating room, and she is
10 not available today.

11 THE COURT: Okay.

12 MR. SMILEY: We're going to stipulate. We have no
13 problem with it being entered into evidence at this point in
14 time because she's not available. It looks like this case is
15 shortening up and shortening up that I would expect the State
16 is gonna rest this afternoon. He's got two more witnesses at
17 this point. One of his lengthy witnesses is no longer gonna
18 be called and we've gone back and forth and I think he has two
19 police officers. One of them is just gonna be is -- is
20 Herbie's statement and then I think they will be resting.
21 Instead of having to drag it out until the nurse comes
22 tomorrow, we don't need to do that and move that into evidence
23 from our prospective.

24 THE COURT: And that projectile is Exhibit ---

25 MR. OSBORNE: Thirteen, Your Honor.

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1 THE COURT: All right. So, State's Exhibit Thirteen is
2 being admitted ---

3 MR. SMILEY: Without objection.

4 THE COURT: --- without objection?

5 MR. SMILEY: Yes, sir.

6 STATE'S EXHIBIT NUMBER THIRTEEN

7 ADMITTED INTO EVIDENCE

8 MR. OSBORNE: It just seems for judicial economy, the
9 first time I've ever -- and then because the case is moving
10 about twice -- the reason we kept saying it was gonna take a
11 week is the last case that they tried took a week and we
12 didn't see this case being a whole lot different and it's
13 becoming quite different. It has shortened up. So, I believe
14 the State is gonna rest this afternoon and then I would ask
15 you since we're running ahead of schedule, we will need to
16 talk to our client and there's some discussion about what
17 we're gonna put up or even if we're going to put and we're
18 gonna do that, if you would, in the morning and let you know
19 as soon as we can whether we're going to because I think we
20 can wrap this case up maybe as early as tomorrow morning, just
21 so you know how things are changing.

22 THE COURT: All right. All right. As long as we get
23 this in, I mean I can accommodate y'all all you want to. I
24 just want to make sure that it's in ---

25 MR. OSBORNE: Yes, sir, and we're certainly well under

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1 what we thought it was going to be.

2 THE COURT: All right. Well, when we bring the Jury in,
3 the first thing I'll do then is just tell them that the
4 parties over lunch agreed to the introduction of State's
5 Exhibit Number Thirteen and then we'll proceed with the next
6 witness.

7 MR. OSBORNE: Yes, sir.

8 MR. SMILEY: Yes, sir.

9 MR. OSBORNE: And just to piggyback off the
10 expeditiousness that we're trying to get here, I'm gonna skip
11 ahead and not waste everyone's time listening to three hours
12 or whatever it was and we're gonna start at about three hours
13 and twenty minutes and play that. It's only about twenty to
14 thirty minutes.

15 MR. SMILEY: And we've pretty much agreed to that as long
16 as the Jury understands that there was a conversation that
17 took place that's not relevant to the matter, I guess I can
18 use the words Your Honor used.

19 THE COURT: Well, I mean typically as I understand it, if
20 it's a statement ---

21 MR. SMILEY: Yes, sir.

22 THE COURT: --- you can play whatever portion you want.

23 MR. SMILEY: Right.

24 THE COURT: Then the Defense has the option on cross to
25 play what additional parts or the entire thing if you desire.

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1 MR. SMILEY: Yes, sir.

2 THE COURT: Okay. All right. Anything from the State
3 before we bring the Jury in?

4 MR. OSBORNE: No, Your Honor.

5 THE COURT: Anything from the Defense?

6 MS. HENSLEY: No, Your Honor.

7 THE COURT: All right. Let's bring the Jury in.

8 (REPORTER'S NOTE: Jury enters courtroom. 1:22 P.M.)

9 BAILIFF: All jurors present, Your Honor.

10 THE COURT: Thank you very much.

11 Ladies and gentlemen, welcome back. I hope everyone had
12 a good lunch. Make sure you have your own notepads. We're
13 ready to proceed with the trial of this case, but before we do
14 so, I need to let you know that over lunch, the parties agreed
15 and stipulated to the introduction of State's Exhibit Number
16 Thirteen without objection. So State's Exhibit Thirteen is
17 now an exhibit in this trial. All right.

18 The State can call your next witness.

19 MR. OSBORNE: The State calls Detective Richard
20 Burckhardt.

21 RICHARD BURCKHARDT, HAVING BEEN SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Please have a seat. And for the record, if you
24 could state your first and your last name and spell out your
25 last name, please.

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RICHARD BURCKHARDT - DIRECT BY OSBORNE

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1 MR. BURCKHARDT: My name is Richard Burckhardt, that's B-
2 U-R-C-K-H-A-R-D-T.

3 DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. OSBORNE:

4 Q: Good afternoon, Mr. Burckhardt?

5 A: Good afternoon.

6 Q: Where do you currently work?

7 A: I work in the Federal Court Building. I am a Court
8 Security Officer for the United States Marshall Service.

9 Q: And where did you work prior to that?

10 A: I worked with the Charleston Police Department for
11 twenty-seven years. I retired November last year.

12 Q: All right. Tell us about some of the various assignments
13 that you had while you were at CPD?

14 A: So, I completed the basic academy training in Columbia in
15 1988, police training. I went to the Uniform Division upon my
16 return to Charleston, I worked there for several years. After
17 that I was in Special Operations where I worked the Narcotics
18 Unit. I was assigned to the Drug Enforcement Administration
19 for a number of years. I came out of that detail and went
20 straight into the Central Investigative Division and -- where
21 I started in the Violent Crime Unit. I completed the last
22 seventeen years at CPD in VC Unit.

23 Q: All right. Let's just get right into it. On December
24 the 18th of 2014, what was your assignment then?

25 A: Detective, investigator for the Violent Crime Unit.

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1 Q: Okay. Did you have the occasion to become involved in an
2 investigation into a shooting case?

3 A: I did.

4 Q: All right. How did that come about?

5 A: This particular incident, I was alerted to the incident
6 -- I was actually -- I believe I was driving home, it was
7 after shift in the afternoon. The alert tone for the shooting
8 had gone across all our police radios. I was in my vehicle,
9 heard the call for service and heard the request for officers,
10 detectives and pretty much anybody to respond to the Ardmore
11 Subdivision to the area of Acacia Street where the shooting
12 occurred.

13 Q: Okay. Did you respond to the scene?

14 A: I did.

15 Q: What did you learn when you responded to the scene?

16 A: So, I met with the uniformed officers which we typically
17 do as we respond to these scenes to get a briefing as to the
18 known information and I spoke with officers. It was relayed
19 to me that what we call a drive-by shooting had just occurred
20 on Acacia Street and that one victim had been transported to
21 the hospital so he was unavailable at the scene and that Crime
22 Scene started their processing the scene. Myself and other
23 detectives started to arrive on the scene. I pretty much
24 conducted a canvas of -- trying to locate witnesses to the
25 incident. There was also information that was broadcasted on

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1 the way over of this.

2 Q: Okay. So, yes or no, in the broadcasted information, did
3 you have a suspect name at that time?

4 A: We did.

5 Q: Did you a suspect vehicle description at that time?

6 A: Yes, it was pretty much almost right after the shooting
7 happened, we learned that -- what came across the police
8 radios was the vehicle belonging to the suspect belonged to
9 the Defendant, Herbie Singleton. They broadcasted by name.
10 They also broadcasted the description of the vehicle I believe
11 to have been a silver/gray sedan and it had a distinctive
12 bumper, a after-market type bumper. So it was at that point,
13 at that time -- that information came directly from the
14 victims.

15 Q: Did something occur that caused you to leave the scene?

16 A: To leave the scene?

17 Q: Yeah?

18 A: Yes.

19 Q: And what was that?

20 A: So, not too long after the incident occurred, we began
21 looking for Mr. Singleton, the CPD units in the area. He was
22 located by a uniformed officer and I was notified of him being
23 located and, at that time, I requested that he be removed from
24 the scene and brought to CPD headquarters for further
25 investigation.

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1 Q: Okay. So did you relocate to CPD?

2 A: I did.

3 Q: Do you recall about what time the shooting came out?

4 A: The shooting to be somewhere in the neighborhood 4:34 or
5 4:45 in that area.

6 Q: Okay. Do you -- when you were notified that Mr.

7 Singleton had been detained, did you respond directly to the
8 station?

9 A: Yes, I went straight to headquarters.

10 Q: Did you meet with the Defendant?

11 A: I did.

12 Q: And where did you meet with them at?

13 A: At our Central Detective Office. We have two interview
14 rooms and he was placed in one of those rooms awaiting my
15 arrival.

16 Q: Okay. Did you speak to him?

17 A: I did.

18 Q: How did you begin the interview and what was said?

19 A: I began the interview typically as I would in any suspect
20 interview. He was issued his standard Miranda Warning, read
21 verbatim off of a standard Miranda card. I issued him his
22 rights, I discussed -- explained to him I needed to discuss a
23 criminal investigation. I read him his rights and asked him
24 if he understood his rights, he said he did. He acknowledged
25 the card and signed the back of the card acknowledging that

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1 fact, and I proceeded into an interview.

2 Q: Okay. Your Honor, may I approach the witness?

3 THE COURT: Yes.

4 Q: I'm showing you what's been marked as State's Exhibit
5 Number Forty-one. Can you take a look at that and tell me if
6 you recognize it?

7 A: So, this is the original Miranda Warning card that I
8 issued to the Defendant. On the back are the five standard
9 rights that I read to him. On the front, it's date and time,
10 it's photographed by myself as the warning officer and it's
11 signed by the Defendant.

12 Q: Okay. And that's how you know what it is because you
13 recognize your signature?

14 A: I do.

15 MR. OSBORNE: Okay. Your Honor, at this time, I would
16 request State's Exhibit, I think is it Forty-one?

17 A: Yes, sir.

18 MR. OSBORNE: --- Forty-one be admitted into evidence?

19 MR. SMILEY: Without objection.

20 THE COURT: That's State's Exhibit Forty-one admitted
21 into evidence without objection.

22 STATE'S EXHIBIT NUMBER FORTY-ONE

23 ADMITTED INTO EVIDENCE

24 BY MR. OSBORNE:

25 Q: All right. Mr. Burckhardt, I'm showing you State's

1 Exhibit Forty-one. Can you tell the Jury what that is?

2 A: That's -- that is the backside of our standard Miranda
3 Warning card.

4 Q: Okay. Are these the rights that you read to the
5 Defendant?

6 A: It is.

7 Q: Did you read them exactly as they appear on the card?

8 A: Yes.

9 Q: All right. Could you please read them for the record?

10 A: Sure. Miranda item number one states, You have the right
11 to remain silent. Number two states, Anything you say can and
12 will be used against you in a court of law. Number three
13 states, You have the right to talk with a lawyer and to have
14 him present during any questioning. Number four states, If
15 you cannot afford to hire a lawyer, one will be appointed to
16 represent you before any questioning if you wish one. Number
17 five states, If you decide to answer questions without a
18 lawyer present, you have the right to stop answering questions
19 anytime if you so choose.

20 Q: You may have said it, at this point when you advised him
21 of his Miranda Warnings, did you let the Defendant know that
22 you were questioning him or wanted to question him about the
23 shooting?

24 A: I did.

25 Q: After you read those warnings to him, what did he

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- 1 indicate?
- 2 A: Typically, I started a baseline interview, which is
- 3 standard for wanting to establish a timeline.
- 4 Q: Did he indicate that he wanted to talk to you?
- 5 A: He did.
- 6 Q: And what does the top of that card say?
- 7 A: It states -- it's got the date and time on it. It's got
- 8 the date as the 12/18 of 2014, 1800 or 6 o'clock hours, and
- 9 the line next to that is the Defendant's signature.
- 10 Q: Okay. Did you ask him if he understood all the rest?
- 11 A: I did.
- 12 Q: And what did he say?
- 13 A: He acknowledged that he did.
- 14 Q: Did he say that he was willing to talk to you about it?
- 15 A: He did.
- 16 Q: And, and right above suspect's signature; is that the
- 17 Defendant's signature?
- 18 A: Yes.
- 19 Q: And Warning Officer, that's your signature?
- 20 A: That's mine.
- 21 Q: All right. So how long were you in there speaking to the
- 22 Defendant, about?
- 23 A: Approximately thirty or forty minutes.
- 24 Q: Okay. During the interview, did the Defendant appear to
- 25 be intoxicated or under the influence of any drugs?

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1 A: No.

2 Q: Did the Defendant appear to have any physical or mental
3 disability that would have impaired his ability to understand
4 what was being said to him?

5 A: No, he did not.

6 Q: Prior to or during the interview with the Defendant, did
7 you offer him any breaks, bathroom or otherwise?

8 A: We did.

9 Q: Was the Defendant denied access to a telephone, food or
10 drinks?

11 A: No.

12 Q: Did you make any threats or any promises to the Defendant
13 in exchange for his statement?

14 A: No.

15 Q: All right. Your Honor, may I approach?

16 THE COURT: Yes.

17 Q: I'm showing you now what's been marked as State's Exhibit
18 Number Forty. Can you take a look at that; do you recognize
19 it?

20 A: I do.

21 Q: And what is that?

22 A: This is an audio -- audio-taped interview of the
23 Defendant and myself.

24 Q: Okay. How do you know that CD contains that interview?

25 A: This is the CD that I produced during an interview and

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1 it's got my initials on it.

2 MR. OSBORNE: Okay. Your Honor, at this time, we would
3 seek to admit State's Exhibit Number Forty into evidence?

4 THE COURT: Any objection?

5 MR. SMILEY: May we approach?

6 THE COURT: All right.

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

9 BY MR. OSBORNE:

10 Q: All right. Mr. Burckhardt, just to clarify. This CD
11 contains the contents of the interview, but you didn't
12 actually make this CD; isn't that correct?

13 A: I'm not sure if I produced it. It's my interview with
14 him.

15 Q: Right, because that's your initials on it?

16 A: Correct.

17 Q: Do you recall me allowing or listening to it with me in
18 my office?

19 A: Yes.

20 Q: And then I asked is that the interview?

21 A: Yes.

22 Q: And then you said yes, it was, and I said put your
23 initials on it?

24 A: That's correct.

25 MR. OSBORNE: Your Honor, at this time we'd seek to admit

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1 State's Exhibit Forty into evidence?

2 THE COURT: Any objection?

3 MR. SMILEY: No objection.

4 THE COURT: All right. State's Exhibit Forty admitted
5 into evidence without objection.

6 STATE'S EXHIBIT NUMBER FORTY

7 ADMITTED INTO EVIDENCE

8 BY MR. OSBORNE:

9 Q: All right. I'm gonna spare everyone having to listen to
10 all that. Let's just summarize it, okay. Tell the Jury what
11 the Defendant's account of the shooting was when you were
12 talking to him.

13 A: The Defendant basically stated that he no knowledge of
14 this shooting and that he was not present for the shooting.
15 He maintains for quite some time that on the timeline, since
16 the shooting occurred somewhere from 4:30, 4:30ish, my
17 recollection, the CPD reports can confirm better and narrow it
18 down, but I think it's right in that ballpark. It's my
19 recollection from the interview that the Defendant indicated
20 that at 3 o'clock that afternoon, which would've been an hour
21 and a half before, he loaned his vehicle out to a female
22 acquaintance and that he had no idea where the vehicle went,
23 what it did, who occupied it, provided very little details to
24 the identity of this female person. I tried to validate and
25 confirm everything that he was telling me and he gave me next

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1 to nothing that I could confirm from his story.

2 Q: Okay. So, basically the thirty or forty minutes that are
3 on there with you talking to him is I don't know anything
4 about the shooting?

5 A: Pretty much.

6 Q: The girlfriend's got the car?

7 A: Yes.

8 Q: Did you ask if he knew someone by the name of Lamont
9 Gregg or Monty?

10 A: He referred -- he was -- I did, I asked him that and he
11 said that he had heard of a Monty or knew of a Monty but he
12 didn't go into great detail about that.

13 Q: Okay. He had heard of him?

14 A: Yes.

15 Q: No further questions, Your Honor.

16 THE COURT: All right. Cross examination?

17 MR. SMILEY: No questions, Your Honor.

18 THE COURT: All right. You may step down.

19 State can call your next witness?

20 MR. OSBORNE: The State calls Detective Paul Krasowski.

21 PAUL KRASOWSKI, HAVING BEEN SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Please have a seat. And for the record, if you
24 would state your first and last name and spell out your last
25 name, please.

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1 MR. KRASAWSKI: First name is Paul, last name is
2 Krasowski and that's spelled K-R-A-S-O-W-S-K-I.

3 DIRECT EXAMINATION OF PAUL KRASOWSKI BY MR. OSBORNE:

4 Q: All right. Detective, you've been here the whole time,
5 so you sort of know the routine. Where do you work?

6 A: I work for the City of Charleston Police Department.

7 Q: And how long have you worked there?

8 A: I've been there for a little over ten years now.

9 Q: All right. What are some of the various assignments that
10 you've held?

11 A: I started out in regular patrol once I was hired and
12 graduated from the Justice Academy, and then I transitioned
13 into investigations. I spent about two years in the Robbery
14 Division and then been in the Homicide Unit and the Violent
15 Crimes Unit since October of 2013, so ---

16 Q: Okay. Did you receive any specialized training that
17 might be relevant to this case?

18 A: I've gone to various trainings and training seminars and
19 training hours in interviews, interrogations. I went to a
20 homicide investigation course, which was kind of just a
21 holistic response to a homicide or major event, managing a
22 crime scene, and so on and so forth.

23 Q: All right. So, let's get into December the 18th of 2014,
24 were you in the Violent Crimes Unit then?

25 A: I was.

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1 Q: And did you become or have the occasion to become
2 involved in this investigation?

3 A: I did.

4 Q: Were you working that night?

5 A: That evening, so I was actually on my way home. My shift
6 ended around 4:30ish and so I was traveling south on Savannah
7 Highway when this call went out and a serious call like this
8 actually starts off by alert tones to get your attention. So,
9 it quickly caught my attention and I was close to the incident
10 location.

11 Q: And did you respond to the scene?

12 A: I did. So, typically, we will respond and once patrol
13 gets there and since I was so close I was kind of on the early
14 onset of the response so I was -- I was tailing behind the
15 patrol officers as they arrived. So, I kind of got there a
16 little bit earlier than typical.

17 Q: All right. Let's talk about what your role was early on
18 in the investigation. Were you the lead detective in the
19 case?

20 A: Since I responded first, I was able to get some
21 information and then directed additional detectives once they
22 got on the scene kind of, you know, where to go and what kind
23 of basic questions to ask at that point.

24 Q: Okay. Did -- but as far as like -- so let me phrase it
25 another way. As far as the case being assigned to someone, or

1 case agent, I think, is the terminology y'all use, were you
2 originally the case agent?

3 A: I was not the original case agent. Detective Burkhardt
4 was the original assigned case agent and he, as you heard,
5 retired at the end of last year and so in trial preparation
6 earlier this year, I was assigned to the case agent in this
7 case.

8 Q: Because they asked you to?

9 A: Yes.

10 Q: So -- all right. So you responded to [REDACTED] Acacia Street.
11 I'm gonna show you State's Exhibit One. Looking at State's
12 Exhibit One, can you mark on there where [REDACTED] Acacia would be
13 or thereabout?

14 A: Yes, I believe it's right here (indicating).

15 Q: Okay. All right. So, briefly explain to the Jury what
16 you saw whenever you got to the scene?

17 A: So, on my arrival I was behind some patrol officers so
18 they had -- they had responded within minutes before me and so
19 I knew -- I was directed -- there were several officers there
20 already so I was directed to the specific house where this
21 incident occurred at 1515 Acacia and I made entry pretty
22 quickly into the house after the patrol officers were there
23 already, but I know that other patrol officers were setting up
24 the crime scene in the area because we didn't know exactly
25 where the crime scene was at this point. We knew it was a

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1 drive by so that the street directly in front of this house
2 was blocked off to prevent any travel from there and I made
3 contact with the victim pretty quickly. He was in the hallway
4 facedown and it was clear that he had a gunshot wound.

5 Q: Okay. So while on the scene, did you have the occasion
6 to leave the scene at some point and go to the station?

7 A: I did. So, EMS arrived soon thereafter so I was able to
8 talk with the victim very briefly and just in that brief time
9 it was -- he had a suspect vehicle description and a suspect
10 name, which was Herbie Singleton and his vehicle, and he had a
11 unique description to the vehicle that set it aside -- set it
12 apart from just a typical silver sedan was that black bumper
13 and that information was relayed via radio and I'm not sure if
14 I did that or if patrol did that. But I spoke with him
15 quickly and made sure that that information was known and then
16 I also got a quick statement from Dontaviha's mother, Jamie,
17 and I got a quick statement at the house there and then after
18 that, I transported her and her two children down to the
19 hospital to be with Dontaviha.

20 Q: Okay. Did you have the occasion to relocate to the
21 station?

22 A: I did. So after I provided that escort to them, I came
23 back to the station and then was filled in because I was off
24 the radio for a little while, so I didn't know all of the
25 developments that occurred. But I learned at that point that

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1 the vehicle or that, excuse me, that -- there were additional
2 witness statements and that the vehicle or Herbie Singleton
3 was at the station and also that his vehicle was located.

4 Q: Do you know where the vehicle was located?

5 A: So, his -- the vehicle was located back at his residence
6 in the driveway and that was on [REDACTED] Street.

7 Q: Was the vehicle located at the same time the Defendant
8 was located?

9 A: No. So, that was -- that was the difference right there.
10 So, Herbie was located also at his residence and that's when
11 he was brought down to the station. His vehicle was not there
12 at the time when he was located, but his vehicle appeared
13 after he was already taken down to the station.

14 Q: Okay. So, yes or no, then you did a search warrant I
15 think to have the vehicle processed?

16 A: I did.

17 Q: And then the vehicle was then I guess taken to Crime
18 Scene. Mr. Unterbrink, who has already testified, processed
19 the vehicle; is that right?

20 A: Yes. So once the vehicle was seized, I drafted a search
21 warrant to actually process that vehicle and that -- that
22 search warrant was signed by a judge and then that was
23 forwarded over to the Crime Scene Division when they began the
24 search of that vehicle.

25 Q: Okay. Just briefly here, how long did you say you worked

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1 in the Crime Scene Unit again?

2 A: Since October of 2013.

3 Q: And during that time if you had to estimate, how many
4 shootings would you say that you worked in any capacity, lead
5 or assisting?

6 A: It would probably be very similar to what Detective
7 Bailey said, somewhere in the ballpark of about seventy-five
8 shootings.

9 Q: Okay. And I believe as being a certified police officer,
10 you have to qualify with your firearm, I think, twice a year;
11 isn't that right?

12 A: That is correct.

13 Q: You have a semi-automatic handgun?

14 A: That is correct.

15 Q: Semi-automatic, just for the jurors that don't know, is
16 it fair to say that that's the one that spits out shell
17 casings after the bullet ejects from the barrel?

18 A: It is. That's a semi-automatic, right.

19 Q: Through your experience as a violent crimes detective, if
20 a revolver was used, would you expect to see shell casings?

21 A: You would not. So, I always typically refer to a
22 revolver as a cowboy-style gun and that has that barrel that
23 rotates the cylinder in the middle and that does not eject
24 shell casings when a firearm -- when the firearm is shot.

25 Q: All right. When you responded to -- you've already heard

1 Mr. Burkhardt testify, when you responded to this station, was
2 he in the process of interviewing the Defendant?

3 A: He was. So, he was in an interview room with, with the
4 Defendant, Herbie Singleton, when I got back there.

5 Q: All right. So, Detective Burkhardt testified he had
6 interviewed him for about thirty or forty minutes?

7 A: So, that was the interview time base time. That
8 interview probably was a little bit longer at that point with
9 breaks because Detective Burkhardt is coming out to, to confer
10 with us and other detectives about what information was
11 learned at that point to have a better understanding, grasp of
12 the whole situation.

13 Q: So, we're gonna cue up your portion or part of your
14 portion here in a minute and the time is gonna show three
15 hours and twenty minutes. Was he interviewed for three hours
16 and twenty minutes?

17 A: No, and that goes along with what I was just saying. So
18 there were a lot of breaks in between and when Detective
19 Burkhardt would step out and, again, to try to figure out what
20 information we have at this point in time because it was a
21 very active investigation. Obviously, we're still trying to
22 understand what, what happened at that point.

23 Q: All right. So -- hold on one second. When Detective
24 Burkhardt was interviewing him, it was your -- was it your
25 understanding that he was basically denying any knowledge of

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1 the incident at that time?

2 A: That's correct.

3 Q: Why, why would you then go in and interview him
4 afterwards?

5 A: You know, it's just different faces, younger faces.
6 We've -- there's a variety of reasons that one detective over
7 another may have success. It could be just different
8 personalities and that's essentially what we just tried and
9 wanted to give it a shot if, you know, Detective Burkhardt
10 wasn't having much success, we might as well try another way,
11 and so that's when Detective Bailey, we heard earlier today,
12 and myself went in and interviewed him.

13 Q: Okay. I'm just gonna ask you some quick questions.
14 During your interview with the Defendant did he appear
15 intoxicated or under the influence of drugs?

16 A: He did not.

17 Q: Did the Defendant appear to have any physical or mental
18 disability that would have impaired his ability to understand
19 what was being said to him?

20 A: He did not.

21 Q: Prior to or during your interview with the Defendant, did
22 you offer him breaks, bathroom or otherwise?

23 A: Yes.

24 Q: Was the Defendant denied access to any telephone, food or
25 drinks?

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1 A: No, he wasn't.

2 Q: Did you or anyone while you were in there, make any
3 threats or promises to him?

4 A: No, we didn't.

5 *****OFF THE RECORD*****

6 (REPORTER'S NOTE: Playing of Plaintiff's Exhibit Forty for
7 the Jury. Not transcribed herein.)

8 (On the Record.)

9 BY MR. OSBORNE:

10 Q: All right. That was Mr. Burkhardt's voice?

11 A: That was Detective Burkhardt's voice.

12 Q: All right. We're going to try to cue it up at 3:20:00.

13 *****OFF THE RECORD*****

14 (REPORTER'S NOTE: Continue playing of Plaintiff's Exhibit
15 Forty for the Jury. Not transcribed herein.)

16 (On the Record.)

17 BY MR. OSBORNE:

18 Q: All right. So I just want to stop right here. All
19 right. So clearly you had been talking to him for a little
20 bit prior to this; is that right?

21 A: That's correct. So at this point, this wasn't my first
22 entry into the room. This was actually at the very end of
23 this whole interview and it was just me in the interview room
24 at this point and Detective Bailey was not in the interview.

25 Q: The very end of it and still twenty-something minutes to

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1 go?

2 A: Well, not the very end of it, but, yeah, the last stages
3 of it when we were -- this was the last chance that we were
4 trying to get Herbie to explain.

5 Q: Okay. Let's just bring the Jury up to speed on what the
6 Defendant had told you prior to this point?

7 A: So, you obviously, you heard from Detective Burkhardt
8 what he learned through his portion of the interview and we --
9 obviously, that wasn't jiving with the information that we had
10 otherwise. So, through the first part of it with Detective
11 Bailey and myself, we were able to confirm that, that Kevin
12 Corley, the codefendant as you've heard today was sitting in
13 the passenger seat of his vehicle and -- actually, I got a
14 little ahead of myself. Herbie did admit to driving this
15 vehicle when the shots were fired. He also said that another
16 codefendant, Elijah Green, was also seated in the vehicle and
17 he had put him in the backseat passenger side. He also then
18 began -- he told us that he did, in fact, pick up a fourth
19 person in his vehicle as they were driving and his name was a
20 subject that went by the name of Terrell and he provided a
21 basic physical description of this Terrell person. Terrell,
22 excuse me.

23 Q: I'm sorry. So, is it fair to say what we're hearing from
24 this point on is you trying to identify Terrell?

25 A: That's correct. He gave that -- that -- those physical

1 features and also that nickname and we were trying to search
2 for any kind of names that would come up that would be
3 consistent with that and I came back into the room at this
4 point.

5 Q: Okay.

6 *****OFF THE RECORD*****

7 (REPORTER'S NOTE: Continued playing of Plaintiff's Exhibit
8 Forty for the Jury. Not transcribed herein.)

9 (On the Record.)

10 BY MR. OSBORNE:

11 Q: He said that he saw this person named Antonio walking on
12 the Shires?

13 A: Yes.

14 Q: Okay. So I'm going back to State's Exhibit One. Can you
15 just go head and circle where that area would be?

16 A: So that's actually off the map. It's closer to Highway
17 61, but it would be in the vicinity of like around here.

18 Q: Okay. And Mr. Barrett, where did he live, just the
19 street or general vicinity?

20 A: Just to make sure, the man Antonio we know about was
21 Antonio Barrett. He lived on West Robinhood Drive.

22 Q: And where would that be?

23 A: Which is again, it's somewhere in the vicinity -- it's
24 off the map somewhere down here close to Highway 61.

25 Q: Where at about?

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1 A: It's -- it would be a road that runs -- it runs parallel
2 to Acacia so it's probably somewhere right around here
3 (Indicating).

4 Q: Okay.

5 *****OFF THE RECORD*****

6 (REPORTER'S NOTE: Continuing Playing of Plaintiff's Exhibit
7 Forty for the Jury. Not transcribed herein.)

8 (On the Record.)

9 BY MR. OSBORNE:

10 Q: All right. Just real quick. So he had already given you
11 a description of Antonio Barrett prior to him giving you the
12 name Antonio Barrett?

13 A: He did.

14 Q: And did the description that he provided of Antonio
15 Barrett match the Antonio Barrett that you would later learn
16 of and arrest?

17 A: It did. So, he provided the basic description with the
18 hair features also height and weight and, and so it did jive
19 with what the information as it progressed.

20 *****OFF THE RECORD*****

21 (REPORTER'S NOTE: Continuing Playing of Plaintiff's Exhibit
22 Forty for the Jury. Not transcribed herein.)

23 (On the Record.)

24 BY MR. OSBORNE:

25 Q: It's kind of hard to understand what he said when you

1 asked him if he had changed. Can you tell -- do you remember
2 what he said?

3 A: I think he said, he said huh-uh.

4 Q: No?

5 A: Yeah, I think that was huh-uh.

6 Q: All right. So let's skip ahead to 03:29:25. And just so
7 -- you left out of the room and there was silence during that
8 time?

9 A: Yes.

10 Q: Okay.

11 *****OFF THE RECORD*****

12 (REPORTER'S NOTE: Continuing Playing of Plaintiff's Exhibit
13 Forty for the Jury. Not transcribed herein.)

14 (On the Record.)

15 BY MR. OSBORNE:

16 Q: All right. Let me just ask you this right here. I don't
17 recall hearing anything here. You are saying that Mazerati
18 was his old friend. Did the Defendant tell you prior to this
19 that he and Mazerati were old friends?

20 A: I can't remember exactly. That might've been learned
21 through another interview that I had knowledge of at that
22 point. I can't remember exactly if he said that. I think he
23 did say that, but I'm not positive.

24 Q: Did the Defendant say anything to you about he and the
25 victim communicating with threatening text messages?

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1 A: He did not.

2 *****OFF THE RECORD*****

3 (REPORTER'S NOTE: Continuing Playing of Plaintiff's Exhibit
4 Forty for the Jury. Not transcribed herein.)

5 (On the Record.)

6 MR. SMILEY: Your Honor, may we approach?

7 THE COURT: All right.

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

10 MR. OSBORNE: We got it. Thank you, Your Honor.

11 THE COURT: All right.

12 *****OFF THE RECORD*****

13 (REPORTER'S NOTE: Continuing Playing of Plaintiff's Exhibit
14 Forty for the Jury. Not transcribed herein.)

15 (On the Record.)

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

17 THE COURT: Yes.

18 BY MR. OSBORNE:

19 Q: When it starts back up, he says, cause that's my homeboy;
20 is that correct?

21 A: That's correct.

22 Q: Who is he talking about?

23 A: I asked him was Lamont Gregg was in the car. Well,
24 actually, I asked about Lamont Gregg and he referenced that
25 that's his homeboy.

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1 *****OFF THE RECORD*****

2 (REPORTER'S NOTE: Continuing Playing of Plaintiff's Exhibit
3 Forty for the Jury. Not transcribed herein.)

4 (On the Record.)

5 BY MR. OSBORNE:

6 Q: Where was Lamont Gregg from?

7 A: As far as I know, the Moe.

8 *****OFF THE RECORD*****

9 (REPORTER'S NOTE: Continuing Playing of Plaintiff's Exhibit
10 Forty for the Jury. Not transcribed herein.)

11 (On the Record.)

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

13 THE COURT: Yes.

14 BY MR. OSBORNE:

15 Q: I'm showing you what's -- I'm showing you what's been
16 marked as State's Exhibit Forty-two. Can you take a look at
17 that?

18 A: This is the picture, the single picture that I showed to
19 Herbie Singleton during his interview of Antonio Barrett and
20 he identified that as being the person in his vehicle.

21 MR. OSBORNE: Your Honor, at this time, I'd seek to
22 introduce State's Exhibit Forty-two into evidence?

23 THE COURT: Any objection?

24 MR. SMILEY: No objection, Your Honor.

25 THE COURT: State's Exhibit Forty-two admitted into

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1 evidence without objection.

2 STATE'S EXHIBIT NUMBER FORTY-TWO

3 ADMITTED INTO EVIDENCE

4 BY MR. OSBORNE:

5 Q: I'm showing you State's Forty-two, the handwriting that's
6 on the left there, is that your handwriting or is that the
7 Defendant's?

8 A: That's Herbie's handwriting.

9 Q: And the initials off to the right, is that his?

10 A: That is his initials and the date that it was signed.

11 Q: And who is the picture of again?

12 A: That's Antonio Barrett, the person he identified as being
13 the shooter in this case, and I asked him actually to write
14 what he did next to the picture and that's what he wrote, shot
15 fired from my car. Then he wrote un, I think, suspected.

16 *******OFF THE RECORD*******

17 (REPORTER'S NOTE: Continuing Playing of Plaintiff's Exhibit
18 Forty for the Jury. Not transcribed herein.)

19 **(On the Record.)**

20 BY MR. OSBORNE:

21 Q: Okay. We're gonna go and skip through that sounds of you
22 leaving the room and it picks back up at 03:44:51.

23 *******OFF THE RECORD*******

24 (REPORTER'S NOTE: Continuing Playing of Plaintiff's Exhibit
25 Forty for the Jury. Not transcribed herein.)

1 (On the Record.)

2 BY MR. OSBORNE:

3 Q: All right. After speaking to him, what happened next in
4 the investigation?

5 A: So he identified, there were three people that he
6 identified in his vehicle through the duration of this whole
7 statement, which was Kevin Corley, Elijah Green and Antonio
8 Barrett and so warrants were drafted because those
9 identifications came from a codefendant, an eyewitness to this
10 whole incident, which gave us the probable cause to move
11 forward with charges.

12 Q: All right. Tell the Jury or list to the Jury all the
13 evidence that you had to move forward against Antonio Barrett,
14 excluding what was told to you from the Defendant?

15 A: Excluding that?

16 Q: Yes.

17 A: There was no other evidence that Antonio Barrett's name
18 came into this investigation besides from the Defendant.

19 Q: Okay. So the only evidence that led to Antonio Barrett's
20 freedom being deprived is from the Defendant?

21 A: That's correct, his identification.

22 Q: Well, sorry I have to ask the question then, why would
23 detectives with CPD take Defendant's word, when he had already
24 lied, and then move ahead and arrest an individual.

25 A: Well, he -- in the beginning stages of his interview, he

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1 -- he did lie. He tried to say that he was not involved in
2 this at all, his car was elsewhere and he had no knowledge of
3 what occurred. His, his statement evolved to the point where
4 he was relaying information that we were able to corroborate
5 through other witnesses. When he identified Elijah Green and
6 Kevin Corley, that was consistent with the other information
7 that we got at that time. So, it was suggesting that he was
8 -- there was credibility to the statement. He also stated
9 that he did drive by and he drove by with the driver's side
10 facing the, the incident location, the house of Mazerati. So,
11 everything was jiving. So, when he went on to describe this
12 -- this fourth person, which turned out to be the shooter,
13 there was no reason not to believe him at that point when he
14 did provide all that other corroborating information.

15 Q: Not to believe him at that time?

16 A: At that time, yes.

17 Q: Did you get other information later on in the
18 investigation or did it just stop that night?

19 A: No, the investigation was far from over.

20 Q: Okay.

21 A: And so it continued on, progressed on.

22 Q: All right. So that sounds pretty important. So he told
23 you that the direction that the vehicle was traveling, did
24 anyone volunteer that information to him or is that something
25 that he came up with on his own?

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1 A: That's something he came up with on his own.

2 Q: All right. So, well let's just address that. So, well,
3 let me ask it to you this way. When you interview people as a
4 detective, I imagine that would be several people?

5 A: That's correct.

6 Q: And is common for people to come in when you first start
7 talking to them and lie to you or mislead you?

8 A: Absolutely, it's something we have to deal with in most
9 of our statements.

10 Q: Everyone that comes in and lies to you, do you charge
11 them all with obstruction?

12 A: No.

13 Q: Okay. Antonio Barrett, do you recall the date that he
14 was arrested?

15 A: He was arrested the day after this incident occurred, so
16 it was the 19th of December.

17 Q: Okay. And do you know about how long he spent in jail?

18 A: Yes, he had -- he bonded out in February 13th, 2015. So
19 it was a little over two months in jail or just under two
20 months in jail.

21 Q: No further questions.

22 THE COURT: All right. Cross examination?

23 CROSS EXAMINATION OF PAUL KRASOWSKI BY MR. SMILEY:

24 Q: Krasowski?

25 A: You got it.

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1 Q: I got it. Detective Krasowski, I'm not going to
2 introduce myself; I hope you know who I am. All right.
3 Before we get to the statement, I want to sort of sum up some
4 other stuff. When you took over as the case officer, is it
5 sort of your job to make sure the evidence has been collected
6 and any analysis that needs to be done is done and that kind
7 of stuff?

8 A: Yeah, typically, yes.

9 Q: And in this case there had been a gunshot residue kit
10 collected, right?

11 A: Yes, there were.

12 Q: Has there been some fingerprints collected, correct?

13 A: Yes.

14 Q: Some DNA swab or attempted to be swabbed?

15 A: Yes.

16 Q: All right. The fingerprints, the initial analysis I
17 think was done like four days afterwards, right, or shortly
18 thereafter?

19 A: Yes, the -- yes, the report came out soon thereafter.

20 Q: And it was determined not to send off the GSR Kit for
21 analysis that was taken from Mr. Patterson because of the way
22 it was collected; is that fair to say?

23 A: Well, I'm not sure the way it's collected, that would
24 indicate that there was some procedural issue, but it wasn't
25 sent off because there was no evidence to suggest that he had

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1 a gun or fired a gun or anything like that.

2 Q: Okay. Well, fair enough; it wasn't sent off. DNA?

3 A: DNA swabs made from the vehicle.

4 Q: But they weren't sent off for analysis either?

5 A: Correct.

6 Q: This case sort of was moved in a whole bunch of
7 directions right there in the beginning, right?

8 A: Yeah, I mean, the first six hours or so we worked it
9 until about midnight that night. So it never really varied in
10 direction, it was consistent with Herbie's vehicle and it was
11 just determining the occupants of the vehicle.

12 Q: All right. So you, you spoke to the victim before he was
13 transported to MUSC?

14 A: Very briefly.

15 Q: And he told you that it was Herbie's car that went by,
16 correct?

17 A: Yes, sir.

18 Q: He did not say that it was Herbie who shot him, though,
19 did he?

20 A: Yeah, he didn't know who shot him.

21 Q: He saw Herbie's car go by?

22 A: That's correct.

23 Q: All right. You escorted Ms. Patterson and the children
24 down to the hospital, but you didn't interview her in that
25 capacity on the way down there?

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1 A: What I did, I continued, so when I responded there I got
2 the very basic statement from her. She was, obviously very
3 distraught. Her son was just shot in front of her,
4 essentially, and so I ended up it worked out where I was gonna
5 escort her down to the station so that's kinda how I resumed
6 that statement with her, resumed the audio recording and asked
7 a few more questions just about who would do this or just
8 about the facts and this type thing.

9 Q: Okay. Did she bring up Monty's name to you on the ride
10 down?

11 A: She did not.

12 Q: Were you the officer that was at the hospital that
13 interview Dontaviha that night?

14 A: I was not.

15 Q: That information though was relayed back to, I guess,
16 central headquarters that evening though, right?

17 A: That's correct.

18 Q: So, the conversation with Dontaviha said the person that
19 has a beef with me is Monty or Lamont Greg, and it's over a
20 laptop we believe. That was obtained that night, right?

21 A: That was.

22 Q: And it was relayed back to headquarters that night?

23 A: That's correct.

24 Q: And Herbie was still at headquarters when that
25 information was being relayed, right?

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1 A: Yes.

2 Q: And of course y'all had canvased the area and spoken with
3 some witnesses, correct?

4 A: Yes.

5 Q: And as a result of that, you were able to put Kevin
6 Corley, E.J., and Herbie together in the car, correct?

7 A: Yes, that's correct.

8 Q: It's this fourth person that was the mystery, right?

9 A: Yes, as it progressed on, yeah.

10 Q: You had information that the person with the problem with
11 Mr. Patterson was Lamont Gregg, but you didn't have anybody
12 putting Lamont in the car; is that fair, at that point?

13 A: We did not have Lamont, no, but we have information. His
14 name came up as having an issue with the victim.

15 Q: Now, we heard the pertinent part of the interview
16 just now with Herbie. And when Herbie got down to it, he
17 ended up corroborating a great deal of what you had learned as
18 to everything but that fourth person, correct?

19 A: Well he, he was able to identify to other codefendants in
20 this case, occupants of that vehicle.

21 Q: And he told you -- he drove which was cooperated, the
22 fact that they came back to the Hole, correct?

23 A: That's correct.

24 Q: They took off, they disbursed and he didn't know where
25 the other two went, but he went Pep, right?

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- 1 A: Yes.
- 2 Q: Most of that information, I'm not gonna say all of it,
3 but most of that information was deemed corroborated, right?
- 4 A: Yes.
- 5 Q: And that's one of the things that gave credence to him
6 when he gave up Antonio Garrett, correct?
- 7 A: That's correct.
- 8 Q: But it seemed to make sense that the fourth person was
9 being identified, right?
- 10 A: That's correct.
- 11 Q: Now you bring up in the interview a whole bunch about the
12 motive being the neighborhood, correct?
- 13 A: Yes.
- 14 Q: For the most part, it's fair to say Herbie was telling
15 you he didn't have anything to do with that and it wasn't
16 about the neighborhood, correct?
- 17 A: He actually -- I mean, at one point, I think at the very
18 end of it that's when he said it was more to do with the
19 neighborhood, but yeah.
- 20 Q: He kept telling you -- trying to tell you that he and
21 Patterson were friends, right?
- 22 A: He did, I referenced them as old friends.
- 23 Q: And he kept saying that he didn't have a problem with
24 him, right?
- 25 A: He did.

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1 Q: As he further went on that even though he had other
2 friends and told him not to hang out with him, he did hang out
3 with him, right?

4 A: He did reference it.

5 Q: Now, I mean, you even -- you had the name Lamont Gregg in
6 that interview because you asked him about Lamont, right?

7 A: Yes.

8 Q: And Lamont, just to make sure, Lamont Gregg's street name
9 is Monty, correct?

10 A: That's correct.

11 Q: And so you knew that Monty was Lamont Gregg?

12 A: At that point, yeah.

13 Q: And you received --- I want to make sure I ask this
14 question correctly. The next day Antonio Garrett was arrested
15 based on the probable cause that you received from Herbie and
16 Herbie alone.

17 A: Yes, that's correct.

18 Q: However, I think he testified at length before this trial
19 that it doesn't stop because one guy falsified his name,
20 right? The case isn't made with uncorroborated evidence,
21 right?

22 A: Absolutely, yes.

23 Q: Might've been enough for probable cause, but in your mind
24 the investigation continues?

25 A: It's not over; that's correct.

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1 Q: And when Antonio came into the station, he was -- did you
2 do that interview?

3 A: I did not.

4 Q: Okay. You being the case agent, you received that
5 information fairly quickly, correct?

6 A: I think so. I became the case agent this year.

7 Q: I understand.

8 A: I think it was -- because I interviewed Elijah Green, he
9 was arrested around the same time, and so we obviously
10 reconvened and we all talked about it.

11 Q: All right. You were aware that Antonio Barrett was
12 adamant that he had nothing to do with it as soon as he was
13 arrested?

14 A: Yes.

15 Q: You were aware that Antonio Barrett was providing a alibi
16 as soon as he got there?

17 MR. OSBORNE: Objection, Your Honor, this is his personal
18 knowledge.

19 THE COURT: I overrule; I'll allow that. Go ahead.

20 A: He said he was -- he was babysitting. So, yes, he said
21 he was at his house.

22 BY MR. SMILEY:

23 Q: And you're a member of the CAT team, right, or were at
24 one point in time?

25 A: Yes, sir.

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1 Q: Okay. And so you're familiar with that neighborhood,
2 right?

3 A: Fairly familiar, yes.

4 Q: Okay. You know where Robinhood was, it was right down on
5 that neighborhood. I think you drew it on the map, it was a
6 couple more streets towards 61, right?

7 A: Yes, that's correct.

8 Q: Antonio's father provided you in the investigation -- he
9 provided the investigation with you as the case agent, a
10 neighbor that could vouch for him, correct?

11 A: He did. He contacted the department, Detective Bailey
12 and had phone contact with him and he provided ---

13 Q: And the CAT team was in that neighborhood just a couple
14 of blocks away, right?

15 A: Yes.

16 Q: Okay. And as you continued investigating this case,
17 Lamont Gregg, Monty, name wouldn't go away; fair enough, it
18 kept coming up?

19 A: That's correct.

20 Q: Because the night of the shooting, you've got Dontaviha
21 saying the only person that I only really got a beef with is
22 Monty at the hospital is you are able to gather information
23 that Monty was upset with Dontaviha over getting arrested,
24 right?

25 A: Yes.

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1 Q: So that -- you're doing your job, continued to
2 investigate, and within three or four days you had Lamont's
3 fingerprint come back on the car, right?

4 A: Yes.

5 Q: As you did in the investigation and trying to continue to
6 corroborate information to build your case, after you arrested
7 Antonio, and when I say you, I mean the department, the
8 process, nothing was done though as far as he's concerned
9 about corroborating the evidence against him because the
10 investigation was leading in other directions?

11 A: Well, I wouldn't say that's true. So with the
12 information as this continued on, Detective Burkhardt did
13 reach out to the Solicitor's office and inform them that there
14 is a concern about some of the evidence that we have here and
15 that's what -- when Assistant Solicitor Osborne became more
16 involved and that's when they began the process of offering or
17 the proffers that you heard earlier and that was obtaining
18 information that way. And the reason that it happened and
19 transitions into that is now all these codefendants have
20 attorneys and so we have no ability to reach out to them and
21 communicate with them and that's how that process begins.

22 Q: Okay. Now some of the things about Antonio Barrett that
23 Herbie gave you didn't corroborate though, like the age,
24 right?

25 A: Yeah, so initially he said, he's like early twenties,

1 mid-twenties and then ended up, he just kinda left off at mid-
2 twenties or something like that, but everything else was
3 pretty consistent.

4 Q: Well, height was different, because I believe Antonio is
5 about -- or is that not in evidence. Do you know how tall
6 Antonio Barrett was?

7 A: So, I, I think it was consistent with around 5'10", I
8 think.

9 Q: All right. You were able to corroborate the story about
10 going to play basketball, right, you spoke to witnesses that

11 ---

12 A: Yes, sir.

13 Q: --- that made clear or corroborated that there was a plan
14 for Herbie to drive those two gentlemen -- those two young men
15 over to play basketball, right?

16 A: Yes.

17 Q: You were able to corroborate that?

18 A: Yes.

19 Q: And the talk about gas money was corroborated also?

20 A: It was.

21 Q: It was also corroborated that Herbie's car is the
22 neighborhood taxi; is that fair to say?

23 A: I don't -- I don't want to say that. I would disagree.

24 Q: You would? A lot of people got in and out of that car.

25 A: Well, I mean, if we're talking about the four

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1 codefendants here, yes, but the processing of the vehicle only
2 yielded three sets of fingerprints, identical fingerprints, so
3 if it was, I would expect more.

4 Q: All right. Now the victim that night at the hospital was
5 sending information back about the beefs with Monty is over a
6 laptop. He even gave up where Monty lived that night to
7 y'all, right, because he says the guy that got shot over on
8 [REDACTED], the last guy that got shot on Evergreen; so, you
9 were sure who it was, right?

10 A: I'm sorry, repeat that?

11 Q: Bad question. Sometimes I get carried away. He, in a
12 roundabout fashion, even conveyed to the officer at the
13 hospital that was conveyed back to y'all where Monty lived
14 because he was the guy that got shot, the last time on
15 Evergreen.

16 A: He did say -- he referenced Monty as being shot on
17 Evergreen. I don't know if it came to us. It was at his
18 house and that address.

19 Q: So you were able to arrest Lamont Gregg in this case,
20 correct?

21 A: Eventually, yes.

22 Q: And he has admitted his guilt in this case, right?

23 A: He did.

24 Q: It was admitted that he fired the gun?

25 A: He did.

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1 Q: In other words, he pled guilty to attempted murder,
2 right?

3 A: That's correct.

4 Q: And he also pled guilty to possession -- possessing a
5 weapon during a crime of violence, right?

6 A: That's correct.

7 Q: By the time -- were you present at the proffer of Kevin
8 Corley?

9 A: I was not present when that one occurred.

10 Q: It happened on -- it occurred in April of this year,
11 right?

12 A: April 24th of '15.

13 Q: I'm sorry. I'm getting my news mixed up now. So this
14 crime happened in December and Kevin sat down and spoke under
15 proffer with the Solicitor's office, were you aware of that in
16 April?

17 A: In April, yes.

18 Q: All right. Because the case -- you didn't make the
19 arrest warrant against Antonio, did you?

20 A: I did not.

21 Q: Okay. Because you were aware that Antonio Barrett was
22 indicted in May of 2015?

23 A: Yes, May 5th, they were all indicted.

24 Q: That was after the proffer, correct?

25 A: His first proffer, yes.

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1 Q: All right. By the time that first proffer had ended, was
2 it quite apparent that Lamont Gregg was the shooter?

3 A: I wouldn't -- so now at this point, we have one person
4 saying -- identifying the shooter as Lamont Gregg and we have
5 Herbie Singleton identifying the shooter as Antonio Barrett.
6 So it's kind of fifty/fifty. There is some additional
7 evidence that would que in Lamont Gregg, but at this point,
8 we're still on a tossup.

9 Q: Okay. You've got the victim telling you that he believed
10 that he had the motive to do it, certainly, right?

11 A: He provided the motive, but that's all he could provide.

12 Q: I beg the Court's indulgence?

13 THE COURT: All right.

14 Q: Did you have the opportunity to interview Elijah Green on
15 the 19th?

16 A: I did. That was the day after the incident.

17 Q: Right. Now Elijah Green provided you with some
18 information, didn't he?

19 A: He did. He did. He provided a short statement, yes.

20 Q: And in that statement, he told you that Herbie ---

21 MR. OSBORNE: Objection, Your Honor, hearsay. May we
22 approach?

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

25 THE COURT: Sustained.

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PAUL KRASOWSKI - REDIRECT BY OSBORNE

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1 BY MR. SMILEY:

2 Q: As you were saying that April -- as far as fifty/fifty,
3 isn't it true on the 19th that you were able to produce a
4 witness that put Lamont Gregg in the car?

5 MR. OSBORNE: Objection, Your Honor.

6 THE COURT: Sustained.

7 MR. SMILEY: Nothing further.

8 THE COURT: Redirect?

9 MR. OSBORNE: Just briefly, Your Honor.

10 REDIRECT EXAMINATION OF PAUL KRASOWSKI BY MR. OSBORNE:

11 Q: Okay. So let's keep going with some of those dates that
12 he just ended with. All right. You have become aware that
13 Kevin Corley entered into a proffer agreement; is that
14 correct?

15 A: That is correct.

16 Q: And what was the date of that proffer agreement?

17 A: That was April 24th, 2015.

18 Q: And I do not want you to get into the content, but did
19 you become aware that Elijah Green entered into a proffer
20 agreement?

21 A: I did become aware..

22 Q: And what date was that?

23 A: That was July 31st, 2015, so three months later.

24 Q: Okay. What happened with Antonio Barrett's charges after
25 Elijah Green entered into a proffer agreement?

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1 A: So -- you said Antonio Barrett's?

2 Q: Yes.

3 A: Antonio Barrett's charges were dropped by the Solicitor's
4 office on August 24th, 2015.

5 Q: Subsequent to the proffer with Elijah Green?

6 A: That's correct.

7 Q: Okay. Mr. Smiley said that -- and he just made a point
8 of this, that y'all had Lamont Gregg's information on the
9 night of the incident, correct?

10 A: We did; his name came up.

11 Q: And I think the victim even give you some directions to
12 where you might be able to find him?

13 A: That's correct.

14 Q: Okay. So the subsequent question is obvious is why
15 didn't you just go talk to him?

16 A: Well, as -- after we got this identification and the
17 arrests were made, we were looking to bringing all the facts,
18 looking at where we needed to go with this and it created some
19 difficulty of, of reaching out, going to Lamont Gregg and
20 trying to get a statement from him, when he knows full well
21 that an arrest was made off the shooter. So that interview
22 would be pretty fruitless at that point. So that's why we
23 directed our focus, the Solicitor's office to assist us in
24 continuing this investigation that night.

25 Q: Okay. So it fair to say then, you would be going to an

1 individual and telling him to confess to a shooting when y'all
2 had already arrested someone?

3 MR. SMILEY: Objection, Your Honor.

4 THE COURT: Sustained. Go ahead.

5 BY MR. OSBORNE:

6 Q: All right. The -- let's get back to the dad's phone call
7 that Mr. Smiley mentioned where he said there's a neighbor,
8 that was an alibi, but I think he also mentioned that
9 Antonio's sister was an alibi; isn't that correct?

10 A: That is correct.

11 Q: And the message was then related, well, just have the
12 sister come in and talk with us, correct?

13 A: As well as the neighbor because he mentioned the neighbor
14 as well.

15 Q: Okay. So a neighbor I might get but did the sister ever
16 come in?

17 A: Nobody ever came in.

18 Q: All right. So let's talk briefly about the fingerprint
19 in the car that you mentioned. I'm showing you what's been
20 marked as State's Exhibit Sixteen. Okay. The -- I think
21 we've heard testimony to this, but the investigation showed
22 that the shooter was on what side of the car and seated where?

23 A: The shooter was on the driver's side rear seat, so the
24 driver's side rear passenger.

25 Q: Do you know where the fingerprint that was recovered from

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PAUL KRASOWSKI - REDIRECT BY OSBORNE

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1 the vehicle that came back for Lamont Gregg was recovered?

2 A: It was actually recovered on the door, the back door of
3 the passenger side. So it's different in the seating
4 arrangement.

5 Q: Okay. Can you just mark that? Do you know about where?

6 A: I don't remember where. It was at the top. It was
7 somewhere -- I'm not positive. It was either ---

8 Q: If you don't know, don't do it.

9 A: Okay.

10 Q: But so let me just ask you this. As the case agent or a
11 case agent, somebody who's investigated crimes, did the fact
12 that Lamont Gregg's fingerprint come back that that car loses
13 significance when it wasn't found on the shooter's side of the
14 car?

15 A: A little bit, yes, because there was no reason to suggest
16 he was in the car at this time at that point in the
17 investigation and with his fingerprint being on the opposite
18 side of the door of the car from where the shooter was, it --
19 it wasn't immediate red flags.

20 Q: All right. I'm showing you what's been marked as State's
21 Exhibit Forty-two and this being -- and you've already
22 identified this -- this being the photograph of Barrett. I
23 want to focus your attention to this hair. Does Antonio
24 Barrett's hair match the description as was given by the
25 Defendant of the shooter?

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BY THE COURT

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1 A: He did. He described him having longer twist braids,
2 something to that effect, which was consistent with the
3 picture.

4 Q: Okay. And Mr. Smiley talked about corroboration in some
5 of the things the Defendant said that were -- that could be
6 corroborated. When Herbie was asked if he had any issues with
7 Dontaviha, his old friend, he said no; is that correct?

8 A: That's correct.

9 Q: Were you able to corroborate that?

10 A: Well, that would contradict the Facebook messages that we
11 obtained through this investigation and that would show
12 there's a clear issue between their friendship close to the
13 time of this incident.

14 Q: No further questions.

15 THE COURT: All right. You may step down.

16 BY THE COURT:

17 THE COURT: Ladies and gentlemen, I think we're gonna
18 take our afternoon break now. Please leave your notepads in
19 the jury box. Do not discuss the case even among yourselves.
20 We'll take about a ten or fifteen-minute break and then come
21 back and resume at that time.

22 (REPORTER'S NOTE: Jury exits courtroom. 2:53 P.M. The
23 following takes place outside the presence of the Jury.)

24 THE COURT: All right. Anything from the State before we
25 recess?

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1 MR. OSBORNE: No, Your Honor.

2 THE COURT: Anything from the Defense?

3 MR. SMILEY: No.

4 THE COURT: Y'all still got another witness?

5 MR. OSBORNE: No, we're gonna rest.

6 THE COURT: You're gonna rest?

7 MR. OSBORNE: Yes, Your Honor.

8 THE COURT: Okay. I'll let you rest on the record when
9 get the Jury back in here, okay?

10 MR. OSBORNE: Yes, sir.

11 THE COURT: All right. Before we take a recess then, any
12 motions at this point in time?

13 MOTIONS:

14 MR. SMILEY: Yes, sir. I have a motion as to each
15 charge. The first to the attempted murder, Your Honor. In
16 this case if the State goes forward, it's gonna have to go
17 forward with the hand of one hand is the hand of all theory.
18 The alleged gunman in this case, by the testimony and
19 otherwise pled guilty to firing the three shots and to
20 possession of a weapon. And so there has to be some common
21 scheme or plan or as I called it in opening a preplan of some
22 sort to show that they were acting in concert. The -- and
23 mere presence, even in a light most favorable to the State, is
24 not enough. Mere suspicion is not enough. You have to look
25 at the evidence. And I would submit, Your Honor, through

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1 every single witness that has been put on the stand, there's
2 been not one iota of any common scheme or plan to fire a
3 weapon at Dontaviha Patterson. Certainly, there's no motive
4 and that was discussed about Lamont Gregg, but the occupants
5 in the car testified that he did not hear any conversation
6 about a gun and said that there was no gun visible. There's
7 nothing that would establish a plan that was discussed before
8 they got in the car between my client and Mr. Gregg. Nothing
9 before, and there was no actions that from the outside would
10 appear to show acting in concert. Driving the car to drop a
11 person off and then driving away after a shot, I don't believe
12 establishes, even in the light most favorable to the State,
13 that there was a common scheme or plan in this case.
14 Therefore, I would make a motion for a directed verdict on the
15 attempted murder.

16 As to the obstruction of justice, and it was -- without
17 going back over my pretrial motions about obstruction, we just
18 go to the elements of an intentional act and I would guess
19 that would be providing the -- that would be providing the
20 false name as an act which prevented, obstructed, impeded or
21 hindered the administration of justice. The correct shooter
22 pled guilty. He didn't prevent it. The officers testified
23 that they didn't stop the investigation, didn't impede the
24 investigation, impede to slow progress or hinder, which are
25 very similar, the administration of justice. As Your Honor

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1 has -- I beg the Court's indulgence.

2 In the abstract, the information was Antonio Barrett from
3 our client, and there wasn't other information coming in in
4 the investigation because he only provided that name and he
5 didn't himself get him get him arrested. They had information
6 that night from the victim that Monty is the person that I
7 have a problem with, that it's about a laptop, getting
8 arrested, that where Monty lives, that while they tried to say
9 it's insignificant, they had a print that goes back to Lamont
10 Gregg. Antonio gives them an alibi when he's arrested the
11 next day that's easily confirmable, the neighbor and sister
12 within blocks and available, the address is given, that
13 could've been checked out, that -- and that Kevin Corley told
14 the police he was not with Antonio Barrett. And so the only
15 piece of information that's given that could be obstructing
16 justice is my client, whose been charged, he's been charged
17 with attempted murder, is sitting in a room and he gives the
18 wrong name of a shooter which given what the events that just
19 happened, it's quite understandable, that he just saw what
20 Lamont Gregg does to somebody that gets him arrested, that he
21 pulls out a gun and starts shooting at a house. I'm not
22 saying that was a good thing to do, but I don't believe it
23 rises to the common law obstruction of justice and the purpose
24 of which -- it did not prevent, did not obstruct, impede or
25 hinder the administration of justice, which follows through

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1 all the way to the end. And therefore, I would make a motion
2 to have that charge -- a directed verdict on that charge as
3 well.

4 THE COURT: Mr. Osborne, Ms. Ginsberg?

5 MR. OSBORNE: Yes, Your Honor, so I'll start backwards
6 and do the obstruction first. There was testimony that the
7 only evidence to implicating Antonio Barrett was the
8 Defendant's statement. It's an interesting position that the
9 Defense is taking. It's almost like, yeah, our guy lied,
10 yeah, it's our guy's fault that he got arrested but they
11 didn't do their job. I don't -- you can't say that just
12 because the police didn't follow up on Lamont Gregg that he
13 didn't obstruct or impede the investigation or administration
14 of justice.. And I think that Detective Krasowski had a good
15 explanation for why you don't go interview Lamont Gregg and in
16 each one of those bits and pieces of evidence that came up
17 could be explained. You have an eyewitness to the incident.
18 And, he did provide some corroborating information, the
19 direction in which the vehicle was traveling wasn't provided
20 to him. So that's -- that's pretty credible information. He
21 provided that on himself. At that time, they didn't have any
22 reason to disbelieve him. Just because the one guy that
23 Lamont Gregg wanted to shoot, doesn't mean that more people
24 didn't want to shoot him. So, I think they had more than
25 enough to go ahead with probable cause at that time to affect

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1 the arrest.

2 In reference to the attempted murder, the Defendant said
3 that night on the way over to Mazerati's house, that there was
4 negative comments being said between the shooter, identified
5 as Antonio, and himself about the victim while they were
6 headed to the victim's house. Kevin Corley himself said that
7 the Defendant was saying that on Thanksgiving that he wanted
8 just one, that he wanted to fight the victim and he wanted to
9 hurt him. The Facebook messages all corroborate that. Kevin
10 Corley said that he had called him a P -- a P word. That was
11 corroborated also in the Facebook messages; that exact term
12 was used. There was clearly animosity there. This pre-
13 planning, the law doesn't say that it has to go back; it's
14 just I believe it's the facts and circumstances to reasonably
15 allow the jury to infer the intent and I think with all the
16 evidence that's here, by any evidence standard, a jury could
17 reasonably infer that he understood what he was doing when he
18 drove Monty over there.

19 THE COURT: Anything in reply?

20 MR. SMILEY: No, sir.

21 THE COURT: All right. I note your motions. I'm gonna
22 deny them. I think there's enough to get around the directed
23 verdict.

24 MR. SMILEY: I think I have to renew, just for the
25 record, Your Honor, that at this -- my motion to quash those

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HERBIE VALL SINGLETON - BY THE COURT

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1 pre-trial -- I just renew it. I respectfully understand your
2 decision, Your Honor.

3 THE COURT: All right. I'm going to deny -- you're
4 talking about the motion to quash the obstruction of justice
5 indictment?

6 MR. SMILEY: Yes, sir. That's just in an abundance of
7 caution to protect my record.

8 THE COURT: All right. I'm gonna deny that motion.

9 MR. SMILEY: Yes, sir.

10 THE COURT: Anything else?

11 MR. SMILEY: No, sir.

12 THE COURT: All right. Let me go ahead and question your
13 client regarding his right to testify and then we'll take a
14 break and that will give him a break before I get to the
15 answer from him.

16 Let's go ahead and place him under oath, please.

17 HERBIE VAL SINGLETON, HAVING BEEN

18 SWORN TESTIFIES AS FOLLOWS:

19 BY THE COURT:

20 THE COURT: All right, sir, your name is Herbie Val
21 Singleton, Jr?

22 MR. SINGLETON: Yes, sir.

23 THE COURT: All right. Mr. Singleton, at this time, I'm
24 going to explain to you certain rights that you have. If you
25 do not understand anything I say, let me know, and if you want

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1 has shown and the law to be applied in this case.

2 All right. Mr. Osborne, Ms. Ginsberg, who wishes to make
3 the closing argument?

4 MR. OSBORNE: I will, Your Honor.

5 THE COURT: All right.

6 CLOSING BY OSBORNE:

7 MR. OSBORNE: Disrespect. When you disrespect Ardmore,
8 you're disrespecting his neighborhood, you're disrespecting
9 his territory, you're disrespecting him. Dontaviha
10 disrespected Ardmore in two ways. He disrespected Ardmore
11 when he set up the bottom of the Moe guy, gave him a stolen
12 laptop and got him charged. He disrespected -- the way that
13 he disrespected Ardmore that cut this Defendant the most is
14 whenever he was out there running his mouth saying F the Moe.
15 That's the disrespect that almost cost him his life.

16 I'm not gonna go through all the evidence again. All
17 right? But I am gonna point out something that I think is
18 important looking at it chronologically. Okay. On August of
19 2014, Dontaviha, a downtown guy, moves to Ardmore. He
20 rekindles a friendship with the Defendant. The Defendant then
21 introduces him to other Ardmore guys, namely, Lamont Gregg or
22 Monty. October the 28th, Monty pawned a laptop that was given
23 to him by Dontaviha. November the 18th, Monty gets arrested.
24 By all accounts, up until this date, this downtown guy was
25 getting along just fine with these two Ardmore guys. From

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1 this date, everything changed. November the 19th, Monty is
2 bonded out. Just a couple days later, he approaches Dontaviha
3 and says, hey, I want the whole seventy-five bucks, you got me
4 locked up. Dontaviha tells him no. He laughs at him. Now,
5 you know that Monty communicated that information to Moe Boy
6 Herb because Kevin Corley told you it was right around
7 Thanksgiving. Everything prior to that was fine, but right
8 around Thanksgiving Herbie starts saying Dontaviha is out
9 there running his mouth. He's out there saying F the Moe,
10 right around Thanksgiving. And it's at that point that Moe Boy
11 Herb starts calling him a pussy, pussy boy. It's at that
12 point that Herbie starts saying I want my one. I want to hurt
13 Dontaviha. That didn't come from Monty; that was Herbie that
14 was saying that.

15 And you know Mazerati heard that Herbie was saying the
16 same thing because, look, just a few days later, damn, why the
17 F you telling people I say F the Moe. Like what the F? I
18 don't even have y'all on my mind. He knows he's not just
19 talking to Moe Boy Herb; he's talking to Monty too. And you
20 know that Herbie had heard the same thing because listen to
21 what he told the detective.

22 *****OFF THE RECORD*****

23 (REPORTER'S NOTE: Portion of State's Exhibit Forty played for
24 Jury. Not transcribed herein.)

25 (On the Record.)

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1 MR. OSBORNE: He's was saying F the Moe.

2 The weekend prior to the shooting 13th or 14th, Monty
3 approaches Dontaviha in the bottom of the Moe at White Oak and
4 Evergreen, if I see you on these streets again I'll smoke you,
5 lay you out, kill you. Dontaviha just had his life threatened
6 by Monty. He didn't take action. On the 14th around the same
7 day, Moe Boy Herb chimes and starts slinging insults to him.
8 Mazerati is not gonna take that laying down. He starts
9 slinging insults back. But, it's at that point that Mazerati
10 realizes I got a problem. I've had one by Moe Boy telling me
11 he was gonna lay me out. Okay. Now, I got a second one. I
12 got another bottom of the Moe boy telling me -- throwing
13 insults my way. So what does he do, over the next day or two,
14 tries to -- tries to get a gun, tries to arm himself. He
15 needs to get a scrap, needs to get one ASAP. During the same
16 time period Moe Boy Herb chimes in and lets him know, you're
17 gonna need a gun. Don't let me catch you sleeping out there,
18 Bitch Boy. He went to sleep and you heard what that means.
19 Sleeping means being out there relaxing and you don't have a
20 gun, you're not armed. Look at how Mazerati responds. Y'all
21 -- N words -- always talking in your hood, Ardmore, y'all.
22 This is a fight. Not a fight with fists; it's a gun fight.

23 The very next day, he can't find him. Moe Boy Herb
24 cannot find Mazerati, get outside, get the F out here.
25 Mazerati: Y'all don't even be on my F-ing mind. Y'all who?

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1 He knows who he talking to. Y'all, both of you. Meet me on
2 the track later. I can't get you outside. Just meet me on
3 the track. Laughing out loud. You know where I live. Just
4 meet me on the track. Desperately trying to get him outside.
5 So he finds a place that he thinks he can lure Dontaviha out.
6 Dontaviha, top of the -- top of the Moe. Lamont Gregg, bottom
7 of the Moe. Herbie, Moe Boy Herb, bottom of the Moe. Where's
8 track? It's a perfect middle ground. Just come meet me here
9 then. It's a good thing he didn't; that was an ambush.

10 All right. The day before the shooting, now I know that
11 you heard Dontaviha testify and he sort of played it off like,
12 well, you know, it didn't really bother me that much, you
13 know. Tried to come across like a tough guy and whatnot. The
14 messages don't reflect that from two years ago. Well, I'm at
15 my sister's house, I can't come out and meet you. I'm inside.
16 Y'all think I'm gonna sit here and let y'all take my life?
17 Y'all, y'all, Moe Boy Herb.

18 This was a big mistake here. On the day of the shooting
19 at 11:50 A.M., Heard you been looking for a real N-word
20 yesterday. You know where the F I've been at? I've been out
21 on Balsam Street. This is an insult. This is disrespectful
22 right here. Mazerati's telling him, you've been looking for
23 me this whole time; look at where I was. Moe Boy Herb, I was
24 right in your backyard. I was trouncing around in your
25 territory and you didn't know anything about it. You know

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1 that got to him. Forty minutes later, look at this message.
2 Listen, that's been Monty in my inbox; that wasn't me.
3 Everything between you and I is cool. I don't know what
4 happened. He must've got on my Facebook Message. He must
5 have my user name, must have got my password. But those
6 messages for those last two-plus weeks, they weren't from me.
7 So everything is cool.

8 Mazerati is a young man, a little bit naive, and I will
9 submit to you he might still be a little bit naive. Okay.
10 Well, that's cool. Man, if that was Monty, why didn't he just
11 state his name, but you and I, if that's the case, then you
12 and I are cool. Why didn't he just unblock me and send a
13 message to me. I didn't block him. And their little ploy
14 worked because just a few hours later, Dontaviha gets shot.

15 Now, like the Judge said, I don't get to come back up
16 here again after the Defense talks to you. So I have to sort
17 of guess as to some of the things they might say and address
18 them now. In a case of this nature, where we have a lot of
19 evidence, okay, we have to call a lot of witnesses. All
20 right. The law requires that we jump through a lot of hoops
21 in order to get that evidence in. Tuesday was a kind of a
22 rough day for that. We had to sit through a lot of chain
23 witnesses. We had to sit through a lot of crime scene
24 technicians. I felt like I needed to present that evidence to
25 you to show you that this was a thorough investigation. If I

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1 didn't do that, you could almost be guaranteed they would've
2 pounced on that and pointed out all that they didn't do.

3 The second thing I want to point out that they might
4 mention is that Dontaviha said that he and Herbie were
5 friends. I think we even heard they got a tattoo together.
6 Well, that's true, but you also heard Dontaviha said that we
7 hung out almost every day from August until Thanksgiving. It
8 stopped then. Around Thanksgiving the only communication they
9 were having was by Facebook messages and they weren't
10 friendly. Now Dontaviha has testified that things were cool
11 between he and Herbie. Well, I would ask you this, I wonder
12 two years ago when he was laying on the ground after he'd
13 gotten shot and he saw Herbie's car drive away, if he thought
14 things were cool between them then? And I would also submit
15 to you this, he's probably hoping that things were cool
16 between he and Herbie. The last time he and Herbie got into a
17 disagreement, it almost cost him his life.

18 All right. So, in this case you've heard the evidence,
19 you've heard the bad blood, you've seen the Facebook messages,
20 but you've also heard more. You've heard from Kevin Corley.
21 Kevin testified that he and Herbie were like best friends
22 similar to he was best friends with E.J. You heard that Kevin
23 entered into a proffer agreement with the State. Don't be
24 confused. A proffer agreement does not give him immunity.
25 Kevin Corley will be prosecuted just like Lamont Gregg was

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1 prosecuted, just like E.J. Green will be prosecuted. Today
2 this trial, this is Herbie's day.

3 All right. Now, let's look at what Kevin said.
4 Everything was cool until up around Thanksgiving and that's
5 when Herbie said that Dontaviha was disrespectful to the Moe,
6 out there running his mouth. Well, you see the text messages
7 and Facebook messages that corroborates that. Herbie was
8 calling Dontaviha names. Kevin even mentioned the name, the P
9 word. We saw that in the Facebook messages as well that
10 Herbie was calling Mazerati -- Moe Boy Herb was calling
11 Mazerati the P name and that Herbie wanted his one, that he
12 wanted to hurt Dontaviha.

13 Now, I know that Dontaviha said that he thought
14 everything was cool between he and Herbie. If memory serves
15 me correctly, Dontaviha, who has been here throughout this
16 entire trial, testified before Kevin Corley, I wonder if
17 having heard this would change his opinion. Kevin testified
18 that the shooter fired from the Defendant's car and testified
19 there were four people in the car, the driver, the Defendant,
20 Kevin was the front passenger, E.J. sat behind Kevin, shooter
21 was behind Herbie.

22 All right. I want to talk to you a second about the path
23 they took. They started in the bottom of the -- of the --
24 bottom of the Moe in the Hole on Sequoia, leaving Ms. Lizzie's
25 house. They come down, they hang a left or, yeah, left on

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1 Balsam Street. Prior to or while making that left, they pick
2 up Monty. Give me a ride to Mazerati's house. Now, I am not
3 suggesting to you that they got into the car with the seating
4 arrangement to say let's leave that seat blank. Okay? Let's
5 leave it empty because when Monty comes up, he can get in the
6 car. I'm not suggesting to you that plan. Okay? I'm
7 suggesting to you that it was random that he happened to get
8 in the car behind Herbie. Okay? But let's just play it out.
9 Let's just say that he had -- let's say that E.J. had decided
10 that day I'm gonna sit behind Herbie, leaving that seat behind
11 Kevin blank. Let's say that Monty got in the car behind
12 Kevin. Here's what would have happened. They would have went
13 down White Oak, went down to Acacia, hung a right, and made it
14 down in the front of Mazerati's house. That's the path they
15 would've took had the seating been that way. That's also the
16 path they would've took if Herbie was simply dropping off
17 Monty at Mazerati's house because that's the quickest path.
18 He had been there several times before and he doesn't take
19 that path. He takes the scenic route. He goes up Mulberry,
20 takes a right on Mulberry, goes all the way down, hangs a left
21 on Watson, it comes all the way down to Acacia, hangs a left
22 on Acacia, comes down, stops in front of the house that is not
23 Mazerati's house. Waits for a second and slowly goes up to
24 Mazerati's house. Shots occur, goes back up, drives, just
25 drives back up to White Oak, left, left again, back to the

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1 Hole. He took that scenic route for a reason.

2 Okay. Monty was the shooter. That's what Kevin told
3 you. That brings us to what Herbie said whenever he was
4 arrested. He was brought in, he was interviewed by Detective
5 Burckhardt, first. For thirty to forty minutes, he lied. He
6 said, I don't know anything about a shooting. I wasn't in the
7 car at the time of the shooting. My car was with my
8 girlfriend at the time. I don't know what you're talking
9 about.

10 Who's Monty? Ah, just a guy I know. What about
11 Döntaviha? Oh, that's my Home Boy, we're cool, I don't have
12 any problems with him. But when confronted with the evidence,
13 he realized he had a problem. He realized he had -- he was in
14 the car at the time of the shooting and they can prove that.
15 So he put himself in the car at the time of the shooting.
16 Well, if he's in the car at the time of the shooting, well,
17 then who did the shooting, Trell (spelled phonetically), some
18 guy named Trell and then they realized, well, I'm kinda boxing
19 myself in with Trell. I got to find somebody, Antonio
20 Barrett, and that's what led to the obstruction charge.

21 Like the Judge told you, I'm gonna talk to you a second
22 about the law. Okay? If I say anything that differs from
23 what the Judge says, or Ms. Hensley or Mr. Smiley for that
24 matter, you follow the Judge. But he's been charged with
25 obstruction. The Defendant committed an act, which prevented,

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1 obstructed, impeded, or hindered the administration of
2 justice. Defendant did the act with the intent to obstruct
3 justice. When this Defendant was asked who's the shooter, he
4 describes the guy. He describes a guy with dreads, gives them
5 a height and weight. Then he identifies the guy. Identifies
6 Antonio Barrett. It's not enough to just say it was Antonio
7 Barrett, they showed him a picture of Antonio Barrett. Yeah,
8 that's the guy. Him identifying Antonio Barrett cost Antonio
9 Barrett about two months of his freedom. He sat in jail for
10 two months for a crime he did not commit all thanks to that
11 man. That's why he's being prosecuted for obstruction of
12 justice. And you may ask yourself why, why Antonio Barrett;
13 why would he pick him? You heard Detective Krasowski testify.
14 Antonio lived in Ardmore in the top of the Moe just like
15 Dontaviha Patterson. It's two birds with one stone.
16 Dontaviha, the Defendant and Monty were working together.

17 Now, I want to talk to you a second about what the
18 Defense might have to say about obstruction. Okay? I don't
19 know, I can only guess, but I think we've all sort of felt the
20 tone of the trial and it all seems to kind of revolve around
21 it's his fault, blame the police. Don't hold him accountable.
22 Okay? Hold him accountable for his lie. Detective Krasowski
23 told you when we started to catch wind that Lamont might be
24 the guy, we can't go back and speak to all the people that
25 were in the car, E.J. Green and Kevin Corley, because they

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1 already have attorneys. It's got to come through the State;
2 that's the only way to do it. And then to suggest, which I
3 think they might, I don't know, that he should go talk to
4 Lamont Gregg and he kind of chuckled a little bit, just let's
5 play that out. Monty, will you please tell me you tried to
6 kill somebody? I know we already charged one other guy, but
7 you think you could just confess for us? The Defense might
8 say that, well, why would Herbie get a man arrested when that
9 man, Monty, just tried to kill a man for getting him arrested;
10 it kind of puts him in a tight spot, right? Well, you heard
11 Detective Burkhardt testify. When he was questioned,
12 Detective Burkhardt read him his Miranda rights. He had a
13 right to remain silent; he didn't have to say a thing. He
14 could shut that down at any point. He could -- he could have
15 -- he could have in fact when he said -- he could've ended it
16 there, when he said it was Antonio Barrett, he could have
17 ended it there. No, he went so far as to identify the
18 specific Antonio Barrett knowing that he would get charged.
19 Obstruction of justice is not just a lie. People come in and
20 lie to the police all the time; it's a material lie.

21 All right. The second charge, attempted murder. With
22 the intent, attempts to kill another person with malice or
23 forethought, express or implied. The key here is malice, it's
24 an old English term, as I understand it, that simply means ill
25 will or hatred towards another. You've heard the Facebook

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1 messages. There was ill will. There was certainly hatred.
2 But you can also get there through implied malice. You can
3 infer malice through the use of a deadly weapon. A gun is a
4 deadly weapon. He fired that gun three times. Well they
5 didn't fire it -- that gets us to who did fire it? Monty.
6 I'm sure at some point during this trial you've been asking
7 yourself, Monty's already been convicted, what are we even
8 doing here? Well, in this State the hand of one is the hand
9 of all. Okay? If a crime is committed by two or more people
10 who are acting together in committing a crime, the act of one
11 is the act of all and I want to give you a little example. If
12 Ms. Ginsberg and I decide to go out and rob a bank and she
13 drives the car, I get out, I go rob the bank, I get back
14 inside the car, she takes me from the scene, she's just as
15 guilty of armed robbery, but we got to prove it. So, the hand
16 of one has principals. Okay? Mere knowledge one is gonna
17 commit a crime is insufficient. I would submit mere knowledge
18 would be just, you know, hey, Herbie, Monty just shot
19 somebody. Well, Herbie's under no obligation to do anything
20 about it. Just because he knows about it doesn't mean that
21 he's guilty under hand of one. Defendant can be found guilty
22 as a principal, Monty, if he actually commits the crime or is
23 present assisting in a crime. This crime doesn't happen
24 without the wheel man. If they don't have a car to take them
25 to this drive-by and a driver for that car, the crime never

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1 occurs. A finding of a prior arranged plan or common scheme
2 is necessary and we'll talk about this in a second.

3 Intent. Intent is a necessary element. Intent means
4 intending the result with which actually occurred; it's not an
5 accident. One shot maybe; three, that's not an accident.
6 Intent may be shown by acts and conduct of the Defendant or --
7 or/and other circumstances you may reasonably infer intent.
8 Acts and conduct and other circumstances you may reasonably
9 infer intent.

10 I would submit that in order to convict him for attempted
11 murder, this finding of a common scheme or a plan that's
12 really what the case all revolves around. You've heard all
13 the evidence, text messages, the path that he took at the Moe
14 -- I want to draw your attention to this. This message right
15 here, listen, that'd been Monty, just relax. Keep in mind,
16 they can't get him to come outside. Just relax, everything is
17 okay; it's fine between you and I. That's coming from Moe Boy
18 Herb. And naively, Mazerati, okay, that's fine, that's good,
19 good to know. Everything is cool. Herbie and Monty fooled
20 this downtown guy. They fooled him into thinking everything
21 was fine.

22 Now, for you to believe that there was no plan to harm
23 Dontaviha, you would have to believe an extraordinary set of
24 circumstances. First, you would have to believe that Monty
25 hijacked his Facebook account, got his user name, got his

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1 password, and started sending threatening messages to
2 Dontaviha for two plus weeks. Herbie had no idea. Next, you
3 would have to believe that coincidentally while this Defendant
4 found out about these messages on the day of the shooting. He
5 just coincidentally happens to be going to play basketball and
6 sees the hacker himself, Monty, the person who he knows hacked
7 his account just standing there on the corner.
8 Coincidentally, the hacker, Monty, take me to Mazerati's
9 house, the recipient, the victim of those threats that whole
10 time. Coincidentally, he goes to Mazerati's house, taking a
11 roundabout way. Coincidentally, that roundabout way just
12 happened to put Monty, the shooter, in a perfect position to
13 start shooting at Mazerati. Coincidentally and apparently not
14 willingly, he happened to stop in front of the wrong house
15 when he been to his house several times before allowing Monty
16 in the backseat enough time to pull out his gun and prepare
17 himself and you know that happened because Kevin Corley told
18 you when he stopped in front of the wrong house, I turned
19 around, and I saw he was moving. He was pulling his gun out,
20 that's what drew his attention. Coincidentally, he happened
21 to stop, happened to slowly drive up to Mazerati's house,
22 giving Monty enough time to prepare himself. Coincidentally,
23 he stopped in front of Mazerati's house, the first shot was
24 fired, pow, then he started to pull away the second and third
25 whatever, pulled away. Coincidentally, he didn't speed away.

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1 You heard Kevin testify, he just drove away. That gunshot
2 inside of that car was so loud, it startled Kevin. He threw
3 -- he dropped the phone. It scared him. Not Herbie.
4 Coincidentally three gunshots inside of his car didn't startle
5 him in the least bit. He was just looking straight ahead and
6 drove away.

7 All right. And when you talk about intent, okay, it's
8 very difficult, if not impossible, to get inside of someone's
9 mind. Okay? The law doesn't require that. The law only
10 requires that you look at the conduct and circumstances of the
11 case to reasonably infer intent. Okay? You've heard more
12 than enough evidence here to reasonably infer that this man
13 knew exactly what he was doing when he drove Monty over to
14 Dontaviha's house.

15 All right. Proof beyond a reasonable doubt. It's proof
16 that leaves you firmly convinced of the Defendant's guilt.
17 While it does not require proof that overcomes every possible
18 doubt, there are few things in life that we know to an
19 absolute certainty. The law does not require that we prove to
20 absolute certainty that you know he knew what he was doing
21 when he drove over there. All we have to prove is that you
22 are firmly convinced that he knew what he was doing when he
23 drove Monty over to Dontaviha's house. And I would submit to
24 you by all the evidence, you know he wasn't going over there
25 just to holler at him.

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1 Ladies and gentlemen, all the evidence in this case
2 points to one thing, Monty and Moe Boy Herb are like birds of
3 a feather. When Moe Boy sent that message to Dontaviha, it
4 was for the intent to get him to relax, everything's okay. He
5 and Monty had no idea that it was gonna take hold that fast,
6 that he would come outside right after getting that and sit
7 there in broad daylight for the whole world to see, just
8 sitting there watching a movie, an easy target, but when Monty
9 caught wind of that, he flagged down that car and he told Moe
10 Boy, take me to Mazerati's house. He knew exactly why they
11 were going there. They were going there to get the respect
12 that they felt they had earned for being bottom of the Moe.
13 I'm asking you to give this Defendant a verdict. Find him
14 guilty of attempted murder and obstruction of justice. Thank
15 you.

16 THE COURT: All right. Ms. Hensley or Mr. Smiley?

17 MS. HENSLEY: Thank you, Your Honor, may it please the
18 Court?

19 THE COURT: Yes.

20 CLOSING BY HENSLEY:

21 MS. HENSLEY: Good morning. When we started on Tuesday,
22 Mr. Smiley came up here and told you to look for the plan. He
23 said when you hear a plan, make a note. When you hear
24 something about a plan, write it down, and that's because in
25 order to convict Herbie Singleton, just as Mr. Osborne told

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CLOSING BY HENSLEY

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1 you, the State must prove beyond a reasonable doubt that there
2 was a prior arranged plan or common scheme that's necessary to
3 find Herbie Singleton guilty as a principal because everybody
4 knows that Lamont Gregg shot Dontaviha and everybody knows
5 that Lamont Gregg shot Dontaviha because of the laptop.

6 I want to talk a little bit about the witnesses and what
7 each witness did and what they provide to us when we're
8 looking for this common plan. So, we had Officer Shier, who
9 was the first guy there, and he told us that he was in Ardmore
10 all night December the 18th. He told us he worked from 4:00
11 P.M. to 2:00 A.M. right there in Ardmore all night. Then we
12 heard from Officer Fry, who told us all about the community
13 action team, the team that's out there in Ardmore all the time
14 getting to know the people in the neighborhood. Then Officer
15 Ivery came and he works exclusively in Ardmore. He was in
16 Ardmore all that night. I think even through Officer Ivery,
17 we saw a picture of Lamont Gregg's house. They showed us
18 that. Then we heard from Jamie Patterson, Dontaviha's mom,
19 and we heard that at the hospital, right after the shooting,
20 Jamie Patterson told the officer, it's about a laptop right
21 then, December the 18th, right after the shooting in the
22 hospital, it's about a laptop. The police knew what this was
23 about. We heard from Jeff Miller, he's the crime scene guy.
24 He went out there and collected the pants and stuff. Officer
25 Unterbrink got the fingerprints. Then we heard from Antonio

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1 Barrett. He went to the police station the next day and he
2 told them, I wasn't there, babysitting my sisters. I didn't
3 have anything to do with this. I don't know anything about
4 that. Then we heard from Detective English and he told us
5 about the motive for the shooting and it was about a laptop.
6 It was about Dontaviha Patterson getting Lamont Gregg locked
7 up for pawning a laptop, a stolen laptop. And after Detective
8 English, we heard from Sergeant Bailey, and I think Sergeant
9 Bailey is important in this case because Sergeant Bailey told
10 you on December the 23rd, he was contacted and provided with
11 the name and address of Antonio Barrett's alibi witness and he
12 told you he did nothing with that information. He said they
13 didn't come in to see us. Then we heard from Dontaviha
14 himself. Dontaviha, I think is very important here because
15 where did he say in the hospital, what did he say when the
16 police were asking him about Herbie. Herbie Singleton is my
17 brother. Herbie Singleton is my home boy. That's because
18 Herbie Singleton and Dontaviha weren't having a problem. Who
19 would want to shoot you, man? Do you owe somebody money?
20 Tell us what's going on. Monty would want to shoot me. Well,
21 what's his name? This is right after the shooting now; it's
22 at the hospital. Well, I don't know what his whole name is
23 but I'll tell you how you can figure out who he is to the
24 police. He's the last person who got shot down on Evergreen.
25 Now, you know we've got the FLEX Team, we've got the CAT Team,

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CLOSING BY HENSLEY

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1 we've got all these people in Ardmore so -- to know the people
2 and know what's going on. Easy to figure out that the police
3 could put Monty to Lamont Gregg. Here, here's how you get to
4 his house. Go down here and it's a gray apartment looking
5 thing, that's how you get to his house. Dontaviha gave the
6 police the directions to Lamont Gregg's house the very night
7 of the shooting. Dontaviha provided a verifiable motive.
8 It's about a laptop. And that wasn't just verifiable, it was
9 confirmed. It was easy to confirm, they just go -- once they
10 figure out Lamont Gregg's name, and you know they had figured
11 it out because they asked Herbie about Lamont Gregg. They
12 figured out who he is. It's easy to figure out if he got
13 locked up over a laptop. Detective English came in here and
14 told you about figuring out that he got locked up for a
15 laptop. And Dontaviha told them Monty just threatened me last
16 Saturday. This happened on a Wednesday. Monty threatened me
17 and that's the threat where he's walking with his cousin down
18 in the Hole and that's the threat that he says Herbie was
19 minding his business and didn't have one thing to do with
20 that. This is Monty threatening me. And I asked him, I asked
21 him about looking for the gun. Are you looking for the gun
22 because of y'all? No, I was looking for a gun because Monty
23 threatened me. So, don't get distracted by all this y'all
24 stuff. Dontaviha told you who would want to hurt him and
25 Dontaviha told you why they would want to hurt him and

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CLOSING BY HENSLEY

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1 Dontaviha told you who he was afraid of and he was right.
2 Lamont Gregg shot him. Now, Dontaviha also never testified
3 that he was talking about to Herbie and Lamont. Dontaviha
4 testified that he got the Facebook messages and was confused
5 by them because he didn't have a problem with Herbie. And
6 Dontaviha testified that when Herbie said that was Lamont, he
7 understood, that made sense because it was. And he also told
8 you Lamont had me blocked on Facebook. So, if he was going to
9 come at me through an inbox, he had to come through somebody
10 else. And I would submit to you that that's not that hard to
11 do.

12 Kevin Corley testified, and he was there when this
13 happened, and Kevin Corley told you there was no plan. The
14 plan was to go play basketball. People changed clothes to go
15 to play basketball; Herbie got on bicycle to go play
16 basketball; Herbie borrowed some money to be able to get to go
17 play basketball; that was the plan. Kevin Corley also the
18 very next day told the police Antonio Barrett wasn't there.
19 Kevin Corley told you he was startled by the shot, dropped his
20 phone and ducked his head in his lap. Kevin Corley told you
21 there was no conversation in the car after the shots. Now,
22 Kevin Corley also told you that he lied to the police. He
23 told you a couple of different lies he had told even after he
24 entered into the proffer. And Mr. Smiley said, well, did you
25 get charged with obstruction of justice and I think Mr.

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CLOSING BY HENSLEY

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1 Osborne jumped up and said you never accused somebody of
2 committing a crime, and then he said -- but he had to because
3 he lied and said Lamont Gregg pointed the gun at Herbie's head
4 and said drop; that was lie. That was a lie accusing somebody
5 of a crime, but nobody got arrested for it because it didn't
6 fit the State's theory.

7 Now by all accounts from Kevin Corley's own mouth and I
8 think the State vouches for him, Kevin Corley didn't know
9 anything about a plan, but they charged him with this crime
10 too. In order for Kevin Corley to be guilty, he'd had to be
11 part of the prior arranged plan or common scheme. I would
12 submit to you that the same way Kevin Corley didn't know there
13 was a plan, Herbie Singleton didn't know there was a plan and
14 Herbie Singleton told you that. When he's the fourth or fifth
15 hour of his interview with Detective Krasowski and the
16 detective's saying come on, man, you went by your old friend's
17 house. And he was like my old friend; that's my home boy,
18 that's my brother and you knew this was gonna happen, you --
19 what was -- was it stink eye, was it this, was it that and
20 Herbie said I didn't know; there was no plan.

21 Then we heard from Detective Burckhardt and he's really
22 my favorite here about what he told us about what the police
23 do after they take these statements. They investigate crimes
24 and they validate and confirm. Detective Krasowski told us
25 that the investigation isn't over after arrests are made. He

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CLOSING BY HENSLEY

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1 also told us about the fourth or fifth hour interview with
2 Herbie. And in that time, Herbie was saying Mazerati is my
3 home boy. I didn't know about the plan.

4 I want to talk a little bit about validating and
5 confirming as it applies to obstruction of justice. Okay?
6 Because what did the police validate and confirm the night of
7 the shooting? Who'd want to hurt you, man? Monty would want
8 to hurt me. I don't know what his whole name is, but he's the
9 last guy that got shot on Evergreen. He lives here. Here's
10 how you get to his house. Now, the police were certainly not
11 impeded in any way from going to Monty's house on December the
12 18th. They weren't impeded on any way from going to Monty's
13 house on December the 19th, the morning that they arrested
14 everybody at school. The police had a valid and confirmed
15 motive that they didn't follow up on. Herbie's statement
16 hours after that, that Antonio Barrett was the shooter, did
17 not impede the police from doing their job on the night of
18 December the 18th. Kai Ivery was in the neighborhood all
19 night and Officer Shier 4:00 P.M. to 2:00 A.M. All they had
20 to do is say run down there and check out Lamont's house.
21 They took a picture of it and showed it to y'all, but they
22 never went there.

23 The investigation continued and the real shooter pled
24 guilty. The administrative -- the administration of justice
25 was not thwarted in any way in this case. Herbie didn't

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CLOSING BY HENSLEY

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1 prevent the police from doing anything. The police just
2 didn't do anything.

3 Let's talk about the alibi. Antonio Barrett comes in and
4 says I have an alibi. They don't go and call his mom, they
5 don't talk to his sisters, that was on December the 19th.
6 December the 23rd, they get a call, hey, this guy -- this
7 person can confirm this alibi. Now, they've got all these
8 people in this neighborhood, we heard from them. The CAT
9 Team, the FLEX Team, we're there, we're there all the time.
10 All they got to do is ride by the neighbor's house to confirm
11 and validate because that's their job, but they didn't.
12 Herbie didn't do anything to prevent them from doing that. A
13 sloppy investigation is not the same as obstruction of
14 justice. The police told you, they clearly knew Antonio
15 Barrett wasn't involved. They want you to buy into this idea
16 that after arrested Antonio they couldn't go talk to Lamont.
17 They could've just cut Antonio loose; eventually, that's what
18 they did. They could have checked out his alibi and cut him
19 loose sooner, but they didn't because they didn't follow up on
20 the information they had. Herbie Singleton did absolutely
21 nothing to prevent, hinder, obstruct or impede their ability
22 to do that. They just didn't try to validate or confirm the
23 information they were given by Dontaviha Patterson. Not one
24 effort, not one intent to validate or confirm what the victim
25 himself and his mother, who they say was the person with

1 motive to shoot him.

2 Also with obstruction of justice, Herbie has to lie to
3 the police with the intent to prevent them from doing
4 something, with the intent to obstruct justice. What was the
5 reason for the lie? Well, I think the reason for the lie was
6 to get out of the room. It's the fourth or fifth hour, right?
7 You need to tell us somebody. Why didn't he just say Lamont
8 Gregg? Well, unlike very few people who get him locked up,
9 right? Herbie had just seen that.

10 I want to go back just for a minute to this idea about
11 this common scheme or plan, this prearranged plan between
12 Herbie Singleton and Lamont Gregg to drive over to Mazerati's
13 house to do this shooting on the afternoon of December the
14 18th, 2014. We've got two extra people in the car. We picked
15 up a couple of extra witnesses on our way to do this shooting.
16 Monty has to flag him down. I mean if they've got a plan, why
17 did he have to flag him down and tell him where he needed to
18 go? No plan. If the plan was I'm gonna run by and shoot
19 Mazerati on my way to play basketball, you'd have least gone
20 to play basketball, right, and quit running straight back to
21 where you started. And if the four of them were planning to
22 do this as the State obviously believes since they charged
23 everybody, why does Lamont jump out of the car at the corner?
24 The three people who had a plan to play basketball stayed in
25 the car. The guy who did the unexpected, Herbie told you

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CLOSING BY HENSLEY

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1 unexpected, in his statement, he jumps out and runs away.
2 Also there's no conversation on the way back after they're all
3 startled and scared to death. Wouldn't you get your story
4 straight if you had a plan?

5 You know, we don't have to prove anything. This is --
6 the burden is all on the State and they have to prove all
7 these elements beyond a reasonable doubt and that means so
8 that y'all don't have to guess. You don't have to speculate
9 and you don't have to fill in the blanks for them. There has
10 been no testimony or any evidence provided that points to a
11 plan. Kevin Corley told you there wasn't a plan. He didn't
12 have a plan and Herbie didn't have a plan to go do this
13 shooting. They had a plan to play basketball.

14 I always think about reasonable doubt. I think the Judge
15 will charge you that reasonable doubt is the kind of doubt
16 that would cause somebody to hesitate to act. And I try to
17 break these things down into everyday things so that I can
18 make them make sense in my mind. So, when I think about
19 reasonable doubt, I usually think about if, if I was
20 confronted -- say I'm confronted with a serious medical
21 condition. I go to the doctor and the doctor said, you know,
22 we've done your mammogram, Ms. Hensley, and we've got some
23 questions and we think you need to immediately have a
24 mastectomy and these -- these are the tests that we've done
25 and this is -- I think about the test like the witnesses or

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CHARGE TO JURY

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1 the evidence.. This is the evidence that we have, but we don't
2 have any evidence about the plan and we don't have evidence,
3 we don't have anybody to testify about a plan, so we haven't
4 done any tests that verify anything. We -- all the people
5 that you've heard from, all the tests that we've done -- have
6 done can't confirm anything, but we want you to go ahead
7 anyway, don't hesitate, go ahead. I have to say, if the
8 doctor told me we have absolutely nothing that points to this,
9 but we think you should go ahead with the mastectomy now,
10 would I hesitate to act? Guaranteed.

11 After the Judge charges you on the law and you get all
12 the evidence, I think that it will be clear to you that the
13 only reasonable, the only true verdict in this case on both
14 charges is not guilty. Thank you very much.

15 CHARGE TO JURY:

16 THE COURT: Thank you. All right. Ladies and gentlemen,
17 all of the evidence has been presented to you in this case.
18 The attorneys have made their closing arguments, and now is
19 the time of the trial when I charge you with the law to be
20 applied in this case. The indictments in this case allege
21 several different offenses against the Defendant. One
22 indictment charges the Defendant with attempted murder and the
23 other indictment charges the Defendant with obstruction of
24 justice. Each indictment charges a separate and distinct
25 offense. You must decide each indictment separately on the

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BY THE COURT

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1 welcome back. I received another note from the foreperson
2 stating someone needed to text their daughter and as I told
3 you the last time you were out here, that's fine. That's not
4 a problem. Whenever you need to take a break, whenever you
5 need to make a call, need to send a text, that's fine. It's
6 just that everyone has to stop deliberations and you cannot
7 discuss the case in your text, your phone call or whatever the
8 case may be. You can only discuss the case with your fellow
9 jurors during deliberation. Okay. All right. I'm gonna send
10 you back out and let you continue with your deliberations.
11 Thank you very much.

12 (REPORTER'S NOTE: Jury exits courtroom. 4:36 P.M.)

13 THE COURT: All right. Anything from the State before we
14 recess?

15 MR. OSBORNE: No, Your Honor.

16 THE COURT: Anything from the Defense?

17 MR. SMILEY: No, sir.

18 THE COURT: All right. We stand in recess.

19 (RECESS - 4:36 P.M.)

20 *****OFF THE RECORD*****

21 (On the Record - 5:27 P.M.)

22 THE COURT: Thank you very much, please be seated. All
23 right. I understand the Jury has reached a verdict. Anything
24 from the State before we bring the Jury in?

25 MR. OSBORNE: No, Your Honor.

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VERDICT OF THE JURY

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1 THE COURT: Anything from the Defense? Oh, I guess we
2 need to -- I'm sorry. I didn't realize he wasn't in here.

3 (REPORTER'S NOTE: Defendant enters courtroom.)

4 THE COURT: All right. As I said, I understand the Jury
5 has reached a verdict. Anything from the State before we
6 bring the Jury in?

7 MR. OSBORNE: No, Your Honor.

8 THE COURT: Anything from the Defense?

9 MR. SMILEY: No, sir.

10 THE COURT: All right. Let's bring the Jury in.

11 (REPORTER'S NOTE: Jury enters courtroom. 5:27 P.M.)

12 VERDICT OF THE JURY:

13 THE COURT: Ms. Hines, I understand the Jury has reached
14 a verdict. Is that correct?

15 JUROR 148: Yes, sir.

16 THE COURT: All right. Have you completed the verdict
17 form?

18 JUROR 148: Yes, sir.

19 THE COURT: All right. If you'd please hand it to the
20 Bailiff.

21 Thank you.

22 I'd ask the Clerk to please publish the verdict.

23 CLERK: The State of South Carolina, County of
24 Charleston, Court of General Sessions for the Ninth Judicial
25 Circuit, Indictment Numbers 2015-GS-10-2437 and 2016-GS-10-

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BY THE COURT

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1 592, the State of South Carolina versus Herbie Val Singleton,
2 Jr. On the charge of attempted murder, we, the Jury, find the
3 Defendant not guilty. On the charge of obstruction of
4 justice, we, the Jury, find the Defendant guilty. Signed Ms.
5 Foreperson, September 22nd, 2016.

6 Ladies and gentlemen of the Jury, if this is your
7 verdict, please raise your right hands. Thank you.

8 THE COURT: All right. Let the record reflect that all
9 jurors did raise their right hands. Any polling of the Jury
10 by the State? Any polling of the Jury by the State?

11 MR. OSBORNE: No, Your Honor.

12 THE COURT: Any by the Defense?

13 MR. SMILEY: No, sir.

14 BY THE COURT:

15 THE COURT: All right. Ladies and gentlemen, I want to
16 thank you for your service not only in this case but for this
17 week. This will conclude your duty as jurors in this case as
18 well as for this week. I know it's not an easy thing to sit
19 on a jury and I want to thank you for your service. You have
20 a one-year disqualification from serving jury duty. You've
21 got a three-year exemption. I hope you don't exercise your
22 exemption because we certainly do need good jurors and I want
23 to thank you for your service in this case.

24 That will conclude your service. You're free to go at
25 this time. Thank you very much.

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SENTENCE OF THE COURT

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1 place him under oath.

2 HERBIE VAL SINGLETON, HAVING BEEN

3 DULY SWORN, TESTIFIES AS FOLLOWS:

4 THE COURT: All right. Ms. Hensley, I understand that
5 you represented Mr. Singleton in his obstruction of justice
6 trial. Do you also represent him in carrying a weapon on
7 school property and threatening the life of a public official?

8 MS. HENSLEY: I do not.

9 MS. HANSOTIA: I do, Your Honor, Ms. Hansotia.

10 THE COURT: I'm sorry, your name again?

11 MS. HANSOTIA: My name is Shirene Hansotia. I'm with the
12 Public Defender's Office. I represent him on those two
13 charges.

14 THE COURT: Okay. All right. Ms. Hansotia, you
15 represent Mr. Singleton on carrying a weapon on school
16 property and threatening the life of a public official

17 MS. HANSOTIA: Yes, sir.

18 THE COURT: Have you discussed with your client the
19 charges against him, his rights as a Defendant and the
20 consequences of being convicted of these crimes?

21 MS. HANSOTIA: Yes, sir.

22 THE COURT: In your opinion, does your client understand
23 the charges against him, his rights as a Defendant and the
24 consequences of being convicted of these crimes?

25 MS. HANSOTIA: Yes, sir.

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SENTENCE OF THE COURT

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1 THE COURT: And does he wish to plead guilty or not
2 guilty?

3 MS. HANSOTIA: Guilty.

4 THE COURT: Do you agree with his decision to plead
5 guilty to these charges?

6 MS. HANSOTIA: Yes, sir.

7 THE COURT: Based upon the information you have, if this
8 case proceeded to trial, do you feel that the State could
9 prove your client's guilt beyond a reasonable doubt?

10 MS. HANSOTIA: Yes, sir.

11 THE COURT: Has your client received a competency
12 evaluation?

13 MS. HANOSTIA: No, sir.

14 THE COURT: Do you feel that he needs a competency
15 evaluation?

16 MS. HANSOTIA: I do not.

17 THE COURT: All right. And could you spell your last
18 name for me?

19 MS. HANSOTIA: H-A-N-S-O-T-I-A.

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

21 All right. Sir, your name is Herbie Val Singleton, Jr.?

22 MR. SINGLETON: Yes, sir.

23 THE COURT: All right. Mr. Singleton, as you know from
24 the trial this week, you have been convicted of obstruction of
25 justice. And according to your attorney, Ms. Hansotia, you

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SENTENCE OF THE COURT

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1 also wish to plead guilty to carrying a weapon on school
2 property and threatening the life of a public official; is
3 that correct?

4 MR. SINGLETON: Yes, sir.

5 THE COURT: All right. Before I can accept your guilty
6 plea, I've got to go over some questions with you to be sure
7 that you understand the charges against you, that you
8 understand your rights as a Defendant, that you understand the
9 consequences of pleading guilty and I must be sure you're
10 pleading guilty voluntarily.

11 Now, during the past seventy-two hours, have you taken
12 any medication, consumed any alcohol or drugs or been under
13 any influence that would affect your ability to know why
14 you're here?

15 MR. SINGLETON: No, sir.

16 THE COURT: All right. Do you understand why you're here
17 today?

18 MR. SINGLETON: Yes, sir.

19 THE COURT: Is there anything about this hearing that you
20 want to ask any of your attorneys or ask me before we proceed?

21 MR. SINGLETON: No, sir.

22 THE COURT: All right. Now, even though -- now one of
23 your rights as a Defendant is that you cannot be prosecuted
24 for any crime unless and until you're indicted by the Grand
25 Jury. What that means is when you're charged with a crime,

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SENTENCE OF THE COURT

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1 the State has an obligation to present your case to a Grand
2 Jury for review. The Grand Jury reviews your case to
3 determine whether or not there's any evidence to indicate you
4 committed these crimes or this crime. If the Grand Jury finds
5 there is evidence you committed the crime, the Grand Jury
6 would indict you and the State would go forward and prosecute
7 you on that charge. On the other hand, if the Grand Jury
8 found that there was no evidence against you or that the
9 evidence against you is insufficient to support the charge,
10 then the Grand Jury would not indict you and the State could
11 not prosecute you.

12 At this point in time, you have not been indicted by the
13 Grand Jury on the charge of carrying a weapon on school
14 property. Therefore, at this point in time, the State cannot
15 prosecute you on this charge and I cannot accept your guilty
16 plea unless you waive presentment to the Grand Jury. Waiving
17 presentment to the Grand Jury means that you are relieving the
18 State from its' obligation to have the Grand Jury review your
19 case and indict you before they prosecute you. Do you
20 understand that?

21 MR. SINGLETON: Yes, sir.

22 THE COURT: And do you wish to waive presentment to the
23 Grand Jury so that you can plead guilty to that charge?

24 MR. SINGLETON: Yes, sir.

25 THE COURT: All right. Even though you waived

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SENTENCE OF THE COURT

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1 presentment to the Grand Jury on that charge and even though
2 you've been indicted on the charge of threatening the life of
3 a public official, under the Constitution of the United
4 States, you're presumed innocent of both of these crimes and
5 you have the right to have your guilt or innocence determined
6 by a jury trial of your peers. The State bears the burden of
7 proving your guilt beyond a reasonable doubt. You do not have
8 to prove your innocence and you cannot be compelled to testify
9 against yourself. You also have the right to confront and
10 cross examine anybody who testifies against you. If you
11 choose, you can present a defense to these charges, but when
12 you plead guilty, you give up all of those rights. Do you
13 understand that?

14 MR. SINGLETON: Yes, sir.

15 THE COURT: And do you want to give up those rights and
16 plead guilty to these charges?

17 MR. SINGLETON: Yes, sir.

18 THE COURT: All right. Now, I understand that you've
19 reached a negotiated sentence with the State which means that
20 whatever sentence I impose for these two charges, then I will
21 run that sentence concurrently with the sentence for
22 obstruction of justice. Obstruction of justice carries up to
23 ten years in prison and a fine within my discretion. Carrying
24 a weapon on school property carries up to five years and
25 \$5,000 fine. No, that carries up to five years and a \$1,000

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SENTENCE OF THE COURT

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1 fine. And threatening the life of a public official carries
2 up to five years and a \$5,000 fine. So the maximum sentence
3 you could receive for -- under the negotiated sentence would
4 be ten years. I could sentence you to ten years, five years,
5 five years and fine you, but it would all run together at the
6 same time; do you understand that?

7 MR. SINGLETON: Yes, sir.

8 THE COURT: All right. Do you understand that I'm not
9 obligated to accept that negotiated sentence, but if I do not
10 accept it, you can withdraw your guilty plea. But, please
11 keep in mind, if you withdrew your guilty plea, if you ever
12 pled guilty to these charges without a negotiated sentence or
13 if you went to trial on these charges and you were convicted
14 without a negotiated sentence and you received the maximum
15 sentence for all crimes and the sentences ran consecutively,
16 then for the obstruction of justice you could receive ten
17 years and a fine, for carrying a weapon you could receive five
18 years and a \$1,000 fine, and the threatening the life of a
19 public official you could receive five years and have a \$5,000
20 fine, which means that you could go to jail for twenty years
21 and be fined in excess of \$6,000. Do you understand that?

22 MR. SINGLETON: Yes, sir.

23 THE COURT: Knowing all of your rights as a Defendant,
24 knowing the maximum sentence you could -- or knowing the
25 negotiated sentence to be imposed if accepted by the Court,

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SENTENCE OF THE COURT

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1 and knowing the maximum sentence you could receive without a
2 negotiated sentence, do you wish to plead guilty or not guilty
3 to carrying a weapon on school property?

4 MR. SINGLETON: I do.

5 THE COURT: You want to plead guilty or not guilty?

6 MR. SINGLETON: Guilty.

7 THE COURT: You wish to plead guilty or not guilty of
8 threatening the life of a public official?

9 MR. SINGLETON: Guilty.

10 THE COURT: Has anybody promised you anything other than
11 this negotiated sentence to get you to plead guilty?

12 MR. SINGLETON: No, sir.

13 THE COURT: Are you pleading guilty voluntarily?

14 MR. SINGLETON: Yes, sir.

15 THE COURT: Are you satisfied with the services of your
16 lawyer?

17 MR. SINGLETON: Yes, sir.

18 THE COURT: Are you pleading guilty to these crimes
19 because you've committed these crimes?

20 MR. SINGLETON: Yes, sir.

21 THE COURT: All right. I need you to listen carefully
22 while the Solicitor gives me the allegations in this case.
23 All right, sir?

24 MR. OSBORNE: Thank you, Your Honor. On January the 27th
25 of 2016 about 10:45 A.M. the Defendant was a student at West

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1 Ashley High School when he was approached by a teacher because
2 he was loitering in the hallway. The teacher asked the
3 Defendant if he had a hall pass and the Defendant replied, I'm
4 gonna fuck you up. Defendant became aggressive, punched a
5 locker and screaming I'm gonna fuck you up, I'm gonna fuck you
6 up. The incident was caught on a surveillance camera and
7 corroborated by the teacher's accounts.

8 THE COURT: All right. What about the carrying the
9 weapon?

10 MR. OSBORNE: Thank you, Your Honor. On April the 20th
11 of this year at about 7:30 in the morning and again at West
12 Ashley High School, a teacher noticed that two students know
13 smelt of marijuana. The teacher alerted the school resource
14 officer and school officials, used surveillance footage and
15 observed that the two students were dropped off in a Hyundai
16 Sonata. The officers went out there, approached the vehicle.
17 When they did, they observed two individuals exit the vehicle.
18 They were later identified as Colin Singleton and Herbie
19 Singleton. When Herbie was questioned, he said that there was
20 a gun in the car. A Smith & Wesson handgun was recovered from
21 the vehicle. Herbie then told the officers that he needed the
22 gun for protection.

23 THE COURT: All right. Mr. Singleton, do you understand
24 what the allegations are against you?

25 MR. SINGLETON: Yes, sir.

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SENTENCE OF THE COURT

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1 THE COURT: Is that what happened in this case?

2 MR. SINGLETON: Yes, sir.

3 THE COURT: All right. All right. I'll hear from Ms.
4 Hansotia?

5 MS. HANSOTIA: Hansotia, yes, sir.

6 THE COURT: Hansotia, I'll hear from you and/or Ms.
7 Hensley or Mr. Smiley on any mitigating factors regarding
8 these charges and the obstruction of justice charge.

9 MS. HANSOTIA: Thank you, Your Honor, may it please the
10 Court? Herbie is nineteen years old. He, Your Honor, every
11 interaction I've had with him, I've actually really been
12 impressed with him as a young man. He's smart. He is polite
13 and he strikes me as a kind young man. I think the things
14 he's charged with here, he's made some mistakes, some serious
15 mistakes as a high school kid, but I truly believe he's got
16 ambition, he's got intelligence and he's got a kind heart and
17 that these were indeed mistakes. He's a drummer at his church
18 for the past two years, Your Honor. He goes to Wesley United
19 out in Hollywood. He, he has, as his mom explained, a high
20 school certificate. He wants to get his GED because he's got
21 some big dreams, Your Honor. He even wants to go to college
22 to get a business degree and own some car dealerships.
23 Alternatively, he's also mentioned wanting to be a firefighter
24 at one point.

25 On a personal note, I have seen him with interact with

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1 his sister, who has Down Syndrome. He takes care of her and
2 most of the time, Your Honor, his parents are hard-working and
3 at work a lot and although Herbie has also worked himself at
4 Darlings Oyster Bar, he takes care of his sister. They're
5 very close. She's thirteen; he's nineteen. I've seen him
6 interact with her when they came to arraignment court together
7 and they obviously have a very strong bond and he's very
8 protective of her. He did approximately a hundred days. I
9 apologize for not having the exact date. I didn't have time
10 this morning when I was rushing, but it is approximately a
11 hundred days on these charges. I'm asking Your Honor for you
12 to go along with what Ms. Hensley and Mr. Smiley are asking
13 for a Youthful Offender Act. I truly believe these incidents
14 were something that he has learned from that I think he has a
15 hopeful future and I would love for him to have the
16 possibility to be expunged in the future. A YOA would give
17 him services that he needs to get his GED and get help with
18 his learning disorder, to see what prison is like and be
19 shocked and know that he'll never want to be there again, but
20 also to not ruin his life with these very serious charges on
21 his record. His parents are here, Your Honor, if you're
22 willing to hear from them briefly.

23 THE COURT: Okay. I'll hear from Mr. Singleton and/or
24 anybody -- well first before we do that, let me hear from Ms.
25 Hensley or Mr. Smiley; who wants to speak?

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1 MS. HENSLEY: Thank you, Your Honor, may it please the
2 Court? I've had the privilege of representing Herbie since
3 early in 2015. I think I got retained on the attempted murder
4 charge almost immediately after he got charged. I attended
5 the prelim in February of 2015. I've interacted with his
6 family over the past two years, both his mom and his dad
7 maintain and Herbie maintain almost constant communication
8 with me. In the last six months, I've probably met with them
9 once every two or three weeks. Herbie has always been well
10 mannered and polite. He was only seventeen at the time of
11 this crime. He does -- I do not believe that he needs any
12 sort of competency evaluation, but he does have a low IQ.
13 He's had an IEP all the way through school and only now has a
14 High School Certificate, but he did stay in school. He did go
15 to -- to be able to say he graduated from West Ashley High
16 School and I think that was quite an accomplishment for
17 Herbie. He, he has a strong and supportive family. I believe
18 that he could benefit from sentencing under the Youthful
19 Offender Act. He -- I have by my count 133 days time-served
20 but again, I'm not sure how accurate that is. He, he does
21 care for his disabled sister and assist his parents in that
22 and has the entire two years that I've known him. I would ask
23 that the Court consider sentencing Herbie, suspending -- with
24 a suspended Youthful Offender Act sentence for shock, Your
25 Honor.

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1 THE COURT: All right. All right, Mr. Singleton,
2 anything you want to say or anyone wants to speak on your
3 behalf?

4 THE COURT: All right. If you'll come forward to the
5 microphone, please. If you'd please give the Court Reporter
6 your name?

7 MR. SINGLETON SR.: I'm Herbie Singleton, Sr., sir.

8 THE COURT: All right. Mr. Singleton, what would you
9 like to say?

10 MR. SINGLETON, SR.: I do love my son. He have made some
11 mistakes. He's mostly influenced by his friends. Also this
12 particular one, you got two guys, he'll give them a ride to
13 school and my son, he don't understand that if something is
14 found in the car, even though it's not yours, he accept the
15 fact that it's his because he's the owner of the vehicle. I
16 don't think he realized the seriousness of this until now. I
17 mean, he'll take me, my daughter to help us out while me and
18 my wife works, after school for him. I mean, as a parent,
19 there's much I can't say, you know what I mean, and if you try
20 to consider that, I'd appreciate it, sir.

21 THE COURT: All right. Thank you. Okay. Anybody else
22 what to say anything? All right. Mr. Singleton, anything you
23 want to say?

24 MR. SINGLETON: No, sir.

25 THE COURT: All right.

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1 MR. SMILEY: Your Honor, if I could briefly. The victim
2 in the first case has come back this morning and while that
3 case was acquitted, he certainly has some feelings that he
4 wanted to make known to the Court and one of the reasons he
5 came back and I'm gonna speak. If I say something that's out
6 of line, if you would correct it, okay? But I didn't meet the
7 victim until after he had testified. I didn't speak to him
8 and neither Ms. Hensley or I had spoken to him out of respect
9 so he would not feel pressured. I met with him downstairs and
10 we spoke for a little bit and he expressed to me that he was
11 concerned that Herbie was gonna get convicted, which was a
12 little puzzling to me because he's the alleged victim in the
13 case. And he says he's maintained throughout that he and
14 Herbie and friends, have been friends, that he did not believe
15 that Herbie was involved in trying to hurt him. They still
16 remain friends today, that he thinks that Herbie didn't
17 agitate, but actually tried to calm things and that he's
18 maintained a friendship with him. They rap together and have
19 done some other things together. He -- while the jury was out
20 and I thought it was -- I don't want to say humorous, but a
21 little ironic is he was on a Facebook page saying, free Herb.
22 And so I just want to let you know that there's really not
23 between this Defendant and the victim in the case, bad
24 feelings and there never was.

25 Another thing I wanted -- is that a good way to put it;

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SENTENCE OF THE COURT

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1 did I put it ---

2 THE COURT: Well, if he's gonna speak he needs to come
3 forward and give the Court Reporter ---

4 MR. SMILEY: Come forward and talk to the Judge.

5 THE COURT: --- if he wants to. He doesn't have to.

6 MR. SMILEY: While he's doing that, Judge, I want to put
7 on the record, I gave him thirty-five bucks for a cab ride
8 yesterday and I was told that that was inappropriate, but I
9 wanted to make sure he could get down here. So, I certainly
10 wasn't buying any testimony, but he said he didn't have a way
11 down here so I paid for a cab where he could come down today.
12 Additionally, he didn't have lunch yesterday. I just met him,
13 but I said here's ten bucks; go get some lunch. So Mr.
14 Osborne thought I was being inappropriate with that. I meant
15 nothing other than to be kind and just wanted the Court to
16 know that.

17 THE COURT: All right. Anybody else want to speak on
18 behalf of Mr. Singleton? If anybody wants to speak on behalf
19 of Mr. Singleton, they need to come forward now and give the
20 Court Reporter their name?

21 Yes, sir, your name?

22 MR. PATTERSON: Dontaviha Patterson.

23 THE COURT: All right. Mr. Patterson, what would you
24 like to say?

25 MR. PATTERSON: Well, we --- (inaudible) ---

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1 THE COURT: You're gonna have to speak up. I can't hear
2 you.

3 MR. PATTERSON: I say what this case, like they said was
4 for, I never had no altercations with Herbie Singleton. I
5 mean, I knew him since ninth grade and when I saw that he got
6 arrested for this case, I was shocked because like the last --
7 what -- we was -- everything was okay. Like I said, we never
8 had no altercations so, I mean, he was a good person and we
9 did music together, shows together, stuff like that. Went to
10 high school together and his mother and father and they like
11 my family, too, they like parents to me. My momma was like
12 his momma and stuff like that.

13 THE COURT: All right. Thank you. Anybody else want to
14 speak on behalf of Mr. Singleton?

15 All right. Any victims wish to speak?

16 MR. OSBORNE: No, Your Honor. Ms. Greene is the victim,
17 the teacher, she could not get here that quickly. When I
18 explained to her the plea, she's okay with that. She's asking
19 for the max. I told her it was a little bit unique, but she
20 did want me to relay that to you.

21 THE COURT: All right. The obstruction of justice, does
22 the victim wish to speak?

23 MR. OSBORNE: Well, Your Honor, I would say that the
24 victim in that case is the State of South Carolina and that
25 would be me. So, I would like to address the Court as a

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1 representative of the State.

2 THE COURT: All right.

3 MR. OSBORNE: So, first I want to address the issue that
4 Mr. Smiley just brought up. I do think that's inappropriate.
5 We're in the process of sentencing. The victim is going to
6 speak. Any exchange of money from him to the victim can be
7 perceived as being inappropriate, as innocent as it might have
8 been. So, yes, I do believe it was and ---

9 MR. SMILEY: I'll self-report, Your Honor.

10 MR. OSBORNE: Secondly, I'll be brief. You've heard the
11 entire trial so I'm not gonna go through it again and I'm not
12 gonna talk about the attempted murder because the Jury heard
13 it, they acquitted him for that. I will talk about the
14 obstruction. The State's position is that this was a pretty
15 egregious case of obstruction. He identified an innocent man
16 and our position would be to cover up for his buddy or to help
17 his buddy. That innocent man was then arrested, he then spent
18 about two months in jail. I can't think of a much more
19 egregious example of obstruction of justice than that.

20 I will also say that I think it's the State's position
21 that public policy would warrant a ten-year sentence in this
22 case. This is the exact kind of case that whatever this
23 sentence is, that message is gonna be passed on to Ardmore and
24 other people in Ardmore are gonna know. So, we would ask for
25 the entire ten years.

State v. Singleton - 2016-GS-10-00592 & 02437
SENTENCE OF THE COURT

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1 THE COURT: All right.

2 MR. OSBORNE: Thank you.

3 THE COURT: Any prior record?

4 MR. OSBORNE: He has none.

5 SENTENCE OF THE COURT:

6 THE COURT:, All right. Mr. Singleton, you have been
7 convicted by a jury on obstruction of justice. Also I do
8 accept your guilty plea on the charge of threatening the life
9 of a public official and carrying a weapon while on school
10 property. I find that you entered that guilty plea freely,
11 knowingly, voluntarily, fully advised of your rights as a
12 Defendant and the nature of the charges against you and the
13 consequences of your guilty plea. I also find that there is a
14 factual basis to support those charges against you. I'll
15 accept the negotiated sentence, run all sentences concurrent.
16 The sentence for obstruction of justice is that you be
17 committed to the State Department of Corrections under the
18 Youthful Offender Act for an indefinite period of time not to
19 exceed six years.

20 On the threatening the life of a public official and
21 carrying a weapon on school property, the sentence of the
22 Court is that you be confined to the State Department of
23 Corrections under the Youthful Offender Act for an indefinite
24 period not to exceed five years. All sentences are run
25 concurrent. You don't get any credit for time served since

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1 it's the Youthful Offenders sentence. It's up to you to
2 determine how long you stay at the Department of Corrections.
3 They will -- the only restriction is that they cannot hold you
4 any longer than six years. Then upon your release you'll be
5 on YOA Parole if you serve less than six years, which means
6 that it's basically a probationary period for you.

7 All right. Anything further from the Defense?

8 MR. SMILEY: No, sir.

9 MS. HENSLEY: No, Your Honor.

10 THE COURT: Anything further from the State?

11 MR. OSBORNE: No. Thank you, Your Honor.

12 THE COURT: All right.

13 MR. SMILEY: I enjoyed trying the case in front of Your
14 Honor.

15 MS. HENSLEY: Thank you, Your Honor.

16 THE COURT: Yes, sir. Thank y'all. Everyone did well.

17 **ADJOURNED - 9:33 A.M.**

18 **END OF DAY FIVE.**

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CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State versus Herbie Vall Singleton, Jr., held in the Court of General Sessions for Charleston County, Charleston County Courthouse, Charleston, South Carolina, on September 18-23, 2016.

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



Kay H. Richardson

Official Court Reporter

January 2, 2017.

DLO/0308173.
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2014-21575

ARREST WARRANT NUMBER

2015A1010900570

DATE OF ARREST

08/22/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-00592

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JANUARY TERM 2016

THE STATE

VS.

HERBIE VAL SINGLETON, JR

B/M DOB: [REDACTED]-1997

Indictment for

OBSTRUCTION OF JUSTICE

SC Code: § 17-25-0030

CDR Code: 0118

FILED

1/21/2016 12:31:50 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened January 2016, the Grand Jurors of Charleston County present upon their oath:

OBSTRUCTION OF JUSTICE

The defendant, Herbie Val Singleton Jr, did on or about December 18, 2014, in Charleston County, South Carolina, intentionally commit an act which prevented, obstructed, impeded or hindered the administration of justice, to wit: Herbie Val Singleton Jr. falsely identified an individual as being the shooter in an attempted murder investigation, in violation of the Common Law of the State of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Alex J. Ziegler for

DAVID L. OSBORNE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.HERBIE VAL SINGLETON, JR

AKA:

Race: Black/African AmericanSex: MDOB: 1/19/97SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Charleston, SC 29407-6647

DL#

SID# SC02181168*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Obstruction of JusticeIn violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0118☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

David L. Osborne, Assistant Solicitor
SC Bar # 101325

Defendant

Jane A. Hensen, Attorney for Defendant
SC Bar # 16867

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of X days/months/years or ☒ under the Youthful Offender Act not to exceed 6 years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 9/23/2016☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (SEAL)

CLERK, O.P., G.S. & P.C.

By _____

DEPUTY CLERK

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso 61.6 (Public Def/Prob)

\$500

\$

§14-1-212 (Law Enforce. Funding)

\$25

\$25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$

§50-21-114 (BUI Breath Test Fee)

\$50

\$

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$

\$3.75

TOTAL

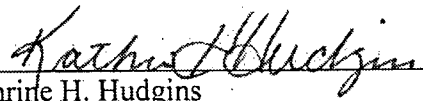
\$128.75

Clerk of Court/Deputy Clerk: Christine BawgCourt Reporter: Kay RichardsonPresiding Judge: Margaret C. [Signature]Judge Code: 2148Sentence Date: Sept. 23, 2016

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of December, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of December, 2017.

RECEIVED
DEC 05 2017
SC Court of Appeals

6

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HERBIE VAL SINGLETON, JR.

APPELLANT

RECEIVED

DEC 05 2017

SC Court of Appeals

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon V. Henry Gunter, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of December, 2017.



Scott Leverett
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 5th day of December, 2017.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.