

ORIGINAL

VOLUME I OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HORACE ELIJAH WATTS,

APPELLANT

APPELLATE CASE NO. 2017-000255

RECORD ON APPEAL

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SC Court of Appeals

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	)	
THE STATE,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
HORACE ELIJAH WATTS,	)	
DEFENDANT:	)	
	)	

February 6-9, 2017
Columbia, South Carolina

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE.

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I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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All Exhibits were retained by the Clerk of Court for Richland County.

P R O C E E D I N G S

1
2 THE COURT: Good morning, ladies and gentlemen. My
3 name is Clifton Newman and I am presiding in this
4 courtroom. Next to me is my law clerk Jasmine Kearse.
5 She is a lawyer. And judges have law clerks who are
6 lawyers or waiting to be lawyers and she is already a
7 lawyer. She's my law clerk and she assist me. You were
8 sent here for jury selection in the first case we are
9 going to do this week. And I will have the State call the
10 case at this time.

11 MR. POTTS: State calls State v. Horace Watts.

12 THE COURT: All right. Ladies and gentlemen, the
13 State has called for trial the case of State v. Horace
14 Elijah Watts.

15 Mr. Watts, if you will stand and face the jury panel.

16 (The Defendant stands.)

17 THE COURT: All right. Thank you very much.

18 Mr. Watts is in court and represented by counsel.

19 Counsel, if you will introduce yourselves.

20 MR. RUFFIN: Adam Ruffin.

21 MR. KRZYSTON: Stephen Krzyston.

22 MR. COMISH: Jonathan Comish.

23 THE COURT: Mr. Watts was indicted by the grand jury
24 of Richland County and charged with murder in the killing
25 of Isaac Lewis on or about July 12th of 2014. In addition

1 to that charge, he is also charged with attempted murder
2 of Tyrone Johnson, same date and time. He is charged with
3 unlawfully carrying a pistol, same date and time. And
4 also, possession of a weapon during the commission of a
5 violent crime, a violent crime or crimes being murder and
6 attempted murder.

7 He has plead not guilty to these charges and he is
8 presumed to be not guilty. He cannot be found guilty
9 unless the State presents evidence which convinces a jury
10 of his guilt beyond a reasonable doubt. And that is the
11 purpose of a trial, we're going to have to determine
12 whether the State can meet that burden of proof.

13 The State is represented -- the State is represented
14 through the solicitor's office. And we'll have the
15 solicitors introduce themselves.

16 MR. POTTS: Good morning, I'm Carter Potts. With me
17 today is Jessica Nickles and Brent Arant.

18 THE COURT: Also, at the State's table is?

19 MR. POTTS: Investigator McCoy, Your Honor, of the
20 Columbia Police Department.

21 THE COURT: This case arises out of incidences
22 occurring in the City of Columbia on Magnolia Street?

23 MR. POTTS: That's correct.

24 THE COURT: Magnolia Street in the City of Columbia
25 on or about July 12th, 2014.

1 If any member of the jury panel is a friend, relative
2 or associate of Mr. Watts or Isaac Lewis or Tyrone Johnson
3 or if you know anything about this case or if you have
4 heard anything about this case, please stand.

5 (There was no response.)

6 THE COURT: And, ladies and gentlemen, you may
7 recall, when you came in for jury qualifications, the
8 Court -- you were placed under oath and that oath that
9 you took is to give complete and truthful responses to
10 all questions that you are asked. That same oath carries
11 forth through this process and through the entire -- your
12 entire jury service this week. You must give complete
13 and truthful responses to all questions. You must answer
14 all of the questions even though they may make you
15 uncomfortable. If there are any questions that may cause
16 you some embarrassment, I'll give you a chance to come
17 forward and share those responses with the Court in the
18 presence of counsel.

19 The purpose of the -- the process that we're going
20 through, which is called jury selection or jury voir dire
21 -- or voir dire in asking you questions so that the
22 parties can select a jury that they believe would be a
23 fair and impartial jury.

24 The following people may testify in this case and if
25 you know any of them, friend, relative, associates with

1 any of them or friend, relative or associates with any of
2 the lawyers or police officers, I need you to stand.

3 Tyrone Johnson; Dr. Troy Privette from Palmetto
4 Health Richland; Dr. Mylinski, Richland Memorial --
5 Palmetto Richland -- Palmetto Health Richland is the name
6 of it; Dr. H-U-Y-N-H, the same hospital; Destiny Meshell
7 L. Elizabeth; Kadeisha Doninwue Gosier, G-O-S-I-E-R;
8 Quiera, Q-U-I-E-R-A, Durham; George Smith from the police
9 department; Investigator Matthew McCoy, police department;
10 Dr. Bradley Marcus; Sergeant Ivey Gilliam from the policy
11 department; Sergeant Robert McCracken, police department;
12 Investigator Tyrone Pugh, police department; Investigator
13 Brian Vanhoutten from ATF; Sergeant Walter Rose from the
14 police department; Officer Ivan Birochak; Corporal Erskine
15 Moody; Officer David Hellman; Officer James Fitzpatrick;
16 Officer Anthony Viehweg; Lieutenant J.P. Williams;
17 Sergeant Ray Behney, B-E-H-N-E-Y, all of the Columbia
18 Police Department; Investigator Shannon McKellar from the
19 USCPD, formerly of Columbia Police Department;
20 Investigator Beatrice Fields; Chauncey Duckett; Amy
21 Mostella, Columbia Police Department; Investigator Brian
22 Zwolak; Lieutenant George Drafts; CSI George Potash from
23 the police department; Melinda Robinson; Lucinda Nadine
24 Robinson; Doris Yarbrough with SLED; Officer Johnny Gaston
25 and George Wise and Officer Bodiford of the police

1 department; SLED Agents K. Thrower, Chad Smith, M.
2 Robinson; EMS workers, Corporal Wright; Ethan Kenney; Rob
3 Salley; Sergeant Robert Waters, who works at Alvin S.
4 Glenn; Amanda Beckham with the police department; the
5 following other officers with the Columbia Police
6 Department, Nicholas Sexton; Dustin Pollard; William J.
7 Scott; William Wells; Sharon Alexander; Antonio Anderson;
8 Brian Sutton; Christopher Blackwell; Robert Fehr; Allen
9 Brinson; Meagan Marceleno; Dustin Williams; Robert M.
10 Henry; Zachary Halpern; William Beattie; Catherine
11 Robinson; Investigator Allison Fitzgerald; Amanda Beckham,
12 all from the police department, Sarah Young; 911
13 custodian; Dominique Tucker; Joy Reese; police department
14 workers, Donna Martin, Tracy Dixon; also, the following
15 people, Jamichael Lewis; Precious Dottery; Paris Ra'Shad
16 Lagrant Young; Beverly Ann Wilburn; Diamond Corbett; April
17 Mae Cleckley; Avery Dickson; Benjamin Austin Walker;
18 Jasmine Sims; Terry Lewis; Diquan Almont Devont; Donte
19 LaJuan Wallace; Tarus Threatt; Sergeant Val Moorer, police
20 department; Sergeant Collin Baily, police department;
21 Investigator Wayne Montgomery; Darius Wade, police
22 department; Taniqua Goodwin-Weeks; Investigator Emmitt
23 Gilliam, police department; Octavia Thompson; Julie
24 Hinton; Deangelo Gibson; Whitney Berry from SLED; Jennifer
25 Lewis; Ila Simmons from SLED; Megan Timmons, EMS; Clayton

1 Coker, EMS; Carrie Klein, EMS; Mary Ellen Bonneval, EMS;
2 Lieutenant Ogden, EMS; Oddessy Leaphart; Diana
3 Bender-Williams.

4 If you know any of those people, friend, relative,
5 associate or otherwise, please stand.

6 (Jurors stand.)

7 THE COURT: Yes, ma'am.

8 PROSPECTIVE JUROR: I went to school with Quiera
9 Durham.

10 THE COURT: And the fact that she may be a witness in
11 this case, would that fact make you -- prevent you from
12 being fair and impartial?

13 PROSPECTIVE JUROR: No, sir.

14 THE COURT: And what is your juror number?

15 PROSPECTIVE JUROR: 132.

16 THE COURT: 132. How many years ago was that?

17 PROSPECTIVE JUROR: High school. I'm 24. I think
18 she left in the ninth grade, so it was while a while ago.

19 THE COURT: All right. Thank you.

20 Yes, sir?

21 PROSPECTIVE JUROR: What was the last name you
22 called? Did you call Richard Yarborough?

23 THE COURT: Richard who?

24 PROSPECTIVE JUROR: Richard Yarborough.

25 THE COURT: Assuming I did.

1 PROSPECTIVE JUROR: I used to work with him.

2 THE COURT: Your juror number is?

3 PROSPECTIVE JUROR: 302.

4 THE COURT: And the fact that he may testify, would
5 that prevent you from being fair and impartial?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: I don't think I called that name, but if
8 you know anyone -- since I called so many, if you know
9 anyone that works as a police officer with the Columbia
10 Police Department, please stand.

11 Yes, sir?

12 MR. POTTS: Your Honor, there are two names I just
13 forgot on the list, Terrell Threatt and Daquan Cleckley.

14 THE COURT: All right.

15 Ladies and gentlemen, if you know of any reason why
16 you should not be selected to be a juror in the trial of
17 this case, please stand.

18 (Juror stands.)

19 THE COURT: All right. And what is your juror
20 number, sir?

21 PROSPECTIVE JUROR: 310.

22 THE COURT: All right.

23 PROSPECTIVE JUROR: Can I speak with you privately?

24 THE COURT: Yes, sir. I'll get to you in a moment.

25 PROSPECTIVE JUROR: Thank you.

1 THE COURT: All right. Ladies and gentlemen, a few
2 other questions. If you have ever been a victim, witness
3 or accused of a crime of violence, which involves assault,
4 serious assault, burglary, rape, robbery, or any of your
5 immediate family members ever been a victim of, witness to
6 or accused of such a crime of violence, please stand.

7 (There was no response.)

8 THE COURT: Now, ladies and gentlemen, statistics are
9 pretty easy -- some statistics are pretty easy to figure.
10 As I indicated to you, your oath as jurors require you to
11 stand and provide information.

12 How many people do we have out there?

13 THE CLERK: Fifty.

14 THE COURT: All right. And the question is if you or
15 any member of your immediate family have ever been accused
16 of, victim of, or witness to a violent crime? If so,
17 please stand.

18 (Jurors stand.)

19 THE COURT: Thank you.

20 Tell us your juror number and basis for your
21 standing.

22 PROSPECTIVE JUROR: Jury 22, father was shot and
23 killed by a cop in '84.

24 THE COURT: All right. Would that prevent you from
25 being a fair and impartial juror in this case?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Thank you.

3 Yes, sir?

4 PROSPECTIVE JUROR: 272, my father was accused of
5 assault.

6 THE COURT: Would that prevent you from being a fair
7 and impartial juror in this case?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Thank you.

10 Yes, ma'am?

11 PROSPECTIVE JUROR: 258, I was accused of assaulting
12 somebody and we went to court right there in Springdale
13 and he told that I was innocent.

14 THE COURT: All right. Would that prevent you from
15 being fair and impartial in this case?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Thank you.

18 Yes, ma'am?

19 PROSPECTIVE JUROR: Juror 330. I need to talk to
20 you.

21 THE COURT: Juror 330, I'll speak to you in a moment.

22 Yes, sir?

23 PROSPECTIVE JUROR: 245, I was a witness to an
24 assault in 1997.

25 THE COURT: Would that affect your ability to be a

1 fair and impartial juror in this case?

2 PROSPECTIVE JUROR: No.

3 THE COURT: All right. Thank you, sir.

4 Has any member of the jury panel or any member of
5 your immediate family ever worked in law enforcement as a
6 solicitor, prosecutor, victim advocate, any law
7 enforcement officer or prosecution office? If so, please
8 stand.

9 (Jurors stand.)

10 THE COURT: All right. Yes, ma'am?

11 PROSPECTIVE JUROR: 258, my dad, who has passed away,
12 he was a policeman in Lexington County when I was like
13 two. I don't remember it, but.

14 THE COURT: All right. Thank you.

15 Yes, ma'am?

16 PROSPECTIVE JUROR: 167, my son-in-law is an
17 investigator for Richland County.

18 THE COURT: All right. What's his name?

19 PROSPECTIVE JUROR: Clay Short.

20 THE COURT: All right. Thank you.

21 Yes, sir?

22 PROSPECTIVE JUROR: No. 310, my cousin is a security
23 guard for Kirkland.

24 THE COURT: All right. Thank you.

25 Yes?

1 PROSPECTIVE JUROR: 328. My brother was a Richland
2 County deputy about 10 years ago.

3 THE COURT: All right. Thank you.

4 Yes?

5 PROSPECTIVE JUROR: 272, my stepfather was a police
6 officer.

7 THE COURT: All right. Thank you.

8 If any of that would affect any of your ability to be
9 fair and impartial, please stand.

10 (There was no response.)

11 THE COURT: If you or any member of your immediate
12 family currently belong to or have in the past been a
13 member of any law enforcement -- any organization that
14 promotes law enforcement, such as MADD, SADD, Sister
15 Care, Assessment Resource Center, or if you've been
16 involved in any organization that promotes protection of
17 the rights of the accused, such as ACLU and any similar
18 organization, please stand.

19 (There was no response.)

20 THE COURT: If you belong to or support any online
21 blogs or other social forums the primary purpose of which
22 is to support crime victims or law enforcement, please
23 stand.

24 (There was no response.)

25 THE COURT: If you have ever testified in a case on

1 any level as a witness, please stand.

2 (Jurors stand.)

3 THE COURT: All right. Yes, sir, juror number?

4 PROSPECTIVE JUROR: 210, I was in a civil case
5 between the City and an organization over a tax dispute.

6 THE COURT: All right. Thank you.

7 Yes, sir?

8 PROSPECTIVE JUROR: I was a witness in a civil case
9 between a land owner and on pipeline company in York
10 County.

11 THE COURT: What's your juror number, sir?

12 PROSPECTIVE JUROR: Four.

13 THE COURT: Thank you.

14 Yes?

15 PROSPECTIVE JUROR: 283, I have been a witness for
16 probate court hearings for people with substance abuse
17 issues.

18 THE COURT: All right. Thank you.

19 Yes?

20 PROSPECTIVE JUROR: 167, I was a juror in a civil
21 trial.

22 THE COURT: All right.

23 PROSPECTIVE JUROR: Juror 59, I testified in a civil
24 case regarding a fire.

25 THE COURT: All right. Thank you.

1 Yes?

2 PROSPECTIVE JUROR: 288, I was a juror in a criminal
3 case.

4 THE COURT: All right. When was that?

5 PROSPECTIVE JUROR: Ten years or so ago. I don't
6 know.

7 THE COURT: All right. Thank you.

8 Was any member of the juror panel --

9 Yes, ma'am?

10 PROSPECTIVE JUROR: 297, I was a juror in a civil
11 case here.

12 THE COURT: Any other previous jurors out there?

13 Yes?

14 PROSPECTIVE JUROR: 130, I've been a juror in a civil
15 case and a criminal case.

16 THE COURT: Yes, sir?

17 PROSPECTIVE JUROR: Juror 47, I was a juror in a
18 civil case about 10 years ago.

19 THE COURT: All right. Thank you.

20 Yes, ma'am?

21 PROSPECTIVE JUROR: 283, I was a juror last year in a
22 substance abuse driving case.

23 THE COURT: All right.

24 PROSPECTIVE JUROR: 258, I was a juror out in Swansea
25 probably 15 years ago.

1 THE COURT: All right.

2 PROSPECTIVE JUROR: 172, I was a juror in a civil
3 case and also a criminal case.

4 THE COURT: When was that, ma'am?

5 PROSPECTIVE JUROR: Twenty-five years ago.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR: No. 3, I was a juror here at this
8 state court about three, four years ago, a civil case.

9 THE COURT: All right. Thank you, sir.

10 As I stated, the Defendant is accused of various
11 crimes I called out. He's presumed to be not guilty and
12 cannot be found guilty unless the State presents evidence
13 which convinces the jury of his guilt beyond a reasonable
14 doubt. If there are any members of the jury panel who
15 cannot accept that principle of law or who believes that
16 the person's -- the fact that someone is arrested
17 automatically makes them guilty, if you believe that,
18 please stand.

19 (There was no response.)

20 THE COURT: All right. No one standing.

21 This case is expected to last this entire week, I
22 would think, if you know of any reason why you should not
23 be selected to be on the jury based on the length of the
24 case, please stand.

25 (Jurors stand.)

1 THE COURT: All right.

2 Sir, you can come forward, along with the other
3 person, 330.

4 If anyone else has any questions, issues or concerns
5 regarding serving on this case, please come forward at
6 this time, along with these two jurors.

7 (The Court and jurors confer outside the hearing of
8 the jury panel.)

9 PROSPECTIVE JUROR: I'm on bond.

10 THE COURT: Is that in Richland County?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: You won't sit on this one, but you can
13 still stay.

14 THE CLERK: No. 330.

15 THE COURT: All right. Thank you.

16 PROSPECTIVE JUROR: I was molested by my husband and
17 he's incarcerated now.

18 THE COURT: Okay. Is that still going on or?

19 PROSPECTIVE JUROR: Yes, he got 15 years.

20 THE COURT: Oh, he's in prison now?

21 PROSPECTIVE JUROR: Yes, Kershaw.

22 THE COURT: Kershaw County. And how much years ago
23 did that happen?

24 PROSPECTIVE JUROR: In 2004.

25 THE COURT: 2004. Now, you think that would prevent

1 you from being a fair and impartial juror?

2 PROSPECTIVE JUROR: It shouldn't.

3 THE COURT: It should not.

4 PROSPECTIVE JUROR: (The witness nodded head.)

5 THE COURT: No. 330, do you want to ask her anything?

6 MR. POTTS: What's your husband name?

7 PROSPECTIVE JUROR: Willie Haskins.

8 THE COURT: Do you think you were treated fairly by
9 the process or mistreated or did you want him to get more
10 time or are you satisfied or what?

11 PROSPECTIVE JUROR: I haven't really dealt with it
12 because when they gave him the 15 years, I was like oh,
13 well, you know.

14 THE COURT: Have you remarried again, divorced or
15 still married?

16 PROSPECTIVE JUROR: Yeah.

17 THE COURT: You think you can be a fair and impartial
18 juror?

19 PROSPECTIVE JUROR: (Indicated in the affirmative.)

20 THE COURT: You think so?

21 PROSPECTIVE JUROR: Yeah, I think so.

22 THE COURT: Okay. Where do you work?

23 PROSPECTIVE JUROR: I'm unemployed.

24 THE COURT: Why are you unemployed?

25 PROSPECTIVE JUROR: Because I just feel --

1 THE COURT: I got you. Thank you.

2 PROSPECTIVE JUROR: On February 14th, I have to go to
3 court.

4 THE COURT: That's Valentine's Day.. What about it?
5 (Laughter.)

6 PROSPECTIVE JUROR: I got a speeding ticket.

7 THE COURT: Oh, you got a ticket. Where do you have
8 to go to court for that?

9 PROSPECTIVE JUROR: Washington Street.

10 THE COURT: Oh, okay.

11 PROSPECTIVE JUROR: At 1:00 o'clock.

12 THE COURT: Okay.

13 THE CLERK: No. 245.

14 PROSPECTIVE JUROR: Clarification to question about
15 being in law enforcement. My wife used to work at the
16 Department of Mental Health and now works to restore
17 people to competency with felonies. She's not in law
18 enforcement. She's a physician.

19 THE COURT: She does competency evaluations?

20 PROSPECTIVE JUROR: She treats them and other people
21 do their evaluations.

22 THE COURT: Okay. All right. Thank you for telling
23 us.

24 THE CLERK: No. 132.

25 PROSPECTIVE JUROR: You ask about Quiera Durham?

1 THE COURT: You're the one who stood up?

2 PROSPECTIVE JUROR: No, but did you say Quiera
3 Durham? I don't know her personally, but I know of her.

4 THE COURT: How often do y'all communicate?

5 PROSPECTIVE JUROR: I just know her socially.

6 THE COURT: Y'all are Facebook friends?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Would that prevent you from being fair
9 and impartial?

10 PROSPECTIVE JUROR: No, sir, I just wanted to let you
11 know.

12 THE COURT: What's your juror number again?

13 PROSPECTIVE JUROR: 132.

14 THE COURT: Where do you work?

15 THE DEFENDANT: I'm a medical collector.

16 THE COURT: Medical collector. All right. Thank
17 you.

18 PROSPECTIVE JUROR: All right. Thank you.

19 (End of conference with jurors.)

20 THE COURT: If anyone else is in the courtroom and
21 you are a potential witness in this case, please stand.

22 All right. Tell us who you are. If you are a
23 possible witness in this case, tell me who you are.

24 MR. SMITH: Chad Smith with SLED.

25 THE COURT: Thank you, sir.

1 MR. MCCOY: Investigator Matthew McCoy, Columbia
2 Police Department.

3 THE COURT: All right. Thank you.

4 Any juror that is a friend, relative, associate of
5 any of possible witnesses, please stand?

6 (There was no response.)

7 THE COURT: If you did not respond to any question
8 that I asked because I went to fast and your brain was
9 moving too slow and you want to have an opportunity to
10 respond to those questions, any question, please stand.

11 (There was no response.)

12 THE COURT: Any additional questions by the State?

13 MR. POTTS: Your Honor, may we approach on one issue?

14 (WHEREUPON, a bench conference was held off the
15 record, in the presence of the jury, but out of the
16 hearing of the jury.)

17 THE COURT: What's your name?

18 VICTIM ADVOCATE: Will Galvet.

19 THE COURT: Any member of the jury panel know him?

20 (Juror stands.)

21 THE COURT: All right. Yes, ma'am?

22 PROSPECTIVE JUROR: I know him from college.

23 THE COURT: All right. And your jury number is?

24 PROSPECTIVE JUROR: Fifty-nine.

25 THE COURT: And would that affect your ability to be

1 fair and impartial?

2 PROSPECTIVE JUROR: No.

3 THE COURT: All right. Thank you.

4 And the lawyers, if any member of the jury panel is a
5 friend, relative, associate of any of the lawyers, Mr.

6 Ruffin, Mr. Comish, Mr. Krzyston, Mr. Potts, Ms. Godwin,

7 Mr. Arant? Friend, relative, associate of any of them, if
8 you know them, please stand.

9 (Jurors stand.)

10 THE COURT: All right. Yes, sir. Your juror number
11 is?

12 PROSPECTIVE JUROR: Seventy-six.

13 THE COURT: And who do you know?

14 PROSPECTIVE JUROR: Mr. Davis.

15 THE COURT: And would that affect your ability to be
16 fair and impartial?

17 PROSPECTIVE JUROR: No.

18 THE COURT: All right.

19 Yes, ma'am?

20 PROSPECTIVE JUROR: 297, Adam Ruffin.

21 THE COURT: Would that fact affect your ability --
22 how well do you know him?

23 PROSPECTIVE JUROR: Pretty well.

24 THE COURT: Pretty well. Would that fact affect you
25 ability to be fair and impartial?

1 PROSPECTIVE JUROR: No.

2 THE COURT: All right. Thank you.

3 Any additional questions by the State or the Defense?

4 MR. POTTS: None from the State, Your Honor.

5 THE COURT: All right.

6 MR. RUFFIN: Nothing from us, Judge.

7 THE COURT: All right. Let's have a jury.

8 THE CLERK: Yes, sir, Your Honor.

9 Ladies and gentlemen of the jury panel, as I call
10 your number, please come to the center of the courtroom
11 bringing any personal belongings with you, state your
12 number only and your occupation.

13 No. 258.

14 (Juror No. 258, a white female, came forward.)

15 PROSPECTIVE JUROR: 258, member service rep.

16 THE COURT: What says the State?

17 MR. POTTS: Please present the juror.

18 THE CLERK: What says the Defense?

19 MR. RUFFIN: Please seat this juror.

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

21 No. 255.

22 (Juror No. 255, a white female, came forward.)

23 PROSPECTIVE JUROR: 255, -- specialist.

24 THE CLERK: What says the State?

25 MR. POTTS: Please present the juror.

1 THE CLERK: What says the Defense?

2 MR. RUFFIN: Please seat this juror.

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

4 No. 167.

5 (Juror No. 167, a white female, came forward.)

6 PROSPECTIVE JUROR: 167, I'm a client specialist at
7 Talbert's.

8 THE CLERK: What says the State?

9 MR. POTTS: Please present the juror.

10 THE CLERK: What says the Defense?

11 MR. RUFFIN: Please excuse the juror.

12 THE CLERK: Please have a seat in the back of the
13 courtroom.

14 No. 22.

15 (Juror No. 22, a black male, came forward.)

16 THE COURT: Let me pose this question, one additional
17 question to the jury panel, we don't typically stop at
18 5:00. We sometimes go over -- quite often we go over. So
19 if any of you have to pick up babies from the daycare at
20 5:00 or the like, please stand. If you can't make
21 arrangements otherwise.

22 (There was no response.)

23 THE COURT: Okay. Thank you.

24 PROSPECTIVE JUROR: Juror No. 22, I'm a professional
25 truck driver.

1 THE CLERK: What says the State?

2 MR. POTTS: Please excuse the juror.

3 THE CLERK: Please have a seat in the back of the
4 courtroom.

5 No. 108.

6 (Juror No. 108, a black male, came forward.)

7 PROSPECTIVE JUROR: Juror 108, James Haigler, Verizon
8 Wireless.

9 THE CLERK: What says the State?

10 MR. POTTS: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. RUFFIN: Please seat this juror.

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

14 No. 19.

15 (Juror No. 19, a white male, came forward.)

16 PROSPECTIVE JUROR: No. 19, Jack Blakeney, IT
17 director for --

18 THE CLERK: What says the State?

19 MR. POTTS: Please present the juror.

20 THE CLERK: What says the Defense?

21 MR. RUFFIN: Please excuse this juror.

22 THE CLERK: Please have a seat in the back of the
23 courtroom.

24 No. 197.

25 (Juror No. 197, a black female, came forward.)

1 PROSPECTIVE JUROR: 197, cashier at Target.

2 THE CLERK: What says the State?

3 MR. POTTS: Please present the juror.

4 THE CLERK: What says the Defense?

5 MR. RUFFIN: Please seat this juror.

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

7 No. 73.

8 (Juror No. 73, a black female, came forward.)

9 PROSPECTIVE JUROR: No. 73, administrative
10 specialist.

11 THE CLERK: What says the State?

12 MR. POTTS: Please present the juror.

13 THE CLERK: What says the Defense?

14 MR. RUFFIN: Please excuse this juror.

15 THE CLERK: Please have a seat in the back of the
16 courtroom.

17 No. 288.

18 (Juror No. 288, a white female, came forward.)

19 PROSPECTIVE JUROR: 288, small business owner
20 staffing agency.

21 THE CLERK: What says the State?

22 MR. POTTS: Please present the juror.

23 THE CLERK: What says the Defense?

24 MR. RUFFIN: Please seat this jury.

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

1 No. 210.
2 (Juror No. 210, a white male, came forward.)
3 PROSPECTIVE JUROR: No. 210, real estate specialist.
4 THE CLERK: What says the State?
5 MR. POTTS: Please present the juror.
6 THE CLERK: What says the Defense?
7 MR. RUFFIN: Please excuse this juror.
8 THE CLERK: Please have a seat in the back of the
9 courtroom.
10 No. 273.
11 (Juror No. 273, a black male, came forward.)
12 PROSPECTIVE JUROR: 273, spotter.
13 THE CLERK: What says the State?
14 MR. POTTS: Please present the juror.
15 THE CLERK: What says the Defense?
16 MR. RUFFIN: Please seat this juror.
17 THE CLERK: Please have a seat in the jury box.
18 No. 15.
19 (Juror No. 15, a white female, came forward.)
20 PROSPECTIVE JUROR: No. 15, homemaker.
21 THE CLERK: What says the State?
22 MR. POTTS: Please present the juror.
23 THE CLERK: What says the Defense?
24 MR. RUFFIN: Please seat this juror.
25 THE CLERK: Please have a seat in the jury box.

1 No. 4.

2 (Juror No. 4, a white male, came forward.)

3 PROSPECTIVE JUROR: No. 4 --

4 THE CLERK: What says the State?

5 MR. POTTS: Please present the juror.

6 THE CLERK: What says the Defense?

7 MR. RUFFIN: Please seat this juror.

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

9 No. 265.

10 (Juror No. 265, a black female, came forward.)

11 PROSPECTIVE JUROR: 265, dietician.

12 THE CLERK: What says the State?

13 MR. POTTS: Please present the juror.

14 THE CLERK: What says the Defense?

15 MR. RUFFIN: Please seat this juror.

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

17 No. 172.

18 (Juror No. 172, a white female, came forward.)

19 PROSPECTIVE JUROR: 172, service dog trainer.

20 THE CLERK: What says the State?

21 MR. POTTS: Please present the juror.

22 THE CLERK: What says the Defense?

23 MR. RUFFIN: Please seat the juror.

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

25 No. 330.

1 (Juror No. 330, a black female, came forward.)
2 PROSPECTIVE JUROR: 330, unemployed.
3 THE CLERK: What says the State?
4 MR. POTTS: Please excuse the juror.
5 THE CLERK: Please have a seat in the back of the
6 courtroom.
7 No. 136.
8 (Juror No. 136, a black male, came forward.)
9 PROSPECTIVE JUROR: 136, machine operator.
10 THE CLERK: What says the State?
11 MR. POTTS: Please present the juror.
12 THE CLERK: What says the Defense?
13 MR. RUFFIN: Please seat this juror.
14 THE CLERK: Please have a seat in the jury box.
15 No. 43.
16 (Juror No. 43, a black female, came forward.)
17 PROSPECTIVE JUROR: No. 43 --
18 THE CLERK: What says the State?
19 MR. POTTS: Please present the juror.
20 THE CLERK: What says the Defense?
21 MR. RUFFIN: Please seat this juror.
22 THE CLERK: Please have a seat in the jury box.
23 THE COURT: Two alternates.
24 THE CLERK: Strikes are going to be one for the
25 State, two for the Defense.

1 No. 295.

2 (Juror No. 295, a black male, came forward.)

3 PROSPECTIVE JUROR: 295, IT technical support.

4 THE CLERK: What says the State?

5 MR. POTTS: Please present the juror.

6 THE CLERK: What says the Defense?

7 MR. RUFFIN: Please seat this juror.

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

9 No. 47.

10 (Juror No. 47, a white male, came forward.)

11 PROSPECTIVE JUROR: No. 47, department of affairs.

12 THE CLERK: What says the State?

13 MR. POTTS: Please present the juror.

14 THE CLERK: What says the Defense?

15 MR. RUFFIN: Please seat this juror.

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

17 THE COURT: Are there any matters of law regarding
18 the jury selection?

19 MR. POTTS: None from the State, Your Honor.

20 MR. RUFFIN: None from the Defense.

21 THE COURT: Okay. Ladies and gentlemen, you are the
22 jury. You've been selected to serve as the jury in this
23 case. I'm going to have you all go to the jury room with
24 the bailiff. Please do not discuss the case while there.
25 I'm going to speak to the ones who were not selected and

1 the lawyers for a few minutes and we'll bring you back
2 out.

3 (WHEREUPON, the jury left the courtroom at 12:20
4 p.m.)

5 THE COURT: All right. Ladies and gentlemen, those
6 of you who were not selected, you can return back
7 downstairs for further instructions.

8 (WHEREUPON, the remaining jury panel left the
9 courtroom at 12:21 p.m.)

10 THE COURT: All right. What's the schedule? What
11 schedule do y'all want to have?

12 MR. POTTS: Well, Your Honor, while the witness list,
13 as you saw, is very long, we believe we can cut it down
14 substantially. We don't expect to go too far into the
15 week. I know that's probably surprising, but I think --
16 when I counted up, we have something around 25 witnesses
17 we want to present. Of course, that's -- they may have --
18 that may change depending on what their defense is going
19 to be. But I think we can -- if Your Honor wants, we can
20 probably open, just depending on how the pretrial stuff
21 goes, this afternoon --

22 THE COURT: Oh, definitely.

23 MR. POTTS: Or start in the morning.

24 THE COURT: Oh, absolutely. No, this afternoon,
25 we're starting.

1 MR. POTTS: So I've got --

2 THE COURT: What kind of schedule do you want?

3 Meaning, what time are you -- you have some pretrial and
4 how long and the jury, they go the lunch, what time you
5 want them back? That kind of thing.

6 MR. POTTS: My witnesses are on standby for
7 2:00 o'clock, Your Honor. I can have them picked up --
8 some of them need rides. If we can begin around then,
9 that would give me a chance to make sure they all get
10 here. We have a lot of lay witnesses, Your Honor.

11 THE COURT: All right. So you're ready to go?

12 MR. POTTS: Yes, sir.

13 THE COURT: All right.

14 MR. POTTS: I'm ready to go.

15 THE COURT: All right.

16 Okay. Defense?

17 MR. RUFFIN: Your Honor, we're ready to go, too. I
18 think Mr. Comish has maybe one issue he wants to address
19 with you.

20 THE COURT: All right. What is that?

21 MR. COMISH: Just the diabetes, Your Honor. If I
22 have low blood sugar, I don't really want to eat in court,
23 but if I could just slip and treat that condition.

24 THE COURT: You can eat in court, you can slip out,
25 whatever you want to do.

1 MR. COMISH: Whatever the Court prefers.

2 THE COURT: No, whatever suits you. You know, I'm
3 not going to feel it, whatever it is. Just whatever
4 you've got to do, do it.

5 MR. COMISH: Yes, sir.

6 MR. POTTS: Your Honor, I think we've agreed on most
7 of the pretrial issues. I guess there's a couple we need
8 you to arbitrate.

9 MR. RUFFIN: Your Honor, we have a list. You want me
10 to just go through and tell you what they are?

11 MR. POTTS: Yes, sir.

12 MR. RUFFIN: I mean, at this time, you know, the
13 Defense, obviously, we want to review our Rule 5 motion
14 for discovery and disclosure of evidence. Mr. Potts and I
15 have already discussed that. I just want to put it on the
16 record. Obviously, the motion -- also, Riddle will be
17 settled under that.

18 THE COURT: What is a Riddle motion?

19 MR. RUFFIN: Just the State's continuing obligation
20 to disclose every witness, which they've done. So I just
21 want to put on the record, though, that we're renewing
22 those motions.

23 THE COURT: All right. Any response to them renewing
24 those motions?

25 MR. POTTS: Your Honor, we have turned over -- we've

1 gone over the case discovery with them. We have turned
2 over everything that we're aware that we have and that
3 they've requested. Even when they requested additional
4 things, we turned it over. As we interviewed witnesses,
5 anything new that came up that was contradictory, we also
6 gave them. At this time, we believe we have satisfied our
7 Rule 5 obligation under Brady.

8 THE COURT: With regard to the pretrial hearings that
9 Judge Hood had in this case, are y'all stipulating that I
10 adopt his findings?

11 MR. RUFFIN: Yes, Your Honor, we would be.

12 MR. POTTS: We're asking you to, yes, Your Honor.

13 THE COURT: Based on the stipulations, I will adopt
14 his findings.

15 MR. POTTS: Thank you, Your Honor.

16 MR. RUFFIN: And just to be -- I don't know if we
17 should put on the record, the transcript will already be
18 there, as to which witnesses testified at that hearing and
19 the finding all of the photo lineups were ruled admissible
20 and all of the in-court IDs were ruled admissible.

21 THE COURT: Okay.

22 MR. POTTS: The only other potential is -- as
23 potential in-court ID and Terry Lewis, we did not do the
24 lineup in that pretrial hearing. At this time, we are not
25 planning on calling Terry Lewis. He's a 15-year-old

1 child, Your Honor. At this time, we're not planning on
2 having him testify.

3 THE COURT: All right.

4 MR. POTTS: Just for the record, in the pretrial, we
5 had Paris Young, Avery Dickson, Benjamin Walker, Jamichael
6 Lewis, Dominique Tucker, Daquan Cleckley, Jasmine Sims,
7 April Cleckley, Diamond Corbett, all Judge Hood ruled that
8 their in-court IDs and their photo lineups were
9 admissible.

10 THE COURT: All right.

11 (WHEREUPON, State's Exhibit Nos. 1 through 12
12 were marked for identification only.)

13 MR. POTTS: The next on the list, Your Honor.

14 THE COURT: He's still giving me his concerns. I
15 thought I was through hearing yours.

16 MR. POTTS: You are, you are through hearing mine,
17 Your Honor.

18 MR. RUFFIN: Your Honor, you can see next on my list,
19 we wanted to settle the record of the State's witnesses
20 and put on the record that we have. I believe that
21 they've -- I think we've been turned over, at least, one
22 rap sheet. I'm not sure if any of the lay witnesses,
23 primarily, if they have criminal records. We'd just like
24 to know what they are.

25 THE COURT: Any other witnesses have criminal

1 records?

2 MR. POTTS: Yes, Your Honor.

3 THE COURT: Has -- all right.

4 MR. POTTS: I will just go through them one by one
5 with Your Honor. Your Honor, Paris Young, one of the
6 witnesses, has a 2013 possession of cocaine and a 2016
7 simple possession of marijuana.

8 THE COURT: All right.

9 MR. POTTS: You want to inspect these?

10 MR. RUFFIN: That's fine.

11 MR. POTTS: Tyrone Johnson, Your Honor, has a 1989
12 receiving stolen goods, 1990 possession of crack cocaine
13 with intent to distribute, 1990 strong armed robbery, 1996
14 assaulting police officer while resisting arrest, 2001
15 giving false information to police -- I'm sorry, that was
16 not a conviction. Driving under suspension, speeding,
17 2002 possession of controlled substance, possession of a
18 pistol by a person prohibited, and 2004 possession of less
19 than one gram of ice or crack cocaine, and, also,
20 possession of a pistol by a person prohibited. And that
21 is the extent of his record.

22 As far as that goes, Your Honor, I think they are
23 limited to 10 years on the 2004 stolen -- possession of
24 crack cocaine. He did not finish his sentence until three
25 years after that. Ten years would elapse at some point

1 this year.

2 THE COURT: All right.

3 MR. RUFFIN: Your Honor, if I could ask Mr. Potts, he
4 said there was false information to police, but that's not
5 a conviction --

6 MR. POTTS: It's not a conviction, just an arrest.

7 Jasmine Sims has no prior record.

8 THE COURT: All right. Well, if you'll bring the
9 jury in for me, please.

10 (WHEREUPON, the jury returned to the courtroom
11 at 12:30 p.m.).

12 BAILIFF: Your Honor, the jury's present.

13 THE COURT: All right. Thank you, ladies and
14 gentlemen. We need to discuss some preliminary matters,
15 so rather than have you wait, we'll have you all go to
16 lunch. I need you back at 2:30.

17 Once you're selected on the jury, you cannot discuss
18 the case, do any research about the case or try to find
19 anything about the case other than what you hear in the
20 courtroom. You're not allowed to discuss it with each
21 other as well. We'll need you back at 2:30.

22 (WHEREUPON, the jury left the courtroom at 12:32
23 p.m.)

24 THE COURT: All right. Yes, sir.

25 MR. RUFFIN: Just to clarify, we're done with the

1 records?

2 MR. POTTS: How about you and I meet at break, we can
3 go through them all.

4 MR. RUFFIN: That's fine.

5 MR. POTTS: Because it may take a bit longer.

6 MR. RUFFIN: Your Honor, our substantive motions, Mr.
7 Potts and I have talked. He's shown me a couple of
8 photographs from the autopsy of Mr. Isaac Lewis. We would
9 object to those as being unduly prejudicial and 403. It's
10 the Defense's -- it's our position that there is no
11 probative value that would be added to the pathologist's
12 testimony about the cause of death.

13 THE COURT: Do you have any photographs that you
14 agree to?

15 MR. RUFFIN: Almost all of them, I agree to.

16 THE COURT: Okay. We'll admit to what you agree to
17 and what you disagree with, I will rule when they're
18 offered.

19 MR. RUFFIN: Okay, that sounds good, Judge. Again,
20 this is probably something --

21 THE COURT: So whatever you agree to, they need to be
22 marked so that she can have exhibit numbers and all that
23 that's been agreed to. Whatever's questionable that
24 they're trying to introduce, they will be marked for
25 identification only and then I will rule as we go.

1 MR. RUFFIN: Okay. Thank you, Judge.

2 THE COURT: Because I don't know anything about the
3 case or anything. There's no point in going through that
4 exercise whether or not they're too prejudicial. I don't
5 know the context, or anything about the evidence so that
6 would be better at a later time.

7 (WHEREUPON, State's Exhibit Nos. 110 through 122
8 were marked for identification only.)

9 MR. RUFFIN: Okay. And, Your Honor, if you have any
10 questions, certainly, we can answer them, I'm sure.
11 Because my other two other motions -- at least, letters B
12 and C on there would be clearly they are specific to
13 testimony. If you want us to just wait and object to
14 them, that's fine, but the objection is the mention of
15 gang affiliation.

16 THE COURT: All right. Do you intend to try to
17 mention gang affiliation?

18 MR. POTTS: No, Your Honor.

19 THE COURT: All right. So that settles that one.

20 MR. POTTS: And in terms of the 404(b) argument, the
21 letter B on our list, Ms. Precious Dottery, who is a
22 sister of my client, she said in her statement that my
23 client had tried to stab her at some point. My
24 understanding is they're not calling her as a witness, so
25 it shouldn't be an issue. I just wanted to put on the

1 record that, obviously, we object to that.

2 THE COURT: Her statement?

3 MR. RUFFIN: Correct. But if she testifies --

4 THE COURT: Right.

5 MR. RUFFIN: -- we would object to that testimony if
6 she is going to testify.

7 THE COURT: But he said she's not testifying.

8 MR. POTTS: At this time, Your Honor, when she takes
9 the stand, we will not offer that evidence unless it
10 becomes relevant in some way. At this point, I don't
11 think it's relevant.

12 THE COURT: Okay.

13 MR. RUFFIN: There's one other thing that sort of
14 comes up in a couple of different individuals' statements.
15 And just as a matter of caution, if they are to testify,
16 some of them mention a prior beef, in their words, prior
17 beef between my client and another individual who is
18 associated with this family. Most of the lay witnesses,
19 Your Honor, are family members or friends of family
20 members. They talk about a prior beef that my client had.
21 It's not relevant. It has nothing to do with the date in
22 question.

23 THE COURT: Well, usually, the lawyers bring all of
24 that evidence in after asking me to exclude it.

25 MR. RUFFIN: Certainly, I understand that if I open

1 the door, then it comes in.

2 THE COURT: You probably will ask them a question and
3 that will be their response. I mean, I don't know. You
4 know, when you start these cross-examinations, people say
5 all kinds of things.

6 MR. RUFFIN: Okay. And the last thing that I have is
7 a motion to suppress or redact some of the jail calls. My
8 understanding is that there's three jail calls that the
9 State intends to introduce as evidence. We have some
10 objections to the content in those jail calls.

11 THE COURT: What's he talking about?

12 MR. RUFFIN: He talks about being on probation, that
13 he has a probation violation court coming up, that he had
14 to two attempted murder charges before. He's talking
15 about fee for a lawyer at one point. I have a list, Your
16 Honor, of actual times, specific times in the call that I
17 would like to be redacted. I don't know if Your Honor
18 wants to hear the jail -- each jail call is about 15
19 minutes.

20 THE COURT: Well, you all might agree on all this, so
21 whatever you agree on, there's no point in me ruling on
22 it. I think if he's saying he's on probation and he's had
23 some other cases that he's -- would you try to introduce
24 that?

25 MR. POTTS: No, Your Honor, I don't think that -- not

1 the specifically, no. Having not seen his --

2 THE COURT: Y'all have to see what y'all agree to. I
3 rule on what you don't agree to.

4 MR. RUFFIN: We can do that after lunch.

5 THE COURT: All right.

6 MR. RUFFIN: And the last thing would be on
7 Mr. Krzyston's motion, which is regarding firearm and tool
8 mark evidence.

9 MR. KRZYSTON: Judge, I believe that would be an
10 objection under 702, Council, White and Jones. I don't
11 know if you want to handle that at the time of testimony,
12 excuse the jury and let them establish the threshold --

13 THE COURT: You mean their expert is not an expert or
14 something?

15 MR. KRZYSTON: That would be our contention. And we
16 also would probably state alternative grounds for relief
17 depending on the alleged expert's testimony, but I think
18 that would probably be based on language of his
19 conclusions --

20 THE COURT: Who is this alleged expert that they
21 don't think is an expert?

22 MR. POTTS: The witness is here, sir.

23 THE COURT: And that's Mr.?

24 MR. SMITH: Chad Smith.

25 THE COURT: Okay. And when do you anticipate

1 Mr. Smith testifying?

2 MR. KRZYSTON: I think they said Wednesday or
3 Thursday.

4 THE COURT: So we can get into the flow of the case.
5 That's not -- you wouldn't be talking about that early on
6 through your opening statements, would you?

7 MR. POTTS: I think we planned on mentioning some of
8 that in the opening, Your Honor, some of the ballistics,
9 the tool mark stuff, Your Honor, in the opening.

10 THE COURT: All right.

11 MR. POTTS: I think we have a good faith basis to do
12 it in opening.

13 THE COURT: So what is the -- what's the controversy
14 then?

15 MR. KRZYSTON: Judge, we think that the foundational
16 reliability or the validity of the science itself is at
17 question. We also do have some issues with this specific
18 expert qualifications. You know, I think the bulk of our
19 argument is going to rest and challenging, again, the
20 foundation and validity of the science itself.

21 THE COURT: The science of tool mark evidence?

22 MR. STEPHEN: The science or art. I think it's more
23 of an art, but yes.

24 THE COURT: All right. You have cases that says it's
25 not or you're treading new ground or --

1 MR. KRZYSTON: I don't believe that we're treading
2 new ground in terms of things and authors and commentators
3 that have addressed this. Federal courts have tangled
4 with this issue, primarily, in the district of
5 Massachusetts and southern district of New York. In
6 addition to that, Your Honor, the National Association of
7 Science -- excuse me, the National Academy of Science as
8 well as the National Research Council have addressed these
9 issues. In addition to that, presidential advisors on
10 science and technology have also addressed some of the
11 foundational elements. So I think, you know, we do have a
12 basis for challenging that evidence.

13 THE COURT: All right. Did you want to call him now
14 and let me hear some of what --

15 MR. RUFFIN: Yes, Your Honor, we can do that.

16 MR. ARANT: Yes, Your Honor.

17 THE COURT: Let's take about a two-minute break so
18 y'all can get a drink of water and then we'll do that.

19 (WHEREUPON, a short recess was held.)

20 MR. ARANT: The State calls Chad Smith.

21 Thereupon;

22 CHAD SMITH,

23 After having been duly sworn, testified as follows:

24 THE CLERK: Thank you. Please have a seat in the
25 witness stand and state your full name for the record.

1 THE WITNESS: My name is Chad Smith.

2 DIRECT EXAMINATION

3 BY MR. ARANT:

4 Q Agent Smith, where are you employed at?

5 A I'm employed with the South Carolina Law Enforcement
6 Division, which is also known as SLED. Specifically, I
7 work in the firearms department at SLED forensic services
8 laboratory.

9 Q And how long have you been employed at SLED?

10 A A little over eight years and three months.

11 Q Will you tell this Court in what capacity you have
12 been in for those eight years and three months?

13 A It's always been in the firearms department. I
14 started out as a trainee, that lasted several years. Then
15 I became a qualified examiner and began to receive my own
16 case work.

17 Q In those first few years you were talking about, what
18 kind of things were you doing?

19 A The training program lasted between three to five
20 years when I was in it and it was supervised by the
21 court-qualified examiners of the firearms department.
22 There was extensive reading and studying, multiple
23 examinations and practical tests were given during this
24 period. I attended various seminars and classes and went
25 to see several manufacturing facilities to see how

1 firearms and tools are manufactured. And later in the
2 training period, I was able to help the other examiners
3 prepare their own case work. And at the end of the
4 training period, I was given a comprehensive multi-part
5 examination, which I successfully passed, then I began to
6 receive my own cases.

7 Q Okay. Before -- back up a little bit. Before you
8 were at SLED, where did you go to college at?

9 A Clemson University.

10 Q Okay. And what was your degree in at Clemson
11 University?

12 A It was a Bachelor of Science degree in biological
13 sciences.

14 Q Okay. And were you ever employed with Clemson or any
15 of that matter while you were in school or anything like
16 that?

17 A Yes, I was. I worked for Clemson while I was in
18 school during the summers. Then when I graduated, I
19 worked for Clemson University in several different
20 capacities before coming to SLED.

21 Q Okay.

22 THE COURT: Let me just ask you a question, is that
23 the same department Dan DeFreese was working in?

24 THE WITNESS: Yes, sir, he retired.

25 THE COURT: Okay. All right.

1 BY MR. ARANT:

2 Q Did you go anywhere before SLED or you went straight
3 from Clemson to SLED?

4 A Yes.

5 Q Like you said, you've been at SLED for eight and a
6 half years?

7 A Yes.

8 Q What is your certain position at SLED?

9 A It's a firearms and tool mark examiner. The majority
10 of what we do is try to determine if a particular firearms
11 component, such as ammunition -- such as a cartridge case
12 or bullet was fired by a particular firearm.

13 Q How long have you been under that title as firearms
14 examiner at SLED?

15 A Since July of 2012.

16 Q Okay. Since July of 2012, how many firearms or their
17 belongings, cartridge casings, bullets have you examined?
18 What's a ballpark figure?

19 A Probably in the many hundreds.

20 Q Many hundreds. Once a year -- in a given year, how
21 many would you probably do?

22 A Well, we probably try to work several cases a month.
23 It just depends on how much evidence is involved, but, you
24 know, probably several hundred a year.

25 Q Before you were -- when you were in training with

1 SLED, did you have occasion to analyze firearm parts and
2 their components?

3 A Yes.

4 Q Okay. On a daily basis?

5 A Yes.

6 Q And you were under the -- were you under supervision
7 at that point?

8 A Yes, during training, yes.

9 Q In your current capacity, do you have a supervisor?

10 A Yes, we have a lieutenant who's over the firearms
11 department.

12 Q Who is that?

13 A His name is Tracy Thrower.

14 Q In addition to that, do you attend any seminars or
15 are you currently in journals of that nature in your
16 field?

17 A Yes, I'm a member of AFTE, it's A-F-T-E, that's the
18 Association of Firearm Tool Mark Examiners. That's a
19 professional organization for our field of study. They
20 have a training conference every year and I've attended
21 that training conference several times. They publish a
22 quarterly journal that is peer reviewed, which I do
23 subscribe to.

24 Q Okay. And at SLED, does SLED have a given set of
25 protocols that you have to administer these particular

1 tests when you're testing items?

2 A Yes, SLED firearms has their own protocol manual.

3 Q Who are those -- who or where are those adopted from?

4 A Basically, we use what are recommendations from our
5 accreditation body, ASCLD, it's A-S-C-L-D, which is the
6 Association -- or I'm sorry, American Society of Crime
7 Laboratory Directors. And it's the laboratory
8 accreditation board that does the accrediting. So
9 protocols come from them. And then we use protocols and
10 procedures adopted by AFTE organization.

11 Q And is SLED currently in compliance with those
12 protocols?

13 A Yes, sir.

14 Q Okay.

15 MR. ARANT: Your Honor, before I ask that he be
16 qualified as an expert, I think I know what their argument
17 is going to be at, so I would like to probably question
18 him about some of the protocols and trainings that their
19 department utilizes before I get specific about this case.

20 MR. KRZYSTON: Judge, it's our position that it's
21 their burden to establish not only the qualification, but
22 the reliability, so by all means.

23 THE COURT: All right.

24 MR. ARANT: Just didn't want to be -- you wondering
25 what's going on.

1 BY MR. ARANT:

2 Q Agent Smith, as a part of those protocols that SLED
3 has adopted, are those the ones that are adopted
4 nationwide?

5 A Actually, the accreditation process that we have is
6 international standards.

7 Q Okay. Are those -- those techniques that are used
8 within SLED, are those the ones that are recognized by
9 your peers around the country?

10 A And the world, yes, sir.

11 Q Okay. Did you use those in this particular case?

12 A Yes, sir.

13 Q Okay. Are these techniques also supported by any
14 books or journals?

15 A Yes, sir.

16 Q And those are the same ones used in testing the
17 particular items in this case?

18 A Correct.

19 Q Are there any type of quality control verifications
20 within SLED?

21 A Yes. Specifically, everything that we issue results
22 on in our department have to be peer reviewed by another
23 qualified examiner. And we do that in two processes. We
24 do that in what we call micro-verification, in which
25 another qualified examiner comes to the microscope and

1 looks at the evidence same as we did and they reach their
2 own individual conclusion as to the conclusion that we
3 have already established. And if they agree with our
4 conclusion, they sign off on the worksheet. Then it goes
5 to technical and administrative review, usually by the
6 same examiner. It doesn't have to be, but usually it is.
7 And then that's approved by them and then the report is
8 issued and approved.

9 Q Can you explain for the Court the process when you
10 receive different types of ballistics and ammunition and
11 firearms, what kind of process you go through to analyze
12 it?

13 A Yes, sir. When we get a firearm in, the first thing
14 we want to do is we look at it and make sure there's no
15 obvious defects or anything on it that we might need to
16 collect, such as blood or any sort of trace material that
17 could be important. As far as the bullets or cartridge
18 cases are concerned, we kind of do the same thing as far
19 as looking for trace evidence. If we don't know where a
20 particular bullet or cartridge case was found and there's
21 blood or any sort of trace material that might need to be
22 collected, we go ahead and do that.

23 The bullets, we would observe, physically examine.
24 We would weigh them, then try to get a particular diameter
25 from them and determine what caliber they could possibly

1 be. And then cartridge cases, we do sort of the same
2 thing, examine them for any sort of damage or anything
3 like that.

4 Now, as far as the comparisons are concerned, what we
5 do is we use what's known as a comparison microscope,
6 which is, basically, two microscopes connected by an
7 optical bridge system so we can compare samples
8 simultaneously. And what we're looking for is what we
9 call -- it's pattern matching. We're looking for
10 impressed evidence or striations, which are scratches.
11 We're looking for any sort of marks that could be
12 individual or subclass in nature. And then what we try to
13 do is try to match those individual marks together to try
14 to determine a common origin.

15 Q In this case, this particular case and the things you
16 examined, did you do that in this case?

17 A Yes, sir.

18 Q Did you have a chance to photograph these items?

19 A Yes, sir.

20 Q And I've seen you have an extensive report, not only
21 the three-page overall report, but an extensive report.
22 Were you also writing about these items and what you were
23 observing?

24 A Yes, sir. In a case file, we have worksheets on the
25 evidence. We fill out particular fields that could be

1 important. So all that's part of our case file. And the
2 conclusions we write down are also in the case file and
3 that goes into the report.

4 Q All the particular things you're doing to these
5 items, are those done by other labs and supported by other
6 journals across the country?

7 A Yes, sir.

8 Q And you're doing everything based on those standards?

9 A Yes, sir.

10 Q Now, once you've come to your conclusion -- we're not
11 getting to your conclusion yet, but once you come to your
12 conclusion, what happens at that point? Is there somebody
13 to verify it or anything like that?

14 A Yes, that would be the micro-verification process.
15 We write down our conclusion on the worksheet prior to
16 another examiner coming to check it out. Then they look
17 at the evidence and try to reach the same conclusion that
18 we did. If they agree, then they would sign off if they
19 agreed.

20 Q Okay. The standards and process that you've
21 explained to the Court, are those nationally recognized
22 and adopted?

23 A Yes, sir.

24 Q And SLED is in compliance with those?

25 A Yes, sir.

1 Q And the results and conclusions that you reached in
2 this case, are they supported by the scientific community?

3 A Yes, sir. There's been numerous studies in the field
4 of firearms and tool mark identification which support the
5 scientific methods and the procedures.

6 Q And your particular degree of certainty, that's
7 supported by peer review in all these journals that we've
8 talking about?

9 A Yes, sir.

10 Q And in addition to that, your department also has a
11 department manual for firearms and tool marks?

12 A Yes, sir.

13 Q And you're familiar with that?

14 A Yes, sir.

15 Q Give us a brief overview of what that manual does.

16 A The manual encompasses, basically, all the policies
17 and procedures of our particular department. It covers
18 ranges from how to collect trace evidence to how to do
19 certain types of examinations, trigger pull weights for
20 firearms to determine what kind of trigger pull a firearm
21 has. Then it goes into training -- training procedures.
22 There's all sort of indexes and appendices inside the
23 training manual as well.

24 Q Okay. Do you adhere to those standards?

25 A Yes, sir.

1 Q You're obviously aware of the manual. You receive a
2 manual?

3 A Yes, sir.

4 Q Okay. In addition to that, do you have any other
5 membership besides the AFTE one you mentioned?

6 A Just the AFTE, the only professional organization.

7 Q And as a part of the AFTE membership, do you receive
8 anything?

9 A Well, a journal every quarter. And then we also have
10 the opportunity to go to the AFTE conference every year,
11 training conference.

12 Q Okay. And have you been actively going to training?

13 A I've been twice.

14 Q Have you had the opportunity to testify in court
15 before as an expert?

16 A Yes, I have.

17 Q Approximately how many times?

18 A I've testified 31 times, been qualified 30 times.
19 With the one exception, there was a coroner's inquest,
20 which I testified in, which, apparently, has different
21 standards of rules, so they didn't qualify me as a
22 witness.

23 Q Are there any other things this Court should know
24 about your qualifications in the firearms field?

25 A No, sir.

1 MR. ARANT: Your Honor, at this time, we'd ask that
2 he be an expert in firearms identification for purposes of
3 this case.

4 THE COURT: All right. By the defense?

5 MR. KRZYSTON: Voir dire, Your Honor?

6 THE COURT: Yes.

7 MR. STEPHEN: Thank you, Your Honor. May it please
8 the Court, Your Honor?

9 THE COURT: Yes, sir.

10 VOIR DIRE

11 BY MR. KRZYSTON:

12 Q Mr. Smith, you have been employed at SLED, you said,
13 how many years?

14 A Since November 3rd of 2008, so a little over eight
15 years and three months.

16 Q And as part of the requirements of your job, are you
17 required to keep a statement of qualifications?

18 A Yes.

19 Q And --

20 MR. KRZYSTON: Permission to approach?

21 THE COURT: You don't need to ask permission to
22 approach.

23 MR. KRZYSTON: Thank you, Judge.

24 THE COURT: Throughout the trial.

25 MR. KRZYSTON: Thank you.

1 BY MR. KRZYSTON:

2 Q Mr. Smith, would you review that statement of
3 qualifications that I just handed you?

4 A (The witness complied).

5 Q Mr. Smith, is that statement of qualifications
6 accurate to this day?

7 A It was accurate as of January 5th.

8 Q Of this year?

9 A Of this year.

10 Q And to your knowledge, is it currently accurate?

11 A We've done some training since then.

12 Q But you haven't written it down yet?

13 A Right.

14 Q And as part of just being a regular human being, do
15 you maintain a curriculum vitae?

16 A Yes.

17 Q Okay. Now, you mentioned that you graduated from
18 Clemson University in the year 2000?

19 A Yes, sir.

20 Q And your degree was in Bachelor of Science, correct?

21 A It was a Bachelor of Science degree in biological
22 sciences.

23 Q Okay. And that's a four-year degree?

24 A It was -- well, it was a four-year degree. I changed
25 from engineering to biological sciences, so it took me

1 five years.

2 Q And Clemson's biological science program, there are
3 emphases, are there not?

4 A Pardon? Could you say that again?

5 Q In Clemson's biological science division, if you
6 will, there are -- your degree can have an emphasis?

7 A At the time, I don't know what it is now, but
8 biological sciences was a major by itself. It encompassed
9 animal, plant, all sorts of -- it's basically just biology
10 in general.

11 Q So it just focused on biology, there was no other
12 additional emphasis?

13 A No.

14 Q Okay. You remember your GPA?

15 A I don't.

16 Q Okay. Now, in terms of being hired on by SLED, I
17 guess you applied, correct?

18 A Yes, sir.

19 Q And you go for an interview?

20 A Yes, sir.

21 Q And once you're accepted and you accept, there's a
22 course of instruction that you have to go on?

23 A Right. Before that, they do an extensive background
24 check, polygraph examination. So you have to pass certain
25 things, drug tests, everything that you would expect

1 before being hired at SLED.

2 Q Okay. And as part of the process, before you can
3 become an examiner, you have to undergo a course of
4 instruction, correct?

5 A Yes, sir.

6 Q And you were hired on at SLED in 2008?

7 A Yes, in November.

8 Q And you completed the course of instruction for
9 firearms and tool mark identification when?

10 A July of 2012.

11 Q So that's approximately what, four and a half years?

12 A That's about three and a half.

13 Q Three and a half, okay. You have a copy of the SLED
14 protocols right there. Is that just the protocol or is
15 that actually the training manual as well?

16 A This is part of our firearms and tool mark department
17 of operations manual, which includes training and policies
18 and procedures.

19 Q Okay. Because yours looks a little bit thinner than
20 mine and --

21 A I didn't print out the training stuff and certain
22 things.

23 Q Okay. Would you, I guess, take a look at the
24 training section of that and tell me if it is complete to
25 the best of your knowledge?

1 A To the best of my knowledge, this is the current
2 training manual. It should be noted, however, that this
3 manual was revised -- it's version three, which was
4 revised June 8th of 2016. So the manual, training program
5 manual that I was -- had would have been totally
6 different.

7 Q Okay. And we'll get to that in a second.

8 MR. KRZYSTON: But, Your Honor, for the record, we
9 would like to indicate that this is, again, version
10 3.060816.

11 THE COURT: That's what he just said, isn't it?

12 MR. KRZYSTON: I believe so, Your Honor. Of the SLED
13 firearms and tool mark operations manual. We would ask
14 that the Court identify and mark this as a Court's
15 Exhibit.

16 THE COURT: Okay.

17 (WHEREUPON, Court's Exhibit No. 1 was marked for
18 identification only.)

19 BY MR. KRZYSTON:

20 Q Now, you mentioned that this operations manual was
21 different from the operations manual that was in effect
22 when you went through training, correct?

23 A Yes.

24 Q And SLED's laboratory was actually accredited
25 differently when you joined it as it is now?

1 A I believe so, yes.

2 Q And in 2008 when you joined the SLED laboratory, it
3 was accredited under what was then a different
4 organization, ASCLD?

5 A Yes, it was ASCLD, but it wasn't at the international
6 standard.

7 Q Correct. At that time, you are aware that SLED's
8 laboratory was accredited under the so-called legacy
9 program, correct?

10 A Yes, I believe that's what it was called.

11 Q Okay. You are also aware that ASCLD lab, again, the
12 Laboratory Accreditation Board, put out the technical
13 framework that SLED now conforms to, correct?

14 A Yes, sir.

15 Q They put that out in 2005, correct?

16 A I believe so.

17 Q Okay.

18 MR. KRZYSTON: And that is, just for the Court's
19 record, ASCLD standard ISO 17025.

20 BY MR. KRZYSTON:

21 Q So this standard of accreditation was, I guess,
22 available generally to the public at the time you joined
23 SLED's laboratory?

24 A Right, we didn't get accredited through the -- you're
25 talking about the international standard, until, I

1 believe, 2014.

2 Q But that was, again, promulgated in 2005?

3 A (The witness nodded head.)

4 Q Now, in terms of your annual training, you have been
5 to the -- is it AFTE?

6 A Yes, sir.

7 Q You've been to the AFTE annual training conference
8 once, May 31st through June 5th of 2009?

9 A Yes, sir.

10 Q Then again, I believe, is it 2015?

11 A 2015, yes.

12 Q Yes. May 25th through the 29th of 2015?

13 A Yes.

14 Q Okay. Would you please turn to lesson plan K under
15 the SLED training manual?

16 A Can you give me a page number, please?

17 Q I'm sorry, I cannot. If you go to, I think it's page
18 117, there is a table of contents for the training manual.
19 I apologize.

20 A Lesson K, yes, sir.

21 Q Okay. On there, it says pretty much right under
22 training introduction -- I'm sorry, would you please turn
23 to training introduction, that was Page 118, I apologize.

24 A Okay.

25 Q All right. Do you see under the course of

1 instruction or under the training introduction, it says,
2 quote -- and stop me if I'm wrong, the course of
3 instruction, COI, should be completed in approximately two
4 and one-half years?

5 A Yes, that's under the new --

6 Q It's a new standard?

7 A It's a new standard. We're trying to get training
8 done a little quicker so we can get examiners out and
9 start with a case load.

10 Q Okay. And below that section, again, stop me if I'm
11 wrong, the trainee should attend seven hours in
12 conferences of the organization, which include firearms
13 and tool mark examiners among their membership. The most
14 important conference to attend is the annual AFTE
15 conference. The trainee should be encouraged to join AFTE
16 as soon as is practical?

17 A Right.

18 Q Okay. Now, you joined AFTE in April of 2014?

19 A Yes, sir, I believe so.

20 Q And again, you started your employment and training
21 with SLED in June of 2008?

22 A Right.

23 Q Okay. Would you please next turn to lesson K?

24 A Okay.

25 Q And again, stop me if I'm wrong, but I believe this

1 is probably two or three paragraphs down. The trainee
2 should join AFTE to benefit from the training
3 opportunities, the information available in the journal
4 and on the website and to have opportunities to learn and
5 exchange relevant information?

6 A Correct.

7 Q Okay. Now, again, you sought AFTE membership in
8 April of 2014, correct?

9 A Yes.

10 Q And you received not a regular membership, but what's
11 call a provisional membership, correct?

12 A Correct.

13 Q Now, the requirements for a provisional membership
14 are a little bit different than a regular membership,
15 correct?

16 A Right. You have to go through the provisional
17 membership before regular membership.

18 Q Right. Now, the requirements as listed by AFTE for a
19 provisional membership are that -- excuse me, you are --
20 that you are a practicing firearm and/or tool mark
21 examiner and you are a student trainer in the profession
22 of firearm and/or tool mark identification, correct?

23 A Correct.

24 Q You also must conform to association requirements for
25 candidacy. So you have to be a student trainer or trainee

1 in the field, correct?

2 A Correct.

3 Q And you also have to be a respected member of the
4 community, correct?

5 A Correct.

6 Q Okay. Meaning that the people who are involved in
7 AFTE and the people who do tool mark and firearm
8 comparison at SLED, theoretically, would think you're a
9 good guy and that you do the job well, correct?

10 A Right. AFTE has its own code of ethics.

11 Q Okay. For a regular membership, there are additional
12 criteria, correct?

13 A Correct.

14 Q Okay. And one of those additional criteria is that
15 you have been a provisional member or a technical adviser
16 with AFTE for, at least, three years?

17 A Right.

18 Q You would also have to derive a majority of your
19 income from active examinations. You would have to be
20 either at a lab that is state run or private that, again,
21 the majority of your job is analyzing tool marks and
22 firearms?

23 A Yes.

24 Q As part of your membership in AFTE, you have access
25 to what is called a peer review journal, correct?

1 A Correct.

2 Q That's where studies are published?

3 A Yes.

4 Q And opinions from people in the field are kind of
5 spread out to the community at large?

6 A Correct.

7 Q You are familiar with the study done by Bunch and
8 Murphy cited by the AFTE journal in, I think, copy or
9 episode 30, whatever they call it. It's called a
10 comprehensive validity study for the forensic examination
11 of cartridge cases. I have copy of it if you would like
12 to --

13 A Sure.

14 Q Okay. Have you had a chance to review?

15 A Yeah, I looked over it.

16 Q That's one of studies -- in fact, one of the foremost
17 studies that you as a firearm and tool mark examiner rely
18 on in claiming that there is a valid scientific foundation
19 for the identification of firearms and tool marks, is it
20 not?

21 A The Bunch and Murphy study, I'm not that familiar
22 with. I'm familiar with other studies. This was from
23 2003, I believe.

24 Q Okay.

25 A So I'll have to read it in depth --

1 Q Brundage may be one that you're aware of?

2 A Brundage, yes.

3 Q Okay. But there are about six or seven that you guys
4 really focus on as establishing a proper foundation to
5 call this a quote, unquote, science, correct?

6 A Those are the most mentioned. There are numerous
7 ones that have been done as well as ones in the process of
8 being addressed, but, yes.

9 Q Okay. And are you aware of the names of those?

10 A I can find out.

11 Q And Mr. Smith, would you let the record reflect that
12 you're referring to the SWGGUN admissibility and resource
13 kit?

14 A This particular one is the firearms ARK admissibility
15 kit --

16 Q Okay.

17 A -- which does have some of the scientific working
18 group information in it.

19 Q And if right off the top of your head, you're not
20 aware of them, that's okay.

21 A Right, I don't know them by name.

22 Q Okay. We can move on. I want to talk a little bit
23 about the actual results in this examination, okay. As
24 part of your work as a firearm and tool mark examiner,
25 you -- take us through what you do.

1 A In this particular case, I received a number of --

2 THE COURT: Let me ask you, you're voir diring him on
3 his qualifications as an expert. Now, you're asking him
4 about his work in this case. How is that relevant to
5 whether or not he's an expert?

6 MR. KRZYSTON: Your Honor, I believe that --
7 admittedly, we have moved beyond the qualification
8 stage --

9 THE COURT: Well, we have not, that's why -- you're
10 asking questions.

11 MR. KRZYSTON: Correct.

12 THE COURT: Because we're at the qualification stage.

13 MR. KRZYSTON: Correct, Your Honor. What the
14 Defense's contention is is that not only does the
15 government have a requirement to establish the
16 qualification of Mr. Smith, they also have the requirement
17 to establish the foundational reliability.

18 THE COURT: Well, that's the law, that's not --
19 that's the Court standard, whether it's the Defense's
20 standard or not -- or the State's standard. At this
21 point, he's being questioned -- the State is attempting to
22 establish that based on his education, training and
23 experience, he's an expert in his field such that he can
24 offer an opinion. And you are allowed to ask questions on
25 that issue. Now, you're seeking to bypass that to ask him

1 the quality of his opinion, perhaps, to attack his
2 reliability. That's not relevant as to whether or not
3 he's an expert in his field.

4 MR. KRZYSTON: Again, Your Honor, admittedly, that is
5 true.

6 THE COURT: Well, with that admission, do you have
7 anything else to ask on the issue of his qualifications
8 only?

9 MR.. KRZYSTON: No, Your Honor, but I would have
10 additional questioning relating to the foundational
11 reliability.

12 THE COURT: Well, I find that he is an expert in the
13 field that he professes to be an expert in, firearms
14 identification and tool mark.

15 We're going to break for lunch. We can come back at
16 2:00 o'clock.

17 MR. KRZYSTON: Your Honor, will I be allowed to
18 continue my cross-examination?

19 THE COURT: The State hasn't -- you have nothing to
20 cross-examine him on. He hasn't said anything about his
21 tests or whatever he thinks or whatever it is that you
22 disagree with.

23 MR. KRZYSTON: Your Honor, I believe it's State --
24 respectfully, of course, State v. White puts the onus on
25 the government to establish the foundational reliability.

1 THE COURT: Well, they have to be able to ask
2 questions first. So you can't cross-examine before they
3 ask questions.

4 MR. KRZYSTON: Okay. So we're just going to break it
5 up. Great. Thank you.

6 THE COURT: All right.

7 (WHEREUPON, a lunch break was taken.)

8 MR. RUFFIN: Your Honor, I think I neglected to
9 mention this on the record, the list of pretrial motions
10 that I stated to you, that the witnesses be sequestered.
11 I think I forgot to put that on the record, so I just ask
12 the State's witnesses be sequestered during trial.

13 THE COURT: What's the basis for that motion?

14 MR. RUFFIN: Well, Your Honor, I understand that it's
15 in your discretion, so I don't have case law or anything
16 like that. It's certainly not mandatory, obviously. The
17 reason that we ask for it generally as matter of course is
18 because witnesses might possibly feed off of each other's
19 testimony if they hear it. But I understand it's up to
20 Your Honor.

21 THE COURT: Well, you have written copies of their
22 statements, don't you, if they gave statements?

23 MR. RUFFIN: Yes, that's correct.

24 THE COURT: So you know what to expect based on
25 copies of the statements.

1 MR. RUFFIN: To some extent, Your Honor, of course,
2 since we don't have depositions in criminal cases, you
3 know, the written statements is only -- generally, does
4 not include a lot of information. Of course, I wasn't --
5 didn't have the opportunity to cross-examine them under
6 oath at the time.

7 THE COURT: All right. That's the art of lawyering.

8 MR. RUFFIN: That's right.

9 THE COURT: You get them on the stand, if you think
10 they spit out what they heard out there, that's a good
11 line of attack on cross-examination. If they repeat what
12 somebody else repeats and it's not in their statement.
13 You know, it's just -- you know, taking the delay in
14 between every witness to go find somebody, you know, it
15 creates a delay in the trial, unless there's some
16 legitimate basis for sequestration because it's an open
17 courtroom.

18 Many times, you sequester people who are -- have an
19 interest in the trial and they've never witnesses. The
20 State gave me about 100 people who are supposed to be
21 witnesses. Are we supposed to be on the lookout -- they
22 probably don't know these people, all of them. So I'm
23 just saying you've got to give me a basis upon which to
24 utilize my discretion to exclude someone from an open
25 courtroom.

1 MR. RUFFIN: Your Honor, the basis is just an
2 abundance of caution.

3 THE COURT: Right.

4 MR. RUFFIN: I know they gave us a list of over a
5 hundred witnesses --

6 THE COURT: Then they change their mind -- it seems
7 like they gave me the name of everyone who works for the
8 police department.

9 MR. RUFFIN: That's what it seems like to me, too,
10 Judge.

11 THE COURT: Uh-huh. Well, I'm not going to exclude
12 them out of an abundance of caution because there is no
13 basis to do that.

14 MR. POTTS: Your Honor, I have a thumb drive with
15 exhibits --

16 THE COURT: All right.

17 MR. POTTS: I have showed them the photos -- it's a
18 PowerPoint presentation that's on the screen along with a
19 911 call just for Your Honor.

20 THE COURT: Thank you.

21 We're hearing the direct -- more direct examination
22 about this expert.

23 (WHEREUPON, State's Exhibit Nos. 13 and 29 through
24 33 was marked for identification only.)

25 CONTINUED DIRECT EXAMINATION

1 BY MR. ARANT:

2 Q Agent Smith, let me turn your attention to why we're
3 here today. Did you happen to review and analyze and test
4 some components in this case back on August 20th, 2016?

5 A Yes, sir.

6 Q And do you have a copy of your report?

7 A I do.

8 Q And could you tell the Court what you received?

9 A I received six fired 9mm Luger caliber cartridge
10 cases, 12 fired 45 auto caliber cartridge cases, one
11 unfired 9mm Luger caliber cartridge, three fired bullets,
12 one fired bullet jacket fragment and one miscellaneous
13 metal fragment.

14 Q I know you've already explained the process. Once
15 you receive these, what do you do initially -- how do you
16 retrieve these?

17 A I retrieve them from our evidence control department,
18 which is on the first floor of our laboratory. So all the
19 evidence that's submitted to the laboratory goes through
20 them to be entered into our system, our computer system.

21 And, typically, what happens is they store it until
22 we're ready to come pick it up and then we transfer it
23 into our custody and put it into our own storage lockers
24 that each individual examiner has until it's ready to be
25 worked.

1 Q So when it's processed, besides your normal testing,
2 are you altering or tampering with the products
3 themselves?

4 A No, sir.

5 Q In this case, once you receive these items, what's
6 the first thing you do?

7 A We do an inventory, take overall photographs of the
8 evidence to make sure that everything that was supposed to
9 be submitted was submitted. Then we compare what's
10 actually submitted to the submission documents to make
11 sure that all of the descriptions were correct. Then we
12 start going to the examination process after photographing
13 everything.

14 And then the examination process involves having
15 worksheets for each types of things. Like, we have
16 worksheets for cartridge cases, worksheets for bullets,
17 worksheets for firearms and so on. So all the worksheets
18 are filled out as we're examining the evidence. Again, if
19 there's any sort of blood or trace material that needs to
20 be collected, we go ahead and do that with gloves on prior
21 to handling anything. Typically, we're the last
22 department to receive the evidence after it's already been
23 through latent prints or DNA or anything like that.

24 So once my just cursory examinations are done, we go
25 into the comparison part of my study, which would

1 incorporate using the comparison microscope to compare
2 bullets to bullets or cartridge cases to cartridge cases.
3 It's at that point that I would try to make the
4 determination as to if they were fired by the same gun or
5 possibly multiple guns.

6 Q Back you up, when you are visually -- when you're
7 photographing these, you're visually photographing, not
8 under a microscope, but visually on the table or
9 something?

10 A Right, just overall --

11 Q Okay.

12 A -- we would take pictures of the evidence. The
13 comparison are done under the microscope, so we take
14 pictures through the microscope at that point.

15 Q Now, when you first get them, as you were talking
16 about, are you doing any note taking? How you are
17 notating?

18 A Yeah, that goes on the worksheet, typically, how
19 things are packaged, make sure that they were sealed
20 properly as they were received, nothing -- no tampering or
21 anything like. So all that's noted on our worksheets.

22 Q Is that what you did in this case?

23 A Yes, sir.

24 Q Were any of these items tampered with or unsealed to
25 your knowledge according to your report?

1 A No, no tampering.

2 Q If it was tampered with, would you have still tested
3 it?

4 A Possibly. It's still -- we'd have to talk to the
5 submitting agency to kind of figure out what was going on.
6 Typically, what happens is we get stuff that's submitted
7 with the evidence tape seal on it. Sometimes they forget
8 to put their initials or dates or something like that,
9 which it doesn't actually indicate tampering as far as
10 opening the container prior to getting it. It's usually
11 simple things. I've never had an issue with a major
12 tampering or anything.

13 Q And in your inspection that's in your reports, there
14 was no tampering of any of these items?

15 A Right.

16 Q Okay. Now, I know ammunition cartridges sometimes
17 spell out what the particular caliber is or the
18 millimeter, do you also measure those or are you just
19 visualizing those?

20 A On a cartridge case, you have what's the head stamp
21 area. That typically tells you who manufactured the
22 cartridge and then gives you normally caliber information.
23 So that doesn't require any sort of measuring. It's the
24 bullets, you know, projectile stuff that would require
25 measuring to try to determine what sort of caliber it

1 would be.

2 Q Now, in your report, I see there are 9mms collected
3 and some have Tulammo, some have FC, what does that mean?

4 A Yes, that -- that's the head stamp information. The
5 FC stands for federal cartridge. And then some --
6 sometime federal writes out federal on their head stamp.
7 But Tulammo, that's just a brand. So all these are,
8 basically, different brands of manufacturer of those
9 cartridge cases.

10 Q Does that still mean they're the same size and all?

11 A Right, that wouldn't indicate any sort of difference
12 in caliber, that's just the manufacturer.

13 Q Okay. And did you have occasion to analyze some of
14 these cartridge cases in this case, specifically, 9mms?

15 A Yes.

16 Q In your expert opinion, what results did you receive?

17 A I determined that all of the 9mms were fired by the
18 same firearm.

19 Q And how did you determine that?

20 A Again, using the comparison microscope. We compared
21 each cartridge case against each other and looked for
22 those striations, the scratches caused by the firearm
23 marking the cartridge casing during the firing. And so --
24 and a lot of those marks, we try to determine if they're
25 individual in nature. And that's what we use to make our

1 determination.

2 Q Now, can you explain to the Court the basis of the
3 striations and how they relate to the weapons?

4 A Right. On a semi-automatic pistol, you'd have a
5 slide, which is the part that moves back and forth.
6 That's, basically, the operating system of the gun itself.
7 And on that slide, you would have what's known as the
8 breech face. And if you've ever looked at a gun and you
9 see where the firing pin comes out of, that comes out of
10 the breech face. So the breech face typically marks a
11 cartridge case. Not all breech faces, depending on how
12 they're finished. It depends on how the actual slide is
13 being manufactured.

14 So those markings that are on the breech face caused
15 from the manufacturing process can be imparted onto the
16 cartridge case that is being fired because during the
17 firing process, basically, the breech face supports that
18 cartridge. And so, again, the markings would be imprinted
19 onto it. So it's those marking that we can use as well as
20 markings created by the firing pin itself.

21 Now, you can go into other things like extractor and
22 ejector marks, which, basically, means how the cartridge
23 case was pulled out of the gun and ejected out of a
24 semi-automatic pistol. But you have to be careful with
25 those marks because sometimes it only indicates that a

1 particular cartridge case was cycled through a gun and not
2 actually fired. So we take the totality of the markings
3 throughout the whole cartridge case to try to make the
4 determination.

5 Q And are you marking those, making note of those when
6 you're comparing those cartridge cases?

7 A Yes, on the worksheets, we would mark specifically
8 where we would find areas of interest that we base our
9 conclusions on.

10 Q The markings from -- if I understand correctly, the
11 markings from the weapon or gun, whichever it may be, are
12 transferred to the potential cartridge case?

13 A Right.

14 Q Okay. And again, what was your opinion of the 9mms
15 in this case?

16 A The six fired 9mms were all fired by the same
17 firearm.

18 Q And I turn your attention to there was some 45
19 caliber cartridge cases. Can you tell me a little bit
20 about those and what you found?

21 A Yeah, during my examinations, I found that all those
22 12 fired 45 auto caliber cartridge cases were fired by the
23 same firearm. And again, I would use the same process as
24 with the 9mms, looking for markings caused by the breech
25 face or the firing pin to try to make a determination.

1 Q And in your expert opinion, you found they were fired
2 by the same firearm?

3 A Right. The 45s were fired by one gun and the 9mms
4 were fired by a separate gun.

5 Q I want to turn you attention, I think items 20, 22,
6 23 are three fired bullets. What can you tell me about
7 your analysis of those?

8 A Right, 20, 22 and 23 were three fired bullets that
9 were most consistent with being bullets that were loaded
10 into some 45 auto caliber cartridges. So, basically,
11 that's what caliber I determined them to be.

12 And as far as the microscopic comparison with each
13 other, they were, basically, inconclusive, so I couldn't
14 tell if they were fired by one gun or multiple guns. And
15 really, that has something to do with the damage and the
16 limited marks that were on these bullets themselves.

17 Q What, if any, possibility is there that you can match
18 those bullets to these cartridge cases that you have?

19 A We don't do that sort of examination to try to
20 determine if a specific bullet came out of a cartridge
21 case. I think that's just in the beginning stages of
22 research. There's some laboratories I think that try to
23 do that sort of thing, but we don't have those sort of
24 procedures or protocols for that. So that's not an
25 analysis that we perform.

1 Q I also note there was an item 24. Can you tell me
2 about that? I believe it was a bullet jacket fragment.

3 A Right. There was, basically, a fragment of the outer
4 part of a bullet. And with that one, basically, due to
5 its damage and its small size, I couldn't tell what
6 possibly caliber that could be. It did have some markings
7 on it, but I wasn't confident that the markings were
8 caused by the firearm or -- you know, the barrel itself or
9 by damage. So, basically, I really couldn't tell much
10 about it. But I did compare that with the other bullets,
11 but it was still conclusive with the other items.

12 Q And lastly, there was item 25, which is a metal
13 fragment. What can you tell me about your analysis of
14 that?

15 A Right. I don't believe that was part of a fired
16 bullet or ammunition component. It was listed as being
17 from a car, so it was -- you know -- I didn't put this in
18 the report, but I think it was probably part of a car.
19 But in the report, I just stated it was not consistent
20 with being a fired ammunition component..

21 Q And once you were doing -- done with this report, I
22 notice you have a paragraph about IBIS. What is IBIS and
23 what does that last paragraph speak to?

24 A IBIS is the Integrated Ballistics Identification
25 System that SLED has. It's actually owned by the ATF and

1 operated by them. But, basically, what it is is a system
2 that we can put cartridge cases into, it takes a picture
3 of. It's an investigative tool to try to compare other
4 images of other cartridge cases to try to link other
5 unsolved crimes and things like that, link cases together.
6 So I did enter one of the 9mms and one of the 45 autos
7 into IBIS as per our protocol. So far, nothing has come
8 up.

9 Q Okay. Why did you choose items two and eight?

10 A I think because those probably look the best.
11 Typically, we try to put the best examples into the
12 system.

13 Q Okay. And explain, after you come to this analysis,
14 then you write your report at this point or is there some
15 sort of micro-verification by another analyst or what goes
16 on?

17 A Well, previous to the report being written, after I
18 come up with my conclusions based on my examinations, all
19 of that goes on the worksheet. And another examiner would
20 come behind me, look through my microscope and come up
21 with their own conclusions. If they agree with my
22 conclusions, then they would sign as the verification
23 process for the microscopic examinations.

24 Then once that's done, then I can go ahead and get my
25 case file together, all of the worksheets, write my

1 report. And then when the whole case file is compiled,
2 all of that goes to the examiner, different examiner for
3 review for technical accuracy and everything. And also as
4 well as make sure spelling and just, basically,
5 administrative stuff is correct.

6 Then if there's any kind of issues, it's routed back
7 and forth through our computer system to fix and keep
8 track of all the changes. Then once that reviewer agrees
9 with everything, everything looks good, they go ahead and
10 approve it. Then it goes onto the submitter as approved
11 for court.

12 Q And was that done in this case?

13 A Yes, sir.

14 Q Now, how do you determine or who is it that's doing
15 the analysis behind you, goes behind you, how do you
16 determine who that is? Does SLED have a policy on that?

17 A No, it just has to be another qualified examiner.
18 Since we've only got five qualified examiners right now,
19 we kind of go through a rotation. But there's nothing
20 that says you have to have a certain person or anything
21 like that. It's, basically, who's available at the time
22 to do it and not too busy is usually the person who gets
23 picked.

24 Q Do they have to be from the firearm tool
25 identification department?

1 A Yes, sir.

2 Q So it can't be somebody from the DNA department
3 coming behind you?

4 A No, sir, a court-qualified firearms examiner.

5 Q When you're looking at these items that you receive,
6 what's your main goal?

7 A Basically, just trying to give the best examination
8 and results that I can. You know, there's no -- in this
9 particular case, there's no firearm that was submitted to
10 compare them to. So, basically, cartridge case-wise, try
11 to determine how many guns were involved. I tried to do
12 that with the bullets, but the bullets in this case were
13 all inconclusive with each other.

14 So that was pretty much it. I tried to give a list
15 of possible manufacturers of the item 20, 22, 23, bullets
16 that possibly could have fired those guns. We have a
17 database that we can enter information about the bullets
18 into which generates that list.

19 Q And throughout this process when you were determining
20 and analyzing these items, were you aware that some of the
21 cartridge casings, particularly, the 45 cartridge casings
22 were from two different scenes?

23 A I was not aware at the time. The pictures of the
24 packaging do indicate that, but I was not aware they were
25 from different locations.

1 Q So you were unaware they were from different
2 locations?

3 A Correct.

4 Q Okay. All the -- all of the test procedures and
5 everything you did in this particular case, is that what
6 you normally do?

7 A Yes, sir.

8 Q Did you stray away from any protocols or anything of
9 that nature?

10 A No, sir.

11 Q So this is what you normally do on a daily basis in
12 examining --

13 A Correct.

14 Q -- these types of cases?

15 MR. ARANT: Beg the Court's indulgence, Your Honor.

16 THE COURT: Yes, sir.

17 MR. ARANT: No further questions.

18 THE COURT: All right.

19 MR. KRZYSTON: Thank you, Your Honor. May it please
20 the Court.

21 CROSS-EXAMINATION

22 BY MR. KRZYSTON:

23 Q When we left off, I was getting ready to talk to you
24 again about the actual, I guess, reports and worksheets
25 in this case, but before we do that, you are again a

1 provisional member of AFTE, correct?

2 A Yes, sir.

3 Q And you have membership in AFTE, but there's
4 additional certifications that AFTE gives out; isn't that
5 correct?

6 A That's correct.

7 Q And that would be quote, unquote, certified examiner
8 for AFTE, correct?

9 A Yes.

10 Q And in order for you to obtain that certification,
11 you would need to pass a competency test, proficiency
12 testing and do a number of other criteria to demonstrate
13 to AFTE your qualifications --

14 A Yes, sir.

15 Q -- as an examiner?

16 A Correct.

17 Q And again, it is your testimony today that you are
18 not a certified member of AFTE?

19 A I'm not certified through AFTE, that is correct.

20 Q Okay.

21 A But neither are any other of the examiners.

22 Q So no examiner in the State of South Carolina is
23 certified?

24 A Not in our laboratory.

25 Q Okay.

1 A As far as firearms.

2 Q Okay. Thank you. With respect to the actual
3 reports -- I mean, I think it's important to differentiate
4 between the fact that there are worksheets and reports,
5 correct?

6 A Correct.

7 Q Because those are pieces of information that you work
8 with at different stages during your analysis, correct?

9 A Yes.

10 Q Okay. So the Court can be aware, this is a copy of
11 your report header?

12 A May I see it, please?

13 Q Yes, sir.

14 A Yes.

15 Q And as far as you are aware, that complies with all
16 ASCLD certifications and protocols as to how a report
17 should be issued?

18 A As far as I know.

19 Q And to your knowledge, it's your testimony that the
20 conclusions that are identified in that report are
21 consistent with ASCLD's protocol?

22 A Yes.

23 Q Okay. I want to turn your attention to the results
24 of item 18 and 19 specifically. Do you have a copy of
25 this report?

1 A I do.

2 Q Okay. Item 18, for the record, is one fired 45 auto
3 caliber cartridge case bearing federal head stamp. Item
4 19 is an additional 45 auto caliber cartridge case bearing
5 head stamp federal. Under the specific portion where it
6 says results, would you read that for me, please?

7 A Items two through five, seven, 12 through 16, 18 and
8 19 were physically examined and microscopically compared
9 with each other. Matching individual identifying
10 characteristics were found and it was concluded that items
11 two through five, seven, 12 through 16, 18 and 19 were all
12 fired by the same firearm. These items may be suitable
13 for identification with that specific firearm and/or with
14 another fired cartridge cases.

15 Q Okay. I think we're good there. So with respect to
16 your opinion as it concerns items 18 and 19 of the SLED
17 report L1408788, it is your opinion that items 18 and 19
18 were fired by the same tool that fired items two through
19 five, seven, 12 through 16?

20 A That's correct.

21 Q Okay. In relaying that opinion to the jury, what
22 will be the actual language of your testimony? How will
23 you give them that conclusion?

24 A Basically, what is written in my report would be what
25 I would conclude.

1 Q Okay. Do you agree with me that the language of this
2 conclusion leads the jury to believe that you can identify
3 items 18 and 19 as having been fired from the same gun as
4 items two through five, seven, 12 through 16 to the
5 practical exclusion of all other firearms?

6 A It's based on the fact that it's practically
7 impossible --

8 Q Well, we'll get to that, but what -- you would
9 agree --

10 MR. ARANT: Your Honor, can he have a chance to
11 answer the question, please?

12 MR. KRZYSTON: I think I can clarify my question,
13 Your Honor.

14 THE COURT: You withdraw the last question?

15 MR. KRZYSTON: Pardon?

16 THE COURT: Are you withdrawing the question?

17 MS. KRZYSTON: I could withdraw the question and
18 rephrase.

19 THE COURT: All right.

20 MR. KRZYSTON: Thank you.

21 BY MR. KRZYSTON:

22 Q Again, I'm just asking what conclusion. I don't need
23 the basis of your conclusion. But are you hoping to relay
24 an opinion to the jury that items 18 and 19 were fired by
25 the same tool as items two through five, seven, 12 through

1 16 to the practical exclusion of all other firearms?

2 A Well, it doesn't say that.

3 Q But will you testify to that?

4 A I will testify that it's my opinion and the opinion
5 of my micro-verifier that those cartridge cases were all
6 fired by the same firearm.

7 Q Okay. And in that statement and in that testimony,
8 do you have any mechanism whatsoever to relay to the jury
9 your level of uncertainty as to that conclusion?

10 A If you wish. If you want to go into it.

11 Q I mean, do you -- again --

12 A I've never been asked before about that.

13 Q Uh-huh.

14 A But it's based on the act of theory of
15 identification.

16 Q And we'll get to that in a minute, just if you don't
17 want to go into that. But, again, the question is, do you
18 have in your testimony and in that conclusion any
19 mechanism to tell the jury that you are to some degree
20 uncertain as to that conclusion?

21 A No, it doesn't say that. On the last page above my
22 signature --

23 THE COURT: What are we doing here? We're now into
24 the language of his testimony?

25 MR. KRZYSTON: Well, I think it goes directly to what

1 he will testify to. Again, Your Honor, not only is this
2 --

3 THE COURT: We haven't started the trial yet. He
4 doesn't know what questions he'll be asked. How could
5 you -- how can you elicit from him what answers he plans
6 to give the jury without there being any questions asked?

7 MR. KRZYSTON: Well, I think, again, Your Honor, this
8 is an objection not only to the admissibility, but to the
9 scope of the language to which they are referring to.

10 THE COURT: Well, none of this is appropriate for
11 pretrial hearing in my view.

12 MR. KRZYSTON: Okay. Your Honor, I would point you
13 to State V. White as well as 702 --

14 THE COURT: What about it?

15 MR. KRZYSTON: Again, essentially, what I believe
16 Your Honor to be saying is that question goes to weight
17 not admissibility, correct?

18 THE COURT: I didn't say that.

19 MR. KRZYSTON: Okay. Perhaps, I misunderstand your
20 contention.

21 THE COURT: Well, you're asking him what's going to
22 be the language of his testimony to the jury. He probably
23 doesn't know what the language -- we don't know what the
24 questions will be. I know the whole issue of the
25 reliability and ballistics testimony and whether or not

1 the witnesses can be positively certain that the
2 particular weapon fired a -- you know, all the projectiles
3 came from a specific weapon versus whether it's consistent
4 with being fired from the same weapon. You know, all of
5 that sort of goes beyond this colloquy that the two of you
6 are having.

7 MR. KRZYSTON: Well, Your Honor --

8 THE COURT: That you're having.

9 MR. KRZYSTON: I think --

10 THE COURT: Go ahead.

11 MR. KRZYSTON: I'm sorry. I think, again, based on
12 the fact that this is an objection to the scope of what he
13 can testify to --

14 THE COURT: Well, you didn't make an objection to the
15 scope of what he could testify to. You objected, number
16 one, you said he was a so-called expert. Now, you've
17 concluded pretty much through your voir dire that yes, he
18 is an expert. Then your next thing well, Judge, the State
19 has to get beyond this reliability of his opinion. You're
20 not challenging the reliability of him testifying as an
21 expert, I presume. Now, you're into trying to lock in
22 what can he say and how can he say it. And we're not
23 going to do that at this point in time.

24 MR. KRZYSTON: May I rephrase the question?

25 THE COURT: Well, go ahead. But still, in the end,

1 you know, the -- he may be totally convinced that he can
2 pinpoint it down to a hundred percent certainty.

3 MR. KRZYSTON: And --

4 THE COURT: And it is a matter of law based on all
5 these things you've read and cited and studies and this
6 and that, that that's inherently unreliable and no expert
7 can make that conclusion, but that's not for the two of
8 you to debate here at this point in time.

9 MR. KRZYSTON: Certainly, Your Honor. And I'm just
10 trying to establish some type of basis for you to rule
11 upon about how far he can go in testifying to his
12 conclusion.

13 THE COURT: Well, we're -- we're not going to spend
14 an hour or two or whatever going through this process for
15 me to be assisted in some conclusion about the limits of
16 his testimony. If you've got specific questions to ask
17 him, you need to go to those, zero in on those main
18 questions.

19 MR. KRZYSTON: I'll rephrase, Your Honor --

20 THE COURT: All right.

21 MR. KRZYSTON: -- and move on.

22 BY MR. KRZYSTON:

23 Q When you testify to the jury, will you relay a
24 degree of uncertainty to them in your conclusions?

25 MR. ARANT: Your Honor, I object to this line of

1 questioning.

2 THE COURT: He doesn't know what he's going to plan
3 to relay to the jury. It's not even up to him. That's
4 where objections come and, of course, ruling on objections
5 come. You know, we're not -- we're not prescreening his
6 testimony. We're determining whether or not he's an
7 expert and can offer an opinion on the issues. If
8 whatever opinion he seeks to offer is beyond the scope of
9 his expertise or if the question is objectionable, that's
10 when you object. That's the trial. Beyond that, to try
11 to narrow down how far he thinks he can go so you can get
12 me to rule that he can't go there, I -- we're not
13 prescreening testimony.

14 BY MR. KRZYSTON:

15 Q You have a copy of your report?

16 A Yes, sir.

17 Q And you're familiar with the projectile or bullet
18 worksheets that your lab uses?

19 A Yes.

20 THE COURT: All right. Let's see. If you will bring
21 that juror out that sent me the note, No. 172.

22 BAILIFF: Yes, sir.

23 THE COURT: Juror No. 172 sent a note that she just
24 got a text informing her that her mother in New Jersey was
25 admitted to the hospital with congestive heart failure and

1 fibrillation or something.

2 (WHEREUPON, Juror No. 172 enters the courtroom.)

3 THE COURT: Yes, ma'am. You sent in a note saying
4 that your mother was in the hospital?

5 PROSPECTIVE JUROR: (The witness nodded head.)

6 THE COURT: Do you think you need to go?

7 PROSPECTIVE JUROR: You know, she's 87. If things
8 look bad, then yes. She's been in before and she's been,
9 you know, released.

10 THE COURT: Right.

11 PROSPECTIVE JUROR: So it's not the first time, but.

12 THE COURT: Well, I'm just asking because we have --
13 I think we have other jurors downstairs. And if you think
14 you can't stay, then I understand. It's beyond your
15 control and our control. But we need to select another
16 juror to take your place while we still have others here.

17 PROSPECTIVE JUROR: Right.

18 THE COURT: So I'm asking you whether or not you
19 think you need to be excused from having to serve?

20 PROSPECTIVE JUROR: Well, if something takes a turn
21 for the worse, then yes, I would want to go home.

22 THE COURT: Are you from New Jersey?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: All right.

25 PROSPECTIVE JUROR: So, but, you know, if she's in

1 the hospital, she has -- my sisters are there and if
2 everything -- you know, she starts improving and they
3 bring her home, then no.

4 THE COURT: All right. You would rather stay if you
5 can?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: All right. Well, thank you.

8 (WHEREUPON, Juror No. 172 leaves the courtroom.)

9 THE COURT: Yes, sir, go ahead.

10 MR. KRZYSTON: Thank you.

11 CONTINUED CROSS-EXAMINATION

12 BY MR. KRZYSTON:

13 Q You're familiar, again, with the bullet projectile
14 worksheets you submitted pursuant to this report?

15 A Yes.

16 Q You illustrated on direct that these worksheets are
17 filled out contemporaneously as you perform the analysis?

18 A Right.

19 Q And could I specifically turn your attention to, I
20 think -- I believe it's Page 8 of the projectile
21 worksheets?

22 A Page 8 is a ammunition cartridge case worksheet.

23 Q Okay. I apologize. And down there under results,
24 correct me if I'm wrong, items two through five, seven, 12
25 through 16, 18 and 19 were physically examined and

1 microscopically compared with each other. Matching IIC's
2 were found in the breech face marks, firing pin drag and
3 firing pin impressions and it was concluded that those
4 items two through five, seven, 12 through 16, 18 and 19
5 were all fired by the same firearm. Is that, essentially,
6 the results of that test?

7 A Correct.

8 Q And below that -- below those lines, there is a spot
9 that says micro-verified, it is circled and then
10 initialed, I believe, J. G. Or S. G.?

11 A It's J.G.

12 Q Okay. These then are the actual micro-verification
13 documents?

14 A Right.

15 Q Okay. And it's your testimony here today that other
16 than this ammunition and cartridge case worksheet, there's
17 no additional notation conducted by you in the course of
18 your examination?

19 A Could you say that again, please?

20 Q So it is your testimony today that other than this
21 worksheet that you completed (indicating), there's no
22 additional documentation of your observations that were
23 done in connection with this analysis?

24 A I've got photographs taken through the microscope to
25 back up the conclusions.

1 Q But no additional handwriting or anything like that?

2 A No.

3 Q Sir, are you familiar with the AFTE's theory of
4 identification as it relates to tool marks?

5 A Yes, sir.

6 Q Do you have a copy of it in front of you?

7 A I do.

8 Q Okay. Would you please read for the Court --

9 THE COURT: All right. I'm not going to go through
10 all of this prior to the trial. I will limit what the
11 State can say about it and we'll pick it up during the
12 course of the trial if you have more prior to his
13 testifying before the jury, which you all have indicated
14 to be on Wednesday.

15 So you can step down, sir.

16 MR. KRZYSTON: Judge, are we going to have a ruling
17 on this?

18 THE COURT: I'm not going to -- he's qualified as an
19 expert. The scope of his opinions, the State will avoid
20 going into in opening statements and we'll resume the
21 hearing at a later time.

22 MR. KRZYSTON: Thank you, Your Honor.

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

24 THE WITNESS: Thank you, sir.

25 THE COURT: How many more hours of questioning do you

1 have of this witness?

2 MR. KRZYSTON: Truthfully, I think it was probably
3 about 15 to 20 minutes and then I have some additional
4 argument as it relates to --

5 THE COURT: All right. We can do that later on. All
6 right.

7 MR. KRZYSTON: To what extent will you be limiting
8 the scope of what they can say in opening?

9 THE COURT: They can say they have an expert and he's
10 qualified and they have to -- I don't know, how do you
11 think I need the limit it?

12 You can step down, sir.

13 MR. KRZYSTON: I would prefer that they not indicate
14 that there's any type of match or that they can tell that
15 the fired -- excuse me, the cartridge casings found at
16 Waites Road and --

17 THE COURT: They can testify that he's going to give
18 some testimony concerning the identification of the
19 weapon.

20 MR. KRZYSTON: Nothing regarding it matching --

21 THE COURT: They're going to give testimony --

22 Don't you have eyewitnesses in this case?

23 MR. POTTS: Yes, Your Honor.

24 THE COURT: Are we just spinning our wheels just to
25 be spinning then or, you know?

1 MR. KRZYSTON: No.

2 THE COURT: That's just the general limitations. All
3 right.

4 MR. POTTS: Thank you, Your Honor.

5 MR. KRZYSTON: Thank you.

6 MR. POTTS: Your Honor, is he released that I can
7 speak to him before he testifies again?

8 THE COURT: Yes.

9 MR. POTTS: Okay.

10 THE COURT: We can get him at the end of day or
11 beginning of the day when the jury is not waiting.

12 MR. POTTS: Yes, sir.

13 THE COURT: All right. How many more minutes do
14 y'all need before opening statements?

15 MS. NICKLES: We're ready to proceed, Your Honor.

16 THE COURT: All right.

17 MR. KRZYSTON: Ready to proceed, Your Honor.

18 THE COURT: All right. Let's take a one-minute
19 stretch.

20 (WHEREUPON, a short recess was held.)

21 THE COURT: All right. You may bring in the jury.

22 (WHEREUPON, the jury returned to the courtroom at
23 2:44 p.m.)

24 BAILIFF: Your Honor, the jury's present.

25 THE COURT: Very good. Welcome back, ladies and

1 gentlemen. If y'all will stand to be sworn.

2 (WHEREUPON, the jury was duly sworn.)

3 THE CLERK: Thank you. You may be seated.

4 THE COURT: Oh, you missed your right hand.

5 JUROR: Yes, sir, I did.

6 THE COURT: Start over one more time.

7 (WHEREUPON, the jury was duly sworn.)

8 THE CLERK: Thank you.

9 THE COURT: All right. Very good. We got it right.

10 All right. Ladies and gentlemen, that oath is
11 important. You have taken an oath to well and duly try
12 this case and render a true verdict according to the law
13 and according to the evidence so help you God. Now,
14 that's a powerful oath and that oath is the foundation of
15 our criminal justice system.

16 The Defendant is accused of very serious crimes. He
17 is presumed to be not guilty of these crimes. The State
18 has the burden of proving his guilt beyond a reasonable
19 doubt of the various crimes. And should the State meet
20 that burden of proof in the end, then you must found him
21 guilty. Should the State fail to meet that burden of
22 proof, then you must find him not guilty as to any
23 particular offense he's charged with.

24 And out of all of the folks who were summoned to come
25 here for jury duty, out of all the people who came here

1 along with you all this morning, only the 12 of you who
2 will deliberate can decide this case. And you are the
3 judges of the facts of this case. And as the presiding
4 judge, I have no role in deciding the facts of this case.
5 That's a matter solely for you, the jury, to determine.
6 So it's your job as jurors to listen to the testimony, to
7 evaluate the creditability and believability of the
8 witnesses who have testified -- who testify and of the
9 evidence that is presented to you. Then after listening
10 to all of the testimony, I will instruct you in great
11 detail as to the law that you must apply to the facts as
12 you find them to be.

13 So you are the sole judges of the facts, I'm the sole
14 judge of the law. You put together the facts as you find
15 them to be, the law as I give it to you, and you will
16 decide this case -- or these cases. It is therefore,
17 obviously, important that you be focused and that you pay
18 attention so that you will be in a position to carry out
19 this important task that's before you.

20 Now, it is an important rule in our system of justice
21 that jurors listen to the entire case before discussing
22 the case, and you discuss the case with the people who
23 have heard the very same thing that you have heard.
24 Therefore, you are not to discuss the case with someone
25 outside of the courtroom. You're not to go home and try

1 to decide the case based on what someone at home tells you
2 because that person or persons would not have heard the
3 case. That would be unfair to yourself and to your fellow
4 jurors to go out and investigate the case yourself,
5 discussing the case with someone else before you've heard
6 the entire case and to engage in any form of premature
7 deliberations. Because you need to listen to all of the
8 testimony, the argument that the lawyers will make
9 concerning what they think that you should believe to be,
10 the facts and listen to the law as I give it to you.

11 Now, I will do all that I can to keep this case
12 moving and not put you in a position that you have to sit
13 for a too long a period of time listening to people talk.
14 I know that many of you probably do not have to sit and
15 listen to people talk all day, as I do. I have to sit
16 everyday and listen to people talk. Many of you probably
17 don't do that on a consistent basis, so it's easy for you
18 to get restless and tired and bored and all that, so
19 whenever you need a break, if you ever need a break, we
20 will take a break so that you can be as fresh and alert as
21 possible.

22 Now, the State has the burden of proof in this case
23 and that's proof beyond a reasonable doubt. The State
24 will go first in presenting -- after both sides are given
25 an opportunity to make an opening statement, the State

1 will tell you what they believe the evidence in the case
2 will show and what they believe your finding should be,
3 and then the Defense will have that same opportunity.

4 I look forward to working with you on this case.
5 Later in the process, I will appoint one of you to be the
6 foreperson of the jury. And that person will have the
7 responsibility of being the spokesperson for the jury, to
8 preside over the jury deliberations and to complete the
9 verdict form representing the unanimous verdict of the
10 jury. So prior to that time, you know, I will be
11 observing the jurors and I will pick the very best person
12 to be the foreperson of the jury. And I, obviously, want
13 to get it just right, pick the right person to be the
14 foreperson of the jury. And I look forward to do that
15 later in this process.

16 We'll now hear opening statements.

17 MS. NICKLES: May it please the Court?

18 THE COURT: Yes.

19 OPENING STATEMENT BY MS. NICKLES

20 MS. NICKLES: Good afternoon. A red laser beam
21 attached to a semi-automatic handgun fell on Isaac Lewis.
22 As Isaac Lewis turned to run, it was too late. The bullet
23 entered the left side of his back. It ripped through his
24 left lung. It severed his aorta, ripped through his right
25 lung and exited the right side of his chest, leaving

1 behind two holes. Two holes that through which the blood
2 that for 47 years had run so naturally through Isaac
3 Lewis's veins and arteries began to pour out of his body
4 into the dirt where he had fallen.

5 As Isaac Lewis lie in a growing pool of his own blood
6 taking what would be his last breaths of life, the two men
7 who fired 16 bullets into a crowd of unarmed men, women,
8 and children were running away. Running away, leaving
9 behind what should have been the scene of a celebration of
10 a life, what should have been a birthday party, as the
11 scene of a senseless murder.

12 It didn't start out that way. Nobody ever saw it
13 coming. It was a hot summer day here in Columbia,
14 July 12th, 2014. And as they had done so many times
15 before, the Cleckley and Lewis family gathered at Aunt
16 April's house. They came together today to celebrate
17 April's 41st birthday. There were children playing in the
18 yard. There were brothers and sisters and cousins
19 gathered on the front porch. And Uncle Ike, as usual, was
20 doing what he loved. He was manning the grill getting
21 ready for a big day.

22 Bullets, 16 of them, flying towards the house. And
23 as the people began to run for their lives, they felt the
24 bullets whizzing by. They heard the explosions as the
25 bullets landed on the cars parked nearby, as the glass

1 exploded and the metal twisted.

2 Tyrone Johnson had just pulled up at April's house.
3 He hadn't even gotten out of his car when the bullet hit
4 him. It tore through his side. At this point, it wasn't
5 exactly clear where the bullets were coming from, but with
6 every bullet that was fired into that crowd of unarmed
7 men, women and children, it became clear. Because the two
8 men holding the guns firing the bullets into the crowd
9 were running towards the yard. And as Uncle Ike was
10 trying to make sure that all the small children in
11 attendance were in a safe place, that laser beam fell on
12 Uncle Ike.

13 Horace Watts held the semi-automatic gun with the
14 laser on it. Horace Watts (indicating) pointed that laser
15 at Uncle Ike. Horace Watts (indicating) pulled the
16 trigger of that gun. Horace Watts fired the bullet that
17 took Uncle Ike from the Cleckley and Lewis families
18 forever, the bullet that killed Isaac Lewis; the bullet,
19 one of the 16, that changed that day that should have been
20 a birthday party into the scene of a murder.

21 For his actions that day, Horace Watts is charged
22 with murder. Murder in South Carolina, simply put, is the
23 killing of another with malice aforethought either implied
24 or expressed. You're going to hear throughout the course
25 of this trial a lot about what malice is. Simply put,

1 malice is, basically, a general malignant recklessness
2 toward the lives and safety of others or condition of the
3 mind which shows the heart regardless of social duty and
4 fatally bent on mischief.

5 Horace Watts is also charged with attempted murder
6 for that bullet that struck Tyrone Johnson. And attempted
7 murder is when a person who with the intent to kill
8 attempts to kill another person with malice aforethought
9 either expressed or implied.

10 He is also charged with possession of a weapon during
11 the commission of a violent crime. And the Judge will
12 instruct you that both murder and attempted murder are
13 violent crimes. For the gun he held to carry those crimes
14 out, he is charged with possession of a weapon during the
15 commission of a violent crime.

16 He's also charged with unlawful carrying of a pistol.
17 And in South Carolina, our law very specifically lays out
18 the people who are allowed to carry a pistol. I submit
19 throughout the case of this -- this trial, you will learn
20 that Horace Watts was not one of those people who was
21 allowed to carry either concealed or openly a pistol.

22 After the 16 shots crashed through the crowd, the 911
23 calls began pouring in. You'll hear those 911 calls, the
24 voices that say, We were just having fun. They came
25 shooting at us. I know who shot us. Please hurry, my

1 uncle is dying. Please send the police, send the police,
2 they're shooting at us. We were just having fun. My
3 uncle's dead.

4 Soon after those 911 calls came in, officers
5 responded to April Cleckley's house at [REDACTED]
6 [REDACTED]. Officer Birochak with the Columbia Police
7 Department was one of the first on the scene. You'll hear
8 from him. He was in the area. And he'll tell you that
9 this was actually his second time at April's house that
10 day. You see, not even 30 minutes prior to this shooting,
11 he had responded there. There was an argument. This was
12 supposed to be a birthday party. There were a lot of
13 people there. And some of the people there were friends
14 with a boy name Malik Davis. You'll learn that Malik
15 Davis is Horace Watts' younger brother.

16 Now, Malik came over to the house as he had done so
17 many times before because this family knew Malik. They
18 knew Horace. They went to school together. They played
19 basketball together. These were not strangers. And Malik
20 went to April's house that day, like he had so many other
21 days, and he got into an argument with a guy named Terrell
22 Threatt. It was just an argument until Malik Davis
23 decided to turn it physical. He punched Terrell, and
24 after he punched Terrell, Terrell punched him back. And
25 he got in about three or four good licks before the adults

1 at the party stepped over, broke up the fight and sent
2 Terrell and Malik home.

3 Officer Birochak responded right after that first
4 fight, but when he arrived on scene the adults told him
5 everything's fine, it's okay. We dealt with it. They
6 thought everything was okay. Less than 30 minutes later,
7 he got another call of multiple shots fired. And that's
8 when he returns back to April's house and the scene this
9 time is so much different. There are shell casings all
10 over the place. There are bullet holes in cars. There
11 are shattered glass from cars. And there's a large group
12 of people assembled on the side of the house. They're
13 hysterical. Officer Birochak actually has to physically
14 move people to get to where Isaac Lewis had fallen.

15 When he sees Isaac, he checks him for signs of life.
16 And he'll tell you he didn't find any. Still not knowing
17 who or where the shooters were, Officer Birochak, being
18 one of the first on scene, says, Where are the shooters?
19 No one there can him where they went. All they know is
20 they ran away. But almost every single person that he
21 talks to knows one thing. We know who the shooters are.
22 We know their names. Their names are Malik Davis and
23 Horace Watts (indicating).

24 Knowing that the scene is somewhat safe now because
25 he's gotten information that no one believes that the

1 shooters are still at the scene, he makes his way to
2 Tyrone Johnson, who is also shot. I tell you, when he
3 found Tyrone Johnson, he was turning white. He thought he
4 was going to die. He waited with Tyrone Johnson until EMS
5 arrived. When they arrived, they transport both Tyrone
6 Johnson and Isaac Lewis to the hospital.

7 Some officers, Officer Viehweg and Duckett -- or
8 Investigator Duckett also responded to the hospital to
9 check on the victims that had been transported. And it is
10 there that they learn what everyone else already expected,
11 Isaac Lewis is dead and Tyrone Johnson is being treated
12 for a gunshot wound.

13 Investigator Matthew McCoy with the Columbia Police
14 Department also responds to the scene. He is designated
15 as the lead investigator and he immediately begins his
16 investigation. They set up a crime scene. And he begins
17 to talk to people because his number one priority is
18 finding out who did this. He talks to Jamichael Lewis,
19 Paris Young, Daquan Cleckley and so many others. But what
20 he learns from them is exactly what Officer Birochak
21 learned when he arrived. They know the shooters. They
22 give him their names. It was Malik and Horace.

23 Before he assigns investigators to speak with these,
24 Jamichael Lewis says, Not only do I know who they are, I
25 know where they live. I'll take you there. He goes with

1 Investigator McCoy and some others and directs them
2 straight to [REDACTED]. Horace Watts and Malik
3 Davis lived at [REDACTED]. They're not there, but
4 they go there. He then assigns different investigators to
5 meet with all of these witnesses because he will tell you,
6 this scene was chaotic. It was a big party, or it was
7 supposed to be. There were a lot of people there. So he
8 begins to get investigators and assigns specific witnesses
9 to specific investigators so they can begin to collect
10 statements and investigate what these people know.

11 Sergeant Rose and Crime Scene Investigator George
12 Smith also respond to Magnolia Street and they photograph
13 the cars that have been shot up, the bullet holes, the
14 missing glass, the shell casings in the road, the blood
15 where Isaac Lewis died. And they collect those shell
16 casings.

17 Investigator Gilliam also responds. He talks to
18 Investigator McCoy and based on this information that
19 McCoy was able to gather very quickly because everyone
20 said it was Horace Watts and Malik Davis, he asked
21 Investigator Gilliam to develop a lineup so they can show
22 these lineups to these witnesses and see if they really
23 can identify who they named.

24 The lineup is shown individually to Paris Young. He
25 picks out Horace Watts (indicating) as one of the

1 shooters. Benjamin Walker, he picks out Horace Watts
2 (indicating) as one of the shooters. Jamichael Lewis, he
3 picks out Horace Watts (indicating) as one of the
4 shooters. Dominique Tucker, he picks out Horace Watts
5 (indicating) as one of the shooters. Daquan Cleckley, he
6 picks out Horace Watts as one of the shooters
7 (indicating). Jasmine Sims, she picks out Horace Watts as
8 one of the shooters (indicating). And April Cleckley, who
9 is supposed to be celebrating her birthday with her
10 family, spends her night meeting with police investigators
11 and she, too, picks out Horace Watts as one of the
12 shooters (indicating).

13 Investigator McCoy also request a search warrant to
14 search [REDACTED], where he had learned that these
15 two boys were living. When they searched that home, they
16 find a box of ammunition. That ammunition is the same
17 brand as the shell casings that are found at the scene of
18 the shooting. He also finds two shell casings, among some
19 other things.

20 Two other crime scene investigators will search the
21 cars from the scene, the car where Tyrone Johnson was shot
22 because he just pulled up and didn't even have time to get
23 out before the bullets came crashing through. And also,
24 another car at the scene. And they will tell you that
25 when they searched those cars, they found -- you'll see

1 the bullet holes, you'll see the missing glass, shattered
2 glass, and you'll see the bullet fragments that they were
3 able to retrieve from those cars.

4 Dr. Marcus performed the autopsy on Isaac Lewis.
5 He'll tell you the trajectory of the bullet, how it went
6 through the left side of his back, his left lung, his
7 aorta, his right lung and exited his chest. He'll tell
8 you how those are catastrophic injuries. He would have
9 died within minutes.

10 Dr. Privette treated Tyrone Johnson when he was taken
11 to the emergency room. He'll tell you how he treated
12 Tyrone Johnson for a bullet wound. How Tyrone Johnson,
13 although he was unlucky because he got shot, was very
14 lucky. Because had that bullet been two inches over from
15 where it landed, he, too, could have had life-threatening
16 injuries. He, too, could have died.

17 The shell casings that were collected by the
18 investigators were sent to SLED to be tested. Chad Smith
19 is a firearms expert from SLED and he will testify and he
20 will take you through the conclusions that he made after
21 examining the things that were left behind at the scene.

22 Finally, you're going to hear from Brian Zwolak, one
23 of the officers who found Horace and Malik. He will tell
24 you how they were able to arrest them. How they were
25 hiding in someone else's apartment.

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1 MR. KRZYSTON: Horace, stand up.

2 This is Horace Watts (indicating). He's 24 years
3 old. He's a father. He was born and raised here in
4 Columbia. This is the mother of his child (indicating)
5 and this is his mom (indicating).

6 On July 12th, 2014, as the heat index hovered around
7 90 and the air over on Magnolia Street stood still thick
8 with humidity, the sounds, the smells of a barbecue
9 permeated the block of Magnolia Street. Isaac Lewis, his
10 family, his friends were gathering for a cookout. As
11 sometimes tends to happen at these things, at the end of a
12 long hot day, close of a long hot week tensions boiled
13 over and an argument ensued. That argument spilled over
14 into the streets to include an individual by the name of
15 Malik Davis.

16 Now, the neighborhood knows Malik and they know
17 Horace. And they associate Malik and Horace together
18 because they're brothers. You see Malik, most of the
19 times, you see Horace.

20 Now, the fight between Malik and some of the party
21 goers got broken up. Malik went on his way. The party
22 goers went to do what people at parties do. And everybody
23 thought the confrontation was over. A short time later,
24 the police would be there at Magnolia Street. The cookout
25 would be over and Isaac Lewis would lay dead of a gunshot

1 wound.

2 Now, between the time that the gunshot occurred and
3 the arrival of the police some very, very, very important
4 things occurred. Immediately, when responding police
5 officers got to the scene, they noted the presence of a
6 large chaotic, emotional crowd. They noted that the
7 people in that crowd were talking to each other. They
8 were talking about what they heard and what a few of them
9 thought they saw. That crowd was moving in and out of the
10 crime scene, in and out. While they were doing that, they
11 were trampling, traipsing, and unintentionally
12 manipulating evidence.

13 Now, ladies and gentlemen, it is the government's
14 burden (indicating), it is their responsibility to prove
15 their case, what they say happened, beyond a reasonable
16 doubt.

17 Now, the reasonable doubt standard or burden is the
18 highest standard or burden that any court in this fine
19 country can place on a party. The reason for that is
20 simple, Horace, at 24, sits before you innocent of these
21 crimes, his life in the balance. Nothing more important
22 could be at stake.

23 Ladies and gentlemen, we're not going to yell at you
24 or shout at you and try to beat you over the head with
25 what happened, but what we're going to ask you to do is

1 faithfully consider the evidence. Listen to what the
2 witnesses have to say. Listen to what the police officers
3 have to say. Listen to what the evidence is that they
4 present (indicating). Listen to the factors that
5 negatively and drastically affect the reliability of what
6 they're going to present to you.

7 Ladies and gentlemen, once you hear all of the
8 evidence, once you hear all of the witness statements, you
9 will be in a position to deliberate. The judge will
10 instruct you on the law and you will go back in that room
11 to talk to each other (indicating). At that point, if you
12 have any doubt, and you will, that what they are saying
13 occurred and if you have -- or believe that that doubt is
14 reasonable, and you will, you cannot find for them
15 (indicating), you have to find Horace not guilty.

16 And, ladies and gentlemen, here this morning, I tell
17 you, when you hear the evidence that they have to present,
18 when you hear the witness statements that they have to
19 present, and when you hear the factors that negatively and
20 dramatically affect the reliability of that evidence, you
21 will have doubt, it will be reasonable, and you will find
22 Horace not guilty on all counts. Thank you.

23 THE COURT: Call your first witness.

24 MR. ARANT: The State calls Officer Birochak.

25 THE COURT: Let's all stand for a moment as we

1 prepare to get the first witness.

2 (Pause.)

3 THE COURT: We'll give you a couple of minutes. If
4 you'll go to the jury room for a few minutes. Do not
5 discuss the case while you're there. We'll come back in a
6 few minutes.

7 (WHEREUPON, the jury left the courtroom at 3:21
8 p.m.)

9 THE COURT: All right. We'll take a couple minutes.
10 Give them a chance to use the restroom or whatever. Just
11 a few minutes.

12 (WHEREUPON, a short recess was held.)

13 (WHEREUPON, the jury returned to the courtroom at
14 3:30 p.m.)

15 BAILIFF: The jury's present, Your Honor.

16 THE COURT: All right. Your first witness.

17 MR. ARANT: The State calls Officer Birochak.
18 Thereupon;

19 IVAN BIROCHAK,

20 after having been duly sworn, testified as follows:

21 THE CLERK: Thank you. Please have a seat in the
22 witness stand. State your full name for the record and
23 please spell your last name.

24 THE WITNESS: My name is Ivan Birochak with the
25 Columbia Police Department. Last name is spelled

1 B-I-R-O-C-H-A-K.

2 DIRECT EXAMINATION

3 BY MR. ARANT:

4 Q Afternoon, Officer.

5 A Good afternoon.

6 Q And please, for the record, where are you employed
7 at?

8 A I'm employed with the Columbia Police Department.

9 Q How long you been employed with the Columbia Police
10 Department?

11 A I'm currently at five years with the Columbia Police
12 Department.

13 Q Before that, were you employed in any other type of
14 law enforcement?

15 A I was a reserve deputy with the Lexington County
16 Sheriff's Department for five years.

17 Q How long have you been in the law enforcement
18 community?

19 A Ten years.

20 Q Before that, do you have any training in the law
21 enforcement community?

22 A No training.

23 Q In your capacity with the Columbia Police Department,
24 what roles have you served in?

25 A Currently, I am assigned to our K-9 division. I'm

1 also still assigned to our metro region patrol division.

2 I've been assigned to the metro region, which is our
3 downtown and Two Notch area for the entire time I've been
4 with Columbia Police Department, so it's five years.

5 Q And I'm going to fast forward you to why we're here
6 today. July 12th, 2014 -- or just in July, what region of
7 Columbia, City of Columbia were you are employed in?

8 A I was employed with -- in the metro, I was assigned
9 to the area of metro, which is the Two Notch Road area,
10 which would include Magnolia Street and Pinehurst
11 community.

12 Q Okay. What capacity were you employed?

13 A I was a patrol officer, so that meant I was assigned
14 to patrolling, answering calls for service, and I would be
15 assigned to a shift, which would be a 12-hour shift
16 throughout the week.

17 Q And this particular time, this month and on that
18 date, July 12th, 2014, what region were you policing that
19 day?

20 A I was policing -- I was assigned to that area.

21 Q Did you have an occasion to come to an address on
22 Magnolia Street on that day?

23 A I did.

24 Q Could you describe to the jury why you were there?

25 A We had received a call in reference to a disturbance

1 on scene. We responded to the scene. And I responded
2 first. I know kind of our protocol when we get an unknown
3 disturbance call, they'll usually dispatch several
4 officers. I arrived first on scene. It was dispatched as
5 a disturbance, possibly a fight in progress.

6 Once I got on the scene, I didn't observe anyone
7 fighting. I observed, I would say, probably 30, 40 people
8 standing out from the house and in and around the house.
9 No one was in distress. I spoke to several adults on
10 scene, stated there had been a disturbance. The people
11 involved in the disturbance had left and there was no need
12 for law enforcement on scene. At that point, I cleared
13 the call and went to another call.

14 Q Can you tell the jury please what time you arrived at
15 the scene on that day?

16 A Let me refresh my memory. I've got a dispatch log
17 here.

18 Q I think I'm looking on Page 2, I think is where --

19 A Page 2. Based on what I'm seeing, the call came in
20 for service at 8:22 p.m. And I am showing arriving on
21 scene by our dispatch log at 8:26. So I arrived on scene
22 at 8:26 and it shows me clearing the call at 8:31.

23 Q Okay. Was there an incident report generated from
24 that call for service?

25 A There was no incident report generated.

1 Q Why is that?

2 A Looking at the clearance code that I -- whenever we
3 arrive on scene, we advise dispatch the nature of the
4 call, whether we need more units, whether we need
5 additional resources, EMS, fire. In this situation, I
6 gave a code to our dispatch that said that the scene was
7 under control and no additional units were needed.

8 In reference to completing an incident report without
9 anyone requiring an incident report, we do not generate an
10 incident report to every call we respond to. Incident
11 reports are generated for things that we observe that
12 would require further police action or if someone on scene
13 request an incident report. Which in this case, no one
14 had requested an incident report nor was there any
15 observable crime or situation that needed to be
16 documented.

17 Q So is that standard operating procedure of your
18 department?

19 A That is standard operating procedure, yes, sir.

20 Q Now, this particular location that you responded to,
21 were you familiar with it, if at all?

22 A I was. In being a patrol officer, one of the ways
23 that complete our job is to know our community. And for
24 me, I was assigned to that actual community. That was one
25 of the communities I routinely patrolled. And as a patrol

1 officer, you become familiar with who lives at different
2 locations, cars, what's normal, what's out of place.

3 In that particular street, Magnolia Street, the
4 Cleckley household always had something going on. If you
5 went by their house and didn't see somebody, you would be
6 -- something would be out of place. There was always
7 something going on. There was people working on cars.
8 There was also people around the barbecue grill. There
9 were several barbecue grills you could see beside the
10 house, kind of behind the house. There was always like a
11 card table set up, you know, people sitting around playing
12 cards or having a beer or something like that. There was
13 always something going on at that house. And that's kind
14 of -- it stood out to me as we responded to that call,
15 that, you know, there was always people there at this
16 location.

17 Q Safe to say family friendly environment at the
18 Cleckley household?

19 MR. RUFFIN: Objection, leading.

20 MR. ARANT: Your Honor, I'll rephrase.

21 THE COURT: Yes, sir.

22 MR. ARANT: I'll move on, actually.

23 BY MR. ARANT:

24 Q After you responded to that initial call, you then
25 left -- I believe you said you left for service somewhere

1 else or another call?

2 MR. RUFFIN: Objection, leading again.

3 THE COURT: Objection is overruled.

4 BY MR. ARANT:

5 Q You can answer.

6 A I responded to another call for service. So while
7 that call was getting cleared, another call came in, you
8 know, kind of in the same community. For efficiency sake,
9 we kind of stay in our same little area so we don't travel
10 all the way across the region. So we had another call not
11 too far away that I responded to.

12 Q I'm going to hand you what's marked State's Exhibits
13 29 through 33. Do you recognize those?

14 A Yes, I do.

15 Q What are those? What are those pictures of?

16 A Those are aerial pictures of, again, the Two Notch
17 Road area. I observe Waites Road, Two Notch Road and
18 Magnolia Street in Exhibit 29. Exhibit 30 is Magnolia
19 Street. It's actually an aerial photo of the house at
20 [REDACTED]. Exhibit 31 is an aerial photo of
21 the Two Notch Road area from Magnolia Street. The bottom
22 of the picture shows the Benedict football stadium. You
23 see part of Carver-Lyon Elementary School over to the left
24 of the picture. You see Pinehurst Park in the upper
25 right-hand picture.

1 Q Do all those pictures fairly and accurately depict
2 the space and land as it was then and now?

3 A I don't see any change.

4 MR. ARANT: Your Honor, I seek to move these
5 exhibits, No. 29 through 33 into evidence.

6 MR. RUFFIN: No objection, Judge.

7 THE COURT: All right.

8 (WHEREUPON, State's Exhibit Nos. 29 through 33
9 were admitted into evidence.)

10 MR. ARANT: Your Honor, may I publish these?

11 THE COURT: Yes, they're admitted. You may publish
12 them.

13 MR. ARANT: Thank you, Your Honor.

14 BY MR. ARANT:

15 Q I'm going to hand you a laser to use to point to
16 these areas. Can you kind of orient the jury --

17 MR. ARANT: Your Honor, can he stand up and come
18 down?

19 THE COURT: Yes, sir.

20 BY MR. ARANT:

21 Q You can stand right here so the court reporter can
22 hear your answers. All right. Can you tell the jury kind
23 of what this is and what area of town this is?

24 A This right here, this is going to be Two Notch Road.
25 It's a four-lane road. This here highlighted is 

1 [REDACTED]. This here is -- this right here is
2 Schoolhouse Road. Once Schoolhouse crosses Two Notch,
3 this is considered the Pinehurst community. This whole
4 neighborhood is Pinehurst. So Schoolhouse Road comes out
5 on Pinehurst Park. The next street over is Magnolia
6 Street. And this is Benedict football stadium.

7 Q Please tell the jury what this is.

8 A This is an aerial photograph and I recognize the
9 house. And kind of referring to my testimony earlier in
10 reference to people out here, this is the house at [REDACTED]
11 [REDACTED]. Whenever I would drive by on patrol, we
12 would see people up here barbecuing, have a grill set up
13 here. There was always something going on at the house.
14 You could drive by and look down at the house and see
15 people kind of congregating here.

16 When I responded the night prior to responding the
17 second time, you know, they had numerous people here
18 (indicating) and amongst the side of the house, the back
19 of the house and the front of house. There was a porch on
20 the front of the house.

21 Q This is the house you responded to when that first
22 incident occurred?

23 A Correct, that was the house I responded to.

24 Q Again, I think it's an aerial picture, but what does
25 it depict in this picture?

1 A This depicts -- just for reference, this is Benedict
2 Stadium. This is Pinehurst -- City of Columbia Pinehurst
3 Park. This is considered the Pinehurst community. This
4 is going to be Two Notch Road and this is Carver-Lyon
5 Elementary School.

6 Q You mentioned that you went off to respond to another
7 call. Can you tell us what this picture depicts?

8 A This would have been, roughly -- I think we were --
9 the call would have been over here (indicating), but this
10 would have been essentially my response -- the distance of
11 my response to the call, so I was over here on a call. I
12 think we were dealing with a call for service involving a
13 possible break-in or something when we got the shots fired
14 call. I cleared up and I responded. So my response time
15 would have been, you know, that distance.

16 Q Okay. You can sit back down.

17 A Okay. (Witness complied.)

18 Q So you were saying that you responded to another call
19 away from [REDACTED]?

20 A That's correct.

21 Q What happened after that?

22 A While we were on the scene, again, I don't know, I
23 never heard the gunfire. I think it was because we were
24 dealing with a pretty loud situation, but we received a
25 tone call, which with our dispatch, a tone call is a call

1 that they tone out on the radio. So it's kind of
2 something that as we're dealing with the situation, it's
3 loud, but a tone call, they will tone it out on the radio,
4 so it's essentially a beeping noise that draws your
5 attention to listen. It might be for another reason, but
6 you pause what you're doing to listen to the call because
7 it might be a high priority call.

8 Q What kind of call was that that you received, toned
9 out?

10 A The call that we got, received was a shots fired call
11 and they upgraded the call to shots fired and individual
12 hit.

13 Q When you respond to this call, what jurisdiction are
14 you in?

15 A We are in the City of Columbia, County of Richland
16 County.

17 Q Please describe to the jury what happens once you
18 respond to this call?

19 A I pull up on scene -- I came down Pinehurst Road, so
20 I took a right down Magnolia. So if you could pull the
21 map back, I came from the right-hand side down to the
22 house. And, you know, pulling up to that house, all I
23 could see were people in the roadway, you know, people in
24 and around the house. And, you know, I knew that we were
25 going into a very chaotic scene.

1 Q Now, I'm looking at your report right here. Can you
2 describe to the jury particularly what you saw, how many
3 people you saw, what was going on there, what was the
4 scene like?

5 A From being there, I couldn't -- the timeframe being
6 there less than half an hour prior to this second call,
7 there were many more people there the second time that I
8 was there. I think the shots fired and injuries brought
9 other people from the neighborhood to the scene as they
10 were looking to either help or just try to figure out what
11 had just happened. I would say there was over a hundred
12 people there on scene, in and around the house, the road.
13 It made it very difficult initially to determine where, if
14 there was still a shooter on scene, if there was even a
15 victim. Because, initially, you know, because of the
16 amount of people, I didn't even see the victim.

17 Q Now, what kind of information do you have before you
18 respond to that scene? Just that there were shots fired
19 or does dispatch tell you anything else?

20 A They upgraded the fact that there was shots fired, I
21 remember them saying there was someone hit.

22 Q So you arrive on the scene, can you walk the jury
23 through what happened once you arrived physically on the
24 scene?

25 A Once I arrived on scene, you know, I am mobbed by

1 people that are panicking. There is -- there's just
2 hysterical individuals running up to me. I see a --
3 again, kind of through the crowd, I see someone laying on
4 the ground beside the house.

5 I approach. There's numerous people around in a
6 state of just shock, panic, hysteria. There's yelling.
7 There's screaming. There's people crying. I think there
8 was still a state of shock and in that shock, I think
9 people were trying to render First Aid. But, you know, I
10 went over and approached Mr. Lewis and I didn't see any
11 signs of life. You know, there were people shaking him
12 trying to, you know, again, in their state of panic
13 administer some sort of First Aid.

14 He was laying on his back when I observed him. His
15 feet were facing towards Magnolia. He had blood all over
16 his face. Around him was a large pool of blood. On the
17 ground, it was like sandy ground, the blood was pooling up
18 all around his head, I remember that very clearly.

19 Again, I didn't really -- I didn't see any signs of
20 life. I went -- I kind of knelt down. You're surrounded
21 by family. You're surrounded by individuals screaming.
22 And I did my best to try to keep them at that point off of
23 him because I didn't really want any additional injuries
24 to be sustained in their attempts to assist.

25 At that point in time, I was told that there was

1 another victim that was there on scene. I walked back to
2 where they led me out to the second victim, which was an
3 individual that I found in a Ford Explorer. He was in the
4 passenger seat. I walked up to the window and there in
5 the window, I could see that he had been injured. I asked
6 him what had happened. He said he was shot. I couldn't
7 really see any injuries on the front, so I let him lean
8 forward. I remember seeing a bunch of blood coming
9 through his T-shirt on the back side of his shirt. I
10 could see the color just draining out of his face. I
11 remember just holding his hand trying to keep him calm
12 because he kept looking like he was going to pass out on
13 me.

14 You know, I could see there looked like there was
15 bullet holes in the vehicle. The back glass of the
16 vehicle was on the ground. So based on what I could see,
17 I just assumed he had been shot in the back. So I stayed
18 with him. Again, initially, it was just myself and
19 another officer on scene, so we kept asking, you know,
20 where are the shooters. We wanted to know if these guys
21 were, you know, behind the house, across the street. You
22 know, where these shooters were in reference to any type
23 of additional threat. Was there still a threat of injury
24 to people on scene. And from what we could gather, the
25 shooters had left. So we called in EMS and EMS was able

1 to come in. And like I said, I stayed with him at that
2 point until EMS got there. And they responded within a
3 few minutes.

4 Q What, if anything, were all these people on scene
5 telling you?

6 MR. RUFFIN: Objection, hearsay.

7 MR. ARANT: Your Honor, I believe he has to answer
8 the question first.

9 THE COURT: Your objection is sustained.

10 BY MR. ARANT:

11 Q You're on the scene, and there's -- you mention
12 there's a ton of people there around you. And how is the
13 scene -- once you arrive and assess the situation, what
14 else are you doing there to, I guess, maintain the scene?
15 Or what, if anything, are you doing to maintain the scene?

16 A Our primary concern when we got there was to make
17 sure there wasn't going to be any more injuries. So it's
18 kind of -- you're even thinking about it as you're
19 responding to the scene. You're responding to a scene
20 where you know guns are involved, you know there's already
21 been a shooting, you know someone's been hit.

22 So the way that I'm thinking is I've got to go there,
23 I've got to, first of all, make sure that there's not
24 going to be any more shooting. There's not going to be
25 any more additional threat to the actual people and

1 myself. And then secondly, I've got to identify and get
2 help to whoever's there. In asking where the shooters
3 have gone, we were approached by -- you know, again, as
4 I'm approaching people, trying to pull them off of
5 Mr. Lewis, trying to, again, create some separation so we
6 could assess what we had. You know, that was when
7 numerous individuals started screaming that --

8 MR. RUFFIN: Objection, Your Honor, hearsay.

9 MR. ARANT: Your Honor, I think he's laid the proper
10 foundation to the hearsay exception. He's talked about
11 chaotic, the hysteria since the time he has returned to
12 the scene, so I believe he's allowed to testify as present
13 sense impression, excited utterance of what he is
14 perceiving what people are telling him.

15 THE COURT: All right. Defense?

16 MR. RUFFIN: Your Honor, I think we have a matter of
17 law.

18 THE COURT: Sir?

19 MR. RUFFIN: Could we approach?

20 THE COURT: Yes, sir.

21 (WHEREUPON, a bench conference was held off the
22 record, in the presence of the jury, but out of the hearing
23 of the jury.)

24 THE COURT: Ladies and gentlemen, I will have you go
25 to jury room for a few minutes.

1 (WHEREUPON, the jury left the courtroom at 3:56
2 p.m.)

3 THE COURT: Yes, sir.

4 MR. RUFFIN: Thank you, Your Honor, may it please the
5 Court. Specifically, our objection is that this officer
6 is testifying that the witnesses on the scene -- to things
7 that witnesses on the scene told him -- well, he's getting
8 ready to. I interrupted him with an objection because I
9 believe that he's going to testify what witnesses on the
10 scene --

11 THE COURT: Yeah, that's pretty obvious.

12 MR. RUFFIN: Correct. I understand that the State's
13 contention is that this is a present sense impression. My
14 understanding of present sense impression is that you are
15 making the statement while perceiving the event.

16 THE COURT: What does the rule say, 803(1)?

17 MR. RUFFIN: Right.

18 THE COURT: Let's read it out loud, then you can
19 explain your objection.

20 MR. RUFFIN: Do you want me to read it out loud?

21 THE COURT: Yes, sir.

22 MR. RUFFIN: Okay. Well, just for definition
23 purposes, obviously, hearsay --

24 THE COURT: No 803(1), present sense impression.

25 MR. RUFFIN: A statement describing or explaining an

1 event or condition made while the declarant was perceiving
2 the event or condition or immediately thereafter.

3 THE COURT: Okay.

4 MR. RUFFIN: Your Honor, our position is that it's
5 not -- I guess it depends on how you define immediate.

6 THE COURT: I don't know.

7 MR. RUFFIN: I think the officers responded minutes
8 after -- several minutes --

9 THE COURT: That would be immediately, wouldn't it?

10 MR. RUFFIN: Your Honor, our contention would be no.

11 THE COURT: Okay.

12 MR. RUFFIN: I would think that it has to be much
13 quicker than that to say that, you know, we see this thing
14 right now.

15 THE COURT: How quicker could it be? Between --

16 MR. RUFFIN: Seconds.

17 THE COURT: Between the event occurring and minutes
18 after the event? How else could you define immediately?

19 MR. RUFFIN: Seconds.

20 THE COURT: Seconds?

21 MR. RUFFIN: Yeah, sure, Judge.

22 THE COURT: All right.

23 MR. RUFFIN: And just one further point, Your Honor,
24 is that, you know, Horace Watts has a further
25 confrontation clause, a Fifth amendment right to confront

1 these witnesses, so that goes to hearsay. You know, when
2 this witness is talking about what other witnesses said --

3 THE COURT: All right.

4 MR. RUFFIN: -- that violates his right to confront
5 that person who has supposedly made that statement. So
6 because of that, he shouldn't be able to testify to what
7 these witnesses said. They can call those witnesses and
8 those witnesses can say what they perceived. That would
9 be appropriate, not to have somebody come in here and
10 testify to what someone else said.

11 THE COURT: All right. What says the State?

12 MR. ARANT: Your Honor, I made my first objection --
13 my response to that was under present sense impression.
14 We do believe these statements meet that burden, that they
15 are immediately thereafter.

16 Further, Your Honor, if the Court is not inclined to
17 go with that prong, we then jump to the prong of excited
18 utterance. A statement relating to some event or
19 condition made while a declarant was under distress or
20 excitement caused by the event or condition.

21 Your Honor, further, case law says that the passage
22 of time is not dispositive of the statement coming in.
23 Your Honor, we would submit State V. Sims -- I don't have
24 a copy of it, Your Honor, but in that case --

25 THE COURT: I have a copy of everything on my

1 computer right here and she's got one there and I've got
2 it on my Iphone, so I don't need any copies of anything.

3 MR. ARANT: Yes, Your Honor. State V. Sims is 348
4 S.C. 16, Your Honor. And I don't know that we have to go
5 this far, but in that case, the questioning of the officer
6 happened 12 hours after the event occurred. We have an
7 officer here on the stand who responds to a hysterical
8 crime scene moments, minutes after he is dispatched, toned
9 out on the radio and these people are coming and crying
10 under stress, hysteria, just as the rule says, they are
11 coming. So we feel that -- what they're describing does
12 come in as an exception.

13 Further, Your Honor, it does note that -- the case
14 law has noted and the supreme court has noted that the
15 reason this is allowed in is because it's immediately
16 thereafter, like the keywords in this phrase --

17 THE COURT: He says it's not immediate. Minutes
18 after is not immediate. It has to be seconds, a nano
19 second.

20 MR. ARANT: If that's the Defense's contention,
21 that's their contention, Your Honor, but we believe that
22 the court has been very clear that it doesn't have to be
23 seconds. It certainly is not days, but here, we have a
24 brief lapse in time and they're immediately on the scene.

25 THE COURT: How much time lapsed?

1 MR. ARANT: I believe it was three or four minutes.

2 THE COURT: Uh-huh.

3 MR. ARANT: Maybe even less. The dispatch log has
4 that.

5 THE COURT: What are you trying to get him to say?

6 MR. ARANT: Your Honor, what he's purporting to say
7 is that people on the scene told him that Horace Watts and
8 Malik Davis were the shooters, were the ones that shot and
9 were shooting at the crowd of people.

10 Your Honor, it's further going not only for the truth
11 of the matter, but explaining why the officer is doing
12 what he's going. And so I believe for those reasons, the
13 courts are very clear and I believe it's an exception to
14 the rule.

15 THE COURT: Well, the rule says describing or
16 explaining the event or condition. You don't want him to
17 testify as to the witnesses' description of the event or
18 condition or describing it, you just want them to ID the
19 shooters?

20 MR. ARANT: Well, Your Honor, I believe that comes in
21 under excited utterance. People --

22 THE COURT: That's what -- you don't want him to say
23 anything else about what they said other than these guys
24 did it?

25 MR. ARANT: I'm not limiting his testimony to -- I'm

1 only asking -- the part of the testimony they're trying to
2 prohibit is the Horace Watts coming in. I don't know what
3 he's going to -- I don't know what his answer will be when
4 people are saying what's going on, but I anticipate a
5 portion of that will point to Horace Watts being the
6 shooter, being one of the armed men as well as Malik
7 Davis.

8 THE COURT: All right. What else?

9 MR. RUFFIN: Your Honor, I mean, I would just
10 reiterate --

11 THE COURT: Well, you don't need to -- that's what
12 else in addition to what you've already said?

13 MR. RUFFIN: If you ask me to speak immediately,
14 you're not asking me to sit here in silence for three or
15 four minutes and then start talking. This is not
16 immediate. And for that reason, it does not fall within
17 the present sense impression or excited utterance. Again,
18 even if it did, you still have the confrontation clause
19 issue. They're saying that they want this witness to ID
20 my client as the shooter.

21 THE COURT: You're saying the confrontation clause
22 overrules the rules of evidence?

23 MR. RUFFIN: I think it --

24 THE COURT: If it includes identifying a defendant?

25 MR. RUFFIN: Correct.

1 THE COURT: All right.

2 MR. ARANT: And it doesn't go as much to
3 identification, that's what the people have told him has
4 happened, what they perceived has happened. I'm not going
5 to ask him to identify Horace Watts.

6 THE COURT: All right.

7 MR. ARANT: I believe that he is perceiving it as
8 it's happening and the courts have said those exceptions
9 do ease the confrontation clause. Similarly --

10 THE COURT: Well, he's going to explain what they
11 told him happened, I presume?

12 MR. ARANT: That's correct, Your Honor.

13 THE COURT: All right.

14 MR. ARANT: That's correct.

15 THE COURT: All right. I overrule the objection.
16 Bring them in.

17 (WHEREUPON, the jury returned to the courtroom at
18 4:04 p.m.)

19 BAILIFF: The jury is present, Your Honor.

20 THE COURT: I overrule the objection.

21 You may proceed.

22 MR. ARANT: Thank you, Judge.

23 CONTINUED DIRECT EXAMINATION

24 BY MR. ARANT:

25 Q Officer Birochak, do you have your incident report

1 handy?

2 A Yes.

3 Q Does it list the dispatch time on there?

4 A I have the dispatch -- on Page 1, I have the dispatch
5 time in which I received the dispatch at 8:41 p.m. and the
6 time I arrived is 8:44 p.m., so three minutes.

7 Q So I believe we were going back and forth about you
8 arrived on the scene. You found two victims?

9 A Correct.

10 Q And they there were a lot of people. I believe you
11 testified there were over 50 people gathering around the
12 streets. You were having a hard time discerning what was
13 going on and people were hysterical?

14 A Correct. When I arrived on scene, kind of what I was
15 saying is a priority of getting on scene is to first, you
16 to have check for threat. You have to make sure that
17 whatever is going on is stopped.

18 So getting on scene, one of first things that we did
19 was asked where are the shooters. And almost immediately
20 when we got on scene, even through the hysterical
21 screaming and crying, you know, people just upset and very
22 difficult to understand, almost immediately upon arrival
23 on scene, numerous people came up and were, We know who
24 did this. We know who shot us up. We know who just shot
25 us. And they named Malik Davis and Horace Watts. And

1 that was throughout the entire time there. I was a
2 approached by numerous people saying, We know who did it.
3 We know where they're staying. We know who did this to
4 us.

5 And making sure the scene was safe, you know, trying
6 to get as best information as far as where the direction
7 of travel was, if they were still in the area, so almost
8 immediately, I was able to get the information that they
9 had left, that they had an idea as far as who had done
10 this. Just seeing the scene, you know, I could observe
11 several vehicles that looked like they had been struck by
12 bullets. I could see what looked like a bullet hole on
13 the side of the house. There were spent shell casings,
14 just I could see initially. And then, of course, as the
15 scene got more controlled, I could see spent shell casings
16 on the street, by the side of the house, you know,
17 scattered all the way up the street in front of house.

18 Q Let me stop you. When you're talking about shell
19 casings, were you picking those up or what were you doing
20 with those when you saw those?

21 A When we first got on scene, what we did was we took
22 our traffic cones and we put the traffic cones over the
23 top of the shell casings, not only to mark them so when
24 our crime scene responds -- which their response is going
25 to be, of course, after usually the scene is secure and

1 more of an evidentiary collection. So it marks and then
2 also preserves it from being walked on or driven on by
3 other responding officers. Because we had a lot of
4 response from both officers and both fire and EMS
5 responding to the scene to render aid. Those traffic
6 cones were to preserve any evidence.

7 (WHEREUPON, State's Exhibit Nos. 14 through 28
8 were marked for identification.)

9 BY MR. ARANT:

10 Q I'm going to hand you what's marked as State's
11 Exhibit 14 through 28. Could you just briefly look at
12 those and see if those are familiar to you?

13 A You want me comment on them or just look at them?

14 Q Just look at them and see if they are familiar to
15 you.

16 A I recognize these pictures.

17 Q What do those photos depict?

18 A These photos depict the front house on -- the front
19 of the house of 2723. There's a picture of the Ford
20 Explorer where I located Mr. Johnson. There's pictures
21 around the street with the crime scene tape up. There's
22 some patrol cars that kind of became part of the crime
23 scene because we set the crime scene tape up around it.
24 The patrol car then had to remain in place until the
25 evidence was collected. There's some pictures of the --

1 there's additional pictures of the Ford Explorer. There's
2 some pictures of where I located Mr. Lewis beside the
3 house. There's blood there on the ground. There's
4 numerous traffic cones on the street where we located and
5 then marked shell casings with the traffic cones. And I
6 think there's also -- there's a picture of the side of the
7 house where it looks like the side of the house was struck
8 by what appeared to be gunfire.

9 Q And do those pictures fairly and accurately depict
10 the crime scene that night?

11 A Yes.

12 MR. ARANT: Your Honor, the State would seek to admit
13 Exhibits 14 through 28 into evidence.

14 MR. RUFFIN: No objection, Your Honor.

15 THE COURT: Admitted.

16 (WHEREUPON, State's Exhibit Nos. 14 through 28
17 were admitted into evidence.)

18 MR. ARANT: Your Honor, may the witness step down?

19 THE COURT: Yes, sir.

20 BY MR. ARANT:

21 Q Can you tell the jury what's in this picture here?

22 A This is the front porch of -- this is the front
23 porch to [REDACTED].

24 Q Is that the same house you were testifying to
25 earlier?

1 A Yes.

2 Q And this is the house you responded to?

3 A Yes.

4 Q What is that a picture of?

5 A This is -- this roof line here is going to be the
6 front porch of [REDACTED]. This is going to be the
7 Ford Explorer. Mr. Johnson would be in the passenger
8 seat. Again, when I located him -- these are taken after
9 the light has gone down, but when we first responded, the
10 sun was still up so you could still see. You know, I
11 could observe there was all this shattered glass on the
12 ground. There appeared to be bullet holes in the vehicle
13 and there appeared to be a bullet hole in the back of his
14 seat that he was seated. I remember reaching through the
15 window and holding his hand and kind of trying to keep him
16 alert and conscious while EMS responded.

17 Q Where in the Ford Explorer was Mr. Johnson?

18 A Mr. Johnson was in the front passenger seat.

19 Q Okay.

20 A And this right here (indicating), this perspective, I
21 think, is probably right beside where the side of the
22 house is. So it was kind of a hedgerow and Mr. Lewis
23 would have been on the other side of this fence. So you
24 can kind of see there's a traffic cone and there's a white
25 towel in one of the pictures I saw. That's actually where

1 I found Mr. Lewis.

2 These traffic cones here are traffic cones marking
3 shell casings. And this vehicle right here was one of the
4 vehicles that we towed out at the incident location as it
5 had a bullet hole in it. There was a bullet hole over
6 here in the side of the house (indicating).

7 And when I -- when I originally responded, there were
8 numerous people -- this is kind of the side of the house
9 looking down where you would always see people kind of
10 congregating, you know, grilling, working on stuff. This
11 was where I -- initially, when I first responded, there
12 was 30 to 40 people on the front porch. There were people
13 here (indicating). And so when I responded the second
14 time, there were more people here and that's when I
15 located Mr. Lewis right here over the hedges.

16 Q What street is that you see in this picture?

17 A This is Magnolia Street.

18 Q Can you tell the jury where it is in relation to Two
19 Notch?

20 A Two Notch would be this way (indicating). So
21 Pinehurst would be this way, Two Notch would be this way
22 (indicating). So we're facing north when we look at this
23 picture.

24 Q I believe this is another picture of the crime scene.
25 Is that what that is?

1 A That's correct. This is going to be -- again, like I
2 said, there were several police patrol vehicles that kind
3 of got incorporated into the crime scene. You can see the
4 crime scene tape all the way up here (indicating). This
5 is going to be Center Street. You can see the traffic
6 cones over here to the left as they kind of string up
7 toward Center Street, couple hundred feet away from the
8 actual house. This here, again, is going to be the Ford
9 Explorer that I located Mr. Johnson in.

10 Q Using this picture, when everybody was telling you
11 what was going on, did they tell you the direction people
12 were coming in?

13 A I don't have the incident report. I want to say the
14 direction of travel was they came down from Center Street
15 and that's when they started firing, but I do know that
16 that was the direction that they approached. So you see
17 the shell casings. The house would be over here in
18 orientation to this picture. They came into this location
19 based on what witnesses were saying on scene --

20 MR. RUFFIN: Objection, Your Honor, hearsay.

21 THE COURT: All right. I didn't hear the question.

22 MR. ARANT: Your Honor, I asked him which direction
23 the shooters were coming in. I believe he responded based
24 on with what they were telling me when he arrived --

25 THE COURT: The objection is sustained as to the form

1 of the question.

2 MR. ARANT: Okay. I'll move on from that, Your
3 Honor.

4 BY MR. ARANT:

5 Q Is this just another picture of the scene that
6 night?

7 A This is another picture. That's the Ford Explorer.
8 This is, again, the Ford Explorer and just the crime
9 scene. I think that's going to be the house.

10 Q Is that where it was located that night?

11 A That's correct.

12 Q Okay. What is this a picture of?

13 A This is --

14 Q Describe to the jury what's that a picture of.

15 A This is the side of the house where I located
16 Mr. Lewis. The dark color there on the ground is going to
17 be blood. I think there's a towel, that might be a shirt
18 that they cut off of him, but it's covered in blood. So
19 you can kind of see where that sort of pool of blood was.

20 Again, when I first got there, you know, he had blood
21 on his face. Initially, I thought he had been shot in the
22 head, but later determined there was other injuries. You
23 see other vehicles back there, so there was a large crowd,
24 you know, on the scene at the time. There was obviously
25 other vehicles parked behind the house as well.

1 Q What does this picture depict?

2 A This picture is my memory of the scene. Mr. Lewis, I
3 believe, if I'm not mistaken, that part there would have
4 been his head, kind of where the dry spot is, all the
5 blood around it. That's my memory of the scene was he was
6 lying -- this is going to be Magnolia Street. There was
7 people facing toward Magnolia. He was face up with his
8 hands by his side. He was lifeless. I didn't see any
9 signs of life whatsoever in Mr. Lewis.

10 Q Do you recall what that is in the picture?

11 A I'm not sure if that's a shell casing or if that's
12 just a marking. Again, to try to preserve, we just put
13 cones. So I believe that might just be the medical --
14 like I think I see a lead there, possibly from when EMS
15 first arrived on the scene. But that was there just to
16 note where he was found and kind of keep people from
17 walking through that area.

18 Q Is this another picture of the crime scene that
19 night?

20 A This is another picture. You can see the patrol
21 vehicles had been removed from the scene. This is on
22 Center Street back towards Magnolia Street. So there was
23 the Ford Explorer. You can see the cones and how the
24 crime scene was, so they were trying to put the markers
25 up.

1 Q Tell the jury what these cones are.

2 A These cones were shell casings, spent shell casings
3 that we located on the scene. We were trying to preserve
4 evidence. Again, we had a lot of people there. As
5 officers responded, myself and other officers kind of
6 assigned jobs, your job is to stay with this person, they
7 say they saw what happened, your job is to stand by these
8 shell casings. Eventually, we were able to put cones out.

9 Q Can you tell the jury what these cones were doing?

10 A The casings with -- what we would do is I would put
11 the cones right over the top of the casing, so that way it
12 wouldn't get hit, they wouldn't walk on them. So it was a
13 way to keep everything marked and preserved as best we
14 can.

15 Q So this is another shot of the crime scene that
16 night?

17 A This is another shot, yes.

18 Q Tell the jury what this is.

19 A This cone was placed down here -- these holes were in
20 the side of the house. This would have been the side of
21 the house that we found Mr. Lewis in. Those holes would
22 be -- it appeared there was bullet holes in the side of
23 the house.

24 Q Do you know who found those holes?

25 A I believe I did. And you can see that there's -- the

1 siding has been broken. There's actually like some of the
2 insulation coming out through those holes.

3 Q Okay. Take a seat back in your -- in the witness
4 stand for me.

5 A (The witness complied.)

6 Q So you're on scene, do you know how long you were on
7 scene that night?

8 A It was a long time.

9 Q Would that be located in your incident report?

10 A I have my depart time at 1:50 a.m. that morning. So
11 I was on scene from 8:44 p.m. to almost 2:00 a.m.

12 Q And I noticed on this report, the date says
13 July 13th. We started talking about July the 12th. Why
14 is that?

15 A I believe in entering the information in the report
16 because it had already lapsed to the next day, the date
17 automatically reset at the top of it.

18 Q And in this report that you -- that's written, I'm
19 referring to your incident report, there's a long
20 narrative. What are you doing in that narrative? What
21 are you trying to convey or get across or record in that
22 narrative?

23 A I don't do any of the -- as the responding officer, I
24 don't do any of the followup investigations, so some of
25 the information that I take is just what I saw. I'm

1 trying to do the best I can to write this like I'm going
2 to testify off of it three years later. So I'm trying to
3 preserve as much as what I observed on scene. I put down
4 the different officers, the different fire, EMS, the
5 different people that would have responded to the scene
6 and different facts as far as the vehicles, what we
7 located on scene and put that all into a -- kind of
8 several paragraphs.

9 Q What, if any, other departments or agencies were on
10 the scene that night besides your agency?

11 A I know EMS responded, I have them down as responding.
12 I know Columbia fire twice, initially, and then they
13 responded a second time to help with the crime scene,
14 cleaning up the blood and all the medical equipment that
15 was left behind from the treatment of the victims. I know
16 I have a deputy coroner with Richland County on my report.
17 Because of the size of the crime scene and because of the
18 fact that we had two shooters possibly involved, I know --
19 I believe Benedict Police Department might have responded.
20 I believe we had numerous officers from different
21 departments responding initially to help us out with the
22 perimeter because we really didn't have any idea as far as
23 the potential of this restarting.

24 Q What, if anything -- tell the jury about any weapons
25 you observed on the scene or anything of that nature.

1 A I didn't observe any weapons on the scene.

2 Q No one had any had weapons that night?

3 A The only thing we observed were spent shell casings.

4 Q This was after the shooters had left?

5 A That's correct.

6 Q When you first responded the initial time to this
7 house, not for the crime scene, but to the first time, did
8 you see Horace Watts there?

9 A No. I -- I made no contact with the parties
10 involved, so I never made contact with Horace Watts.

11 MR. ARANT: Your Honor, I beg the Court's indulgence.

12 THE COURT: Yes.

13 MR. ARANT: Nothing further, Your Honor.

14 THE COURT: Cross-examination?

15 MR. RUFFIN: May it please the Court?

16 THE COURT: Yes.

17 CROSS-EXAMINATION

18 BY MR. RUFFIN:

19 Q Officer Birochak, am I pronouncing that right?

20 A Yes.

21 Q You were the first person on the scene? I guess it
22 was you and one other officer?

23 A Yes, it was myself and my supervisor at the time,
24 Corporal Moody.

25 Q And you said there was probably a hundred people or

1 so?

2 A That's correct.

3 Q And they were in the street, in the house, in the
4 backyard, driveway, all over the place?

5 A Yeah, that would be correct.

6 Q And one of the things that you do -- and I'm asking,
7 are you trained to do when you arrive at a scene like
8 this, one of the things you want to do is establish a
9 perimeter, is that fair to say? In the pictures, there's
10 crime scene tape, correct?

11 A Correct.

12 Q Is that part of you want to kind of push the
13 witnesses out and take the scene?

14 A That's correct, yes. As far as establishing a crime
15 scene, we want to get a scene and then a scene log to do
16 our best to make sure that evidence is staying where
17 evidence was left and not being moved or taken out of the
18 scene, so that's correct.

19 Q And establishing a crime scene log, what you mean is
20 that other officers kind of sign in and out if they come?

21 A Correct. What we do is on the scene, we have a -- it
22 can be something as simple as a note pad. We actually
23 have forms as well. It's essentially a name, an agency
24 and reason for entering. And if someone is already on
25 scene, let's say it was your residence, I would have a way

1 to sign you out, so why you left the scene and who
2 escorted you off of the property. That way, there's kind
3 of a list of accountability in and out.

4 Q And you say accountability, in other words, so we
5 know what officers were there and what officers were not
6 there so if anything was contaminated or something like
7 that, you would sort of know who was there?

8 A Correct, that's the idea.

9 Q Okay. Another thing -- is another thing that y'all
10 do try to separate witnesses or assign specific
11 investigators as they arrive? I know there's a bunch of
12 investigators, a bunch of officers who came to the scene
13 and they interviewed particular witnesses. Do you tend to
14 separate witnesses when you get there?

15 A We do the best based on resources. This was a pretty
16 unique crime scene just because it was such a large crime
17 scene and was so many people there. But one of the things
18 that I did early on, as people approached me and said they
19 knew who the shooters were or they had witnessed it is as
20 officers are coming on scene, as the scene is getting, to
21 use the term secure, so we know that the shooter is no
22 longer there on scene and we have the victims transported
23 is to assign an officer to a witness. And that's, you
24 know, you're going to stay with this officer. And,
25 essentially, keeping those witnesses as separated as

1 possible so that way when investigations got there -- in
2 this particular case, because of the number of witnesses,
3 I did not enter that into my incident report. There were
4 so many witnesses that I actually just created a witness
5 list, turned that over to investigations and they then
6 were able to transport witnesses away from the scene to
7 take statements.

8 But again I -- what we did on scene was to assign
9 officers to a witness and essentially keep them there and,
10 you know, keep them separate.

11 Q Okay. So once you know -- once you know that someone
12 is saying that they are a witness --

13 A Right, as they told us, hey, I saw what happened, you
14 know, again, I wrote down their information as best I
15 could, but then I would assign an officer. Okay, you're
16 going to stay with Officer so and so and you're going to
17 stay here until an investigator can get you and transport
18 you to headquarters to actually complete a statement.

19 Q Is it fair to say that there's a hundred witnesses,
20 y'all didn't talk to every single person?

21 A Right.

22 Q You didn't write down every single person's
23 information?

24 A Yeah, I did not record a hundred people's
25 information.

1 Q It was just kind of as people came up to you?

2 A As people approached. And I didn't know -- you know,
3 everyone on scene would have been a witness to a certain
4 degree, but certain people saw -- in what they were
5 saying, certain people saw a greater scope of what had
6 occurred.

7 Q And those people are --

8 A Of course, as we tried to analyze what people were
9 telling us, you know, you could determine okay, he's
10 saying he saw them walking down the street. He saw him
11 doing this. He saw -- I'm going to say come over here and
12 stand with this officer and we need our investigators to
13 talk to you.

14 Q Okay. I want to ask you about Isaac Lewis. I think
15 you said that he was on his back when you saw him?

16 A That's correct.

17 Q And there were people around him; is that right?

18 A That's correct.

19 Q That was a group of people around him?

20 A Yes.

21 Q Were people performing CPR on him at that time?

22 A I didn't see any recognizable medical -- you know,
23 again, I'm not trying to fault anyone on scene. There was
24 panic and people were terrified and frantic. Just based
25 on the amount of blood coming out of Mr. Lewis, I think

1 people were in a state of shock. I didn't recognize any
2 medical First Aid being rendered. I think they were just
3 panicked.

4 Q Okay. What I was asking is did you -- when you got
5 there, was somebody currently performing -- like did you
6 see somebody?

7 A No, no.

8 Q Okay. And to your knowledge, had Mr. Lewis been
9 moved from the time that he was shot? Did anybody -- was
10 there any information about that?

11 A I didn't see any signs of -- again, you can see from
12 the pictures kind of like the sand. I didn't see any
13 signs of him getting dragged.

14 Q Okay.

15 A With the sand and soil, I think if he had been
16 flipped, I think there would have been sand on the front
17 of him as well or possibly the blood would have soaked to
18 the front before he got flipped. I didn't see -- I think
19 that's how he landed to be honest with you.

20 Q So you didn't observe sand on his front?

21 A Correct.

22 Q Okay. Now, Tyrone Johnson, the other individual who
23 was shot, you saw him in the passenger side of the Ford
24 Explorer?

25 A That's correct.

1 Q Okay. Now, in the pictures that we saw, the door is
2 opened, the passenger side door was opened. Was it opened
3 when you got there? Was he seated with the door opened?

4 A The door was closed. And, initially, again, there's
5 a large crowd of people, so the ability to observe two
6 victims was really difficult. But when I first got there,
7 I went to Mr. Lewis because that was obvious. He was
8 laying on the ground and there was blood -- you know, this
9 huge pool of blood by him. And I was on scene for maybe a
10 minute or two before I even realized that Mr. Johnson was
11 also struck. So I bypassed him in going to Mr. Lewis and
12 then came back to Mr. Johnson as I believed Mr. Lewis was
13 dead.

14 Q So the direction that you walked up, you walked past
15 the Ford Explorer and into the driveway?

16 A Correct. I kind of like walked through the yard and
17 saw the crowd, which I was being directed there as well,
18 but followed the crowd to where Mr. Lewis was.

19 Q Okay. And you said about a minute later is when you
20 realized that there was another individual shot?

21 A I was again directed by witnesses on scene that
22 there's someone shot over here in the Ford Explorer.

23 Q Okay. So to your knowledge, had anybody moved Tyrone
24 Johnson or had he moved or was it your understanding he
25 was shot while in the vehicle?

1 A He was -- from what I could see, there was a bullet
2 hole in the seat. So you have the passenger seat, kind of
3 a bucket seat and there was a hole kind of in the -- where
4 the upper back would be. And in pulling him forward --
5 because when I got to him, I remember him just laying back
6 (indicating) against the seat and he was just pouring
7 sweat and all the color was just running out of his face.
8 He was just -- I thought he was dead.

9 And I pulled him forward trying to determine where he
10 had been hit and I saw on the back, I want to say his back
11 left, there was a big bloodstain that was soaking through
12 his T-shirt. And then this was also corresponding blood
13 on the seat of the vehicle. And at that point, I mean, I
14 was able to get him to talk to me. I got enough
15 information to know who he was. And I remember just
16 holding his hand, just trying to keep him conscious while
17 EMS responded.

18 Q And when you say you were holding his hand and that
19 kind of thing, the window was down and you're reaching
20 into the window or do you know if you had opened the door
21 at that time?

22 A I can't recall if I had opened the door at that time.

23 Q Okay.

24 A But the door -- I do remember the door being closed
25 when I approached the vehicle.

1 Q Okay. I want to grab one of these pictures real
2 quick. Let me see if I can find the right one. Who set
3 up -- who actually does the crime scene tape? Did you do
4 that?

5 A I don't recall doing it. It's -- as you respond to a
6 scene of that size and involving that many people, it's
7 pretty much you show up and grab a job. When you show up
8 and there's that much going on, there's people, witnesses,
9 the potential for more harm, you have officers -- just as
10 we kind of find more evidence, let's set up some more
11 crime scene tape here.

12 So I didn't participate in that because I was dealing
13 with the victims, I was dealing with the witnesses and
14 kind of just observing evidence. I know I did direct
15 several officers to assist with putting up crime scene
16 tape. I believe one of the officers was Viehweg. When he
17 responded to the scene, again, what can I help with? Like
18 start stretching some crime scene tape. So we had these
19 rolls of -- you saw them in the picture, the yellow tape.
20 And just tie it off to something. You can stretch it to
21 another point. You try to, essentially, create a fence
22 around whatever evidence you think is going to be needed
23 to be preserved.

24 Q Right. One of the -- you described it as a fence.
25 When crime scene investigators arrived to -- like the

1 shell casings, for instance, you put the cones on it.

2 Obviously, that's going to be inside the fence?

3 A That's correct.

4 Q And that's sort of to help them so they know where to
5 look?

6 A That's correct.

7 Q And it's fair to say that setting up the crime scene
8 tape in this case, it was a multiple officer job?

9 A Correct. And I -- again, as we initially got on
10 scene, you know, the crime scene started to grow as more
11 officers got on scene and realized that there were shell
12 casings even further up the street. So it was something
13 that we kept expanding as we found additional evidence.

14 Q Right. Because I think in some of those pictures,
15 there's actually like two rows of crime scene tape?

16 A Correct, yeah.

17 Q Okay. I want to show you -- this is State's Exhibit
18 19 I'm going to try to kind of get up here. This is a
19 picture -- I guess, this picture would be taken from
20 standing like with your back toward Magnolia Street and
21 looking into the driveway towards the backyard; is that
22 right?

23 A That's correct, yeah.

24 Q Okay. And you can see that there's some crime scene
25 tape there sort of in the backyard, right?

1 A That's correct.

2 Q And there's some cars on the other side of that crime
3 scene tape, right?

4 A That's correct.

5 Q And I know that you said earlier you're familiar with
6 this area. A lot of times, there's people hanging out in
7 the backyard, right?

8 A That's correct.

9 Q And on this night, there were individuals on the
10 other side of that crime scene tape in the backyard, is
11 that fair to say?

12 A I believe I remember observing people back there.
13 That would be fair to say, yes.

14 Q Okay. Thank you.

15 MR. RUFFIN: No further questions, Your Honor.

16 MR. ARANT: Just briefly, Your Honor.

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. ARANT:

20 Q Officer, he asked you questions about where the
21 bullet hole was in the Ford Explorer in relation to
22 Tyrone Johnson. Are you sure you know where the bullet
23 hole was in the Ford Explorer?

24 A If I remember correctly, it was signs of possibly
25 several bullet holes in the vehicle.

1 (WHEREUPON, State's Exhibit Nos. 39 and 40 were
2 marked for identification only.)

3 BY MR. ARANT:

4 Q I'm going to show you what's marked for
5 identification as State's Exhibit 39 and 40. Kind of
6 orient yourself with those. Do you recognize what that
7 is?

8 A It looks like the -- it's looks like it's the front
9 post on the driver's side of the vehicle.

10 Q Okay. Would that refresh your recollection of where
11 that bullet hole might be in that vehicle?

12 A I -- it would have been on the passenger side.

13 Q Okay. I guess based on those pictures, where is
14 bullet hole at?

15 A In these pictures, there's a bullet hole that appears
16 to be on the driver's side right there by the -- I guess
17 would be called the B post, which is the past in the
18 vehicle between the driver's side front door and the
19 driver's side passenger door where the -- your seatbelt
20 would be.

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

22 THE COURT: Anything further?

23 MR. RUFFIN: No.

24 THE COURT: You may step down.

25 You may call your next witness.

1 MS. NICKLES: The State calls Officer Viehweg.
2 Thereupon;

3 ANTHONY VIEHWEG,

4 After having been duly sworn, testified as follows:

5 THE CLERK: Thank you. Please have a seat in the
6 witness stand and state your full name for the record.

7 THE WITNESS: Corporal Anthony Viehweg.

8 THE CLERK: Spell your name for the record.

9 THE WITNESS: V-I-E-H-W-E-G.

10 DIRECT EXAMINATION

11 BY MS. NICKLES:

12 Q Good afternoon, Officer Viehweg. Can you please
13 tell the jury where you're employed?

14 A City of Columbia Police Department.

15 Q And what is your position there?

16 A Corporal.

17 Q And what do you do in your role as a corporal?

18 A I'm a street supervisor, respond to calls for
19 service, and respond to any calls that require supervisor
20 on scene.

21 Q How long have you been with CPD?

22 A Eight years.

23 Q Were you working with Columbia Police Department back
24 on July 12th of 2014?

25 A Yes.

1 Q And I want to turn your attention to the incident
2 we're here for today. Did you have occasion to respond to
3 [REDACTED]?

4 A Yes.

5 Q And can you please tell the jury what you did when
6 you responded?

7 A I responded on scene, I made contact with Officer
8 Birochak. He requested assistance in getting the crime
9 scene set up, so I assisted him in getting the crime scene
10 tape set up. Saw there was a lot of people going back and
11 forth. Once I got there and got the crime scene tape out,
12 we got a -- rather, what we perceived to be the initial
13 crime scene. We got the tape set up and I started to get
14 everyone out of that area that wasn't either First
15 Responder related or needed to be in that area and
16 provided security for the scene.

17 Q So do you know proximately how many other people were
18 on scene when you got there?

19 A To my knowledge -- First Responder-wise?

20 Q Uh-huh.

21 A Officer Birochak, Corporal Moody and may have been
22 one other officer.

23 Q So is it fair to say that you were one of the first
24 on scene?

25 A Yes.

1 Q And your primary purpose when you're there is you
2 began to establish the scene?

3 A I take direction from the officer at the scene that's
4 in charge. At the time, that would have been Officer
5 Birochak. We establish whatever directives he has and
6 maintain safety of the crime scene and for the individuals
7 of the community.

8 Q Once you had set up the crime scene tape, did you
9 have any other involvement at this scene?

10 A At the scene, no.

11 Q Did you have any other involvement in this case?

12 A Yes.

13 Q And what was that?

14 A They loaded Mr. Lewis into an ambulance and I
15 followed the ambulance to Richland Memorial Hospital.

16 Q You said they loaded Mr. Lewis into an ambulance.
17 Was he loaded in there alone?

18 A What was that?

19 Q So you followed Mr. Lewis's ambulance?

20 A Yes, I did.

21 Q And where did you follow that ambulance?

22 A Richland Memorial Hospital.

23 Q And why do you follow an ambulance from the scene,
24 can you tell the jury?

25 A Protocol for any shooting situation we go to, one

1 officer follows the ambulance to the hospital to stay with
2 the victim to provide any type of safety, if any deemed to
3 be necessary, to maintain contact with the victim during
4 the incident.

5 Q Is that what you did in this case?

6 A Yes.

7 Q And once you followed the ambulance to the hospital,
8 Mr. Lewis was, I assume, taken inside?

9 A He was taken into one of their trauma operating
10 rooms.

11 Q And did your contact with him end then?

12 A I stayed in the room, but I had no contact with him.

13 Q Okay. So you followed him inside the hospital?

14 A Yes.

15 Q And remained with him?

16 A Yes.

17 Q Did you ever have the occasion to talk to Mr. Lewis?

18 A I did not have the opportunity to talk to him.

19 Q When did you eventually leave Mr. Lewis?

20 A Later in the evening, several hours later, I left
21 after they stop operating on him and pronounced him dead.

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

23 (Pause.)

24 MS. NICKLES: I don't have any other questions for
25 you, Officer Viehweg. Please answer any that the Defense

1 attorney has.

2 CROSS-EXAMINATION

3 BY MR. COMISH:

4 Q Good afternoon, Officer. Would you tell me the
5 pronunciation of your name one more time?

6 A Viehweg.

7 Q Let's just go back to when you were at the scene, if
8 you don't mind. You said a second ago just only a few
9 officers were there. Do you know about when they arrived
10 in relationship to you and how long they were there by the
11 time you arrived?

12 A When I heard the call go out, I switched over to the
13 metro region channel, I was in south region. I
14 immediately upon switching over there heard officers
15 calling for help, so I wouldn't imagine they would have
16 been on scene very long.

17 Q Okay. We heard some testimony that they placed cones
18 over what they considered evidence. Do you recall seeing
19 any cones placed by the time you arrived?

20 A I didn't see any cones when I arrived, no, sir.

21 Q Okay. So there were no cones when you got there. Is
22 chaotic a safe way to describe that crime scene?

23 A It was a little chaotic, yes, sir.

24 Q We heard earlier testimony that roughly a hundred
25 people were there. Does that sound accurate to you?

1 A Yes.

2 Q And were these people moving back and forth?

3 A Yes.

4 Q Were these people frantic?

5 A Yes.

6 Q And they were upset?

7 A Yes.

8 Q Okay. Part of your job is to sort of get control of
9 the crime scene and coral folks out of there, correct?

10 A Yes.

11 Q About how long did that process take?

12 A When I arrived on scene, it took a couple of minutes
13 to get that under control.

14 Q Okay. Did you create an incident report?

15 A I did not.

16 Q Okay.

17 MR. COMISH: Beg the Court's indulgence one second.

18 (Pause.)

19 MR. COMISH: No further questions. Thank you,
20 Office.

21 THE COURT: Anything further?

22 MS. NICKLES: Nothing from the State, Your Honor.

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

25 You may call your next witness.

1 MR. POTTS: The State calls Jackie Richburg.

2 THE CLERK: Raise your right hand.

3 Thereupon;

4 JACKIE RICHBURG,

5 after having been duly sworn, testified as follows:

6 THE CLERK: Have a seat in the witness stand and
7 state your name for the record.

8 THE WITNESS: Jacqueline Richburg.

9 DIRECT EXAMINATION

10 BY MR. POTTS:

11 Q Hi, Ms. Richburg, how you are?

12 A Great. How are you?

13 Q Can you tell this jury where you currently work?

14 A Columbia Richland 911 Communication Center.

15 Q Now, what do y'all do at Columbia Richland 911?

16 A We process incoming calls and radio traffic from
17 police deputies, fire and EMS.

18 Q How long have you been doing that?

19 A I've been doing it 35 years.

20 Q You've been there the whole time 35 years?

21 A Yes.

22 Q So what's your current job there?

23 A Deputy director.

24 Q Okay. Now, do y'all get these calls all the time,
25 911 calls?

1 A Yes.

2 Q What happens when a call comes in?

3 A The calls are recorded and there's a series of
4 questions that we ask each caller. We're consistent with
5 asking those questions.

6 Q Is every call recorded?

7 A Yes.

8 Q And do y'all have a data base where y'all store these
9 calls for a while?

10 A Yes.

11 Q Is there any -- is the recording automatic?

12 A It is automatic.

13 Q Is there a process where someone can decide not to
14 record a call?

15 A No.

16 (WHEREUPON, State's Exhibit No. 34 was marked for
17 identification only.)

18 BY MR. POTTS:

19 Q I'm going to show you what's been marked State's
20 Exhibit No. 34?

21 A Okay.

22 Q Do you recognize that?

23 A Yes.

24 Q Tell the jury what that is.

25 A It's a CD recording of something. I don't know if

1 it's a phone call or radio traffic, but it's a CD
2 recording that we use.

3 Q Okay. So is it recordings of 911 calls that y'all
4 receive?

5 A Yes.

6 Q Have you had a chance to listen to them?

7 A Yes.

8 Q And there's a little, I guess, a couple of little
9 letters right there. What are those?

10 A That's my initials.

11 Q So you've listened to these and these are, in fact,
12 y'all's calls?

13 A Yes.

14 MR. POTTS: At this time, I'd offer into evidence
15 State's Exhibit 34.

16 MR. RUFFIN: No objection, Your Honor.

17 THE COURT: All right. Admitted.

18 (WHEREUPON, State's Exhibit No. 34 was admitted
19 into evidence.)

20 MR. POTTS: Beg the Court's indulgence while I set
21 this up real quick, Your Honor.

22 (911 calls played for the jury.)

23 MR. POTTS: Thank you, Ms. Richburg. No further
24 questions.

25 CROSS-EXAMINATION

1 BY MR. RUFFIN:

2 Q You heard at the beginning of the call, it gives the
3 date and time?

4 A Yes.

5 Q And the time, I think was 2039, 2040, that's 8:39,
6 8:40, right?

7 A Yes.

8 MR. RUFFIN: Thank you.

9 THE COURT: You may step down.

10 Any additional questions?

11 MR. POTTS: No, Your Honor.

12 THE COURT: All right.

13 Next witness.

14 MS. NICKLES: The State calls April Cleckley.

15 Thereupon;

16 APRIL CLECKLEY,

17 after having been duly sworn, testified as follows:

18 THE CLERK: Thank you. Please have a seat in the
19 witness stand and state your full name for the record.

20 THE WITNESS: April Cleckley.

21 DIRECT EXAMINATION

22 BY MS. NICKLES:

23 Q Ms. Cleckley, I'm going to pull this microphone just
24 a little bit closer to you so the jury can hear what
25 you're saying, okay? And if at any time you need to take

1 a break, you just let me know okay.

2 A (The witness nodded head.)

3 Q Ms. Cleckley, can you tell the jury where you're
4 from?

5 A I'm from Orangeburg, South Carolina, but I was living
6 up here 22 years.

7 Q You've been in Columbia for 22 years?

8 A (The witness nodded head.)

9 Q And where do you live?

10 A Now?

11 Q Uh-huh.

12 A [REDACTED].

13 Q All right.

14 THE COURT: Pull the mic up closer and scoot up as
15 well.

16 BY MS. NICKLES:

17 Q I know this is difficult, but if you can speak up so
18 the jury can hear you. We want everyone to be able to
19 hear what you say, okay?

20 A (The witness nodded head.)

21 Q Where were you living in 2012?

22 A [REDACTED].

23 Q Who did you live there with?

24 A It was me, my husband, and my baby girl.

25 Q And --

1 A And my son.

2 Q And your son?

3 A (The witness nodded head.)

4 Q How many kids do you have?

5 A I have three.

6 Q Three. And who are they?

7 A I got one Billy, one named Daquan and one named
8 Obinasia.

9 Q And Daquan, how old was Daquan in 2012?

10 A He was 20.

11 Q Okay. And he was living at your house with you?

12 A (The witness nodded head.)

13 Q The reason that we're here today, Isaac Lewis, did
14 you know him?

15 A (The witness nodded head.)

16 Q Tell the jury how you knew Mr. Lewis?

17 A He was my brother-in-law.

18 Q And how -- so is it your husband's --

19 A My husband's brother.

20 Q Okay. And back in 2012, where was Isaac Lewis
21 living?

22 A He was living with my niece.

23 Q Here in Columbia?

24 A Uh-huh.

25 Q Okay. I want to ask you, you said Daquan was about

1 20. Where did Daquan go to school?

2 A C. A. Johnson.

3 Q Okay. And that's also here in Columbia?

4 A Uh-huh.

5 Q And you said you were living a [REDACTED].

6 Can you describe to the jury your house, specifically,
7 your backyard back then?

8 A It's a big open backyard where we always have
9 functions.

10 Q And what kind of functions did you have?

11 A Well, this particular day, it was my birthday.

12 Q And before we get to the day, what was -- what kind
13 of functions did you have in your backyard? Is it fair to
14 say it was kind of a gathering spot?

15 MR. RUFFIN: Objection, relevance.

16 THE COURT: Your objection is overruled.

17 THE WITNESS: Holidays and outings.

18 BY MS. NICKLES:

19 Q Okay. Did Daquan have friends over and hang out at
20 your house?

21 A Yes.

22 Q I want to ask you about two people. Do you know
23 Malik Davis and Horace Watts?

24 A Yes.

25 Q Will you tell the jury how you know them?

1 A They were friends with my son.

2 Q And when you say they were friends with your son, can
3 you kind of characterize those relationships? Were they
4 good friends? Did they see each other often?

5 A Yes, they went to school together.

6 Q So they went to school together and they would also
7 hang out at your house?

8 A Yes.

9 Q Did -- so you saw Malik and Horace a good bit?

10 A But I see Horace Watts the most.

11 Q You saw Horace Watts the most?

12 A (The witness nodded head.)

13 Q So he came around your house?

14 A (The witness nodded head.) They come play basketball
15 because we have -- we had a basketball goal in the yard.

16 Q So they would play basketball at your house?

17 A Yes.

18 Q Horace Watts?

19 A Yes.

20 Q I want to take your attention to July 12th, 2014.

21 And I know you said that y'all were at your house to
22 celebrate your birthday?

23 A Yes.

24 Q And who all was there?

25 A It was just, basically, my family and friends.

1 Q Okay. And was Isaac Lewis there?

2 A Yes.

3 Q And what was he doing that day?

4 A He was cooking on the grill.

5 Q Okay. Can you kind of describe for the jury where
6 people were? I know you said there were a lot of people
7 at your house. Were they all inside, were they outside,
8 was it a mixture? Can you just tell the jury so they can
9 kind of visualize what was going on?

10 A We had some on the outside and some on the inside and
11 some was like hanging out on the front.

12 Q Okay. And about how many of your friends were there?

13 A I would say about 50 at the time.

14 Q Okay. And about what time did people start coming
15 over that day?

16 A Around 5:30.

17 Q Okay. At some point that day, are you aware of any
18 kind of altercation that occurs?

19 A At the time, I was in the house.

20 Q You were where?

21 A I was inside the house at the time.

22 Q Okay. At the time that an altercation occurred?

23 A (The witness nodded head.)

24 Q Okay. Did you see anything?

25 A My nephew, Terrell, and Horace were having a little

1 altercation.

2 Q Okay. After that altercation, did you see Terrell
3 again that day?

4 A Did I see him again?

5 Q Uh-huh.

6 A Yes.

7 Q Did he stay at the party or did he leave?

8 A He stayed.

9 Q He stayed?

10 A (The witness nodded head.)

11 Q Did you see Malik Davis again?

12 A No.

13 Q Later that afternoon after that initial altercation,
14 did the party go as planned?

15 A It still went on.

16 Q Was there anything that interrupted the party? I
17 know that sounds like a silly question, but.

18 A After they got into the altercation, Malik had left.

19 Q Okay.

20 A And he came back with his brother.

21 Q And you said he came back with his brother. His
22 brother is who?

23 A Horace.

24 Q Okay. And when they come back, where are you?

25 A I was in my front yard standing by the road.

1 Q What was the first thing you saw when they came back?

2 A I looked down the street, I saw them running from off
3 Center Street. They got out on Center Street.

4 Q You see Horace and Malik running from Center Street.
5 Where are they running?

6 A Running towards my house.

7 Q Are they doing anything?

8 A They had guns in their hands.

9 Q When you look up when you're standing in your front
10 yard and you see Horace and Malik running toward your
11 house with guns in their hands, what did you do?

12 A I ran.

13 Q Where did you run?

14 A In my backyard into my house.

15 Q So you were standing in the front yard when you saw
16 them?

17 A (The witness nodded head.)

18 Q Then you ran around --

19 A My backyard into my back door in my house.

20 THE COURT: Can everyone hear her?

21 THE JURORS: A little bit, Judge.

22 THE COURT: All right.

23 Solicitor, perhaps, if you would stand where the
24 jurors are and if you can't hear her, then you know the
25 jurors can't hear.

1 MS. NICKLES: Okay.

2 BY MS. NICKLES:

3 Q So you run into your house. Do you hear anything?

4 A I heard guns going off.

5 Q Do you see anything?

6 A No. At the time, I had done made it in the house.

7 Q Once you get in your house, can you see outside?

8 A I didn't really want to look. It was -- it was too
9 terrifying.

10 Q Once you're inside, I know you didn't want to look,
11 but do you eventually look outside?

12 A (The witness shakes head.) After I hear all of guns
13 and stuff going off, I panicked.

14 Q How quickly is all of this happening?

15 A It happened so quick.

16 Q Do you know where Isaac Lewis was when this was
17 happening?

18 A He was getting all of the kids up to get them in the
19 house.

20 Q And how many kids were there that day?

21 MR. RUFFIN: Objection, relevance.

22 THE COURT: Your objection is overruled.

23 THE WITNESS: It was like 20.

24 BY MS. NICKLES:

25 Q And about what ages, small kids, big kids?

1 A Small and big.

2 Q And you said Isaac was trying to get the kids to
3 safety?

4 A Yes.

5 Q Did you see him?

6 A I seen him standing by the tree by the trash can.

7 Q And the tree by the trash can, where is that located?

8 A It's like on the side of my house, like my pathway.

9 Q Okay. And when you see him standing by the tree,
10 what did you see next?

11 A He got shot.

12 Q Who shot him?

13 A Horace.

14 Q If you need to take a break, let me know.

15 Ms. Cleckley, after you saw Horace Watts shoot your
16 brother-in-law, what did you do?

17 A Panicked.

18 Q And just so the jury can understand this, when you
19 see this, where are you?

20 A In the house.

21 Q Okay. And so you're observing this through a window?

22 A Yes.

23 Q Okay. And you were able to actually see Horace
24 Watts?

25 A Yes.

1 Q Later that day, did you meet with police
2 investigators?

3 A Yes.

4 Q Did you tell them what you had seen?

5 A Yes.

6 Q And do you remember investigators asking you to look
7 at some photos?

8 A Yes.

9 Q I'm going to hand you what's been marked as State's
10 Exhibit 7. Do you remember -- can you tell me if you
11 recognize that? You can flip through it.

12 A (The witness complies.)

13 Q Do you recognize what this is?

14 A Yes.

15 Q What is it?

16 A It's a photo lineup.

17 Q Okay. And is this the lineup that police showed you
18 that day?

19 A Yes.

20 Q And were you able to pick anyone out?

21 A Yes.

22 Q What number did you pick out?

23 A Number two.

24 Q And who is the picture of number two of?

25 A Horace Watts.

1 Q And when they gave you that lineup to pick out, why
2 did you pick out Horace Watts as -- was he the person that
3 was at your house that day?

4 A Yes.

5 Q The one who shot Isaac Louis?

6 A (The witness nodded head.) Yes.

7 Q And when they showed you those lineups, did you
8 recognize him immediately?

9 A Yes.

10 Q Did they suggest for you who to pick out?

11 A No.

12 Q Did they tell you that you had to pick somebody out?

13 A No.

14 Q Did they tell you that he would definitely be in
15 there?

16 A No.

17 Q So they didn't indicate at all who to pick out?

18 A No.

19 Q Why did you pick number two?

20 A Because I knew him.

21 Q Because you knew that was Horace?

22 A (The witness nodded head.)

23 Q Okay.

24 MS. NICKLES: Your Honor, at this time, the State
25 would seek to admit State's 7 into evidence.

1 MR. RUFFIN: Your Honor, we renew our previous
2 objection to this at the Neal V. Biggers.

3 THE COURT: All right. Can I see it?

4 MS. NICKLES: Yes, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, I'm
6 going to have you go to your jury room for a few minutes.
7 Please do not discuss this case.

8 (WHEREUPON, the jury left the courtroom at 5:18
9 p.m.)

10 THE COURT: What was your objection at the Neal V.
11 Biggers?

12 MR. RUFFIN: Essentially, what our objection was is
13 that Mr. Watts' picture in the lineup was blurrier than
14 the other pictures, so we argued that was unduly
15 suggestive to the witness. In addition -- Your Honor, I
16 don't want us to go too far because I don't remember
17 exactly what I argued, certainly I know you have the
18 transcript. I don't want to argue something that maybe I
19 didn't.

20 THE COURT: Friday about 4:00 or 5:00, you all sent
21 me a 233-page transcript. And this is the hearing that
22 Judge Hood conducted and y'all stipulated that the Court
23 adopts Judge Hood's finding.

24 MR. RUFFIN: Correct.

25 THE COURT: So if you're renewing an objection, then

1 I need to know what's your objection.

2 MR. RUFFIN: My objection is that the lineup should
3 not be admissible because it is unduly suggestive in that
4 my client's photograph was blurrier than the others so as
5 to suggest -- that distinguishes his picture from the
6 others. So our argument was that that was --

7 THE COURT: Well, she said she knew him. He is not a
8 stranger. She said he's friends with her son. She said
9 he was over at her house all the time. They played
10 basketball together.

11 MR. RUFFIN: And much of that -- what Your Honor is
12 saying now is why Judge Hood ruled that they were
13 admissible. I'm only renewing my objection for the record
14 for appeal, Judge.

15 THE COURT: Okay. All right. I just need to
16 understand. You know, I was watching the Super Bowl last
17 night, not reading these 233 pages. But clearly, she has
18 an independent basis for identifying him. And she said
19 that the police officer didn't suggest who to pick out.
20 So I'll overrule the objection.

21 MR. RUFFIN: Your Honor, if I may?

22 THE COURT: I can't -- it doesn't look blurry to me.
23 Of course, I have a hard time picking out who's who.

24 MR. RUFFIN: Just for Your Honor's clarification, I'm
25 going to be renewing my objection. There's many

1 witnesses. And I just want Your Honor to understand that
2 I understand that Judge Hood has already ruled on it.

3 THE COURT: Yeah.

4 MR. RUFFIN: We accepted his ruling. I'm only
5 renewing my objection for purposes of appeal. That's all
6 I'm saying.

7 THE COURT: Uh-huh. Well, if the judge made an error
8 in admitting it -- I mean, I don't know the point of
9 renewing your objection. Your objection is a matter of
10 record. You all have had a hearing on that. But if you
11 are -- you know, when you make an objection, I'm not going
12 through a presumptive process. If you make an objection,
13 then I need to deal with what that objection is and the
14 basis for it so that I can rule on it. And now I
15 understand the basis for your objection having heard her
16 testimony and I agree a hundred percent with Judge Hood.
17 All right.

18 MR. POTTS: Thank you, Your Honor.

19 MS. NICKLES: Thank you, Your Honor.

20 THE COURT: So let's take a little stretch for a
21 couple minutes before we bring the jury back.

22 (WHEREUPON, a short recess was held.)

23 THE COURT: Before the jury returns, I do have some
24 questions I want to ask you, ma'am, based on what maybe
25 seen as a conflict in your testimony. At what point in

1 time did you look out the window and see the Defendant
2 shooting?

3 THE WITNESS: You mean how long?

4 THE COURT: No, when did you see -- explain to me how
5 you know that it was this Defendant who was out there
6 shooting.

7 THE WITNESS: Because I seen him running down the
8 street.

9 THE COURT: Before or after --

10 THE WITNESS: When I standing in my front yard.

11 THE COURT: He was running down the street. How --
12 when was that --

13 THE WITNESS: Coming up Center Street.

14 THE COURT: Was that before or after the shooting?

15 THE WITNESS: Before.

16 THE COURT: And how soon was that before the
17 shooting?

18 THE WITNESS: It was like a minute or two.

19 THE COURT: And did he have anything in his hand or
20 what was he doing?

21 MS. NICKLES: He had a gun.

22 THE COURT: You saw him with a gun?

23 MS. NICKLES: Yes.

24 THE COURT: And then how much time passed before you
25 heard the gunshots?

1 THE WITNESS: I heard it before they got up to my
2 house. It started when they got off Center Street.

3 THE COURT: And it was before you got in the house?

4 THE WITNESS: Yes.

5 THE COURT: All right. When you got in the house,
6 did you look back outside again or while it was still
7 going on or after it was over?

8 THE WITNESS: I peeped out my front window.

9 THE COURT: What was going on then?

10 MS. NICKLES: They was still shooting.

11 THE COURT: And could you see him shooting, Watts?

12 THE WITNESS: Yes.

13 THE COURT: All right. You can bring the jury in.
14 How many years do you think you've known him?

15 THE WITNESS: About a year and a half.

16 THE COURT: Okay.

17 (WHEREUPON, the jury returned to the courtroom at
18 5:28 p.m.)

19 BAILIFF: Your Honor, the jury is present.

20 THE COURT: The objection is overruled.
21 You may proceed.

22 MS. NICKLES: Thank you, Your Honor.

23 CONTINUED DIRECT EXAMINATION

24 BY MS. NICKLES:

25 Q Ms. Cleckley, you said you picked out number two.

1 Did you do anything to indicate that number two was the
2 one you had selected?

3 A I initialed it.

4 Q Are these your initials right here at the bottom of
5 number two?

6 A Yes.

7 Q A.C.?

8 A Uh-huh.

9 Q Ms. Cleckley, the person you selected in this photo
10 lineup as the one who came to your house on your birthday
11 with a gun and shot your brother-in-law, do you see him
12 here today in the courtroom?

13 A Yes.

14 Q Where is he seated?

15 A Right here in the front.

16 Q And what's he wearing?

17 A A white shirt and red and white tie.

18 MS. NICKLES: Your Honor, may the record reflect that
19 she's identified the Defendant?

20 THE COURT: It does.

21 (WHEREUPON, State's Exhibit No. 7 was admitted
22 into evidence.)

23 MS. NICKLES: Beg the Court's indulgence.

24 (Pause.)

25 MS. NICKLES: Ms. Cleckley, I don't have any other

1 questions for you. Please answer any questions they have.

2 CROSS-EXAMINATION

3 BY MR. RUFFIN:

4 Q Hey, Ms. Cleckley.

5 A Hello.

6 Q This was your birthday party?

7 A Yes.

8 Q Do you remember what time you got there, what time
9 you got over -- that was your house, right?

10 A Yes.

11 Q So you had been there all day?

12 A Yes.

13 Q So people are coming to your house?

14 A Yes.

15 Q Now, you were asked a little bit about an altercation
16 between Malik Davis and Terrell, right?

17 A Yes.

18 Q Did you see that?

19 A Yes.

20 Q You saw that with your own eyes -- let me ask you,
21 where were you when that happened?

22 A I was in my backyard.

23 Q And where was the fight?

24 A Out front.

25 Q So you didn't see it?

1 A Huh-uh.

2 Q Okay. And you said that, I guess, after it was over,
3 Malik Davis left, right?

4 A Yes.

5 Q But Terrell stayed there?

6 A Yes.

7 Q Okay. And maybe 30 minutes later or so, there was a
8 shooting at your house, right?

9 A Yes.

10 Q And this was probably about 8:30 at night?

11 A It was daylight.

12 Q Do you think it was 8:30? You think it was earlier
13 than that?

14 A It was still daylight.

15 Q But you're not sure what time it was?

16 A 7:00.

17 Q Maybe 7:00. And you said at that time, you were out
18 in the front yard, right?

19 A Yes.

20 Q And you said that you saw -- you said you saw Horace
21 and Malik coming down the street shooting guns, right?

22 A Yes.

23 Q And did you see -- did they get out of a car, did you
24 see them get out of a car?

25 A The only thing I seen was them running off Center

1 Street coming toward my house.

2 Q You did not see them get out of a vehicle; is that
3 correct?

4 A (There was no response.)

5 Q I'm just asking if you saw them get out of a car or
6 not. Do you remember?

7 A I remember.

8 Q You do remember?

9 A (The witness shakes head.)

10 Q So did you see them get out of a car or did you not
11 see that?

12 A They got out of a car.

13 Q Okay. Do you remember what color it was?

14 A No.

15 Q Okay. Do you remember what they were wearing?

16 A At that particular time, they had on white T-shirts.

17 Q Okay. Now, at this time, you're out in the street or
18 you're in the front yard?

19 A I was standing in my front yard.

20 Q Is there anybody else standing in the front yard with
21 you?

22 A Me and my niece.

23 Q Okay. So there was no --

24 A And a couple more other people.

25 Q Do you know if your son was out there, Daquan? Do

1 you remember if he was out on the street?

2 A I don't think he was out in the street at that time.

3 Q Do you remember if you saw -- do you know Paris
4 Young?

5 A Yes.

6 Q Do you know if -- was he out on the street, do you
7 remember?

8 A At the time, everybody was in the backyard.

9 Q So Paris Young was not in the street?

10 A They was in backyard.

11 Q Okay. So the only person in the street was you and
12 your niece?

13 A And a couple more other people.

14 Q So who were the other people is what I'm asking? Do
15 you remember if Tarus Threatt was out there? Do you know
16 Tarus Threatt?

17 A Yes.

18 Q Was he out there?

19 A All of them been in the back.

20 Q All those people were in the back?

21 A Yes.

22 Q Paris, Tarus?

23 A Yeah.

24 Q Now, you said when the shooting happened, you ran to
25 the backyard where everybody else was?

1 A Yes.

2 Q And you actually ran into the house?

3 A Yes.

4 Q As you're running to the backyard, you're hearing
5 gunshots?

6 A Yes.

7 Q But before you started running, you actually saw them
8 shooting the gun in the street?

9 A They started shooting soon as they got out the car.

10 Q And you saw that?

11 A Yes.

12 Q Do you remember was Tyrone Johnson out there?

13 A He was out there sitting in his truck.

14 Q And where was he sitting in his truck?

15 A On the passenger side front seat.

16 Q He was sitting in the front passenger seat --

17 A (The witness nodded head.)

18 Q -- while you were standing in the yard? And you're
19 saying that Horace and Malik were coming down the road
20 shooting their guns?

21 A Uh-huh.

22 Q Did you see Tyrone get hit?

23 A I didn't actually see him get hit. I heard he got
24 hit.

25 Q Okay. So I'm going to fast forward again. So you

1 run into the house, right?

2 A Uh-huh.

3 Q And you're still hearing gunshots going off?

4 A (The witness nodded head.)

5 Q Now, were there still people in the backyard, though,
6 who were still outside?

7 A Everybody was running trying to get away.

8 Q And some people went inside with you?

9 A Yes.

10 Q Do you remember who went inside with you?

11 A I know all the kids and one of them was my
12 three-year-old daughter.

13 Q She came inside with you?

14 A Yes.

15 Q Obviously, Isaac Lewis didn't go inside?

16 A He was gathering all the kids to get in the house.

17 Q Okay. And I think that you said -- and I don't want
18 to put words in your mouth, so correct me if I'm wrong,
19 but when you got inside, you looked out one of the
20 windows, right?

21 A Yes.

22 Q And when you look out the window, you're saying that
23 you saw Horace Watts come in the driveway; is that right?

24 A Yes.

25 Q And you saw him shoot Isaac Lewis?

1 A Yes.

2 Q And so you're standing at -- and you're standing in
3 the living room, I guess?

4 A In my living room.

5 Q In your living room. And the window that you're
6 looking at looks to the driveway; is that right?

7 A Yes.

8 Q And that's when you saw -- you saw Horace and Isaac?
9 Were they face to face?

10 A They wasn't face to face.

11 Q Okay. What were they?

12 A He was standing by the tree by the trash can.

13 Q Isaac --

14 A Just standing there.

15 Q Trying to get people to come in?

16 A Yes.

17 Q And is that -- do you remember if the trash can, was
18 that on like the side of where the house is or would it be
19 on the other side of the driveway?

20 A On the other side the driveway, like toward the
21 fence.

22 Q That's where Isaac was?

23 A Yes.

24 Q And Horace came and shot him?

25 A He shot him.

1 Q Now, you said that you had talked to police that
2 night, right?

3 A Yes.

4 Q And you told them everything that happened?

5 A (The witness nodded head.)

6 Q After the shooting was over -- or after the shooting
7 stopped, did you go back outside?

8 A To talk to the officer.

9 Q You talked to the officer outside?

10 A (The witness nodded head.)

11 Q Were other people in the family, were y'all all
12 talking to each other?

13 A Yes.

14 Q Were other people in the family, were they saying
15 that it was Horace and Malik?

16 A Yes.

17 Q Now, you know Horace?

18 A Yes.

19 Q And you also know Malik?

20 A Yes.

21 Q They were, I guess, friends with your son, Daquan?

22 A Yes.

23 Q And you know them just from being around the
24 neighborhood and things like that?

25 A Yes.

1 Q Okay. I'm going to grab your lineup. I just want
2 you to -- will you look through those pictures again and
3 tell me do you know any one else in those pictures?

4 A None of them, but number two.

5 Q So number two, that's the picture of Horace Watts?

6 A Yes.

7 Q He's the only person in that group that you
8 personally know?

9 A Yes.

10 Q Would you agree with me, and just look at the
11 pictures, that number two is blurrier than the other
12 pictures?

13 A This picture is not blurry.

14 Q Number two is not blurry. I can take those back if
15 you want.

16 Ms. Cleckley, do you remember giving a written
17 statement in the case?

18 A Yes.

19 Q And you remember signing it?

20 A Yes.

21 Q And you remember you told the officer everything that
22 happened, right?

23 A Yes.

24 Q Now, you talked to them that night, the night that
25 this happened, right?

1 A Yes.

2 Q And that was two and half years ago, right?

3 A Yes.

4 Q Okay. I'm showing you this, this is a copy of your
5 statement, right?

6 A Yes.

7 Q Is that your signature down there?

8 A Yes.

9 Q Okay. I'm going to read these highlighted portions
10 and I want you to look along with me and tell me if read
11 this correctly. This is the question --

12 MS. NICKLES: Objection, Your Honor.

13 MR. RUFFIN: You want us to approach?

14 THE COURT: Sir?

15 MR. RUFFIN: Can I speak from my spot?

16 THE COURT: Can you do what?

17 MR. RUFFIN: Can I respond to her objection?

18 THE COURT: What's the basis for the objection?

19 MS. NICKLES: Your Honor, I believe he's trying to --
20 I believe he's improperly using the statement by reading
21 it to her.

22 THE COURT: All right. I sustain the objection.

23 MR. RUFFIN: Your Honor, it's a prior inconsistent
24 statement.

25 THE COURT: I don't know if it is or isn't, but the

1 manner in which you attempted to establish that was
2 improper.

3 BY MR. RUFFIN:

4 Q Ms. Cleckley, will you read that highlighted portion
5 for me?

6 MS. NICKLES: Objection.

7 THE COURT: The objection is overruled.

8 BY MR. RUFFIN:

9 Q You can read just the highlighted portions.

10 A Did you see a gun?

11 No, but I heard it.

12 Did you see who shot?

13 No.

14 Q That's your signature at the bottom, right?

15 A Yes.

16 Q So that's what you told the police the night that
17 this happened, right?

18 A (There was no response.)

19 Q Is that right?

20 A Yes.

21 MR. RUFFIN: No further questions.

22 THE COURT: Any redirect?

23 MS. NICKLES: Just briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. NICKLES:

1 Q Ms. Cleckley, Mr. Ruffin spent a long time asking
2 you who was in the front yard, who was in the backyard
3 and who was where. When you -- when these two males were
4 running at your house shooting, did you stop and look and
5 take an inventory of where every single person was?

6 A No.

7 Q What did you do?

8 A I started running.

9 Q He asked you a lot about the time of the shooting.
10 You told him it was still daylight. When these two people
11 were running toward your house, holding guns, shooting,
12 did you stop and look at your watch?

13 A No.

14 Q What did you do?

15 A Ran in the house.

16 Q I believe the statement he's referring to that you
17 gave to the police, that was a pretty brief statement,
18 right?

19 A Yes.

20 Q Two pages?

21 A (The witness nodded head.)

22 Q Did you write down every single thing that you knew
23 from that night?

24 A Not everything.

25 Q He also asked you about picture number two, asked you

1 a lot about if this was blurry or not. What do you see in
2 this picture?

3 A It's not blurry.

4 Q And who is in the picture?

5 A Horace Watts.

6 Q Do you have any doubt in your mind?

7 A That's him.

8 MS. NICKLES: Beg the Court's indulgence.

9 (Pause.)

10 MS. NICKLES: No further questions. Thank you.

11 THE COURT: Recross?

12 MR. RUFFIN: May it please the Court?

13 RECROSS-EXAMINATION

14 BY MR. RUFFIN:

15 Q Investigators show you all these pictures one at a
16 time, right? Look at picture number one, right? You
17 looked at picture number two, right?

18 A Yes.

19 Q You're telling me that number two is not blurrier
20 than number one, right?

21 A It's not.

22 Q That's what you're saying? They just look the same
23 to you? Number one is just as clear as number two, that's
24 what you're saying, right?

25 A No.

1 Q So what are you saying then? Are you saying number
2 two is a clear picture?

3 A Number two is a clear picture.

4 Q Number two is blurrier, right?

5 MS. NICKLES: Objection, asked and answer.

6 MR. RUFFIN: I'll move on, Judge.

7 BY MR. RUFFIN:

8 Q The night that this happened, you talked to the
9 police, right?

10 A Yes.

11 Q Today, we're two and a half years later, right?

12 A Yes.

13 Q You told the police that night that you didn't see
14 anybody with a gun, right? That's what you told them, you
15 remember that?

16 A Yes.

17 Q You also told them that you did not see anyone shoot
18 a gun, right?

19 A Yes.

20 MR. RUFFIN: No further questions.

21 THE COURT: You may step down, ma'am.

22 All right. Ladies and gentlemen, we'll recess now
23 until 9:30 tomorrow morning. Please do not discuss the
24 case. Have a good evening.

25 (WHEREUPON, the jury left the courtroom at 5:45

1 p.m.)

2 THE COURT: All right. Anything else today?

3 MR. POTTS: Nothing from the State.

4 MR. RUFFIN: Nothing from us, Your Honor.

5 THE COURT: All these exhibits that y'all said you
6 were going to review and agree to have marked and all, how
7 many of them have y'all had marked?

8 MR. POTTS: We're still getting them all marked, Your
9 Honor. We have stickers.

10 THE COURT: So do you plan to offer them one by one
11 or -- as you've done up to this point?

12 MR. POTTS: Yes, in the same manner we've done up to
13 this point as for the photographs.

14 THE COURT: But if you've agreed to them being
15 admitted, except for these autopsy photos, why don't you
16 get them all marked and admitted?

17 MR. POTTS: We will do that right now, Your Honor.

18 THE COURT: Okay. All right.

19 We'll see everyone tomorrow morning.

20 MR. POTTS: Thank you, Your Honor.

21 (WHEREUPON, State's Exhibit Nos. 35 through 38 and
22 41 through 109 were marked for identification only.)

23 (WHEREUPON, the proceedings were adjourned for the
24 day.)

25 TUESDAY, FEBRUARY 7, 2017

1 THE COURT: Any matters before the jury comes in?

2 MR. POTTS: Yes, Your Honor. After going through the
3 photos with Defense counsel, we'll just go ahead and admit
4 State's Nos. 35 to 109 and then 148 to 170.

5 THE COURT: Any objection to those exhibits?

6 MR. RUFFIN: No, Your Honor.

7 THE COURT: They're admitted without objection.

8 (WHEREUPON, State's Exhibit No. 148 through 170
9 were marked for identification only.)

10 (WHEREUPON, State's Exhibit Nos. 35 through 109
11 and 148 through 170 were admitted into evidence.)

12 THE COURT: Anything further?

13 MR. POTTS: Your Honor, the Defense and I are still
14 working on discussions with the phone calls, but
15 otherwise, I think we are ready to proceed.

16 THE COURT: All right. Bring in the jury.

17 (WHEREUPON, the jury returned to the courtroom at
18 9:41 a.m.)

19 BAILIFF: The jury's present, Your Honor.

20 THE COURT: All right. Good morning.

21 Next witness.

22 MR. ARANT: Your Honor, the State would call Captain
23 Rob Salley to the stand.

24 Thereupon;

25 ROBERT SALLEY,

1 after having been duly sworn, testified as follows:

2 THE CLERK: Please have a seat in the witness stand
3 and state your full name for the record and please spell
4 your last name.

5 THE WITNESS: Robert Marvin Salley, Jr., last name
6 S-A-L-L-E-Y.

7 DIRECT EXAMINATION

8 BY MR. ARANT:

9 Q Morning, Captain Salley.

10 A Good morning.

11 Q Where are you currently employed at?

12 A Richland County EMS.

13 Q And what is your current position with Richland
14 County EMS?

15 A Paramedic.

16 Q And I notice you have the title of captain. How long
17 have you been an EMS or EMT worker?

18 A Seventeen years.

19 Q What capacities have you worked with EMS?

20 A I started out with EMS as an EMT basic and then I
21 went through paramedic school and have been a paramedic
22 for roughly 15 years.

23 Q Is there a lot of training that goes with that?

24 A Yes, sir.

25 Q I'm going to bring your attention to July 12th, 2014.

1 Do you have a copy of your report from that day?

2 A Yes, sir.

3 Q And did you have an occasion to respond to [REDACTED]

4 [REDACTED] --

5 A Yes, sir.

6 Q -- on that day?

7 A Yes, sir.

8 Q Can you tell the jury what you responded to and what
9 you found?

10 A We were responding to a GSW, which is gunshot wound.
11 We arrived on scene and I found Mr. Johnson in a vehicle,
12 that he presented with a GSW to his left axillary region.
13 We immediately began to treat and transport Mr. Johnson to
14 Richland.

15 Q I know this is a long time ago, a few years ago, do
16 you recall what his condition was at that time? Was he
17 stable?

18 A Yes, sir, he was stable.

19 Q Was he speaking a lot?

20 A Yes, he was talking.

21 Q Okay. Now, when you're administering this case to
22 him, was that your main goal, just to administer care?

23 A That's -- yes, sir.

24 Q Okay.

25 A To provide medical treatment.

1 Q And I think you noted he was transported to the
2 hospital?

3 A Yes, sir.

4 Q Who else was on scene with you?

5 A Columbia Police Department and Lieutenant Ogden.

6 Q Okay. And you didn't notice any weapons on that --
7 on the victim you were attending to?

8 A No, sir.

9 Q Did you happen to attend any other victims that day?

10 A No, sir.

11 Q Okay.

12 MR. ARANT: Beg the Court's indulgence.

13 BY MR. ARANT:

14 Q You just -- clear up one thing for us, the left
15 axillary region, can you just tell the jury what that is
16 and where that's located on the body?

17 A The left upper part of the chest area (indicating).

18 Q Okay. So that would have been a gunshot wound to the
19 chest area?

20 A Right, the axillary is like your armpit, so it would
21 be in this general area (indicating).

22 Q Okay. And what kind of, I guess, measures did y'all
23 do on the scene?

24 A When you have a -- when you're -- a patient is shot
25 in the chest, we're worried about their lung sounds. And

1 we have been taught to put an occlusive dressing, which is
2 like a Vaseline-type gauze, over that hole to be able to
3 cover that up and assist them with their breathing.

4 And according to the reports, that's what I did, is I
5 applied this dressing there and went ahead and started an
6 IV, which is per protocol, and put him on a monitor which
7 does the blood pressure, shows me his pulse oximetry,
8 which is his O2 levels and his heart rate. And then we
9 just monitored him while we transported to Richland.

10 MR. ARANT: Thank you, Captain Salley. No further
11 questions.

12 MR. KRZYSTON: Thank you, Your Honor, may it please
13 the Court?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. KRZYSTON:

17 Q Captain Salley, what time did you arrive on scene at
18 Magnolia Street?

19 A Arrived at 2051.

20 Q So that's, for normal people, 8:51?

21 A Yes, sir.

22 Q Okay. Cool. And when you got there, about how many
23 police units were on scene?

24 A I have no idea.

25 Q Was it more than one? One?

1 A I don't -- it seems that there was more than one, but
2 as far as giving you a particular number --

3 Q No, that's cool.

4 A Okay.

5 Q Was the crime scene corded off and crime taped? Was
6 there a scene established that you remember?

7 A I don't remember.

8 Q You don't --

9 A I don't recall there being a crime scene. I think we
10 were there relatively quick and I don't know that they had
11 time to establish that yet.

12 Q And you didn't see any traffic cones on the ground
13 kind of around?

14 A No, sir.

15 Q And when you went out there, you saw a bunch of
16 people kind of in and around the crime scene, correct?

17 A I focused primarily on this vehicle. I didn't notice
18 anything beyond where my patient was.

19 Q Okay. So you didn't notice -- you don't pay
20 attention to the size of the crowd when you get out there?

21 A I do for our safety, but once I determined that the
22 scene was relatively safe and under control, my primary
23 focus was to get Mr. Johnson --

24 Q Mr. Johnson stabilized?

25 A Yes, sir.

1 Q But you did note that people were out there wandering
2 around?

3 A Yes, sir.

4 Q But you felt relatively safe?

5 A Yes, sir.

6 MR. KRZYSTON: Thank you. No further questions.

7 THE WITNESS: Okay.

8 THE COURT: Anything further?

9 MR. ARANT: Nothing from the State, Your Honor.

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

11 MR. ARANT: The State calls Lieutenant Ogden.

12 Thereupon;

13 BRITTANY MANUEL OGDEN,

14 After having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. ARANT:

17 Q Morning, Lieutenant. If you could just please state
18 your full name for the record.

19 A Brittany Manuel Ogden.

20 Q Lieutenant Ogden, where are you currently employed
21 at?

22 A Richland County Emergency Services.

23 Q And how long have you been employed at Richland
24 County Emergency Services?

25 A Off and on, about 27 years.

1 Q And have you been there in several capacities?

2 A Yes, sir.

3 Q Can you just tell the jury briefly your history
4 there?

5 A Initially, I started as an EMT, paramedic
6 certification. I worked my way up through the ranks to
7 assistant shift supervisor, which I currently hold now.

8 Q And back in July of 2014, what was your position
9 then?

10 A It was a lieutenant then as well.

11 Q Okay. I'm going to put you on July 12th, 2014. Did
12 you have an occasion to respond to a shooting?

13 A Yes, sir.

14 Q Can you tell us a little bit about that?

15 A The captain and I were in one of the pickup trucks
16 riding through town and a gunshot wound call came out.
17 They responded to the unit. So whenever we have
18 significant calls such as that, the supervisors respond as
19 well.

20 Q And can you tell the jury who the captain was at that
21 time?

22 A Captain Rob Salley.

23 Q And once you got to the scene, what did you find?

24 A Chaos. We got there relatively quick. I mean, it
25 was -- there was some semblance of control, but not very

1 much, you know what I mean? There were still people
2 milling about. As far as we knew, we only had one patient
3 and then we were told there was a second one. So Captain
4 Salley stopped with the first patient and I went to the
5 second patient.

6 Q And what did you find at the second patient?

7 A I found a gentleman laying on his back, obvious
8 gunshot wound to his chest, right chest, wasn't breathing.
9 So I grabbed my kit and decompressed his right chest in
10 hopes to reestablish his breathing. But that didn't work,
11 so we started bagging him or breathing for him as best we
12 could.

13 Q Okay. Is that what you mean by bagging?

14 A Yes.

15 Q What happened after that?

16 A Put occlusive dressings on his chest and everything
17 and attempted to stabilize and waited for the unit to get
18 there. Then we packaged him up, put him in the truck and
19 I wasn't in the ambulance on the way to the hospital.

20 Q Okay. And what did -- when you arrived on a scene
21 such as this, what is your main goal?

22 A Find out how many patients we have.

23 Q Okay.

24 A Initially, scene safety, make sure it's okay for us
25 to actually get out of the truck and then determine how

1 many patients we have.

2 Q You testified earlier there were two patients?

3 A Yes.

4 Q And I believe you said you went to work on the second
5 one?

6 A Yes.

7 MR. ARANT: Beg the Court's indulgence.

8 (Pause.)

9 MR. ARANT: I don't have any further questions.

10 CROSS-EXAMINATION

11 BY MR. RUFFIN:

12 Q Hey, Lieutenant Ogden, how you doing?

13 A Good. How about yourself?

14 Q I'm good. So when you were first got there, you said
15 it was complete chaos?

16 A To me, it was chaos. I mean, there was a lot of
17 people there.

18 Q And one of the things that y'all worry about, you
19 want to make sure that you and your EMS workers are safe
20 when you get there, right?

21 A Correct.

22 Q When you first arrived, was -- did you have a concern
23 about your safety at first?

24 A I been doing this a long time, it takes a lot to make
25 me nervous, but no, not really.

1 Q Okay. Was there a crime scene established yet?

2 A Not that I recall.

3 Q And there were maybe only a couple other police
4 officers on the scene at that point, do you remember?

5 A Two, three, maybe.

6 Q Okay.

7 A I mean, it all transpired rather quickly, so, you
8 know, resources hadn't had enough time to get there.

9 Q Right. Right. And there's still people kind of
10 walking -- are there people near where Mr. Lewis was --

11 A Yes.

12 Q -- lying down?

13 A Yes.

14 Q There was people around him?

15 A There were. When I walked up to him, everybody kind
16 of disbursed to let me do my thing.

17 Q And were there people in the backyard, do you
18 remember?

19 A Backyard, I don't recall.

20 Q You don't recall, okay. On the street, do you
21 remember?

22 A Yes, sir.

23 Q There were people in the street?

24 A Yes, sir.

25 Q You said that Mr. Lewis, he was lying on his back?

1 A Yes, sir.

2 Q And his feet would have been facing toward the
3 street?

4 A Correct.

5 Q Do you remember?

6 A Correct.

7 Q So your initial thought was there was a gunshot wound
8 to the chest?

9 A Judging -- based on my experience and judging by the
10 hole that was in his chest, it looked like an exit wound.
11 I mean, it was just that --

12 Q I thought you just said on direct that -- you
13 described it as a gunshot wound to the chest?

14 A Yes, sir -- initially, all I saw was just a gunshot
15 wound to the chest.

16 Q Okay. So that's what you were operating under?

17 A Yes. Correct.

18 MR. RUFFIN: No further questions.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. ARANT: ATTORNEY:

22 Q Why don't y'all wait until crime scene is put up?

23 A Patients come first.

24 MR. ARANT: No further questions.

25 THE COURT: Anything further?

1 MR. RUFFIN: No, Your Honor.

2 THE COURT: Thank you, sir.

3 THE WITNESS: All right.

4 MR. POTTS: The State calls Terrell Threatt.

5 Thereupon;

6 TERRELL THREATT,

7 after having been duly sworn, testified as follows:

8 THE COURT: All right. Have a seat.

9 DIRECT EXAMINATION

10 BY MR. POTTS:

11 Q Good morning, Mr. Threatt. Could you say your name
12 for the record, please?

13 A Terrell Threatt.

14 Q Could you spell it for the court reporter?

15 A T-E-R-R-E-L-L, T-H-R-E-A-T-T.

16 Q Thank you, Mr. Threatt. Tell the jury a little bit
17 about yourself. How old are you?

18 A Twenty-one.

19 Q What are you doing nowadays?

20 A I'm working at Wendy's.

21 Q You have to speak up a little bit, sir.

22 A Oh, working at Wendy's.

23 Q You're working at Wendy's?

24 A Uh-huh.

25 THE COURT: Solicitor, you know, the witnesses are

1 really -- you're asking the questions, but they're giving
2 testimony to the jury, so if you don't mind moving your --
3 toward the jury so the jury can look at -- face the jury
4 so they can hear him better.

5 MR. POTTS: Certainly, Your Honor.

6 BY MR. POTTS:

7 Q All right, Mr. Threatt, you're working at Wendy's?

8 A Yes, sir.

9 Q How long you been working there?

10 A I just started about a week ago.

11 Q Okay. Now, I'm going to take you back to July 12th
12 of 2014, okay? Do you remember what you were doing that
13 day?

14 A I was going to my auntie's, she had a function for
15 her birthday.

16 Q Who's your aunt?

17 A April Cleckley.

18 Q April Cleckley?

19 A Uh-huh.

20 Q Now --

21 THE COURT: Mr. Threatt, pull that mic the other way,
22 toward the jury over there. Lift it up some, pull it to
23 you. Speak up. I want to hear what you're saying.

24 Go ahead.

25 BY MR. POTTS:

1 Q So tell me who your auntie is.

2 A April Cleckley.

3 Q Okay. And what's your relationship to her? Describe

4 --

5 A That's my auntie-in-law. That's my uncle's wife.

6 Q Who's your uncle?

7 A Jerry Lewis.

8 Q Jerry Lewis. Now, why did you say you were there
9 that day?

10 A It was a family function.

11 Q And what function was it?

12 A April Cleckley's birthday.

13 Q It was her birthday?

14 A Uh-huh.

15 Q And who's house were you at?

16 A April Cleckley's house.

17 Q And that's at [REDACTED]?

18 A Yes, sir.

19 Q Okay. Now, what kind of party was this? What were
20 y'all doing?

21 A Playing cards, dominoes, grilling out.

22 Q And who was on the grill?

23 A Isaac Lewis.

24 Q And who's Isaac Lewis to you?

25 A My uncle.

1 Q You have a name for him?

2 A Uncle Ike.

3 Q Uncle Ike?

4 A Uh-huh.

5 Q What were you doing that day?

6 A I just had got there.

7 Q You just got there?

8 A Yeah.

9 Q Okay. Now, when you say you just got there, what
10 happened right after you got there?

11 A I spoke to everyone. Talked to family.

12 Q Uh-huh. You talked to your family?

13 A Uh-huh.

14 Q Did you -- were y'all -- did you play any cards?

15 A Yes.

16 Q You played some cards?

17 A Dominoes.

18 Q You played some dominoes?

19 A Yeah.

20 Q Okay. How long you were there that day?

21 A I was there, I'd say, about three hours.

22 Q Okay. Did anything happen right before you left?

23 A Yeah, me and my girlfriend had got into an
24 altercation.

25 Q So y'all got into -- you say altercation, you talking

1 about y'all had words or y'all got physical?

2 A We was arguing.

3 Q Y'all got in an argument?

4 A Uh-huh.

5 Q What was your argument about?

6 A Something petty.

7 Q Something petty?

8 A Uh-huh.

9 Q All right. You got to say your words a little better
10 for me, okay?

11 A Oh, yes, sir.

12 Q Do you remember what it was about?

13 A No, sir.

14 Q Okay. So what happened when you and your girlfriend
15 got into a fight?

16 A Once we got in an argument, then my cousin came and
17 then they got into -- my cousin and my girlfriend, they
18 got to fighting.

19 Q Who's your cousin?

20 A Julie Hinton.

21 Q Julie Hinton?

22 A Uh-huh.

23 Q Then what happened?

24 A They broke it up, seen Malik walking up the street.

25 Q Now, tell me who Malik is.

- 1 A He was a friend.
- 2 Q How do you know Malik?
- 3 A School.
- 4 Q What school did you go to?
- 5 A C.A. Johnson.
- 6 Q Did he go to school with you?
- 7 A Yes, sir.
- 8 Q How long have you known him?
- 9 A Probably about two years.
- 10 Q Two years at that point?
- 11 A Uh-huh.
- 12 Q Okay. Where did he live?
- 13 A I don't know.
- 14 Q Okay. How often did you see Malik?
- 15 A I seen him like every other day. Like every time I
16 would go to my auntie's house, I see him walking up the
17 street and I would speak to him, like that.
- 18 Q So every time you'd go to [REDACTED], you'd see
19 Malik?
- 20 A Yeah, most of time.
- 21 Q Not every time, right?
- 22 A Not every time.
- 23 Q But lots of time, you'd see Malik?
- 24 A Yes, sir.
- 25 Q Does Malik have any relatives?

1 A Yes, sir.

2 Q Does he have a brother?

3 A Sir?

4 Q Does he have a brother?

5 A Oh, yes, sir.

6 Q Did you ever see his brother?

7 A Yes, sir.

8 Q Who is his brother?

9 A Horace Watts.

10 Q How often did you see Horace Watts?

11 A Not too often. I seen Malik more than I seen Horace
12 Watts.

13 Q Now, Malik walked up to you after the altercation
14 between Julie and your girlfriend?

15 A Uh-huh.

16 Q What did he do?

17 A Now, I was telling him that it's a family
18 altercation, just gone ahead and leave. And then he kept
19 walking, so I was walking to him. Then he hit me and then
20 we got into it. They broke it up, he went that way -- he
21 left and I went the other way.

22 Q Okay. So describe in a little bit more detail for
23 us, okay? So Malik walks up. Does he say anything to
24 you?

25 A No, we like -- like, he where you at, I'm where I'm

1 at. We yelling at each other. I'm like, Man, go ahead,
2 go ahead, just go ahead and leave. He was like, No, man,
3 no. I was like, Man, go. So he kept walking and he just
4 hit me.

5 Q So he hit you, swung at you?

6 A Yes.

7 Q Did you hit him back?

8 A Yes, sir.

9 Q Okay. And then you said it got broken up. Who broke
10 up the fight?

11 A It was too many people trying to break it up. I
12 couldn't tell you who it was, but I know they was trying
13 to break up the fight.

14 Q So a bunch of people got between you and him and
15 broke up the fight?

16 A Yes, sir.

17 Q So once the fight was over, where did you go?

18 A I went home.

19 Q You went home?

20 A Yes, sir.

21 Q Where do you live?

22 A [REDACTED].

23 Q Did you walk home?

24 A Yes, sir.

25 Q Okay. Did you -- where did Malik go, did you see

1 him?

2 A Yeah, when he was walking off. I didn't see where he
3 went after that.

4 Q Okay. Did you say anything to him?

5 A No, sir.

6 Q Did he say anything to you?

7 A No, sir.

8 Q Okay. At that point, you went home?

9 A (The witness nodded head.)

10 MR. POTTS: Beg the Court's indulgence, one second.

11 BY MR. POTTS:

12 Q And we mentioned Malik's brother, Horace. Was
13 Horace out there at all?

14 A No, sir.

15 Q So when you were out there, he was not out there?

16 A No, sir.

17 MR. POTTS: Thank you. No further questions.

18 MR. COMISH: Thank you, Your Honor, may it please the
19 Court.

20 CROSS-EXAMINATION

21 BY MR. COMISH:

22 Q Good morning, Mr. Threatt?

23 A Good morning.

24 Q How are you this morning?

25 A Fine.

1 Q Good. You testified you were there for a birthday
2 function?

3 A Yes, sir.

4 Q Were there parties over there or social functions
5 over there all the time?

6 A I mean, everyone go over there. That's my uncle's
7 house. Everyone come around and speak, sit over there.

8 Q What do y'all do over there?

9 A Play basketball, cards, work on cars, stuff like
10 that.

11 Q How often do y'all have parties over there?

12 A Whenever it's a celebration, I guess.

13 Q But how often do you have celebrations, once a week,
14 twice a week?

15 A Yeah, probably about once a week.

16 Q About once a week?

17 A Uh-huh.

18 Q Y'all grill out?

19 A Yes, sir.

20 Q Y'all play dominoes?

21 A Yes, sir.

22 Q Y'all play cards?

23 A Yes, sir.

24 Q Just have a good time?

25 A (The witness nodded head.)

1 Q All right. You testified earlier that you had gotten
2 into an altercation with your girlfriend?

3 A Yes, sir.

4 Q And that your cousin came up and got into a fight
5 with your girlfriend?

6 A (The witness nodded head.)

7 Q Was that fight physical in nature?

8 A (The witness nodded head.)

9 Q Can you describe that fight a little bit more for me?

10 A Well, me and my girlfriend was arguing, so she
11 slapped me, then my cousin said stop hitting me like that,
12 stop hitting my little cousin like that. They got to
13 arguing and they got to fighting. Broke that up.
14 Everybody came to the front of the road then.

15 Q Okay.

16 A So everybody --

17 Q Do you recall who all broke up the fight between your
18 cousin and your girlfriend?

19 A No, sir.

20 Q Okay. Was it like a bunch of folks just crowding in,
21 something like that?

22 A Yes, sir.

23 Q Okay. And that's the point at which Malik walked up,
24 is that accurate?

25 A Uh-huh.

1 Q Do you think Malik saw your cousin assaulting your
2 girlfriend?

3 A No, sir.

4 Q No?

5 A (The witness shakes head.)

6 Q Okay. So Malik walks up, does he say anything to
7 you?

8 A (The witness shakes head.) I said something to him
9 first.

10 Q Oh, okay. What did you say to him?

11 A It's a family altercation, so leave.

12 Q You used those exact words?

13 A Yeah.

14 Q What did he do when you used those words?

15 A Kept walking up.

16 Q Okay. Then what happened?

17 A Then when he kept walking, I was walking towards him
18 and that's when he hit me, then I hit him back.

19 Q So y'all were just sort of walking straight at each
20 other?

21 A Yeah, he was coming from, I think, Ervin Street.

22 Q Uh-huh.

23 A He was coming from that way and we at [REDACTED] in the
24 road. And I see him walking up, I seen him walking. I
25 was like, just keep walking, man, just keep walking.

1 Q Okay.

2 A He was like no.

3 Q So you didn't want him butting into your business,
4 did you?

5 A No, sir.

6 Q I got you. After he punched you and you hit him
7 back, you said everybody came and broke up the fight?

8 A (The witness nodded head.)

9 Q About how many people was that?

10 A It was like, probably like 10 people.

11 Q Okay.

12 A Trying to break it up.

13 Q Now, did they break up the fight or did they just
14 beat Malik down?

15 A They broke up the fight.

16 Q Okay.

17 A I stopped fighting.

18 Q Excuse me?

19 A I had stopped fighting when they broke it up.

20 Q You had stopped fighting, but what did Malik do?

21 A I don't know. When they broke it up, I just seen him
22 -- next time I seen him, he was walking off.

23 Q So you didn't actually see Malik when they came and
24 broke it up? Were they surrounding Malik?

25 A They came in between us.

1 Q Okay. I got you. I understand. And then Malik
2 walked off?

3 A (The witness nodded head.)

4 Q And at that point, you left?

5 A Yes, sir.

6 Q Okay.

7 MR. COMISH: Beg the Court's indulgence, just one
8 second.

9 (Pause.)

10 MR. COMISH: Mr. Threatt, no further questions.

11 THE COURT: Anything else?

12 MR. POTTS: No, Your Honor.

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

14 Next witness.

15 MR. POTTS: The State calls Jamichael Lewis.

16 THE COURT: If y'all would step to your jury room for
17 a few minutes.

18 (WHEREUPON, the jury left the courtroom at 10:07
19 a.m.)

20 (WHEREUPON, a short break was taken.)

21 THE COURT: Bring the jury in.

22 (WHEREUPON, the jury returned to the courtroom at
23 10:13 a.m.)

24 BAILIFF: The jury's present, Your Honor.

25 THE COURT: All right. Next witness.

1 MR. POTTS: State calls Jamichael Lewis.

2 Thereupon;

3 JAMICHAEL LEWIS,

4 after having been duly sworn, testified as follows:

5 THE CLERK: Thank you. Please have a seat in the
6 witness stand and state your full name for the record.

7 THE WITNESS: Jamichael Lewis.

8 DIRECT EXAMINATION

9 BY MR. POTTS:

10 Q Spell your name for the court reporter, Mr. Lewis.

11 A J-A-M-I-C-H-A-E-L, L-E-W-I-S.

12 Q How you doing today, Mr. Lewis?

13 A I'm doing all right.

14 Q Just pull it a little closer to you, a good spot for
15 you.

16 What is your relationship with Isaac Lewis?

17 A He was my great uncle.

18 Q Your great uncle?

19 A Yes.

20 Q How often did you see him?

21 A Everyday.

22 Q Tell me a little bit about what y'all would do.

23 A We would go get lawn mowers, fix them, do yard work
24 and just go around just doing a lot of yard work.

25 Q So describe how that process would work.

1 A How the process worked?

2 Q Yeah, describe how he would take you out and do the
3 yard work.

4 A Oh, we just fix up lawn mowers, go out looking for
5 yards to do and go on from there.

6 Q Now, can you tell me about what happened on -- do you
7 remember July 12th, 2014?

8 A Yes, sir.

9 Q Okay. What were you doing that day?

10 A Well, I was mingling with the whole family.

11 Q Why were you mingling with the whole family?

12 A It was a family event. It was a party.

13 Q Do you remember who the party was for?

14 A For my Auntie April.

15 Q And what kind of party was it?

16 A It was her birthday party.

17 Q So who was there at the party?

18 A A lot of my family.

19 Q What was the age range of people at the party?

20 A From -- it was a lot of little kids and a lot of
21 adults. I don't really know the age offhand.

22 Q What time did you get there that day?

23 A Like 10:30 to 11:00.

24 Q Okay. And what did you do? What were you doing at
25 the party?

1 A Just hanging with the family.

2 Q Just talking with your family?

3 A Yeah.

4 Q Would you say most of your family was there?

5 A Yes, most of them was there.

6 Q How many people was it at the max?

7 A I'd say about 30, 30 plus.

8 Q Thirty plus?

9 A (The witness nodded head.)

10 Q Okay. Now, were you there for the fight that
11 happened that day?

12 A Yeah, I was there when it happened.

13 Q Okay. Tell me little bit about what happened.

14 A All right. My cousin and his girl was arguing.

15 Q Who's your cousin?

16 A Terrell, Terrell Threatt. And they was just arguing
17 back and forth. And Malik come up and he was like, What's
18 going on? And my cousin was like, It was a family -- it's
19 a family argument and stuff like that. And then he was
20 like --

21 Q And you say he was like, who's he?

22 A Then Malik was like, I want to get my rank off, too.
23 And he was like no --

24 MR. RUFFIN: Objection, Your Honor, hearsay.

25 THE COURT: Objection is overruled.

1 MR. POTTS: Thank you:

2 BY MR. POTTS:

3 Q Continue.

4 A And Terrell was like, No, man, this like my family
5 right here. I don't know the words that was said after
6 that, but I Malik swung on Terrell.

7 Q Then what did Terrell do?

8 A He hit him back.

9 Q And once that happened, what did you do?

10 A I went to help break it up.

11 Q All right.

12 A Everybody went to help break it up.

13 Q And this is the second fight that happened in a few
14 minutes, right?

15 A Yeah.

16 Q Okay. How did you break it up?

17 A I was pulling Terrell back and everybody else pulling
18 Malik back. And a couple of us fall on the ground trying
19 to stop it. And we just broke it up and Malik went his
20 way and Terrell went home.

21 Q So Terrell left?

22 A Uh-huh.

23 Q And Malik left?

24 A Yeah.

25 Q Was anyone saying anything as they left?

1 MR. RUFFIN: Objection, Your Honor --

2 THE WITNESS: No.

3 MR. RUFFIN: -- hearsay.

4 MR. POTTS: The answer is going to be no, so it's not
5 hearsay.

6 THE COURT: You already know the answers to the
7 questions?

8 MR. POTTS: Well, he did answer it before Defense's
9 objection.

10 MR. RUFFIN: Your Honor, the question was what did
11 they say? Clearly, it's asking for hearsay.

12 BY MR. POTTS:

13 Q Did you hear anyone say anything as they left?

14 A No.

15 Q Okay. So after this fight, once it's broken up, what
16 did you do?

17 A I sat -- I went to the backyard, then I sat on the
18 front porch, came back and sat on the front porch.

19 Q Okay. What was happening in the backyard?

20 A Everybody was back there. My uncle was cooking --
21 well, getting ready to cook on the grill.

22 Q And your uncle being?

23 A Uncle Ike.

24 Q Okay. Where was most of the crowd?

25 A In the back some -- well, they was everywhere in the

1 yard, most -- it was just separated.

2 Q So you went to the backyard. Where did you go next?

3 A To the front porch.

4 Q Who was with you on the front porch?

5 A Me and Avery.

6 Q And who is Avery?

7 A Avery is a friend of the family.

8 Q You know his last name?

9 A No, not offhand.

10 Q Okay. And so just tell the jury a little bit about
11 what happened when you got to the porch.

12 A All right. I got to the front porch and we was
13 sitting there, me and Avery was sitting there talking and
14 a couple more of the family was in the front, too. And we
15 just heard gunshots. Everybody ran -- that was on the
16 side. Everybody ran to the back. But it was happening so
17 fast that me and Avery couldn't really run. We went -- we
18 didn't want to get hit by a stray bullet or whatever, so
19 we just sat back and hid behind the brick on the front
20 porch.

21 Q Did you see where the bullets were coming from?

22 A From down -- from down the road, like -- there was
23 coming from -- how can I explain it?

24 Q Coming from down the road?

25 A Yeah, they was coming from down the road.

1 Q Okay. Did you see anyone with guns?

2 A Not at first.

3 Q Okay.

4 A We just heard it, so we just stayed where we was.

5 And that's when it was getting closer and closer and

6 that's when I see Horace run in the yard shooting.

7 Q Okay. Now, you said Horace. How do you know Horace?

8 A I know him through my cousin, my cousin, Quan.

9 Q Okay. And who's Quan? Is that Daquan?

10 A Yeah, Daquan.

11 Q Okay. And what's his relationship to April?

12 A Oh, that's her son.

13 Q Okay. That's April's son?

14 A Uh-huh.

15 Q Now, how often did you see Horace?

16 A I ain't -- I seen him a lot. Most of the time in the
17 neighborhood, but he used to come to the house the
18 majority of the time.

19 Q Okay. Did y'all ever hang out together?

20 A Yeah, we played basketball and all together.

21 Q Okay. So you see him come into the yard. What was
22 he doing?

23 A Shooting.

24 Q And just tell the jury about what you saw from that
25 point on.

1 A He ran -- he came in the yard, point the gun at me
2 and he was like, Why y'all jump my brother? And we ain't
3 say nothing because we was shocked he was pointing the gun
4 at us. And he just ran past us and kept going in the yard
5 shooting.

6 Q And is there anything special about his gun?

7 A He had a red beam on it.

8 Q What was the red beam doing?

9 A It was daytime, I really couldn't --

10 Q Okay.

11 A I know it was a beam on it.

12 Q Did he point the gun at you?

13 A Yes.

14 Q How far away was he when he did this?

15 A He was from here to here, like almost could have been
16 like face to face.

17 Q So just a couple of feet then?

18 A Yeah.

19 Q Okay. Did you see Malik at all?

20 A Yeah.

21 Q Okay. How do you know Malik?

22 A Through my cousin, Quan.

23 Q Okay. Are they good friends?

24 A Yeah, they -- yeah, they was.

25 Q What was Malik doing during all of this?

1 A Still holding his gun like it ran out of bullets or
2 it jammed.

3 Q So describe to me -- and it might help if you step
4 down real quick. Then you can show the jury how he was
5 holding his gun.

6 A He was just holding it like this (indicating) and he
7 was messing with it, fiddling with it. I don't know what
8 he did after that.

9 Q Okay. Did he come into the yard?

10 A No.

11 Q So where was he standing the whole time?

12 A In front of the driveway.

13 Q Okay. You can sit back down.

14 A (The witness complied.)

15 Q Is there anything you can tell me about what Malik's
16 mouth looked like?

17 A He had a gold grill in his mouth.

18 Q Tell me what a gold grill is.

19 A Like gold teeth.

20 Q Something you kind of put over your teeth?

21 A Yeah.

22 Q Now, once Horace points the gun at you, he doesn't
23 shoot you, does he?

24 A No.

25 Q Did he pull the trigger at you?

1 A Huh-uh.

2 Q Describe to the jury what happens next.

3 A Then he kept shooting and that's when I seen my
4 cousin boyfriend, Ty, Tyrone, he fall out the car.

5 Q And what car is this?

6 A A blue Jeep. I think it was blue.

7 Q Blue SUV?

8 A Yes.

9 Q Where was that in relation to you?

10 A Huh?

11 Q Where was that in relation to you?

12 A Talking about where was it?

13 Q Yeah, how far away were you standing from that blue
14 car?

15 A I'd say about 20 feet away from it.

16 Q Okay. So what did you do when he fell out?

17 A I ran over there to help him up. While I'm going to
18 pick him up, Horace still shooting, but I got my back
19 turned to him at this time and he still shooting. I'm
20 trying to help Ty up, put him back in the car. And then
21 when I turned around and looked back, I see Horace running
22 out the yard and my uncle on the ground.

23 Q Okay. Did you hear any bullets in the direction that
24 Malik was standing?

25 A No.

1 Q Okay. All of the shooting you heard was from the
2 direction that you last saw Horace go?

3 A All the shooting.

4 Q All right. When Horace is leaving, where is he
5 leaving from?

6 A Where he was leaving -- he was leaving out the yard,
7 running out the yard through --

8 Q That little driveway area?

9 A Yeah, coming out the driveway and ran out the yard.

10 Q And where did you see Ike's body?

11 A On the side of the yard -- on the side of the
12 driveway where all the shooting was at.

13 Q Okay. So once -- so what did Malik do when Horace
14 left?

15 A Oh, they ran together.

16 Q They ran together. Which way did they run off?

17 A They ran down like going on Ervin Street.

18 Q Uh-huh.

19 A Then they turned the other way -- they turned -- they
20 went right on Ervin and ended up coming on Chestnut.

21 Q Did you follow them?

22 A No.

23 Q Did you see anyone follow them?

24 A No.

25 Q Okay. What happened -- describe to me kind of what

1 happened next?

2 A After all of that?

3 Q Yeah, after all of that.

4 A We was just trying to help my uncle to see if he was
5 alive or whatever, but there wasn't no -- we was just
6 trying to see if he was all right.

7 Q Okay. And so what happened with -- what happened
8 with Ty?

9 A I pulled Ty's shirt up to see where he was hit at and
10 he was hit in the side, but he was all right.

11 Q Okay. Did law enforcement arrive?

12 A (The witness nodded head.)

13 Q What about EMS?

14 A Huh?

15 Q What about emergency services?

16 A I think I was gone before the ambulance even came. I
17 was at headquarters.

18 Q Okay. So you went to headquarters?

19 A (The witness nodded head.)

20 Q And they talked to you a little bit?

21 A Yes, sir.

22 Q I'm going to show you what's marked State's Exhibit
23 No. 4. Look at that for me. Do you recognize what that
24 is?

25 A Yes, sir.

1 Q What is that?

2 A A picture of Horace Watts.

3 Q Okay. What's the whole thing together? Is that the
4 photo lineup they showed you?

5 A Yeah.

6 Q And what did they ask you about?

7 A They just asked me could I identify the shooter in
8 the --

9 Q In the photos?

10 A Yeah.

11 Q Did they tell you which one to pick out?

12 A No.

13 Q Did they say, you know, point out one a little
14 different from all the rest?

15 A No.

16 Q Okay. How did you decide which one to pick out?

17 A Because I knew who he was.

18 Q Okay.

19 A And I know who he is.

20 Q And which one did you select?

21 A I select picture five.

22 Q Picture five. And who is that a picture of?

23 A Horace Watts.

24 Q What did he do that day?

25 A Shot and killed my uncle.

1 MR. POTTS: At this time, Your Honor, I'd like to
2 offer into evidence State's Exhibit No. 4.

3 THE COURT: Any objection?

4 MR. RUFFIN: Yes, Your Honor, we'd renew our previous
5 objection.

6 THE COURT: Which is what?

7 MR. RUFFIN: The Neal V. Biggers hearing.

8 THE COURT: This witness identifies the Defendant as
9 someone who he knew and someone who he saw and his basis
10 for identifying the Defendant is based on that knowledge.
11 I overrule the objection.

12 MR. POTTS: Thank you, Your Honor.

13 (WHEREUPON, State's Exhibit No. 4 was admitted
14 into evidence.)

15 BY MR. POTTS:

16 Q So after you finished identifying who the shooter
17 was --

18 A Uh-huh.

19 Q -- do you remember going out with Investigator McCoy?

20 A Going out?

21 Q Do you remember telling him you knew where Horace
22 Watts lived?

23 A Yeah.

24 Q Okay. And did you take him to Horace's house?

25 A No.

1 Q Okay. Do you not recall specifically?

2 A Yeah, I really couldn't remember that, so.

3 Q Okay. Now, let me ask you this, at this time, you
4 have a pending charge in our office, correct?

5 A Yes, sir.

6 Q And that's for domestic violence second degree?

7 A Yes, sir.

8 Q Does that have anything whatsoever to do with your
9 testimony today?

10 A No, sir.

11 Q Have we even talked about that?

12 A No, sir.

13 Q At all?

14 A No, sir.

15 Q Before today?

16 A No, sir.

17 MR. POTTS: Thank you. No further questions. Answer
18 any questions they have for you.

19 THE COURT: Cross-examination.

20 MR. RUFFIN: Thank you, Your Honor, may it please the
21 Court.

22 CROSS-EXAMINATION

23 BY MR. RUFFIN:

24 Q Jamichael, what's going on? You do have a pending
25 charge, right, domestic violence second degree?

1 A Yeah.

2 Q You know you're looking at three years in prison for
3 that, right?

4 A Uh-huh.

5 Q So you could go to jail for three years for that?

6 A Yes, sir.

7 Q And they're the ones prosecuting you, right?

8 A Yes, sir.

9 Q Their office?

10 A Yes, sir.

11 Q So when you have court, you come up to this
12 courthouse?

13 A Uh-huh.

14 Q Okay. But that doesn't have anything to do with your
15 testimony, though?

16 A Nothing to do with it at all.

17 Q Okay. So you got to -- you got over to April's house
18 in the morning, right? Like 10:00, I think you said?

19 A 10:30, 11:00.

20 Q Okay. And there was a whole bunch of people? Were
21 there already a bunch of people there?

22 A Yes.

23 Q Okay. Were y'all playing games and stuff like that,
24 playing basketball?

25 A Yeah, prepping, getting stuff done.

1 Q Cooking food and stuff like that?

2 A Getting ready.

3 Q Okay. And it was a while later, like later on in the
4 afternoon, the evening when Terrell and Malik got in a
5 fight, right?

6 A Yeah.

7 Q And you saw that?

8 A Uh-huh.

9 Q You were in the front yard or on the porch or what?

10 A I was in the front.

11 Q Okay. Just standing out in the yard? There was a
12 bunch of people out there, I guess, at that time?

13 A Uh-huh.

14 Q Okay. And you said that you saw Malik -- or Terrell
15 was in an argument with his girlfriend?

16 A Yes, sir.

17 Q Was anybody else involved in that argument?

18 A No, sir.

19 Q So Julie Hinton wasn't involved in that argument?

20 A Not that I know of.

21 Q Okay. You were there and you were watching what was
22 going on?

23 A Yeah, but when I was there and watching it, I didn't
24 see her.

25 Q You didn't see Julie?

1 A I didn't see her at that time.

2 Q You know who she is, though?

3 A Yeah, that's my cousin.

4 Q Okay. That's your cousin, too?

5 A Uh-huh.

6 Q And you saw Malik walk up, right?

7 A Yeah.

8 Q And he and Terrell, I guess, exchanged words?

9 A Uh-huh.

10 Q And you're saying what you saw was Malik punch
11 Terrell?

12 A Malik punched Terrell and Terrell punched him back.

13 Q Like one punch each?

14 A Yeah, they got into it and that's what made us break
15 it up.

16 Q So it was more than -- I mean, it was a fight fight?

17 A Yeah.

18 Q Okay. Then a bunch of people kind of surrounded them
19 or what?

20 A Bunch of people came to break it up.

21 Q To get in between them?

22 A It was so many, most of us fell on the ground. But
23 when we broke it up, they went their separate ways.

24 Q Okay. And one of the things -- you kind of pulled --
25 did you pull Terrell off or were you grabbing Malik or

1 what?

2 A I was pulling Terrell.

3 Q Okay. And somebody else was pulling Malik back?

4 A Yeah.

5 Q Okay. And you said then both of them just walked
6 off?

7 A They went their separate ways.

8 Q And you went up on the porch -- or you went in the
9 backyard?

10 A I went to the backyard, came back to the front.

11 Q Right.

12 A Sat right there, me and Avery.

13 Q So you and Avery were sitting on the front porch?

14 A Yeah.

15 Q Is Avery in here right now?

16 A Yes, sir.

17 Q He's up there (indicating). Okay. Anybody else on
18 the porch with y'all?

19 A Yeah, it was lot of us, but me and him was sitting
20 beside each other the whole time. Everybody else was
21 standing and talking while we was there.

22 Q So there was -- when you say standing and talking,
23 you're talking like you're on the porch, there's people in
24 the front yard?

25 A Yeah, they was like in the front by the road.

1 Q Do you remember --

2 A And some in the driveway.

3 Q Say that again.

4 A Some in the driveway.

5 Q Okay. And some people were in the backyard. I guess
6 you couldn't see them?

7 A No, I couldn't.

8 Q Okay. Was April out there, April Cleckley?

9 A Not that -- I think she was in the front.

10 Q She was in the front?

11 A (The witness nodded head.)

12 Q Do you remember, was Paris Young out there?

13 A Paris?

14 Q Do you know Paris Young?

15 A Yeah.

16 Q Is he in here right now?

17 A Yeah.

18 Q Okay. He's in here, too?

19 A I think so.

20 Q So you know them?

21 A Yeah. I don't know where he was at that time.

22 Q What about Dominique Tucker, is he in here?

23 A No, he's not in here.

24 Q Okay. Do you remember if he was out there that day?
25 If he was out in the street or in the front yard, do you

1 remember seeing him?

2 A He came after all of the commotion. He came after
3 the fight.

4 Q Okay. After the fight between Terrell and Malik?

5 A Yeah.

6 Q Dominique came up?

7 A (The witness nodded head.)

8 Q And he was out in the street or do you remember?

9 A No, he wasn't standing out there. After all that
10 happened --

11 Q Okay.

12 A -- he came and he said, Horace said tell Quan -- he
13 said Malik said, Tell Quan I'm coming to shoot up his
14 family.

15 Q All right. So a few minutes after the fight, I
16 guess, maybe 30 minutes after the fight, you're sitting on
17 the porch and you start hearing gunshots?

18 A Yeah.

19 Q All right. Now, you couldn't see -- while you're
20 sitting on the porch at April's house and looking out to
21 the street -- like if you're on Magnolia Street and I'm
22 sitting on the porch, the driveway's to my right, right?

23 A (The witness nodded head.)

24 Q And there's a row of bushes right there --

25 A Uh-huh.

1 Q -- along the driveway; is that right?

2 A (The witness nodded head.)

3 Q And you're sitting on the porch and you look this way
4 (indicating), which would be sort of down Magnolia Street,
5 you can't really see the street from there, right?

6 A (The witness shakes head.)

7 Q I need you to answer out loud.

8 A No, I can't see the street.

9 Q You can't see the street?

10 A No.

11 Q Okay. So you said that you hear the gunshots, but
12 you didn't see anybody until they came around the corner?

13 A Yeah.

14 Q Okay. All right. One of the other things you talked
15 about was Tyrone Johnson?

16 A Uh-huh.

17 Q He's also your uncle or cousin?

18 A He was my cousin's boyfriend at that time.

19 Q Cousin's boyfriend. Okay, I got you. Now, he pulls
20 up in his car, which was a blue Explorer, right?

21 A Yeah.

22 Q Okay. And again, you're sitting on the porch looking
23 out to the street. He's pulls up right here, so the
24 driver's side of his car is facing you, right?

25 A Yeah.

1 Q Okay. Did you see Tyrone get out the car?

2 A No.

3 Q Or did he stay in the car?

4 A He was in the car.

5 Q He was in the car? He was driving?

6 A I think he was in the passenger seat after he pulled
7 up.

8 Q You think he was sitting in the passenger seat --

9 A When he pulled up -- well, the car was right there
10 for a second.

11 Q All right.

12 A I ain't see him get out the car, but I know he was in
13 the passenger seat.

14 Q Did you see him pull up?

15 A Yeah.

16 Q Was he in the driver's seat then?

17 A Yeah.

18 Q All right. And you did not see him get out of the
19 car?

20 A No, I really wasn't paying attention to all of that.

21 Q Okay. Okay. I'm just asking -- yeah, if you don't
22 remember --

23 A I wasn't paying to none of that.

24 Q All right. So you don't remember seeing him get out
25 of the car or anything like that?

- 1 A No.
- 2 Q You're hearing gunshots?
- 3 A Yeah.
- 4 Q But you do remember seeing him fall down, right?
- 5 A Yes.
- 6 Q Do you remember what side?
- 7 A Out of the driver's side.
- 8 Q He fell on the ground by the driver's side of the
- 9 car?
- 10 A Yeah. Yeah.
- 11 Q And at that point, you said Horace came in the yard
- 12 and Malik, I guess, was in the street?
- 13 A Malik didn't come in the yard. Horace came in the
- 14 yard shooting.
- 15 Q Uh-huh. And he pointed a gun at you?
- 16 A Pointed it at me and Avery.
- 17 Q Anybody else on the porch?
- 18 A No, everybody had ran. Me and Avery couldn't -- we
- 19 didn't have the chance to run.
- 20 Q You said you kind of hid behind like a brick --
- 21 A Yeah, sitting down still and we just stayed right
- 22 there --
- 23 Q All right.
- 24 A -- and hide our heads behind the bushes.
- 25 Q But he still was able to get the beam on your chest?

1 A No, I don't know if he put the beam on me, but I know
2 he point the gun at me.

3 Q All right. But he didn't shoot at you?

4 A No.

5 Q Then he ran past you?

6 A Yeah, and start shooting again, just kept shooting,
7 kept shooting.

8 Q And kind of when he ran past you in the driveway, you
9 ran out to Tyrone Johnson, right?

10 A Uh-huh.

11 Q And that was on the driver's side of the car, I
12 guess, he was on the ground?

13 A Yeah, he was on the ground.

14 Q All right. Did you pick him up?

15 A Yeah, I picked him up and helped him to the truck.

16 Q Okay. Okay. To get on the other side, I guess?

17 A Yeah.

18 Q And you said you had your back turned?

19 A I had my back turned to Horace.

20 Q And you're hearing gunshots?

21 A I'm still hearing shooting. So when I turned around
22 to look back, I see him running past me to leave out the
23 yard and my uncle was on the ground dead.

24 Q And you saw Malik and Horace, you saw them running
25 off together?

1 A Yeah, I saw them running off.

2 Q Which direction did they go?

3 A They went down -- all right, they went down this way
4 (indicating).

5 Q All right.

6 A Like going toward Ervin. They turned left, but they
7 turn back around and went right, then they went that way
8 and came out on Chestnut.

9 Q So I'm sorry, I'm trying to get it straight. When
10 you say they turned left, you mean coming out of the
11 driveway to the left?

12 A No, they been out the driveway when they started
13 running. They ran down the road.

14 Q To Ervin Street?

15 A Yeah.

16 Q Got you. And then you said they turned on Ervin
17 Street?

18 A Uh-huh.

19 Q Okay. After that happens, you're still there with
20 Ty, right?

21 A Yeah. Uh-huh.

22 Q Did you go over to Isaac?

23 A Yes, sir.

24 Q All right. And there was a bunch of other people
25 over with Isaac?

1 A Yes, sir.

2 Q He was laying on his back?

3 A He was laying on his stomach face first in the dirt.

4 Q Uh-huh.

5 A And we, trying to keep waking him up to see what's
6 going on, turned him over.

7 Q Yeah.

8 A And he was -- that's the part I don't like -- yeah,
9 he was gone.

10 Q Right then?

11 A Yeah.

12 Q And your family, they're all talking to each other at
13 this point?

14 A (The witness nodded head.)

15 Q Talking about what just happened, right?

16 A (The witness nodded head.)

17 Q Saying that it was Horace and Malik, right?

18 A (The witness nodded head.) Yeah, I knew it was
19 Horace and Malik.

20 Q Right. Right. And so you did a lineup with the
21 officer, right?

22 A Uh-huh.

23 Q Let me make sure I got the right one, yeah. If you
24 will take a look through those pictures, and you might
25 remember. You said you know Horace. Do you know any of

1 the other people in there?

2 A Nope.

3 Q Horace is the only person that you know?

4 A Yeah, that I know.

5 Q Uh-huh. You think that Horace's picture is blurrier
6 than the other pictures?

7 A Don't matter how he look, I know who he is.

8 Q I'm just asking do you think it's blurrier?

9 A Yeah, it's blurry.

10 Q Okay, all right. I'll put it back for you. And
11 again, of course, you picked Horace because that's who you
12 know. He's the only person in the lineup you know, right?

13 A Uh-huh.

14 Q And you had already told the police that it was
15 Horace and Malik?

16 A Yeah.

17 MR. RUFFIN: No further questions.

18 THE COURT: Anything further?

19 MR. POTTS: Just very briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. POTTS:

22 Q All right. I'm going to show you what's marked as
23 State's Exhibit No. 8. Tell me what that is.

24 A Magnolia.

25 Q It's a picture?

1 A Yeah, it's a picture.

2 Q It's a picture of [REDACTED]?

3 A Uh-huh.

4 MR. POTTS: Your Honor, at this time, I would like to
5 offer into evidence State's No. 8?

6 MR. RUFFIN: No objection, Judge.

7 THE COURT: It's admitted.

8 (WHEREUPON, State's Exhibit No. 8 was admitted
9 into evidence.)

10 BY MR. POTTS:

11 Q You stand on this side with me, that way the jury and
12 the court reporter can hear you. Can you tell me the
13 direction that Horace and Malik went?

14 A When they left?

15 Q When they left?

16 A This way (indicating). They turned to go this way,
17 but they came back and went that way.

18 Q And you can have a seat. And the person you
19 identified, did you identify him because you knew them or
20 for what reason did you identify him?

21 A I identified him because I seen him do it and I was
22 there and I seen them.

23 Q Is that person in the courtroom today?

24 A Yes, sir.

25 Q Where is he? Describe what he's wearing.

1 A Blue shirt, blue and white tie.

2 Q Okay.

3 MR. POTTS: Let the record reflect he's identified
4 the Defendant.

5 Thank you, Mr. Lewis.

6 THE WITNESS: All right.

7 MR. POTTS: They might have more questions for you.

8 No further questions, Your Honor.

9 RECROSS-EXAMINATION

10 BY MR. RUFFIN:

11 Q This guy right here came into your yard, is what
12 you're saying?

13 A Uh-huh.

14 Q You're sitting on the porch, right, and he pointed a
15 gun at you, right?

16 A Uh-huh.

17 Q How close was he to you? Like this close, further
18 away or what? Tell me when to stop.

19 A Come back.

20 Q I'm him?

21 A Yeah.

22 Q And you're sitting on the porch?

23 A Yeah.

24 Q How far --

25 THE COURT: He said come back.

1 MR. RUFFIN: Okay.

2 THE WITNESS: Saying he was about right there.

3 BY MR. RUFFIN:

4 Q Gun at your chest?

5 A (The witness nodded head.)

6 Q And didn't shoot you?

7 A Didn't shoot.

8 Q Gun at Avery's chest, didn't shoot?

9 A Didn't shoot.

10 THE COURT: You may step down.

11 Next witness.

12 MR. ARANT: State would call Avery Dickson.

13 Thereupon;

14 AVERY DICKSON,

15 after having been duly sworn, testified as follows:

16 THE CLERK: Please have a seat in the witness stand
17 and state your full name for the record.

18 THE WITNESS: My name is Avery Dickson, Jr.

19 DIRECT EXAMINATION

20 BY MR. ARANT:

21 Q Morning, Mr. Dickson. How are you doing this
22 morning?

23 A I'm all right.

24 Q Can you tell the jury a little bit about yourself,
25 where you live, that type of thing?

1 A I'm living in Kentucky and South Carolina, going to
2 school for welding. I also play some pro football for the
3 Palmetto Hurricanes. And I'm going back to school down
4 here --

5 Q I'm sorry, if you could speak up just a little bit so
6 we can hear you.

7 A I'll be back down here around March to finish up my
8 CDL.

9 Q You said you were in welding school?

10 A (The witness nodded head.)

11 Q You're going to get your CDL?

12 A Yes.

13 Q And have some plans to play some pro football?

14 A Yeah.

15 Q Okay. Let me bring your attention to why we're here
16 today. Do you know April Cleckley?

17 A Yeah.

18 Q How do you know her?

19 A She like a mom to me.

20 Q How did she become that mother figure to you?

21 A She let me come in, you know, stay with her and
22 stuff, you know, part of the family.

23 Q So back in 2014, were you staying there is what
24 you're saying?

25 A Yeah.

1 Q This happened in July -- we're here today for an
2 incident that happened July 12th. How long had you been
3 staying at her house?

4 A Over -- over eight months.

5 Q Over eight months?

6 A Yeah.

7 Q Did you continue to stay there for a while?

8 A Yes.

9 Q So is it fair to say you knew her fairly well?

10 A Yeah.

11 Q Did you know her family and all?

12 A Yeah.

13 Q Did you know Isaac Lewis?

14 A Yeah.

15 Q And how did you know him?

16 A He was like an uncle to me.

17 Q How were your and his interactions?

18 A Always laughing, joking, stuff like that, you know,
19 just having fun.

20 Q Now, you as a member of that household living there,
21 did y'all have occasion to have parties?

22 A Yeah.

23 Q What kind of parties did y'all have?

24 A Family cookouts, you know, birthdays, you know,
25 events, stuff like that.

1 Q Okay. And on this particular day, July 12th, what
2 was going on that day?

3 A It was a birthday party for April.

4 Q Okay.

5 A You know, we was celebrating for her.

6 Q You were there that day?

7 A Yeah.

8 Q Were you there the whole day?

9 A Yeah.

10 Q Okay.

11 A Yes, sir.

12 Q Kind of take us through and tell the jury what
13 happened on that day.

14 A On that day, it was -- we had a cookout. And, you
15 know, it was lot of family, friends, kids there. We was
16 just enjoying ourself. We wasn't causing no problems or
17 nothing. And an altercation went off and it was with
18 Terrell and his girlfriend.

19 Q I'm just going to stop you. The altercation, who was
20 that between?

21 A It was Terrell and his girlfriend.

22 Q Okay. I think you were going to go ahead and tell us
23 more.

24 A After that then, things got kind of uproared then.

25 That's when -- everyone was at the front of the street, so

1 that's when Malik came up. And he was -- you know, he
2 said some words and, you know, Terrell was telling him
3 this is a family altercation, you know, we not trying to
4 have none of that. So it was words went off. So after
5 that, he swung on Terrell and Terrell defended himself,
6 you know. Then after that, we standing on the front porch
7 and I hear Malik saying he was coming back, you know, get
8 his gun or whatever like this, that and the third.

9 So when Malik Davis left, me and Jamichael and a
10 couple more friends, we was out on the front. I was
11 sitting on the porch, me and Jamichael, just talking.

12 Q Let me slow you down for a second just take you back.
13 Now, the first altercation, Malik comes up -- he's not
14 involved, he just comes up and inserts himself --

15 A Yeah.

16 Q -- in that altercation?

17 A Yeah.

18 Q Okay.

19 A So after that, you know, Terrell told him, you know,
20 man, we not trying to have no problems here. So after
21 words was spat, he swung on Terrell. Like I said, Terrell
22 defended himself. And that's when he was saying he was
23 going to come back and this, that and the third, but
24 nobody really wasn't paying attention to it. So we just
25 sitting there still talking, having a good time. That's

1 when I look up, I see a blue car coming through on Center
2 Street --

3 Q And you looked up, where are you at?

4 A I'm on the porch.

5 Q You're on the porch of April's house?

6 A Yeah.

7 Q Okay.

8 A So I'm sitting on the porch, I see the blue pull up
9 and hop out and Malik and Horace coming down the street
10 firing shots. So, you know, me and Jamichael ain't had
11 time to run or nothing like that. Everybody else running,
12 fearing for their life. I wasn't running. So, you know,
13 they coming down the street shooting. That's when Horace
14 come in the yard and pointed a gun at me and Jamichael.
15 He didn't shoot.

16 So after that, you know, Malik was standing in the
17 street, fumbling with his gun right there. He didn't do
18 nothing. That's when he ran past us. That's when Uncle
19 Ike was standing by the tree -- that's when he got
20 everybody into a safe area, he was just standing by the
21 tree. I seen when he shot Uncle Ike. Uncle Ike just
22 dropped right there on his face.

23 Q So you saw Horace shoot your Uncle Ike?

24 A Yeah.

25 Q Shoot Uncle Ike, I mean?

1 A Yeah.

2 Q Was is it still light?

3 A Yeah, it was still, around 6:00 something.

4 Q Okay.

5 A Up in that area.

6 Q And so tell the jury -- well, how do you know Horace
7 and Malik?

8 A I know them from Quan. They come around, play
9 basketball, chill with us everyday, you know, thinking
10 they was friends, you know. But that's how I knew them
11 from just coming around and stuff like that.

12 Q And when you say Quan, are you talking about Daquan?

13 A Yeah.

14 Q Daquan Cleckley?

15 A Yeah.

16 Q And you knew both Horace and Malik?

17 A Yeah.

18 Q And they came around every other day, every day?

19 A Yeah, almost every other day, stuff like that, just
20 hanging and chilling with us.

21 Q Y'all were all friends?

22 A Yeah.

23 Q So at that point, what happens next after Uncle Ike
24 is shot? What do you do next?

25 A Everybody it just -- everybody was going -- just

1 going crazy, but, you know, we was trying to see if Uncle
2 Ike was still alive, you know, but he wasn't. You know,
3 it was just a lot of commotion going on. It was crazy.

4 Q Okay. After you're tending to Uncle Ike, did you
5 observe where the shooters went, where they went after
6 that or anything of that nature?

7 A No, I just seen them took off, just ran, but not in
8 the direction where I knew where they ran. They just took
9 off.

10 Q Okay. Let me show you what was just marked and
11 admitted as State's Exhibit No. 8. You can probably just
12 sit right there. Do you recognize this?

13 A Yeah.

14 Q Can you point -- can you show the jury which house
15 would be April Cleckley's house?

16 A The house right here (indicating).

17 Q Right there (indicating)?

18 A Yeah.

19 Q And you're familiar -- of course, you're familiar
20 with this neighborhood?

21 A Yeah.

22 Q You've lived there?

23 A Yeah.

24 Q So when -- you described for us the guy in the blue
25 car?

1 A Yeah.

2 Q Where on this map was that blue car?

3 A On Center Street.

4 Q Center Street? It was coming on Center Street?

5 A Yeah.

6 Q Did you see who was driving that car?

7 A Huh-uh.

8 Q So they get off Center Street, what happens next?

9 And are you in the front yard when this is going on?

10 A Yeah, we in the front yard on the porch.

11 Q And you can see this way?

12 A Yeah, I can see.

13 Q And kind of -- you took us through it, but they were
14 coming -- is it fair to say they were coming this way?

15 A They were coming this way.

16 Q Where would -- you have been in the yard at this
17 point?

18 A Yeah, I would have been right here standing on the
19 porch. Me and Jamichael right here on the porch.

20 Q And where was your Uncle Ike?

21 A He was standing right here (indicating), by the tree,
22 by the bush and stuff.

23 Q Okay. And does this -- this area all back here, what
24 is that?

25 A That's the backyard. That's where some of the people

1 were at.

2 Q Okay.

3 A You know, just eating and stuff.

4 Q Is that where y'all have your parties?

5 A Uh-huh.

6 Q Okay. Hanging out and stuff?

7 A Yes, sir.

8 Q Where's the grill?

9 A The grill like right there (indicating).

10 Q Okay. So it's in the back, too?

11 A Yeah.

12 Q So that's where Uncle Ike would have been?

13 A Yeah.

14 Q Okay. And so they're coming this way. And you said
15 Horace enters the yard?

16 A Yeah.

17 Q He goes in the yard?

18 A Yeah.

19 Q And you mentioned that he had a gun pointed at you?

20 A Yeah.

21 Q You remember anything specific about that gun?

22 A It had a beam on it.

23 Q What color was that beam?

24 A It was red.

25 Q Okay. And so you're in the yard. And then Uncle

1 Ike, you said was shot over in the side?

2 A Yeah, he was shot over on the side.

3 Q And you saw that?

4 A Yeah.

5 Q And you had a clear vantage point?

6 A Yeah.

7 Q And you don't have any eyesight problems that you
8 know of --

9 A Huh-uh.

10 Q -- that prohibits you from seeing things?

11 A Huh-uh.

12 Q Did you have an occasion to be interviewed by an
13 investigator in this case?

14 A Yes, sir.

15 Q I'm going to show you what's been marked as State's
16 Exhibit No. 1. I'm going to hand you that. If you would
17 just look through that and see if that looks familiar?

18 A (The witness complied.)

19 Q You recognize that? Those look familiar?

20 A Yes, sir.

21 Q And on the first page, kind of tell me what that
22 first page says. You don't have to read it word for word,
23 but what does that say?

24 A Identify photo.

25 Q Which photo number is that?

1 A Six.

2 Q Okay. And they showed you six photos, is that fair?

3 A Yeah.

4 Q Did you pick out one of those?

5 A Yes.

6 Q Is that your signature there? Did you sign there?

7 A Yes.

8 Q Okay. When they're showing you these photos, are
9 they telling you which guy to pick out?

10 A He told me to identify the shooter that I saw.

11 Q And did you identify a shooter?

12 A Yeah.

13 Q Is this the one that you identified?

14 A Yes.

15 Q Okay. Is that your initials right there?

16 A Yeah.

17 Q And your signature right there identifying him as the
18 shooter?

19 A Yes.

20 Q And that was the one you saw shooting?

21 A Yes.

22 Q Okay. But no one directed you to that photo and said
23 you have to pick that him out?

24 A Huh-uh.

25 Q You were picking out who you saw?

1 A (The witness nodded head.)

2 MR. ARANT: Your Honor, I would seek to admit that
3 exhibit. I believe it's No. 1, State's Exhibit 1 into
4 evidence.

5 MR. KRZYSTON: Your Honor, we object based on our
6 prior objection.

7 THE COURT: Okay. Have you seen -- I don't know if
8 you -- let me see. Let me see the last one -- lineup that
9 you introduced through the other witness as well.

10 The witness's identification is not based on any
11 influence of anyone, it's based on his own identification.
12 I overrule the objection.

13 MR. ARANT: Thank you, Your Honor.

14 (WHEREUPON, State's Exhibit No. 1 was admitted
15 into evidence.)

16 BY MR. ARANT:

17 Q So at that point, you picked out Horace in the
18 lineup?

19 A Yeah.

20 Q And you picked him out because you saw him shooting
21 Uncle Ike?

22 A Yeah.

23 MR. ARANT: I beg the Court's indulgence one moment,
24 Your Honor.

25 BY MR. ARANT:

1 Q Avery, can you -- do you see Horace in the courtroom
2 here today?

3 A Yeah.

4 Q Can you describe what he's wearing?

5 A Blue shirt and blue and white tie with glasses.

6 Q Okay.

7 MR. ARANT: Your Honor, if we can have the record
8 reflect that Mr. Dickson has identified the Defendant here
9 in the courtroom today?

10 THE COURT: It does.

11 MR. ARANT: I have no further questions at this time.
12 Please answer any questions the Defense has.

13 MR. KRZYSTON: Thank you, Your Honor, may it please
14 the Court.

15 CROSS-EXAMINATION

16 BY MR. KRZYSTON:

17 Q Mr. Dickson, so you were staying at the house on
18 Magnolia Street at the time of the shooting, correct?

19 A (The witness nodded head.)

20 Q When I say staying, you were laying your head there,
21 you were sleeping there?

22 A Yeah.

23 Q And you were at Magnolia Street on the day that this
24 shooting occurred, correct?

25 A Correct.

1 Q Okay. And did you help with the preparations of the
2 barbecue?

3 A Yeah.

4 Q Okay. And what did those preparations entail?

5 A Like you always prepare, season meat, get all your
6 food --

7 Q Some chicken, some steak, some ribs?

8 A Yeah.

9 Q You guys having a good time there?

10 A Yeah.

11 Q Okay. Later on in the day, did you go out and get
12 any beer for the thing or what did you do?

13 A We was chilling, I was at the house all day --

14 Q Okay. So --

15 A -- helping out.

16 Q I'm sorry, go ahead.

17 A I was at the house all day helping out Auntie and
18 them. I was just out there helping.

19 Q And Jamichael, he's not in the courtroom anymore, is
20 he?

21 A Huh-uh.

22 Q Okay. He was also laying his head there at night,
23 correct?

24 A No.

25 Q No, he wasn't?

1 A No.

2 Q But he came over early in the day?

3 A Yeah.

4 Q Okay. And earlier, you were in the courtroom for
5 Jamichael's testimony, correct?

6 A Yeah.

7 Q So you heard everything he had to say?

8 A Yeah.

9 Q Okay. And where were you when the shooting occurred
10 -- or sorry, where were you when the shooting started?

11 A I was in the front yard.

12 Q You were in the front yard?

13 A On the porch.

14 Q And as soon as the shooting started, people kind of
15 went crazy, right?

16 A Yeah.

17 Q Everybody is running all different directions?

18 A Yeah.

19 Q Paris and Tarus, they ran cross the street through
20 the open field?

21 A Yeah.

22 Q Okay. And you and Jamichael, you guys -- where did
23 you guys go?

24 A We were still on the porch. We was hiding behind the
25 little brick thing.

1 Q Okay. And the shooting kept on going, correct?

2 A Yeah.

3 Q And everybody, to your knowledge, kind of got to
4 where they were going, I guess, halfway through when the
5 shooting was happening?

6 A Yeah.

7 Q So you guys peeked your head up or what did you do
8 next?

9 A We was just staying right there, you know, just -- we
10 didn't have the chance to run, so I mean we just stood
11 there.

12 Q So you froze?

13 A Yeah.

14 Q Everybody is running around?

15 A Yes.

16 Q Gunshots are going off?

17 A Yes.

18 Q And you two freeze?

19 A Yeah.

20 Q Okay. Now, I think that you had said on direct there
21 weren't any problems at the cookout beforehand, right?

22 A Right.

23 Q But there were fights that had happened?

24 A It was with Terrell and his girlfriend.

25 Q Little scuffle between everybody there?

1 A Yeah. Yeah.

2 Q Okay. And there were, at least, two or three by the
3 time Malik got there?

4 A No.

5 Q There weren't?

6 A No.

7 Q So there wasn't a fight between Julie and Tarus's
8 girlfriend?

9 A I don't know about that.

10 Q And there wasn't a fight between Tarus and Julie's
11 boyfriend?

12 A No.

13 Q And there wasn't a fight -- there was a fight between
14 Malik and Terrell?

15 A Yeah.

16 Q Okay. Now, you said once the shooting started and
17 kind of halfway through, you and Jamichael were sitting on
18 the porch, standing on the porch while everybody else was
19 running around?

20 A Yeah.

21 Q About how far were you -- were you about this far
22 when you say Horace pointed the gun at you?

23 A Back up some. Right there.

24 Q Right here?

25 A Right there.

1 Q So he was this far (indicating), pointed a gun
2 directly at you?

3 A Yeah, with the beam on it.

4 Q With the beam on it, okay. Didn't shoot at you?

5 A Huh-uh.

6 Q Put the gun over, put it on Jamichael?

7 A Didn't shoot.

8 Q With the beam on it?

9 A Didn't shoot.

10 Q Didn't shoot?

11 A No.

12 Q Walked past you, shot somebody else?

13 A Yeah.

14 Q You reviewed a lineup at Columbia City Police
15 Department, correct?

16 A Correct.

17 Q You looked at this picture (indicating)?

18 A Yeah.

19 Q You looked at this picture? Sorry, I should show
20 that to you first.

21 A Yeah.

22 Q You looked at this picture?

23 A I looked at all of them.

24 Q You looked at this picture?

25 A Yeah.

1 Q You looked at this picture?

2 A Yeah.

3 Q And you selected this picture (indicating)?

4 A (The witness nodded head.)

5 MR. KRZYSTON: No further questions.

6 THE COURT: Any redirect?

7 MR. ARANT: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. ARANT:

10 Q Avery, you saw the shooting?

11 A Yes.

12 Q Who shot your Uncle Ike?

13 A Horace Watts.

14 Q Is that who you picked out of the lineup?

15 A Yes.

16 Q And why did you pick him out of the lineup?

17 A Because he's the one who shot him.

18 MR. ARANT: No further questions.

19 THE COURT: Anything further?

20 MR. KRZYSTON: No thank you, Your Honor.

21 THE COURT: You may step down.

22 Call your next witness.

23 MS. NICKLES: The State calls Benjamin Walker.

24 Thereupon;

25 BENJAMIN WALKER,

1 after having been duly sworn, testified as follows:

2 THE CLERK: Thank you. Please have a seat in the
3 witness stand and state your full name for the record.

4 THE WITNESS: Benjamin Walker.

5 DIRECT EXAMINATION

6 BY MS. NICKLES:

7 Q And Mr. Walker, I'm going to pull the mic a little
8 bit closer so the jury can hear you, okay? Mr. Walker,
9 where are you from?

10 A Columbia, South Carolina.

11 Q And how old are you?

12 A Twenty-one now.

13 Q Have you lived in Columbia all your life?

14 A Yes, ma'am.

15 Q Where are you working?

16 A Right now, I'm working a Jordan's on Shakespeare
17 Road.

18 Q What do you do there?

19 A Making handmade weed eaters and fishing poles.

20 Q Weed eaters and fishing poles?

21 A Yes, ma'am.

22 Q Okay. If you could please keep your voice up just a
23 little bit so everybody can hear you. Where did you go to
24 school?

25 A C.A. Johnson High School.

- 1 Q And where is that?
- 2 A That's on Bonneville Road.
- 3 Q Here in Columbia?
- 4 A Yes, ma'am.
- 5 Q Did you play any sports while you were in school?
- 6 A I played football and basketball.
- 7 Q Who was on the team with you?
- 8 A Daquan Cleckley and Terrell Threatt.
- 9 Q Okay. You said Daquan who?
- 10 A Cleckley.
- 11 Q And do you know his mom's name?
- 12 A April Cleckley.
- 13 Q Which team was he on with you?
- 14 A We was on varsity.
- 15 Q Both basketball and football?
- 16 A I didn't play football with him. I wasn't in the
- 17 same year as he was.
- 18 Q So y'all played basketball together?
- 19 A Yeah, on varsity together.
- 20 Q How long have you known Daquan?
- 21 A Daquan, since I got to Johnson. I got to Johnson in
- 22 like my 10th grade year, so from 10th to 12th.
- 23 Q Did you know any other members of Daquan's family?
- 24 A I know a lot of them.
- 25 Q Okay. Specifically, did you are know Isaac Lewis?

1 A Yes, ma'am.

2 Q Who is he?

3 A To me, he was just like my uncle, just like he was to
4 them. I see him after every game. I see him when I come
5 to their house. But that was Daquan uncle.

6 Q You know what they called him?

7 A Uncle Ike.

8 Q You said he was like an uncle to you, too?

9 A Yeah.

10 Q But y'all aren't blood related?

11 A Not blood related.

12 Q Okay. Where was Daquan living?

13 A Magnolia Street in Pinehurst.

14 Q Okay. Did you also know a guy named Malik Davis?

15 A Yeah, I know Malik from school.

16 Q From C.A. Johnson?

17 A C.A. Johnson.

18 Q And about how long have you known Malik Davis?

19 A Since I got there my 10th grade year -- no, I met
20 around 11th grade, because he was in a grade lower than
21 me.

22 Q Okay. Did you know any of Malik Davis's siblings?

23 A Yeah, I know Horace. I met Horace probably a year
24 after I met Malik.

25 Q And would you see them -- how often would you see

1 them?

2 A Every time I come to Pinehurst.

3 Q Where is Pinehurst?

4 A Right off Two Notch Road.

5 Q Is Magnolia Street in Pinehurst?

6 A Yes, ma'am.

7 Q Okay. So that's in that neighborhood?

8 A Yes, ma'am.

9 Q Okay. So you saw them pretty often?

10 A Yes, ma'am.

11 Q Did you also know a guy named Terrell Threatt?

12 A Yeah, I knew Terrell.

13 Q How did you know Terrell?

14 A School and basketball.

15 Q Okay. C.A. Johnson?

16 A Yes, ma'am.

17 Q I want to turn your attention to July 12th, 2014. Do
18 you remember that day?

19 A Yes, ma'am.

20 Q Can you tell me where you were?

21 A I was sitting on the front porch at the time, on the
22 side porch. I was on the front porch, but on the side of
23 it.

24 Q Okay. Well, before we get to -- I don't want to skip
25 ahead. On what porch were you at?

1 A On Daquan's porch.

2 Q And that's [REDACTED]?

3 A Yes, ma'am.

4 Q Okay. About what time did you get there?

5 A I got there between 10:30 and 12:00, normal time I
6 get there.

7 Q Was anything going on at that house that day?

8 A When I arrived, they was setting up for a surprise
9 birthday party.

10 Q Who was that party for?

11 A April.

12 Q Okay.

13 A And I came and I started to help them.

14 Q Okay. About how many people are there?

15 A Lot of people. I would say it was a good 50.

16 Q Okay.

17 A Little kids and grownups.

18 Q You said there were kids there, too?

19 A Yeah, kids and grownups.

20 Q About how many kids?

21 A It was a lot of kids.

22 Q So fair to say people of all ages?

23 A Yes, ma'am.

24 Q Did you ever have a chance to see Malik at that
25 party?

1 A I seen him after the family had their little issue.

2 And the police came, everything was all right --

3 Q Okay.

4 A -- he come around the corner.

5 Q Okay. I want to stop you real quick. You said the
6 family had their little issue. What happened then? What
7 issue are you talking about?

8 A When they was arguing.

9 Q Okay. Who was arguing?

10 A Terrell and his girlfriend and probably a couple of
11 other family members, but it was family thing and
12 everything was all right.

13 Q So there was a family argument going on and that's
14 when you saw Malik?

15 A Yeah, after that family argument had settled down, he
16 come around the corner.

17 Q And what happened when he came around the corner?

18 A He didn't make it in the yard. Everybody was in the
19 street because it was a family argument. And he
20 approached Terrell. He was looking for Daquan, but Daquan
21 was sleep at the time.

22 Q Okay.

23 A And Terrell was telling him it was a family argument,
24 he don't need to be around. He said something smart and
25 he swung on Terrell.

1 Q Okay. Before he swung on Terrell, were they -- how
2 did they get to be close enough for him to swing? How did
3 this dispute between them start? Were they face to face
4 or?

5 A All right. They was face to face, but in between
6 them, it was, at least, two or three people.

7 Q Before the fight?

8 A Before the fight.

9 Q And then what happened?

10 A After that, Malik swung on Terrell and they got to
11 fighting. I say five to seven people, everybody was
12 trying to break it up. When they did break it up, he got
13 up and left. His comment was he'll be back to shoot up
14 the house.

15 Q Okay. Before he left, were you one of the ones who
16 helped to break up the fight?

17 A No, I stayed on the front porch. I was watching.

18 Q You were watching from the front porch?

19 A Yes, ma'am.

20 Q Okay. So you never left the porch?

21 A No, I never left the porch.

22 Q But you said this happened right in front of the
23 house?

24 A Yes, ma'am.

25 Q So you had a pretty good view of what was going on?

1 A Yes, ma'am.

2 Q Okay. After the fight, they both left?

3 A Yeah, Terréll went home and Malik, he went back
4 around the corner where he came from.

5 Q Okay. What happened later on?

6 A Later on after that fight, I'd say about 30, 35
7 minutes afterward, they -- he came back, but he came from
8 the opposite end of the corner.

9 Q Okay. I'm going to show you what's been marked as
10 State's 8. If you could step down so you can just show
11 the jury. So is this Daquan's house?

12 A Yeah.

13 Q And make sure you keep your voice up because she
14 needs to hear you and they need to hear you, okay?

15 A This is the house. I was sitting right here on the
16 side (indicating). And they came from this corner right
17 here (indicating).

18 Q Okay. The first time Malik came, where did he come
19 from?

20 A He come from this corner (indicating).

21 Q Where did he leave?

22 A He went back to this corner after the fight.

23 Q Okay. And the next time you saw him, where was he?

24 A He was at this corner (indicating). They got dropped
25 off. We heard gunshots. I was sitting here, I never

1 moved. They came -- Dominique ran past me. After the
2 gunshots started, everybody started running back towards
3 the house. Dominique said, Ben, come on. I got up, I ran
4 to the back. I went in the back door, like right there at
5 the corner of the house, came back to the front porch. I
6 stood there. I was by Avery. And I was at the front and
7 I went back in. I went back in and I was by the window.
8 I heard more gunshots on the side of the house. And after
9 that, he came back out and Uncle Ike was -- there's a tree
10 right here (indicating), that's where the grill was at.
11 He was getting ready to cook. That where we seen him
12 laying.

13 Q That's where you saw Uncle Ike laying?

14 A Yes, ma'am.

15 Q Did you see Uncle Ike get shot?

16 A No, I seen him point the gun -- when he came in, I
17 was looking out the window. He came and he pointed the
18 gun and Malik stood right here. When I went back, I heard
19 more gunshots. I didn't see him shoot Uncle Ike.

20 Q Let me show you -- you can take a seat.

21 A (The witness complied.)

22 Q I want to go back through this so it's clear.

23 MS. NICKLES: Beg the Court's indulgence.

24 BY MS. NICKLES:

25 Q So when they come up the first time, where are you,

1 when they're running toward the house?

2 A I was sitting on the side porch.

3 Q On the side porch?

4 A It's a front porch, but it's on the side porch.

5 Q And could you see where the gunshots were coming
6 from?

7 A I couldn't see them, but I could hear them. I could
8 see people coming from there. Like it was trees there,
9 but you could see -- you could see a little bit through
10 the trees and stuff.

11 Q I'm going to show you what's been marked as State's
12 14. Do you recognize that?

13 A Yes, ma'am.

14 Q What's that?

15 A That's Quan's house.

16 Q Okay. And where -- is that the front porch?

17 A That's the front porch. I was sitting right behind
18 this brick, this little wall right there on the steps.

19 Q And that's the side porch where you were?

20 A Yes, ma'am.

21 Q Okay. That's where you heard the gunshots?

22 A Yes, ma'am.

23 Q And once you hear them, do you automatically get up
24 to run to the back?

25 A No.

1 Q What do you do?

2 A I sat there because nobody couldn't really see me.
3 There was a car in front of me. There's a bush, that pole
4 I just pointed at and it was the house.

5 Q Okay.

6 A Behind me was next door neighbor house. And -- but
7 Dominique ran past and said, Ben, come on. But I'm
8 listening to the gunshots.

9 Q Okay. I want to stop you there. When he runs past
10 you, who else is around you?

11 A At times, everybody was running past me.

12 Q Okay. Are there children around?

13 A Yes, ma'am. Before I ran, I grabbed Daquan's son and
14 his little sister.

15 Q How old were those kids?

16 A At the time, Daquan's son was one, he was just
17 learning how to walk. And his sister had to be like two
18 or three.

19 Q So you're helping get these kids?

20 A Yes, ma'am.

21 Q To safety?

22 A To the back.

23 Q Okay. And then when you go to the back, what do you
24 do?

25 A I came back to the front porch.

1 Q So how did you -- so you run to the back of the
2 house. How do you get to the front porch?

3 A I go in the back door.

4 Q In the back door of April's house?

5 A Yes, ma'am, right there at the corner.

6 Q Okay.

7 A Went in the back door, it's a straight shot to the
8 front door.

9 Q Okay.

10 A I stood there for a minute. And then I came back in
11 and I looked out the window.

12 Q Let me stop you right there. When you're on the
13 front porch, do you see anything?

14 A I seen when everybody was running in. Malik stood
15 there, but Horace ran past. Malik stood there.

16 Q Malik stood where?

17 A In the driveway.

18 Q And where did Horace run?

19 A He came in the yard.

20 Q What part of the yard did he come in?

21 A He came through the driveway where Uncle Ike was
22 shot.

23 Q Okay.

24 A I say he probably came -- I don't know if he made it
25 all the way to the backyard, but you heard the gunshots.

1 Q All right. And did -- at any point, did you see
2 Horace and Malik while they're in the -- after they run
3 towards the house?

4 A Yeah, when I looked out the window, Horace was right
5 there. When I went to the front door, Malik was there.

6 Q What was Malik doing?

7 A He was standing there. He was just looking, standing
8 there looking.

9 Q And was he holding anything?

10 A He had a gun in his hand.

11 Q Okay.

12 A I came back in -- I just stopped looking out the
13 window. Everybody said get back from the window. You
14 heard more gunshots. After that, I ran back out -- when
15 the gunshot was done, I ran back out and they was running.

16 Q When you say they were running, who was running?

17 A Malik and Horace was running.

18 Q Okay. At any point, did you see Horace while he was
19 in the yard?

20 A When I looked out the window before they started back
21 shooting on the side.

22 Q And what did you see him doing?

23 A He had the gun pointed at Uncle Ike.

24 Q Okay. And you didn't see any shots, did you?

25 A No, ma'am.

1 Q But you heard them?

2 A I heard them.

3 Q And you saw Malik and Horace both with guns?

4 A Yes, ma'am.

5 Q Did you -- was there anything about Horace's gun that
6 drew your attention to it?

7 A The red beam.

8 Q The red what?

9 A The red beam, which is called a laser.

10 Q Okay. So when they're finally running away, where
11 are you?

12 A I'm -- when they was running away, I was coming back
13 from off the side looking at Uncle Ike.

14 Q Okay.

15 A I was in the front yard.

16 Q What did you see in the front yard after they left?

17 A Just everybody trying to see what's going on.

18 Q Okay. Do you eventually find out that people have
19 been hit?

20 A Yeah.

21 Q Who?

22 A There was two people.

23 Q Who are those people?

24 A His name is Tyrone, but we called him Ty.

25 Q Okay.

1 A And Uncle Ike was hit. Tyrone was hit in the side,
2 but he was still living. He was talking. Uncle Ike, we
3 was looking trying to find out where he got shot at and
4 everything.

5 Q And do you see Uncle Ike?

6 A Who do you mean do I see him?

7 Q You said you went outside and you find out that Ty's
8 been shot, but he was talking?

9 A Uh-huh.

10 Q And then Uncle Ike. Do you see Uncle Ike outside?

11 A Yeah, you can see him. You don't have to be standing
12 in the driveway. You can stand in the middle of the
13 street and just look and you will see him.

14 Q Okay. When this shooting happened, was it light or
15 dark outside?

16 A It was getting ready to be dark.

17 Q Okay. After this shooting, do you remember speaking
18 with officers from the Columbia Police Department?

19 A Yes, ma'am.

20 Q And where did you do that? Do you talk to them at
21 the house or do you go somewhere?

22 A We went up there on Two Notch to headquarters, I
23 think.

24 Q To their station on Two Notch?

25 A Yeah.

1 Q And they are -- when you're meeting with them, do you
2 tell them what you saw, what happened?

3 A Yeah, I told them what I saw.

4 Q At some point -- I'm going to hand you State's 9. Do
5 they ask you to look at photographs?

6 A Yeah.

7 Q Look through those and tell me if you recognize that?

8 A Yes, ma'am.

9 Q What is that?

10 A A lineup.

11 Q Is that the lineup they showed you that night?

12 A Yes, ma'am.

13 Q How do you know?

14 A I'm looking at the pictures and I remember faces.

15 Q And did you -- when they showed you those pictures,
16 did you pick out anyone?

17 A Yeah, I picked out one.

18 Q What number was it?

19 A Two.

20 Q And did they tell you that you had to pick out
21 anyone?

22 A No, I was in the room by myself.

23 Q Did they tell you that the person would definitely be
24 in there?

25 A No.

1 Q Did they suggest in any way whatsoever?

2 A No, ma'am.

3 Q You said you were by yourself?

4 A They put me in a room by myself.

5 Q Why did you pick out number two?

6 A Because that's the person I seen shooting.

7 Q Okay. I'll take it back from you.

8 A Okay.

9 Q Once you picked out number two, did you do anything
10 to that picture to indicate that that was the one you had
11 picked out?

12 A I put my name.

13 Q Okay. That's your handwriting?

14 A Yes, ma'am.

15 Q You wrote that?

16 A Yes, ma'am.

17 Q Okay. The person you picked out in number two, that
18 was the person who came in the yard that day, one of the
19 two?

20 A Yes, ma'am.

21 Q With the guns and shot --

22 A Yes, ma'am.

23 Q -- at the family members? Do you see that person in
24 the courtroom today?

25 A Yes, ma'am.

1 Q Where is he?

2 A Right here to the right of me.

3 Q What's he wearing?

4 A A blue shirt and blue and white tie.

5 MS. NICKLES: Your Honor, may the record reflect he
6 has identified the Defendant?

7 THE COURT: It does.

8 BY MS. NICKLES:

9 Q Mr. Walker, do you have any doubt that the man that
10 you picked out, the man who's sitting in the courtroom
11 today is the man that came into the yard with the gun and
12 fired on the family?

13 A Yes, ma'am, that's the man.

14 MS. NICKLES: Thank you. No further questions -- oh,
15 I beg the Court's indulgence.

16 (Pause.)

17 MS. NICKLES: Your Honor, at this point, the State
18 would like to admit State's 9.

19 THE COURT: Any objection?

20 MR. KRZYSTON: We object on prior grounds, Your
21 Honor.

22 THE COURT: It's admitted.

23 (WHEREUPON, State's Exhibit No. 9 was admitted
24 into evidence.)

25 MS. NICKLES: Thank you, Your Honor.

1 Please answer any questions the Defense has.

2 CROSS-EXAMINATION

3 BY MR. KRZYSTON:

4 Q How are you doing today, Mr. Walker?

5 A I'm good. How are you?

6 Q I'm here. So you were at the party or -- I guess it
7 was a party, right?

8 A Yes, sir.

9 Q On Magnolia Street?

10 A Yes, sir.

11 Q And again, a party for Ms. Cleckley, right?

12 A Yes, sir.

13 Q And you -- what time did you get to the party?

14 A Between -- normal time I always come between 10:30 to
15 12:00.

16 Q 10:30 a.m. and 12:00 p.m.?

17 A Yes, sir.

18 Q Okay. So you were at school before this?

19 A No, no, this was the weekend.

20 Q Oh, okay. This is Saturday, right?

21 A Yeah.

22 Q So where were you before this?

23 A I was at home.

24 Q All right.

25 A I left home and went straight to Quan's house.

1 Q And you were helping get stuff for the party?

2 A When I find out they was setting up for the party, I
3 started to help.

4 Q Okay. And you weren't there for any of the other
5 fights. You were just there for the fight between Terrell
6 and Malik, right?

7 A That was the only fight.

8 Q That was the only fight you were there for?

9 A I was there through the whole day. I didn't leave.

10 Q Okay. And you've been in this courtroom, you've
11 heard the testimony of the other couple witnesses this
12 morning?

13 A Yeah.

14 Q Okay. So there wasn't a fight between Julie and
15 Terrell's girlfriend?

16 MS. NICKLES: Objection.

17 THE COURT: Basis for the objection?

18 MS. NICKLES: Pitting the witnesses.

19 THE COURT: The objection is sustained.

20 BY MR. KRZYSTON:

21 Q Okay. So, again, you say there were no other
22 fights?

23 A There was no other fights.

24 Q What time of day was it about when the gunshot
25 occurred?

1 A It was daytime.

2 Q It was daytime?

3 A I don't know what time, but it was daytime.

4 Q And you were seated -- bring this up to you. Show us
5 where you were seated. And if you need to step down, go
6 ahead and do it.

7 A This is the house (indicating).

8 Q That's the house right there?

9 A I was on -- this is the front porch (indicating), I
10 was on the side of the house (indicating).

11 Q Okay. And you said that's a tree right there
12 (indicating)?

13 A You too far back.

14 Q That's the tree? Go ahead and point it out, I don't
15 want to get it wrong.

16 A The front porch.

17 Q Okay.

18 A I was sitting on the side steps. There's a couple
19 little bushes right here and this is a tree right across
20 from them (indicating).

21 Q So this is tree (indicating)?

22 A Tree (indicating).

23 Q Okay. And you were right there (indicating)?

24 A I was right here sitting on the steps.

25 Q Okay. Now, it was a bunch of people out there?

1 A Yeah, it was a lot of people, kids and grownups.

2 Q Y'all were having fun?

3 A Yeah.

4 Q Where were you -- so you were on the steps when the
5 shooting started?

6 A Uh-huh.

7 Q What did you do next?

8 A I sat there. The gunshots got closer, I still didn't
9 move.

10 Q And people are running around by this point, correct?

11 A Yeah, they running toward the backyard trying to get
12 out.

13 Q And you're just hanging out on the steps?

14 A I sat there. Nobody could see me.

15 Q Okay.

16 A There was a car in front of me. I just pointed at
17 some bushes I was showing you.

18 Q Uh-huh.

19 A And there was a bush right here (indicating).

20 Q Okay.

21 A Right here is the brick wall (indicating).

22 Q So you were completely shielded from the shooting
23 when it started?

24 A Yeah.

25 Q There's a car in front of you?

1 A There's a car in front of me.

2 Q And there's bushes in front of you?

3 A Yes, sir.

4 Q Okay. And what did you do next as the shooting got
5 closer?

6 A When I got up -- before I ran, Dominique ran past me
7 and said, Ben, come on. Before I ran, I grabbed Quan's
8 son and his little sister.

9 Q And you went where?

10 A To the back and I went in the house.

11 Q Okay. So you went in the back of the house, and then
12 you went to the front of the house, correct?

13 A Yes, sir.

14 Q And then you went outside?

15 A Yes, sir, stood on the front porch.

16 Q And in a pretrial hearing, you testified that as you
17 turned around, that's when you got hit with the laser
18 beam?

19 A Not me.

20 Q Not you?

21 A Uncle Ike, he had the laser beam.

22 Q So the laser beam never touched you?

23 A No.

24 Q You're sure of that?

25 A Positive.

1 Q Hundred percent?

2 A Hundred percent.

3 Q You didn't say in the pretrial hearing --

4 A I didn't.

5 Q -- that a laser beam hit your back?

6 A (The witness shakes head.)

7 Q You remember the pretrial hearing?

8 A I remember everything.

9 Q You remember what day it was on?

10 A I can't tell you off the top, too much going on right
11 now, but --

12 Q Okay.

13 A -- I know what I'm talking about.

14 Q But you did come October 3rd and give testimony in
15 the pretrial hearing?

16 A Yes, sir.

17 Q If I gave you a transcript of the hearing, would that
18 help refresh your memory about what you said?

19 A You can.

20 Q Okay. All right. Take a look. That says right
21 there, the State calls Benjamin Walker. That's you,
22 right?

23 A Yes, sir.

24 Q It says, Benjamin Walker after being duly sworn
25 testifies as follows, right?

1 A Yes, sir.

2 Q Okay. We're going to skip over some of that stuff.
3 Right there, Ms. Garfield, the prosecutor, asked you a
4 question. You saw his gun and a red laser beam?

5 A Yes, sir.

6 Q Your answer was, Yeah, it was on my back.

7 A It wasn't my back. This is my first time being in
8 something like this.

9 Q Okay.

10 A I seen the mistake when I got it, but it wasn't my
11 back.

12 Q Okay. But your answer was Yeah, it was on my back?
13 But it wasn't your back?

14 A Yeah, that's what's the paper -- what you saying is
15 what the paper says.

16 Q Right.

17 A But I corrected myself when they showed me.

18 Q Okay. But again, your answer is, Yeah, it was on my
19 back.

20 A Not when I corrected myself, no.

21 Q Okay.

22 MR. KRZYSTON: Court's indulgence, Your Honor.

23 (Pause.)

24 BY MR. KRZYSTON:

25 Q And Ms. Godwin -- I'm sorry, Ms. Nickles said that

1 after the shooting, you met with Columbia -- or City of
2 Columbia investigators?

3 A Yes, sir.

4 Q You did a lineup?

5 A Yes, sir.

6 Q Part of that lineup, you looked at this picture?

7 A Yes, sir.

8 Q You looked at that one?

9 A Yes, sir.

10 Q You looked at this one?

11 A Yes, sir.

12 Q You looked at this one?

13 A Yes, sir.

14 Q You looked at this one?

15 A Yes, sir.

16 Q And you selected this one?

17 A Yes, sir.

18 MR. KRZYSTON: No further questions.

19 THE COURT: Any redirect?

20 MS. NICKLES: Just a few.

21 REDIRECT EXAMINATION

22 BY MS. NICKLES:

23 Q Mr. Walker, before this case, have you ever
24 testified before?

25 A No, ma'am.

1 Q Were you a little nervous?

2 A I was when I first did it, yes, ma'am.

3 Q Are you nervous today?

4 A No, ma'am, because I read over my paper.

5 Q I want to show you what he showed you, the transcript
6 from the first testimony. And I would like for you to
7 read from Line 2 to Line 7. Is that your testimony?

8 A Yes, ma'am.

9 Q Can you read that for the jury?

10 A From Line 2 to 7?

11 Q Uh-huh.

12 A Two, When did you see Horace with a gun?

13 Three, when I came back to the front door, he had
14 pointed it with a red beam on it.

15 Four -- well, that was four. Five, Say that one more
16 time.

17 Six, He had this gun -- he had his gun pointed with a
18 laser beam on it at Uncle Ike when I came back to the
19 front door.

20 Q Thank you, Mr. Walker. And that's what you saw,
21 right?

22 A Yes, ma'am.

23 Q Where did you see the laser beam?

24 A On Uncle Ike.

25 Q Can you even see your own back, Mr. Walker?

1 A No, ma'am.

2 Q Okay.

3 MS. NICKLES: Beg the Court's indulgence.

4 (Pause.)

5 MS. NICKLES: No other questions.

6 THE COURT: Anything further?

7 MR. KRZYSTON: Briefly, Your Honor.

8 RE CROSS-EXAMINATION

9 BY MR. KRZYSTON:

10 Q Do you understand the following question, Was the
11 gun ever pointed at you? You understand what that
12 question is asking, right?

13 A Yeah, the gun was never pointed at me.

14 MR. KRZYSTON: No further questions.

15 THE COURT: You may step down.

16 Next witness.

17 MR. POTTS: The State calls Paris Young.

18 THE COURT: Let's stand and stretch. We'll take a
19 break. Ladies and gentlemen, if you will go to your jury
20 room. Please do not discuss the case.

21 (WHEREUPON, the jury left the courtroom at 11:33
22 a.m.)

23 THE COURT: We'll take five minutes or so.

24 (WHEREUPON, a short recess was held.)

25 THE COURT: Bring the jury in, please.

1 (WHEREUPON, the jury returned to the courtroom at
2 11:46 a.m.)

3 BAILIFF: The jury's present, Your Honor.

4 THE COURT: All right. Next witness.

5 MR. POTTS: The State calls Paris Young.

6 Thereupon;

7 PARIS YOUNG,

8 after having been duly sworn, testified as follows:

9 THE CLERK: Thank you. Please have a seat in the
10 witness stand and state your full name for the record.
11 Please spell your first name.

12 THE WITNESS: Paris Young, P-A-R-I-S.

13 DIRECT EXAMINATION

14 BY MR. POTTS:

15 Q How are you today, Mr. Young?

16 A I'm doing good.

17 Q I guess tell the jury a little bit about yourself.

18 A I'm 22 years old, born and raised here in Columbia,
19 South Carolina. I work as part of a repossession team.
20 That's pretty much it.

21 Q What do you mean -- what do you do as part of a
22 repossession team?

23 A I file paperwork and go pick up cars.

24 Q How do you know the Cleckley family?

25 A I'm a good friend of the family. I know Daquan. I

1 went to school with him and we've been friends ever since
2 then. We played football together and we really hung out
3 a lot.

4 Q Now, what school was that you met?

5 A C.A. Johnson.

6 Q C.A. Johnson. Did you -- is that where you -- well,
7 do you know Malik Davis?

8 A I know him, but not like that. We hung around a
9 couple of times.

10 Q But you didn't know him from school?

11 A No.

12 Q What about Horace Watts?

13 A I met Horace through Daquan, too.

14 Q How often did y'all hang out?

15 A They would come to the house -- it would be like
16 everyday, they would come to the house. We would play
17 basketball, dominoes, just hang out. Or it could be a
18 family function and they were welcome to come. We'd see
19 them like that.

20 Q Where did y'all play basketball?

21 A In the backyard of the Cleckley's house.

22 Q Had a little basketball goal set up?

23 A Yeah.

24 Q And so about what period of time did you know Horace?

25 A Not long, but I know him long enough to associate and

1 become friends with him and all.

2 Q Okay. Now, I'm going to take you back to July 12,
3 2014, okay?

4 A Uh-huh.

5 Q What was going on that day?

6 A It was supposed to be a surprise birthday party for
7 April Cleckley.

8 Q And what's April relationship to Daquan?

9 A That's his mother.

10 Q Okay. So where was it supposed to be?

11 A It was at her house. It was going to be in the
12 backyard.

13 Q That's on Magnolia Street, right?

14 A Magnolia Street, correct.

15 Q What time did you get there?

16 A I'd say the time frame was from around 11:30 to about
17 12:30ish, I arrived there.

18 Q And were you just hanging out?

19 A Yeah, yeah, I was hanging out, talking to everybody,
20 you know, welcoming and greeting, that's all.

21 Q Someone mentioned earlier, was there dominoes there,
22 did you play any dominoes?

23 A At the time, no, I was walking from the front yard to
24 the backyard back and forth.

25 Q Now, did any altercation take place?

1 A When I arrived there, I guess I caught the rear end
2 of the altercation, but it was a little altercation
3 between Terrell and his girlfriend.

4 Q Okay. And just tell the jury a little bit about what
5 happened there?

6 A I can't say exactly what happened. I just arrived at
7 the end where everybody was coming to the front yard and
8 Terrell was there. And he was just saying like, It's over
9 with, I'm good. That was pretty much it. Then I seen
10 Malik walk around the corner.

11 Q Okay.

12 A And it went from there.

13 Q What did Malik do?

14 A Malik walked up, he was like, What's going on?
15 What's going on, this and that. Terrell told him, Just go
16 on ahead. It's just something between me and my family
17 member. And he was just like, F that, you know what I'm
18 saying, and saying all kind of stuff. And he got closer
19 to Terrell. And I seen him push Terrell and swing in and
20 then they started fighting.

21 Q What happened when they started fighting?

22 A The family was really trying to break it up, so
23 everybody was pulling Terrell and Malik at the same time.

24 Q Okay.

25 A To get them separated.

1 Q Once they got separated, where did Terrell and Malik
2 go?

3 A Terrell walked off. He went -- I don't know where he
4 went, he walked off. Malik went back around the corner
5 that he came from around. I don't know where he was at.
6 I know he was around the corner. He went back that way
7 after everything was over with.

8 Q So he left the area?

9 A Yeah.

10 Q So after this fight, what did you do?

11 A I was actually standing in the road by the fight the
12 whole time, so I was basically watching. I was
13 spectating. And after the fight was over with, they broke
14 everybody up, Terrell went his way, Malik went his way. I
15 was just sitting there shaking my head. And Malik looked
16 at me and I said, All right. All right. I'll be back.

17 Q Okay. And once he said that?

18 A He just left.

19 Q He left?

20 A He left. Terrell was already gone and Malik had done
21 left. And, you know, the family went back to continuing
22 their family function. And that was it.

23 Q What did you do?

24 A Shoot, I was just standing there in the road still
25 like, wow. And then I walked back to the backyard and

1 proceeded to talk with Uncle Ike.

2 Q What was Uncle Ike doing?

3 A At the time, Uncle Ike had just got his beer and we
4 was getting the grill cranked up and started.

5 Q Is that his job normally at these parties?

6 A I mean, it's not his job, it's whoever wants to cook.
7 Everybody takes a part in something, so it's not like you
8 going to do this, you going to do that. It's whoever want
9 to do it.

10 Q What did you and Uncle Ike talk about?

11 A We was just talking about how the party was going to
12 go, you know, what I'm saying. Hopefully, it wouldn't be
13 no nonsense going on, just laughing and giggling and
14 joking. That's it.

15 Q Okay. And when we say Uncle Ike, who are we talking
16 about?

17 A Isaac Lewis.

18 Q That's the name you called him, Uncle Ike?

19 A Yeah, he's everybody's uncle.

20 Q But he's not your actual blood --

21 A No, he's not my biological uncle. I just called him
22 Uncle Ike because he's somebody I can go and talk to and
23 give you advice whatever it is. He's just there, that's
24 Uncle Ike.

25 Q So tell the jury about what happened once you leave

1 Uncle Ike?

2 A Well, me and Uncle Ike actually was walking to the
3 end of the driveway. We were talking. I told him that I
4 was going to go across the street to their nephew house,
5 Thomas, to see if he was home. By the time I get to the
6 edge of the driveway, I see a blue car pull up, which was
7 on Center Street at the stop sign. And I'm looking at the
8 car and see two doors open. It was the passenger front
9 door and the back driver door, the back side on the
10 driver's side and I see Horace and Malik get out. And the
11 first they did was, Oh, y'all want to jump my F'ing
12 brother, boom, boom, boom, they started shooting.

13 Q Now, when you see them get out the car, about how far
14 away from you are you from there?

15 A I'm leaving out the driveway from the Cleckley house
16 and they're -- this is the house and Center Street is
17 further up, so they're pretty far up there at the stop
18 sign.

19 Q Do you see anything in their hands?

20 A Yes, I seen two guns. They had guns.

21 Q Okay.

22 A Black guns.

23 Q You said one of them said, Oh, y'all want to jump
24 my --

25 A Yeah, that was Horace. He was screaming, Y'all want

1 to jump my F'ing brother.

2 Q Did he say F'ing or did he use the word?

3 A Yeah, he used the word, just, you know, for the
4 court.

5 Q I appreciate your efforts of politeness. And you
6 said -- you did some noise, boom, boom, boom. What was
7 that?

8 A They was shooting. They was shooting. They started
9 shooting the gun.

10 Q Okay. What direction were they shooting the gun?

11 A They were shooting towards the house. The first
12 bullet actually struck the truck, the Ford Explorer truck
13 and Ty was sitting in the truck. I actually seen it go
14 through the window and it hit him in the side. He jumped
15 out the truck and was like, Oh, I got shot. Then turned
16 around and got back in the truck and laid back.

17 Q Okay. Did you -- okay, so you saw the first bullet
18 hit the truck?

19 A Yeah.

20 Q Okay. What direction were -- what were the two --
21 Horace and Malik, what were they doing?

22 A They was running from Center Street shooting. They
23 was running and gunning.

24 Q Running towards y'all?

25 A Yeah. I was across the street from -- I had done

1 made it across the street from Ms. April and them's
2 driveway, so I'm in the church field right there watching
3 everything.

4 Q Okay. You mind stepping down for one second?

5 A Yeah, sure.

6 Q I'm showing you what's marked as State's No. 8. You
7 stand on this side with me so that way, the court reporter
8 can get you, okay?

9 A All right.

10 Q So where were you originally?

11 A All right. I was right here (indicating). This is
12 the edge of the driveway. Across is the church yard.
13 This is a light pole right here. It was a car parked
14 right here. I had already ran behind this car. They were
15 coming from right here. This is Center Street. They were
16 running and shooting all the way down towards the
17 driveway. They came inside the driveway and was still
18 shooting.

19 Q Okay. Go have a seat again. All right. So you run
20 across the street to the church yard?

21 A Yeah, correct.

22 Q And so what do you see from that vantage point?

23 A I'm watching them running, shooting. I watched them
24 run in the yard, point the gun at any and everybody and
25 they was still shooting.

1 Q Okay. Were both of them shooting the whole time?

2 A Yeah, the only thing is that Malik had done stopped
3 shooting. I know I seen him like -- like his gun had been
4 jammed up, so he was standing back trying to get the gun
5 straight, but Horace was still shooting.

6 Q Did both of them go into the yard?

7 A Yeah, both of them entered the yard.

8 Q Where did Horace go?

9 A Horace proceeded further in the driveway to where
10 Uncle Ike was shot at.

11 Q Okay.

12 A That's about the stopping point he was at.

13 Q Was there anyone else with you in the church yard?

14 A No, I was by myself. I was by myself.

15 Q What about earlier in the street?

16 A Earlier, when I walking -- like I said, it was me and
17 Uncle Ike walking, you know, down the driveway. Tyrone,
18 he was still in the truck because he didn't really get
19 out. I can say before they started shooting, there was
20 lot of people in the front yard, so.

21 Q Okay. There were people all over the place?

22 A Yeah, in the front, back, side, inside of the house,
23 next door.

24 Q Okay. Now, what do you remember from when Horace
25 starts advancing in the driveway?

1 A Pointing and shooting at everybody. I remember
2 seeing Uncle Ike making the kids, all the little kids run
3 and all of that. And I seen him in front of Uncle Ike and
4 I heard Uncle Ike -- I remember Uncle Ike, he was like,
5 Oh, you going to shoot me? Bang.

6 Q What happened to Uncle Ike?

7 A Horace shot him. He looked him dead in the face and
8 shot the man.

9 Q Was Uncle Ike turning at the time or?

10 A From what I seen, Uncle Ike was trying to, you know,
11 run and hide behind the tree.

12 Q Okay. What did you do at this point?

13 A I mean, I couldn't do nothing.

14 Q You were way across the street?

15 A I'm across the street. I'm sitting there looking.
16 The only thing I did see -- the only thing out of the
17 ordinary I seen was Jamichael come and get Ty out the
18 truck and help him.

19 Q But everyone else was just running around?

20 A Yeah, everybody scrambling trying to hide. We trying
21 to get the kids from out the way. There was a lot of
22 people out there. There wasn't nothing I could really do.

23 Q So once Horace shoots Uncle Ike, what does Horace do?

24 A He turned around and told his brother to come on.

25 They ran. They left out the yard and went the opposite

1 way from which they came, proceeded from down Magnolia and
2 went toward Ervin and Chestnut Street.

3 Q So just tell me about the sort of things that
4 happened next. Just tell the jury about it.

5 A I mean, after they left, after the shooting was over,
6 you know, people ran up to Uncle Ike. They circled around
7 him trying to, you know, see if he's still alive. He was
8 face first laying in the dirt and he was bleeding bad.
9 When they turned him over, it was like that was it. All
10 the blood just started coming out of his nose, mouth and
11 stuff and it wasn't nothing else they could do. His
12 brother tried to put a towel over his chest, but it was
13 all -- he was already gone. We had to wait for the
14 ambulance and stuff to get there. The police was there.
15 They wasn't too far away, so.

16 Q So they came pretty fast?

17 A Yeah, they came fast. Because they had just left
18 from the house. I guess somebody called them, there was
19 like a little altercation going on. They had pulled up
20 and asked was everything going okay. We was like yeah,
21 just a little altercation. And they left, all right, have
22 a good day. So they wasn't far from us.

23 Q Now, when the police got there, did they end up
24 taking you down to headquarters?

25 A Yeah, they took a good bit of us down to the

1 headquarters.

2 Q I'm talking about you in particular here?

3 A Yeah, they took me. I went.

4 Q Okay. I'm going to show you what is marked as
5 State's Exhibit No. 2?

6 A All right.

7 Q Can you look at that?

8 A (The witness complied.) Yeah, that's mine.

9 Q Tell the jury what that is.

10 A This is a lineup.

11 Q What kind of lineup -- who showed you this lineup?

12 A They showed me this lineup when I went down to the
13 headquarters.

14 Q What did they tell you about it?

15 A He said we're going to give you a lineup. We want
16 you to look through these picture and see if you can
17 identify one of these suspects. And that's what I did.

18 Q Okay. What did you do?

19 A I circled number five (indicating).

20 Q Who is number five?

21 A Horace Watts. Not because I know, because I watched
22 him get out the car running and gunning and leave like it
23 wasn't nothing.

24 Q What did you write next to circle number five?

25 A This is the person I saw shooting, Horace.

1 MR. POTTS: Your Honor, at this time, I'd offer that
2 into evidence as State's No. 2.

3 MR. RUFFIN: Subject to our previous objection, Your
4 Honor.

5 THE COURT: It's admitted.

6 (WHEREUPON, State's Exhibit No. 2 was admitted
7 into evidence.)

8 BY MR. POTTS:

9 Q Now, the person you saw shoot?

10 A Uh-huh.

11 Q The person you saw get out of the car with Malik that
12 day?

13 A Uh-huh.

14 Q The person who ran toward y'all firing?

15 A Right.

16 Q The person who advances into the driveway?

17 A Right.

18 Q The person who shot Uncle Ike?

19 A Right.

20 Q Is that person in the courtroom today?

21 A Yes, he is.

22 Q Would you please point out to me where he is and
23 describe what he's wearing?

24 A He's wearing a blue shirt with glasses with a blue
25 and white tie.

1 MR. POTTS: Let the record reflect he identified the
2 Defendant.

3 THE COURT: It does.

4 BY MR. POTTS:

5 Q Now, Mr. Young?

6 A Yes, sir.

7 Q You've been in trouble before, haven't you?

8 A Yes, sir.

9 Q In fact, you've been convicted with possession of
10 cocaine, haven't you?

11 A I have.

12 Q Does that have anything whatsoever to do with your
13 testimony here today?

14 A No, that has nothing to do with it at all.

15 MR. POTTS: All right. Thank you so much. Answer
16 any questions they have.

17 MR. RUFFIN: May it please the Court?

18 CROSS-EXAMINATION

19 BY MR. RUFFIN:

20 Q Hey, Mr. Young, you remember me?

21 A Yeah, I remember you.

22 Q From the last time you were in court?

23 A Yeah.

24 Q And I asked you a few questions, right?

25 A Right.

1 Q There was no jury here, though?

2 A Correct.

3 Q Just us and the judge, correct?

4 A Right.

5 Q Okay. So I know you talked a little bit about right
6 before the shooting happens?

7 A Uh-huh.

8 Q You were standing out in the road, right?

9 A Right.

10 Q Had Tyrone Johnson already pulled up in the car or?

11 A He been there.

12 Q He had been there?

13 A He been there.

14 Q Like, how long do you mean?

15 A I'd probably say he was there an hour before I got
16 there.

17 Q And what time did you get there?

18 A I got there from around 11:30 to 12:30, in that
19 timeframe.

20 Q So he had been there, but did he leave and come back
21 at some point?

22 A Not that I saw.

23 Q Okay. So he was out in the street with you?

24 A He was sitting in the truck, he wasn't with me.

25 Q He was sitting in the truck?

1 A Yeah.

2 Q Where was he -- do you know if he was driver's side
3 or passenger side?

4 A Passenger side.

5 Q He was sitting in the passenger side?

6 A Right.

7 Q And while you were out on the street, is anybody else
8 in the street, like Dominique Tucker? Was he out on the
9 street with you?

10 A No, they was on the front porch at the time.

11 Q Do you remember if Tarus Threatt was out on the
12 street with you?

13 A Not that I seen.

14 Q Okay. All right. You know who those people are,
15 though?

16 A Yeah, I know who everybody is.

17 Q Right. Right. So while you're standing out there,
18 you see a blue car pull up?

19 A Uh-huh.

20 Q And you say you saw Horace and Malik both get out the
21 car?

22 A Yeah.

23 Q Do you remember what they were wearing?

24 A White shirt, shorts.

25 Q Both of them?

1 A Yeah.

2 Q Both of them have white shirts. And what time --
3 this is about 8:30 in the day?

4 A I don't remember what time it was, it was daylight,
5 though.

6 Q Okay. So it was daylight. And you said that as soon
7 as they get out the car, they're shooting?

8 A Yeah.

9 Q And you hit the ground, basically, or what?

10 A I was running across the street, then I hit the
11 ground.

12 Q Across the street, across from Magnolia Street?

13 A To the church field.

14 Q Right. Which is sort of like --

15 A Right across from the Cleckley's house.

16 Q Yeah. It's kind of across and diagonal a little bit,
17 right?

18 A No, it's just straight across.

19 Q Just straight across. And you were laying down in
20 the church yard?

21 A Yeah, behind the car.

22 Q All right. Do you remember what kind of car it was?

23 A It was a red Pontiac with red and silver rims.

24 Q Okay. And so you actually can look and see --

25 A Them getting out the car, running down the street,

1 shooting the guns, yeah, the whole thing.

2 Q So the way that you're laying down, if you look to
3 your right, you would be looking at April's house,
4 Ms. Cleckley's house?

5 A No, if I look straight, I'd be looking at her house.

6 Q Okay. So you were looking straight at them?

7 A Yeah.

8 Q Okay. I got you. So they were walking -- they were
9 coming up from this way then (indicating), from your left?

10 A Yeah.

11 Q Okay. And you said that you saw them run up in the
12 yard?

13 A Uh-huh.

14 Q Right. Horace, you say is shooting?

15 A Shooting.

16 Q Okay. And you said that your Uncle Ike is there
17 trying to get other people back in?

18 A Yeah, he was already pushing kids and everything out
19 the way. Everybody else was running, but it was kids
20 there at the time. Kids don't know what's going. He was
21 trying to move kids out the way.

22 Q Uh-huh. And they were going to the backyard, I
23 guess?

24 A Yeah. I mean, everybody was in the backyard,
25 backyard and the driveway and there was some still stuck

1 up front.

2 Q And you were out in the road?

3 A Yeah, I was across the street laying in the ground.

4 Q Right.

5 A I could see -- I was laying so I could see them
6 running down, come in the driveway, shoot and leave out
7 the driveway and go around the corner.

8 Q You watched them run out?

9 A I watched the whole thing.

10 Q Yeah. And you saw it was -- you said Isaac was --
11 they were face to face and Isaac said, You really going --

12 A Yeah, he looked at him, So you going to shoot me?

13 Q Yeah.

14 A Because at the time, he had done already been trying
15 to run and hide behind the tree.

16 Q Uh-huh.

17 A But Horace was already right there.

18 Q Right.

19 A Uncle Ike just turned around. I don't know why he
20 turned around. He turned around and Horace was.

21 Q Face the face?

22 A Face to face.

23 Q All right. And Horace shot him?

24 A He shot the man.

25 Q Yeah. Okay. And after they ran away --

1 A Uh-huh.

2 Q -- did you go up to Tyrone or -- because he was shot
3 in the car, right?

4 A No, I didn't go up to Tyrone.

5 Q Did you go up to Isaac?

6 A Yeah, I went to Uncle Ike.

7 Q All right. And there's other people around trying to
8 help?

9 A Yeah, at his aid, yeah.

10 Q Now, everybody is kind of talking about what just
11 happened?

12 A What you mean?

13 Q Like, I mean, it was emotional, right?

14 A Yeah, ain't nothing to talk about. We got a dead
15 person in the driveway.

16 Q Were people saying that, like telling each other?

17 A There's people on the phone, people trying to get him
18 to breathing.

19 Q People calling 911?

20 A Yeah.

21 Q Everybody saying Horace and Malik just came and shot
22 up everybody, right?

23 A Usual reaction that anybody would do if somebody die.

24 Q Right. Right. And do you still have your lineup up
25 there with you?

1 A No, I don't got it up here.

2 Q But you looked at it?

3 A Yeah.

4 Q Would you agree with me that Horace's picture is
5 blurrier than the other ones in there?

6 A It ain't that blurry.

7 Q But it's blurry, right?

8 A It looked clear to me.

9 Q Okay.

10 MR. RUFFIN: Beg the Court's indulgence.

11 BY MR. RUFFIN:

12 Q Was anybody drinking there?

13 A No. Uncle Ike had a beer that he just opened that he
14 never got to finish.

15 Q He was the only person?

16 A Yeah. Because that what he do, he like to drink him
17 a beer and cook.

18 MR. RUFFIN: No further questions.

19 THE COURT: Anything from the State?

20 MR. POTTS: No, Your Honor.

21 THE COURT: You may step down.

22 Next witness.

23 MR. ARANT: Your Honor, the State calls Diamond
24 Corbett.

25 Thereupon;

1 DIAMOND CORBETT,
2 after having been duly sworn, testified as follows:

3 THE CLERK: Thank you. Please have a seat in the
4 witness stand and state your full name for the record.

5 THE WITNESS: Diamond Corbett.

6 DIRECT EXAMINATION

7 BY MR. ARANT:

8 Q Good afternoon, Ms. Corbett, or morning. How are you
9 today?

10 A I'm doing good.

11 Q Tell the Court a little bit about yourself. Who did
12 you come here with today?

13 A I'm here with Jamichael.

14 Q Did you just recently have a kid?

15 A Yes.

16 Q Had a little baby?

17 A Yeah, a little girl.

18 Q How long ago?

19 A Two weeks.

20 Q What's her name?

21 A Taylor.

22 Q Is that your first?

23 A No, my second.

24 Q Okay. Were you just released from the hospital?

25 A Yeah, last Sunday.

1 Q Okay. You still moving around little slow?

2 A Yes, these stitches are killing me.

3 Q Excited for your new arrival? Excited about your new
4 baby?

5 A Yeah.

6 Q Okay. I'm going to have you fast forward to back in
7 2014. You had occasion to know April Cleckley?

8 A Yes.

9 Q Can you tell the jury how you knew her?

10 A I was in a relationship with her nephew, Jamichael.

11 Q And just for the record, what's Jamichael's full
12 name.

13 A Jamichael Lewis.

14 Q Okay. And you were in a relationship with him?

15 A Yes.

16 Q How long were in a relationship with him?

17 A Three years.

18 Q Three years. Did you have an occasion while you were
19 in that relationship with him to go to Ms. April's house,
20 Ms. Cleckley's house?

-21 A Yes, I used to go over there everyday.

22 Q And you're familiar that's on Magnolia Street?

23 A Yes.

24 Q What would you go over there for?

25 A Just to hang out, chill, spend time with him and his

1 family.

2 Q Okay. So you were a regular over there?

3 A Yes.

4 Q Back in the summer of 2014, did you have occasion to
5 go over there from time to time?

6 A Yes.

7 Q And hang out and see people just like you were
8 saying?

9 A Yes, sir.

10 Q And I want to talk about specifically on July 12th,
11 2014. Were you at Ms. Cleckley's house that day?

12 A Yes.

13 Q Tell the jury what was going on earlier that day.

14 A It was a big birthday party.

15 Q Who's birthday party was it?

16 A Ms. April's.

17 Q And if you can tell the jury about how many people
18 were there?

19 A It was lot of us.

20 Q And what were y'all doing at that point in the day?

21 A Just cooking, having fun, dancing, playing with each-
22 other.

23 Q Okay. Was Isaac Lewis there that day, too?

24 A Yes, he was the one cooking on the grill.

25 Q Does he have a nickname that he goes by to everybody?

1 A Uncle Ike.

2 Q And that's what you know him as?

3 A Yes.

4 Q Okay. And you'd see him numerous times?

5 A (The witness nodded head.)

6 Q And tell us a little bit about how that day unfolded
7 once the cookout started that evening.

8 A Everybody was chilling. We was playing music. We
9 were dancing. I had had my son. He was like two months,
10 so we were all talking about my new baby, my apartment.
11 We were just all having a good time.

12 Q Then what happened after that?

13 A Malik had came to the cookout. We had -- I saw him
14 earlier there that day. He was playing basketball. And
15 then he came back and he exchanged words with Terrell.

16 Q Now, who's Terrell?

17 A Jamichael's cousin.

18 Q Okay. Does he have -- do you know his last name?

19 A Yes.

20 Q That would be Terrell Threatt?

21 A Yes, sir.

22 Q Okay. And you were saying him and Malik exchanged
23 words. Kind of describe to the jury what was going on at
24 that point.

25 A Terrell was standing in the road and Malik just

1 walked up to him and started talking trash.

2 Q Okay. And then what -- did anything else happen
3 after that?

4 A Yeah, Malik swung on Terrell and Terrell hit him
5 back.

6 Q Okay. What happened after Terrell hit him back?

7 A Terrell beat him up and they was -- people was trying
8 to break up the fight. And he got mad because he got beat
9 up.

10 Q Who's he?

11 A Malik.

12 Q Malik?

13 A Yeah, Malik got mad because he got beat up, so he
14 said he was going to get his F'ing brother.

15 Q And then what happened after he said that? Did he
16 leave?

17 A Yeah, he left.

18 Q And did y'all continue to party on after this?

19 A Yeah.

20 Q So at that point Malik leaves?

21 A Yes, sir.

22 Q So then tell the jury what happened next after that.

23 A We didn't really think that Malik would actually come
24 back, so we on about our party and we was having fun. And
25 then Malik came back with his brother.

1 Q And you say his brother, who's his brother?

2 A Horace.

3 Q And when they came back -- describe to the jury what
4 you mean came back?

5 A When they came back, they came running down Magnolia
6 shooting at us.

7 Q Both of them?

8 A Yes.

9 Q Both of them had weapons?

10 A Yes.

11 Q And you saw both of them?

12 A Yes.

13 Q Okay. And as they're coming down Magnolia, did they
14 keep coming and stop? What did they do?

15 A They kept coming, running down Magnolia and Malik
16 stood closest to the front of the yard, whereas Horace
17 came all the way in the yard.

18 Q So Horace Watts came in the yard?

19 A Yes, sir.

20 Q Where were you standing at this point?

21 A By a green car and a tree, a little bush.

22 Q Okay. I'm going to show you what's been marked as
23 State's Exhibit 8. Do you recognize this?

24 A Yes.

25 Q Okay. Can you point out Ms. Cleckley's house? I

1 know it's kind of blurry.

2 A (Indicating).

3 Q Right there?

4 A Yes.

5 Q So your testimony is they were coming down this way
6 (indicating)?

7 A Yes.

8 Q Okay. And you were in the front yard?

9 A Yes.

10 Q Okay. And you said Horace came into the yard?

11 A Yes, sir.

12 Q And so Malik was near the road?

13 A Yes, sir.

14 MR. RUFFIN: Objection, Your Honor, leading.

15 THE COURT: Don't lead the witness.

16 MR. ARANT: Yes, Your Honor.

17 BY MR. ARANT:

18 Q And after all of the shots are done ringing out,
19 done firing, do they go in any type of direction? What
20 happens with Horace and Malik at that point?

21 A They ran to the left.

22 Q Okay. So can you just show the jury which way they
23 ran after all that happened?

24 A This way (indicating).

25 Q This ran that way?

1 A Yes.

2 Q So safe to say they're going this way (indicating)?

3 A Yes, sir.

4 Q Okay. All right. So back to when Horace came into
5 the yard, you're in the front yard?

6 A Yes.

7 Q Okay. And are there people in the front yard with
8 you?

9 A Yes.

10 Q Do you remember who those people were by chance or?

11 A It was me, Jasmine and Julie. I don't remember
12 everybody else.

13 Q Okay. But were there a lot of people at this party
14 still when Horace and Malik come up?

15 A Yes.

16 Q Okay. And were you familiar with Horace and Malik?
17 Did you know them?

18 A Yes.

19 Q How did you know them?

20 A They used to come in the backyard and play basketball
21 a lot.

22 Q So you were familiar with both of them through that?

23 A Yes.

24 Q They come often?

25 A Yes.

1 Q Okay. Kind of describe what's going on when Horace
2 starts coming up in the yard. What's he doing? What are
3 you doing?

4 A He's aiming --

5 Q Is he shooting or what's he doing?

6 A Yeah, he's shooting. He's aiming the gun. And --
7 excuse my language, but when he was aiming, he said, Y'all
8 jumped my fucking brother.

9 Q You heard that, that's what he said?

10 A Yes.

11 Q And was he shooting at you or your direction?

12 A He aimed the gun at me and then he pushed the gun
13 past me and he shot and a bullet flew past my arm.

14 Q Bullet flew past your arm?

15 A Yes.

16 Q Was that scary?

17 A Very.

18 Q What did you do at that point?

19 A Ducked behind the true.

20 Q Okay. Then what happened?

21 A I saw Uncle Ike coming toward the front yard and
22 that's when he shot at him. That's when Horace shot at
23 Uncle Ike.

24 Q You saw Horace shoot Uncle Ike?

25 A Yes.

1 Q Uncle Ike was hit. What does Uncle Ike do next?

2 Does he fall down? What does he do?

3 A He grabbed his chest and he spun around and hit the
4 ground face first.

5 Q Did you run over to him or are you still ducking for
6 cover at this point? What are you doing after he got
7 shot?

8 A I stayed where I was until Horace ran out the yard
9 after he ran out of bullets.

10 Q Okay. And he ran out the yard?

11 A Yes.

12 Q And leaves?

13 A Yes.

14 Q After that, the police soon arrive? EMS is called?

15 A Yes.

16 Q And you're still on scene?

17 A Yes.

18 Q Do you recall speaking to an investigator about this
19 case?

20 A Yes.

21 Q Did you show you a lineup in this case?

22 A Yes.

23 Q Okay. I'm going to hand you what's marked as State's
24 Exhibit No. 3. If you can just look through that real
25 quick and tell me what that is.

1 A It's the different people that they showed me to see
2 if I could pick out who Horace was.

3 Q Did they tell you who to pick out?

4 A No.

5 Q Okay. Which guy did you pick out?

6 A Number five.

7 Q And can you -- did you initial number five? Are
8 those your initials on there?

9 A Yes, that's my initials.

10 Q Okay. And is that your signature on the front page
11 there?

12 A Yes.

13 Q And that's the cover page so you can find which one
14 you picked out?

15 A Yes.

16 Q So they're showing you these photos and they're
17 telling you that he may be in there, he may not be in
18 there?

19 A Yes.

20 Q And you picked out the one you saw shooting Uncle
21 Ike?

22 A Yes.

23 Q Now, on that day, do you remember if it was light out
24 or daylight out when the shooting was occurring?

25 A It was still daylight.

1 Q And you don't have any eyesight problems?

2 A Not at all.

3 Q You clearly saw Horace Watts shoot Uncle Ike?

4 A Yes, I did.

5 MR. ARANT: Your Honor, at this time, the State seeks
6 to move Exhibit No. 3 into evidence.

7 MR. RUFFIN: Renew our previous objection, Judge.

8 THE COURT: It's admitted.

9 MR. ARANT: Thank you, Your Honor.

10 (WHEREUPON, State's Exhibit No. 3 was admitted
11 into evidence.)

12 BY MR. ARANT:

13 Q Now, do you see Horace in the courtroom here today?

14 A Yes.

15 Q Can you just describe him so that we may reflect in
16 the record what he looks like?

17 A Yeah, he's right there with the glasses on.

18 Q What color shirt is he wearing?

19 A Blue.

20 MR. ARANT: Your Honor, may the record reflect that
21 she has identified the Defendant in the courtroom?

22 THE COURT: It does.

23 MR. ARANT: I beg the Court's indulgence for one
24 moment.

25 (Pause.)

1 MR. ARANT: No further questions. Please answer any
2 the Defense may have for you.

3 THE WITNESS: All right.

4 CROSS-EXAMINATION

5 BY MR. RUFFIN:

6 Q Ms. Corbett, do you remember what Horace and Malik
7 had on, what they were wearing?

8 A No, I can't remember right now.

9 Q But you were standing right next to Isaac Lewis, your
10 Uncle Ike?

11 A I wasn't standing right next to him.

12 Q He was kind of behind you a little bit?

13 A Yes.

14 Q Okay. And you saw when Horace came in the driveway,
15 they were face to face and he shot him, right?

16 A Yes.

17 Q Now, you said you came here with Jamichael Lewis,
18 right?

19 A Yes.

20 Q And you're actually the victim in his domestic
21 violence charge, right?

22 A Yes.

23 MR. RUFFIN: No further questions, Your Honor.

24 THE COURT: Anything further?

25 MR. ARANT: Nothing further from the State, Your

1 Honor.

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

3 You may call your next witness.

4 MR. POTTS: Your Honor, at this time, the State --
5 that's all we have prepared for this morning, Your Honor.

6 THE COURT: The State rest?

7 MR. POTTS: No, Your Honor. We have more witnesses
8 this afternoon.

9 THE COURT: All right. Ladies and gentlemen, we'll
10 break for lunch. We'll resume at -- it's 12:21. We'll
11 resume at 1:45. Please do not discuss the case. We
12 ordered lunch for you. You don't have to stay in the jury
13 room, but you should never mill around the front of the
14 courtroom where other people connected with this case
15 might be milling around. You should avoid contact with
16 anyone who has anything to do with this case. We'll see
17 you at 1:45.

18 (WHEREUPON, the jury left the courtroom at 12:22
19 p.m.)

20 THE COURT: All right. The next folks will be here
21 at 1:45?

22 MR. POTTS: We have some coming at 1:30, Your Honor,
23 and should be good to go.

24 THE COURT: Okay. Good deal.

25 MR. KRZYSTON: Thank you, Judge.

1 THE COURT: All right. We'll be in recess.

2 (WHEREUPON, a short recess was held.)

3 THE COURT: Anything before the jury comes in?

4 MR. POTTS: One thing, Your Honor. I was talking to
5 the witnesses outside about finding a witness. A juror
6 walked by. I instructed them all to be quiet. I don't
7 think they heard anything, but I just wanted to bring it
8 to the Court's attention. We weren't talking about
9 anything substantive, Your Honor, we were talking about
10 locating a witness. I think the juror was too far away to
11 hear anything. I already told Mr. Ruffin, but I just
12 wanted to bring it to the Court's attention.

13 THE COURT: All right. Anything else before the jury
14 comes?

15 MR. POTTS: Nothing from the State.

16 THE COURT: Bring the jury.

17 (WHEREUPON, the jury returned to the courtroom at
18 1:45 p.m.)

19 (WHEREUPON, State's Exhibit Nos. 171 through 177
20 were marked for identification.)

21 BAILIFF: The jury's present, Your Honor.

22 THE COURT: All right. Thank you.

23 Welcome back, ladies and gentlemen. Some of you want
24 to know if the jury could have a list of witnesses in
25 order -- for each day. You've probably heard from 10 or

1 12 or more. We can see about generating -- having a list
2 generated at some point this afternoon.

3 You may call your next witness.

4 MR. ARANT: Thank you, Your Honor, may it please the
5 Court. The State would call Investigator Smith of the
6 Columbia Police Department.
7 Thereupon;

8 GEORGE SMITH,

9 after having been duly sworn, testified as follows:

10 THE CLERK: Please have a seat in the witness stand
11 and state your full name for the record.

12 THE WITNESS: Crime Scene Investigator George Smith
13 with the City of Columbia Police Department.

14 DIRECT EXAMINATION

15 BY MR. ARANT:

16 Q Afternoon, Mr. Smith. How are you doing today?

17 A Doing well. Thank you.

18 Q Can you please, if you would, tell the Court and the
19 jury where you're employed at?

20 A I'm employed with the City of Columbia Police
21 Department in their crime scene unit.

22 Q And how long have you worked for the City of Columbia
23 Police Department?

24 A I've worked for the City of Columbia for six years.

25 Q Six years. So back in 2010, somewhere in there,

1 2011, that's when you started to work for them?

2 A It is.

3 Q And when you first started working for them, what was
4 your -- what capacity were you employed in?

5 A I was a patrolman for the first two years, on the
6 streets and doing calls and stuff like that, taking
7 reports.

8 Q Were you assigned to a particular region in Columbia?

9 A Yes, I was.

10 Q What region was that?

11 A I'm assigned to the south region..

12 Q Can you just explain what section of town south
13 region is? If you need to use roads or locations or
14 something, just tell them what region of town that was in.

15 A South region of town is Harden Street, out toward
16 Garners Ferry, Leesburg Road, Rosewood area, Shannon area,
17 Lake Katherine.

18 Q And so you were assigned that region for two years?

19 A Yes, sir.

20 Q And as part of your assignment to that region for two
21 years, what were some of your responsibilities as a road
22 unit, as a patrolman?

23 A Going to different scenes, domestics, anything the
24 public needed for us to handle, traffic stops, you know,
25 patrol my areas and try to keep it as safe as possible.

1 Q So you -- is it fair to say you had the occasion to
2 respond to crime scenes before?

3 A Yes.

4 Q What kind of crime scenes, just off of the top?

5 A I went to natural deaths, suicides, burglaries to
6 auto break-ins.

7 Q And you were -- you ever have occasion to be the
8 first responder to those types of situation, first officer
9 on the scene?

10 A I did.

11 Q Okay. Often?

12 A Not often, no.

13 Q Okay. And you mentioned you were a road unit for two
14 years.. Where were you after that?

15 A I went to the crime scene unit.

16 Q And is that where you currently -- is the unit you're
17 currently in?

18 A It is.

19 Q And so approximately how long have you been in crime
20 scene to this date?

21 A Approximately four years.

22 Q Okay. Now, before you came aboard the police
23 department, were you employed anywhere else, have any
24 former work or anything of that nature?

25 A Yes, I was in the printing industry for 23 years.

1 Q Printing industry. What kind of work is that
2 industry?

3 A Ran what we call presses, magazines, print magazines,
4 papers, business cards and letterhead, just your basic
5 print.

6 Q Is it safe to say you're familiar with documentation?

7 A Yes, sir.

8 Q And printing things?

9 A Yes, sir.

10 Q And photographing things?

11 A Uh-huh.

12 Q Even before you joined the police department?

13 A Yes, it is.

14 Q Okay. Now, I'm going to turn your attention to 2014,
15 specifically. Back in July of 2014, what capacity were
16 you employed with at the police department?

17 A I was in crime scene.

18 Q Okay. And how long had you been in crime scene at
19 that point?

20 A Approximately a year, maybe a bit over.

21 Q Did you go through any training under the supervision
22 of other officers --

23 MR. KRZYSTON: Objection to relevance.

24 THE COURT: Overruled.

25 MR. ARANT: Thank you.

1 BY MR. ARANT:

2 Q You can answer the question.

3 A Could you repeat it?

4 Q I believe I asked have you had any training or under
5 supervision when you initially started out in crime scene?

6 A Yes, they had training for photography and crime
7 scene classes and also under the supervision of the crime
8 scene supervisor.

9 Q So you weren't just willy-nilly, you were under the
10 supervision and had training and experience to be able to
11 document crime scenes; is that fair to say?

12 A That is correct, yes, sir.

13 Q Okay. And so on July 12th of 2014, did you have an
14 occasion to respond to [REDACTED]?

15 A I did.

16 Q In what capacity were you called there for?

17 A I was called and notified that date with a murder
18 call.

19 Q Okay. And were you the first on scene at that murder
20 call?

21 A No, sir.

22 Q There were other units on scene, other police
23 officers?

24 A That is correct.

25 Q Okay. I'm going to show you what's been marked

1 State's Exhibit No. 21, do you recognize that?

2 A Yes. That's a photograph.

3 Q Is that the crime scene you responded to that night?

4 A It is.

5 Q Did you actually take that photograph?

6 A I did.

7 Q And so once you arrived, kind of tell the jury what
8 your duties are, what you're trying to do, what your
9 responsibilities are at this point in time when you're
10 responding in your CSI capacity?

11 A Okay. When I respond on a scene, I get with the
12 investigators and I go through the scene to see what
13 happened, make sure -- I look at my evidence and go
14 through everything, make sure everything is marked off
15 like it's supposed to be and taped off. Then I start with
16 my photos. I take 360 photos all the way around, outside
17 the crime scene and inside the crime scene, then up close
18 of each individual item. And I then start my collection.

19 Q Are you putting the crime scene up or is that already
20 established?

21 A The crime scene is already established by the time I
22 get there.

23 Q And are you moving around a lot of things or keeping
24 things in place?

25 A Keeping things in place.

1 Q And why is that?

2 A To make sure that we document it correctly.

3 Q Okay. I'm going to hand you Exhibits 74 through 95.
4 You can just tell me if you recognize all of that. You
5 can have a minute and look those.

6 A (The witness complied.)

7 Q Do those look familiar?

8 A Yes.

9 MR. ARANT: Your Honor, I believe those have already
10 been stipulated to as in evidence.

11 THE COURT: All right.

12 BY MR. ARANT:

13 Q And do you recognize this photo here?

14 A Yes, I do.

15 Q Can you just kind of tell the jury what you're trying
16 to capture in this photo?

17 A I'm trying to capture the area that the crime
18 happened from the first marking, where the first shell
19 casing, out to just give you an idea of how big the crime
20 scene is or how small and how much stuff there is in
21 there.

22 Q And in your experience, would you describe this as a
23 big crime scene, small crime scene?

24 A It's a good sized crime scene.

25 Q Fairly large crime scene?

1 A Yes.

2 Q So there were there multiple CSI personnel on scenes
3 as well?

4 A No.

5 Q Okay. Again, you recognize this photo?

6 A I do.

7 Q Is that just a close-up version of more of the
8 markers?

9 A It is.

10 Q Okay. Can you tell the jury why there are cones
11 there and why there are numbers there?

12 A When the police officers arrived on scene, they put
13 all of the cones over the evidence to secure it and make
14 sure nothing happens to it. And once I get there, I
15 number all my evidence and collect it by the number and
16 take photos of it.

17 Q I noticed in this photo -- and can you see this?

18 A Yes.

19 Q Okay. If you need to get up and come up here, you
20 can do that.

21 A Okay. Thank you.

22 Q But when you get there, are those markings already
23 there, the one, three, four, et cetera?

24 A No, I put those there.

25 Q So you put those there?

1 A Uh-huh.

2 Q And what is the purpose of the cones?

3 A The cones are the markers of the evidence that's in
4 the crime scene of what the officers see when they arrive,
5 the first responders arrive.

6 Q Are these hollow cones?

7 A They are.

8 Q So they're laying flat? They're hollow?

9 A Yes.

10 Q They don't have something inside them?

11 A Correct.

12 Q Why is that?

13 A Just to make sure that it's secure and stuff like
14 that, where another investigator walked on the scene
15 whether it's not manipulated in any way.

16 Q Okay. Do you have occasion to notate all that's
17 going on on the scene?

18 A Yes.

19 Q And document everything thoroughly?

20 A I do.

21 Q And why do you do that?

22 A For my purposes so I can remember the case and go
23 back and look at it. If anybody has any question about
24 it, I'll have my notes and documentation and I can tell
25 them what they need to know.

1 Q Investigator Smith, I'm just going to show you what
2 I'm referring to. Do you have these with you, these crime
3 scene notes?

4 A Yes, sir.

5 Q These look familiar?

6 A Yes, sir.

7 Q Did you prepare these two that I'm showing you?

8 A I did.

9 Q Do you have those with you right now?

10 A I do.

11 Q Okay. And you prepared those -- were these prepared
12 on scene or later when you have a chance to write
13 everything down?

14 A No, sir, they were prepared on scene.

15 Q Okay. You're writing these? This is your
16 handwriting? You're currently inscribing these as you go?

17 A Correct.

18 Q What's the purpose of that again?

19 A To keep my memory good when I go to do the report and
20 I go to turn things in when I collect the stuff to do my
21 report. So I'm on scene and I walk around and I'll do a
22 sketch of what I see, where it's at, mark it and just make
23 sure I get everything properly done.

24 Q Okay. And you also did a map here in this case?

25 A Yes, sir.

1 Q What was the purpose of that?

2 A Again, for my memory when I go back to do my report
3 and just make sure I have everything right and documented
4 correctly.

5 Q Okay. And did you eventually type up a report in
6 this case?

7 A I did.

8 Q Did you do a summary as well?

9 A Yes.

10 Q Okay. And I'm probably going to ask you to refer to
11 that when we're going through these pictures?

12 A Okay.

13 Q It may be a little easier for everyone to be on the
14 same page. And you recognize this, too?

15 A I do.

16 Q And that's just another photo with markers?

17 A Right.

18 Q Are you getting different angles?

19 A Different angles, yeah.

20 Q Why is that?

21 A Just to make sure we get the whole crime scene for
22 the measurements, for -- just to make sure we get all the
23 way around the crime scene.

24 Q And this marker here, what's significant about marker
25 one?

1 A Marker one was the first marker I put down. Once I
2 mark them, I take the cones up so I can do my photography
3 and capture it into whatever I'm documenting.

4 Q What can you tell the jury about the piece of
5 evidence in this case?

6 A That was a 9mm spent shell casing.

7 Q When you're saying 9mm, are you physically measuring
8 these with a ruler or is this just visually what the
9 casing has written on it?

10 A It's a stamp that's on the casing.

11 Q Okay. Tell the jury what number two is?

12 A Number two is a 45 caliber Federal spent shell
13 casing.

14 Q And again, the same process as the 9mm, you're just
15 looking at it saying it's a 45mm based on --

16 MR. KRZYSTON: Objection, leading.

17 THE COURT: Don't lead the witness.

18 BY MR. ARANT:

19 Q What's number three?

20 A Number three is a 45 caliber spent shell casing.

21 Q Can you tell the jury what number four is?

22 A Number four is also a 45 caliber spent shell casing.

23 Q And as we're going through these and you're seeing
24 these and documenting these, are you picking these up as
25 soon as you photograph these or what are you doing?

1 A Yes, I pick them up and secure them in an envelope.

2 Q Okay. And we'll touch more on that. I just want to
3 run you through these photographs. Number five, can you
4 tell the jury what that is?

5 A It's also a 45 caliber spent shell casing.

6 Q Number six?

7 A Number six is a 9mm Luger spent shell casing.

8 Q What's number seven?

9 A A 45 spent shell casing.

10 Q Number eight?

11 A It's a 9mm spent shell casing.

12 Q Again, all these up to this point are spent shell
13 casings?

14 A Yes, they are.

15 Q What does that mean?

16 A That means they've already been fired and ejected out
17 of the weapon.

18 Q And number nine?

19 A Number nine is a 9mm spent shell casing.

20 Q Number ten?

21 A A 9mm spent shell casing.

22 Q What's number 11?

23 A 9mm spent shell casing.

24 Q Okay. Number 12?

25 A Is a 45 caliber spent shell casing.

1 Q And I noticed the different texture with number 12.

2 Can you tell the jury where number 12 was?

3 A Number 12 -- if I can get back to my report?

4 Q That's -- yeah, use your report notes, please.

5 A Number 12 was at the -- at the beginning of the
6 driveway of the incident location.

7 Q Number 13?

8 A Number 13 is a 45-caliber spent shell casing.

9 Q Number 14?

10 A Number 14 was a 45-caliber spent shell casing.

11 Q Number 15?

12 A A 45-caliber spent shell casing.

13 Q Number 16?

14 A Forty-five caliber spent shell casing.

15 Q And again, it looks like they were all 45 caliber in
16 the driveway?

17 A That's correct.

18 Q Is that what you're seeing?

19 A (The witness nodded head.)

20 Q Let me show you what's been marked as State's Exhibit
21 173. Do you recognize this?

22 A I do.

23 Q Tell the jury what this is.

24 A That is a -- I put it on this thing here to mark
25 where it was at.

1 Q Why did you do that?

2 A Just, again, to help, you know, my process of it and
3 if anybody has any questions, it would be right there for
4 them.

5 Q And you composed this? You made this?

6 A I did.

7 Q You drew this?

8 A I did.

9 Q And this is the way the crime scene was back then as
10 it is now?

11 A That is correct.

12 Q Or as it was back then?

13 A Correct.

14 MR. ARANT: Your Honor, the State would seek to move
15 this into evidence as Exhibit 173.

16 MR. KRZYSTON: No objection, Your Honor.

17 THE COURT: It's admitted.

18 (WHEREUPON, State's Exhibit No. 173 was admitted
19 into evidence.)

20 BY MR. ARANT:

21 Q Tell the jury, the last 13 through 16, those are
22 highlighted in yellow, I see. What kind of shell casing
23 are those?

24 A Forty-five caliber spent shell casings.

25 Q And those again, are those the pictures in the

1 driveway that we just saw?

2 A That is correct.

3 Q And early ones were on the roadway?

4 A That is correct.

5 Q Okay. And you documented all of that in your notes?

6 A I do.

7 Q Okay. And so tell the jury a little bit about when
8 you're collecting these things, collecting these casings,
9 what kind of process do you go through to collect these?

10 MR. STEPHEN: Objection, calls for narrative.

11 THE COURT: It's overruled.

12 THE WITNESS: My process is I photograph them, I take
13 photos of them and immediately put them in an envelope,
14 seal them, mark down what I put in the envelope.

15 Q So you're marking on these envelopes, putting down
16 what they are?

17 A That is correct.

18 Q And you're matching the casings to the markings on
19 the scene?

20 A That is correct.

21 Q And so are you securing these items?

22 A Yes.

23 Q Okay. What -- how are you securing these items?

24 A On scene or?

25 Q On scene?

1 A On scene, I secure them in an envelope and tape them
2 up, put my initial on them, put the date or the time I
3 picked them up and what they are.

4 Q And you tape them so they are sealed?

5 A Correct, and I initial them.

6 Q Once you seal them and tape them and collect all the
7 pieces of evidence at the scene, what do you do with those
8 next or who did you do in this case?

9 A In this case, I went back to headquarters and I
10 secured them in our secured crime scene lab that only
11 crime scene investigators have access to it.

12 Q So before you do any more investigating in this case,
13 you take these casings back --

14 MR. STEPHEN: Objection, leading.

15 THE COURT: Can I hear the question?

16 MR. ARANT: Sir?

17 THE COURT: Let me hear the question.

18 MR. ARANT: Before he does any more investigating in
19 the case, does he take these -- what does he do with these
20 items that he collects from the scene.

21 THE WITNESS: After I collect them from the scene, I
22 take them and secure them in the lab.

23 BY MR. ARANT:

24 Q At that point in time, immediately thereafter?

25 A That is correct.

1 (WHEREUPON, State's Exhibit Nos. 132 through 147
2 were marked for identification only.)

3 BY MR. ARANT:

4 Q Okay. I'm going to show you what's been marked as
5 State's Exhibits 132, 133, 134, 135, 136. Do you
6 recognize those?

7 A I do.

8 Q I'm also going to show you Exhibits 137 through 141.
9 Do you recognize those?

10 A Yes, I do.

11 Q I'm also going to hand you what's been marked as
12 State's Exhibits 142 through 147. Do you recognize these?

13 A Yes, I do.

14 Q What can you tell the jury about the markings on
15 those and how you collected those and put those in
16 envelopes? And is there some writing on the envelopes?

17 A There are. That's shell casings that I collected
18 with the case number and time collected on the envelope,
19 marker number 15, case number and what I collected and
20 what time I collected it.

21 Q And so forth for all of those?

22 A Correct.

23 Q Okay. So you put on there the marker number it came
24 from and all of that. And that's your handwriting?

25 A That is correct.

1 Q Then these are the ones you turned into the evidence
2 lab?

3 MR. STEPHEN: Objection, leading.

4 THE COURT: Don't lead the witness.

5 BY MR. ARANT:

6 Q What do you do with these once you collected these?

7 A I secured them in our lab.

8 Q Okay.

9 MR. ARANT: Your Honor, at this time, I would ask
10 that these -- that 132 through 147 be marked into evidence
11 at this point.

12 THE COURT: And objection?

13 MR. STEPHEN: Without objection, Your Honor.

14 THE COURT: They're admitted.

15 MR. ARANT: Thank you.

16 (WHEREUPON, State's Exhibit Nos. 132 through 147
17 were admitted into evidence.)

18 BY MR. ARANT:

19 Q So after you leave this scene and secure those
20 casings, what then do you do?

21 A The next step is I pack everything together and take
22 it to SLED for further processing.

23 Q Okay. Did you happen to investigate any other scenes
24 that night or later that day or anything of that nature?

25 A Not -- later that day, I went to another scene, yes,

1 sir.

2 Q Can you tell the jury what that scene was? And if
3 you need to refer to your notes, please do.

4 A Thank you. Later on that day, I arrived at [REDACTED]

5 [REDACTED].

6 Q Okay. And I know you're saying later that day, I see
7 it as July 13. Is that because this initially started
8 July 12th?

9 A That's correct.

10 Q Was it late at night?

11 A It was. We went into the early morning hours.

12 Q So you respond to -- is that house?

13 MR. KRZYSTON: Objection, Your Honor, leading.

14 THE COURT: Is it a house? That leads him to say yes
15 it's a house or no, it's not a house. How is that
16 leading? Is it a house?

17 MR. STEPHEN: The form of the question, Your Honor.

18 THE COURT: It's overruled.

19 Is it a house?

20 THE WITNESS: Yes, it was a house made into a duplex.

21 [REDACTED]

22 THE COURT: Yeah, that's a house.

23 BY MR. ARANT:

24 Q Before we do that, Investigator Smith, let me ask if
25 you recognize these. There's more photos from the scene.

1 I'm going to show you what's mark State's Exhibits 104 --
2 or excuse me, State's Exhibits 101 -- look likes State's
3 Exhibits 96 through 109. See if you are familiar with
4 all of those?

5 A Yes, sir, I am familiar with them.

6 Q You recognize those?

7 A I do.

8 Q Were those pictures you took that night at the scene?

9 A They are.

10 Q Okay. Can you tell the jury what that is and what
11 you're trying to capture in that photo?

12 A Just trying to capture more of the scene and the
13 distance from where the scene started to where the Ford
14 Explorer is.

15 Q And what's significant about that Ford Explorer?

16 A It had bullet holes in it and the back glass was
17 shattered.

18 Q Why are you taking pictures of it?

19 A Just because it's part of the -- may have been or
20 could have been part of the crime.

21 Q Okay. Is that just another picture of the car?

22 A That is correct.

23 Q What do you see in this picture here? Do you mind
24 standing up and come down so we can all see what's here
25 and not having to strain. Tell the jury what's

1 significant about this photo. Do you see anything in
2 there?

3 A It appears to be a bullet hole in the windshield
4 here.

5 Q Is that the same photo?

6 A Yes, it is.

7 Q It's closer up?.

8 A Just a close-up of it.

9 Q Okay. What is that a picture of? .

10 A Appears to be when the bullet went through the
11 windshield, it hit the headrest of the driver's front
12 seat.

13 Q Yeah, I think you said earlier it was important to
14 get a lot of angles. Is that what you said?

15 A Yes.

16 Q What is this? What do you see? .

17 A Another vehicle parked in the driveway, what appeared
18 to be a bullet hole in the --

19 Q And is this before or after, when is it in relation
20 to you putting the markers out on these cones?

21 A I took the photos before I put them out.

22 Q Okay. And why do you do that?

23 A My initial thing is to make sure that I look at the
24 crime scene, initial take photos when I get there. And
25 then put my markers down and take more photographs. And

1 that's the front of the vehicle.

2 Q That's the same vehicle in the previous picture, just
3 a different angle?

4 A That is correct.

5 Q Okay. Is that the same vehicle?

6 A That's the same vehicle. Same vehicle, but you can
7 see -- well, what appears to be a bullet hole going to the
8 trunk --

9 Q You can get back on the stand. Thank you.

10 A (The witness complied.)

11 Q Now, you mentioned that you went to a Waites Road
12 address. Did you also -- did you do anything else beside
13 the Waites Road address and the crime scene itself? Did
14 you go anywhere else, document anything else?

15 A That day?

16 Q Yeah, later that day. If you need to use your
17 report, go ahead. I know it's a lot of stuff in there.

18 A Later on that day, I was -- one second, please. I
19 was contacted by one of my investigators in reference to a
20 search warrant for one of the vehicles.

21 Q What kind of car was that search warrant to be done
22 on?

23 A The search warrant was for a burgundy Ford Fusion.

24 Q Now, what's the purpose -- what is your purpose of
25 that search warrant? Are you executing the search warrant

1 or what are you doing?

2 A I photograph what the investigators need photographed
3 and collect items they needed collected.

4 Q Okay. And so where was that done in this particular
5 case? Where was that the car inventoried at?

6 A That car was --

7 Q If I show you a picture, will that make it --

8 A It would.

9 Q Here you go. I'm showing you State's Exhibits 62
10 through 73. Need you to just look at those and see if you
11 recognize those.

12 A These photographs were taken at 1 Justice Square
13 headquarters.

14 Q Did you take these?

15 A I did.

16 Q Okay. If you wouldn't mind stepping down and we'll
17 go grab the big board. It might be a little bit easier.
18 Is that the car you searched or documented or what is
19 that?

20 A That's the vehicle that I had the search warrant.

21 Q Do you notice anything about it from this view or?

22 A Down here, what appears to be a bullet whole in the
23 bottom part of the bumper.

24 Q Okay.

25 A That's just another angle of the vehicle. That's

1 what appeared to be a bullet hole. And there should be a
2 far away picture of that one. Can you go back?

3 Q Yeah. Is that the marker right there by you?

4 A It is, marking the hole.

5 Q And you put those when you find things or why do you
6 put markings out?

7 A Just for measurement purposes.

8 Q Measurement, okay.

9 A And that's another view of the bullet hole in the
10 car. This first bullet hole at the bottom of the rear
11 bumper went into the spare tire.

12 Q You photographed all of those? These are your
13 photographs?

14 A These are my photographs, yeah. And up-close of the
15 same. It went inside the trunk and this is what it looked
16 like inside of the trunk and the spare tire. Lifted up
17 the rear tire and this is the projectile from where it
18 went into the vehicle and it was up under the spare tire.
19 Again, stuff around it (indicating). That's just another
20 photo of the wheel right there and measurement of it.

21 Q That's the hole where you put --

22 A That's the hole where it went into the -- where the
23 spare tire was there.

24 Q You want to get back on the stand. And thank you.

25 A (The witness complied).

1 Q Now, you mentioned that you found that projectile?

2 You found that projectile in that car?

3 A I did.

4 Q What did you do once you found that projectile?

5 A I found the projectile and went through our process
6 again of securing it in an envelope, marking what it is
7 and the time I took it.

8 Q And is that the same process that's done on the
9 things from at the scene, same process?

10 A That is correct, same process.

11 Q And once you're done collecting that, what do you do
12 with that?

13 A Secured it in my lab -- in the lab -- excuse me.

14 Q You need some water or anything?

15 A I would love some, yes.

16 Q I'm sorry.

17 A Secure it in the lab until we're able to take it to
18 SLED for further processing.

19 Q So you said you were securing it in the lab, again,
20 like you did the other items?

21 A That is correct.

22 (WHEREUPON, State's Exhibit Nos. 123 through 131
23 were marked for identification only.)

24 BY MR. ARANT:

25 Q Okay. I'm going to show you what's marked as State's

1 Exhibit 131. If you can just take a look at that, then
2 explain to the jury what that is.

3 A That is the projectile that was in the photographs in
4 the trunk of the vehicle. And again, where I put the
5 date, collected it from and how I collected it.

6 Q And that's the same process you did with other
7 casings from the scene?

8 A That is correct.

9 Q Okay.

10 MR. ARANT: Your Honor, at this time, I seek to admit
11 State's Exhibit 131 into evidence.

12 MR. KRZYSTON: Without objection, Your Honor.

13 THE COURT: It's admitted.

14 MR. ARANT: Thank you, Judge.

15 (WHEREUPON, State's Exhibit No. 131 was admitted
16 into evidence.)

17 BY MR. ARANT:

18 Q So these bullets and casings that you're collecting
19 so far, do y'all do any testing on those or anything of
20 that nature?

21 A No, sir. We take them to SLED.

22 Q You're just securing them so they're not tampered
23 with or anything like that?

24 A That is correct.

25 Q Okay. Now, I think we touched on you also did a

1 search warrant of a house?

2 A Yes, that's correct.

3 Q And that's Waites Road?

4 A That is correct.

5 Q Okay. And again, when you're going to that
6 particular address, are you going to -- what is your role
7 in that part of the search warrant at an address?

8 A My role is to photograph what the search warrant is
9 for and collect anything investigators need me to collect.

10 Q I'm going to hand you what's marked as State's
11 Exhibits 148 through 168. Can you take a look at those,
12 please?

13 A (The witness complied.)

14 Q Are you familiar with those?

15 A I am.

16 Q Why are you familiar with those?

17 A Because I took those photos.

18 Q Were you there that night?

19 A I was.

20 Q Do you mind stepping down again with me over here so
21 we can publish those to the jury?

22 A (The witness complied.)

23 Q I believe this is Exhibit 148. Can you tell the jury
24 what this is?

25 A That's the front of that house at [REDACTED].

1 Q And why did you document that?

2 A Just to make sure we have the address and everything
3 showing.

4 Q Exhibit 149, will you tell the jury about that?

5 A That is the door of the [REDACTED]

6 Q We're looking at exhibit -- let me catch up with you

7 --

8 MR. ARANT: Beg the Court's indulgence, one moment.

9 BY MR. ARANT:

10 Q Exhibit No. 162, what do you see in that photo?

11 A It's a photograph of one of the bedrooms and a pair
12 of white shorts or white pants and gold in color --

13 Q Did you end up collecting a pair of those?

14 A I did.

15 Q What is that of?

16 A That's the a grill, gold grill people use to put over
17 their teeth.

18 Q Can you tell the jury what you see in this picture
19 here?

20 A That is two shell casings, here (indicating) and here
21 (indicating) that was up against the wall with the bed
22 pushed up against it, up under the bed.

23 Q Okay. And just for the record, that's Exhibit 155.

24 And so you said there were two casings that what you saw
25 there?

1 A Yes, sir. Two spent shell casings.

2 Q And did you retrieve those?

3 A I did.

4 Q Okay.

5 A And that's just an up-close photo of one of the shell
6 casings, spent shell casings, and another up-close photo.

7 Q Tell the jury what this is.

8 A This is a small shelf beside the bed. These rounds
9 were on the shelf beside the bed and this live round was
10 sitting right there beside the box by the box.

11 Q If you wouldn't mind stepping back inside the witness
12 box. I'm looking at your written summary report, can you
13 tell me where these items that we see in these pictures,
14 where they were located at and so forth? Actually, this
15 may be better. Do you have a copy of this?

16 A I do.

17 MR. KRZYSTON: Objection, Your Honor. I don't know
18 if we've laid a foundation for this.

19 MR. ARANT: I introduced the document into evidence.

20 MR. KRZYSTON: He's asking to read testimony off of a
21 piece of paper.

22 MR. ARANT: I'm asking him to look at, I believe.
23 He's looking at his own statement and document.

24 MR. KRZYSTON: The conclusions would come from the
25 information contained in those papers, Your Honor.

1 THE COURT: What was the question?

2 MR. ARANT: Your Honor, I was just asking if he could

3 --

4 THE COURT: Do it to him and then I'll hear what the
5 question is.

6 MR. ARANT: Okay.

7 BY MR. ARANT:

8 Q Investigator, again, I'm referring you to the notes,
9 the handwritten notes you made and asking you if you
10 could tell the Court where these items were located at
11 this house?

12 THE COURT: All right. Are those your notes, sir?

13 THE WITNESS: They are, yes, sir.

14 THE COURT: All right. You can look at your notes
15 and you can answer the question.

16 MR. ARANT: Thank you.

17 THE WITNESS: If you'd give me a moment to get to
18 them, please.

19 BY MR. ARANT:

20 Q Can you just tell the jury where those items that
21 you collected were located at?

22 A Okay. The gold mouth pieces were located in bedroom
23 one, that's where I collected them from.

24 Q And how many were there in that room?

25 A There were two.

1 Q Okay. What else was collected from that room?

2 A Collected 9mm live round unfired cartridge, a box of
3 20, 45-caliber box.

4 Q And then was there anything else collected besides
5 those items you already mentioned?

6 A Not in the bedroom, no, sir.

7 Q Were there any other items located throughout the
8 house?

9 A In bedroom two, 45-caliber spent shell casings that
10 were there.

11 Q How many were located there?

12 A Two.

13 Q Okay. I'm going to hand you what's marked State's
14 Exhibit 127. Do you recognize that?

15 A I do.

16 Q What is that?

17 A That is an envelope that I put the two gold mouth
18 pieces in and sealed it.

19 Q Is that still sealed?

20 A It is.

21 Q Is that your handwriting on the envelope?

22 A It is.

23 Q And did you turn this into evidence -- what did you
24 do with this?

25 A Turned it into evidence.

1 Q Okay.

2 MR. ARANT: Your Honor, at this time, we'd seek to
3 admit State's 127 into evidence.

4 MR. KRZYSTON: Without objection, Your Honor.

5 THE COURT: It's admitted.

6 MR. ARANT: Thank you.

7 (WHEREUPON, State's Exhibit No. 127 was admitted
8 into evidence.)

9 BY MR. ARANT:

10 Q Did you also have occasion to document, photograph
11 and collect any other items, any other casings?

12 A From that --

13 Q I'm sorry, I can rephrase the question. What did you
14 do with the casings and cartridges you collected at that
15 place?

16 A I secured them, taped them and secured them in our
17 lab.

18 Q I'm going to show you what's marked as Exhibits 128,
19 129 and 130 and just ask if you recognize those?

20 A Yes, sir.

21 Q Okay. And is that -- are those your handwriting on
22 those items?

23 A It is.

24 Q Okay. And are you documenting where these are taken
25 from in the place?

1 A That is correct. I collected this from bedroom two,
2 a spent shell casing 45-caliber and the time I collected
3 it.

4 Q Can you read where that one was collected or what
5 does that one say?

6 A This one says collected bedroom two, 45-caliber spent
7 shell casing at 0448.

8 Q And what is that --

9 A And the address that I collected it from.

10 Q What is the significance of that cartridge there?

11 A This is a 9mm live round, unfired cartridge. It was
12 in bedroom one on the nightstand, and I collected it at
13 0426.

14 Q And as you're collecting all of these, what did you
15 do after you collected them and sealed them in these bags?

16 A They were secured in my lab.

17 MR. ARANT: I would ask that these be admitted in
18 evidence as well, 128, 129, 130?

19 THE COURT: It's admitted.

20 MR. ARANT: Thank you.

21 (WHEREUPON, State's Exhibit Nos. 128, 129 and 130
22 were admitted into evidence.)

23 BY MR. ARANT:

24 Q Are you aware of whose house it was y'all were doing
25 the search warrant on?

1 A I'm sorry?

2 Q Do you know whose apartment y'all were doing the
3 search warrant on, which house that was? Whose it was?

4 A No, sir, I don't know whose house it was. And there
5 was, I think, one last item that we collected. This is
6 State's 126.

7 Q If you could tell the jury what the item is. And you
8 can open it if you need to.

9 A That is a box of Federal 45-caliber live rounds.

10 Q Where was those collected at?

11 A Those were collected from bedroom on the nightstand.

12 Q And once you collected those, what did you do with
13 those?

14 A I sealed them in this bag and secured it in our lab.

15 MR. ARANT: Your Honor, at this time, we would ask
16 that State's Exhibit 126 be admitted into evidence.

17 MR. KRZYSTON: Without objection.

18 THE COURT: It's admitted.

19 (WHEREUPON, State's Exhibit No. 126 was admitted
20 into evidence.)

21 BY MR. ARANT:

22 Q So can you open that and tell the jury what is in
23 this box?

24 A Twenty unfired rounds of 9mm ammunition -- I mean,
25 I'm sorry, 45 ammunition.

1 Q And how do you know that, is that because it reads 45
2 on there?

3 A It's head stamped 45.

4 Q And you found these in that bedroom in the house.

5 A That is correct.

6 Q Okay.

7 MR. ARANT: Your Honor, I just beg the Court's
8 indulgence one moment.

9 BY MR. ARANT:

10 Q Investigator, after you turned all of these items of
11 evidence in, all the shell casings, all the evidence you
12 collected, did you do anything else with them? Did you
13 do anything else with them at a later date or anything?

14 A I did.

15 Q Can you tell the jury what you did with those?

16 A At the request of investigator of our chain or
17 custody, signed them out of our evidence department and
18 took them to SLED for further processing.

19 Q Why did you do that?

20 A Because my investigator asked me to.

21 Q And when you were transporting them and you signed
22 them out, are they still in the same packaging? Are you
23 maintaining protocol on these?

24 A That is correct, they are secured.

25 Q If you don't mind, can you just tell us which items

1 ended up going to SLED?

2 A It --

3 Q It might be easier to just -- since they're admitted
4 in evidence just to say which exhibit number those are you
5 sent off. There's a list of them, I believe. How many
6 items did you send off to SLED?

7 A Hold on a second, sir. 22 items.

8 Q Do you mind, it may be tedious, but could you tell
9 the jury and the Court which exhibits that were just
10 entered that you sent off to SLED? These are marked by
11 the ones we just entered. If you compare it with your
12 list.

13 A These exhibits are consistent with mine.

14 Q What's that?

15 A They are consistent with mine.

16 Q What exhibit numbers are those?

17 A 132 to 146.

18 Q And those went off to SLED?

19 A Yes, sir.

20 Q How about the Ford Fusion bullet fragment?

21 A That went off to SLED as well.

22 Q Okay. How about the spent shell casing -- how about
23 the items from the house that had the search warrant on
24 it, those go off to SLED?

25 A The shell --

1 MR. KRZYSTON: Your Honor, I object to that question.
2 I think just briefly a matter of law.

3 THE COURT: All right.

4 Ladies and gentlemen, I will have you go to your jury
5 remember for a moment.

6 (WHEREUPON, the jury left the courtroom at 2:38
7 p.m.)

8 THE COURT: Yes, sir.

9 MR. KRZYSTON: Thank you, Your Honor. I hate to
10 interrupt the flow of things here, but Your Honor has not
11 ruled, obviously, on the admissibility of the firearm and
12 tool mark evidence. We are objecting out of an abundance
13 of caution to potential answer by CPD that they submitted
14 the actual shell casings from Waites Road to SLED for
15 forensic testing and comparison. I think until that
16 evidence is properly found reliable, an insinuation that
17 it was tested by SLED would be improper.

18 THE COURT: That's not a matter of law. I deny the
19 motion or whatever request claiming that it's a matter of
20 law because it's not.

21 Bring the jury back.

22 (WHEREUPON, the jury returned to the courtroom at
23 2:39 p.m.)

24 BAILIFF: The jury's present, Your Honor.

25 THE COURT: All right. Thank you. The objection is

1 overruled.

2 You may proceed.

3 MR. ARANT: Thank you, Your Honor.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. ARANT:

6 Q Investigator, did you send all of the casings and
7 cartridges that you collected from the multiple scenes
8 off to SLED?

9 A Yes, sir, I did.

10 Q From multiple scenes?

11 A Yes.

12 Q Okay.

13 MR. ARANT: Beg the Court's indulgence, Your Honor.

14 BY MR. ARANT:

15 Q Do you recall who you --

16 MR. ARANT: I withdraw my question, Your Honor. No
17 further questions.

18 THE COURT: Cross-examination?

19 MR. KRZYSTON: Thank you, Your Honor, may it please
20 the Court?

21 CROSS-EXAMINATION

22 BY MR. KRZYSTON:

23 Q All right. Is it investigator? What's your
24 official title, I'm sorry?

25 A MPO Smith.

1 Q Master Patrol Office?

2 A Yes, sir.

3 Q Okay. MPO Smith, you did author a report in
4 connection with your involvement in this case, correct?

5 A I'm sorry, sir?

6 Q You authored a report in connection with your
7 involvement in this case, correct?

8 A I wrote a report, yes.

9 Q That report was authored on July 17th of 2014?

10 A It was altered?

11 Q Authored? Written?

12 A I'm sorry. Yes, it was, I'm sorry.

13 Q And on that report, you indicated that you arrived at
14 [REDACTED] at 2135. Now, I'm guessing that's
15 Magnolia Street, that's a typo?

16 A Yes, sir.

17 Q Okay. But the time would be correct?

18 A I was dispatched at 2135.

19 Q Okay. I'm sorry, and your arrival time was a couple
20 minutes later at 9:42, 2142?

21 A Correct.

22 Q You testified earlier on direct -- can you see this
23 picture right here? I know it's a little bit smaller than
24 it was on direct, but can you see it?

25 A Uh-huh.

1 Q This is not a picture of the scene. Is this a
2 picture of the scene that you arrived to?

3 A It's a picture that I arrived to after I put my
4 markings down, yes, sir.

5 Q So prior to your arrival at the scene, everything was
6 the same except for these numbered markings right here
7 (indicating)?

8 A It --

9 Q Substantially?

10 A Yes, sir.

11 Q Okay. And you notice down here at the end of the
12 block, there's a patrol car with flashing blue strobes on
13 it?

14 A Correct.

15 Q And a little bit closer to the block, from the
16 camera's point of view, you notice that there's a line of
17 yellow crime scene tape?

18 A That is correct.

19 Q And then beyond that, closer to us even, there's
20 another layer of crime scene tape?

21 A Uh-huh.

22 Q And then along the sides of the crime scene, there's
23 additional crime scene tape?

24 A There is.

25 Q Okay. And part of the reason that you guys cordon

1 stuff off is to control the crime scene, correct?

2 A That is correct.

3 Q It protects the integrity of the evidence, correct?

4 A Yes, sir.

5 Q You don't want anybody tampering with it or messing
6 with it?

7 A No, sir, we don't.

8 Q And alter your ability to find things that are
9 probative or informational about the crime?

10 A That is correct.

11 Q Okay. Now, when you arrived, again, you said that
12 there were traffic cones out here marking what appeared to
13 be evidence?

14 A Yes, sir.

15 Q Okay. Outside of the boundary of this crime tape,
16 you didn't look for any additional evidence, did you?

17 A No, sir.

18 Q It's not your responsibility to do that?

19 A Well, it is if I feel that it needs to be done, yes,
20 sir.

21 Q Okay. But the initial deputies or officers that
22 respond to the scene, their job is to kind of lock the
23 crime scene down and figure out where most of the evidence
24 is most likely to be found?

25 A That's correct.

1 Q Okay. Now, do you know what point of view this
2 picture was taken from?

3 A I --

4 Q I mean, do you know what street is that down there
5 that the patrol car is establishing a perimeter on?

6 A I can't say.

7 Q Okay. That's fair. How about this blue Explorer, is
8 that in front of the house on Magnolia Street that we're
9 talking about here, where Ms. Cleckley's party was
10 located?

11 A If you give me a minute, sir.

12 Q Oh, yeah, take your time. That Explorer to the left
13 facing 277 -- [REDACTED] is to the left, that driveway
14 of the incident location?

15 A Yes, sir.

16 Q Okay. So this is the incident location from quote,
17 unquote, up the street?

18 A Yes, sir.

19 Q Okay. You can't see the house from that location,
20 can you?

21 A No, sir.

22 Q You can't see the stairs from that location, can you?

23 A No, sir.

24 Q You can't see the location of Mr. Lewis's body from
25 that location, can you?

1 A No, sir.

2 Q You can't see anything related to the actual crime
3 scene other than these shells, that car and this crime
4 scene perimeter, can you?

5 A No, sir.

6 Q Okay. Now, this is a picture from -- where is this
7 picture from, I'm sorry, the next one in the series?

8 A May I come up and look at the photo?

9 Q Oh, absolutely. I'm sorry.

10 A There was a private driveway across from the house.
11 The house over here, that's a private driveway I took
12 photos from.

13 Q And the crime scene location, if this photo extended,
14 would be right to the right here?

15 A That is correct.

16 Q Okay. This picture depicts item five, does it not?

17 A Yes, sir.

18 Q And I don't know if you can see it in good enough
19 detail, but this casing right here, what caliber did you
20 indicate it was?

21 A A 45 caliber.

22 Q Do you note the scratches on the casing?

23 A Do I notice them?

24 Q Yeah, these scratches right here, do you note them?

25 A I --

1 Q You do?

2 A I notice them, yes, sir.

3 Q Yeah, okay. And this is item, I believe, six?

4 A Yes, sir.

5 Q Okay. Item 13, these are shell casings that were in
6 the driveway I believe you testified on direct?

7 A Correct.

8 Q And you noticed this rock right here (indicating)
9 partially covering that spent casing?

10 A That's correct.

11 Q You also notice the rock right here also partially
12 covering that spent casing?

13 A Yes, sir.

14 Q You notice the ground and the dirt as well also
15 partially covering that spent shell casing?

16 A I do.

17 Q Item 14, is that also a 45 caliber, sir?

18 A Yes, sir, it is.

19 Q Okay. And you do note that there is significant
20 covering or burying of the spent shell casing?

21 A There --

22 Q In the sand?

23 A It is in the sand, yes.

24 Q Okay. And again, you're just taking pictures of the
25 evidence as you find it?

1 A That's correct.

2 Q You're not moving it?

3 A No, sir, not at all.

4 Q You're not manipulating it. You're just taking
5 pictures?

6 A Just taking photos.

7 Q Okay. Stuff that has already been identified as
8 potentially involved or linked to the criminal offense?

9 A That is correct.

10 Q Same situation with 15, I assume that's a 45-caliber
11 casing?

12 A It is, yes.

13 Q You also note that is buried, at least, halfway deep?

14 A Yes, sir.

15 Q Same situation in item 16?

16 A Yes, sir.

17 Q Okay. And again, this is a picture, I guess, from up
18 the street, what we're calling up the street. You do
19 began to see the house where Ms. Cleckley's birthday party
20 was, correct?

21 A That is correct.

22 Q And you note that you just see the very barrier of
23 the front porch, correct?

24 A Correct.

25 Q And you note that this person right here is barely

1 peeking over this blue Ford Explorer, correct?

2 A That is correct.

3 Q You do not see the side of that house, do you?

4 A No, sir.

5 Q It's obstructed by bushes, correct?

6 A That is correct.

7 Q Okay. It's also partially obstructed by this vehicle
8 right here (indicating)?

9 A That is correct.

10 Q As well as this, I believe, Pontiac Grand Prix across
11 the street?

12 A Yes.

13 Q Okay. Again, the same picture, can't see the side of
14 the house?

15 A No, sir.

16 Q Can't see the chairs?

17 A No, sir.

18 Q Okay. That's obstructed by, again, a bush and the
19 car?

20 A Yes, sir.

21 Q This would be a picture kind of from the opposite
22 side of that, correct?

23 A That is correct.

24 Q You can't see through that car, can you?

25 A No, sir.

1 Q Okay. Okay. This is a picture that depicts the
2 driveway of Magnolia Street, correct?

3 A That is correct, yes, sir.

4 Q In the bottom right corner, you can see a set of
5 stairs, correct?

6 A That's correct.

7 Q To what would be if you were sitting on those stairs,
8 the length of those stairs, you note the presence of a
9 large, full bush, correct?

10 A That is correct.

11 Q Additionally, directly in front, no more than
12 three feet of the stairs, you note the presence of a
13 Hyundai car, correct?

14 A Correct.

15 Q You can't see through that car, can you?

16 A No, sir.

17 Q And that bush is fully developed?

18 A I don't know if that bush is fully developed or not.

19 Q It's growing leaves?

20 A Yes, sir.

21 Q They're full?

22 A Yes, sir.

23 Q No empty branches?

24 A Not that I can see.

25 Q Okay. Also, right here, there's another hedgerow of

1 shrubbery, correct?

2 A That is correct.

3 Q This spot right here, you believe that's where the
4 decedent was located, correct?

5 A Correct.

6 Q Can you see anything from up the street, what we're
7 calling up the street from that specific location?

8 A No, sir.

9 Q Again, this is looking up the driveway towards the
10 street with your back facing where the decedent was
11 located, correct?

12 A That is correct.

13 Q Then you note that that car is in the line of sight
14 of those stairs?

15 A Correct.

16 Q As well as that bush that was to the left in the
17 other picture?

18 A Correct.

19 Q You can't see through the car, correct?

20 A No, sir.

21 Q Okay.

22 MR. ARANT: Objection, Your Honor.

23 MR. KRZYSTON: Grounds?

24 MR. ARANT: The ground is for speculation --

25 THE COURT: You don't need to respond to the

1 solicitor's -- Defense counsel's comments.

2 MR. ARANT: Say again, Your Honor.

3 THE COURT: You don't need to respond to Defense
4 counsel's comments.

5 MR. ARANT: Okay. Yes, sir.

6 THE COURT: Objection is overruled..

7 MR. KRZYSTON: Thank you, Judge.

8 BY MR. KRZYSTON:

9 Q Again, you can't see through that car?

10 A No, sir.

11 Q Okay. Now, the only other additional stuff that you
12 did, you did collect a gunshot residue test from the
13 victim, Tyrone Johnson, correct, the other individual who
14 was shot?

15 A Let me refer back to my notes.

16 Q So yes, absolutely. Take your time.

17 THE COURT: Is there a question on the floor at this
18 point?

19 MR. KRZYSTON: There is, Your Honor. He's referring
20 to his notes in an attempt to answer whether or not he
21 collected a gunshot residue test from the alleged victim,
22 Tyrone Johnson.

23 THE COURT: All right.

24 And while he's reading through that, we'll take a
25 break. Please do not discuss the case.

1 (WHEREUPON, the jury left the courtroom at 2:55
2 p.m.)

3 THE COURT: Let's take about five minutes.

4 (WHEREUPON, a short break was taken.)

5 THE COURT: As we wait for the Defendant to come up,
6 are there any other matters?

7 MR. KRZYSTON: Not from us, Judge.

8 MR. POTTS: The State is good, Your Honor.

9 THE COURT: All right.

10 MR. POTTS: Your Honor, the first three items in the
11 folder, we agree on. The rest we do not.

12 THE COURT: All right. So the ones that you have not
13 agreed upon, looks like some kind of bone scan or
14 something and sketch showing where bullet wounds are?

15 MR. POTTS: That we agree on.

16 THE COURT: The ones you disagree on -- the ones you
17 agree on are the color photographs?

18 MR. POTTS: The opposite, Your Honor. We agree on
19 the diagrams and the bone photo.

20 THE COURT: Okay.

21 MR. POTTS: We do not agree on the ones with the
22 actual body. I think that would be the best way to put
23 it.

24 MR. RUFFIN: Yeah, that's right.

25 THE COURT: All right. So I'll look at these as you

1 are identifying photographs by the person who took the
2 photographs.

3 Bring the jury.

4 (WHEREUPON, the jury returned to the courtroom at
5 3:14 p.m.)

6 BAILIFF: The jury's present, Your Honor.

7 THE COURT: All right. You may proceed.

8 MR. KRZYSTON: Thank you, Your Honor, may it please
9 the Court.

10 CONTINUED CROSS-EXAMINATION

11 BY MR. KRZYSTON:

12 Q I'm going to go ahead and withdraw my last question
13 due to an error in my notes that sent you on a wild goose
14 chase. I'll withdraw that question. I have one last
15 question to go. Did you take any measurements on any of
16 these items or any of the items at the at the scene? Did
17 you measure the distance from these items to the front
18 porch?

19 A No, sir, I did not.

20 Q Okay.

21 MR. KRZYSTON: Thank you, Your Honor. No further
22 questions.

23 THE COURT: Redirect?

24 MR. ARANT: Just briefly, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. ARANT:

2 Q I know he asked you some questions about kind of he
3 map of this place. Can you just tell the jury what
4 street this is right there?

5 A Says Center Street.

6 Q Okay. And the casings that were found in the yard
7 were located where?

8 A On Magnolia.

9 Q Okay. And what house is that they were located at?

10 A That's [REDACTED].

11 Q Okay. Does daylight affect visibility?

12 A I'm sorry?

13 Q Does the daylight affect visibility? Would you agree
14 with me that daylight affects your visibility, if it's
15 night or day?

16 A Oh, yes, yes.

17 Q You would agree with me that daylight does affect
18 your visibility?

19 A Yes, sir.

20 Q And when you're documenting these photographs, it's
21 nighttime?

22 A That is correct.

23 Q And you arrive on scene after an incident takes
24 place?

25 A Correct.

1 Q Okay.

2 MR. ARANT: No further questions.

3 MR. KRZYSTON: Just briefly, Your Honor.

4 RECROSS-EXAMINATION

5 BY MR. KRZYSTON:

6 Q The shell casings that are right there kind of on
7 the edge of the table, all the testing has been done on
8 those, correct?

9 A Yes.

10 Q All right. Is it safe for me to put them away
11 without gloves? I don't want them getting knocked over.

12 A Yes, sir.

13 Q Okay.

14 MR. KYZYSTON: Your Honor, I've got no further
15 questions. I didn't want this evidence toppling around
16 and having issues with it.

17 THE COURT: You may step down, sir.

18 Your next witness.

19 MR. POTTS: The State calls Dominique Tucker.

20 Thereupon;

21 DOMINIQUE TUCKER,

22 after having been duly sworn, testified as follows:

23 THE CLERK: Thank you. Please have a seat in the
24 witness stand and state your full name for the record.

25 THE WITNESS: Dominique Tucker.

DIRECT EXAMINATION

BY MR. POTTS:

Q Good afternoon, Mr. Tucker. How you doing?

A All right.

Q Tell the jury a little bit about yourself.

A My name is Dominique, I work at USC and Wal-Mart and I'm 23.

Q What are you doing at USC and Wal-Mart?

A Housing and store remodeling.

Q Let's adjust the mic just a little bit. Mr. Tucker, tell me how you know the Cleckley family?

A That's my auntie.

Q Who's your auntie?

A April.

Q April's your aunt?

A Uh-huh.

Q Do you often see them?

A Yeah, most of the time, yeah.

Q And so do they have any kids your age?

A Yeah.

Q Who?

A Daquan.

Q Do you hang out with him a lot?

A Yes.

Q Do you know Malik Davis?

- 1 A Yeah, kind of. We went to school together.
- 2 Q Y'all went to C.A. Johnson?
- 3 A Yeah.
- 4 Q What about his brother, you know him?
- 5 A Not like that.
- 6 Q You're not as close with him?
- 7 A No.
- 8 Q You do know Horace, correct?
- 9 A Yeah.
- 10 Q That's because he and Daquan hang out sometimes?
- 11 A Yeah.
- 12 Q Okay. Now, let me take you back to July 12th, 2014,
- 13 okay?
- 14 A Uh-huh.
- 15 Q Tell me about what you were doing that day.
- 16 A That day, I was at my auntie's house on Leesburg
- 17 Road, Auntie Jessica.
- 18 Q So not your Auntie April?
- 19 A No, not my Auntie April. I was with my mom. She was
- 20 getting her hair done or whatever. And then I told her to
- 21 drop me off at Auntie April's house because it was her
- 22 birthday and I know she was having a little get together
- 23 or whatever.
- 24 Q And so did she take you there?
- 25 A Yes, she dropped me off at Party Town.

1 Q How far is that from the Cleckley household?

2 A Like a block, like a block away.

3 Q And then you started walking?

4 A Yeah, I started walking. And I got by Books Barber
5 Shop and I seen Malik or whatever. And he was -- he was
6 like, Tell your family --

7 MR. RUFFIN: Objection, Your Honor --

8 THE WITNESS: -- I got something for them.

9 MR. RUFFIN: -- hearsay.

10 THE COURT: Next question. Go ahead.

11 BY MR. POTTS:

12 Q How did Malik look?

13 A He looked kind of beat up.

14 Q Okay. And what direction was he going?

15 A He was going upwards toward like Waites Road, his
16 house.

17 Q Okay. Going back toward his house?

18 A Yeah.

19 Q Okay. Now, what did you do?

20 A After he said that, you know, I tried to hurry up
21 down there to my family.

22 Q Why were you hurrying up?

23 A Because he looked beat up, so I was just trying to
24 see what he was talking about when he said, Tell your
25 family I got something for them.

1 MR. RUFFIN: Objection, Your Honor, hearsay.

2 MR. POTTS: At this point, Your Honor, I'm trying to
3 explain not for the truth of the matter asserted, but why
4 he's reacting the way he is.

5 THE COURT: Restate your question.

6 I call counsel's attention to Rules of Criminal
7 Procedure. Where is that rule? Rule 18, counsel shall
8 not attempt to further argue any matter after it has been
9 heard and the ruling of the Court been pronounced.
10 Section B, No argument shall be made on objections to
11 admissibility of evidence or conduct at trial unless
12 specifically requested by the Court. So there's an
13 objection. That's it.

14 MR. POTTS: I apologize, Your Honor.

15 THE COURT: Anything the Court request, the Court
16 will entertain argument. If I don't ask for any, don't
17 give me any.

18 Restate the question.

19 BY MR. POTTS:

20 Q Why were you in a hurry to get to your Auntie
21 April's house?

22 A Because he looked kind of beat up and I just wanted
23 to know what was going on or whatever.

24 Q Okay. Now, what happened when you got to your --
25 what happened went you got to April's house?

1 A When I got close around the corner, it was like a big
2 commotion, like -- it was like a big argument or something
3 going on.

4 Q And then lead me through what happened.

5 A All right. I went around the corner to my Auntie
6 April's house or whatever, people been outside in the
7 road, like a big commotion. And then the next thing you
8 know, like my family, we went in the yard. We was trying
9 to enjoy ourself, I guess.

10 Q So everything calmed down?

11 A Yeah, everything had calmed down. People had left
12 and my family had went in the yard or whatever. Then
13 something was telling me like -- you know, I was outside
14 in the road, me and my cousin, Tarus. And something just
15 told me to look. I looked to my left and I seen a car, a
16 blue Impala with tinted windows.

17 Q Okay. What happened with the car?

18 A Like it had stopped, it had stopped right there on
19 Center Street. And that's when I seen Malik and Horace
20 get out with guns. And I was trying to tell me cousin,
21 Tarus, to run. And that's what we did, we ran.

22 Q Did you hear anything?

23 A We just heard gunshots and in the yard, that's it.

24 Q Okay. And were the gunshots coming from the
25 direction of Malik and Horace?

1 A Yeah.

2 Q Did you see them actually shooting?

3 A No.

4 Q Okay. But you did see them with firearms?

5 A Yes, I seen them with guns yes.

6 Q At that point you ran. What did you do when you ran?

7 A When I ran, I ran in the yard. I tried to tell
8 everybody to run or whatever. I tried to grab one of my
9 cousins, but he was just so fast, I just ran in the house.

10 Q And what happened next?

11 A I ran in the house. Everybody was trying to get
12 down, like safety or whatever. And my Uncle Ike, he was
13 trying to get the kids in the house or whatever, too. So
14 when I was in the house, I was on the ground. And the
15 next thing you know, I just heard gunshots or whatever
16 hitting the house. And that was it.

17 Q Okay. So what happened when the gunfire stopped?

18 A When the gunfire stopped, I just heard one of my
19 people crying, saying like, Oh, Uncle Ike, Uncle Ike. So
20 I went to the back door to see was he shot or whatever.
21 And he was shot, he had two in his chest or whatever. And
22 that was it.

23 Q Did law enforcement eventually come?

24 A Yeah, they came, probably like 10 or 15 minutes.

25 Q And over the course of that evening, did they take

1 you down to headquarters?

2 A Yeah.

3 Q I'm going to show you what's marked as State's
4 Exhibit No. 5. Take a look at that and let me know if you
5 recognize it.

6 A Yeah.

7 Q Is that the photo lineup they showed you that night?

8 A Yeah. You talking about all the photos?

9 Q Yeah, all the -- that's the whole thing, the lineup
10 they showed you that night?

11 A Oh, yeah, yeah.

12 Q Did they tell you to pick anyone in particular out?

13 A Huh-uh.

14 Q What did they tell you to look for?

15 A They said just look for a shooter, you know, and put
16 your name or whatever beside him.

17 Q Okay. Were you able to identify the shooter?

18 A Yeah.

19 Q What picture was that?

20 A (Indicating).

21 Q I need you to give me verbal.

22 A Horace's picture.

23 Q And did you sign your name to it?

24 A Yeah.

25 Q Okay.

1 MR. ARANT: At this time, Your Honor, the State would
2 like to offer into evidence State's No. 5.

3 MR. RUFFIN: Renew our previous objection.

4 THE COURT: It's admitted.

5 (WHEREUPON, State's Exhibit No. 5 was admitted
6 into evidence.)

7 BY MR. POTTS:

8 Q Is the person you saw get out of that blue car, is
9 the person you saw with a gun here in the courtroom
10 today?

11 A Yeah, he right there in the blue (indicating).

12 Q Is he wearing anything else besides blue?

13 A Just blue.

14 Q Blue shirt and blue tie?

15 A Yeah.

16 MR. POTTS: Let the record reflect he identified the
17 Defendant?

18 THE COURT: It does.

19 MR. POTTS: Thank you, Mr. Tucker. No further
20 questions.

21 THE COURT: Cross-examination?

22 MR. RUFFIN: Just briefly, Your Honor.

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. RUFFIN:

1 Q Mr. Tucker, so you weren't over at your Aunt April's
2 house when the fight between Terrell and Malik happened?
3 You didn't see that?

4 A No, I didn't see none of that.

5 Q But when you got there, when you first showed up,
6 there was a big commotion you said?

7 A Yeah.

8 Q Like, there was a lot of people out there, I guess?

9 A Uh-huh.

10 Q Would you say more than 50?

11 A Yeah, it was about 40 to 50.

12 Q Were most of the people out in the street --

13 A In the street.

14 Q Okay.

15 A Some in the street, some in the yard, yeah. Mostly
16 in the street, though.

17 Q And you were in the street?

18 A Yeah, when I had walked around the corner, yeah.

19 Q You said that you were there with Tarus?

20 A Yes.

21 Q That's your cousin?

22 A Yeah, my little cousin.

23 Q Do you remember if Paris was out there or Daquan or
24 any of them?

25 A I think Paris and Daquan was out there.

1 Q Okay.

2 A Yes, sir.

3 Q It seemed like most of the people were in the street?

4 A Yeah, most of the people was.

5 Q All right.

6 A Except for the little kids.

7 Q You said that you didn't actually see anybody shoot a

8 gun?

9 A No.

10 Q Right. But you were shown a lineup?

11 A Uh-huh.

12 Q And you were asked to pick out who the shooter was?

13 A Yeah.

14 Q And you picked out Horace Watts, a picture of Horace

15 Watts, right?

16 A Yeah.

17 Q And you know Horace?

18 A Yeah.

19 Q You know his face, right?

20 A Yeah.

21 Q You seen him before?

22 A Yeah.

23 Q But you didn't know him that well?

24 A No.

25 Q All right. Do you have your lineup still in front of

1 you?

2 A No, he took it.

3 Q Okay. But you've seen it, right?

4 A Yeah.

5 Q Do you agree that -- let me ask you this, do you know
6 anybody else in the lineup? Do you know anybody else in
7 the photos? Do you recognize anybody?

8 A Yeah, people from the street. This one person I did.

9 Q So one of the other people you know?

10 A I don't know him, but just a face.

11 Q Okay. But the others, you don't know?

12 A Huh-uh.

13 Q Okay. And could you tell that Horace's picture was
14 blurrier than the other ones?

15 A No, his picture wasn't blurry.

16 Q It was blurry?

17 A No.

18 MR. RUFFIN: Beg the Court's indulgence, Judge.

19 BY MR. RUFFIN:

20 Q When you first saw the car pull up, did you and
21 Tarus -- I mean, y'all thought they were coming to fight,
22 right?

23 A I really don't know because, like I said, when I got
24 down there, it was like a big commotion. But then again,
25 when they jumped out the car with the guns, they ain't

1 come to fight.

2 Q So you didn't approach them?

3 A Now.

4 Q Nobody approached them?

5 A I ran.

6 MR. RUFFIN: No further questions.

7 THE COURT: Anything further?

8 MR. POTTS: No, Your Honor.

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

10 Who's the next witness?

11 MR. POTTS: Jasmine Sims, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, let's
13 take about two minutes. Please do not discuss the case.

14 (WHEREUPON, the jury left the courtroom at 3:32
15 p.m.)

16 (WHEREUPON, a short break was taken.)

17 THE COURT: All right. You can bring that jury.

18 (WHEREUPON, the jury returned to the courtroom at
19 3:36 p.m.)

20 BAILIFF: The jury's present, Your Honor.

21 THE COURT: All right. Very good.

22 Thereupon;

23 JASMINE SIMS,

24 after having been duly sworn, testified as follows:

25 THE CLERK: Thank you. Please have a seat in the

1 witness stand and state your full name for the record.

2 THE WITNESS: Jasmine Sims.

3 DIRECT EXAMINATION

4 BY MR. POTTS:

5 Q Good afternoon, Ms. Sims.

6 A Good afternoon.

7 Q How are you doing today?

8 A Good.

9 Q How old are you?

10 A Fifteen.

11 Q Where are you in school?

12 A Saluda High School.

13 Q Saluda High School. You live in Saluda?

14 A Yes, sir.

15 Q How long you been living in Saluda?

16 A A year.

17 Q A year?

18 A (The witness nodded head.)

19 Q Now, how old were you back in 2014?

20 A I was 12.

21 Q Twelve?

22 A (The witness nodded head.)

23 Q Now, how do you know the Cleckley family?

24 A April is my auntie, my Uncle Jerry.

25 Q Now, I'm going to take you back a little bit back to

1 July 12th of 2014, okay?

2 A (The witness nodded head.)

3 Q Now, tell me what you were doing that day?

4 A It was a party, so me and my family went down there.
5 And we was just -- it was just a get-together for the
6 party.

7 Q Were there a lot of people there?

8 A Uh-huh.

9 Q And it was the whole family, right?

10 A Yes, sir.

11 Q So was it the young and the old or just adults or
12 what was the crowd like?

13 A I was a little bit of both.

14 Q Both?

15 A Uh-huh.

16 Q How big would you say the crowd was?

17 A It was a lot of us, so I really can't put a number on
18 it.

19 Q That's fine. Now, let me ask you about Malik and
20 Horace Watts, okay. Do you know them?

21 A I know them from being around my uncle's house.

22 Q And by your uncle's house, do you mean Auntie April's
23 house or whose house do you mean?

24 MR. KRZYSTON: Objection, leading.

25 THE COURT: Objection overruled.

1 THE WITNESS: Uncle Jerry and my Auntie April

2 BY MR. POTTS:

3 Q And what would they do at the house?

4 A Play basketball.

5 Q Both of them?

6 A Yes, sir.

7 Q How often would they play basketball?

8 A I can't remember.

9 Q Would it be a lot or a little?

10 A I mean, it was a boy thing, so I wasn't all into it.

11 Q So you didn't play any basketball?

12 A No, sir.

13 Q You're kind of tall for 15, though. Okay. Would you
14 tell the jury what you remember that happened that day?

15 A So it was a party and we was all out there. And a
16 fight broke out between Malik and my cousin.

17 Q So who's your cousin?

18 A Terrell.

19 Q Terrell, okay.

20 A And after that, they -- my family had broke it up.

21 Uncle Ike was one person that broke it up. And then Malik
22 had walked off. So we was just all in the yard, like,
23 trying to get everybody calm, like calmed down.

24 Q Did everyone calm down?

25 A Uh-huh, after a while.

1 Q Did the party start back up?

2 A It didn't 'start how like it was, but yeah.

3 Q Tell me about what happened next.

4 A Then I was sitting on the side of the porch on the
5 step and I heard gunshots. But like before I could get a
6 chance to run, like it was too close to the yard. So it
7 was a car next to the house, so I got in front of it and I
8 got down on my knees.

9 Q And, Jasmine, let me back you up a little bit.
10 Describe to the jury a little bit about what you saw when
11 you heard the gunshots.

12 (Pause.)

13 Q Here you go, Jasmine. (Solicitor hands witness
14 tissue.)

15 THE COURT: What's the question?

16 Q So when you heard the gunshots, what do you remember
17 seeing?

18 A When I heard the gunshots, like, I had my head down
19 so I only heard it when it got really close. And I seen a
20 red beam coming through the bushes.

21 Q So you saw the red beam?

22 A Uh-huh.

23 Q Did you see what the red beam was attached to?

24 A I didn't see what kind of gun it was.

25 Q But it was a gun?

1 A Uh-huh.

2 Q Who was holding that gun?

3 A Horace (indicating).

4 Q Okay.

5 A And when I looked up, I seen my Uncle Ike trying to
6 hide behind the tree --

7 (Pause.)

8 Q It's okay. Take your time.

9 A I seen my Uncle Ike trying to hide behind the tree
10 and before he could get behind the tree, he got shot in
11 his chest. And he had grabbed it and fell to the ground.
12 And then it was mostly gunshots fired after that. And he
13 had shot at the car that I was in front of, then he ran
14 off.

15 Q Who's this he you're talking about, Jasmine?

16 A Horace.

17 Q Now, is Horace here in the courtroom here today?

18 A Yes, sir.

19 Q Okay. Describe briefly what he's wearing.

20 A A blue button-up shirt with a blue tie and glasses.

21 MR. POTTS: Beg the Court's indulgence.

22 BY MR. POTTS:

23 Q Jasmine, did you have a chance to go talk to the
24 City of Columbia headquarters?

25 A Uh-huh.

1 Q I'm going to show you what's marked as State's No. 12
2 right here. Just tell me if you recognize it?

3 A Yes, sir.

4 Q Okay. I'm also going show you what's marked as
5 State's Exhibit No. 10. Let me know if you recognize
6 that.

7 A Yes, sir.

8 Q What is State's Exhibit No. 10?

9 A A photo lineup.

10 Q Is that the lineup they showed you that day?

11 A Yes, sir.

12 Q Were you able to pick anyone out that day?

13 A Yes, sir.

14 Q Who were you able to pick out?

15 A Horace.

16 Q Okay. What -- just tell me what number it was, if
17 you don't mind?

18 A Number four.

19 MR. POTTS: Your Honor, at this time, I would offer
20 State's Exhibit No. 10 into evidence.

21 MR. KRZYSTON: Sorry, Your Honor, previous objection.

22 THE COURT: It's admitted.

23 (WHEREUPON, State's Exhibit No. 10 was admitted
24 into evidence.)

25 BY MR. POTTS:

1 Q No. 12, what was that, Jasmine?

2 A It was stating that --

3 Q Is that the sheet paper you signed saying which one
4 was Horace?

5 A Uh-huh.

6 Q Okay.

7 MR. POTTS: At this time, Your Honor, I'd like to
8 offer State's No. 12.

9 MR. KRZYSTON: Same objection, Your Honor.

10 THE COURT: Let me see that.

11 MR. POTTS: Certainly, Your Honor.

12 THE COURT: It's admitted.

13 MR. POTTS: Thank you. Your Honor. No further
14 questions.

15 (WHEREUPON, State's Exhibit No. 12 was admitted
16 into evidence.)

17 THE COURT: Cross-examination?

18 MR. KRZYSTON: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. KRZYSTON:

21 Q I just have a couple questions for you.

22 A Okay.

23 Q You said Uncle Ike broke the fight up?

24 A Uh-huh.

25 Q Yes?

1 A He was one of them.

2 Q Okay. But everybody was out there breaking up the
3 fight?

4 A Uh-huh.

5 Q And you said that you were sitting on the stairs when
6 the shooting happened?

7 A Yes, sir.

8 Q Okay.

9 MR. KRZYSTON: That's all I have, Your Honor.

10 THE COURT: Anything further?

11 MR. POTTS: No, Your Honor.

12 THE COURT: You may step down.

13 MS. NICKLES: The State calls Chauncey Duckett.

14 Thereupon;

15 CHAUNCEY DUCKETT,

16 after having been duly sworn, testified as follows:

17 THE CLERK: Thank you. Please have a seat in the
18 witness stand. State your full name for the record.

19 THE WITNESS: Investigator Chauncey Duckett, City of
20 Columbia Police Department.

21 DIRECT EXAMINATION

22 BY MS. NICKLES:

23 Q Will you please tell the jury where you're employed?

24 A City of Columbia Police Department.

25 Q And in what capacity are you employed there?

1 A As an investigator.

2 Q What types of crimes do you investigate?

3 A Currently, I investigate violent crimes.

4 Q And violent crimes include what?

5 A Homicides, robberies.

6 Q Were you working in that same capacity back in 2012?

7 A I was in the burglary unit at the time, but I was
8 still an investigator, yes, ma'am.

9 Q So still an investigator?

10 A Uh-huh.

11 Q How long have you been with Columbia Police
12 Department?

13 A Will be 10 years in May.

14 Q Okay. Back on July 12th of 2014, did you have an
15 occasion to become involved in a homicide investigation?

16 A I did, yes, ma'am.

17 Q And can you tell me a little bit about that?

18 A I was called to respond to the incident location.
19 When I got on scene, I was advised by Investigator McCoy
20 to go check on the status of the two victims that had been
21 shot at the location at the hospital. So I then responded
22 to Richland Memorial Hospital.

23 Q Okay. So when you arrived on the scene, the victims
24 are both gone?

25 A Yes, ma'am.

1 Q Okay. And you said you spoke to Investigator McCoy
2 who gave you some things to follow up on?

3 A Yes, ma'am.

4 Q What was Investigator McCoy's role?

5 A Investigator McCoy was the lead investigator, so he
6 was in charge of pretty much conducting the whole
7 investigation.

8 Q And in certain cases, particularly ones with a lot of
9 people, is it common for a lot of investigators to become
10 involved?

11 A Yes, ma'am.

12 Q Why is that?

13 A Multiple witnesses that need to be interviewed as
14 well as evidence that may need to be collected as well as
15 other leads that may need to be followed up on. And it's
16 just best to have multiple people doing it so it can be
17 done in a timely manner.

18 Q Okay. So you responded and then he asked you to go
19 to the hospital. What did you do next?

20 A I responded to the hospital. When I got there, I
21 believe Officer Viehweg was already there, a lineman or
22 patrol officer, Tyrone Jackson, and Mr. Isaac was there as
23 well.

24 Q When you arrived at the hospital, you said Viehweg
25 was there. What do you do, do you each -- are you each

1 assigned to a particular person or how do y'all work that
2 out?

3 A Well, I was the only investigator there, so I would
4 pretty much be dictating what we were going to do. I just
5 went and briefly spoke with Tyrone Johnson.

6 Q And when you went to go speak with Tyrone, where was
7 he?

8 A He was in the trauma bay, but he was just in a room
9 or hallway, I'm not exactly sure where he was at. But he
10 was at the hospital in the trauma area.

11 Q Was he already being treated for his injuries?

12 A Yes, ma'am, he was.

13 Q And were you able to speak with him?

14 A I was.

15 Q Can you describe for the jury -- you can't get into
16 what he said, but what was his demeanor like?

17 A His demeanor was he was apparently in pain because he
18 was suffering from a gunshot wound. He made a few
19 statements, but he just said he had been shot.

20 Q At the point when he's being treated, do you fully
21 investigate or do you just get preliminary information?

22 A At this time, we're just getting a little bit of
23 preliminary information from him, anything that we may
24 need to follow up on or whatnot.

25 Q And you were able to do that?

1 A Yes, ma'am.

2 Q After you met with Mr. Johnson, what did you do?

3 A I went to check on the other victim.

4 Q Okay. Mr. Lewis?

5 A Mr. Lewis.

6 Q And when you went to check on him, what did you find?

7 A I found that Mr. Lewis was deceased.

8 Q Okay. The doctors there informed you of that?

9 A Yes.

10 Q Once you learned -- once you had spoken with Mr.
11 Johnson and learned that Mr. Lewis was deceased, what did
12 you do with that information?

13 A At that time, I can't remember if I called McCoy or I
14 believe the supervisor on the scene, but I notified them
15 that he had passed away.

16 Q Okay. And why is it important to let them know that
17 information?

18 A Well, it just changes the caliber of the
19 investigation. It lets us know what direction we're going
20 to be headed, whether we're going to working an attempted
21 murder or an actual murder.

22 Q Okay. And in this case, you were actually working
23 both?

24 A Essentially yes, ma'am.

25 Q Once you have met with Mr. Johnson and spoken with

1 the doctors about Mr. Lewis, do you stay at the hospital?

2 A Briefly, not very long. I finished gathering up all
3 the information that I was getting. I spoke with Officer
4 Viehweg briefly to see if he had anything, but he did not.
5 Then I went to the Columbia Police Department headquarters
6 to assist with interviewing witnesses.

7 Q Once you went to the headquarters, Columbia Police
8 Department headquarters, what did you do next?

9 A I was instructed to interview, I believe his name was
10 Paris Young..

11 Q Paris Young?

12 A Yes, ma'am.

13 Q And who's giving you these instructions?

14 A It was McCoy.

15 Q So it's his case and he's asking you to assist with
16 specific witnesses?

17 A Yes, ma'am.

18 Q Specifically, what did he ask you to assist with in
19 regards to Paris Young?

20 A He didn't -- we're not specific on what to do. He's
21 an investigator, as am I. And he requested for me to
22 interview him. At that time, that's what I did. I took
23 him in the interview room and I spoke to him in reference
24 to what had occurred and what he could tell me.

25 Q And at this point -- I want to back up just a little

1 bit. Approximately how long were you on the scene before
2 you left to respond to the hospital?

3 A Less than five minutes.

4 Q Were you aware of everything that had occurred at the
5 scene?

6 A I had no information on the outcome of events. The
7 only thing I knew is that we had two people who had been
8 suffering from gunshot wounds.

9 Q Okay. So when you speak with Paris Young -- can you
10 just kind of briefly explain to the jury how you structure
11 your interviews?

12 A Okay. In this instance, Mr. Paris was a witness. I
13 just specifically asked him to tell me in reference to
14 what happened that day and what he could recall and what
15 he saw.

16 Q Okay. And was he able to do that -- you can't say
17 what he said, but was he able to do that?

18 A He was able to provide me with information from his
19 point of view from the time he was there, yes, ma'am.

20 Q Okay. After you had spoken with him and interviewed
21 him, did you do anything else to further your
22 investigation?

23 A At that time, I provided that information to McCoy,
24 which it was a written statement when we completed the
25 interview. And at this time, I do not believe that the

1 photo lineups were ready, so Mr. Young was then seated
2 back in the waiting room.

3 Q Okay. Who -- can you explain to the jury how you get
4 these photo lineups or did you get them?

5 A No, I did not get these photo lineups. I believe
6 Investigator Gilliam was the one who was instructed to
7 request the photo lineups. I was -- once they came it, it
8 was handed to me. I took the photo lineup and I then
9 administered that to Mr. Young.

10 Q Okay. And are you aware of where these photo lineups
11 are created or who creates them?

12 A Usually, they come from SLED.

13 Q Okay. But you didn't request them in this case?

14 A (The witness shakes head.)

15 Q Once you get those photo lineups -- in this
16 particular case, did you know who the suspect was?

17 A I had a name after speaking with Paris. He had
18 provided me with a name, but I didn't know the name with
19 the face, no.

20 Q Okay. So these pictures, you have no idea who --

21 A (The witness shakes head.)

22 Q So it would -- you didn't indicate to him who to pick
23 out?

24 A I wouldn't have been able to, no, ma'am.

25 Q Okay. I know that sounds like a silly question. Can

1 you describe to the jury how you present these photos to
2 Mr. Young?

3 A Yes, ma'am. For Mr. Young, we had six individual
4 pictures. When I got the photos, they were not numbered,
5 so I took the photos and I placed numbers on the photos
6 for them to be identified by Mr. Young. I laid the photos
7 out for Mr. Young, all six photos and it was at that time
8 that he identified one. I can't recall off the top of my
9 head which number it was, but he identified one of those.

10 Q And you said you placed numbers on these photographs.
11 Why do you do that?

12 A Just so they can be identified.

13 Q Okay. So there's no -- you just number them?

14 A Uh-huh.

15 Q I'm going to hand you what's been marked as State's
16 5. I want you to tell me if you recognize that.

17 A This is a photo lineup that was administered by
18 Investigator Gilliam.

19 Q I apologize. You are correct. Do you recognize
20 State's Exhibit No. 2?

21 A I do. I recognize the handwriting and the numbers on
22 the photos is mine.

23 Q Is that the lineup you showed to Mr. Young?

24 A Yes, ma'am, it is.

25 Q Could you tell the jury what number he picked out?

1 A He identified number five.

2 Q Okay. And did he give you a name with that picture?

3 A He did.

4 Q What was that name?

5 A Horace.

6 Q When he was picking -- when he was looking through
7 these photographs, how long did it take him to pick out
8 one, do you remember?

9 A He identified Mr. Horace pretty quickly. It didn't
10 take him long. He didn't have to study it.

11 Q He didn't hesitate?

12 A No, ma'am, he didn't hesitate and he knew him by name
13 as well.

14 Q You said prior to showing him this lineup, he had
15 already given you the name in his statement?

16 A He did.

17 MS. NICKLES: Beg the Court's indulgence.

18 (Pause.)

19 MS. NICKLES: I don't have any other questions for
20 you, Investigator Duckett. Please answer any the Defense
21 may have.

22 THE WITNESS: Yes, ma'am. Thank you.

23 MR. RUFFIN: May it please the Court?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. RUFFIN:

2 Q Good afternoon. How are you doing?

3 A I'm doing well, sir. How are you?

4 Q I'm good. Thank you. One of the things that you --
5 I know you went to the hospital and you saw Tyrone Johnson
6 there, right?

7 A Yes.

8 Q And you told one of the nurses to bag his hands up
9 for potential gunshot residue?

10 A Uh-huh.

11 Q Again, you didn't really know --

12 A Uh-huh.

13 Q You didn't know what people's statements were at that
14 time?

15 A Uh-huh.

16 Q But you did tell a nurse to bag his hands?

17 A I believe so.

18 Q Okay. Now, about the lineup, you said you didn't
19 know who the suspect was in the pictures?

20 A Correct.

21 Q You didn't know which one was Horace Watts?

22 A No, sir, I did not.

23 Q Is that standard protocol for Columbia Police
24 Department? I mean, is it standard that you would not
25 know who the person is?

1 A No, it's not standard.

2 Q It just so happened that in this case you didn't
3 know?

4 A That is very true.

5 Q And you said that you laid the pictures out --

6 A Uh-huh.

7 Q -- for Mr. Young. And did you give him any
8 instructions on lineup procedure, anything like that? Is
9 there standard instructions that you give to a witness?

10 A There's no standard as far as any policy how we're
11 supposed to administer. I, typically, would ask any
12 individual, as I did with Mr. Young, if you see the person
13 that you recognize who you saw shooting a gun or commit
14 this act, identify him.

15 Q So -- and you do lots of these, right?

16 A Uh-huh.

17 Q This was two and a half years ago?

18 A Uh-huh.

19 Q And since that time, you've continued to investigate
20 violent crimes with Columbia Police Department, right?

21 A Yes, sir.

22 Q So I'm guessing that you've done -- you've
23 investigated many crimes in the last two and half years,
24 is that fair?

25 A Unfortunately.

1 Q And you've probably done many photo lineups with many
2 different witnesses?

3 A Yes, sir.

4 Q But there's no standard way that you instruct the
5 person who's picking the person out?

6 A No.

7 Q And in this case, you're saying you just basically
8 laid it out and said tell me who the shooter is?

9 A When I spoke with Paris, I asked him -- I said, I'm
10 going to show you a lineup and if you recognize the person
11 who you identified in your statement to go ahead and
12 identify him.

13 Q And you knew that the name was Horace Watts. And
14 once Paris picked the picture, you knew that that was
15 Horace Watts?

16 A I didn't know if that Horace Watts when he picked him
17 because --

18 Q But he said that's who it was?

19 A He said that was Horace, but I didn't know if that
20 was Horace.

21 Q Got you.

22 MR. RUFFIN: Beg the Court's indulgence.

23 BY MR. RUFFIN:

24 Q And you got Mr. Young to sign that form, right,
25 that's in evidence?

1 A Yes, sir.

2 MR. RUFFIN: No further questions.

3 THE COURT: Anything further?

4 MS. NICKLES: Nothing from the State.

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

7 Your next witness.

8 MR. POTTS: The State calls Tarus Threatt.

9 Thereupon;

10 TARUS THREATT,

11 after having been duly sworn, testified as follows:

12 THE CLERK: Thank you. Please have a seat in the
13 witness stand and state your full name for the record.

14 THE WITNESS: Tarus Threatt.

15 DIRECT EXAMINATION

16 BY MR. POTTS:

17 Q Tarus, would you please tell the jury a little bit
18 about yourself? How old are you?

19 A I'm 17.

20 Q Are you currently in school?

21 A Yeah.

22 Q Where do you go to school?

23 A C.A. Johnson.

24 Q C.A. Johnson?

25 A (The witness nodded head.)

1 Q Where do you live?

2 A Glenwood Apartments.

3 Q How long have you lived there?

4 A About a year.

5 Q Now, tell the jury about how you know the Cleckley
6 family?

7 A My uncle is -- my uncle and April are in a
8 relationship.

9 Q Okay. So is April your aunt?

10 A Yeah.

11 Q Okay. How often do you get to see her?

12 A I used to see her a lot.

13 Q A good bit?

14 A Uh-huh.

15 Q Back in 2014, did you go over to her house a lot?

16 A Yeah.

17 Q What would you do over there?

18 A We used to play basketball, have fun.

19 Q So you played basketball?

20 A Yeah.

21 Q Now, I'm going to take you back to July 12th, 2014,
22 okay?

23 A All right.

24 Q What were you doing that day?

25 A With my family having fun.

1 Q Okay. Was there any special occasion?

2 A Yeah, it was April's birthday.

3 Q Were you at her house?

4 A Yeah.

5 Q That's down on Magnolia, right?

6 A Yeah.

7 Q Just tell the jury a little bit about what happened
8 that day.

9 A We was just down there having fun and then the
10 altercation between my brother and Malik.

11 Q Who's your brother?

12 A Terrell.

13 Q Is he your older brother?

14 A Yeah.

15 Q How much older is he than you?

16 A Four years.

17 Q When he and Malik got in this fight, what did you do?

18 A I helped try to break it up.

19 Q You were there when it happened and you helped break
20 it up?

21 A Yeah.

22 Q How well do you know Malik?

23 A Well, I knew him from my cousin, Quan.

24 Q So would he come over to April's house to play
25 basketball?

- 1 A Yes.
- 2 Q What about his brother, Horace?
- 3 A Yeah, I seen him a few times, too.
- 4 Q He'd come over to play basketball as well?
- 5 A Uh-huh.
- 6 Q How well did you get to know those two?
- 7 A I didn't know them like that, but I knew them.
- 8 Q And you knew their names?
- 9 A Yeah.
- 10 Q And you hung out with them occasionally?
- 11 A I didn't really hang out with them.
- 12 Q Would you be there when they were hanging out?
- 13 A Yeah.
- 14 Q Okay. What happened after the fight? Where did
- 15 Malik go?
- 16 A Malik left.
- 17 Q Where did Terrell go?
- 18 A Terrell left.
- 19 Q Just walk the jury through what happened then.
- 20 A After Malik left, everything kind of died down a
- 21 little bit, but I don't know how I ended up on the side of
- 22 the road with my cousin Dominique, and then I seen Malik
- 23 and his brother, Horace, got out the car.
- 24 Q What kind of car was it?
- 25 A I can't remember all of that.

1 Q You remember the color?

2 A I can't remember.

3 Q Okay. So you remember them getting out the car?

4 A Yeah.

5 Q What did you notice about them?

6 A I heard their voice and noticed them. And then I
7 thought they were coming back to fight, I guess.

8 Q Whose voice did you hear?

9 A It was Malik -- I don't know whose voice it was.

10 Q Okay.

11 A I just noticed it.

12 Q Okay. What did you notice next?

13 A I seen them, so I start walking to the middle of the
14 road because I thought they was coming back to fight
15 again. And then they just start shooting, so I ran into
16 the yard.

17 Q You say they just started shooting, who is they?

18 A Malik and Horace.

19 Q Where were they going?

20 A They was running towards me from Center Street.

21 Q And they were firing in your direction?

22 A Yeah.

23 Q What did you do?

24 A I ran in the yard.

25 Q Okay. And what happened while you ran in the yard?

1 A They just coming towards us shooting. I couldn't do
2 nothing, but run. I heard the shots.

3 Q You just kept running?

4 A Uh-huh.

5 Q Did you end up hiding anywhere?

6 A Yeah, in the house. I went in the house.

7 Q Okay. What happened when the shooting stopped?

8 A I think I left.

9 Q That's when you left?

10 A Yeah.

11 Q Later that day, did you go talk to law enforcement?

12 A I think it was the next day.

13 Q The next day?

14 A (The witness nodded head.)

15 Q Okay. So the person who was shooting, the one with
16 Malik?

17 A Yeah.

18 Q Is that person here in the courtroom today?

19 A Yeah.

20 Q Can you point them out and describe what they're
21 wearing, please?

22 A Horace with the blue shirt on, the blue and white
23 tee.

24 MR. POTTS: Let the record reflect he identified the
25 Defendant.

1 THE WITNESS: Huh?

2 MR. POTTS: I was talking to His Honor. I apologize.

3 THE COURT: It does.

4 MR. POTTS: Thank you.

5 Thank you. No further questions.

6 THE COURT: Cross-examination?

7 MR. COMISH: May it please the Court, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. COMISH:

10 Q Good afternoon, Tarus.

11 A Good afternoon.

12 Q After what time did you get to your aunt's house that
13 day?

14 A I think it was about 3:00 or 4:00.

15 Q About 3:00 or 4:00. So you saw the commotion that
16 led up to the altercation between your brother and Malik?

17 A Yeah.

18 Q So your brother had gotten into a fight with his
19 girlfriend?

20 A It wasn't really a fight. It between them two.

21 Q Did you observe that altercation?

22 A Not really, I know just it was an altercation.

23 Q Okay. Well, we'll move on then. Did you see your
24 cousin get into a fight with the girlfriend?

25 A My cousin?

1 Q And I apologize, I forget her name.

2 A Who is it?

3 Q Your female cousin. I don't recall the name right
4 off the top of my head. But did you see another fight
5 with your brother's girlfriend?

6 A No.

7 Q Okay. Where were you when you saw Malik and Terrell
8 get into their altercation?

9 A If I'm not mistaken, I think I was on the porch, on
10 the front porch.

11 Q And the altercation was in the street?

12 A Yeah.

13 Q And what did you do when you saw the altercation
14 begin?

15 A I tried to break it up.

16 Q Okay. So -- and stop me if I'm putting words in your
17 mouth, but you ran from the porch to the street?

18 A Yeah.

19 Q Is that accurate?

20 A Yeah.

21 Q Okay. And what did you specifically do when you were
22 attempting to break it up?

23 A I tried to grab my brother.

24 Q Excuse me?

25 A I grabbed my brother and tried to pull him back.

1 Q So you grabbed your brother?

2 A (The witness nodded head.)

3 Q Were you grabbing him from behind?

4 A Yeah.

5 Q In that sort of action (indicating)?

6 A Yeah.

7 Q And you observed what happened to Malik, correct?

8 You had eyes on him, correct?

9 A Yeah.

10 Q It was a bunch of folks jumping on him?

11 A Everybody was trying to break it up.

12 Q About how long were they on top of him?

13 A It happened so fast, it wasn't even a minute, no
14 longer than 30 seconds.

15 Q Okay. But to be fair, there were folks piling on him
16 for about 30 seconds?

17 A Yes, trying to break it up.

18 Q Okay. And Malik left after that?

19 A Yeah.

20 Q Okay. Do you know about how much longer before they
21 came back?

22 A I wouldn't put a time on it.

23 Q Just give me an estimate. I'm not going to hold you
24 to it, 15 minutes?

25 A It wasn't longer than 20, 25 minutes.

1 Q Okay. And where were you when you saw the car pull
2 up?

3 A On the side of road in front of [REDACTED].

4 Q Okay. Were you by yourself right there?

5 A No.

6 Q Who was with you?

7 A My cousin, Dominique.

8 Q You were with Dominique on the side of the road when
9 the car pulled up?

10 A Yeah.

11 Q Okay. And what did you do immediately when the car
12 pulled up? What did you notice?

13 A I told you I noticed his voice. I noticed their
14 voice coming down the street.

15 Q What did you physically do when the car stopped? Did
16 you walk up to the car?

17 A You said when the car stopped?

18 Q Yes, sir.

19 A I didn't know it was them at first.

20 Q Okay. But just tell me what you did, though?

21 A All right. We was on the side of the road. I didn't
22 -- I was with Dominique. And then the car -- the car had
23 pulled up, I guess, and then I heard their voice. So I
24 went to the middle of the road to see what they was coming
25 back for.

- 1 Q Okay.
- 2 A And then I heard the shooting, then I ran.
- 3 Q Okay. Were you by yourself? Did Dominique come in
- 4 the middle of the road with you?
- 5 A I think he ran, too.
- 6 Q Ran with you or back to the house?
- 7 A Back to the house.
- 8 Q Okay. So you were by yourself in the middle of the
- 9 road?
- 10 A No. I guess we ran in the backyard together. I
- 11 can't remember where Dominique went.
- 12 Q Okay. So just to clarify, I'm going to recap and
- 13 then I'm going be done, okay?
- 14 A (The witness nodded head.)
- 15 Q You were on the side of the road, correct?
- 16 A Yeah.
- 17 Q You saw the car pull up?
- 18 A Yeah.
- 19 Q You saw Horace Watts and you saw Malik get out the
- 20 car?
- 21 A Yeah.
- 22 Q And you walked to the middle of the road because you
- 23 thought they came back to fight?
- 24 A (The witness nodded head.)
- 25 Q Am I right?

1 A (The witness nodded head.)

2 Q Thank you very much.

3 MR. COMISH: Beg the Court's indulgence just one
4 second.

5 (Pause.)

6 MR. COMISH: All right. No further questions.

7 THE COURT: Anything further?

8 MR. POTTS: No, Your Honor.

9 THE COURT: You may step down.

10 Next witness.

11 MR. ARANT: The State calls Donna Martin.

12 Thereupon;

13 DONNA MARTIN,

14 after having been duly sworn, testified as follows:

15 THE CLERK: Thank you. Please have a seat in the
16 witness stand and state your full name for the record.

17 THE WITNESS: My name is Donna Martin.

18 DIRECT EXAMINATION

19 BY MR. ARANT:

20 Q Good afternoon, Ms. Martin. Where are you employed
21 at?

22 A Columbia Police Department.

23 Q In what capacity are you employed with the Columbia
24 Police Department?

25 A The evidence and property unit.

1 Q Excuse me, I'm sorry?

2 A Evidence and property unit. I apologize, I have a
3 cold.

4 Q The evidence and property room?

5 A Yes.

6 Q How long have you been employed there?

7 A Twenty years.

8 Q Twenty years. In the same capacity?

9 A Yes.

10 Q Okay. And what is your current -- do you have a
11 current title there?

12 A I'm the supervisor.

13 Q Supervisor?

14 A Yes.

15 Q Okay. Now, I'm going to draw your attention back to
16 2014, July 12th, 13th, 2014. Were you still a supervisor
17 back then?

18 A Yes.

19 Q And what are some of your duties and tasks as the
20 supervisor of the evidence department?

21 A The daily intake of property that comes in from the
22 officer bringing them to the window or when we're closing
23 in the evening, we log and put it on the shelf. Also,
24 return back to owners and help assist the officers in any
25 way possible and we go to court.

1 Q Okay. Is it fair to say y'all work regular business
2 hours?

3 A Yes, we do.

4 Q What are those hours?

5 A Monday through Friday, 8:00 to 4:30.

6 Q Now, what if there's a crime after 4:30, what
7 happens?

8 A The crime scene investigator will turn everything in
9 and put it into our locks. We get it the next morning.

10 Q Those are locked?

11 A Locked and secured, yes.

12 Q Y'all have protocols in place?

13 A Yes.

14 Q Why do y'all have those protocols in place?

15 A Because we're not a 24-hour operation, so everything
16 that's after 4:30, we turn into the locker. We're the
17 only one who have access to the lockers. The officers put
18 it in, lock it. We the only one that come and retrieve
19 it.

20 Q So y'all are the only with access to it?

21 A Yes. Uh-huh.

22 Q Okay. I'm going to draw your attention to this case
23 specifically, that would be incident number 14-19459, what
24 did you do in this case?

25 A Hum --

1 Q You have your report?

2 A Yes, I do.

3 Q Okay. You can refer to that?

4 A Okay. We logged in all the evidence that came --
5 currently turned in on the case, initially turned in the
6 case.

7 Q Okay. And what particular evidence did you have an
8 occasion to log in?

9 A Item on our log sheet, items three through 14, I
10 received them from the locker.

11 Q What do you mean by received them from the locker?

12 A Those are items when the investigator or crime scene
13 investigator turns in evidence after we're closed. We get
14 it the next morning and log it onto our log sheet or
15 existing log sheet on the case.

16 Q And where does it state you received the items?

17 A Once we get in and log it in, we put it on our shelf.
18 Everything is assigned to a shelf location.

19 Q On this particular -- I have some notes and referring
20 to these. I'm referring to these notes that we have that
21 you gave to us on this case -- that the department gave to
22 us on the case. Do y'all inventory, write things down?

23 A Yes.

24 Q Okay. And on this case, what kind of things do you
25 write down besides the type of evidence you get?

1 A We write what we have and where it's from, as far as
2 if it's a GSR kit or any location or anything, we attach
3 that name to that piece of evidence.

4 Q Okay. I noticed on this sheet, there are two victims
5 listed; is that correct?

6 A Yes.

7 Q Can you just tell the jury who those two victims are?

8 A Mr. Tyrone Johnson And Mr. Isaac Lewis.

9 Q Okay. Is there also subject for the --

10 A Yes.

11 Q Okay. And what is listed on the subject?

12 A I have Mr. Malik Davis and Mr. Horace Watts.

13 Q Is that common for y'all to mark that on there?

14 A Yes, we do.

15 Q Okay. Can you tell this jury -- just go through what
16 items you actually logged in yourself.

17 A Okay. Items I received, there was three through 14,
18 which number three is a black watch; number four is a
19 South Carolina ID; number one -- number five, I'm sorry,
20 is a house key; number six is GSR kit from Mr. Isaac
21 Lewis; number seven, a box cutter, key chain and keys and
22 two South Carolina IDs; number eight was a pair of white
23 slippers; number nine, another pair of shoes; number 10, I
24 have about four or five cell phones on this case; number
25 11, I have another cell phone, which is broken; item 12,

1 another cell phone; number 13, a lighter and a comb; and
2 number 14, \$375.

3 Q And you logged those items in?

4 A Yes.

5 Q Were those items ever tampered with?

6 A No.

7 Q They were kept in the original condition as best can
8 be?

9 A Yes.

10 Q And outside of anyone in the department, who else has
11 access to those items?

12 A Only the people working in the department within our
13 unit.

14 Q And if somebody wants to see those items, they have
15 to come see you?

16 A Yes.

17 MR. ARANT: No further questions.

18 THE COURT: Cross-examination?

19 CROSS-EXAMINATION

20 BY MR. KRZYSTON:

21 Q You guys work over there in that new fancy CPD annex,
22 right?

23 A Yes, we do.

24 Q Across from the fairgrounds?

25 A Yes, sir.

1 Q Brand new building. I know that's nice.

2 A Yes.

3 Q You actually know in this case who the suspects are
4 because, again, on the report, it's listed?

5 A Right. It was turned in, yes, sir.

6 Q And GSR, just so the jury knows because they don't
7 deal with this like you and I, gunshot residue test?

8 A Yes.

9 MR. KRZYSTON: Okay. Cool. Thank you.

10 THE COURT: Anything further?

11 MR. ARANT: Nothing further, Your Honor.

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

13 Next witness.

14 MR. ARANT: The State calls Amanda Beckham.

15 Thereupon;

16 AMANDA BECKHAM,

17 After having been duly sworn, testified as follows:

18 THE CLERK: Thank you. Please have a seat in the
19 witness stand and state your full name for the record.

20 THE WITNESS: Amanda Beckham.

21 DIRECT EXAMINATION

22 BY MR. ARANT:

23 Q Ms. Beckham, where are you employed at?

24 A I'm employed at the Columbia Police Department.

25 Q And what's your current task at the Columbia Police

1 Department?

2 A Currently, I'm assigned to the records unit as
3 administrative assistant.

4 Q How long have you worked with the City?

5 A Going on seven years.

6 Q Seven years. Did you have occasion to work in any
7 other department prior to the records department?

8 A Yes, before records, I was assigned to the property
9 and evidence unit.

10 Q Did you have a specific title there?

11 A Property and evidence clerk.

12 Q Okay. And as a property and evidence clerk, what are
13 your duties there?

14 A What we would do is when we took in evidence, we
15 would keep a chain of custody of who we received it from,
16 the condition that it's in, and then we would process it
17 by writing on our sheets what we had, inventoried it, then
18 assign a place on the shelf for it to be housed.

19 Q Okay. And I'm going to draw your attention while
20 we're here today, in this case, in particular, did you
21 have occasion to log in some items of evidence?

22 A Yes.

23 Q And what were those items of evidence?

24 A On this particular case, from what I can recall, I
25 believe number one -- our number one -- CPD evidence sheet

1 number one, I received it from Crime Scene Investigator
2 Wise.

3 Q Okay. You have your report or a copy of the custody
4 records by chance?

5 A What we would do is when we would get it in, the
6 initial, we would stamp it with the evidence and time,
7 date it and who we received it from and who received it..

8 Q Okay. This is State's Exhibit 125. Do you recognize
9 that, the handwriting on that?

10 A Yes, that is my initials and the time.

11 Q Are those the items you received?

12 A Yes.

13 Q How many items are there inside that exhibit?

14 A We have it labeled as one. I've got two bullet
15 fragments and two projectiles.

16 Q Is that what you see there in that?

17 A Yes.

18 Q Okay. Thank you. Now, in this case, you said you
19 received these from Investigator Wise?

20 A Yes.

21 Q So sometimes y'all physically receive these items
22 from investigators?

23 A Yes.

24 Q Did this look like it was altered in any way?

25 A No.

1 Q When you received it?

2 A Everything looked fine.

3 Q And you never tampered with it?

4 A No.

5 Q Did you have occasion to do anything else with this
6 case?

7 A Occasionally, if they request -- a crime scene or
8 investigator request something to go to SLED, I would sign
9 them out to SLED.

10 Q And did you do that in this case?

11 A Yes, I did.

12 Q And which items did you do that on?

13 A The items that I have listed that I turned over to
14 Investigator Smith, number one, 16, 17, 20, 21 and 22.

15 Q Can you just read for the jury what those actual
16 items were that went?

17 A Yes. Number one is the two bullet fragments and the
18 two projectiles; 16 is two 40-caliber spent shell casings;
19 our number 17 is one 9mm unfired cartridge or bullet; 20
20 is 16 spent shell casings; 21, one GSR kit; 22 is one
21 projectile.

22 Q And those were sent off to SLED?

23 A Yes.

24 MR. ARANT: Okay. I have no further questions.

25 Thank you.

1 MR. KRZYSTON: Briefly, Your Honor.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. KRZYSTON:

5 Q You just indicated that this listed -- State's 125
6 listed having one item?

7 A That was our item number one, that's what we --

8 Q Excellent. You did submit a GSR test to SLED?

9 A I handed it over to -- or signed it out to
10 Investigator Smith or MPO Smith.

11 Q George Smith?

12 A Yes.

13 MR. KRZYSTON: Thank you very much.

14 No further questions, Your Honor.

15 THE COURT: Anything else?

16 MR. ARANT: No, Your Honor.

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

18 Next witness.

19 MS. NICKLES: The State calls George Wise.

20 Thereupon;

21 GEORGE WISE,

22 After having been duly sworn, testified as follows:

23 THE CLERK: Thank you. Please have a seat in the
24 witness stand and state your full name for the record.

25 THE WITNESS: George Wise, W-I-S-E.

DIRECT EXAMINATION

BY MS. NICKLES:

Q Good afternoon, Investigator Wise.

A Good morning.

Q Will you please tell the jury where you're employed?

A Columbia Police Department.

Q And what are your duties there?

A I'm a crime scene investigator.

Q Okay. And as a crime scene investigator, can you just explain to them briefly what your role is?

A Yes. My role as a crime scene investigator, a lot of times, we'll go to a crime scene. Once the crime scene is secured by parole officers, it's my job to go in and examine the crime scene, see what action or process I need to conduct in the crime scene. After that, I go back to my truck and get my equipment and come back in. At that time, process the crime scene by photographing it, video taping it, process it for fingerprints or DNA. Then from there, I start collecting evidence. Once I collect evidence, those evidence items are tagged in and placed into the property room.

Q And you mentioned that you go to crime scenes. Does your job always involve going to crime scenes?

A No, ma'am. I also work along side investigations as far as working search warrants and what other items they

1 deem necessary for us to do for them.

2 Q And with search warrants, those could be for various
3 types of locations or objects, correct?

4 A Yes.

5 Q Would that include cars?

6 A Yes.

7 Q I want to turn your attention to July 14th of 2014.

8 Were you working with Columbia Police Department then?

9 A Yes.

10 Q And did you have the chance to become involved with
11 an ongoing homicide investigation?

12 A Yes.

13 Q What was your involvement?

14 A My involvement was I was notified by investigators to
15 conduct two search warrants on two vehicles that had been
16 towed to the Columbia Police Department.

17 Q Okay. And you said those were towed to the Columbia
18 Police Department?

19 A Yes.

20 Q Why is that?

21 A That's where we have a fenced-in area in the back
22 part of the Columbia Police Department and that's where we
23 store our vehicles involved in crimes.

24 Q So it's not uncommon for you not to execute a search
25 warrant where the vehicle is on the scene?

1 A That is -- you can do that. It just the request of
2 the investigators if they want to do that on the scene.

3 Q But it's not unusual to have vehicles towed to
4 headquarters to your location to search them?

5 A No, ma'am.

6 Q And is that what happened in the case?

7 A Yes.

8 Q Specifically, what vehicles did you become involved
9 in searching?

10 A The first vehicle we executed a search warrant on was
11 a blue in color 1999 Ford Explorer and the second vehicle
12 was a blue in color 2006 Hyundai Elantra.

13 Q Okay. I'm going to hand you what's been marked
14 State's 35 through 44. And these have already been
15 admitted, but take a look at those and tell me what that
16 is. You can just slip through them all. You don't have
17 to tell me one by one.

18 A Yes. This would be the Ford Explorer I executed a
19 search warrant on.

20 Q Okay. And when you're executing a search warrant on
21 a car, is there a particular method you follow?

22 A Not necessarily.

23 Q Do you usually take photographs?

24 A Yes, ma'am. We do the photographs and we do the
25 exterior and interior of the vehicle before we do the

1 search warrant.

2 Q Okay. So before you go in and retrieve anything, you
3 take pictures?

4 A Yes.

5 Q Of where -- of the car as it comes to you?

6 A Yes.

7 Q Okay. And did you do that in this case?

8 A I did.

9 Q Okay. And if you wouldn't mind, I'm going to flip
10 through these. Is this the car that you searched in this
11 case?

12 A Yes.

13 Q And I noticed there's some red tape on these doors.
14 Can you explain to the jury what that is? Can you see it
15 from there?

16 A Yes. A lot of times if a vehicle is being taken from
17 a crime scene and towed to Columbia Police headquarters, a
18 lot of times our crime scene investigator will place
19 evidence tape across the doors to show that the vehicle
20 has not been tampered with until we obtain the search
21 warrant.

22 Q Okay. And why do you do that?

23 A To prevent the vehicle from being tampered with, so
24 we secure the doors with evidence tape.

25 Q And in this case with this Ford Explorer, was there

1 any evidence that anyone tampered with that?

2 A To my knowledge, no.

3 Q Okay. So you said you'll photograph the vehicle. Do
4 you photograph -- how do you do that?

5 A We do like a 360. We actually go in the back, take a
6 photo of the back, then we take a photo of the tag. Then
7 we would go to each corner and we would do a side and then
8 we do the corner. So, basically, we take about seven or
9 eight photos.

10 Q State's 30 would be a photograph of the back?

11 A Yes.

12 Q Thirty-six would be the front?

13 A Yes.

14 Q And then 37 would be one side?

15 A Yes.

16 Q So you just kind of walk around to photograph -- 35
17 would be the other side?

18 A Yes.

19 Q So you photograph all of the exterior of the vehicle.
20 What, if anything, did you notice about the outside of
21 this vehicle?

22 A The broken glass.

23 Q Okay.

24 A On the rear window.

25 Q And was the broken glass on the rear window the only

1 broken glass that you observed on this vehicle?

2 A I would have to look at the photos. I can't recall
3 now.

4 Q That's fine.

5 A Yes. A broken glass on the driver's side door.

6 Q And particularly on the windshield, do you notice
7 anything?

8 A Yeah, it appears to be damage to the windshield,
9 also.

10 Q Okay. And you don't make any opinion as to what that
11 damage is, you just photograph it, correct?

12 A Yes.

13 Q Once you're done photographing the exterior of the
14 car, what is the next step in your investigation?

15 A I go in and I open all four doors and I do a
16 photograph of the interior of the vehicle.

17 Q Okay. I'm going to hand you State's 38, 40, 41
18 through 44. Do those look familiar?

19 A Yes, photographs of the interior of the vehicle.

20 Q Okay. And again, if you could walk the jury through
21 how you photograph the inside?

22 A Normally, we open all four doors and I start off on
23 the driver's side and take a picture of the inside, just
24 showing what the vehicle looks like once we receive it. I
25 go around to all four locations, front seat, passenger

1 seat, and then passenger side passenger seat and then rear
2 passenger seat and take photographs.

3 Q Okay. And if you see anything, if anything catches
4 your eye, do you take close-up pictures of that?

5 A I do. If I see like clothing items or anything
6 that's of evidentiary value.

7 Q Did you do that in this case?

8 A I did, but upon the investigator's request, if he
9 sees something, then he request a close-up photo. That's
10 what I do a lot of times based upon what the investigator
11 may see.

12 Q Okay. And you're not investigating this yourself,
13 you're following an investigator's instructions?

14 A Yes, I'm just there to assist the investigators just
15 by photographing and collecting evidence.

16 Q Okay. And they point out specifically we think this
17 may be interesting or we may want to collect this?

18 A Yes.

19 Q And did they do that in the case of the Ford
20 Explorer?

21 A Yes.

22 Q What specifically did you collect from the Ford
23 Explorer?

24 A From the Ford Explorer, I collected what appeared to
25 be a part of the bullet, a fragment, like a jacket of the

1 bullet.

2 Q Would that be what you're describing?

3 A Yes.

4 Q In State's 43 and 44. And where was that located?

5 A May I look at my notes, ma'am?

6 Q Sure.

7 A Investigator McKellar located the bullet fragment

8 that was imbedded in the left rear behind the driver's

9 seat head rest.

10 Q Okay. And you did collect that?

11 A Yes.

12 Q What do you do when you collect it?

13 A First of all, I photograph from a location to show --

14 depict where the fragment is located, then I do a

15 close-up. Then I collect it by placing it with gloves on,

16 collect the evidence by placing it -- a lot of times when

17 we collect projectiles or bullets, you put them in a small

18 coin-type envelopes.

19 Q Did you do that in this case?

20 A Yes.

21 Q Did you number them?

22 A No, ma'am.

23 Q Who numbers them?

24 A At that point in time -- only time I number my

25 envelopes is when I have markers at a shooting scene.

1 Normally, I would write down where the fragment came from.

2 Q But in this case, you know it's coming from the Ford
3 Explorer, so that --

4 A Yes.

5 Q Okay. And you said that you also executed a search
6 on an Elantra; is that correct?

7 A Yes.

8 Q I'm going to hand you 45 through 48?

9 A Yes, this is the vehicle I photographed.

10 Q And again, we won't go through it in quite as much
11 detail, but did you use the same procedure to photograph
12 the Elantra?

13 A Yes, ma'am, the 360.

14 Q The 360. What, if anything, did you notice about the
15 exterior of the Elantra?

16 A Well, I think it had some damage to it. Again, I
17 would have to recall by looking at the notes, ma'am.

18 Q Specifically, did you notice any damage to the rear
19 window?

20 A Yeah, yeah, it appears -- we have what appears to be
21 a bullet hole through the rear window.

22 Q And when you're photographing the exterior the first
23 time, do you place any markings on the car?

24 A No, ma'am.

25 Q When you notice some damage, do you do anything to

1 indicate that in further photographs?

2 A Yes, I'll take a photograph of it first, the location
3 where it's at and then from there, I'll do another photo
4 with scales on it.

5 Q Okay. Are these the scales that you're referring to?

6 A Yes, ma'am.

7 Q In State's 50, 51 and 52?

8 A Yes.

9 Q And why do you do that?

10 A Just in case they want to do a shooting
11 reconstruction, the scales are used to show the -- I
12 should say the size of the hole, to use in reconstruction.

13 Q To measure it. And when you were searching the
14 Elantra, did you do as you did with the Ford Explorer, you
15 took exterior pictures and then you moved to the inside?

16 A Yes.

17 Q And what, if anything, did you photograph and/or
18 collect from the inside of the Elantra?

19 A Photographing the interior of the Elantra, I
20 photographed some of the damages caused by the projectile.
21 Then once the investigators started their search and
22 located the projectile, at that time, I photographed the
23 projectile and collected it.

24 Q Okay. How many projectiles were you able to collect
25 from the Elantra?

1 A Let me refer to my notes.

2 Q Yeah, that's why we have them.

3 A From my notes, Investigator McKellar located a
4 projectile inside the left rear seat behind the driver's
5 seat. I photographed and collected. Investigator
6 McKellar located a bullet fragment inside the trunk area.
7 And again, a fragment would just be a piece of the bullet.
8 Then Investigator Gilliam located a projectile -- there
9 was some clothing in the trunk area. As he was moving
10 some clothing items, I recall one of the projectiles
11 actually fell out of one of the clothing items.

12 Q Okay.. And in State's 53, does that picture -- is
13 that one of the areas from which you collected a fragment?

14 A Yes. I think this right here should be the head rest
15 area (indicating).

16 Q If we could show the jury. But that was in the back
17 where the damage was, the bullet hole to the back window,
18 correct?

19 A Yes, ma'am.

20 Q Okay. So you collected that one. And then you said
21 when one of the investigators was removing some clothing
22 from the trunk, you -- another one fell out?

23 A Yes, ma'am, a projectile or bullet actually fell out.

24 Q Is that in State's 60?

25 A If I recall, ma'am, I believe that was the item he

1 was removing from the trunk, ma'am.

2 Q And then you said that you found one more around the
3 trunk compartment.

4 A The trunk part was a bullet fragment.

5 Q Oh, I'm sorry.

6 A Investigator McKellar located a projectile inside the
7 left rear seat behind the driver's seat.

8 Q This is the left rear seat in State's 59 and 58?

9 A Yes, ma'am.

10 Q And did you also collect those?

11 A Yes.

12 Q And you packaged them in the same manner you packaged

13 --

14 MR. KRZYSTON: Objection to leading.

15 THE COURT: Don't lead the witness.

16 BY MS. NICKLES:

17 Q How did you package those bullets -- or the bullet
18 fragments?

19 A Utilizing gloves, I placed the projectile in one of
20 my little coin envelopes.

21 Q I'm going to hand you what's being marked as State's
22 125. Tell me if you recognize that.

23 A Yes, ma'am.

24 Q And what are those?

25 A Items I collected, the first part you will see here

1 will actual bullet fragment jacketing and then the two
2 actual projectiles or bullets that were collected.

3 Q Okay. Does State's 125 contain the items that you
4 collected from both of those cars?

5 A Yes.

6 Q Okay. Do you need to look at it to make sure?

7 A (The witness reviewed State's Exhibit No. 125.)

8 Q Okay. So this is how you packaged those that you
9 collected?

10 A Yes.

11 Q Okay.

12 MS. NICKLES: Your Honor, at this time, the State
13 would seek to move 125 into evidence.

14 THE COURT: Any objection?

15 MR. KRZYSTON: Without objection, Your Honor.

16 THE COURT: Admitted.

17 MS. NICKLES: Thank you, Your Honor.

18 (WHEREUPON, State's Exhibit No. 125 was admitted
19 into evidence.)

20 MS. NICKLES: I beg the Court's indulgence.

21 BY MS. NICKLES:

22 Q Investigator Wise, did you do anything else in the
23 investigation of this particular case?

24 A No, ma'am, that was my only involvement was I believe
25 these two search warrants and that was all, ma'am.

1 MS. NICKLES: All right. Thank you. I have no
2 further questions.

3 THE COURT: By the Defense?

4 MR. KRZYSTON: Briefly, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. KRZYSTON:

7 Q Is it Master Patrol Officer or what is -- what's the
8 technical rank?

9 A MPO, yes, sir.

10 Q Cool. How long you been with the CPD?

11 A I've been with CPD 23 years now.

12 Q Were you employed as an officer of the law prior to
13 that?

14 A Yes, sir.

15 Q When you started your career, you were a patrol
16 officer, like any other officer, correct?

17 A Yes.

18 Q And as a part of your duties as a patrol officer, you
19 engaged in traffic stops?

20 A Yes.

21 Q And in your practice and in your experience, is it
22 easier or harder to see through windows that are tinted?

23 A Harder.

24 Q Okay. And as part of your duties as a quote, quote
25 evidence technician, you're actually trained in the

1 collection of evidence, correct?

2 A Yes.

3 Q You know -- or simplifying it, you know how not to be
4 a bull in a china shop, correct?

5 A Yes.

6 Q They send you in so that they can preserve evidence
7 and they don't trample or tread or accidentally manipulate
8 evidence?

9 A Correct.

10 Q And you just testified that you processed a, was it
11 Elantra, a Honda? It's a turquoise Honda, Hyundai, excuse
12 me?

13 A I have new contacts and they're not bifocals. I'm
14 kind of flexing in and out.

15 Q This guy right here (indicating)?

16 A Yes, sir.

17 Q Okay.

18 A I think I listed it down as blue in color.

19 Q You can't visually see through that actual car, can
20 you?

21 A No, sir.

22 Q No x-ray vision or anything like that?

23 A No, sir.

24 Q New contacts don't help that much, right?

25 A No, sir.

1 Q And you also processed what's depicted in State's 37,
2 Blue Ford Explorer?

3 A Yes, sir.

4 Q You can't see through that one either, right?

5 A No, sir..

6 MR. KRZYSTON: No further questions, Your Honor --
7 I'm sorry, I actually have one very brief question.

8 BY MR. KRZYSTON:

9 Q The windows in that blue Ford Explorer, tinted or
10 not?

11 A Tinted from what I can tell from the photo.

12 MR. KRZYSTON: Thank you, Your Honor. No further
13 questions.

14 THE COURT: Anything further?

15 MS. NICKLES: Nothing from the State, Your Honor.

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

17 You may call your next witness.

18 MS. NICKLES: The State calls George Potash.

19 Thereupon;

20 GEORGE POTASH,

21 After having been duly sworn, testified as follows:

22 THE CLERK: Thank you. Please have a seat in the
23 witness stand and state your full name for the record and
24 please spell your last name.

25 THE WITNESS: My name is George Potash, P-O-T-A-S-H.

DIRECT EXAMINATION

BY MS. NICKLES:

Q Will you please tell the jury where you're employed?

A I'm employed by the City of Columbia Police Department.

Q And what is your title there?

A I'm an officer, patrolman assigned to the crime scene unit.

Q Okay. And what are your duties in the crime scene unit?

A The identification, documentation, collection and preservation of evidence.

Q And how long have you been with the Columbia police department?

A I've been with Columbia police department for about 15 years.

Q I want to turn your attention to a case that began on September [sic] 12th, 2014, specifically a homicide investigation. Did you have the occasion to become involved in that case?

A Yes.

Q What was your initial involvement?

A My initial involvement was taking photographs of an individual at the request of Investigator McCoy. After that, at the request of crime scene sergeant, Sergeant

1 Rose, I responded to Richland Hospital, conducted a GSR
2 test and collected some evidence and then I returned to
3 headquarters and took photos of another individual.

4 Q Okay. Specifically, who did you photograph with this
5 initial involvement?

6 A Initially, I took five photographs of a subject by
7 the name of Horace Watts because he was identified by the
8 investigator.

9 Q Was that on the 12th?

10 A It would have been about 8:15 in the evening, so I
11 believe it would have been on the 12th.

12 Q Do you have your report in front of you?

13 A Yes.

14 Q What date is that report dated?

15 A Seven/12/2014.

16 Q Okay. So you became -- but your initial involvement
17 was to respond to the hospital, correct?

18 A No, my initial was -- I'm not sure. There may be an
19 error on my notification. I have 2205 hours for the
20 hospital.

21 Q Okay. And when you responded to the hospital, what
22 did you do?

23 A I collected a GSR test on a subject identified as
24 Tyrone Johnson.

25 Q Okay.

1 A And I collected a black cloth wallet, which contained
2 identification and personal papers for an Isaac Lewis from
3 a Richland Hospital employee by the name of Amber
4 Blackwood. And then also from Amber Blackwood, I
5 collected a Samsung cell phone.

6 Q Let's first go to the GSR kit. Can you tell the jury
7 what a GSR kit is?

8 A A gunshot residue test is a trace evidence
9 collection. What you're doing is you're taking a sample
10 of material to be submitted to a lab for identification.
11 What it consist of is a carbon disk with an adhesive on
12 it. That disk is taken -- it consist of four parts, the
13 backs of each hand and the palms of each hand. You take
14 the carbon disk with adhesive on it and you tap it along
15 the sides of the hands, either the back of the hand or the
16 palm of the hand. Any possible residue will be collected
17 by the adhesive. They are packaged in a small plastic
18 container. We place those in an envelope, put a seal on
19 them with all the documentation inside and then we submit
20 it to property. It then goes to SLED to be analyzed.

21 Q Okay. And is it uncommon to collect a GSR kit or
22 gunshot residue kit from anyone involved in a shooting
23 incident?

24 A No, it's not uncommon at all.

25 Q In fact, in the beginning investigation, anything

1 that involves a gun, would you say it's more common to
2 collect a gunshot residue kit?

3 A It would be fairly common, yes.

4 Q Is there a time limit on the amount of time that you
5 can collect those?

6 A They try to -- they try to say no more than six hours
7 out from a shooting incident. That can be affected by
8 both the caliber ammunition, the amount of residue that's
9 put out, the type of firearm and, you know, distance.
10 Also, the fact that gunshot residue is actually absorbed
11 by the human body. Interestingly enough, it's only
12 absorbed by a living human body. Deceased persons, when
13 they die, it --

14 MR. COMISH: Objection, Your Honor. Sounds like he's
15 testifying as an expert and I don't believe he's been
16 qualified.

17 MS. NICKLES: Your Honor, I believe he's just giving
18 his opinion -- he deals with this. He testified he's a
19 crime scene investigator with the City of Columbia Police
20 Department, that he routinely --

21 THE COURT: He hasn't been offered as an expert in
22 the field that he's testifying to.

23 MS. NICKLES: Yes, Your Honor. I don't believe he's
24 giving an expert opinion. He's explaining why it's
25 important to collect these initially. We can move on from

1 this.

2 THE COURT: All right.

3 BY MS. NICKLES:

4 Q Okay. So you said it's not uncommon to collect
5 them, though?

6 A Oh, no.

7 Q And whether you -- at the time you collect them, do
8 you know if you will need them later on?

9 A No.

10 Q Okay. You mentioned that you met with a person named
11 Amber Blackwood. Who is she?

12 A From my notes, she is an employee of Richland
13 Hospital, administrative registration ER.

14 Q Okay. And specifically, what items did you collect
15 from her?

16 A As I said, it was a black cloth wallet containing
17 identification and personal papers for an Isaac Lewis and
18 a Samsung cell phone.

19 Q So these were Mr. Lewis's belongings?

20 A I would expect so based on the identification.

21 Q Okay. What did you do once you collected those?

22 A They were placed in a container, which is bags, and
23 then submitted to the property room.

24 MS. NICKLES: Okay. Beg the Court's indulgence.

25 (Pause.)

1 BY MS. NICKLES:

2 Q You testified that you did have some additional
3 involvement in this case. Who requested your involvement?

4 A Sergeant Rose initially for the evidence, and then
5 Investigator McCoy for photographs.

6 Q And Investigator McCoy requested you to take
7 photographs of whom?

8 A Two persons, one was a Malik Davis and the other was
9 a Horace Watts.

10 Q And these photographs, when they were taken, what was
11 the status of these two individuals? Were they in
12 custody?

13 A Yes, they were in custody with the investigators.

14 Q Okay. So those pictures were taken after their
15 arrest?

16 A I don't know about when they were arrested. I know
17 they were present at headquarters and they were
18 photographed at headquarters.

19 Q And then after photographing Malik Davis and Horace
20 Watts at the request of Investigator McCoy, did you have
21 any other involvement in this case?

22 A No.

23 MS. NICKLES: Beg the Court's indulgence.

24 (Pause.)

25 MS. NICKLES: I don't have any other questions.

1 Thank you.

2 THE COURT: Cross-examination?

3 MR. COMISH: May it please the Court, Your Honor?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. COMISH:

7 Q Good afternoon. Just very briefly, did you respond
8 to the crime scene at all?

9 A No.

10 Q You went straight to the hospital?

11 A Right. I was -- basically, what I was doing was I
12 was offering support to the other units. And as far as
13 the GSR, it's simply because there is a general time
14 limit, so I was handling that for them.

15 Q And the GSR, specifically, you collected it, packaged
16 it and sent it off to SLED?

17 A I did not send it off to SLED. I collected it and
18 submitted it to property room.

19 Q Okay.

20 A I stated that we don't analyze those kits in the
21 department. For analysis, they are sent to SLED.

22 Q Excellent. Thank you.

23 MR. COMISH: Beg the Court's indulgence.

24 (Pause.)

25 MR. COMISH: No further questions.

1 THE COURT: Anything further?

2 MS. NICKLES: Just a few brief questions.

3 REDIRECT EXAMINATION

4 BY MS. NICKLES:

5 Q The gunshot residue kit that you collected, from
6 whom did you collect that?

7 A It was from a Tyrone Johnson.

8 Q Okay. And then when you responded to those pictures
9 at the request of Investigator McCoy, did you do reports?

10 A Yes, I did.

11 Q And on those reports, do you see an original incident
12 date?

13 A Yes, 07/12/2014.

14 Q What what was the date that you responded to take
15 those pictures?

16 MR. COMISH: Objection, Your Honor. This is beyond
17 the scope of redirect. I didn't get in any of this in
18 cross.

19 THE COURT: All right. Response?

20 MS. NICKLES: Your Honor, if I may look at my notes
21 real quick.

22 THE COURT: All right.

23 MS. NICKLES: Your Honor, I'll withdraw the question.

24 THE COURT: All right. Anything further?

25 MR. COMISH: Nothing further, Your Honor.

1 THE COURT: You may step down.

2 Your next witness.

3 MR. POTTS: Your Honor, that's all we have for the
4 evening at this time. We'll be ready to go with witnesses
5 tomorrow morning. I have a list of who we expect to call
6 tomorrow that we can provide the Court.

7 THE COURT: All right. How many witnesses do you
8 have tomorrow?

9 MR. POTTS: I think we have, I count nine or 10
10 tomorrow.

11 THE COURT: Is that the total number you have left?

12 MR. POTTS: Yes, Your Honor.

13 THE COURT: All right.

14 All right, ladies and gentlemen, that's it for this
15 day. You made it through one more day. Start at 9:30 in
16 the morning. Please do not discuss the case or anything
17 of that nature.

18 And when you come back tomorrow, Ms. Morell, I'm
19 appointing you to be the foreperson of the jury. If you
20 will take the foreperson's seat, front row.
21 Carter-Morell, Morell-Carter, which one is it?

22 THE FOREPERSON: Carter-Morell.

23 THE COURT: Yes, ma'am.

24 (WHEREUPON, the jury left the courtroom at 4:55
25 p.m.)

1 THE COURT: All right. Anything else before we
2 vacate today?

3 MR. POTTS: Your Honor, as far as scheduling goes,
4 Mr. Chad Smith, we anticipate we'll probably be calling
5 him at some point in the morning because I think we are
6 running out of witnesses, Your Honor. Would you like to
7 finish that pretrial hearing -- we can try and call him
8 first up after lunch and he might be our next to the last
9 witness.

10 THE COURT: Who is that?

11 MR. POTTS: Chad Smith, Your Honor, who you heard a
12 little bit from yesterday, from SLED.

13 THE COURT: What time can he be here in the morning?

14 MR. ARANT: He's just slated to be here tomorrow. I
15 haven't given him a time yet, but I -- we can call him
16 right after lunch, right before lunch, whenever you would
17 like. He's under subpoena, so we can get him here I think
18 when we need to.

19 MR. KRZYSTON: Your Honor, I think, for my part, I
20 can minimize some of the testimony and just kind of move
21 -- after a brief, brief cross-examination, kind of move to
22 argument and let you do what you need to do.

23 THE COURT: Well, is there any point of an argument?
24 The whole issue is whether or not he can say for certainty
25 that a gun fires a bullet or whether or not he has to be

1 more general that it's consistent with the firing by this
2 gun or something of that nature. Why is that an issue for
3 debate?

4 MR. KRZYSTON: Your Honor, I believe from the brief
5 cross-examination and direct testimony that he gave -- on
6 the subject brief, he indicated that he intended to
7 testify to the jury that it would be, again, a match and
8 that he would not relay to them any degree of uncertainty.

9 Specifically, the study that he cited and adopted, I
10 think Brundage from 1998 and Bunch and Murphy from 2003,
11 they -- those studies have been reviewed by learned
12 commentators and those studies have indicated that there
13 are several -- and when I say several, I'm talking about
14 15 or 20 uncontrolled factors, and that those uncontrolled
15 factors or variables defeat the assumption that examiners
16 in the field can make about uniqueness in terms of is a
17 shell casing actually fired --

18 THE COURT: I understand, but he's going to give his
19 opinion and his opinion, apparently, conflicts with your
20 opinion and your research on the issue. You have
21 witnesses to testify to all of those things?

22 MR. RUFFIN: Your Honor --

23 THE COURT: Do you believe that your
24 cross-examination precludes him from offering his opinion?

25 MR. KRZYSTON: I don't think the cross-examination

1 would preclude him from offering the testimony, but I
2 think as a function of 702 and the holding in State V.
3 Council, the Court is required to answer a threshold of
4 questions related to the reliability of --

5 THE COURT: That's why I posed the question, do you
6 have a witness or am I to base my threshold finding on
7 your cross-examination if he says in his view, this is the
8 gun and despite the studies that might -- how did you say
9 it, control --

10 MR. KRZYSTON: I think there are assuming
11 uncontrolled variables in the studies that he cites and
12 relies upon as to defeat the -- what I would call
13 assumption of uniqueness.

14 THE COURT: Okay, but lawyers can't testify, so
15 you're asking him about studies and he says, yeah, I'm
16 familiar with some of those studies, but I'm convinced
17 based on my testing that this gun fired the shot. Now,
18 I'm fully aware of all the cases and the debate on
19 ballistics and how ballistic -- the notion that ballistic
20 experts can be a hundred percent certain is subject to
21 various interpretations by various courts throughout the
22 land. But, typically, if a judge is to weigh evidence,
23 there has to be evidence presented on both sides of an
24 issue. So thus my question, do you have evidence or you
25 simply have argument?

1 MR. KRZYSTON: Your Honor, I would have evidence, but
2 I would establish that evidence through the
3 cross-examination of the government's expert, as you have
4 found. And I think in connection with the evidence and
5 testimony elicited from Mr. Smith and the learned doctrine
6 and treaty upon which we rely on in challenging
7 reliability that we have more than a sufficient basis to,
8 again, draw into question the foundational reliability
9 that you are required to find.

10 THE COURT: And after I rule, you're not planning to
11 go through all this again on cross-examination?

12 MR. KRZYSTON: I think to some extent, we would go
13 into it, but it would be relatively limited. I think it
14 also obviously goes to weight as well as admissibility.

15 THE COURT: State's response?

16 MR. ARANT: Your Honor, that's my contention, it
17 would go to the weight, not admissibility. I think it's
18 well settled they are perfectly -- it's well settled that
19 they can bring in their own defense expert to attack the
20 findings or review the evidence in this case, which has
21 not been done. To simply get up there and ask him --
22 certainly, can ask him I think about would these reports
23 change your opinion, but I think there would have to be
24 some type of evidence presented in the form of testimony
25 by the Defense to come in an attack the State's witness

1 when there has been, first off, no allegation that
2 anything was unreliable or anything to that nature in this
3 particular request. And I think the cases that he would
4 rely on are very different than the case we have at hand
5 here.

6 MR. KRZYSTON: Your Honor, if I may briefly respond?

7 THE COURT: Yes, sir.

8 MR. KRZYSTON: The government's contention that that
9 goes to weight not admissibility is directly disagreed
10 with by the supreme court in State V. White. In State V.
11 White, the supreme court said the argument that weight --
12 it goes to weight not admissibility does not excuse the
13 trial court from its gatekeeping function.

14 THE COURT: Well, that's not -- I accept my
15 gatekeeping function and I don't know that anyone is
16 arguing that the Court don't have the gatekeeping
17 function. The argument is over in weighing evidence.
18 unless you present evidence versus argument.

19 MR. KRZYSTON: Well --

20 THE COURT: And if the -- if the question on what
21 he's allowed to testify to, if he disagrees with all of
22 the studies, if he disagrees with everything that you're
23 claiming and as an expert, he says despite those studies,
24 those studies are limited, controlled studies with four
25 rats and two dogs or whatever those studies consist of, I

1 don't know, I hold firm to my belief, my expert opinion
2 that these are guns that fired these bullets based on all
3 of these things and there is no -- there is an error rate.
4 I've gone through those controls and I've had it peer
5 reviewed and all that, so this is my opinion, I'm going to
6 -- I'm supposed to do what, review the studies and
7 disagree, listen to you and disagree or let the jury weigh
8 the issue?

9 MR. KRZYSTON: Well, I think to an extent, Your
10 Honor, you would probably have to go through, again, to
11 some extent; not to an exhaustive extent, but have a
12 foundational understanding of what we're claiming. I
13 mean --

14 THE COURT: I understand what you're claiming. I
15 just explained that there's a whole issue and cases -- you
16 know, I've read a whole bunch. You know, we don't just
17 sit up here playing monopoly on these computers, you know.
18 We try to stay five steps ahead.

19 So we've -- you know, still the question remains
20 whether or not -- I'm happy to listen and to weigh and to
21 rule, I'm just asking questions. Question one would be do
22 you have witnesses versus your arguments? If your
23 argument is going to be based on studies that you want me
24 to read at some point in time, I need to know about that,
25 I guess. If the study concludes that an expert in

1 ballistics cannot be definitive in their opinion, then I
2 need to know that.

3 MR. KRZYSTON: Certainly.

4 THE COURT: I asked about Dan DeFreese, you know,
5 I've had Dan DeFreese in court testifying probably 25
6 years. His wife is Robin DeFreese, who Crystal replaced
7 --

8 Didn't you replace Robin?

9 THE COURT REPORTER: Yes.

10 THE COURT: -- as court reporter. So we know
11 firearms and SLED and their opinions and all that and I've
12 heard it for over 30 years. And I know that some of these
13 definitive conclusions can often be attacked
14 scientifically. So I don't know the degree to which the
15 State pretends to claim absolute certainty by a witness.
16 I don't even know that it matters in this case given the
17 evidence that is coming forward. And I'm certainly glad I
18 cut you off from wasting -- or spending the time that we
19 were spending in getting started. Even if it is an issue,
20 it's not going to be a significant issue in this case. I
21 doubt that it would be. I don't know. I mean, we're
22 still hearing from people explain what happened and who
23 did what and all of that.

24 MR. KRZYSTON: Respectfully, Your Honor, I obviously
25 disagree with that --

1 THE COURT: You disagree with what?

2 MR. KRZYSTON: The fact that this would not be an
3 important tenant of the case.

4 THE COURT: Okay. Maybe it is. I wait anxiously to
5 see if it is.

6 MR. KRZYSTON: Certainly, Your Honor. And some of
7 the questions that I was preparing to ask the witness do
8 go directly to some of the things you're asking about
9 today. But again, just to let you know, our argument is
10 based, again, off of the methodology that he employed in
11 this case --

12 THE COURT: The State has -- I mean, they have the
13 wrong gun or --

14 MR. KRZYSTON: Your Honor, I said that the
15 methodology he employed is flawed. The overall scientific
16 methodology is lacking to be a scientific claim, and that
17 the foundational validity studies lack scientific rigor
18 such that he cannot say on the stand that the marks made
19 by firearms onto shell casings are in fact --

20 THE COURT: By firearms onto shell casings?

21 MR. KRZYSTON: Correct, tool marks.

22 THE COURT: Based on the fact that the gun was
23 recovered or wasn't recovered?

24 MR. KRZYSTON: There was no gun recovered in this
25 case. He's looking at items 18 and 19 that were submitted

1 to SLED --

2 THE COURT: Oh, I see your point. I thought he had a
3 gun shooting it in a barrel of water or something.

4 MR. KRZYSTON: No, sir. These are comparing the tool
5 marks to, basically, impressions that the firing pin left
6 on items 18 and 19 that were recovered at Waites Road
7 versus the 45 casings that were recovered from Magnolia
8 Road and looking at the tool marks on those.

9 THE COURT: Well, he's not identifying a particular
10 weapon then.

11 MR. KRZYSTON: He's not identifying a particular
12 weapon, but what he is saying is that the same gun,
13 although they don't have it, fired both of those sets of
14 casings.

15 THE COURT: How does that prejudice your client?

16 MR. KRZYSTON: How does that prejudice my client?
17 Because --

18 THE COURT: If he doesn't put the gun -- you know,
19 they dispute firing any gun, I imagine, he's pled not
20 guilty, so why does -- how does that -- how is that
21 prejudicial for him to say that I can look at these shell
22 casings and say what kind of gun they came from and they
23 came from the same gun? I mean, unless you're going to
24 present a defense that you had 10 or 15 people shooting
25 and no one knows who shot who.

1 MR. KRZYSTON: The --

2 THE COURT: I mean, I don't know what your defense
3 is.

4 MR. KRZYSTON: If you were to admit that evidence,
5 the inference that the State could then make would be that
6 Mr. Watts had possession of the firearm at a time earlier
7 than the crime was committed. And that the obvious
8 inference, again, is that the weapon that was in the
9 possession of Mr. Watts was that -- in the possession of
10 Mr. Watts --

11 THE COURT: Who identified the firearm, him as having
12 such a firearm before? Have any witnesses done that?

13 MR. KRZYSTON: Today, not yet.

14 THE COURT: All right.

15 MR. KRZYSTON: They have --

16 THE COURT: What else?

17 MR. KRZYSTON: They have entered evidence to indicate
18 that the shell casings from Waites Road were recovered
19 from a bedroom believed to have been his.

20 THE COURT: The same type shell casings that were
21 found at the scene?

22 MR. KRZYSTON: Well, a shell casing that bore the
23 same tool mark this was found at the scene.

24 THE COURT: So you're back to whether or not he can
25 say with certainty or that based on his knowledge it's all

1 consistent with it being the same type weapon?

2 MR. KRZYSTON: Correct. And if Your Honor, again,
3 will remember the objection to the overall admissibility
4 as well as the scope of what the examiner is allowed to
5 conclude and relay to --

6 THE COURT: All right. Well, y'all need to bring him
7 early in the morning or late in the afternoon, but I have
8 a meeting between 12:00 and 1:30 tomorrow.

9 MR. ARANT: We will, Your Honor. I just ask that I
10 be provided the studies that he's going to refer to.

11 MR. KRZYSTON: Your Honor, these are --

12 MR. ARANT: I don't want to go on a wild goose chase,
13 but I'm certainly entitled if we entertain these studies,
14 if we bring up more recent studies that deal with the
15 changes, the effects that have gone into place since these
16 studies.

17 THE COURT: Where you find these studies, other than
18 the internet?

19 MR. KRZYSTON: The AFTE, the AFTE dot org.. It's a
20 journal that the American Firearm and Tool Mark Examiners
21 put out. It's publicly available information. If they
22 had read the NAS report, they would know exactly what
23 studies I'm referring to --

24 THE COURT: Well, help them out so they can find it
25 and be ready to debate it with you tomorrow.